**«ContractNumber»**

***FINANCE AND ADMINISTRATION CABINET***

***DEPARTMENT FOR FACILITIES & SUPPORT SERVICES***

***FRANKFORT, KENTUCKY***

***AGREEMENT BETWEEN OWNER AND ARCHITECT/ ENGINEER***

This CONTRACT made and entered into this **\_\_\_\_\_\_\_\_** day of**\_\_\_\_\_\_\_\_\_\_\_\_\_\_,** by and between the Commonwealth of Kentucky hereinafter called the “OWNER” and **«VendorName», «VendorAddress», «VendorCityStZip»,** hereinafter called the “ARCHITECT/ ENGINEER” (A/E). It shall be understood that the words “Architect” and “Engineer” as used in this contract are interchangeable. Whichever word is used above in connection with the firm name of the Architect or Engineer shall be accepted as the correct appellation throughout the contract regardless of which word is used hereafter.

WITNESSETH THAT, the Owner is considering the development and construction of a project defined as

follows:

**«RFP»**

**«ProjectDescription1»**

**«ProjectDescription2»**

**«ProjectDescription3»**

**«ProjectDescription4»**

**«ProjectDescription5»**

Hereinafter called the “Project”,

for use by **«RequestingAgency»,** Hereinafter called the “Using Agency”,

**Note: It is affirmed and understood by all parties to this Agreement** that the Using Agency is not a representative of the Owner. The Owner is solely represented in all matters of this Agreement by the Finance and Administration Cabinet, Department for Facilities and Support Services, Division of Engineering and Contract Administration.

and WHEREAS, the Owner desires the services of an Architect/ Engineer to render architectural or engineering services, or both, incident to such development and construction of the Project, as initially defined:

1. by the Request for Proposals used to select the Architect/ Engineer and referenced by RFP number above;
2. The Owner’s standard General Conditions of Contract (published at the time of this Agreement) that will be used in the Construction Documents, where it defines the role and authority of the Architect/ Engineer;
3. by the anticipated physical characteristics of the Owner’s site proposed for the project;
4. by the Owner’s initial budget for the Cost of Construction;
5. by the Owner’s anticipated procurement method;
6. by the Owner’s anticipated dates for commencement of Construction and Substantial Completion of the Work as set forth hereinafter;
7. by supplemental information provided to the Architect/ Engineer prior to the execution of this Agreement (see attachments);

 and

1. all as more fully described hereinafter.

**The Owner and the Architect/ Engineer may rely on the initial definition of the project as indicated above.** Both parties, however, recognize that such definition may materially change and, in that event, the Owner and the Architect/ Engineer shall appropriately adjust the project definition, the Architect/ Engineer’s Services, and the Architect/ Engineer’s compensation.

**The Owner and the Architect/ Engineer recognize that the Owner has the right to modify** the procurement method from that anticipated method at the time of this Agreement, to modify the Owner’s budget for the Cost of Construction determined to be necessary by the A/E’s cost analysis and estimates, to modify the dates for commencement of Construction and Substantial Completion of the Work from that anticipated during the course of the design of the project without an adjustment in the Architect/ Engineer’s compensation unless there is sufficient cause to do make such adjustment.

**The Owner and the Architect/ Engineer recognize that a change in the Project Scope** (intent and/or program), a change in the site selected by the Owner for the project, a change in the physical characteristics of the project site discovered to be significantly different than what was expected by subsequent geotechnical subsurface investigations, or other such materially significant modifications to the project may require an adjustment in the Architect/ Engineer’s compensation.

**NOW, THEREFORE**, in consideration of the mutual promises, covenants and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Owner and the Architect/ Engineer agree to the terms and conditions contained herein.

**The remainder of this Agreement makes provision of the terms and conditions under the following headings:**

**ARTICLE 1: REPRESENTATIONS AND WARRANTIES OF THE ARCHITECT/ ENGINEER**

**ARTICLE 2: OBLIGATIONS OF THE ARCHITECT/ ENGINEER TO FOLLOW THE OWNER’S PROCESSES, PROCEDURES AND POLICIES**

**ARTICLE 3: SCOPE OF ARCHITECT/ ENGINEERS SERVICES**

**ARTICLE 4: ADDITIONAL SERVICES TO BE PROVIDED**

**ARTICLE 5: FEES AND OTHER PAYMENTS**

**ARTICLE 6: CONSULTING ENGINEERS AND SPECIAL CONSULTANTS**

**ARTICLE 7: COST OF CONSTRUCTION**

**ARTICLE 8: CLAIMS AND DISPUTES**

**ARTICLE 9: OWNER’S RESPONSIBILITIES**

**ARTICLE 10: TERMINATION OR SUSPENSION**

**ARTICLE 11: GENERAL PROVISIONS**

**ARTICLE 1: REPRESENTATIONS AND WARRANTIES OF**

**THE ARCHITECT/ ENGINEER**

1.1 By executing this Contract, the Architect/Engineer makes the following express representations and warranties to the Owner.

1. **The Architect/ Engineer is professionally qualified** to act as the professional Architect and/ or Engineer for the Project and is licensed to practice architecture or engineering, or both, by all public entities having jurisdiction over the Architect/ Engineer and the Project;
2. **The Architect/ Engineer shall maintain all necessary licenses, permits or other authorizations necessary** to act as Architect and/ or Engineer for the Project until the Architect/ Engineer’s duties hereunder have been fully satisfied;
3. **The Architect/ Engineer will become generally familiar with the Project** site and the local conditions under which the Project shall be designed, constructed, and operated;
4. **The Architect/ Engineer shall exercise that degree of care and skill ordinarily exercised** by members of the same profession currently practicing under similar circumstances in preparing all documents required by this Contract including, but not limited to, all contract plans and specifications, and shall exercise usual and customary professional care to conform and comply with all applicable law, codes and regulations in effect at the time of preparation;
5. **The Architect/ Engineer shall perform its services as expeditiously as is consistent with such professional skill and care** and the orderly progress of the Project and in compliance with the schedule outlined in the initial Project Definitions and as represented in the Architect/ Engineer’s response to the Request for Proposals that resulted in the selection of the Architect/ Engineer for this Project;
6. **The Architect/ Engineer has identified a representative or representatives**, authorized to act on behalf of the Architect/ Engineer with respect to the Project, in the response to the Request for Proposals that resulted in the selection of the Architect/ Engineer for this Project and shall not change this representative or representatives without written acceptance of the Owner;
7. **The Architect/ Engineer shall, at appropriate times, contact the governmental authorities** required to review and approve the Construction Documents and the entities providing utility services to the project. In designing the project, the Architect/ Engineer shall respond to applicable design requirements imposed by such governmental authorities or utility services providers;
8. **The Architect/ Engineer shall assist the Owner** in connection with the Owner’s responsibility for filing documents required for approval of governmental authorities having jurisdiction over the Project;
9. **The Architect/ Engineer assumes responsibility to the Owner** for the negligent acts, errors, and omissions of its consultants or sub-consultants for professional services within the scope of work between Architect/ Engineer and Owner for the Project;
10. **The Architect/ Engineer is not responsible for an Owner’s Directive** or substitution made without the Architect/ Engineer’s approval;
11. **Except with the Owner’s knowledge and written consent**, the Architect/ Engineer shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect/ Engineer’s Professional Judgement with respect to this Project.

**ARTICLE 2: OBLIGATIONS OF THE ARCHITECT/ ENGINEER TO FOLLOW THE OWNER’S PROCESSES, PROCEDURES AND DOCUMENT SYSTEMS**

**2.1 OWNER’S PROCEDURES MANUAL**

**2.1.1 The Architect/ Engineer is obligated to follow the Owner’s Procedures Manual,** entitled “Capital Construction Project Procedures Manual”, as published by the Division of Engineering and Contract Administration, Department for Facilities Management and Support Services, Finance and Administration Cabinet at the time of this Agreement.

**2.1.2 The Architect/ Engineer is obligated to follow the Owner’s Procedures Manual Supplement**, entitled “Capital Construction Project Procedures Manual, Technical Guidelines and Specifications”, as published by the Division of Engineering and Contract Administration, Department for Facilities Management and Support Services, Finance and Administration Cabinet at the time of this Agreement.

**2.1.3 The Architect/ Engineer shall cause** its employees, consultants, and sub-consultants to become familiar with the Owner’s Procedures Manual by training offered free of charge by attendance at Owner’s sponsored workshops, updates, and training.

**2.2 OWNER’S DOCUMENT COLLABORATION SYSTEM**

**2.1.1 The Architect/ Engineer is obligated to use the Owner’s Document Collaboration System for all official Project Correspondence.** This system is the Owner’s web-based document collaboration system that shall be used by all project participants for the submission, transmittal, transfer, review, approval, processing of all documents related to this project. Where the General Conditions, the technical specifications, or the Contract for Construction indicates that a submission of documents is required, this submission shall be through the Owner’s Document Collaboration System.

**2.1.2 The Architect/ Engineer shall cause** its employees, consultants, and sub-consultants to become familiar with the Owner’s Document Collaboration System by training offered free of charge from the Owner’s Document Collaboration System Provider. This training may also include attendance at Owner’s sponsored workshops, updates, and training.

**ARTICLE 3: SCOPE OF ARCHITECT/ ENGINEER’S SERVICES**

**3.1 The Architect/ Engineer’s Basic Services consist of** those described in the documents which make up the initial Project Definition (outlined in this Agreement) and as described in this Article 3. These Basic Services normally include usual and customary architectural, civil engineering, structural engineering, mechanical engineering, electrical engineering, landscape design and interior design, modified as indicated in the documents referenced above. Services not indicated in the documents referenced above are Additional Services. The Architect/ Engineer shall manage the Architect/ Engineers Basic Services to insure that all required Basic Services are provided.

**3.2 Where Additional Services are required by the Architect/ Engineer** and where this Agreement provides for compensation of these Additional Services, the Architect/ Engineer shall manage these Additional Services the same as Basic Services.

**3.3 The Architect/ Engineer shall coordinate its services with** those services provided by the Owner and/or the Owner’s Consultants working under a separate Agreement. The Architect/ Engineer shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and/or the Owner’s Consultants. The Architect/ Engineer shall provide prompt written notice to the Owner if the Architect/ Engineer becomes aware of any error, omission or inconsistency in such services or information.

**3.4 The Architect/ Engineer’s services shall be divided into four phases.** Each of the last three phases of the Architect/ Engineer’s services shall be performed only upon written authorization of the Owner. Nothing in this contract shall be construed as placing any obligation on the Owner to authorize the Architect/ Engineer to proceed with any phase of its services beyond the first phase, nor shall the Owner be obligated to pay any fees to the Architect/ Engineer incurred beyond the fees applying to the first phase of his services, without the above mentioned written authorization. However, the Owner shall not, without the consent of the Architect/ Engineer, employ or retain any other Architect/ Engineer to perform any of the services covered by this contract unless this contract shall have been terminated as set forth in Section III of this document.

**3.5 At the time of the execution of this Agreement, the Owner and Architect/ Engineer have agreed to the following schedule** for the performance of the Architect/ Engineer’s Services. This initial schedule shall include anticipated time periods (calendar days) for performance of Services, Owner’s Review of Services, Bidding and Award, and Construction.

 Phase A Schematic Design <<insert calendar days>>

 Phase B Design Development <<insert calendar days>> Phase C Contract Documents <<insert calendar days>>

Bidding and Award of Construction Contract <<insert calendar days>>

 Phase D Construction Administration <<insert calendar days>>

 Phase D2 Warranty Period/ LEED Certification <<insert calendar days>>

**3.6 Once this Agreement is executed, time limits established by the schedule** shall not, except for reasonable cause, be exceeded by the Architect/Engineer without the Owner’s approval. Between Phases of Services, the Architect/Engineer shall await the Owner’s review and comment of the preceding Phase of Services and shall not proceed with the next Phase of Services without Authorization from the Owner.

**3.7 The four phases of the Architect/ Engineer’s services shall be as follows:**

***3.7.A PHASE A - SCHEMATIC DESIGN AND ESTIMATE*:**

**3.7.A.1 The Owner and the Using Agency will furnish** to the Architect/ Engineer, written programming data defining area usage and square footage, total project scope, allowable construction cost, together with information on other allowable Project costs. The Owner and the Using Agency will furnish to the Architect/ Engineer, information obtained during the Pre-Design Phase of the Project as outlined in the Owner’s Procedures Manual.

**3.7.A.2 The Architect/ Engineer and his consultants shall confer with the Owner** and the Using Agency to confirm their understanding of the Owner or Using Agency’s purposes, concepts, desires and requirements (Program) and to determine any Owner or Using Agency preferences with respect to systems and other elements of the Project. The Architect/ Engineer shall also review laws, codes, and regulations applicable to the Project or the Architect/ Engineer’s Services.

**3.7.A.3 The Architect/ Engineer shall submit electronically, using the Owner’s Document Collaboration System, a written preliminary evaluation** detailing the Architect/ Engineer’s understanding of the Owner and Using Agency’s Program, schedule, budget for the Cost of Construction, physical characteristics of the Project Site, the proposed procurement or delivery method, other initial Project Information, and its findings of the review of laws, codes, and regulations applicable to the Project within <<insert time>> calendar days of the Initial Project Meeting.This report shall include a review of the written Program data and the allowable Project costs and the Architect/ Engineer’s evaluation of whether the Program furnished is adequate in its description and whether the allowable construction cost is sufficient for the Program. The Architect/ Engineer shall notify the Owner of 1) any inconsistencies discovered in the information gathered and evaluated as a part of this preliminary evaluation and 2) other information or consulting services that may be reasonably needed for the Project.

