

**THE RECTOR AND BOARD OF VISITORS
THE COLLEGE OF WILLIAM AND MARY**



TERMS AND CONDITIONS OF THE A/E CONTRACT

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PLEASE NOTE: The Terms and Conditions of the A/E Contract, has been created specifically for the use of College of William and Mary, which may not alter any provisions without the express written approval of Associate VP for Facilities Management and the Facilities Procurement Manager. The Terms and Conditions have significant legal implications and shall not be altered or modified. The Terms and Conditions of the A/E Contract, shall not be amended or deleted or its intent changed, except by an approved and properly issued Supplemental General Condition. The Commonwealth makes no representation as to their suitability for any other purpose. (Note: Political subdivisions 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: 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 that clarify, correct or change the bidding documents.

Advertisement: The term commonly used to describe the public announcement or "Notice" of the availability of the Invitation For Bids (i.e. bid documents or IFB) or Request For Proposal (RFP) made by publishing a notice in the public procurement Web site designated by the Department of General Services, www.eva.virginia.gov, and by "Posting the Notice" (*Code of Virginia*, §2.2-4300 et seq).

A/E Contract: The Form of Agreement (CO-3, CO-3.1, CO-3.2) and any documents expressly incorporated therein. Such incorporated documents customarily include the Terms and Conditions of the A/E Contract, various sections of this Manual (see definition of A/E Manual), the Memorandum of Understanding and all modifications, including subsequent Change Orders.

A/E Manual: The **A/E Manual** shall consist of the following Chapters and Sections of the Facilities Management Design and Construction Manual – current edition, as amended (called the **Manual**): Chapters 5, 6, 7, 8, 9, and 10. The Manual and all revisions shall be incorporated into the Contract in their entirety except as amended or superseded in the Contract or an addendum thereto.

Additional Services: Services required by the contract to be performed by the A/E that are in addition to those services required under Section 42 "A/E Basic Services".

A/E Services: The services that the A/E performs that constitute the scope of services for the A/E including the Basic Services, Additional Services, and any Extra Services under this contract.

Agency: The Agency, institution or department which is a party to the 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 Head as being delegated authority to award and sign contracts, change orders and other documents related to a capital outlay project for the Agency.

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

A/E, Architect/Engineer, Architect, Engineer: The term used to designate the Architect and/or the Engineer that contracts with the Owner to provide the Architectural and Engineering services for the Project. The A/E is a separate contractor and not an agent of the Owner. The term includes any associates or consultants employed by the A/E to assist in providing the A/E services.

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 condition after Substantial Completion but prior to final completion of the project at which time 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 the Project, or a portion thereof, for such Beneficial Occupancy, unless otherwise specified in the Supplemental General Conditions or by separate agreement.

Bid: The offer provided by the 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).

Building Official: The College of William and Mary Building Official. The Building Official for all buildings on William and Mary and the Virginia Institute of Marine Science campus is the William and Mary Building Official. 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)

Change Order: As used herein, a document (Form CO-11a/e) issued on or after the effective date of the Contract Between Owner and Architect/Engineer, 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 Contract Price and/or the Contract Completion Date. A Change Order, once signed by all parties, is incorporated into and becomes a part of the Contract.

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

CRT: The College of William and Mary Code Review Team.

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

- a. Issuance of a written Request for Proposal (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.
- b. 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):

- a. Issuance of a written Invitation to Bid (IFB) containing or incorporating, by reference, the specifications and contractual terms and conditions applicable to the procurement.
- b. 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 Invitation For Bids (i.e. bid documents or IFB) 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 Department of Small Business and Supplier Diversity (DSBSD).
- c. Public opening and announcement of all bids received.
- d. Evaluation of bids based upon the requirements set forth in the invitation.
- e. Award to the lowest responsive and responsible bidder.

f. 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, 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. The Construction Administrator is the entity responsible to the Owner for providing these services to assure compliance with the Contract Documents but is not responsible under the CA 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.

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. Also called working drawings.

Construction Management (CM): 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 contract, furnishing construction services to the Owner. The Construction Manager has direct responsibility and liability to the Owner for performing the Work as described by the Contract Documents. Also called the CM/GC, or the 'Contractor' for the CM project.

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

Contract: The Contract Between Owner and Architect/Engineer, Form HECO-3, Form HECO-3.1 or Form HECO-3.2, hereinafter referred to as the Contract.

Contract Administration: The duties and responsibilities normally performed by the A/E during the construction phase of a project.

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 Bid.

Contract Documents: The Contract between Owner and Contractor (Form CO-9) signed by the Owner and the Contractor and any documents expressly incorporated therein. Such incorporated documents customarily include the bid submitted by the Contractor, the General Conditions of the Construction Contract, any Supplemental General Conditions, any Special Conditions, the plans and the specifications, and all modifications, including addenda and subsequent Change Orders.

Contract Price: The total compensation payable to the Architect/Engineer for performing the contracted Professional Services, subject to modification by Change Order.

Contractor: The person with whom the Owner has entered into a contractual agreement to do the Work.

Cure Notice: A notice, either oral or in writing, that informs the contractor that he or she is in default and states what the contractor has to do to correct the deficiency. If the notice is oral it shall be confirmed in writing.

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

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).

DCM: Facilities Management Design and Construction Manual, document that governs the A/E and Construction services.

DEQ: Virginia Department of Environmental Quality

Design-Build (DB): A contract between a public body (the Owner) and another party in which the other party agrees to both design and build the structure, roadway or other item specified in the Contract. Agencies must obtain approval from the Director of the Division of Engineering and Buildings to utilize Design-Build procedures for construction, except as provided for under [Code of Virginia](#), § 2.2-4306 and DCM.

“Design-not-to-exceed” Cost: The Project construction cost established in the A/E's contract and accepted by the A/E as the ceiling for the estimated construction cost of the Project the A/E is engaged to design.

DGS: Virginia Department of General Services

DMBE: Virginia Department of Minority Business Enterprise.

DPOR: Virginia Department of Professional and Occupational Regulation

DSBSD: 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 Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects (APELSCIDLA) Board of the Department of Professional and Occupational Regulation, also referred to as the A/E. “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: Electronic procurement in VA. The eVA home page address is www.eva.virginia.gov.

Extra Service: A service which the Owner/Agency tasks the A/E to provide after the 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 the A/E Change Order, CO-11 a/e.

Final Completion Date: The date of the Owner's acceptance of the Work from the Contractor upon confirmation from the Architect/Engineer and the Contractor that the Work is totally complete in accordance with Section 44(b) of the General Conditions of the Construction Contract.

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.

HECO: Higher Education Capital Outlay

Informality: A minor defect or variation of a bid or proposal from the exact requirements of the Invitation to Bid or Request for Proposal that does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured. ([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, 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 to Bid" required by [Code of Virginia](#), § 2.2-4302.1.

Landscape Architect: An individual licensed by the Commonwealth of Virginia as a 'Landscape Architect' by the APELSCIDLA Board of the Department of Professional and Occupational Regulation. The Landscape Architect may function as a project manager and may be the prime professional 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

Micro Business: A small business certified as such by the [Virginia Department of Small Business and Supplier Diversity](#) (DSBSD). For purposes of DSBSD micro certification, the business must have no more than 25 employees and has no more than \$3 million in average annual revenue over the three-year period prior to certification.

