



REQUEST FOR PROPOSALS #854362601

FOR

**ARCHITECTURE/ENGINEERING PROFESSIONAL SERVICES FOR
THE CAMPUS MASTER PLAN UPDATE**

OCTOBER 21, 2025

Note: This public body does not discriminate against faith-based organizations in accordance with the *Code of Virginia*, § 2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, sexual orientation, gender identity, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

OFFER COVER PAGE

Solicitation Number: 854362501
Commodity Code: PROFESSIONAL SERVICES
Issuing Agency & Address: Virginia Polytechnic Institute and State University
Procurement Department (0333)
North End Center, Suite 2100
300 Turner Street, NW
Blacksburg, Virginia 24061
Location of Work: Blacksburg, Virginia
Period of Contract: Single project services

All inquiries for information should be directed to:

Adam C. Smith

Associate Director of Procurement - Capital
Procurement Department
Phone: (540) 231- 3988
Email: adamcs@vt.edu

Sealed proposals for furnishing the services described herein will be received until **2:00 PM EST on November 20, 2025**. Proposals must be submitted in the manner described herein and by the stated deadline.

PROPOSAL SUBMISSION:

Proposals may NOT be hand delivered to the Procurement Office.

Proposals should be submitted electronically through Virginia Tech's procurement portal. This portal allows you access to view business opportunities and submit bids and proposals to Virginia Tech digitally and securely.

Proposals must be submitted electronically at:

<https://bids.scquest.com/apps/Router/PublicEvent?CustomerOrg=VATech>

Offerors will need to register through this procurement portal, hosted by Jaggaer. **It is encouraged for all Offerors to register prior to the proposal submission deadline to avoid late submissions.** Registration is easy and free. If you have any challenges with the registration process, please contact Jaggaer Support at 1-800-233-1121 or procurement@vt.edu.

Click on the opportunity and log in to your account to begin preparing your submission. Upon completion, you will receive a submission receipt email confirmation. Virginia Tech will not confirm receipt of proposals. It is the responsibility of Offeror to make sure their proposal is delivered on time.

Hard copy or email proposals will not be accepted. Late proposals will not be accepted, nor will additional time be granted to any individual Offeror.

Attachments must be smaller than 50MB in order to be received by the University.

Offerors submitting proposals must be properly registered and licensed with the Virginia Department of Professional & Occupational Regulation (“DPOR”) as per the most recent version of the Virginia Tech Construction and Professional Services Manual (“VTCPSM”). The VTCPSM and the Virginia Tech Design and Construction Standards Manual (“VTDCSM”) shall be collectively referred to as the “VT Manual.” For Offerors with multiple offices, the specific office submitting the proposal must be properly registered and licensed with DPOR. Proposals submitted by Offeror (or specific offices of Offeror) who are not properly registered and licensed shall not be considered.

In compliance with this Request For Proposals, which includes all provisions and appendices attached and referenced therein, and subject to all the terms and conditions set forth herein, the undersigned offers and agrees to furnish the services described in the RFP cited above and submit this signed proposal which includes this completed and signed Offer Cover Page, the completed and signed Forms AE-1, AE-2, AE-3, AE-4, AE-5 and AE-6 and other data as required by the RFP. It is understood that this proposal and the scope of services may be modified, by mutual agreement in subsequent negotiations.

The undersigned further acknowledges that they are familiar with the Virginia Tech Campus Design Principles and agrees that, if selected for this project, will provide design submittals that fully comply with these principles.

Name and Address of Offeror:

_____	Date: _____
_____	By: _____
_____	(Signature in Ink)
	Typed Name: _____
City: _____	Title: _____
State: _____ Zip: _____	Email: _____
FEIN/SSN # _____	Telephone No. (_____) _____

DPOR/APELSCIDLA License # for Proposing Office Listed Above: _____

Acknowledge receipt of Addendums:	No. _____	Dated _____
	No. _____	Dated _____
	No. _____	Dated _____
	No. _____	Dated _____
	No. _____	Dated _____
	No. _____	Dated _____

PRE-PROPOSAL CONFERENCE: No pre-proposal conference is scheduled for this procurement.

SWAM PARTICIPATION: Virginia Tech’s SWaM Participation Goal is 50%. Additional information on SWaM participation goals can be found in Section X of the RFP.

[END OF OFFER COVER PAGE]

I. APPLICABILITY OF THE VT MANUAL

The VT Manual shall apply to the contract awarded pursuant to this RFP and is incorporated by reference herein in its entirety.

Offeror's attention is directed to the VT Manual, Definitions, for definitions of terms used in this RFP. The terms "Virginia Tech," "University," "Agency" and "Owner" are used interchangeably in the material referenced in this RFP and each refers to the public body, Virginia Polytechnic Institute and State University, issuing this solicitation for services and with whom the successful Offeror will enter into an agreement.

Offeror's attention is also directed to the Terms and Conditions of the A/E Contract (CO-3a).

II. PURPOSE

The purpose of this RFP is to solicit proposals with the intent to enter into a contract through competitive negotiations for the professional services of an Architectural/Engineering firm, authorized to do business in the Commonwealth of Virginia.

Virginia Tech is seeking an Architectural/Engineering firm to update its Campus Master Plan. Offeror shall provide professional services for the project described in this RFP consistent with the VT Manual, as revised. The University is seeking teams with experience in long-range land use and master planning of large multi-site land-grant universities. Teams are anticipated to incorporate specialized consultants as needed into the project process, with expertise in areas such as public safety, research, and agriculture

III. PROJECT BACKGROUND AND DESCRIPTION

Founded in 1872 as a land-grant institution, Virginia Tech is a leading public research university located in Blacksburg, Virginia. With a strong emphasis on experiential learning, innovation, and service, Virginia Tech enrolls more than 38,000 students across undergraduate, graduate, and professional programs. The university is recognized for its strengths in engineering, architecture, business, agriculture, and the sciences, and is classified as an R1 research institution, reflecting its high level of research activity.