**3.7.A.4 In the event the Using Agency does not have a Program or the Program furnished is inadequate**, or exceeds the scope permitted by the allowable construction cost, the Architect/ Engineer shall, at the request of the Owner, provide professional assistance in developing a Program or reprogramming the Project or otherwise assisting in the reconciliation of Program requirements with the allowable construction cost. Should this request be made by the Owner, the Architect/ Engineer is eligible for additional compensation providing that the Architect/ Engineer indicate the additional compensation required for this service prior to commencement of the service.

**3.7.A.5 The Architect/ Engineer shall present its preliminary evaluation to the Owner** and shall discuss with the Owner and Using Agency alternative approaches to design and construction of the Project, including feasibility of incorporating environmentally responsible design approaches, The Architect/ Engineer shall reach an understanding with the Owner and Using Agency regarding the requirements of the Project.

**3.7.A.6 In accordance with the schedule outlined herein for the completion of Phase A Services,** commencing on the date of the execution of this Agreement, the Architect/ Engineershall prepare adequate Phase A - Schematic Design drawings and outline specifications to define the style and type of structure, the type of mechanical systems, controls, lighting, electrical systems and structural systems, for the Project which can be completed within the allowable construction cost. Together with the electronic submission (using the Owner’s Document Collaboration System) of such drawings and specifications, the Architect/ Engineer shall also submit electronically (using the Owner’s Document Collaboration System) to the Owner in writing a realistic programming estimate of the construction cost for the Project based upon the drawings and specifications submitted and any other decisions reached to date, which estimate shall be within the authorized Project scope. This estimate shall be submitted on the Owner’s Phase A Estimate of Probable Cost form with any supporting data necessary for the Owner’s complete and full review and understanding of the Probable Cost.

**3.7.A.7 If at any time during the Architect/ Engineer’s work under Phase A – Schematic Design,** after Program review and adjustment, it should appear evident that the Project scope or allowable construction cost will be exceeded, the Architect/ Engineer shall notify the Owner in writing accordingly and shall recommend remedial action to reduce the cost to the authorized scope. In this recommendation, the Architect/ Engineer shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics in developing a design for the Project that is consistent with the Owner’s program, schedule and budget for the Cost of Construction.

**3.7.A.8 The Architect/ Engineer shall submit to the Owner a complete Phase A Design Submittal** following the requirements of the Owner’s Procedures Manual. This submittal shall be made electronically (using the Owner’s Document Collaboration System). As a part of this submittal, the Architect/ Engineer shall outline in brief written descriptive form any deviations to the Owner’s Procedures Manual Supplement or the Owner’s Program Requirements that the Owner and Using Agency should consider during its review of the Project Phase A Design Submittal.

**3.7.A.9 For projects Seeking LEED Certification** the Architect/ Engineer shall perform the following during Phase A:

1) The Architect/ Engineer shall register the project as a LEED project with the USGBC.

2) The Architect/ Engineer shall determine the appropriate LEED checklist relative to the project program, shall identify, with the Owner’s assistance, the LEED credits appropriate for the project, and conduct design activities accordingly to achieve the desired credits. This LEED Checklist shall be submitted as part of the Phase A Design Document submittal.

3) The Architect/ Engineer shall participate in commissioning authority schematic design review process if enhanced commissioning is used. Develop a Basis of Design (BOD) based on the

Owner’s Project Requirements (OPR).

4) The Architect/ Engineer shall provide a preliminary energy model as required to document compliance with the required number of points for Energy and Atmosphere Credit 1. This preliminary energy model shall be submitted as part of the Phase A Design Document submittal.

**3.7.A.10 At the conclusion of Phase A, and a determination by the owner that the Project will proceed,** the Owner shall negotiate with the Architect/ Engineer, a reasonable lump sum fee for those services to be provided as agreed upon between the Owner and Architect/ Engineer. Upon written authorization by the Owner, the Architect/ Engineer shall commence Phase B of its services.

***3.7.B PHASE B - DESIGN DEVELOPMENT AND COST ESTIMATE:***

**3.7.B.1 Based on the Owner’s approval of Phase A – Schematic Design documents,** and on the Owner’s authorization of any adjustments in the Project Requirements and the budget for the Cost of Construction, the Architect/ Engineer shall proceed with the services required during Phase B – Design Development following the requirements set forth in the Owner’s Procedures Manual.

**3.7.B.2 At the commencement of Phase B, the Architect/ Engineer shall assist the Owner in obtaining** a complete site survey showing boundaries, easements, restrictions, topography, streets, utilities, and existing structures, together with reports on subsurface investigations such as soundings, core drilling or soil bearing tests as may be required in order for the Architect/ Engineer and it’s consultants to properly design the structure and related facilities. If the Owner has provided this information as part of the initial Project Information or has provided this information during Phase A, the Architect/ Engineer shall review the information provided to determine if additional site survey or subsurface investigations are required to proceed forward and shall assist the Owner in obtaining the additional information.

**3.7.B.3 In accordance with the schedule outlined herein for the completion of Phase B Services,** commencing on the date of the Owner’s written authorization for the Architect/ Engineer to proceed with Phase B - Design Development, the Architect/ Engineer and it’s consultants shall prepare design development drawings and specifications showing and describing, generally, the site plan, utilities, floor plans, elevations, sections, structural systems, materials and finishes. The design development drawings and specifications for the mechanical, electrical and structural portions of the Project shall be prepared by consulting engineers, each licensed in their area of the engineering work. Each drawing shall be imprinted with the seal of the Architect/ Engineer or consultants directly responsible for its preparation.

**3.7.B.4 All such drawings and specifications shall be for a Project which can be completed within the limitations prescribed in Phase A.**

**3.7.B.5 Together with the electronic (using the Owner’s Document Collaboration System) submission of such drawings and specifications,** the Architect/ Engineer shall also submit to the Owner a realistic cost estimate based upon the drawings and specifications submitted, any other decisions reached to date, and the most recent and accurate information regarding local material/equipment prices, wage rates (determined by Kentucky Revised Statutes 337.510 and 337.520) and the actual cost of recent similar projects, making appropriate allowance for changes in cost which may reasonably be expected to occur by the time the Project will be bid and constructed. This Phase B Cost Estimate shall be within the allowable construction cost, which is a part of the Owner’s budget for the Cost of Construction. This estimate shall be submitted on the Owner’s Phase B Estimate of Probable Cost form with any supporting data necessary for the Owner’s complete and full review and understanding of the Probable Cost.

**3.7.B.6 If at any time during the Architect/ Engineer’s work under Phase B – Design Development,** the Architect/ Engineer shall become aware that the Project cost will exceed the limitations prescribed in Phase A, the Architect/ Engineer shall notify the Owner in writing and shall recommend remedial action which shall reduce the cost to the allowable construction cost.

**3.7.B.7 For projects Seeking LEED Certification** the Architect/ Engineer shall perform the following during Phase B:

1) The Architect/ Engineer shall participate in commissioning authority design development review process if enhanced commissioning is used.

2) The Architect/ Engineer shall finalize LEED points being pursued on the project. A Revised LEED Checklist shall be submitted as part of the Phase B Design Document submittal.

3) The Architect/ Engineer shall provide a revised preliminary energy model as required to document compliance with the required number of points for Energy and Atmosphere Credit 1. This revised preliminary energy model shall be submitted as part of the Phase B Design Document submittal.

**3.7.B.8 The Architect/ Engineer shall submit to the Owner electronically (using the Owner’s Document Collaboration System) a complete Phase B Design Submittal** following the requirements of the Owner’s Procedures Manual. As a part of this submittal, the Architect/ Engineer shall outline in brief written descriptive form any deviations to the Owner’s Procedures Manual Supplement or the Owner’s Program Requirements that the Owner and Using Agency should consider during its review of the Project Phase B Design Submittal.

**3.7.B.9 For projects where the number of drawings exceeds twenty (20), at the discretion and by request of the DECA Project Manager**, the Architect/ Engineer shall provide up to three “half size” printed copies of the Phase B – Design Development drawings at no additional cost of the Owner. These printed copies shall be legible at half size in all aspects, bound with sheets in sequential order. These printed copies will be used by the Owner and Using Agency to review the drawings in the Phase B submittal. However, the Owner will transmit review comments through the Owner’s Document Collaboration System.

**3.7.B.10 At the conclusion of Phase B, and a determination by the owner that the Project will proceed,** the Owner will approve the Phase B Submittal and authorize the Architect/ Engineer to proceed with Phase C – Contract Documents, the Architect/ Engineer shall commence Phase C of its services. The Owner’s approval of Phase B Submittal shall be defined as approval for design intent and shall not operate to relieve the Architect/ Engineer from providing adequate design under the contract.

***3.7.C PHASE C - CONSTRUCTION CONTRACT DOCUMENTS AND FINAL ESTIMATE:***

**3.7.C.1 Based on the Owner’s approval of Phase B – Design Development documents,** and on the Owner’s authorization of any adjustments in the Project Requirements and the budget for the Cost of Construction, the Architect/ Engineer shall proceed with the services required during Phase C – Contract Documents following the requirements set forth in the Owner’s Procedures Manual.

**3.7.C.2 In accordance with the schedule outlined herein for the completion of Phase C Services,** commencing on the date of the Owner’s written authorization for the Architect/ Engineer to proceed with Phase C – Contract Documents, the Architect/ Engineer and it’s consultants shall prepare complete and coordinated working drawings and specifications showing and describing with specificity materials, based upon the approved Phase B drawings and specifications and prepared in accordance with normal accepted standards of architectural or engineering practice.

**3.7.C.3 The Owner and the Architect/ Engineer acknowledge that in order to construct the Work the Contractor will provide additional information,** including Shop Drawings, Product Data, Samples, and other similar submittals, which the Architect/ Engineer shall require of the Contractor in the Technical Specifications and which the Architect/ Engineer shall review during the Architect/ Engineer’s Phase D – Construction Phase Services. However, the Architect/ Engineer shall not require the Contractor to provide information which normal accepted standards of architectural and engineering practice expects to be provided by the Architect/ Engineer, except in cases where the Architect/ Engineer has obtained expressed written approval to do so from the Owner.

**3.7.C.4 For large Projects, as the discretion and direction of the Owner,** the Architect/ Engineer shall submit electronically (using the Owner’s Document Collaboration System) a preliminary review set of drawings and cost estimate information at such times when the Phase C – Contract Documents are at a significant level of completeness (typically 25%, 50% and/or 75%). After submission of this preliminary review set, the Architect/ Engineer shall request a presentation meeting with the Owner that will allow the Architect/ Engineer the opportunity to provide the Owner and Using Agency with an update of the current status of the preparation of the Contract Documents and to receive comments and direction from the Owner. The Architect/ Engineer will provide one (1) full size set of the drawings (in progress) at the meeting for use at the meeting. At these meetings, the Architect/ Engineer will update the Owner and Using Agency of the progress in preparation of the Contract Documents and inform the Owner of any material modifications, changes, and/or adjustments to the Project design. The Architect/ Engineer shall also provide a confirmation that the Estimated Probable Cost of Construction is within the amount available for Construction.

**3.7.C.5 In the event the Owner desires to divide the Project into two or more construction projects**, the Architect/ Engineer shall prepare the drawings and specifications to clearly show and describe the work covered in each separate project. Where the division of the Project into two or more construction projects is due to the Owner’s desire to do so, and this desire was not indicated at the time of the initial execution of this Agreement, the Architect/ Engineer may be due additional compensation for additional services. However, where the division of the Project into two or more construction projects is due to the Architect/ Engineer’s failure to meet the establish schedule for the design of the project, the Architect/ Engineer is not due additional compensation for additional services.

**3.7.C.6 The Architect/ Engineer and its consultants shall prepare the Technical Specifications** and shall, with the assistance of the Owner, prepare lists of principal materials, subcontractors, Special Conditions, Forms of Proposal, and a list of Alternates if any have been authorized. (The Owner shall prepare the General Conditions of Contract, the Invitation to Bidders, the Form of Proposal and other bidding documents, the Form of Contract and Form of Bond). The Architect/ Engineer shall provide all information required by the Owner’s Procedures Manual for “Ready to Advertise” Documents.

**3.7.C.7 The title block of the drawings as provided by the Owner,** shall be inserted onto each sheet of the drawings, including the Cover Sheet, in the location and of the size dictated by the Owner, unless prior approval is secured for a specific variation of this requirement.

**3.7.C.8 The drawings shall be**  **prepared and submitted electronically** (using the Owner’s Document Collaboration System) so that the full scale printed drawings (size 24" by 36" or 30" by 42"), shall have proper line quality, font size, and resolution clarity for reproduction of clear, distinct prints.

**3.7.C.9 The specifications shall be submitted electronically** (using the Owner’s Document Collaboration System) so that they can be reproduced in black ink on bond paper for standard 8 ½” x 11" reproductions and be of appropriate quality to allow the printing of specification books.

**3.7.C.10 For projects where the number of drawings exceeds twenty (20), at the discretion and by request of the DECA Project Manager**, the Architect/ Engineer shall provide up to three “half size” printed copies of the Phase C – Contract Document drawings at no additional cost of the Owner. These printed copies shall be legible at half size in all aspects, bound with sheets in sequential order. These printed copies will be used by the Owner and Using Agency to review the drawings in the Phase C submittal. However, the Owner will transmit review comments through the Owner’s Document Collaboration System.

**3.7.C.11 The Architect/ Engineer shall prepare and submit**  **electronically (using the Owner’s Document Collaboration System), a rendering** suitable for reproduction, and three (3) 11" x 17" glossy prints of the rendering. The Glossy prints shall be delivered to the DECA Project Manager within thirty (30) calendar days of the Owner’s approval of Phase C.