MOU: Memorandum of Understanding

NFPA: National Fire Protection Association

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

Notice: All written notices, including demands, instructions, claims, approvals and disapprovals, required or authorized under the Contract Documents. Any written notice by either party to the Contract shall be sufficiently given by any one or combination of the following, whichever shall first occur: (1) delivered by hand to the last known business address of the person to whom the notice is due; (2) delivered by hand to the person's authorized agent, representative or officer wherever they may be found; or (3) enclosed in a postage prepaid envelope addressed to such last known business address and delivered to a United States Postal Service official or mailbox. Notice is effective upon such delivery. All notices to the Owner should be directed to the Project Manager.

If the Owner and the Contractor agree in writing that Notices transmitted by Facsimile (Fax) or via e-mail are acceptable for the Project, such Notice shall be transmitted to the Fax number or e-mail address listed in the agreement and shall have a designated space for the Fax Notice or E-mail Notice recipient to acknowledge his receipt by authorized signature and date. The Fax Notice or E-mail Notice with

authorized signature acknowledging receipt shall be Faxed or e-mailed back to the sender. The Faxed Notice or E-mail Notice shall be effective on the date it is acknowledged by authorized signature. All Faxed Notices or E-mail Notices shall also be sent by hard copy, which shall be effective upon delivery, as provided herein.

Notice shall be effective upon the date of acknowledgment of the Faxed Notice or the date of delivery, whichever occurs first.

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 (with a copy to A/E) fixing the date on which the Contract time will commence for the Contractor to begin the execution of the Work in accordance with the requirements of the Contract Documents. The Notice to Proceed will customarily identify a Contract Completion Date.

Owner: The public body with whom the Contractor has entered into a contractual agreement and for whom the Work or services is 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 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 of Project Manager authority shall not impinge upon or supersede the professional responsibility and liability of the A/E of Record. Changes to any aspect of the design, including: interior layout, exterior appearance, materials of construction, and technical details shall only be made in consultation with the A/E of Record.

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 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 by the Owner, 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 §2.2-4301, *Code of Virginia*, 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" described by the Contract Documents.

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 Owner shall notify the Contractor in writing of the appointment of such Project Inspector(s). The scope of the Project Inspector's authority with respect to the Contractor is limited to that indicated in Section 16 (e) and (f) and as supplemented by the Owner in writing to the Project Inspector and to the Contractor.

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

Project Order: A specific commission that is issued to the A/E with a HECO-3.1a in accordance with the MOU attached to a Term Contract Between Owner and Architect/Engineer. (HECO-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.

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 to Bid ([Code of Virginia](#), § 2.2-4301).

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

RFP: Request for Proposal

RFQ: Request for Qualifications

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

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 by the [Virginia Department of Small Business and Supplier Diversity](#) (DSBSD) as compliant with [Code of Virginia](#), §§ 2.2-1604 and 2.2-4310. The [Code of Virginia](#) defines a “small business” as one that is at least 51% independently owned and controlled by one or more individuals who are U.S. citizens or legal resident aliens, and together with affiliates, has 250 or fewer employees or average gross receipts of \$10 million or less averaged over the previous three years.

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 particular project. The Special Conditions do not amend or supersede the General Conditions.

Specifications: That part of the Contract Documents containing the written administrative requirements and the technical descriptions of materials, equipment, construction systems, standards, and workmanship which describe the proposed Work in sufficient detail and provide sufficient information for the Code Review Team to determine code compliance and for the Contractor to perform the Work. (The General Conditions, any Supplemental General Conditions, various bidding information and instructions, and blank copies of various forms to be used during the execution of the Work are usually bound with the Specifications.)

Subcontractor: A person having a direct contract with Contractor or with any other Subcontractor for the performance of the Work. Subcontractor includes any person who provides on-site labor but does not include any person who only furnishes or supplies materials for the Project.

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 Contract by Change Order.

Supplemental General Conditions: The part of the Contract Documents which amends or supplements the General Conditions of the Construction Contract, HECO-7.

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

Time for Completion: The number of consecutive calendar days following the issuance of the Notice to Proceed which the Contractor has to substantially complete all Work required by the Contract. When the Notice to Proceed is issued, it states a Contract Completion Date, which has been set by the Owner based on the Time for Completion.

UFAS: Uniform Federal Accessibility Standards

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

VPPA: Virginia Public Procurement Act, §2.2-4300 – 2.2-4377, *Code of Virginia*, as amended

VUSBC: Virginia Uniform Statewide Building Code (Also referred to as the USBC)

Work: Services performed under the construction contract including, but not limited to, furnishing labor, and furnishing and incorporating materials and equipment into the construction. The Work also includes the entire completed construction, or the various separately identifiable parts thereof, required to be furnished under the Contract Documents.

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 construction and for obtaining a building permit. Also called construction documents.

2. LICENSE AND REGISTRATION

Entities (e.g. individual, partnership, or corporation) offering to provide architectural and/or engineering services shall be properly registered and licensed in Virginia as required by the Department of Professional and Occupational Regulation (DPOR) through the Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects (APELSCIDLA) Board, and, if incorporated, the State Corporation Commission. Professional Corporations shall obtain a Certificate of Authority as required by §13.1-549. Other business entities shall register with DPOR as required by §54.1-411, *Code of Virginia*, as amended.

The Architect or Engineer (i.e. the person) "in responsible charge" for each discipline shall be currently licensed in the Commonwealth of Virginia and shall affix his or her seal to those documents for which he or she is responsible.

3. PRIME DESIGN PROFESSIONAL

Owners normally contract with a single entity as "Prime Design Professional" to provide the project architectural and/or engineering services. Such Prime Design Professional may have all necessary disciplines in-house, or it may subcontract with consultants to provide services in some disciplines. The Prime Design Professional may be an Architect, an Engineer, or an A/E entity. The Owner shall determine which entity best satisfies the Owner's requirements for providing the services, meeting the time schedule and budget limitations, and managing the services to be provided on the particular project.

4. ASSOCIATIONS

Contracting with an association of firms, such as joint ventures or associates A/E's, involves additional business and legal considerations. Factors to be considered include whether the Association is a registered and licensed entity authorized to offer the services in Virginia, the nature of each party's responsibilities to the other and to the University, the professional liability insurance coverage of the Association, its organization and management structure, each firm's financial condition and/or stability with respect to fulfilling its obligations under the Contract, and whether the parties to the Association are jointly or severally liable for the work. Prior to selecting an Association fee negotiation for a possible contract award, the University shall request a review of the Association's legal documents by the University's legal counsel. Associations not legally constituted and authorized to offer the requested services in Virginia at the time of the closing date of the RFP will be deemed 'not responsive'.

5. DISADVANTAGED BUSINESSES

It is the policy of the University to contribute to the establishment, preservation, and strengthening of small businesses and small businesses owned by women, minorities and service disabled veteran and to encourage their

participation in State procurement activities. The University encourages contractors to provide for the participation of small businesses and small businesses owned by women, minorities, and service disabled veteran through partnerships, joint ventures, subcontracts, or other contractual opportunities. All procurements by competitive negotiation for professional or non-professional services that are expected to exceed \$100,000 in value shall include consideration of the proposer's past and proposed use of small businesses and small businesses owned by women and minorities in the evaluation of proposals.