In November 2018, the current Campus Master Plan, entitled Beyond Boundaries 2047: The Campus Plan, was completed and approved by the Board of Visitors. The current plan received a SCUP Merit Award, Excellence in Planning for an Existing Campus, in 2019. While the Campus Master Plan is scheduled for updates on a ten-year cycle, supplemental Framework Plans are being developed during interim periods. The work completed during these off-cycle phases shall be evaluated, assessed, and revised during subsequent Campus Master Plan updates, rather than recreated from the ground up.

The Campus Master Plan update is intended to facilitate the University's ability to evolve even as circumstances change. Ideally, the plan is grounded in objectives and drivers which yield a campus vision detailed through frameworks and concepts which provide the university agile and adaptable solutions as strategic directions develop over time.

This Campus Master Plan update will focus predominantly on a strategy that evaluates, assesses, and updates the Plan Drivers, Campus Vision, Frameworks, and Districts chapters of the current plan, and augments the plan with additional sections and elements where needed. It is imperative that the Campus Master Plan be linked to the university's Strategic Plan and Initiatives, all of which reaffirm Virginia Tech's commitment to achieving excellence as a

comprehensive land-grant university that makes innovative contributions in learning, discovery, and engagement to the Commonwealth of Virginia, the nation, and the world.

IV. INFORMATION AVAILABLE

See VT Manual. Offerors shall refer to the VT Manual and adhere to all the procedural and technical requirements in the design of this project. Any deviation(s) shall be brought to attention for processing a waiver request when appropriate. If any conflicts exist between the VT Manual and the current adopted version of the Virginia Uniform Statewide Building Code, the more restrictive requirement shall take precedence:

VTCPSM -

https://www.facilities.vt.edu/content/dam/facilities_vt_edu/design-and-construction-standards/vt-construction-and-professional-services-manual-2020.pdf

VTDCSM -

<https://www.facilities.vt.edu/planning-financing/design-and-construction-standards.html>

See Beyond Boundaries 2047: the Campus Plan, adopted November 2018:

<https://vtechworks.lib.vt.edu/handle/10919/87075>

See Campus Design Principles, which reaffirms the university's design approach to the contemporary interpretation of revival Collegiate Gothic campus architecture:

Campus Design Principles –

https://www.facilities.vt.edu/content/dam/facilities_vt_edu/design-and-construction-standards/appendices/app-a-campus-design-principles.pdf

See Virginia Tech Brand Center for signage, wayfinding, and brand. Refer to *VTDCSM* for interior and exterior signage and wayfinding standards and visit the Virginia Tech Brand Center for logo and brand color guidelines.

Virginia Tech Brand Center -

<https://brand.vt.edu/>

See Virginia Tech 2020 Climate Action Commitment Documentation. The project design shall seek to advance the university's sustainability priorities. Refer to the *VT CAC Final Report Rev 10-27*, and associated Appendices, approved by the Board of Visitors, March 2021:

Climate Action Commitment -

<https://www.facilities.vt.edu/sustainability/climate-action-commitment.html>

See the Infinite Loop and Green Links Concept Design & Design Guidelines, which were a follow-up study of two key sections of the Campus Vision chapter of the Beyond Boundaries 2047: the Campus Plan. The Infinite Loop study was completed in December 2020 and the Green Links study was completed in March 2021:

Infinite Loop Concept Design & Design Guidelines

Green Links Concept Design & Design Guidelines

Additional Frameworks updates (ongoing):

Utilities Framework Update (anticipated to be completed 2026)

Mobility Framework Update (anticipated to be completed 2026)

Student On-Campus Housing Framework Update (anticipated to be completed 2026)

V. SCOPE OF SERVICES

The Master Plan is intended to be comprehensive in nature, looking at opportunities for future development and preservation across properties owned by the University and the Virginia Tech Foundation (“VTF”), including its subsidiary, the Corporate Research Center (“CRC”). Although the primary focus will be Blacksburg and Montgomery County, the University is seeking the option to evaluate and plan in other locations across the Commonwealth where we operate today. The following is a summary of contemplated study areas for the Campus Master Plan update.

Land Use Strategy

- All Virginia Tech Montgomery County Property, owned and leased
- Blacksburg Campus
- Agricultural Research and Extension Center (“AREC”) extension and outreach facilities within Montgomery County
- Co-planning of VTF properties in Montgomery County, owned and leased
 - VTF CRC properties and assets
 - VTF properties and assets in the greater Blacksburg area (with adjacency to Virginia Tech Blacksburg properties and assets) including but not limited to University Mall and Heth Farm
 - Provisions for a VTF section and separate task order components
- Co-planning of Virginia Tech and VTF properties in Roanoke, owned and leased
 - Scoped as part of the broader Roanoke Innovation Corridor development, informed by Virginia Tech’s partnership with Carilion Clinic, Radford University, and the City of Roanoke
 - Provisions for a Roanoke section and separate task order components
- All AREC properties and assets, owned and leased
 - Statewide with the exception of Montgomery County assets covered elsewhere
 - Provisions for an AREC section and separate task order components
- Co-planning of Virginia Tech and VTF properties in the Greater District of Columbia (DC) Area
 - Provisions for a Greater DC Area section and separate task order components

Focus Areas

- Growth planning
- Gateways and buffer zones
- Siting for utility infrastructure projects
- Stormwater strategies
- Glossary of terms
- Access and accessibility

Detailed Focus Areas for Blacksburg campus

- Extents of a walkable core campus
- Update Infinite Loop and Green Links
- A ‘relief valve’ roadway
- A Smart Village & connectivity roadway
- A South Gate Extension roadway
- Drillfield
- Duck Pond “Park” expansion
- Land bank evaluations including but not limited to
 - Golf Course
 - “Chicken Hill”
 - Greenhouses
 - Turf Farm

- Electric Service

Plan Drivers

The current Plan Drivers – VT Experience, Sense of Place, Connections, Growth, Access for All, and Sustainability – are to be reevaluated, reassessed, and updated. The Plan Drivers serve as the impetus for the creation of the Campus Master Plan and help give it direction and purpose. Each Driver is expressed in the form of an aspirational goal for the Blacksburg campus and Virginia Tech's locations across the Commonwealth. These goals direct the recommendations of the Campus Master Plan towards the achievement of meaningful results.