**3.7.C.12 Together with the submission of the drawings, specifications, etc., the Architect/ Engineer shall submit to the Owner electronically (using the Owner’s Document Collaboration System), a final anticipated cost estimate** based upon the drawings and specifications submitted and the most recent and accurate cost information, which estimate shall be within the allowable construction cost and shall hereinafter be referred to as the Final Estimate. The Final Estimate shall not be increased or decreased by the Architect/ Engineer unless authorized by the Owner. This estimate shall be submitted on the Owner’s Phase C Estimate of Probable Cost form with any supporting data necessary for the Owner’s complete and full review and understanding of the Probable Cost.

**3.7.C.13 If at any time during the Architect/ Engineer’s work under Phase C, the Architect/ Engineer shall become aware** that the Project scope or Final Estimate may be exceeded, the Architect/ Engineer shall notify the Owner in writing and shall recommend, in writing, remedial action which shall reduce the cost to the authorized scope. The Owner shall consider the recommendations of the drawings and specifications submitted by the Architect/ Engineer, note corrections to and approval of the recommendations, and direct the Architect/ Engineer of the modifications to be executed. The Architect/ Engineer shall then make any necessary corrections on the drawings and specifications and resubmit the Phase C Design Submittal. Should any modifications alter the Project significantly, the Architect/ Engineer shall obtain all necessary approvals required by applicable law, codes and regulations.

**3.7.C.14 At the appropriate time(s) during Phase C,** when the Contract Documents are completed enough for the required reviews and when the submission of review is necessary to obtain approvals prior to Bidding, the Architect/ Engineer shall make the required submittal to all governmental authorities having jurisdiction over the Project that require submission of plans and specifications, and/or other documents (I.e., permit applications, coordination documents, notification documents, etc.). Note: the Owner will pay directly Plan Review Submittal Fees to the Department for Housing, Buildings and Construction. The Architect/ Engineer shall provide a copy of the Plan Review Submittal Fee calculation to the Owner electronically (using the Owner’s Document Collaboration System) for the Owner’s use in making this fee payment. All other review and submittal fees required should be discussed with the Owner prior to the Architect/ Engineer submitting payment and a determination made as to whether the Owner will pay these fees directly or if the Architect/ Engineer is to pay these fees and to be reimbursed by the Owner under this Agreement.

**3.7.C.15 For projects Seeking LEED Certification the Architect/ Engineer shall perform the following during Phase C:**

1. The Architect/ Engineer shall provide the final energy model and the resulting number of points for Energy and Atmosphere Credit 1 to the Owner at the completion of construction documents.
2. The Architect/ Engineer shall insure that the contract documents incorporate information including drawings, details and specifications necessary to meet the LEED requirements for credits being pursued. Include Contractor requirements relating to LEED documentation, process, etc. Include commissioning requirements in the contract documents.
3. The Architect/ Engineer shall participate in commissioning authority construction document design review process to be conducted prior to mid-construction documents.
4. The Architect/ Engineer shall prepare and submit the LEED Design Application to the USGBC. The Owner will be responsible for making the payment of USGBC fees. The Architect/ Engineer shall inform the Owner of the fee payment required.

**3.7.C.16 At the conclusion of Phase C, and a determination by the Owner that the Project will proceed,** the Owner will approve the Phase C Submittal and authorize the Architect/ Engineer to proceed with the electronic submission of “Ready to Advertise” documents for bidding purposes. The Owner’s approval of Phase C Submittal shall be defined as approval for design intent and shall not operate to relieve the Architect/ Engineer from providing adequate design under the contract.

***3.7.C.17 BIDDING AND CONSTRUCTION CONTRACT AWARD PHASE:***

**3.7.C.17.1 Within five (5) working days after authorization by the Owner (or within a time frame mutually agreed to by the Owner and the Architect/ Engineer),** the Architect/ Engineer shall make the “Ready to Advertise” submission electronically (using the Owner’s Document Collaboration System) following the requirements for that submission. None of these documents shall contain any item or facility not previously approved for design intent by the Owner.

**3.7.C.17.2 The Architect/ Engineer and its consultants (as necessary)** shall attend and participate in any Pre-Bid Conference required for the Project.

**3.7.C.17.3 The Architect/ Engineer and its consultants shall assist the Owner in responding to questions** from prospective bidders and providing clarifications and interpretations of the Contract Documents to all prospective biddings by the issuance of any necessary Addendamodifying the requirements of the Contract Documents during the Bidding Period.

**3.7.C.17.4 The Architect/ Engineer and its consultants shall assist the Owner in obtaining bids,** receiving, tabulating and evaluating the bids received and in the award of any contract or contracts for construction of the Project or any part thereof.

**3.7.C.17.5 Should it become necessary to reject all bids and to re-bid the Project for any reason which is in the best interest of the Commonwealth,** the Architect/ Engineer and its consultants shall participate in the re-bidding process without additional compensation.

**3.7.C.17.6 Following its evaluation of the bids received,** the Architect/ Engineer and its consultants shall prepare and submit to the Owner electronically (using the Owner’s Document Collaboration System) its recommendations concerning contract award and approval of proposed construction materials/equipment and subcontractors.

**3.7.C.17.7 In the event that the Owner elects not to award a construction contract** because the low bid or bids exceed the allowable construction cost, the Architect/ Engineer shall, upon the request of the Owner, submit within fourteen (14) days of the Owner’s request, together with appropriate description and explanation, a list of possible changes or revisions to the drawings and specifications, designed to reduce the cost to the Final Cost Estimate while retaining to the maximum extent possible the scope, quality and intent of the original Project requirements. The Architect/ Engineer shall give careful consideration to and evaluate the probable cost of construction changes and revisions proposed. If then directed by the Owner to make certain changes and revisions for the purpose of reducing the cost to within the allowable construction cost, the Architect/ Engineer and its consultants shall make such changes and revisions without additional cost to the Owner. Written approval for design intent of the documents submitted under Phase C, given prior to receipt of bids for the work, shall not relieve the Architect/ Engineer and its consultants of their obligation to make such changes without additional compensation under the above conditions. Evaluations of the Owner’s Project budget, preliminary Cost Estimates or detailed Cost Estimates prepared by the Architect/ Engineer represent the Architect/ Engineer’s best judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Architect/ Engineer nor the Owner has control over the cost of labor, materials or equipment, over the Contractor’s methods of determining bid prices, or over competitive bidding, market or regulatory conditions. Accordingly, the Architect/ Engineer cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner’s Project budget or from any Cost Estimate or evaluation prepared or agreed to by the Architect/ Engineer. Providing the changes and revisions shall constitute the Architect/ Engineer‘s sole responsibility and Owner’s sole remedy to the adequacy of the preliminary or Final Cost Estimate and shall fulfill the Architect/ Engineer’s liability to the Owner in connection with the Final Cost Estimate.

**3.7.C.17.8 Should it become necessary to reject all bids and to re-bid the Project after the modification of the Contract Documents as indicated above,** the Architect/ Engineer and its consultants shall participate in the re-bidding process without additional compensation.

**3.7.C.17.9 After a construction contract has been signed** by the Owner and the Contractor and an Award of Contract Form DOA-39 has been signed, validating the contract, and upon written request of the Owner, the Architect/ Engineer shall commence Phase D of his services.

***3.7.D PHASE D - DUTIES, OBLIGATIONS AND RESPONSIBILITIES DURING CONSTRUCTION:***

**3.7.D.1 Based on the Owner’s Award of a Construction Contract or Contracts for the Project,** and on the Owner’s authorization for the Architect/ Engineer to proceed with Phase D Services, the Architect/ Engineer shall proceed with the services required during Phase D – Construction Administration following the requirements set forth in the Owner’s Procedures Manual.

**3.7.D.2 During construction of the Project, and at all times relevant thereto,**  in addition to its duties, obligations, and responsibilities set forth in the following paragraphs, the Architect/ Engineer shall provide administration of the Contract between the Owner and the Contractor(s), which includes those duties, obligations and responsibilities set forth in the Construction Contract Between Owner and Contractor (“the Construction Contract”) and the “General Conditions of the Contract for Construction” that are specifically designated as duties, obligations and responsibilities of the Architect/ Engineer. If the Owner and Contractor(s) modify their Agreement(s), those modifications shall not affect the Architect/ Engineer’s Services unless the Owner and Architect/ Engineer amend this Agreement.

**3.7.D.3 The Architect/ Engineer shall, as contemplated herein, but not otherwise, advise and consult with and act as a representative on behalf of the Owner** (only to the extent provided in this Agreement) throughout construction of the Project. Instructions, directions, and other appropriate communications from the Owner to the Contractor shall be given to the Contractor by the Architect/ Engineer.

**3.7.D.4 The Architect/ Engineer shall not have control over,** charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect/ Engineer be responsible for the Contractor’s failure to perform the Work in accordance with the requirements of the Contract Documents.

**3.7.D.5 The Architect/ Engineer shall be responsible for the Architect/ Engineer’s negligent acts or omissions,** but shall not have control over or charge of, and shall not be responsible for, acts and omissions of the Contractor(s), sub-Contractors, material suppliers, or of any other persons or entities performing portions of the Work.

**3.7.D.6 Upon receipt, the Architect/ Engineer shall carefully review and examine the Contractor’s Schedule of Values,** together with any supporting documentation or data which the Owner or the Architect/ Engineer may require from the Contractor. The purpose of such review and examination shall be to exercise that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances to prevent an unbalanced Schedule of Values which allocates greater value to certain elements of the Work than is indicated by such supporting documentation or data, or than is reasonable under the circumstances. If the Schedule of Values is not found to be appropriate, or if the supporting documentation or data is deemed to be inadequate, and unless the Owner directs the Architect/ Engineer to the contrary in writing, the Schedule of Values shall be returned to the Contractor for revision or supporting documentation or data. After making such examination, if the Schedule of Values is found to be appropriate as submitted, or if necessary, as revised, the Architect/ Engineer shall sign the Schedule of Values thereby indicating to the best of the Architect/ Engineer’s knowledge, information and belief, that the Schedule of Values constitutes a reasonable, balanced basis for payment of the Contract Price to the Contractor. The Architect/ Engineer shall not sign such Schedule of Values in the absence of such belief unless directed to do so, in writing, by the Owner.

**3.7.D.7 Upon receipt, the Architect/ Engineer shall carefully review and examine the Contractor’s Construction Schedule,** together with any supporting documentation or data which the Owner or the Architect/ Engineer may require from the Contractor. The purpose of such review and examination shall be to exercise that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances to prevent an unattainable Construction Schedule which is reasonably clear as to its inappropriateness under the circumstances. If the Construction Schedule is not found to be appropriate, or if the supporting documentation or data is deemed to be inadequate, and unless the Owner directs the Architect/ Engineer to the contrary in writing, the Construction Schedule shall be returned to the Contractor for revision or supporting documentation or data. After making such examination, if the Construction Schedule is found to be appropriate as submitted, or if necessary, as revised, the Architect/ Engineer accept the Construction Schedule thereby indicating to the best of the Architect/ Engineer’s knowledge, information and belief, that the Construction Schedule constitutes a reasonable, obtainable schedule for the completion of the Work by the Contractor on or before the Date of Substantial Completion as defined by the Contract Documents. The Architect/ Engineer shall not accept such Construction Schedule in the absence of such belief unless directed to do so, in writing, by the Owner. The Owner and the Architect/ Engineer recognize that the Architect/ Engineer is not responsible for the Contractor’s adherence to the Construction Schedule nor to the accomplishment of the Work by the Date of Substantial Completion.

**3.7.D.8 The Architect/ Engineer shall become generally familiar with the progress and quality of the work of the Contractor,** and shall visit the site at intervals appropriate to the stage of construction, including, at a minimum, site visits no less frequently than two (2) per month. The purpose of such site visits shall be to determine in general the quality and quantity of the work in comparison with the requirements of the Construction Contract. In making such on site observations, the Architect/ Engineer shall endeavor to protect the Owner from continuing deficient or defective work, from continuing unexcused delays in the schedule and from overpayment to the Contractor. Following each site visit, the Architect/ Engineer shall submit electronically (using the Owner’s Document Collaboration System) a written report of such site visit, together with any appropriate comments or recommendations, to the Owner. However, the Architect/ Engineer shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work. On the basis of the site visits, the Architect/ Engineer shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent Construction Schedule submitted by the Contractor and (3) defects and deficiencies observed in the Work.

**3.7.D.9 When authorized by the Owner, a Resident Observer** selected by the Architect/ Engineer and acceptable to both the Owner and the consultant and approved in writing by the Owner shall be employed by the Architect/ Engineer at a salary satisfactory to the Architect/ Engineer and the Owner, for continuous on-site inspection of the Project. In event of such authorization, the Owner shall direct the Architect/ Engineer as to when the services of the Resident Observer shall commence and when they shall terminate. The duties, responsibilities and limitation of authority of the Resident Observer shall be the as defined by the Owner’s Procedures Manual. The cost of a Resident Observer is an Additional Service of the Architect/ Engineer. The Owner will compensate the Architect/ Engineer for the cost of the Resident Observer plus markup as negotiated.

**3.7.D.10 The Architect/ Engineer shall initially review and certify periodic and final payments owed to the Contractor** under the Construction Contract predicated upon observations of the work as required herein and evaluations of the Contractor’s rate of progress in light of the remaining Contract Time and shall issue to the Owner Certifications of Payment in such amounts. By issuing a Certification of Payment to the Owner, the Architect/ Engineer informs the Owner that the Architect/ Engineer has made the observation of the work as required herein, and that the work for which payment is approved has, to the best of the Architect/ Engineer’s knowledge, information and belief, reached the quantities or percentages of completion shown, or both, that the quality of the Contractor’s work is in accordance with the requirements of the Construction Contract, and that under the terms and conditions of this paragraph and the Construction Contract, the Owner is obligated to make payment to the Contractor of the amount certified. The foregoing representations are subject to an evaluation of the work for conformance with the Construction Contract upon substantial completion, to results of subsequent tests and instructions, to minor deviations from the Construction Contract correctable prior to completion and to specific qualifications expressed by the Architect/ Engineer. The responsibilities of the Architect/ Engineer therein described along with the issuance of a Certificate of Payment shall not be a representation that the Architect/ Engineer has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of the requisitions from Subcontractors and Material Suppliers and other data requested by the Owner to substantiate the Contractor’s right to payment or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum. The Architect/ Engineer shall maintain a record of the Applications and Certifications for Payment.