6. 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 such licensed expertise is not available within the firm of the A/E of Record, or where the A/E chooses to subcontract a part of the A/E Services, the A/E shall employ an associate or consulting Architectural or Engineering firm with the requisite expertise to provide the required services. The consultants, associates, or 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.

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 the A/E Services of all associates, consultants and subcontractors, whether employees of the A/E or not, performed under the Contract.

7. TAXPAYER IDENTIFICATION NUMBER

The A/E shall furnish to the Owner its Federal Employer Identification Number (FEIN) if a corporation or a partnership or its Social Security Number (SSN) if a sole proprietor, at the time of contract award.

8. DEBARMENT STATUS

The A/E shall certify 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 contract, nor are they an agent of any person or entity that is currently so debarred or enjoined.

9. IMMIGRATION REFORM AND CONTROL ACT OF 1986

The A/E certifies that they do not and will not during the performance of this contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.

10. RELATIONSHIP OF ARCHITECT/ENGINEER TO OWNER

After the Contract for A/E services 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 Section 15, paragraphs (a) thru (h) of the General Conditions of the Construction Contract, 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 designated project representative. If the Owner issues orders directly to the Contractor, the A/E shall be copied on such orders.

11. ARCHITECT / ENGINEER'S MANUAL (A/E MANUAL)

The Facilities Management Design and Construction Manual –current edition, as amended (called the DCM) and all revisions thereto, shall be called the “**A/E Manual**” for identification and reference. The **A/E Manual** shall be incorporated into the Contract in its entirety except as amended or superseded in the Contract or an addendum thereto.

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

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

If the A/E determines that additional A/E Services will be needed to incorporate the requirements of the DCM (or any **A/E Manual** revision issued after the revision shown on the Contract Between Owner and Architect/Engineer [HECO-3]), the A/E shall notify the Owner of same within 60 days of the date of revision distribution, and shall provide an itemized list of the additional A/E Services required.

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 A/E Services, as described in Section 20 of this document. Generally, revisions issued prior to the date of approval of the preliminary submittal can be incorporated with minimal, if any, additional A/E Services on the part of the A/E.

If the A/E fails to notify the Owner within 60 days after the date of distribution of the revision that the revision will require additional A/E Services on the A/E's part, the A/E waives the right to make claims for additional A/E Services based on the contents of the revision.

12. "DESIGN-NOT-TO-EXCEED" COST 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" construction budget. The A/E's Contract requires that if the low bid exceeds the "Design-not-to-exceed" cost identified in the A/E Contract by more than 10%, any A/E revisions to the plans and specifications required to bring the cost of the project within the "Design-not-to-exceed" cost may be executed by the A/E at no additional cost to the Commonwealth.

The A/E's cost estimate shall be in the systems format described in DCM Chapter 9, Section 9.5. 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" cost, 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" cost.

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 may require the approval of the Associate Vice President for Facilities Management or his/her designee.

13. 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 Virginia Uniform Statewide Building Code (Code), the **DCM, William and Mary Technical Standard** and other regulatory requirements applicable to the project. Nothing contained herein shall be construed as relieving any A/E, professional design consultant, contractor, supplier or any other participant from any professional or legal responsibility for performance. Reviews, comments and approvals by the University, or the staff of any State Owner, in no way absolve any other person, firm or corporation involved in a project from their full responsibilities under the applicable laws, codes and professional practice as required in projects for the Commonwealth of Virginia. Lack of comment by a

University or a State reviewer does not relieve the A/E from designing to meet the applicable Code or **A/E Manual** requirements or applicable state regulations or local regulations related to water, sewer, fire department service, and other utilities.

If the correction of a Code, **DCM, William and Mary Technical Standard**, or regulatory violation results in a Change Order during construction, any additional costs incurred shall be borne by the party responsible for the violation. The Owner shall bear only the costs attributable to the actual Code or regulation-required enhancement of the project.

If the A/E believes that a Code, a **DCM, William and Mary Technical Standard** requirement, or a regulation is unclear as to meaning, he shall request a written opinion as to the applicable interpretation from the Division of Engineering and Buildings 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.

14. A/E PROFESSIONAL LIABILITY INSURANCE

The A/E shall carry professional liability insurance covering acts, errors and omissions violating the contractual standard of care for all state-owned projects designed by the A/E which are currently under contract or construction. The A/E shall carry either "basic practice policy" or "project policy insurance" coverage. The minimum amount of professional liability insurance required to be carried by the A/E shall be calculated as not less than an amount equal to 5% of the estimated construction cost per claim and twice that amount in the aggregate for each policy year. Insurance in the amount of \$250,000 per claim and twice that amount in the aggregate for each policy year is the minimum amount regardless of the construction cost. The maximum amount of insurance required, regardless of the construction cost, shall be \$5,000,000 per claim and \$10,000,000 in the aggregate for each policy year.

The A/E shall maintain this insurance coverage after completion of the services under the contract for a period of 5 years after completion of construction. The A/E shall maintain coverage in the amount equal to the highest dollar amount of coverage for the highest construction cost project for a period of 5 years after the completion of the project. If the A/E cancels their professional liability insurance policy prior to 5 years past substantial completion, they must purchase an Extended Reporting Period equal to the number of years the coverage is required.

15. DESIGN ERRORS AND/OR OMISSIONS

The A/E shall be responsible for all damages resulting from its errors, omissions or negligent performance of professional services, and other breaches of the applicable standards of care established under Virginia law.

Damages that the Owner may incur include, but are not limited to:

1. The Owner's own costs for labor and other in-house costs;
2. Any resulting Contractor Change Order costs including the costs for demolition, cutting, patching, repairs, removal, or modification of Work that is already in place;
3. Any Contractor or Owner delay damages; and
4. Any judgments, fines or penalties against the Owner resulting from the A/E's errors, omissions or negligent performance of professional services and other breaches of the applicable standards of care.

The A/E shall not be responsible for the cost to correct equipment or systems which should have been originally specified, except 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 the Contractor's Contract Change Order as a result of the A/E's errors, omissions or negligence.

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 by Contractor's Change Order shall generally be presumed to be 15% greater than if the Work had been included in the Contractor's original Contract. The A/E shall have the burden of disproving this presumption.

When determining the A/E's contribution for Change Orders attributed to errors, omissions or the negligent

performance of professional services (where the work has not yet been done by the Contractor), the Owner/Agency should 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.

The University shall actively pursue reimbursement of damages resulting from the A/E's errors, omissions or negligent performance of professional services or breaches of the applicable standard of care. Upon determination that there may be A/E financial responsibility involved, the A/E shall be contacted by the Owner in writing. The A/E shall be advised of the design deficiency, informed that it is the Agency's opinion that the A/E may be financially responsible, and requested to provide a technical solution to the problem, including cost estimate. Upon notification of potential liability, the A/E should coordinate with the Owner to determine required technical support and timing to minimize delay costs. Pending final decision by the Owner, the A/E will be invited to attend all price negotiations with the Contractor for the corrective work. The A/E shall participate as a non-voting technical advisor to the Owner's negotiator.