Campus Vision

The Campus Master Plan is to establish a land use chapter and physical vision for a vibrant campus rooted in the history and traditions of the university, the unique sense of place, and academic, research, and partnership initiatives. The planning process will reevaluate, reassess, and update the current Campus Vision chapter found in the latest Campus Master Plan document which featured six Key Elements – Central Spine, Agricultural Belt, Campus Districts, Tech and Town, Infinite Loop, and Green Links.

Frameworks

Frameworks are a layering of systems that fit on top of the land use strategies and plan drivers, and while not a final design they do indicate design direction. These are to be an updated set of toolkits to organize physical campus while remaining agile in changing conditions. There are currently five framework themes, each designed to be flexible and help us create a thriving, dynamic campus – Academic and Research, Strategic Partnerships, Campus Life, Landscape, and Mobility – which collectively contribute to a comprehensive and coordinated guide for incremental change. These Frameworks combine to provide an integrated and comprehensive structure for development and change across the campus.

The Frameworks should be predicated on balancing development in the Districts with Virginia Tech's rural character. They should reflect our heritage as a land grant institution and remain flexible enough to adapt to evolving university strategic priorities, and emerging funding opportunities. The scope of services undertakes reevaluation, assessment, and updating of the Frameworks chapter.

Districts

The Districts chapter is an enhanced and more detailed land use and physical vision chapter, which responds to existing conditions, emerging programmatic needs, and campus life goals. Each existing district is organized around a particular focus, such as academics, research, or student life. The programmatic emphasis drives the physical land use and footprint of district buildings, open spaces, and circulation networks and gives each district a distinct character. It also serves to intensify collaboration opportunities between students, faculty, and staff.

In addition to its primary focus, each district is to be planned to contain a variety of campus life and support uses, including social spaces, and considerations for experiential learning and external partnerships. Virginia Tech requests reevaluation, assessment, and update to the Districts chapter found in the latest Campus Master Plan Document.

Additional Sections

Sections and Chapters for separate task order components, such as VTF CRC, Roanoke, AREC, or Greater DC Area are envisioned to be developed and coordinated throughout the document, but also to be articulated in such a way as to stand on their own. For example, the Roanoke section is envisioned to have its own relevant Plan Drivers, Vision, and Frameworks.

Stages of Services

It is anticipated that the fees associated with the total scope of work will be funded over the course of several fiscal years and the specific scope of work released in a particular fiscal year shall be based on Virginia Tech's priorities and available funding at that time. Should the project progress beyond the initial Task Order, Offeror agrees to work with Owner to determine, on a yearly basis, the work that will be completed under the available funding.

The project is envisioned to be funded in three Task Orders, with final scope of services to align with a stepped funding schedule by fiscal year.

- Task Order 1 – intake, inventory, analysis, establish Plan Drivers
- Task Order 2 – ideation, concept development
- Task Order 3 – final plan development

Refinements, iteration, and multiple reviews are an inherent and important part of the plan's development, as is engagement with the Board of Visitors, university leadership, and our campus stakeholders. It is anticipated that engagement will occur in each stage over the course of the project. Our most recent Campus Master Plan update conducted 200 committee and public meetings, and it is anticipated that the university will undertake a similar engagement process.

Additionally, multiple element categories will be identified in order to evaluate and meet funding schedule allocations:

- A. Base scope elements
- B. Priority to integrate into the scope
- C. Potential to integrate

VI. PRELIMINARY PROJECT SCHEDULE

Milestone	Anticipated Date
A/E Inquiries Due	November 6, 2025
A/E Responses Due	November 20, 2025
A/E Interviews	January 28, 2026
A/E Contract Award	FEB 2026
Kick-Off	Winter 2026
Task Order 1 – Intake, Inventory, and Analysis	Spring 2026
Task Order 1 – Establish Plan Drivers	Spring/Summer '26
Task Order 2 – Concept Development and Testing	Winter 2026
Task Order 2 – Plan Revision and Graphic Development	Spring/Summer '27
Task Order 3 – Final Draft Development	Winter 2028
Task Order 3 – Revisions and Campus Master Plan Deliverable	Spring/Summer 28
Final Plan Approval	NOV 2028

Offeror shall work with Virginia Tech to confirm the specific Task Order schedules align with University needs, at the time of release, and to the extent possible, provide suggested improvements to complete the work as expeditiously as possible.

VII. PARTICIPATION OF SMALL BUSINESSES AND MICRO BUSINESSES

The mission of the Virginia Tech's small business ("SWaM") program is to foster inclusion in the university supply chain and accelerate economic growth in our local communities through the engagement and empowerment of high quality and cost competitive SWaM businesses. Virginia Tech encourages prime suppliers, contractors, and service providers to facilitate the

participation of small businesses through partnerships, joint ventures, subcontracts, and other inclusive and innovative relationships. **Virginia Tech's goal for SWAM participation is fifty percent (50%) of small businesses certified by the Commonwealth of Virginia.**

Virginia Tech will not suppress any firm from participating on a project if it meets the requirements as set forth in the terms and conditions of the RFP. Instead, should a business participating in the project not be qualified to be certified through the Commonwealth of Virginia as a SWaM business, Virginia Tech cannot report that spend toward the targeted goal.

Virginia Tech is committed to increasing SWaM participation. Failure to provide information on its past utilization of SWaM businesses, and failure to state and quantify (by listing percentages) any plans to utilize such businesses and the manner in which they may be utilized under this Contract may result in a proposal being deemed non-responsive.

As a means to track SWAM participation/payments, the successful Offeror will be required to report their participation, on a monthly basis, when submitting Offeror's invoices to Virginia Tech. No invoice shall be approved by Virginia Tech until Offeror has submitted the required participation data.