**3.7.D.11 The Architect/ Engineer shall promptly provide appropriate interpretations on written request** (from the Owner or Contractor) or as necessary in the judgment of the Architect/ Engineer for the proper execution of the Work. The Architect/ Engineer shall interpret and decide matters concerning performance under, and the requirements of, the Contract Documents in written form electronically (using the Owner’s Document Collaboration System) in a reasonable timely manner. The Architect/ Engineer shall provide these responses with reasonable promptness to avoid delay of the Work.

**3.7.D.12 The interpretations and decision of the Architect/ Engineer** shall be consistent with the intent of and reasonably inferable from the Contract Documents. When making such interpretations and decisions, the Architect/ Engineer shall endeavor to secure faithful performance by both the Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. Should the Owner or Contractor disagree with an interpretation or decision of the Architect/ Engineer, the procedure outlined in the General Conditions of the Construction Contract will be followed. The Architect/ Engineer shall assist the Owner and the Contractor in this procedure as necessary.

**3.7.D.13 The Architect/ Engineer shall have the authority to reject in writing any work** of the Contractor which is not in compliance with the Construction Contract unless directed by the Owner, in writing, not to do so. However, this authority nor a decision made in good faith to either exercise or not exercise such authority shall give rise to a duty or responsibility of the Architect/ Engineer to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons performing portions of the work.

**3.7.D.14 The Architect/ Engineer shall have authority to require inspection or re-inspection and testing or retesting of the Work** in accordance with the provisions of the Construction Contract whenever appropriate. However, this authority nor a decision made in good faith to either exercise or not exercise such authority shall give rise to a duty or responsibility of the Architect/ Engineer to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons performing portions of the work.

**3.7.D.15 The Architect/ Engineer shall review the Contractor’s Submittal Schedule and shall notify the Contractor** when the proposed schedule does not allow the Architect/ Engineer sufficient time to review the submittals. The Architect/ Engineer shall work to reach agreement at the time of the initial review of the Submittal Schedule with the Contractor as to the appropriate timing of the submission of required submittals that will allow for proper review, revision or supplemental submission without reasonable delay to the Work.

**3.7.D.16 The Architect/ Engineer shall receive and approve, or otherwise respond to, the Contractor’s shop drawings and other submittals,** but only for the limited purposes of checking for conformance with information given and the design concept expressed in the Contract Document. Review of such submittals shall be conducted to allow sufficient time in the Architect/ Engineer’s professional judgment to permit adequate review. However, it is expected that the Architect/ Engineer’s review of shall be prompt and such as to not delay the Work unreasonably. The Architect/ Engineer is not responsible for any delay caused by the Contractor’s failure to make timely submittal nor for the Contractor’s failure to insure that the submittal is complete, accurate and consistent with the Contract Documents. The Contractor is solely responsible for any delay in the Work that results from an untimely or incomplete submittal that must be rejected by the Architect/ Engineer for resubmission. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions or quantities or for substantiating instructions for installation or performance of equipment or systems designed by the Contractor, all of which remain the responsibility of the Contractor to the extent required by the Construction contract. The Architect/ Engineer’s review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect/ Engineer, of construction means, methods, techniques, sequences or procedures. The Architect/ Engineer’s approval of a specification shall not indicate approval of an assembly of which the item is a component. The Architect/ Engineer shall not be responsible for any deviations from the Contract Documents not brought to the attention of the Architect/ Engineer in writing. When professional certification of performance characteristics of materials, systems or equipment is required by the Construction Contract, the Architect/ Engineer shall be entitled to rely upon such certification to establish that the materials, systems, or equipment will meet the performance criteria required by the Construction Contract.

**3.7.D.17 The Architect/ Engineer shall have the authority to authorize minor changes in the Work** that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Amount or Contract Time. The Architect/ Engineer shall promptly prepare and submit to the Contractor and the Owner an Architect’s Supplemental Instruction (or Field Order) to document any minor changes made to the Work. The Architect/ Engineer shall maintain records relative to any minor change in the Work.

**3.7.D.18 The Architect/ Engineer shall receive and promptly examine and advise the Owner** concerning requests for Change Orders from the Contractor. The Architect/ Engineer shall prepare and promptly issue Requests for Proposals to the Contractor when a change is initiated by the Architect/ Engineer or by the Owner. Upon request by the Owner, the Architect/ Engineer shall draft Change Orders, whether initiated by the Owner, or by the Contractor and approved by the Owner, in accordance with the Construction Contract.

**3.7.D.19 The Architect/ Engineer shall, without additional compensation, promptly correct any errors,** omissions, deficiencies, or conflicts in the work product caused by the negligent acts, errors or omissions of the Architect/ Engineer or its consultants, or both. When such correction requires a Change Order to the Construction Contract, the Owner will request an increase the Contractor’s Contract by Change Order and will request a deductive Advice of Change from the Architect/ Engineer to be reimbursed for the cost of the Change.

**3.7.D.20 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional** related to a system, material or equipment, the Architect/ Engineer shall specify the appropriate performance and design criteria that such services must satisfy. The Architect/ Engineer shall review shop drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that hear such professional’s seal and signature when submitted to the Architect/ Engineer. The Architect/ Engineer shall be entitled to relay upon the accuracy, adequacy and completeness of the services, certifications, and seal provided by such design professional. The Architect/ Engineer shall not require such professional design services or certifications, except as required by Building Codes, unless the Owner has agreed in writing that the professional design services may be required of the Contractor rather than provided by the Architect/ Engineer.

**3.7.D.21 For projects Seeking LEED Certification the Architect/ Engineer shall perform the following during Phase D:**

1. The Architect/ Engineer shall respond to the USGBC Design Review within 25 business days of receipt of review comments.
2. The Architect/ Engineer shall initiate Design Application Appeal as/if necessary. Owner will pay any appeal fees that may be required.
3. The Architect Engineer shall provide a written (specifications) and verbal summary of the LEED process and documentation affecting the contract at the pre-bid conference, for the purpose of educating potential bidders on LEED requirements for the project.
4. At or near the time of the pre-construction conference, The Architect/ Engineer shall apprise the contractor of information required from the Contractor relevant to LEED submittals.

**3.7.D.22 Based upon observations of the Project, the Architect/ Engineer shall certify** in writing to the Owner the fact that, and the date upon which, the Contractor has achieved Substantial Completion of the Project and the date upon which the Contractor has achieved Final Completion of the Project. The Architect/ Engineer will follow the requirements for Substantial Completion and Final Completion outlined in the Owner’s Procedures Manual. The inspections for Substantial Completion and Final Completion shall be conducted with the Owner and Using Agency to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the List submitted by the Contractor of Work to be completed or corrected.

**3.7.D.23 When the Work is found to be Substantially Complete,** the Architect/ Engineer shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for Final Completion, correction of the Work, or the assessment of Liquidated Damages for untimely performance.

**3.7.D.24 The Architect/ Engineer shall transmit to the Owner** all manuals, operating instructions, record drawings, warranties, guarantees and other documents and things required by the Construction Contract and submitted by the Contractor.

**3.7.D.25 Within one (1) month after final payment to the contractor, the Architect/ Engineer shall provide** the Owner with a final written report. This report shall include but is not limited to the following: evaluation of the contractor’s work, key personnel and contract administration; evaluation of Project Change Orders; evaluation of the Project schedule; suggestions that would have improved the Project.

**3.7.D.26 The Architect/ Engineer shall, upon the completion of the work, make final corrections to the drawings** that incorporate all changes and revisions as furnished to the Architect/ Engineer by the Contractor made during the course of the Project so as to provide “record drawings” for the Project, and shall furnish such drawings to the Owner within sixty (60) days of substantial completion. This set of record documents will show the reported location of the work and significant changes made during the construction process. Because these record documents are based on unverified information provided by other parties which will be assumed reliable, the Architect/ Engineer cannot and does not warrant their accuracy.

**3.7.D.27 The Architect/ Engineer shall testify, at the request of the Owner, in any judicial proceeding** concerning the design and construction of the Project when requested in writing by the Owner, and the Architect/ Engineer shall make available to the Owner any personnel or consultants employed or retained by the Architect/ Engineer for the purpose of reviewing, studying, analyzing or investigating any claims, contentions, allegations, or legal actions relating to, or arising out of, the design or construction of the Project. The Architect/ Engineer’s fee for such service shall be negotiated by the parties.

***3.7.E PHASE E (also referend to as Phase D extended)- DUTIES, OBLIGATIONS AND RESPONSIBILITIES DURING THE WARRANTY PERIOD:***

**3.7.E.1 As extended Phase E services during the warranty period**, the Architect/ Engineer shall conduct a one year warranty inspection of the Project to determine if remedial work is required to satisfy project guarantees and warranties.

**3.7.E.2 As Extended Phase E Services during the warranty period for projects seeking LEED certification the Architect/ Engineer shall:**

1. The Architect/ Engineer in association with the Contractor shall prepare and submit the LEED Construction Application to the USGBC.
2. The Architect/ Engineer shall respond to the USGBC Construction Review within 25 business days of receipt of review comments.
3. The Architect/ Engineer shall initiate Construction Application Appeal as/if necessary. Owner will pay any appeal fees that may be required
4. The Architect/ Engineer shall assist the commissioning authority as necessary.

**ARTICLE 4: ADDITIONAL SERVICES TO BE PROVIDED**

**4.1** Additional Services listed below are not included in Basic Services but maybe required for the Project. The Owner may, at its discretion, contract for these services from the Architect/ Engineer or from other professional services providers under a separate Agreement. The Architect/ Engineer shall provide the indicated Additional Services ONLY if specifically designated below as the Architect/ Engineer’s Responsibility.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Additional Services** |  | **By A/E (this Agreement)** | **By Others (separate Agreement** | **By Owner / Using Agency** | **Not Required** |
| Feasibility Study |   |   |   |  | X |
| Initial Work Plan |   |   |   |  | X |
| Programming |   |   |   | X |  |
| Master Planning |   |   |   |  | X |
| Multiple Site Analysis |   |   |   |  | X |
| Multiple Design Analysis |   |   |   |  | X |
| Renderings for Funding |   |   |   |  | X |
| Measured Drawings |   |   |   |  | X |
| Existing Facilities Survey |   |   |   |  | X |
| Hazardous Materials Abatement |   |   |   |  | X |
| Furnishings/ Equipment Design |   |   |   | X |  |
| Special As-built Record Drawings |   |   |   |  | X |
| Tenant-Related Services |   |   |   |  | X |
| Owner Consultant Coordination |   |   |   |  | X |
| Telecommunications/ Data Design |   |   |   |  | X |
| Fast-Track / Multiple Bid Documents |   |   |   |  | X |
| Historic Preservation  |   |   |   |  | X |
| Other |   |   |   |   | X |

\*\*Attach an Exhibit to this Document defining the Additional Service indicated above.

**4.2 Additional Services may be amended to this Agreement at the time of execution and/or after execution,** without invalidating the Agreement. Except for Services required due to the fault of the Architect/ Engineer, any Additional Services provided in accordance with this Article shall entitle the Architect/ Engineer to compensation by provision of this Agreement and an appropriate adjustment in the Architect/ Engineer’s Schedule.

**4.3 Upon recognizing the need to perform the following Additional Services,** the Architect/ Engineer shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. Where such Services were contemplated at the time of execution of this Agreement or an Advice of Change to this Agreement, these Services shall not be deemed Additional Services. *The Architect/ Engineer shall not proceed to provide the following Additional Services until the Architect/ Engineer receives an Advice of Change to this Agreement from the Owner:*

1. **Services necessitated by a change in the Initial Information**, previous instructions or approvals given by the Owner, or a material change in the Project including, but not necessarily limited to, size, quality, complexity, the Owner’s Schedule or budget for Cost of Construction, or procurement or delivery method;
	1. **A change in the budget for Cost of Construction** required because of the Architect/ Engineer’s revision to Estimates for the Cost of Construction that do not involve material changes in the Project that deviate significantly from the Initial Information shall not be deemed to be Additional Services.
	2. **A change in the procurement or delivery method** from Traditional Design-Bid-Build to Construction Manager / General Contractor during or after Phase C Design Services shall not be deemed to be Additional Services.
2. **Preparation of design and documentation for alternate bid or proposal requests** and the evaluation thereof, directed by the Owner.
	1. **Where the necessity for these alternates or separate proposals is a result** of the Architect/ Engineer’s revision in Estimates for the Cost of Construction that do not involve material changes in the Project shall not be deemed to be Additional Services;
3. **Services necessitated by the Owner’s request for extensive environmentally responsible design** alternatives, such as unique systems design, in-depth material research, additional energy modeling, or a change in the LEED Certification requirements;
4. **Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision** of Codes, Laws, or Regulations or Official Interpretations that could not have been known or anticipated at the time of execution of this Agreement;
5. **Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance** on the part of the Owner or the Owner’s consultants or contractors, that are not reasonably attributable to the action or inaction of the Architect/ Engineer;
6. **Preparing of physical or digital data for distribution** to the Owner’s Consultants and contractors or to other Owner authorized recipients;
7. **Preparation for, and attendance at, a public presentation, meeting or hearing** requested by the Owner and not a normal part of the execution of the Basic Services and contracted Additional Services of this Project;
8. **Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding,** except where the Architect/ Engineer is party thereto or required by the normal processes of the Basic Services and contracted Additional Services of this Project; or
9. **Consultation concerning replacement of Work** resulting from fire, flood, wind or other cause, either “Act of God” or “Act of Man” during construction. Consultation concerning replacement of Work due to Contractor workmanship or adherence to the Contract Documents is not an Additional Service, except in extra-ordinary instances agreed to by the Owner and the Architect/ Engineer.