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 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 Form HECO-11.

Alternately, where an A/E design error is clearly at fault, the A/E may discharge its financial responsibility through negotiation with, and direct payment to, the Contractor. This action must be participated in and approved by the University.

16. OTHER INSURANCE REQUIRED OF THE A/E

Prior to the start of any A/E Services under the contract, the A/E shall provide to the Owner Certificates of Insurance forms approved by the Commonwealth of Virginia and shall maintain such insurance until the completion of all A/E Services under the contract. The minimum limits of liability shall be as follows:

Worker's Compensation -- Standard Virginia Workers Compensation Policy with statutory requirements and benefits;

Employers Liability -- \$100,000;

Broad Form Comprehensive General Liability -- \$1,000,000 Combined Single Limit coverage. The University shall be named as an additional insured with respect to the services being provided. The coverage shall include: Premises / Operations Liability; Products and Completed Operations Coverage; Independent Contractors Liability; Owners and Contractor's Protective Liability; and Personal Injury Liability (Libel, Slander, Defamation of Character, etc.);

Automobile Liability -- \$500,000 Combined Limit for bodily injury and property damage per occurrence.

17. RECORDS RETENTION

The A/E shall retain record copies of its design calculations, drawings, bid /contract documents, addenda, field orders, clarifications and responses to Requests For Information, approved shop drawings and submittals, inspection / observation reports, fiscal records, and other documents relative to the contract for five (5) years after completion of the services under the contract or five years after completion of construction, 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 for safekeeping.

18. OWNERSHIP OF DOCUMENTS AND MATERIALS

Ownership of all materials and documentation (otherwise known as "Instruments of Service") including the original drawings, the Plans (including electronic files) and Specifications, and copies of any calculations and analyses prepared pursuant to the Contract between the Owner and the A/E, shall belong exclusively to

the Owner. These materials and documentation, whether completed or not, shall be the property of the University, 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 about these materials without the express written consent of the Owner.

Such material may be subject to public inspection in accordance with the University Procurement Rules. 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 §2.2-4342, F., *Code of Virginia*, prior to or upon submission of the data or other materials, identifies the data or materials to be protected and states the reason why the protection is necessary.

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

- original sealed and signed drawings
- original copy of the specifications
- copy of analyses made for the project
- indexed copy of the calculations made by each discipline for the project
- the Owner copy of all shop drawings, submittals, cut sheets, operation and maintenance instructions, parts lists, and other material related to the project.

The University, as owner of the documents prepared for its projects, has the right to use the project documents as a prototype to demonstrate scope, size, functional relationships, etc., to an A/E designing a similar project. The A/E for the original project design shall not be responsible or liable to the Owner for any such use of the documents.

The A/E for the similar project shall be responsible for providing a complete set of project and location-specific "Final Documents" with its seals and signatures which meet all applicable codes and standards in effect at the time those "Final Documents" are submitted.

19. STANDARD / PROTOTYPE PLANS

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

- the name of the Owner, i.e. The College of William and Mary
- the Title of the Standard or Prototype Structure for which the design was developed,
- the name of the A/E, and
- the seal and dated signature of the responsible licensed professional.

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

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

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

20. REQUIREMENTS FOR A/E SEALS AND SIGNATURES

The professional seal and signature of the licensed Professional Engineer, Architect or Certified 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 to which the seal or signature is affixed. All plans and specifications for building projects designed for the University shall bear the seal(s) and signature(s) of the responsible licensed professional(s).

Each drawing to be reproduced shall include:

- The name of the A/E,
- The Project Title,
- The Project location,
- The 11 digit state Project Code,
- The Drawing / Sheet Title,
- The Drawing / Sheet number,
- The seal and dated signature of the responsible licensed professional,
- And the uniform date of the completed documents
- Drawing revisions and associated revision dates

The Title sheet drawing(s) shall include:

- Activity or function(s) to be performed in the facility,
- The Index of Drawings,
- The Project VUSBC data,
- Other major code used as a basis of design
- Use Group classification(s)
- Maximum VUSBC occupancy for each level and total for building
- VUSBC classification of construction type
- Area for each floor and entire building; volume of building
- Location and Vicinity Maps
- The master listing of all applicable abbreviations and symbols
 - Provide a listing of the discipline abbreviations and symbols at the beginning of each discipline.
- Facility capacity
 - Number of beds (dormitory)
 - Number of fixed seats (auditorium)
 - Number of parking spaces (parking deck)
 - Other information relating to capacity of the facility as applicable
- Seal of the A/E Principal-in-Charge of the project, signed and dated
 - A/E may also require the seal and signature of a principal of its consultants.
- The uniform date of the completed documents.

The Specifications Table of Contents or Title Page shall include:

- The seal and dated signature of the A/E Principal-In-Charge of the project,
- The uniform date of the completed documents, and
- The list of specification sections included for the project.
- (A/E may also require the seal and signature of a principal of its consultants.)

“Working Drawing Sets” submitted to CRT for review, are expected to be complete documents ready for bidding. All drawings except the cover sheet shall bear the seal (unsigned) of the responsible licensed professional. The Cover Sheet shall show a complete list of the drawings in the set, but a seal and signature are not required at this submission.

"Final Documents" or "Construction Documents" are completed documents ready for bidding and include all corrections required by the CRT review. Each sheet of the drawings reproduced in the bid documents, including the cover sheet, shall bear the seal and dated signature of the responsible licensed professional and a uniform document date. The original cover sheet without seal and signature shall be reproduced and attached to copies of the other drawings in the set. Each cover sheet print shall then be sealed, signed and dated with original seals and signatures. These official "Final Documents" shall be distributed to the following:

5 sets Building Official (at The College of William and Mary, Code Review Team) – to be stamped “Approved” by the Building Official

- 1 set Regional State Fire Marshal's Office
- 2 sets Owner
- 1 set Reviewer who reviewed the documents, if other than CRT

Two of the stamped "Approved" sets will be returned to the Owner: One set for the Owner's records and one set for the Contractor. "Approved" sets are directly associated with the Building Permit issued for the project's construction.

When Partial Building Permit sets are required due to Design/Build or Construction Manager at Risk delivery methods the A/E shall produce the necessary Partial Building Permit sets and Final Full Building sets. Three sets are stamped "Approved" by the College of William and Mary Building Official. One set is retained by the Building Official and the other two sets are retained by the Owner. These two sets are included in the distribution noted above.

"Addendum" to the Final Documents: 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. In addition, the first sheet of each and every addendum shall bear the name of the project, the 11 digit State Project Code number and the date. Every addendum prepared under supervision of the A/E shall include the seal and signature of the responsible licensed professional on the first page of the addendum.

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

Each addendum shall include:

- the name of the A/E,
- the Project Title,
- the Addendum Number,
- the 11 digit state Project Code,
- the seal and signature of the responsible licensed professional,
- the date of the Addendum,
- the page number and total number of pages,
- and a list of any attachments to and part of the Addendum.

21. SUBCONTRACTS

No portion of the A/E professional 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 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's Contract.