VIII. PROPOSAL REQUIREMENTS

- A. Proposals shall be signed by an authorized representative of Offeror. By submitting a proposal, Offeror certifies that all information provided in response to this RFP is true and accurate. Failure to provide information required by this RFP will ultimately result in rejection of the proposal.
- B. Proposals should be prepared simply and economically, providing a straightforward, concise description of Offeror's capabilities for satisfying the requirements of the RFP. Emphasis should be on completeness and clarity of content.
- C. One (1) electronic original of the proposal shall be submitted to Virginia Tech in the manner described in the Proposal Submission section of the Offer Cover Page above. Offeror's proposal shall include:
 - 1. The completed and signed Offer Cover Page. See Page 2 of this RFP for the referenced form;
 - 2. Summary of Offeror's proposal and proposed team on a double-sided place mat type 11"X17" format; and
 - 3. The completed and signed Forms AE-1, AE-1A, AE-2, AE-3, AE-4, AE-5 and AE-6 (form DGS-30-004). Form DGS-30-004 is available for download at the <http://forms.dgs.virginia.gov> website;
 - a. All Proposals shall comply with the following limitations:
 - 1) AE-4 – No more than 1 page for each individual's resume
 - 2) AE-5 – No more than three (3) representative projects for Offeror and no more than three (3) additional projects reflecting the team experience, as a whole. Each representative Project Summary should not exceed two (2) pages.

- 3) AE-6 – No more than five (5) pages of Supplemental Information. Supplemental information is defined as any information not specifically requested in the AE-1 through AE-5 forms or otherwise required to be submitted with Offeror's Proposal (for example, the place mat and small and diverse business participation data are not considered supplemental information).
 - 4) Additional Information in excess of the noted limitations above will not be considered.
4. Small Business Participation.
 - a. Completed Small Business Participation Data (form DGS-30-360). Form DGS-30-360 is available for download at the <http://forms.dgs.virginia.gov> website;
 - b. Provide information on Offerors past utilization of SWaM businesses and also state any plans to utilize such businesses and the manner in which they may be utilized under this Contract; and
 5. Any additional information requested herein or via addendum.
- D. All documentation submitted with the proposal shall be included in that single bound file. Elaborate brochures and other representations beyond those sufficient for presenting a complete and effective proposal are neither required nor desired.
 - E. Any information thought to be relevant, but not specifically applicable to the enumerated scope of Work, may be provided as an attachment to the proposal. If publications are supplied by Offeror to respond to a requirement, the response should include reference to the document number and page number. Publications provided without such reference will not be considered relevant to the RFP.

IX. EVALUATION AND AWARD OF CONTRACTS

- A. **Evaluation Criteria:** For purposes of shortlisting and establishing the final order of preference, proposals shall be ranked by Virginia Tech using the following criteria:
 1. Expertise, experience, and qualifications of the proposed Offeror team (including Specialty Consultants, if proposed) for providing the services described herein specifically for the project type provided for in this RFP.
 2. Demonstrated ability to deliver campus master plans of similar size and scale.
 3. Demonstrated ability of Offeror's Project Manager and proposed team members to work collaboratively, through design and construction, to successfully deliver a project of similar size, scope and complexity as described herein.
 4. Past performance on projects of a similar complexity for Virginia Tech and/or similar institutions.
 5. Offeror's experience in providing services in conformance with the VT Manual, Virginia Tech Campus Design Principles, including All-gender Bathroom, Wayfinding and Signage and Universal Design Requirements.

6. Proposed participation of SWaM businesses.

Generally, Virginia Tech will consider Offeror's overall suitability to provide the required services within the project's time, budget, operational constraints and past performance. Virginia Tech may consider the comments and/or recommendations of Offeror's previous clients, as well as other references.

- B. **Award of Contract:** After evaluation of the Proposals, received in response to the RFP, Virginia Tech shall engage in individual discussions and interviews with two or more Offerors deemed fully qualified, responsible and suitable on the basis of initial responses, and with emphasis on professional competence, to provide the required services. Repetitive interviews are permitted but not required. Offerors shall be encouraged to elaborate on their qualifications, performance data, and staff expertise relevant to the proposed scope of work. Offerors may also propose alternate concepts or methodology. After the shortlisting of Offerors, during the discussion phase, Virginia Tech reserves the right to request nonbinding estimates relating to the services. Such estimates may include, but are not limited to, life-cycle cost analyses and nonbinding pricing estimates for the services. At the conclusion of the discussion phase and on the basis of evaluation factors set forth in this RFP and the information provided and developed in the selection process to this point, Virginia Tech shall rank, in the order of preference, the interviewed Offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted with Offeror ranked first. If a contract satisfactory and advantageous to Virginia Tech can be negotiated, at a fee considered fair and reasonable, the award shall be made to that Offeror. Otherwise, negotiations with Offeror ranked first shall be formally terminated and negotiations conducted with Offeror ranked second, and so on, until such a contract can be negotiated at a fair and reasonable fee. Should Virginia Tech determine, in writing and in its sole discretion, that only one Offeror is fully qualified, or that one Offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that Offeror.

Proprietary information from competing Offerors (including any data on estimated manhours or rates and the plan for accomplishing the scope of work) will not be disclosed to the public or to competitors, provided such information is duly marked as "Proprietary Information" by Offeror and the designation is justified as required by Section 2.2-4342, Code of Virginia, as revised.

- C. The eVA Internet electronic procurement solution streamlines and automates government purchasing activities within the Commonwealth of Virginia. Virginia Tech, and other state agencies and institutions, have been directed by the Governor to maximize the use of this system in the procurement of goods and services. *We are, therefore, requesting that Offeror register as a vendor within the eVA system.*

There are transaction fees involved with the use of eVA. These fees must be considered in the provision of quotes, bids and price proposals offered to Virginia Tech. Failure to register within the eVA system may result in the quote, bid or proposal from your firm being rejected and the award made to another vendor who is registered in the eVA system.

Registration in the eVA system is accomplished on-line. Offeror must provide the necessary information. Please visit the eVA website portal at <http://www.eva.virginia.gov/pages/eva-registration-buyer-vendor.htm> and **register both**

with eVA and Ariba. *This process needs to be completed before Virginia Tech can issue Offeror a Purchase Order or contract.* If Offeror conducts business from multiple geographic locations, please register these locations in your initial registration.