**4.4 Where the Owner, at no fault of the Architect/ Engineer, suspends the design or construction of the Project for more than ninety (90) calendar days** and then re-commences the design or construction, the Architect/ Engineer shall be entitled to additional compensation for remobilizing on the project. This additional compensation shall be an Additional Service to the extent the Architect/ Engineer’s Basic and Additional Services are affected.

**4.5 To avoid delay in the Construction Phase,** the Architect/ Engineer shall provide the following Additional Services, upon immediate notification to the Owner that it is providing this Service, and with reasonable promptness fully explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those Services are not required, the Owner shall give prompt written notice to the Architect/ Engineer, and the Owner shall have not further obligation to compensate the Architect/ Engineer for those services:

1. **Reviewing a Contractor’s submittal significantly out of sequence from the submittal schedule** agreed to by the Architect, where this review is critical due to the circumstances of Construction and/or the marketplace and where this review places a specific burden on the Architect/ Engineer that would have not been present with the review at the original time;
2. **Evaluating a significant number of Claims** as the initial decision maker where such claims are resultant from an adversarial Contractor making claims that are not valid and not due to any ambiguity in the Contract Documents prepared by the Architect/ Engineer;
3. **Evaluating substitutions proposed by the Owner or Contractor** that are not due to the unavailability of products, materials, or systems in the Contract Documents prepared by the Architect/ Engineer.
4. **Responding to a significant number of Contractor’s Request for Information** where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings or Project correspondence and documentation and where the Architect/ Engineer has indicated such to the Owner prior to providing the response;
5. **Evaluation of a significant number of Contractor’s price proposals and supporting data** where the price proposals by necessity have been rejected and resubmitted by the Contractor in order to reach a reasonable price and where the Architect/ Engineer has indicated such to the Owner prior to evaluation of the resubmission of the price proposal;
6. **Providing Construction Phase Services more than sixty (60) calendar days after the actual Date of Final Completion of the Work,** to the extent that the Architect/ Engineer’s Basic and Additional Services are affected,
7. **Providing Construction Phase Services beyond the anticipated Date of Substantial Completion of the Work per the Construction Contract** except where time extensions have been granted to the Contractor for one or more of the following reasons: (1) delay not caused by the Owner or Contractor; (2) delay due to adverse weather; and/ or (3) delay caused by the action or inaction of the Architect/ Engineer, to the extent the Architect/ Engineer’s Basic and Additional Services are affected;
8. **Providing additional inspections or re-inspections of any portion of the Work** where the General Conditions of the Construction Contract indicates that the Architect/ Engineer is entitled to compensation and where the Owner has the right to charge the Contractor for such inspections.

**ARTICLE 5: FEES AND OTHER PAYMENTS**

**5.1 The Owner shall pay to the Architect/ Engineer for the indicated services the following Fees and other payments.** As full and complete compensation for all of Architect/ Engineer’s Services as provided herein, the Owner shall pay to the Architect/ Engineer the sum indicated the this Article, which sum shall constitute the Total Lump Sum Price (Price) and shall include the lump sum fee described below for Phase A.

**5.1.1** **This Total Lump Sum Price may be equitably adjusted** in the event the Owner and the Architect/ Engineer mutually execute an Advice of Change to the original changing the scope of the Architect/ Engineer’s Basic Services or Additional Services through the provisions of this Agreement.

**5.2 TOTAL LUMP SUM PRICE FOR BASIC AND ADDITIONAL SERVICES OF THE ARCHITECT/ ENGINEER:**

**5.2.1 The Owner and the Architect/ Engineer agree that the Total Lump Sum Price** for Basic and Additional Services to be provided by the Architect/ Engineer for this project has been established as **<<Total Lump Sum Price>>.** \*\* The Total Lump Sum Price for Basic and Additional Services will be determined and negotiated at the conclusion of Phase A Design Services.

**5.2.1.A PHASE A FEE FOR BASIC AND ADDITIONAL SERVICES:** Upon completion of Phase A of the Architect/ Engineer’s Services, (completion defined as Owner’s written authority to proceed to next phase), the Owner shall pay to the Architect/ Engineer a lump sum Fee of «PhaseAFee» «WorkPlanFee».

**5.2.1.B PHASE B FEE FOR BASIC AND ADDITIONAL SERVICES:** Upon completion of Phase B of the Architect/ Engineer’s Services, the Owner shall pay to the Architect/ Engineer, 40% of the Total Lump Sum Price, less the previous lump sum payment made for Phase A.

**5.2.1.C PHASE C FEE FOR BASIC AND ADDITIONAL SERVICES:** On projects with an accepted Phase B construction cost estimate in excess of $1,000,000, when the Owner determines that the Architect/ Engineer has performed one-half of the work required under Phase C, the Owner shall pay to the Architect/ Engineer a sum equal to 60% of the Total Lump Sum Price, less all amounts previously paid for Phase A and B. The 60% payment option does not apply where the Phase B construction cost estimate is less than $1,000,000.

5.2.1.C.1 Upon completion and acknowledgement of the construction documents and final estimate, and all other services required under Phase C of the Architect/ Engineer’s services, notwithstanding the fact that bids have not yet been taken on the Project, the Owner shall pay to the Architect/ Engineer a sum equal to 75% of the Total Lump Sum Price, less all previous payments for Phase A, Phase B and Phase C (50%).

**5.2.1.D PHASE D FEE FOR BASIC AND ADDITONAL SERVICES:**

As the Architect/ Engineer renders services under Phase D and the warranty period the Owner shall pay to the Architect/ Engineer 25% of his Total Lump Sum Price for such services through periodic payments.

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**5.2.1.D.1 For projects requiring LEED certification** 20% of the Total Lump Sum Price shall be paid during Phase D and 5% shall be paid during the warranty period. Each periodic payment to the Architect/ Engineer for services under Phase D shall be that part of the 20% of the Total Lump Sum Price applied to the value of the completed construction as determined by the Owner in approved certificates of payment to the Contractor. Payment under Phase D shall be made to the Architect/ Engineer at 25%, 50%, 75%, and 100% completion of construction, all totaling 20% of the Total Lump Sum Price. However, the Owner may agree to a more frequent schedule of payments. Payment of the remaining 5% of the total price shall be made in two equal payments, one at 50% of the warranty period and one at the conclusion of the warranty period.

**5.2.1.D.2 For projects not requiring LEED certification** each periodic payment to the Architect/ Engineer for services under Phase D shall be that part of the 25% of the Total Lump Sum Price applied to the value of the completed construction as determined by the Owner in approved certificates of payment to the Contractor. Payment under Phase D shall be made to the Architect/ Engineer at 25%, 50%, 75%, and 100% completion of construction, all totaling 25% of the Total Lump Sum Price. However, the Owner may agree to a more frequent schedule of payments.

***5.3 PAYMENTS FOR ADDITIONAL SERIVCES OF THE ARCHITECT/ ENGINEER:***

***5.3.1 For Extra Work in Programming:*** If the Architect/ Engineer is required to provide assistance to the Owner and Using Agency during Phase A for programming or for reconciling Program requirements with allowable construction cost, and if this work is authorized in writing by the Owner, the Owner shall reimburse the Architect/ Engineer for any such extra work as described under the provisions of this Agreement.

***5.3.2 For Extra Work Due to Changes in the Initial Information:***If the Architect/ Engineer and his sub-consultants during Phase B or C of their services, or for the preparation of “Record Drawings” during Phase D, are required by reason of changes ordered by the Owner, to do extra work by changes to drawings, specifications or estimates previously approved by the Owner, and if such work is authorized in writing by the Owner, the Owner shall reimburse the Architect/ Engineer for any such extra work as described under the provisions of this Agreement. However, if such work is required by failure of the Architect/ Engineer or any of his sub-consultants to properly and correctly select, indicate, delineate or describe materials or methods of construction or finishes in accordance with applicable codes, regulations, or normal architectural or engineering practices, in such event the Owner is under no obligation to pay the Architect/ Engineer for the extra cost so caused, even though the documents requiring correction or changes bear the approval of design intent of the Owner.

**5.3.3 For Extra Work Due to a Change in the Procurement or delivery method** from Traditional Design-Bid-Build to Construction Manager/ General Contractor during Phase B of the Architect/ Engineer Services, the Owner and Architect/ Engineer shall negotiate an equitable, reasonable, Additional Services Fee for the change in Services of the Architect/ Engineer to reimburse the Architect/ Engineer for review of the work products of the Construction Manager/ General Contractor and for coordination of the recommendations and findings of the Construction Manager/ General Contractor into the Instruments of Service of the Architect/ Engineer. A change in the procurement or delivery method from Traditional Design-Bid-Build to Construction Manager / General Contractor during or after Phase C Design Services shall not be deemed to be Additional Services.

**5.3.4 In the event the Owner elects to divide the total project into two or more separate projects,** each requiring separate plans, specifications, inspection, and administration of construction, the Architect/ Engineer shall be entitled to additional, reasonable compensation.

**5.3.5** **For extra work in** **preparing of physical or digital data for distribution** to the Owner’s Consultants and contractors or to other Owner authorized recipients and for extra work in Preparation for, and attendance at, a public presentation, meeting or hearing requested by the Owner and not a normal part of the execution of the Basic Services and contracted Additional Services of this Project, the Architect/ Engineer shall be entitled to additional reasonable compensation.

**5.3.6** **For extra work in providing consultation concerning replacement of Work** resulting from fire, flood, wind or other cause, either “Act of God” or “Act of Man” during construction, the Architect/ Engineer is entitled to additional reasonable compensation.

**5.3.7** **For extra work in the** p**reparation for, and attendance at, a dispute resolution proceeding or legal proceeding,** except where the Architect/ Engineer is party thereto or required by the normal processes of the Basic Services and contracted Additional Services of this Project, the Architect/ Engineer is entitled to additional reasonable compensation.

**5.3.8 *Reimbursements to the Architect/ Engineer:*** Extra payments to the Architect/ Engineer, as required under Paragraphs 5.3.1 through 5.3.7 above, shall be on a negotiated basis between the Owner and Architect/ Engineer, and if Owner and Architect/ Engineer cannot negotiate the extra payments, the Architect/ Engineer shall be entitled to additional, reasonable compensation for the extra work as evidenced by a detailed breakdown of actual hours spent by the Architect/ Engineer’s employees and the employees of the Architect/ Engineer’s sub-consultants using the same hourly rates as established by the Owner’s Master Agreement contracts for the same disciplines involved.

***5.4 PAYMENTS FOR SERIVCES OF THE ARCHITECT/ ENGINEER TO AVOID DELAY IN THE CONSTRUCTION OF THE PRIOJECT:***

* + 1. **For extra work required of the Architect/ Engineer for Additional Services that may be**

**necessary to avoid delay in the Construction of the Project** (as indicated in paragraph 4.5,, subparagraphs 1, 2, 3, 4 and 5), where (1) the Service is critical due to the circumstances of Construction and/or the marketplace and where providing this Service places a specific burden on the Architect/ Engineer that would have not been present normally, (2) the requirement for the Service is not due to any ambiguity in the Contract Documents prepared by the Architect/ Engineer; (3) the Architect/ Engineer has indicated to the Owner that such Service is required prior to providing the Service; and (4) the work required to provide the Service is in excess to the work the Architect/ Engineer would have to provide under the provisions of this Agreement for Basic and Additional Services, the Owner shall reimburse the Architect/ Engineer for the Additional Services.

***5.4.2 For Extra Work Due to Extended Construction Time:*** In the event Phase D is extended beyond the contractual dates of Substantial and Final Completion (as described in paragraph 4.5, subparagraphs 6 and 7), not due to weather delay extensions and through no fault of the Architect/ Engineer, and if the Architect/ Engineer is required by the Owner in writing to provide inspection and construction administration services during such extended period, then the Owner shall reimburse the Architect/ Engineer for the Additional Services.

**5.4.3 For Extra Work due to providing additional inspections or re-inspections of any portion of the Work** where the General Conditions of the Construction Contract indicates that the Architect/ Engineer is entitled to compensation and where the Owner has the right to charge the Contractor for such inspections, the Owner shall reimburse the Architect/ Engineer for the Additional Services.

**5.4.4** ***Reimbursements to the Architect/ Engineer:*** Extra payments to the Architect/ Engineer, as required under Paragraphs 5.4.1 through 5.4.3 above, shall be on a negotiated basis between the Owner and Architect/ Engineer, and if Owner and Architect/ Engineer cannot negotiate the extra payments, the Architect/ Engineer shall be entitled to additional, reasonable compensation for the extra work as evidenced by a detailed breakdown of actual hours spent by the Architect/ Engineer’s employees and the employees of the Architect/ Engineer’s sub-consultants using the same hourly rates as established by the Owner’s Master Agreement contracts for the same disciplines involved.

**5.5 REIMBURSEMENTS TO BE PAID TO THE ARCHITECT/ ENGINEER**

**5.5.1** ***For the Services of a Resident Observer:*** If the Architect/ Engineer under Phase D of his services is required to employ a Resident Observer for continuous on-site observation of the Project, the cost of such service shall be a reimbursable amount of the Resident Observer’s approved salary, plus an amount not to exceed 25% of the said gross salary to cover the Resident Observer’s employee benefit

package with the Architect/ Engineer.