22. 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 Contract using Form HECO-11 a/e. Any single change order, or accumulation of change orders, which increases the original A/E Contract Price by 25% or \$50,000, whichever is greater, shall have the prior approval of the Senior Vice President for Finance and Administration or his/her designee. (§2.2-4309, *Code of Virginia* as revised)

The first Change Order which causes the cumulative total of Change Orders to exceed \$50,000 or 25 percent of the original Contract Price, whichever is greater, and all subsequent A/E Change Orders which increase the Contract Price shall have the prior approval of the Governor or his designee. (§2.2-4309, *Code of Virginia* as revised) When the cumulative total of modifications exceeds 25% of the original Contract Price, or \$50,000, whichever is greater, all succeeding Change Orders which increase the Contract Amount

shall receive said prior approval.

In making any modification, the resulting increase or decrease in cost shall be in accordance with requirements of the Virginia Public Procurement Act and Chapter 7, Section 7.5 of the **A/E Manual**.

23. PAYMENTS TO THE ARCHITECT/ENGINEER

The following requirements are established in conformance with the Virginia Public Procurement Act (VPPA), §2.2-4300 thru 2.2-4377, *Code of Virginia* as amended, and, in particular, §2.2-4347 et seq., which is referred to as the Prompt Payment Act.

1. The A/E shall submit an invoice to the Owner using A/E Invoice (DGS-30-216), which is available at the FPDC forms website, 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, man-hours expended, marked up hourly rates for the classification, and the extended cost amount.
2. Failure to use the required form (DGS-30-216), which is available at the FPDC forms website, will result in return of the invoice and payment will not be made until the proper completed format is used. Although basic service fees are delineated by fee per task, payments will be made with overall fee percentage completed as a major factor. By submission of a current request for payment of the fee for services rendered, the A/E warrants to the University that:
 - The date shown is accurate;
 - The work covered by the invoice has been completed in conformance with the A/E contract;
 - All previous payments received from the University on account of the A/E contract have been applied to discharge (except for allowable retainage) all obligations of the A/E to its sub-consultants incurred in connection with work covered by prior invoices.
3. 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 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 A/E. The date on which payment is due shall be referred to as the Payment Date.
4. 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 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 5% (balance of the value of that phase) when the submittal has been reviewed and approved.
5. 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.

6. 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.
7. 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 §6.2-1520, *Code of Virginia*. No interest shall accrue when payment is delayed because of a dispute between the Owner and the A/E as described in subparagraph (4) 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 University, interest shall accrue at the rate determined above on amounts withheld which remain unpaid after seven 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.

24. PAYMENTS BY ARCHITECT/ENGINEER

The following procedures are established in conformance to the Virginia Public Procurement Act (VPPA), §2.2-4300 thru 2.2-4377, *Code of Virginia* as amended, and, in particular, §2.2-4347 et seq. (Prompt Payment Act).

The A/E shall, at the time of contract award to the A/E, require every consultant, subcontractor and supplier to provide its Social Security Number (SSN), if a sole proprietor, or its Federal Employer Identification Number (FEIN), if a corporation or partnership.

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:

1. 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.
2. 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.

3. 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 (2) of this Section. Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of one percent per month.
4. The A/E's obligation to pay interest to its Consultants, Subcontractors or Suppliers pursuant to subsection (3) of this Section shall not be construed to be an obligation of the Owner.
5. 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.

Failure on the part of the A/E to conform to the requirements of this section and the VPPA may be considered a breach of the requirements of the Contract and/or a violation of law.

25. 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.

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

26. 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 supplies or equipment used in such construction. (§2.2-4374, *Code of Virginia*)

In addition, an entity which provides to the A/E any design services specifying a sole source for materials, supplies or equipment to be used in the construction shall be prohibited from bidding on, or otherwise furnishing such 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.

27. 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, personnel of the University, and other A/E's or Consultants performing design of related state facilities is prohibited.

The A/E shall not release information concerning a project under design to anyone other than authorized Owner personnel, other A/E's performing design of related state facilities and personnel of the University without specific prior written approval of the Owner to release such information. This includes, but is not limited to, project photographs, floor plans, and project cost information.

When the project is advertised, the A/E may provide the following information to "construction information/plan

room" services who serve the construction industry:

- type of project or facility,
- size (area) and number of stories,
- types of materials,
- bidding requirements,
- IFB (document) source, and
- a project cost range (e.g. \$3,000,000 to \$5,000,000).

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

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

28. **DEFAULT**

In case of the A/E's failure to deliver the reports, documents, 'Record Drawings', or services in accordance with the Contract terms and conditions, the Owner, after due written notice, may procure same from other sources, and the A/E shall be responsible for any resulting additional procurement and administrative costs. This remedy shall be in addition to any other remedies which the Owner may have.

29. **TERMINATION OF CONTRACT BY THE OWNER / AGENCY**

The Owner may terminate the Contract for cause or for convenience after giving thirty (30) days written notice to the A/E, or as otherwise specified below. The written notice shall include a statement of reasons for the termination.

Delivery of Materials: Any termination shall not relieve the A/E of the obligation to deliver to the Owner all products of the services for which the A/E has been or will be compensated, including, but not limited to, the original 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 material or substantial breach of contract.

a. **TERMINATION FOR CAUSE**

If the A/E should substantially breach the Contract or fail to perform the services, or any portion thereof, required by the Contract, the Owner may terminate the Contract for cause by giving written notice as set forth above or may provide the A/E a stated period of time within which to remedy its breach of contract. If the A/E fails to remedy the breach within the time allotted by the Owner, the Contract may be terminated by the Owner at any time thereafter upon written notice, effective immediately upon receipt. The Owner's forbearance in not terminating the 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 Contract is terminated for cause, the A/E shall be responsible for all damages incurred by the Owner as a result of the A/E's breach of contract or failure to perform, including but not limited to, all costs and expenses incurred in securing a replacement A/E to fulfill the obligations of the Contract.

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

b. **TERMINATION FOR CONVENIENCE**

The Owner may terminate the 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 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 contract is terminated for convenience, the A/E shall be entitled to those fees earned for A/E Services performed in accordance with the Contract prior to the date the notice of termination is received. 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 Contract which were terminated. The A/E shall be compensated for reasonable costs or expenses for delivery to the Owner of the products of the services for which the A/E has or will receive compensation.

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

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

The A/E shall submit invoices for all such amounts in accordance with the normal billing process, but in no event later than 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.

30. ASSIGNMENT OF CONTRACT

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

31. ANTITRUST

By entering into this 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.

32. ETHICS IN PUBLIC CONTRACTING (§2.2-4372 et seq., Code of Virginia)

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.

33. ANTI-DISCRIMINATION

By signing the Contract, the A/E certifies to the University that it, as contractor for the services described in the RFP and the Contract, will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Act of 1975, as amended, where applicable, and §2.2-4310 and §2.2-4311 of the Virginia Public Procurement Act which provides that:

In every contract over \$10,000, the contractor (i.e. the A/E) agrees the provisions in (1) and (2) below apply:

1. During the performance of this contract, the contractor agrees as follows:
 - a. The contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability (including service-related 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 contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, shall state that such contractor is an equal opportunity employer.
 - c. 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.
2. The contractor shall include the provisions of the foregoing paragraphs a, b and c in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

Where applicable, the “Virginians with Disabilities Act” and the federal “Americans with Disabilities Act” shall apply to the A/E and all subcontractors or consultants.