For registration and technical assistance, reference the eVA website at: <https://eva.virginia.gov/>, or call 866-289-7367 or 804-371-2525.

X. FEES

The fee for services shall be negotiated on a lump sum basis considering the Scope of Services required, the estimated manhours required for each level/discipline and the typical labor rates for the various skill levels required for the work. Subsequent to contract award, the A/E services will be incrementally authorized and funded by the following phases: See Section V – Stages of Service for phasing and related funding approach.

Invoices for each phase mentioned above shall be subject to a 5% retainage per the requirements of the CO-3a.

The Memorandum of Understanding prepared by Virginia Tech will document the negotiated acceptable labor rates for the various levels/disciplines and these rates will be used for any hourly rate work of Offeror that is authorized by Virginia Tech.

XI. OPTIONAL PRE-PROPOSAL MEETING

No pre-proposal meeting is scheduled for this procurement.

XII. ACCESSIBILITY OF DOCUMENTS AND COMPLIANCE WITH TITLE 2

Offeror shall be responsible to ensure that all deliverables, submitted to Virginia Tech, that are intended or will be publicly posted by Virginia Tech including via websites, web applications, and mobile apps, must comply with the accessibility requirements of the Americans with Disabilities Act (ADA) Title II, including the updated regulations effective April 24, 2026, which incorporate the Web Content Accessibility Guidelines (WCAG) 2.1, Level AA standards.

XIII. APPENDICES

Appendix A: Terms and Conditions of the A/E Contract (CO-3a) dated July 2025
Appendix B: Virginia Tech Special Terms and Conditions dated September 8, 2023

Appendix A

Terms and Conditions of the A/E Contract (CO-3a) dated July 2025

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 4.20 (excluding 4.19), Sections 5.0 through 5.17, ; 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. 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 Completion: The date when the Owner has received a complete set of design documents without code and/or scope deficiencies.

“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 APESCB 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.

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 APESCIDLA 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 or electronically submitted into eVA utilizing the eVA Secure Vendor Portal 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-owned 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.

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 five (5) years, per claim, and twice that amount, in the aggregate; or (b) five-hundred thousand dollars (\$500,000) per claim and in the aggregate. The maximum amount of insurance required, regardless of the "Design-not-to-exceed" Budget shall be five-million dollars (\$5,000,000) per claim and ten-million dollars (\$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.

Professional Liability Insurance carried by Subcontractors or Consultants of the A/E shall not fulfill the requirements of this section.

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:

- a. 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 one-million dollars (\$1,000,000) bodily injury by accident or disease, each employee.

- b. Comprehensive General Liability – One-million dollars (\$1,000,000) per occurrence and two-million dollars (\$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.).
- c. Automobile Liability – One-million dollars (\$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:

- a. Original sealed, signed, and dated Plans;
- b. Original copy of the Specifications;
- c. Copy of analyses made for the Project;
- d. Indexed copy of the calculations made by each discipline for the Project; and
- e. 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:

- a. The name of the Owner;
- b. The Title of the Standard or Prototype Structure for which the design was developed;
- c. The name of the A/E;
- d. The seal and dated signature of the responsible licensed professional;
- e. The 11-digit Project Code of the Prototype Structure; and
- f. A 2”H x 4”W area (oriented horizontally) shall be reserved in the upper right corner of the title block of all drawings for the State Building Official Approval stamp.

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:

- a. The name of the A/E;
- b. The Project Title;
- c. The Project location;
- d. The 11-digit Project Code;
- e. The Drawing/Sheet Title;
- f. The Drawing/Sheet number;
- g. The seal and dated signature of the responsible licensed professional;
- h. The uniform date of the completed documents; and
- i. A 2”H x 4”W area (oriented horizontally) shall be reserved in the upper right corner of the title block of all drawings for the State Building Official Approval stamp.

The Title sheet drawing(s) shall include:

- a. The Index of Drawings;
- b. The Project VUSBC data;
- c. The seal and dated signature of the A/E of Record of the Project;

- d. The uniform date of the completed documents; and
- e. 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:

- a. The seal and dated signature of the A/E of Record of the Project;
- b. The uniform date of the completed documents; and
- c. The list of specification sections included for the Project.
- d. Note: A/E may also require the seal and signature of a principal of its Subcontractors.
- e. A 2"H x 4"W area (oriented horizontally) shall be reserved on the Project Manual cover for the State Building Official Approval stamp.

"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:

- a. The name of the A/E;
- b. The Project Title;
- c. The Addendum Number;
- d. The 11-digit Project Code;
- e. The seal and dated signature of the A/E of Record and all applicable responsible licensed professionals;
- f. The date of the Addendum;
- g. The page number and total number of pages;
- h. A list of any attachments to and part of the Addendum; and
- i. A 2"H x 4"W area (oriented horizontally) shall be reserved on the first page of the Addendum, and also at the upper right corner of all full-sized drawings included in 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 fifty-thousand dollars (\$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 fifty-thousand dollars (\$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 VPPA (*Code of Virginia*, § 2.2-4309(A)) and Chapter 3, Section 3.2.6 of the A/E Manual.

21. PAYMENTS TO THE ARCHITECT/ENGINEER

The following requirements are established in conformance with the VPPA 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 VPPA 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 VPPA 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:

- a. Type of Project or facility;
- b. Size (area) and number of stories;
- c. Types of materials;
- d. Bidding requirements;
- e. IFB (document) source; and
- f. 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:

- i. 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.
- ii. 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.
- iii. 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.
- iv. 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.
- v. 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:
 - i. 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.
 - ii. 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.
 - iii. 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.
 - iv. The A/E shall include the provisions of the foregoing subparagraphs i, ii and iii in every Subcontract or purchase order over ten-thousand dollars (\$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:
 - i. 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 ten-thousand dollars (\$10,000).
 - ii. 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

- iii. 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.
- iv. The A/E shall include the provisions of the foregoing subparagraph i, ii and iii in every Subcontract and purchase order over ten-thousand dollars (\$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 CLAIMS
(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. Claims due to CPSM or A/E Manual Updates

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.

b. Other Claims

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.

