

Project Number
Contract Number
Total Contract Amount
Professional Liability
Insurance Amount

AGREEMENT, entered into by the parties on the date last signed below on signature page,

Between the

CAPITAL DEVELOPMENT BOARD

of the

STATE OF ILLINOIS ("CDB")

And

Principal Office and

Place of Business Located at

Hereinafter referred to as
("Architect-Engineer" or "A/E")

For the following Project(s)

For the use and benefit of

Hereinafter referred to as the
("Using Agency" or "User")

CDB 414-9-9

TABLE OF CONTENTS

ARTICLE 1 DEFINITIONS 2

ARTICLE 2 A/E’S RIGHTS AND RESPONSIBILITIES 3

ARTICLE 3 CDB RIGHTS AND RESPONSIBILITIES 5

ARTICLE 4 COMPENSATION AND PAYMENT 5

ARTICLE 5 INSURANCE REQUIREMENTS 8

ARTICLE 6 TERMINATION AND SUSPENSION OF THE AGREEMENT 10

ARTICLE 7 GENERAL PROVISIONS 11

ARTICLE 8 ALTERNATIVE DISPUTE RESOLUTION (ADR) 12

ARTICLE 9 STATUTORY REQUIREMENTS 13

ARTICLE 11 PROJECT BUDGET AND ESTIMATING 15

ARTICLE 12 DESIGN PHASE 16

ARTICLE 13 BIDDING PHASE..... 18

ARTICLE 14 CONSTRUCTION PHASE 20

ARTICLE 15 COMMISSIONING 24

ARTICLE 16 PROJECT CLOSEOUT PHASE 25

ARTICLE 17 DECLARATIONS AND CERTIFICATIONS 26

APPENDIX A COMPENSATION RATES & SCHEDULES

APPENDIX B CONSULTANTS

APPENDIX C STANDARD CERTIFICATIONS

APPENDIX D STANDARD DISCLOSURES

PROJECT SCOPE STATEMENT

STANDARD CONDITIONS

The Parties to this contract are the State of Illinois acting through the undersigned Agency (collectively the State) and the Vendor. This contract, consisting of the signature page and numbered sections listed below and any attachments referenced in this contract, constitute the entire contract between the Parties concerning the subject matter of the contract, and in signing the contract, the Contractor affirms that the Certifications and Financial Disclosures and Conflicts of Interest attached hereto are true and accurate as of the date of the Contractor's execution of the contract. This contract supersedes all prior proposals, contracts and understandings between the Parties concerning the subject matter of the contract. This contract can be signed in multiple counterparts and signature may be electronic or digital upon agreement of the Parties.

Contract uses Illinois Procurement Gateway Certifications and Disclosures?

Yes (IPG Certifications and Disclosures including FORMS B)

No (Forms A)

In consideration of the mutual covenants and agreements contained in this contract, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to the terms and conditions set forth herein and have caused this contract to be executed by their duly authorized representatives on the dates shown on the following CONTRACT SIGNATURES page.

ARTICLE 1 DEFINITIONS

- 1.1 **Addendum.** A supplement to the bidding documents, issued prior to the bid opening, for the purpose of clarifying, correcting or otherwise changing the bidding documents previously issued.
- 1.2 **Agreement.** The agreement is composed of these documents:
- A. Professional Services Agreement and Appendices
 - B. Standard Documents for Construction
 - C. Supplement to SDC and SDC-CM dated November 2020
 - D. Design and Construction Manual
 - E. Supplement to DCM dated November 2020
 - F. Program Statement and/or Scope of Work Attachment
 - G. Any Approved Modifications to the Agreement
- 1.3 **Architect.** Architect means a person who is licensed as an architect by the Department of Financial and Professional Regulation, State of Illinois.
- 1.4 **Architect Engineer (A/E).** The Architect/Engineer (A/E) is the firm, and its consultants, that prepare the bidding documents and have certain construction phase duties under contract to CDB. For certain projects, CDB may use staff to prepare the bidding documents and will act as the A/E.
- 1.5 **Assigned Contractor.** An assigned contractor is a contractor who has been assigned to the coordinating contractor for the limited purposes of scheduling and coordination of the work. This assignment is limited and CDB retains certain rights of the contract.
- 1.6 **Change Order.** A change order is a written change in a contract term, other than as specifically provided for in the contract, which authorizes an addition, deletion or revision in the work or necessitates any increase or decrease in the cost of the contract or the time to completion.
- 1.7 **Modification.** A modification is a written change order to a professional services agreement.