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

The Owner's Dispute Resolution Procedures shall apply if provided in writing and attached to the contract. Alternatively, the following procedures shall apply:

A/E claims for additional compensation, whether relating to additional services, delay or other, shall be submitted in writing, no later than sixty (60) days after final payment; however, written notice of the A/E's intention to file such claim must be given to the Owner's Project Manager within ten (10) days of the time of the occurrence or beginning of the A/E Services upon which the claim is based. Such notice shall state that it is a “notice of intent to file a claim” and include a written statement describing the act or omission of the Owner or its agents that allegedly caused or may cause damage to the A/E and the nature of the claimed damage. The filing of a timely notice is a prerequisite 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. The Owner shall provide the A/E written notice of receipt of the A/E's written claim for additional compensation or the A/E's written notice of intent to file such a claim within thirty days of receipt of the A/E's notice or claim. Although the A/E may be required to submit certain classes of claims prior to final payment, and the A/E is not prevented from filing claims during the pendency of the A/E Services, the Owner shall not be obligated to render a final written decision on any claim until after final payment. All claims shall be submitted along with all practically available supporting evidence and documentation.

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

such a decision within ninety (90) days of submission of the claim or within ninety (90) days of final payment, whichever is later.

The decision of the agency head or other signatory on the Contract 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 §2.2-4364, Code of Virginia. Failure of the Owner to render a decision within 90 days 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 decision within 90 days shall be the A/E's right to immediately institute legal action. No administrative appeals procedure pursuant to §2.2-4365, Code of Virginia, has been established for contractual claims under this Contract.

35. INFORMAL ALTERNATIVE DISPUTE RESOLUTION (§2.2-4366, Code of Virginia)

Pursuant to § 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 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 non-binding and subject to § 2.2-514, Code of Virginia, as applicable.

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

37. PROHIBITION OF ALCOHOL AND OTHER DRUGS AT WORKPLACE

In conformance with §2.2-4312, Code of Virginia, 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 on the contract.

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 Contract.

1. The unlawful or unauthorized manufacture, distribution, dispensation, possession, or use of marijuana or other drugs (except the possession and use of medically prescribed drugs for legitimate medical purposes) in the workplace or at the construction site;
2. The unlawful or unauthorized manufacture, distribution, dispensation, or use of alcoholic beverages in the workplace or at the construction site during hours of work;
3. The impairment of a person in the workplace, or at the construction site, related to the use of alcohol, marijuana, or other drugs including impairment from prescription drugs.

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

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.

38. DESIGN OF SECURITY SYSTEMS

Any Bidder/Offeror 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 pursuant to §9.1-139, *Code of Virginia*. 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. (§9.1-140; *Code of Virginia*) If the A/E proposes to have the security system designed by a subcontractor/consultant, such entity shall be properly licensed as required by §9.1-139, *Code of Virginia*.

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

39. USE OF STANDARD FORMS AND FORMATS

The A/E shall incorporate in every construction contract the applicable Form HECO-7 (General Conditions of the Construction Contract) and HECO-7a (Instructions to Bidders), which may be found at the William & Mary FPDC forms website. **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". Such "Supplements" shall be approved by William and Mary, Facilities Planning, Design and Construction Division prior to their incorporation in the construction contract.

The A/E shall use the applicable Higher Education Capital Outlay (HECO) and Capital Outlay (CO) Forms and the Standard Engineering & Buildings Forms which are available electronically for viewing and download from the William and Mary forms website. The wording on the forms shall not be modified or altered without the specific written approval of the College of William and Mary, Facilities Planning, Design and Construction Division. 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 William & Mary FPDC forms website. 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.

40. PARTICIPATION OF SMALL BUSINESSES

Under Executive Order 35 (2019), Cabinet Secretaries and all executive branch agencies are directed to continue and advance the following on a race and gender neutral basis: exceed a target goal of 42% on discretionary spending with small businesses certified by DSBSD (the Virginia Department of Small Business and Supplier Diversity).

For professional service contracts with a fee, or accumulation of fees, greater than \$50,000 the A/E shall submit (as part of the response to the RFP) a small business procurement plan which includes (1) a report of efforts to utilize the goods and services of such businesses within the past 12 months and (2) a plan for involvement of such businesses on the proposed contract which includes the following:

1. **Periodic Progress Reports/Invoices:** For professional service contracts with a fee greater than \$100,000 the A/E shall include a SWaM report on involvement, if any, of small businesses and small businesses owned by women and minorities as a part of their periodic and final invoice. The report will specify the actual amounts of contracts to date with such businesses, and the actual dollars paid to date with such businesses on this contract. This information shall be provided separately for micro businesses, small businesses, small women-owned businesses, small minority-owned businesses and service disabled veteran owned small businesses. The SWaM monthly report template can be located at the FPDC forms website.

The A/E shall provide two (2) copies of this information to the Owner. Failure to submit the required information will result in invoices being returned without payment.

2. **Final Actual Involvement Report:** The A/E shall submit, prior to completion or at completion of the contract and prior to final payment, a report on the actual dollars paid to small businesses and small businesses owned by women, minorities and service disabled veterans during the performance of this contract. At a minimum, this report shall include for each firm contracted, the Business Class, a comparison of the total actual dollars paid on this contract with the planned involvement of the firm, the totals for each business class as specified in the proposal, and the actual percent of the total estimated contract value. A format for the report will be provided by the Owner.

In awarding a contract for services to a small, small women-owned, or small minority-owned business that is certified in accordance with § [2.2-1606](#), or to a business identified by a public body as a service disabled veteran-owned business where the award is being made pursuant to an enhancement or remedial program, the Agency shall include in every such contract of more than \$10,000 the following:

"If the A/E intends to subcontract work as part of its performance under this contract, the A/E shall include in the proposal a plan to subcontract to small, small women-owned, small minority-owned, and service disabled veteran-owned small businesses."

41. 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 the responsibility for evaluating the information provided and for notifying the Agency of any additional surveys, investigations, tests or other information required for the A/E to perform its services. The Agency may request that the A/E obtain such information as an additional service.

1. Information to establish the scope of the design including: building space requirements, adjacencies, functional requirements, special systems, and siting requirements.
2. Design-not-to-exceed construction cost.
3. Schedule for the planning and design of the project.
4. Survey of the site in the form of topographic maps or plats locating relevant existing buildings to scale and, where necessary, showing bench marks, grades, lines of streets, pavements, property lines, rights-of-way, restrictions, easements, other improvements, and trees.
5. Utility maps showing the location, size and elevation of all existing public and private utilities which might interfere with the project or to which the project might be connected.
6. Location and dimensions of existing buildings. Where the interior arrangement, construction, or floor level of an existing building affects the plans for the project, the Agency shall furnish the A/E with the necessary information as to interior arrangement, including reasonably accurate record drawings (if available), construction system information, and floor levels.
7. Existing equipment, furniture, furnishings, apparatus, etc., to be used on the project, including all necessary characteristics required to coordinate the equipment in the project.
8. Itemized list of required equipment, with the standards as to type, size, and quality for use by the A/E in preparing the specifications for this equipment.
9. The necessary roof scans, structural, chemical, mechanical, asbestos, lead based paint, or geotechnical investigations, tests, and reports including borings or load tests for soil bearing capacity shall be included in the A/E contract.
10. Geotechnical investigation including: testing, analysis of test results, and design recommendations based on preliminary design parameters furnished by the A/E (e.g. type of construction, estimated column loads, estimated wall footing loads, and proposed floor elevations relative to existing grade). The geotechnical services scope of work and preliminary design parameters shall be provided by the A/E to the University and considered part of the A/E's Basic Services.
11. Legal advice relating to the design and construction phases of the project. This does not include legal services to or on behalf of the A/E relating to its services and obligations.
12. Determine any specific development requirements of political subdivisions appropriate and consistent with state policy, opinions of the Attorney General, and existing statutes.
13. 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 the Building Official review.