A/E claims for delay to Design Completion throughout the life of a project shall be subject to the following conditions:

- i. The Owner is the sole cause of the delay.
 - ii. If the delay is six (6) months or less and the A/E seeks an extension of the Contract Completion Date, then the A/E shall give Notice to the Owner's Project Manager within ten (10) days of the time of the occurrence of the delay. If the Owner agrees that the overall Design Completion has been impacted by the delay event, the Owner may extend the Contract Completion Date to accommodate the length of time that the overall Design Completion was delayed.
 - iii. If the delay is more than six (6) months and the A/E seeks an extension of the Contract Completion Date, the same Notice procedure detailed above shall be utilized. However, in addition to consideration of an extension to the Contract Completion Date, the Owner may also consider adjustment of the A/E Rates and associated fees for work subsequent to the six (6) month period of delay in an amount not exceeding the change in the Bureau of Labor Statistics, Producer Price Index by Industry: Architectural, Engineering and Related Services (PCU54135413) from six (6) months after the beginning date of the delay to the ending date of the delay, as determined by the Owner.
- c. A/E Final Claims

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.

- i. 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.
- ii. 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:

- a. 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;
- b. 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
- c. 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.

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 ten-thousand dollars (\$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 ten-thousand dollars (\$10,000) and the A/E is not 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 eighty-thousand dollars (\$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:

- a. **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.

- b. **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:
- i. 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
 - ii. 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.

- a. Information to establish the scope of the design including: building space requirements, adjacencies, functional requirements, special systems, and siting requirements.
- b. "Design-not-to-exceed" Budget.
- c. Schedule for the planning and design of the Project.
- d. 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.
- e. 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.
- f. 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.
- g. Existing equipment, furniture, furnishings, apparatus, etc., to be used on the Project, including all necessary characteristics required to coordinate the equipment in the Project.
- h. 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.
- i. 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.

- j. 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.
- k. Determine any specific development requirements of political subdivisions appropriate and consistent with state policy, opinions of the Attorney General, and existing statutes.
- l. 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.
- m. 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 level of competence, care, skill, and diligence held by others of the same profession in the Commonwealth of Virginia relating to design and other services for capital outlay projects of similar nature and complexity which are subject to the Construction and Professional Services Manual. The A/E, remaining responsible for the A/E Services, shall coordinate documents and supervise its consultants to achieve compliance with the requirements stated above. 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 design a structure that can be constructed within the "Design-not-to-exceed" budget, conforms with the *Code of Virginia* and applicable Virginia Regulations, and conforms with the CPSM. The A/E shall restrict the design to the authorized project scope. The Owner, not the A/E, may provide justification for and request a modification of these requirements from the DEB Director.

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 establishes the requirements for development of the working drawings and final design of the Project. Incorporating value engineering recommendations justified on payback and changes in functional layout to achieve greater efficiency or cost savings is within the Basic Services of the Contract. Changes or modifications required to conform to code requirements are within the Basic Services 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 thirty (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** * * *

Appendix B

Virginia Tech Special Terms and Conditions dated September 8, 2023

VIRGINIA TECH SPECIAL TERMS AND CONDITIONS:

9/8/2023

- 1) **PERFORMANCE STANDARDS:** All work is to be performed in compliance with the most current versions of the Virginia Tech Construction and Professional Services Manual ("CPSM") and the Virginia Tech Design and Construction Standards Manual ("DCSM").
- 2) **ELECTRONIC TRANSACTIONS AND EXECUTION IN COUNTERPARTS:** To the fullest extent permitted by Code of Virginia, Title 59.1, Chapter 42.1, the parties agree that electronic records, signatures, systems, formats, transmissions and communications (collectively, Electronic Transactions) may be utilized for this Project and this Agreement and all related documents, records, submissions, approvals, and communications (Ancillary Agreements). The parties agree that electronic signatures are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility. The parties further agree that Electronic Transactions may be relied on for the purposes of binding information transfer for this Project. Unless otherwise agreed to in writing by the parties, the following shall be deemed an acceptable electronic signature for the purposes of this subsection: an electronic symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record. In the event the laws, rules, or regulations of a third party governmental agency or entity do not permit the use of Electronic Transactions or Electronic Signatures, then this section shall not apply but only to the extent necessary to comply with the laws, rules, or regulations of the third party governmental agency or entity.

This Agreement, and any Ancillary Agreements, may be executed in one or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall be deemed to be one and the same agreement. A signed copy of this Agreement, or any Ancillary Agreement, transmitted by any means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement or such Ancillary Agreement.

RIGHTS AND REMEDIES: Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

- 3) **SECTION 179D: ALLOCATION OF ENERGY EFFICIENT DESIGN TAX DEDUCTION - Applicable to all A/E Design RFPs/Contracts and all Design-Build RFPs/Contracts:** Virginia Tech prioritizes environmental responsibility and sustainability in planning, development and construction of our facilities on Virginia Tech's campuses. These efforts, may be eligible for tax benefits under Section 179D of the Federal Tax Code, which allows a deduction based on the cost of certain qualifying, energy efficient property. Virginia Tech, in most cases, is unable to benefit directly from these deductions, however, Virginia Tech is permitted to allocate the deduction to parties responsible for the design of the qualifying property. Virginia Tech shall be reimbursed, by the applicant, for all costs incurred by Virginia Tech and its consultants to administer and support the application process.

An individual or entity who is contracted directly with Virginia Tech to design certain energy efficient buildings may apply to Virginia Tech for an allocation of Section 179D Deductions.