**5.5.1.1 Individual items to be included as part of the employee benefit package** shall exclude profit, overhead and office/firm administrative costs. The Architect/ Engineer shall provide supporting documentation indicating the firm’s fringe benefit contribution percentage that when applied to the approved salary amount, results in a total Architect/ Engineer’s fringe benefit contribution.

**5.5.1.1** **A sum equal to five percent of the Resident Observer’s total approved salary plus the agreed value of the fringe benefit contribution** shall be paid to the Architect/ Engineer for personnel administration and management of the Resident Observer.

**5.5.1.3** **Any Resident Observer’s travel allowance shall be** in accordance with existing State travel regulations. Travel paid to the Resident Observer that is reimbursable by the Owner, shall be only for Project related travel necessary in the performance of the duties of the Resident Observer. The Architect/ Engineer shall be reimbursed for actual travel expense based on the travel allowance agreement. Any deviation from State travel regulations shall be fully documented and approved by the Executive Director, Department for Facilities Management and Support Services.

**5.5.1.4** **These approved expenses** shall be in addition to all fees and other payments, but no further sum shall be paid by the Owner for the services of the Resident Observer. Any cost for the Resident Observer’s services not included in the above reimbursement and any salary or travel allowance in excess of the sum approved by the Owner shall be paid by the Architect/ Engineer without reimbursement.

**5.5.2** ***For The Services of Special Consultants:*** If, because of the highly specialized nature of the Project, the Architect/ Engineer is required by the Owner to hire a Special Consultant, and the Owner has approved in writing the selection of the consultant, the total amount of its fees and the scope of its work, then, and in that event, the Owner shall reimburse the Architect/ Engineer the amount of the Special Consultant’s negotiated lump sum fee when its work on the Project is completed; or if the Owner judges it proper to make periodic partial payments to the Architect/ Engineer for the Special Consultant’s services, the Owner shall make such periodical payments in proportion to the services rendered until the aggregate of all such payments equals the approved total fee of the Special Consultant at the conclusion of his services.

**5.5.2.1** **Food Service Consultants,** where required and authorized in writing by the Owner, shall be considered a Special Consultant and shall be retained after the Owner and the Architect/ Engineer have agreed upon a lump sum fee for such services. Food Service Consultation shall include kitchen equipment and food service equipment only, not built-in shelving or other built-in items. The Architect/ Engineer shall be entitled to a sum equal to not-more-than five (5%) percent of the negotiated lump sum fee of the Food Service Consultant for coordination and administrative costs associated with the Special Consultant.

**5.5.2.2 Acoustical Consultants, Special Lighting Consultants, Exhibit Design Consultants, and Security Design Consultants,** where required and authorized in writing by the Owner, shall be considered a Special Consultant and shall be retained after the Owner and the Architect/ Engineer have agreed upon a lump sum fee for such services. These types of Consultation shall include only specific work assignments for specific areas indicated at the time of the Owner’s authorization of such consultation. The Architect/ Engineer shall be entitled to a sum equal to not-more-than ten (10%) percent of the negotiated lump sum fee of the Special Consultant for coordination and administrative costs associated with the Special Consultant.

**5.5.2.3** **Environmental Consultants, Site and Boundary Consultants, Geotechnical Investigation Consultants, Special Inspection Consultants, Commissioning Consultants, Traffic Analysis Consultants, Airport Right-of-way Consultants and Detailed Cost Estimation Consultants,** where required and authorized in writing by the Owner, shall be considered a Special Consultant and shall be retained after the Owner and the Architect/ Engineer have agreed upon a lump sum fee for such services. The Architect/ Engineer shall be entitled to a sum equal to not-more-than five (5%) percent of the negotiated lump sum fee of the Special Consultant for coordination and administrative costs associated with the Special Consultant.

**5.5.2.4** **Educational Planning Consultants, Health Care Planning Consultants, and other specific building programming consultants of this nature,** where required and authorized in writing by the Owner, shall be considered a Special Consultant and shall be retained after the Owner and the Architect/ Engineer have agreed upon a lump sum fee for such services. The Architect/ Engineer shall be entitled to a sum equal to not-more-than five (5%) percent of the negotiated lump sum fee of the Special Consultant for coordination and administrative costs associated with the Special Consultant.

**5.5.3 *For the Services of Landscape and Interior Consultants:*** If the Architect/ Engineer is required by the Owner to employ a landscape or interior consultant and the Owner has approved in writing the selection of the consultant, the total amount of additional fees and scope of the work shall be as follows:

**5.5.3.1 *Landscape Consultant:***The scope of the services of the Landscape Consultant is to consist of plans and specifications and inspection for planting of trees and shrubs only. Additionally, where specifically indicated by the Owner in the authorization for proving these special landscaping Additional Services, the scope of services can be expanded for special circumstances or Project goals. Note that sodding, seeding, retaining walls, drives, walks, and related services, shall be included in architectural / engineering specifications and plans under the provisions for the Architect/ Engineers Basic Services. The Architect/ Engineer and the Landscape Consultant shall be notified in advance as to project funds available for its work. The Architect/ Engineer shall be paid a reasonable, negotiated, additional lump sum landscaping fee for this work, 80% of which shall be paid to the Landscaping Consultant.

**5.5.3.2 *Interior Consultant*** ***(Furnishings and Equipment Design)****:* The scope of the Interior Consultant’s services is to consist of plans and specifications and inspection of movable equipment and furniture required for the Project. Additionally, where specifically indicated by the Owner in the authorization for proving these special interior Additional Services, the scope of services can be expanded for special circumstances or Project goals. The Architect/ Engineer shall be responsible for the preparation of plans and specifications and for the inspection of carpets, draperies, casework, cabinetry, built-in furniture, re-located and Owner Provided Equipment, architectural shelving and storage shelving under the provisions for the Architect/ Engineers Basic Services. However, the Architect/ Engineer may consult with the Interior Consultant as to colors. The Architect/ Engineer shall be paid a reasonable, additional lump sum interior consultant fee for his work, 80% of which shall be paid to the interior consultant.

**5.5.4** ***For Additional Photographic Reproductions of Renderings:*** If the Architect/ Engineer is required by the Owner to furnish additional photographic reproductions of the architectural rendering for the Project, or reproductions other than those specified as a required part of its Basic Services under the provisions of this agreement, the Owner shall reimburse the Architect/ Engineer the actual cost of such additional or different reproductions times a multiple of 1.1.

**5.5.5** **Reimbursable Expenses** are in addition to the compensation for Basic and Additional Services and include specific expenses incurred by the Architect/ Engineer, or its sub-consultants, directly related to the Project, and are as follows:

1. **Fees paid by the Architect/ Engineer for securing approval of local governmental authorities having jurisdiction over the project.** These Fees are paid on behalf of the Owner and are reimbursable at 110% of the amount of the Fee paid. Note that fees to be paid to State or Federal governmental authorities will be paid directly by the Owner and are not reimbursable to the Architect/ Engineer.
2. **Transportation and authorized out-of-state travel and subsistence, where the Owner requires the Architect/ Engine**er, or its sub-consultants to make such travel directly related to the project other than that described in paragraph 5.5.6 as non-reimbursable expenses. These expenses are reimbursable at 100% of the amount of the expense and shall comply with State Travel Regulations.
3. **Expense for overtime work requiring higher than regular rates, where authorized** in advance by the Owner and where necessary to meet the requirements of the Owner that was not part of the requirements of the Initial Information or Scope of Services at the time of this Agreement. The reimbursable portion of this expense is only the premium amount above the regular rate that would have been incurred without the Owner’s requirements indicated above. These expenses are reimbursable at 100% of the amount.
4. **Architect/ Engineer’s Consultant’s expense of Professional Liability Insurance dedicated exclusively to this Project,** or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that required generally by this Agreement. These expenses are reimbursable at 100% of the amount.
5. **Site Office expenses, when required but not provided by a Contractor** for the Architect/ Engineer’s use. These expenses are reimbursable at 110% of the amount of the expense paid.
6. **Other similar Project-related expenses, where authorized by the Owner** prior to the expense being incurred.

**5.5.6** **Non-Reimbursable Expenses,** are considered to the part of the compensation for Basic and Additional Services and are not reimbursable to the Architect/ Engineer, or its sub-consultants. Non-reimbursable expenses include the following:

1. **Transportation, travel and subsistence, related to the use of out-of-state consultants, that are incurred for travel to and from the Project Site, the Offices of the Owner or Using Agency, the Offices of the Architect/ Engineer, and/or the Offices of the Consultants,** except as agreed in this Agreement or by Advice of Change to this Agreement;
2. **Telephone services, dedicated data and communications services, teleconferences, project websites, and extranets;**
3. **Printing, reproductions, plots, standard form documents, and “record drawings”, except** as provided for elsewhere in this Agreement as Additional Services.
4. **Postage, handling and delivery, except** as provided for elsewhere in this Agreement as Additional Services;
5. **Expense for overtime work requiring higher than regular rates, unless authorized in advance** by the Owner.
6. **Other similar Project-related expenses, where not authorized by the Owner** prior to the expense being incurred.

**ARTICLE 6: CONSULTING ENGINEERS AND SPECIAL CONSULTANTS**

***6.1 When Required,* The Architect/ Engineer shall employ Mechanical and Electrical Engineers** for the design and professional supervision of all mechanical work included in the project, such as plumbing, heating, ventilation, and air conditioning, control system for mechanical systems, and all electrical work included in the Project, including telephone, program clocks, signal, and fire alarm systems, but not elevators.

**6.1.1** **The Consulting Mechanical and Electrical Engineer(s) employed for this project** shall be Kentucky licensed Mechanical and Electrical Engineers against which the Owner has interposed no reasonable objection, to provide services on this project within the scope of their professional registration.

**6.2 *When Required, o*n projects which should have structural frameworks, pilings, or other unusual foundations, the Architect/ Engineer shall employ a Structural Engineer** for the design and direct supervision of the professional services associated with this portion of the work*.* The extent of the Structural Engineer’s work shall include all pilings, reinforced concrete, significant retaining wall constructions, interior concrete slabs on grade, plain structural concrete, reinforcing steel, structural steel, including steel joists, and structural and laminated timbers, hoists and cranes, and all special items designed by the Structural Engineer. The cost of architectural concrete over and above the cost of structural concrete, general excavation and backfill, and elevators shall not be considered in the Structural Engineer’s portion of the work.

**6.2.1** **The Consulting Structural Engineer, if any, employed for this Project,** shall be a Kentucky licensed Structural Engineer, competent in the field of structural design and regularly engaged in practice of structural design, against which the Owner has interposed no reasonable objection, to provide services on this Project within the scope of its professional registration.

**6.3 *When Required, o*n projects that involve significant site work and site utilities work, the Architect/ Engineer shall employ a Site Engineer (Civil Engineer and/or Landscape Architect)** for the design and direct supervision of the professional services associated with this portion of the work*.* The extent of the Site Engineer’s work shall include all site concrete, general excavation and rough grading backfill, site underground utilities and drainage systems, paved parking lots and driveways, general retaining walls, and other site features required of the project. Structural concrete and significant retaining wall constructions shall not be considered in the Civil Engineer’s portion of the work.

**6.3.1** **The Consulting Site Engineer(s), if any, employed for this Project**, shall be a Kentucky licensed Civil Engineer or Kentucky licensed Landscape Architect, competent in the field of site engineering design of the type(s) required of this Project and regularly engaged in practice of site engineering design of the type(s) required of this Project, against which the Owner has interposed no reasonable objection, to provide services on this Project within the scope of its professional registration.

**6.4 The Architect/ Engineer shall employ a Special Consultant** other than the Consulting Engineers mentioned in paragraphs 6.1, 6.2, and 6.3, above only when specifically directed by the Owner to do so.

**6.4.1** **Special Consultants, if any, shall be skilled** in their special field and shall meet such requirements as the Owner shall establish for them. When required by Kentucky Professional Registration Laws, these Special Consultants shall be Kentucky Licensed in the special field they are assigned to provide services for on this Project.

**6.4.2** **Where the Instruments of Service provided by the Special Consultants are not required by Kentucky Professional Registration Laws** to be sealed by the Special Consultant, the preparation of the Instruments of Service provided by such Special Consultant shall be supervised, reviewed and sealed by the Architect/ Engineer. Such supervision and review shall be in accordance with the requirements of Kentucky Professional Registration Laws pertaining to the sealing of Instruments of Service by the Architect/ Engineer.

**6.5 The Architect/ Engineer shall employ Special Landscape and Food Service Consultants where required** by the Owner and the Owner has approved in writing the selection of the consultant.

**6.5.1** **Special Landscape Consultants, if any, shall be** a Kentucky licensed Landscape Architect, competent in the field of Landscape design of the type(s) required of this Project and regularly engaged in practice of Landscape design of the type(s) required of this Project, against which the Owner has interposed no reasonable objection, to provide services on this Project within the scope of its professional registration.

**6.5.2** **Food Service Consultants, if any, shall be skilled** in their special field and shall meet such requirements as the Owner shall establish for them. Preparation of the Instruments of Service provided by a Food Service Consultant shall be supervised, reviewed and sealed by the Architect/ Engineer. Such supervision and review shall be in accordance with the requirements of Kentucky Professional Registration Laws pertaining to the sealing of Instruments of Service by the Architect/ Engineer.