14. Compensate the A/E for the 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 Building Committee, the Art and Architectural Review Board, State Fire Marshal, Division of Engineering and Buildings, Department of Health, Department of Environmental Quality, Department of Conservation and Recreation (Division of Soil and Water Conservation) and Department of Historic Resources.

42. QUALITY OF WORK

The A/E shall be responsible for the professional service, 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, code compliant, and acceptable architectural and/or engineering solution based on the scope of work, "design-not-to-exceed" budget limitations and other constraints of the A/E's contract. All A/E Services must be in accordance with current criteria, guides, and specifications set forth in the DCM, and shall conform to good architectural and engineering practices. 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 the Code Review Team for compliance with VUSBC and the DCM project requirements and criteria. Errors and deficiencies shall be corrected by the A/E at no additional cost to the Commonwealth.

If the A/E or the University determines that a meeting with the Code Review Team is necessary or would be beneficial to discuss or review the A/E's approach to designing the project, the A/E shall request such a meeting.

43. STANDARDS FOR A/E SERVICES

The A/E shall adhere to the design policies of the University's Campus Design Guidelines, the DCM, and the Facilities Management Technical Standards in developing the Project Design. The Agency may request a waiver of policy from the Director of Facilities Planning, Design and Construction for a specific project where technical requirements and life cycle cost considerations justify such a waiver.

The A/E shall restrict itself to the authorized scope of work. Deviations from the authorized scope include incorporating embellishments increasing the cost above programmed amounts for the project, increases in area, major changes in construction criteria, the inclusion of unauthorized buildings or areas, selections of specific systems or equipment without economic or technical evaluation, or introduction of special equipment.

It is the A/E's contractual responsibility to design a facility that can be constructed within the "design-not-to-exceed" budget, within the schedule agreed to, and which conforms with applicable codes and the technical criteria of the DCM.

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.

Generally, the preliminary (35%) design submittal is intended to clarify and establish specified requirements of the project. Approved preliminary design based on incorporation of review comments and accepted Value Engineering (V/E) recommendations establishes the requirements for development of the working drawings and final design of the project. Incorporating V/E recommendations justified on payback and changes in functional layout to achieve greater efficiency or cost savings are within the scope of the Contract. Changes or modifications required to conform to code requirements are within the scope of the Contract.

Should minor changes in the scope of work be authorized, appropriate modifications to the A/E contract will be negotiated.

The University may require the use of special consultants with a particular expertise related to special features of the project. The A/E shall engage such a consultant, subject to the University's approval, and incorporate such work into the project.

The cost of electronic transmissions, all mailings, fax transmissions, and long distance phone calls are considered part of the A/E's overhead expenses and are not normally reimbursable, unless negotiated otherwise.

The University shall reimburse the A/E for the actual costs of blueprinting or other reproductions of drawings, specifications, and other documents required for submittals. Compensation for travel and living expenses associated with the performance of the project scope of work will be included in the negotiated fee. Reimbursement for travel and living expenses of technical personnel while traveling in the discharge of duties in connection with extra services may be authorized by the University at the travel rates and per diem rates for lodging and subsistence shows in the Virginia State Lodging, Meals, and Incidentals Rate Table.

44. A/E BASIC SERVICES

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

The following services are to be provided during each phase of the project, unless modified by the Memorandum of Understanding:

- (1) Prepare meeting agenda prior to each meeting. Project meetings include pre-design, design, procurement, preconstruction, and construction meetings.
- (2) Provide meeting notes in writing for all meetings documenting direction, guidance, clarification, site visit observations, field orders, and significant items of discussion and/or agreement. These meeting notes shall be sent to those parties relevant to the issues, and structured to include all pertinent information.

Project Initiation, including Schematic Phase

After written authorization to proceed with the Schematic Design Phase, A/E shall:

- (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 to" cost; 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. *The Agency should 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 design documents, including a detailed cost estimate, for this phase as described in DCM Chapter 9, Section 9.7. (Submittal may not be required if this information is essentially that which was included in an approved Preplanning Study.)
 - (9) Prepare presentation for the Building Committee, Design Review Board, Art and Architectural Review Board (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 Department of Historic Resources (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.
 - (13) Prepare and submit to the University written responses to all reviewing agencies' comments and provide the necessary technical data for the University to substantiate any waiver request required.

Preliminary Design Phase

After 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. *The Agency also 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 as described in DCM Chapter 9, Section 9.8 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 spatially in the rooms.
- (5) Prepare and make presentations to the AARB, DRB, Building Committee, and DHR as may be required for recommendations for approval.

- (6) Prepare and submit a detailed cost estimate with appropriate backup data. (See DCM Chapter 9, Section 9.5). In reviewing the estimated construction cost, the Owner should be aware that the A/E has no control over the market price of labor, equipment or materials, or over the Contractor's method of pricing, and that the estimated construction costs provided by the A/E are made on the basis of the A/E's qualifications and experience.
- (7) Participate in the Value Engineering Study as described in DCM Chapter 9, Section 9.16. Include described A/E participation as a separate additional service in fee proposal.
- (8) Prepare and submit to the Agency written responses to all Reviewing Agencies' comments and, if applicable, provide the technical data the Agency may need to substantiate any waiver request required.
- (9) Resolve all outstanding issues, comments from reviewers, and Value Engineering recommendations before proceeding with the Working Drawing Phase.
- (10) Prepare and distribute minutes of project meetings or telephonic discussions summarizing discussions, agreements and direction given or received.

Note: The Agency, including the user of the facility and staff responsible for its maintenance and operation should review the preliminary submittal 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 written authorization to proceed with the final design, A/E shall:

- (1) On the basis of the accepted Preliminary Design documents, the accepted Value Engineering 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 with 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. See DCM Chapter 9 for detailed requirements concerning the Plans and Specifications.
- (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; 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 cost estimate with back-up data and submit with working drawing submittal. See DCM Chapter 9, Section 9.5 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 DCM for approval.
- (8) Make any revisions necessary to the Plans and Specifications to be reproduced so that they incorporate resolution and/or correction of all problems raised during review; submit a written response to all review comments to the Code Review Team **prior to printing** the documents for bidding the project. **Do not use the Addendum method to resolve problems or make the corrections required by the Code Review Team comments.**
- (9) Assist the Agency in evaluating contractor and/or subcontractor prequalification data if contractors 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 for Furniture, Furnishings and Decorations for Building Projects

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. (See further in this Section.) The A/E is also required to specify all building materials and finishes and to select the colors for all building components which the building contractor is required to provide and/or install. (See further in this Section.)