Refer to the link below for IRS guidelines and applicable updates regarding project eligibility, <https://www.gpo.gov/fdsys/pkg/USCODE-2010-title26/pdf/USCODE-2010-title26-subtitleA-chap1-subchapB-partVI-sec179D.pdf>

- 4) **UNIVERSAL DESIGN PRINCIPLES:** Universal Design principles, as identified in Virginia Tech's Design Team Assistance Checklist, shall be embraced in all aspects of the design. The A/E shall explore opportunities to apply Universal Design principles in the design and composition of project elements to allow for ease of access, use, and understanding, to the greatest extent possible, by all people regardless of their age, size, ability, or disability. Submittals should demonstrate a thorough understanding of Universal Design principles and strategies to incorporate these principles into the built environment. The A/E will be required to document related efforts at each stage of the design process by completing and submit the Universal Design A/E Guidance Checklist (attached hereto as **Exhibit 1**) to the Virginia Tech Project Manager.
- 5) **ALL-GENDER BATHROOMS:** All-gender restrooms shall be included in each new capital project and major renovations at Virginia Tech. Whenever possible, every floor shall have an All-gender restroom that complies with the 2010 ADA Standards for Accessible Design and is accessible to the general public. The All-gender restroom shall be located nearby the men's and women's multi-user restrooms whenever possible. Appropriate signage shall be displayed for the restroom as well as directional signage if it is not feasible for the restroom to be located near the main floor restrooms. Each All-gender restroom shall be designed as a single occupancy restroom with appropriate locking and closer mechanisms for the operation of the fully accessible door. The toilet, lavatory and all required accessories shall be compliant with the 2010 ADA Standards for Accessible Design.
- 6) **VEHICULAR ACCESS AND PARKING AREAS:** In addition to the Vehicular Access and Parking Area requirements listed in the most recent version of the Virginia Tech Design and Construction Standards, include the following:
 - a. **SIDEWALK PARKING:** Driving on sidewalks is allowed when there is no other way to get a needed vehicle to a designated place or building on campus. The vehicle operator shall be made aware that extreme caution shall be used to operate the vehicle in a way that will not be a hazard or hindrance to pedestrians using the walk. The Contractor shall be responsible for any damage to turf and anything that is located adjacent to the walk. Parking an unattended vehicle on a sidewalk is strictly prohibited by State Law. The Contractor is allowed to park a vehicle on a sidewalk if there is no other way to perform necessary work. The procedure to obtain a permit to operate a vehicle on sidewalks is the same as for the turf as outlined in Turf Policy. Any vehicle parked illegally on sidewalks shall be subject to ticketing, fines and towing if necessary.
 - b. **TURF PARKING:** Parking or driving on campus turf or sidewalk is strictly prohibited, except as specifically directed or otherwise allowed by the Physical Plant Grounds Department. In this case, a turf permit must be obtained from Virginia Tech Parking Services and displayed by the vehicle. Turf parking is not allowed under the canopy of any tree on campus. Any vehicle parked illegally on turf or sidewalks shall be subject to ticketing and fines.
- 7) **COMMONWEALTH OF VIRGINIA TRAVEL REGULATIONS:** The Commonwealth of Virginia Travel Regulations can be downloaded from the Commonwealth's Website at:

- 8) **SCHEDULING SOFTWARE:** When required to develop a CPM schedule, the Contractor shall use Primavera P6 or a similar system as approved in writing by Virginia Tech. Electronic parent files (i.e. XER for Primavera) shall be provided to Virginia Tech upon request. Microsoft Project shall not be used for developing a CPM schedule.
- 9) **CONTRACTOR CHANGE ORDER EVALUATION BY PROJECT A/E:** During the construction administration phase of the project, the A/E shall evaluate all Contractor Change Order requests to confirm the entitlement of the change as well as assess the reasonableness of the costs and schedule impacts.
- 10) **A/E QUALITY ASSURANCE OF DELIVERABLES:** The A/E shall Conduct Quality Assurance of all documents delivered to Virginia Tech per the QA checklist (**Appendix Q**) of the CPSM.
- 11) **CMAR FEE – Applicable to all CM at Risk RFPs and Contracts:** The CMAR fee shall include all costs and expenses for registration and monthly fees associated with eVA, and GC Pay.
- 12) **CMAR COST OF WORK ADJUSTMENT - Applicable to all CM at Risk RFPs and Contracts:** Any “savings” in the actual Cost of the Work versus the Cost of the Work included in the approved GMP shall revert to Virginia Tech and the GMP shall be reduced accordingly by Change Order. If the actual cost exceeds the amount of the approved GMP, those costs shall be borne by the CM.
- 13) **COVID Guidance to Vendors and Contractors:** All contracted service providers (including contractors and their subcontractors) of Virginia Tech who provide services on site at one of Virginia Tech’s campuses or locations, university-owned or leased buildings, or active university construction sites must comply with the most recent COVID guidance and/or directives by Virginia Tech.
- 14) **WAGE THEFT and WORKER MISCLASSIFICATION –** Contractors and Subcontractors at any and all tiers shall ensure that wage theft and worker misclassification is prohibited.
- 15) **BUILDING INFORMATION MODEL ELECTRONIC FILES ACKNOWLEDGMENT:** At the request of Contractor, and approval of Virginia Tech, Contractor shall be provided, with electronic data/digital files (“Files”) for the project. The Files shall be provided to Contractor in their native format as a convenience to Contractor for coordination of the work and preparation of Contractor’s submittals such as shop drawings and coordination drawings. The Files referenced herein include any 3D models of the work. The Files will be shared by the AE with Contractor under the conditions of the Building Information Model Electronic Files Acknowledgement Agreement attached hereto as **Exhibit 2**.



EXHIBIT 1

Universal Design A/E Guidance Checklist

Principle 1: Equitable Use

The design is useful and marketable to people with diverse abilities.

Provide the same means of use for all users: identical whenever possible; equivalent when not.

Avoid segregating or stigmatizing any users.

Provisions for privacy, security, and safety should be equally available to all users.

Make the design appealing to all users

A/E Narrative Response

Principle 2: Flexibility in Use

The design accommodates a wide range of individual preferences and abilities.

Accommodate right- or left-handed access and use.

Facilitate the user's accuracy and precision.

A/E Narrative Response

Principle 3: Simple and Intuitive Use

Use of the design is easy to understand, regardless of the user's experience, knowledge, language skills, or current concentration level.