**6.6** ***Consulting Engineers Named:*** The Architect/ Engineer shall employ the following Consulting Engineers, Special Consultants, Special Landscape Consultant and Food Service Consultants for the design and supervision of the Work of this Project as hereinbefore defined, the firm(s) of:

Mechanical and Electrical Engineering: **«MechanicalElectricalSub»**

Structural Engineering: **«StructuralSub».**

Site Engineering: **«SiteSub»**

Special Landscape Engineering: **«LandSub»**

Food Service Consultant: **«FoodSub»**

**Other Special Consultants:**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ «OtherSub1»**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ «OtherSub2»**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ «OtherSub3»**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ «OtherSub4»**

\*\*\* No Consulting Engineer or Special Consultant shall be employed for this Project by the Architect/ Engineer without prior written approval of the Consulting Engineer or the Special Consultant by the Owner.

**6.7 *Architect/ Engineer’s Payment to Consulting Engineers and Special Consultants:***

**6.7.1 The Architect/ Engineer agrees to pay to each of the Consulting Engineers** indicated in paragraphs 6.1, 6.2 and 6.3 a lump sum fee as negotiated between the Architect/ Engineer and the Consulting Engineer which fee is a part of the Architect/ Engineer’s Total Lump Sum Fee, and which sum is based on 80% of the fee for work for which the Consulting Engineer is responsible, unless the Architect/ Engineer and Consulting Engineer otherwise agree. When such an agreement exists, the Architect/ Engineer shall inform the Owner in writing of such an agreement.

**6.7.1.1 Within fifteen (15) calendar days of the receipt of payment from the Owner** by the Architect/ Engineer, the Architect/ Engineer shall pay to the Consulting Engineers the lump sum fee for the Consulting Engineers for the respective portion and phases of fees as described in Article 5.

**6.7.2 The Architect/ Engineer agrees to pay to each of the Special Consultants** indicated in paragraph 7.4 a lump sum fee as negotiated between the Architect/ Engineer and the Special Consultant which fee is a part of the Architect/ Engineer’s Total Lump Sum Fee, and which sum is based on the fee negotiated with the Owner for work for which the Special Consultant is responsible less the sum that the Architect/ Engineer is entitled to in paragraphs 5.5.2.1, 5.5.2.2, 5.5.2.3 or 5.5.2.4.

**6.7.2.1 Within fifteen (15) calendar days of the receipt of payment from the Owner** by the Architect/ Engineer, the Architect/ Engineer shall pay to the Special Consultants the lump sum fee for the Special Consultant for the respective portion and phases of fees as described in Article 5.

**6.7.3 The Architect/ Engineer agrees to pay to each of the Special Landscape and Food Service Consultants** indicated in paragraph 7.5 a lump sum fee as negotiated between the Architect/ Engineer and the Special Landscape and Food Service Consultants which fee is a part of the Architect/ Engineer’s Total Lump Sum Fee, and which sum is based on the fee negotiated with the Owner for work for which the Special Landscape and Food Service Consultant is responsible less the sum that the Architect/ Engineer is entitled to in paragraphs 5.5.3.1 and 5.5.3.2.

**6.7.3.1 Within fifteen (15) calendar days of the receipt of payment from the Owner** by the Architect/ Engineer, the Architect/ Engineer shall pay to the Special Landscape and Food Service Consultants the lump sum fee for the Special Landscape and Food Service Consultant for the respective portion and phases of fees as described in Article 5.

**6.7.4 The Consulting Engineers, Special Consultants, Special Landscape Consultant, and Food Service Consultant** shall be paid for any authorized extra work due to changes as set out in Article 5.

**ARTICLE 7: COST OF CONSTRUCTION**

**7.1 For the purposes of this Agreement, the Cost of Construction** shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect/ Engineer and shall include Contractor’s general conditions costs, overhead and profit. The Cost of Construction does not include the compensation of the Architect/ Engineer, the costs of land acquisition, rights-of-way, financing, Owner’s design and construction contingencies for change in the Work, or other costs that are the responsibility of the Owner.

 **7.1.1** **For projects involving a Construction Manager/ General Contractor,** the CM/ GC Pre-Construction, CM/ GC Construction, and CM/GC Contingencies are part of the Cost of Construction.

**7.2 The Owner’s budget for the Cost of Construction** is provided in the Initial Information, and may be adjusted throughout the Project as required and/or stipulated throughout the provisions of this Agreement. Evaluations of the Owner’s budget for the Cost of Construction, the preliminary estimate of the Cost of Construction and updated estimates of the Cost of Construction prepared by the Architect/ Engineer, represent the Architect/ Engineer’s judgement as a design professional.

**7.2.1**  **It is recognized by the Owner and the Architect/ Engineer, however, that neither the Architect/ Engineer nor the Owner has control over the cost** of labor, materials or equipment; the Contractor’s methods of determining bid prices; or competitive bidding, market or negotiating conditions. Therefore, the Architect/ Engineer cannot and does not warrant or represent that bids or negotiated prices will not vary reasonably from the Owner’s budget for the Cost of Construction or from any estimate of the Cost of Construction or evaluation prepared or agreed by the Architect/ Engineer.

**7.3** **In preparing the Estimates of the Cost of Construction, the Architect/ Engineer** shall be permitted to include design contingencies during Phase A and B for components and systems not yet defined or determined in the design of the Project; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make recommendations to the Owner for reasonable adjustments in the program and scope of the Project; and to It is recognized and agreed that the Owner has a construction contingency for bidding and price escalation and therefore, the Architect/ Engineer shall not include a contingency during Phase C.

**7.4** **If at any time the Architect/ Engineer estimates that the Cost of Construction exceeds** the Owner’s budget for the Cost of Construction, the Architect/ Engineer shall immediately notify the Owner and provide to the Owner, within a reasonable time, appropriate recommendations to adjust the Project’s size, quality, or budget for the Cost of Construction, and the Owner will cooperate with the Architect/ Engineer in making reasonable adjustments.

**7.5** **When it is determined by the Owner and the Architect/ Engineer, mutually,** that specific items of the Work need to be included in the Bidding Documents, but were they part of a single package, might cause all bids to exceed the Owner’s budget for the Cost of Construction; and that the specific items of the Work can successfully be separated from the Base Bid and a separate Alternate Bid received; and the opportunity exists for the Architect/ Engineer to review the Base Bid with the Owner’s budget for the Cost of Construction and then accept only the Bid Alternates (in a pre-determined order) which do not result in the total Contact Price exceeding the Owner’s budget for the Cost of Construction. The Architect/ Engineer shall develop the Instruments of Service necessary to identify the Alternates in the Bidding Documents as a part of its Basic Services and without additional compensation.

**7.6** **If the Bidding or Negotiation Phase has not commenced within ninety (90) calendar days** after the Architect/ Engineer submits the Contract Documents to the Owner, through no fault of the Architect/ Engineer, the Owner will cooperate with the Architect/ Engineer to review the Architect/ Engineer’s estimate for the Cost of Construction with the current general level of prices in the construction market. Should it be necessary for the Architect/ Engineer to adjust the Project’s size, quality, or budget for the Cost of Construction, and the Owner will cooperate with the Architect/ Engineering in making reasonable adjustments. In this case, the Owner shall reimburse the Architect/ Engineer for any such extra work as described under the provisions of this Agreement.

7.7 **If the Owner’s budget for the Cost of Construction at the conclusion of the Construction Documents Phase Services** is exceeded by the lowest bona fide bid or negotiated proposal, the Owner will:

1) **identify the availability of funds** for an increase in the Cost of Construction and give written approval of an increase in the budget for the Cost of Construction;

2) **authorize rebidding or renegotiating** of the Project, within a reasonable time;

3) **in consultation with the Architect/ Engineer, revise the Project program, scope, or quality** as required to reduce the Cost of Construction;

4) **implement any other mutually acceptable alternative**; or

5) **terminate this Agreement** pursuant to 200 KAR 5:312 and Article 10 of this Agreement;

7.7.1 **If the Owner chooses to proceed under paragraph 7.7, item 1,** the Architect/ Engineer without additional compensation, shall proceed after authorization from the Owner with Phase D Services.

7.7.2 **If the Owner chooses to proceed under paragraph 7.7, item 2**, the Architect/ Engineer without additional compensation, shall assist the Owner with bidding/ negotiations.

7.7.3 **If the Owner chooses to proceed under paragraph 7.7, items 3 or 4**, the Architect/ Engineer without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner’s budget for the Cost of Construction at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under paragraph 7.7, item 1. The Architect/ Engineer’s responsibility under Article 7 shall conclude when either 1) a bid or negotiation is received from a bona fide proposal that is within the Owner’s budget for the Cost of Construction or 2) the Owner chooses to proceed under paragraph 7.7, item 5.

**ARTICLE 8: CLAIMS AND DISPUTES**

**8.1 *Indemnity:*** The Architect/ Engineer shall indemnify and hold harmless the Owner from and against all liability, claims, loss, costs and expense, including defense costs, arising out of, or resulting from, the negligent acts, errors, or omissions of the Architect/ Engineer and its sub-consultants under this Contract. In the event the Owner is alleged to be liable on account of negligent acts or omissions, or both, of the Architect/ Engineer, the Architect/ Engineer shall defend such allegations and the Architect/ Engineer shall bear all costs, fees and expenses of such defense, including but not limited to, all attorneys’ fees and expenses, court costs, and expert witness fees and expenses.

**8.2 Contractor Claims under the terms of the General Conditions of the Contract for Construction:** In accordance with Article 3.4 of the General Conditions of the Contract for Construction, the Architect/ Engineer is the interpreter of the requirements of the Contract Documents and the judge of performance thereunder that the Contractor. Should claims, disputes or other matters in question arise relating to the execution or progress of the Work and referred initially to the Architect/ Engineer for decision, it shall render such decision in writing within a reasonable time.

8.2.1 **Should the Contractor find disagreement with the Architect/ Engineer** as to the proper interpretation of the Contract Documents or other decision of the Architect/ Engineer, and refers the Architect/ Engineer’s decision to the Owner in writing within the specified time, the Architect/ Engineer shall work with the Owner to seek reasonable resolution of the matter without additional compensation.

8.2.2 **Should the Contractor or the Owner find disagreement with the Architect/ Engineer** as to the proper interpretation of the Contract Documents or any other decision of the Architect/ Engineer, and following the attempt at resolution indicated in paragraph 8.2.1 above, appeal the Architect/ Engineer’s initial or revised decision to the Secretary of the Finance and Administration Cabinet under the provisions of Architect 26 of the General Conditions of the Contract for Construction, , the Architect/ Engineer shall work with the Owner to seek reasonable resolution of the matter without additional compensation.

**8.3 *Applicable Law:***  The parties agree that any suit, action or proceeding with respect to the Contract may only be brought in or entered by the courts of the Commonwealth of Kentucky situated in Frankfort, Franklin County, Kentucky, and the parties hereby submit to the non-exclusive jurisdiction of such courts for the purpose of any such suit, action, proceeding or judgement and waive any other preferential jurisdiction by reason of domicile or location. The parties hereby irrevocably waive any objection that they may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or related to this Contract brought in the courts of the Commonwealth of Kentucky situated in Frankfort, Franklin County, Kentucky, and also hereby irrevocably waive any claim that any such suit, action or proceeding brought in any one of the above-described courts has been brought in an inconvenient forum. In any such suit, action or proceeding, the parties agree that the laws of the Commonwealth of Kentucky shall apply. The parties agree that there shall be a one year statute of limitations from the date of the Certificate of Final Completion of the Project or termination of this Agreement as provided herein, whichever shall first occur.

**ARTICLE 9: OWNER’S RESPONSIBILITIES**

**9.1 The Owner will identify a representative(s) authorized to act on behalf of the Owner** with respect to the Project. This representative will be the DECA Project Manager(s) and will be the Architect/ Engineer’s sole source for direction concerning the Project. Note that the Owner also has supervisory representatives (i.e. DECA Associate Director(s), DECA Division Director, FFSS Executive Director) who have the authority to act on behalf of the Owner and may, with reason, supersede the authority of the DECA Project Manager. The Owner will render decisions and approve the Architect’s submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect/ Engineer’s Services, except when it is in the Owner’s best interests not to do so and there upon the Owner will notify the Architect/ Engineer of the delay in rendering a decision of provide an approval and when appropriate under other provisions of this Agreement adjust the Architect/ Engineer’s compensation.

**9.2 The Owner will utilize and follow its own procedures indicated in the Owner’s Procedures Manual.** The Owner will require other entities, within its control and influence, involved in the design and construction of this Project, including but not limited to, Using Agency Representatives, Other Owner’s Consultants, and Contractors, to utilize and follow its own procedures indicated in the Owner’s Procedures Manual. As a part of this utilization and adherence will be the use of the Owner’s Document Collaboration System.

**9.3 Unless otherwise provided under this Agreement,** the Owner will provide information necessary for the Architect/ Engineer to perform its Basic Services and Additional Services under this Agreement in a timely manner. This information includes, but is not limited to, a written program which shall set forth the Owner’s Objectives, schedule, constraints, and criteria (i.e. space requirements and relationships, flexibility requirements, expansion requirements, special equipment, existing equipment to be relocated, special site requirements, former studies and master plans, system preferences, material preferences, CEMS requirements, site and boundary information, geotechnical investigation information, etc.) See the Owner’s Procedures Manual for other Pre-Design information that is to be provided by the Owner to the Architect/ Engineer.

**9.4 The Owner will establish and periodically update the Owner’s budget for the Project,** including (1) total funding for the project, (2) funding available for construction, (3) funding set asides for furnishing and equipment being procured by the Owner, (4) Owner’s other costs, (5) reasonable contingencies, and (6) any time limitations on when funding will be available for use. If the Owner significantly increases or decreases the Owner’s budget for the Cost of Construction, the Owner will notify the Architect/ Engineer. When a significant change in the Owner’s budget for the Cost of Construction is due to a material change in the Initial Information provided to the Architect/ Engineer at the time of execution of this Agreement consideration must be given to modification of the Architect/ Engineer’s compensation. See Article 4 for more information concerning whether a change in the Architect/ Engineer’s compensation is warranted.