Note: Agencies must pay particular attention to the Commonwealth's definition of "Basic Services" and what is included versus the definition of Interior design used in the private sector and the AIA standard contracts. Do not use standard AIA Contracts or AIA definitions of Basic/Additional Services.

This section discusses requirements for the additional services or separate contract for Interior Design services for the selection, specification, and procurement of furniture and furnishings that are not a part of the A/E's Basic Services as defined by the **Manual**. A scope of services shall be determined and a fee negotiated for the interior design services described hereafter. These furnishings or furniture items are often procured by the Agency through the Division of Purchases and Supply (DPS) or through the Agency procurement office.

Examples of the scope of A/E Services for Interior Design services for furniture, furnishings and decorations when procured as an A/E additional service or as a separate contract are listed below. The person providing these services is referred to herein as the Interior Designer.

Selection of furniture, furnishings, and accessories including but not limited to sofas, chairs, tables, screens, planters, art work, carpets, draperies, etc. Most items are available on and should, if possible, be selected through DPS from state contracts.

- If the items are available on state contract, the Interior Designer will recommend the proper item and color, fabric, finish, etc. for the Agency to procure.
- If the items available on state contract are not considered acceptable for the particular application, the Interior Designer will prepare written justifications for the Agency stating why items available on state contracts are not suitable. If procurement of the items off state contract is approved, the Interior Designer will prepare adequate specifications and other data necessary for Agency procurement.
- If the items are not available on state contract, the Interior Designer will prepare adequate specifications and other data necessary for Agency procurement.

The Interior Designer shall select and coordinate all colors, fabrics, etc., with the colors of the building finishes. Although building finishes are selected by the A/E during design and finalized during the review of Contractor submittals, the Interior Designer shall verify actual Contractor applied finishes through on-site verification and/or coordination with the Agency Project Manager.

The Interior Designer shall prepare presentation boards of a minimum size of 15 x 20 inches to show furniture placement plans, catalog cutouts of furniture, furnishings and accessories, color samples, material swatches of draperies, carpets and fabrics.

The Interior Designer shall prepare a minimum of three interior design 8-1/2 x 11 inch binders/packages with accompanying floor plan sheets and deliver to the Agency Project Manager. These binders/packages shall include but are not limited to:

- (1) Floor plans at 1/4" = 1'- 0" or larger scale indicating locations of all furniture, furnishings and accessories. These items should be identified with an item number keyed to the presentation boards and the furniture procurement list.
- (2) Procurement lists identifying all items to be purchased by model number, contract number (for state contracts), identification number and description (for non-state contract items), quantity, price, etc. Care shall be taken in the selection of all items to ensure that delivery times are reasonably within the Agency's schedule and that state contracts, if applicable, will not be expired at the time of purchase.
- (3) Photographic color reproduction or color copies of the presentation boards reduced to fit 8-1/2 x 11 inch binder or package.
- (4) Specifications, drawings and other supporting data for standard procurement and special order items (draperies, custom-built screens or dividers, art work, etc.)

The Interior Designer shall advise, as needed, when changes must be made as a result of changes in requirements, non-availability of items or materials previously selected, etc.

The Interior Designer shall provide placement sheets for each room/area, listing each item of furniture or equipment that will go into the area.

Bidding Phase

After written authorization to proceed with the Bidding Phase, the A/E shall, unless deleted by the contract or MOU or Change Order:

- (1) The A/E shall have a sufficient number of Bid Document sets printed. If the Agency 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 is 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 (DVDs, flash drives and similar), the deposit shall be minimized to cover direct costs of media, 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. Show Project Code and Title on each Addendum. Each Addendum shall bear the A/E seal, signature and date. All addenda shall be approved by the Owner 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 of the Construction Contract gives 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, an Addendum shall be issued to modify the specifications and any material that meets the specifications may be provided. **“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 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. (Note: See DCM and the HECO-7 General Conditions of the Construction Contract.)
- (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 DCM and in Section 15 (a) - (h) of the HECO-7, General Conditions of the Construction Contract, DGS Form DGS-30-054. They shall be provided by the A/E of Record 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 Facilities Planning, Design and Construction:

- (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 Change Orders.
- (3) **Field and Change Orders:** Issue Field Orders and assist the Agency in preparing and issuing 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 Change Order is issued. Since technical matters constitute a change to the approved Building Permit documents, submittal to the Code Review Team 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.
- (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 DCM Section 9.17 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 and judge of the acceptability of the Work thereunder and shall 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.

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 DCM Chapter 14, Section 14.5 and in the General Conditions of the Construction Contract, CO-7 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 whom 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 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 the site visit in writing.
- (2) **Inspections of Work in progress by the A/E.** During his periodic visits to the Site to observe the Work in progress, the A/E (accompanied by the Project Inspector) shall, 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). 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. The A/E shall document the inspection in writing.
- (3) **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.
- (4) **Defective Work.** During its monthly site visits and based on its observation during such visits, the A/E may disapprove or reject Contractor(s)'s 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 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.

- (5) **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.

- (6) **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 DCM Chapter 14, Section 14.2. The A/E shall document all Defective Work in writing. *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.*
- (7) **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 CRT 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. Written notice shall be provided to the Agency and Contractor of the results of such inspections.
- (8) **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 and transfer data to and prepare the Record Drawings. Submit Record Drawings to Owner electronically in PDF format. Also submit in any other format(s) required by Owner (reproducible mylars, electrostatic paper copies, microfilm, etc).
- (9) **Project Closeout.** A/E shall provide project closeout services as outlined in DCM Chapter 14, Section 14.5.
- (10) **Other:** The A/E shall perform all duties described in or reasonably implied by the DCM, the Construction Contract, including the Plans and Specifications and the General Conditions of the Construction Contract.

45. 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, they shall be set out separately with fees negotiated and included in the total fixed fee in the Contract. If requested in writing after negotiation of the Contract, they shall constitute Extra Services and shall be negotiated and authorized by Change Order to the A/E Contract using DGS Form DGS-30-100, HECO-11a/e.

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 additional A/E Services shall be agreed upon and added to the A/E contract by 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 the additional A/E Services shall be agreed upon and added to the A/E contract by 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 the additional A/E Services shall be agreed upon and included in the initial contract as extra services or added to the A/E contract by Change Order.

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

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

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

When the A/E is directed to prepare, document and submit an Environmental Impact Study or Report, the fixed fee amount for the additional A/E Services shall be agreed upon and added to the A/E contract by Change Order.

When the Agency requests special commissioning services for HVAC, the A/E will provide equipment design, submittal approval, point by point testing requirements, component testing, and system testing.

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.

If the A/E is required to participate in the Value Engineering Study as described in DCM Chapter 9, Section 9.16, the A/E's participation fee shall be included as an Additional Service in the project fee negotiation.

46. IDENTIFICATION OF DOCUMENTS AND MATERIALS

The Agency and the A/E shall note the assigned 8 digit project code number and the Work Order number on **all** project documents, correspondence, memoranda, invoices, submittals and other related material. The A/E shall require that the assigned project code number be shown on all submittals, correspondence,

and other documents generated by contractors, subcontractors, suppliers, consultants, testing entities or others associated with the project.

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