Eliminate unnecessary complexity.

Be consistent with user expectations and intuition.

A/E Narrative Response

Principle 4: Perceptible Information

The design communicates necessary information effectively to the user, regardless of ambient conditions or the user's sensory abilities.

Maximize "legibility" of essential information.

Differentiate elements in ways that can be described (i.e., make it easy to give instructions or directions).

Provide compatibility with a variety of techniques or devices used by people with sensory limitations.

A/E Narrative Response

Principle 5: Tolerance for Error

The design minimizes hazards and the adverse consequences of accidental or unintended actions.

- Arrange elements to minimize hazards and errors: most used elements, most accessible; hazardous elements eliminated, isolated, or shielded.
- Provide fail safe features.

A/E Narrative Response

Principle 6: Low Physical Effort

The design can be used efficiently and comfortably and with a minimum of fatigue.

- Specify furnishings which allow user to maintain a neutral body position.
- Use reasonable operating forces.
- Minimize sustained physical effort.

A/E Narrative Response

Principle 7: Size and Space for Approach and Use

Appropriate size and space is provided for approach, reach, manipulation, and use regardless of user's body size, posture, or mobility.

- Provide a clear line of sight to important elements for any seated or standing user.
- Make reach to all components comfortable for any seated or standing user.
- Accommodate variations in hand and grip size.
- Provide adequate space and infrastructure for the use of assistive devices or personal assistance.

A/E Narrative Response

**EXHIBIT 2
TO THE VIRGINIA TECH SPECIAL TERMS AND CONDITIONS**

Building Information Model Electronic Files Acknowledgement

**VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY
BUILDING INFORMATION MODEL ELECTRONIC FILES ACKNOWLEDGEMENT**

Owner: Virginia Polytechnic Institute and State University ("Virginia Tech")
Architect/Engineer: **[Insert A/E Name]** ("A/E")
Contractor: **[Insert Contractor Name]** ("Contractor")
Project Name: **[Insert Project Name]** ("Project")
Project Number: **[Insert Project Number]**

This Building Information Model Electronic Files Acknowledgement ("Acknowledgement"), made effective this **[day]** day of **[month, year]**, is to acknowledge and agree to the conditions of release by Owner (or A/E on Owner's behalf) of the building information model in electronic file format ("Model Files"), and the receipt and/or use of the Model Files, by Contractor, as a convenience and at its sole risk, for Contractor's coordination of the work and preparation of Project submittals, such as shop drawings and coordinated drawings.

Upon execution of this Acknowledgement, Virginia Tech authorizes A/E to provide Contractor with the Model Files for the Project. A/E shall provide the Model Files to Contractor in their native format.

The parties acknowledge and agree that:

1. A Building Information Model is a digital representation of the Project, or a portion of the Project, and is referred to in this Acknowledgment as a Model File, which may describe a model element, a single model or multiple models used in the aggregate. A model element is a portion of the Model Files representing a component, system or assembly.
2. The Model Files are Instruments of Service and are the exclusive and sole property of Virginia Tech including any copyright. Transmission of the Model Files conveys no ownership right in the Model Files;
3. The Model Files are not intended to be used for construction and are not Contract Documents under the terms of the A/E Contract or Contract for Construction;
4. The provision of the Model Files does not modify the terms of the respective contracts between Virginia Tech and the A/E or Virginia Tech and Contractor. Any use of, or reliance on, the Model Files by Contractor is at its own risk and without liability to Virginia Tech or the A/E. Acceptance, use, or reliance of the Model Files does not reduce nor modify Contractor's or A/E's contractual responsibilities for providing complete and coordinated services to Virginia Tech. Contractor further agrees to report any defects, deficiencies, errors or omissions, in the Model Files, discovered by Contractor or its subcontractors to A/E within ten (10) days of such discovery. It is understood and agreed that A/E will correct such defects, deficiencies, errors or omissions promptly and re-transmit the Model Files to Contractor.
5. Contractor shall be responsible for any costs of reviewing, updating or auditing of the Model Files and shall not request reimbursement from Virginia Tech resulting from Contractor's use of the Model Files;
6. Contractor shall ensure each subcontractor, supplier or vendor, which accesses or uses the Model Files for coordination and/or submittal preparation, acknowledges and agrees to all obligations and responsibilities which the Contractor, under this Acknowledgement, assumes toward Owner and A/E;
7. Such Model Files shall have all indices of A/E removed from the Model Files.
8. Contractor shall establish protocols for the usage and sharing of the Model Files with its subcontractors, suppliers and vendors and shall have the following ongoing responsibilities:
 - a. Collecting incoming Model Files;

- b. Coordinating submission and exchange of Model Files;
 - c. Reviewing Model Files for consistency in accordance with Section 4 of this Acknowledgement;
 - d. Maintaining a record copy of each Model File received from the A/E and any subsequent revisions by Contractor or its subcontractors, suppliers and/or vendors;
 - e. Properly maintaining Model Files archives and backups to ensure preservation of the Model Files;
 - f. Managing Model File access rights to ensure controlled and secure access; and
 - g. Submitting Model Files to Virginia Tech, as requested by Virginia Tech, or upon completion of the Work.
9. **Electronic Transactions:** If this paragraph is initialed by both parties, to the fullest extent permitted by Code of Virginia, Title 59.1, Chapter 42.1, the parties do hereby expressly authorize and consent to the use of electronic signatures as an additional method of signing and/or initialing this Acknowledgement and agree electronic signatures (for example, the delivery of a PDF copy of the signature of either party via facsimile or electronic mail or signing electronically by utilizing an electronic signature service) are the same as manual executed handwritten signatures for the purposes of validity, enforceability and admissibility.

_____/_____
(Initials) (Initials)

ACKNOWLEDGED AND AGREED TO ON THE DATE INDICATED ABOVE BY:

A/E

By: [**Type name here**]
Title: [**Type job title here**]

Date: _____

Contractor

By: [**Type name here**]
Title: [**Type job title here**]

Date: _____