**9.5 The Owner will coordinate the services of its own consultants with those services provided by the Architect/ Engineer.** Upon the Architect/ Engineer’s request, the Owner will furnish copes of the scope of services in the Contracts between the Owner and the Owner’s Consultants. The Owner will furnish the services of Consultants necessary to the Project other than those designated in this Agreement, or authorize the Architect/.Engineer to furnish them as Additional Services, when the Architect/ Engineer requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner will require that its Consultants maintain professional liability insurance as appropriate to the services provided.

**9.6 The Owner will furnish tests, inspections, and reports required by Law or the Contract Documents**, such as structural, mechanical, plumbing, and chemical tests, tests for air and water quality, and test for the presence of hazardous materials, when the Architect/ Engineer requests such services and demonstrates that they are reasonably required by the scope of the Project.

**9.7 The Owner will provide Special Inspections and Testing and Balancing** as required by Building Codes when the Architect/ Engineer requests such services and demonstrates that they are reasonably required by the scope of the Project, unless those services are included in the Additional Services of the Architect/ Engineer under this Agreement or an Advice of Change to this Agreement.

**9.8 The Owner will notify the Architect/ Engineer if the Owner becomes aware of any fault or defect in the Project,** including errors, omissions and inconsistencies in the Architect/ Engineer’s Instruments of Service. The Owner will notify the Architect/ Engineer if the Owner becomes aware of any delay being caused by the Architect/ Engineer’s actions or inaction. Notification from the Owner regarding these faults, defects or delay in no way relieves the Architect/ Engineer of the responsibilities to the Owner, including duties the Architect/ Engineer is to be provide according to the provisions of the General Conditions of the Construction Contract or the Owner’s Procedures Manual.

**9.9 The Owner will provide the Architect/ Engineer a copy of the executed Agreement between Owner and Contractor** including the General Conditions of the Contract for Construction. Except as otherwise provided in this Agreement, or when specially required and indicated in the Owner’s Procedures Manual, the Owner will endeavor to communicate with the Contractor and the Architect/ Engineer’s consultants through the Architect/ Engineer about matters arising out of or pertaining to the Contract Documents. When it is necessary for the Owner to have direct communication that may affect the Architect/ Engineer’s Services, the Owner will promptly notify the Architect/ Engineer of the essence of the communication.

**ARTICLE 10: TERMINATION OR SUSPENSION**

**10.1 The Owner may terminate this Agreement** upon not less than seven (7) calendar days’ written notice should the Architect/ Engineer fail substantially to perform in accordance with the terms of this Agreement through no fault of the Owner.

10.1.1 **The Owner may terminate this Agreement for non-performance of the Architect/ Engineer for the following reasons:**

1) **failure to perform its contractual duties defined under this Agreement,** where the Owner has provided a reasonable time for the Architect/ Engineer to cure the identified deficiencies, and the Architect/ Engineer has failed to cure the identified deficiencies within the specified time;

2) **failure to make delivery within the time specified or according to a delivery schedule** fixed by this Agreement the Instruments of Service through no fault of the Owner;

3) **failure to make payments to sub-consultants** as required by the terms of this Agreement under Article 6 where the Owner has made payment to the Architect/ Engineer and where there is no disputed adjustment to the amount due to the sub-consultant;

4) **failure to diligently perform Construction Administration Services** required by this Agreement, (including responsiveness, timeliness, and attentiveness) in such a way that significantly adversely affects the ability of the Contractor to complete the Work as scheduled as evidenced by a successful claim of the Contractor for delay under paragraph 16.2.1 of the General Conditions of the Contract for Construction where the Architect/ Engineer caused the delay;

5) **the closing of the firm or transition to new ownership** without an amendment of this Agreement to satisfactorily accommodate the completion of this Project;

6) **failure to provide services in accordance with KRS Chapter 323 and KRS Chapter 322,** where it results in the endangerment or potential endangerment to the health, safety or welfare of the commonwealth or its citizens.

10.1.2 **The Owner may terminate this Agreement for convenience if the purchasing officer has determined that termination will be in the Commonwealth's best interests.** The Owner shall provide the Architect/ Engineer thirty (30) calendar days written notice of termination of the Agreement, unless the Secretary of the Finance and Administration Cabinet, or designee, makes a written determination that a shorter notice of termination for convenience is in the best interest of the Commonwealth.

**10.2 Termination of this Agreement including the settlement of payments due shall be pursuant to 200 KAR 5:312.**

**ARTICLE 11: GENERAL PROVISIONS**

**11.1 *PROJECT RECORDS****:* All records relating in any manner whatsoever to the Project, or any designated portion thereof, which are in the possession of the Architect/ Engineer or the Architect/ Engineer’s consultants, shall be made available to the Owner for inspection and copying upon written request of the Owner. Additionally, said records shall be made available, upon request by the Owner, to any state, federal or other regulatory authorities and any such authority may review, inspect and copy such records. Said records include, but are not limited to, all plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos, or other writings or things which document the Project, its design, and its construction. Submission or distribution of documents pursuant to this provision, to meet official regulatory requirements or for similar purposes in connection with the Project shall not be construed as publication in derogation of the Architect/ Engineer’s reserved rights. Said records expressly include those documents which reflects the records of expenses and reimbursable items incurred by the Architect/ Engineer in its performance under this Contract. The Architect/ Engineer shall maintain and protect these records for no less than seven (7) years after final completion of the Project, or for any longer period of time as may be required by applicable law or good professional practice.

**11.2 *NO THIRD PARTY BENEFICIARIES:***Nothing contained herein shall create any relationship, contractual or otherwise, with, or any rights in favor of, any third party.

**11.3 *SUCCESSORS AND ASSIGNS:***Neither the Owner nor the Architect/ Engineer shall assign its rights hereunder, excepting its right to payment, nor shall it delegate any of its duties hereunder without the written consent of the other party. Subject to the provision of the immediately preceding sentence, each party hereto binds itself, its successors, assigns and legal representatives to the other and to the successors, assigns and legal representatives of such other party.

**11.4 *OWNERSHIP OF DOCUMENTS:***The Architect/ Engineer and the Owner agree that in transmitting (either physically or digitally) Instruments of Service, and any other information, the Architect/ Engineer thereby transmits the copyright ownership to the Owner and that plans and specifications are the sole property of the Owner, whether or not the work for which they are made be executed. Use of the plans and specifications shall be in accordance with KRS Chapter 323 and KRS Chapter 322, and for any use not in connection with this Agreement, shall be only with the written authorization of the Architect/ Engineer.

11.4.1 **The Architect/ Engineer grants the Owner nonexclusive license** to authorize the Contractor, Sub-contractors, and material or equipment suppliers, as well as the Owner’s Consultants and separate Contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project.

11.4.2 **In the event the Owner uses the Instruments of Service** without retaining the author of the Instrument of Service, the Owner releases the Architect/ Engineer and its consultants from all claims and causes of action arising from such uses. The Owner, to the extent permitted by Law, further agrees to indemnify and hold harmless the Architect/ Engineer and its consultants from all costs and expenses, including the cost of defense, related to such claims and causes of action asserted by any third party to the extent such costs and expenses arise from the Owner’s use of the Instruments of Service under this paragraph 11.4.2. The provisions of this paragraph 11.4.2 shall not apply if the Owner rightfully terminates this Agreement for cause under Article 10 of this Agreement.

**11.5 *MINIMUM INSURANCE REQUIREMENTS:***The Architect/ Engineer shall maintain the following or equivalent insurance policies at no less than the limits shown below and cause its sub-consultants to maintain similar insurance with limits acceptable to the Commonwealth:

***Coverage Limits***

1. **Professional Liability** $1 million per claim, $2 million aggregate
2. **General Liability (Insurance Services Office Form CG 00 01)** $1 million per occurrence, $2 million aggregate
3. **Worker’s Compensation** Statutory
4. **Employer’s liability** $ 500,000.00

11.5.1 The policies above shall contain the following conditions:

1) The Commonwealth shall be named as an additional named insured in the Architect/ Engineer’s general liability policy.

2) The Architect/ Engineer’s general liability shall be primary to any insurance or self-insurance retained by the Commonwealth.

3) The Commonwealth shall be provided at least a thirty (30) calendar day notice in the event any of the required policies are canceled or non-renewed.

4) Professional Liability (Errors and Omission) policies shall be maintained for a minimum of three years beyond the completion date of the project, to the extent commercially available. If not commercially available, the Architect/ Engineer shall notify the Owner and obtain similar insurance that is commercially available and acceptable to the Commonwealth.

5) A copy of the certificate of insurance shall be provided by the Architect/ Engineer to the Owner upon execution of this Contract.

11.5.2 Said coverage shall be written by insurers acceptable to the Owner and shall be in a form acceptable to the Owner. Additional insurance coverage and amounts required, if any, are stated below:

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11.6 ***RECORD DRAWINGS:*** It is understood and agreed and made a part of this Agreement that the Architect/ Engineer shall, under Phase D of his services, upon completion of the Work, make final corrections on the Drawings, incorporating all changes and revisions made during the progress of the Work, so as to provide “Record Drawings” of the Project, subject to paragraph 3.7.D.26 of this Agreement. Record Drawings shall be on the media, in the proper format, and shall meet all the requirements for Record Drawings, as indicated in the Owner’s Procedures Manual. Final payment to the Architect/ Engineer will not be made until the Owner has received the “record drawings”, has review them and accepted them for its use.

**11.7 *MATERIALS AND EQUIPMENT:***The Architect/ Engineer shall only prepare specifications that clearly establish the type and quality of materials/equipment, or application of each item in the Project, without writing a closed specification, and shall prepare them in a manner which encourages competitive bidding.

***11.8 CERTIFICATION OF CONTRACT AND FUNDS:***This Agreement is not effective and binding against the Owner until its applicable encumbrance document, “Purchase Contract,” (Form DOA-39) has been approved and issued by the Finance and Administration Cabinet and unless and until three copies of the Contract are filed with the Legislative Research Commission, with each such copy being accompanied by documentation of the need for such service and by documentation that State personnel are not available to perform such service. The Architect/ Engineer acknowledges and understands that no payment may be made under this Agreement before completion of the review procedure provided for by KRS 45A.705 unless and until alternate actions occur as set out in KRS 45A.695 (7).

**11.9 *EXPEDITION OF WORK/ SCHEDULE:***It is agreed that the Architect/ Engineer shall be in position to commence work on the services involved, within one (1) day of receipt of written authorization, without delay or interruption. Should the Architect/ Engineer fail or refuse to commence said services as directed by the Owner, the Owner shall thereupon have the right to terminate this contract for cause, subject to Paragraph F. Nothing in this Section and nothing set forth in this Contract shall be construed to relieve the Architect/ Engineer of liability for damages sustained by the Owner by virtue of any breach of this Contract by the Architect/ Engineer. After direction to proceed by the Owner, within ten (10) working days the Architect/ Engineer shall provide the Owner with a proposed project schedule. Such schedule, if approved by the Owner, shall constitute the schedule for performance of its duties hereunder by the Architect/ Engineer.

**11.10 *STATE EMPLOYEE:***It is agreed by and between the parties hereto that the Architect/ Engineer shall observe the rule of State Government and shall not solicit or employ State Employees in conjunction with his work under the Contract without the approval of the head of any department from which employees are sought to be obtained, nor without the approval of the Owner.

**11.11 *CONFLICT-OF-INTEREST LAWS AND PRINCIPALS:***By his signature, the Architect/ Engineer certifies that it is legally entitled to enter into this contract with the Commonwealth of Kentucky, and by holding and performing this contract shall not be violating either any conflict of interest statutes (KRS 45A.330-45A.340-45A.990, 164.390), or KRS 11A.040 of the Executive Branch Code of Ethics, relating to the employment of former public servants.

**11.12 *OWNER’S REPRESENTATIVE:***For the purpose of the Contract, the Commissioner, Department for Facilities Management and Support Services , Finance and Administration Cabinet, is hereby designated as the representative of the Owner with full authority to act in all matters pertaining to this Contract for and in the name of the Owner, and may delegate such authority to such other representatives of the Department for Facilities Management and Support Services as he deems in the best interest of the Commonwealth for the proper administration of the project. The Owner and the Architect/ Engineer hereby agree to the full performance of the covenants herein.

**11.13 *SUCCESSORS AND ASSIGNS:***Owner and Architect/ Engineer each binds himself, his partners, successors, legal representatives and assigns to the other party, to this Contract and to the partners, successors, legal representatives and assign of such party in respect to all covenants of the Contract. Upon written notification to the Secretary of the Finance and Administration Cabinet, the Architect/ Engineer may assign a portion of his financial interest to a recognized financial institution for underwriting operations covered by this Contract.

***11.14 PERSONNEL:*** The Architect/ Engineer shall assign only qualified personnel to perform any service concerning the Project. At the time of execution of this Contract, the parties anticipate that the following named individuals shall perform those functions indicated:

**Name Function**

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So long as the individuals named above remain actively employed or retained by the Architect/ Engineer, they shall perform the functions on this project indicated next to their names.

**11.15 *ENTIRE AGREEMENT:*** The Contract constitutes the entire an exclusive agreement between the parties with reference to the Project and supersedes any and all prior communications, discussions, negotiations, understandings, or agreements.

IN WITNESS THEREOF they have executed this Agreement the day and year first above written.

**«VendorName»**

(Name of Architect, Engineer or Firm)

BY:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Insert position in firm)

Date\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**COMMONWEALTH OF KENTUCKY**

BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Commissioner Date

Department for Facilities & Support Services

EXAMINED FOR FORM AND LEGALITY

BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attorney Date

Finance and Administration Cabinet