- 1.8 **Contractor.** The contractor is any individual, firm, partnership, corporation, joint venture or other entity who has entered into a prime construction contract with CDB.
- 1.9 **Coordinating Contractor.** The designated contractor for the project to whom CDB may assign limited administration of the other contracts.
- 1.10 **Direct Wage Expense (DWE).** Actual hourly wages paid employees, exclusive of statutory and fringe benefits, personal and/or performance/profit bonuses.
- 1.11 **Engineer.** Engineer means a person who is licensed as a professional engineer or a structural engineer by the Department of Financial and Professional Regulation, State of Illinois.
- 1.12 **Subcontractor and Suppliers.** A subcontractor is any individual, firm, partnership, corporation, joint venture, or other entity, other than the contractor, who furnishes any goods or services of any kind under a subcontract entered into with a construction contract with CDB's prime contractors. This legal definition shall govern in general, but various contract Articles herein shall distinguish between a subcontractor and a supplier. In those cases, a subcontractor is a business entity that has responsibility for a portion of the work that includes onsite installation labor. Suppliers are business entities that furnish only goods produced off site which will be incorporated into the work by others. The clause on change orders and others makes such a distinction.
- 1.13 **Consultant.** A consultant is any individual, firm, partnership, corporation or other entity that enters into an agreement with the A/E firm contracting with CDB for purposes of fulfilling, or assisting the A/E in fulfilling the services required by this agreement between the A/E and CDB.
- 1.14 **User or Using Agency.** State agency or governmental entity benefiting from the project improvement that will occupy and/or operate the facility, equipment, etc.
- 1.15 **Moveable Equipment.** Equipment that is not fixed to the building structure and/or is not permanently wired or plumbed in. Moveable equipment is not designed by the A/E nor installed by the Contractor(s). A budget amount for moveable equipment may be included in the total project funding, but that amount will not be included in the Construction Budget and shall not be used in the calculation of the Basic Services Fee.
- 1.16 **Work.** The work comprises the complete construction required by the contract documents and includes all labor necessary to produce such construction, and all materials and equipment incorporated or to be incorporated in such construction.
- 1.17 **Substantial Completion.** A condition which occurs when CDB accepts the certification of the A/E that construction is sufficiently complete in accord with the contract documents such that the project, or a designated portion thereof, may be occupied or utilized by the Using Agency for its intended purpose.
- 1.18 **Final Acceptance.** A condition which occurs when CDB accepts the certification of the A/E that the contractor has complied with all requirements of its contract, and that the contractor is authorized to receive final payment in full, including all retainage.

ARTICLE 2 A/E'S RIGHTS AND RESPONSIBILITIES

- 2.1 **A/E's Principal in Charge.** The A/E shall designate a principal in charge for the agreement. CDB shall address all questions and concerns about this agreement and the A/E's performance of its duties of the agreement to the A/E's principal in charge.
- 2.2 **Federal and State Laws.** All applicable Federal and State laws and the rules and regulations of all authorities having jurisdiction over the design of the project shall apply to the agreement

throughout, and they will be deemed to be included in the contract the same as though written therein in full.

- 2.3 **Project Codes, Standards and Regulations.** The A/E shall prepare the bidding documents in accordance with the CDB Design and Construction Manual.
- 2.4 **Building Codes.** The A/E shall design the project in substantial compliance with the building code requirements in the CDB Design and Construction Manual. The design shall be prepared in accordance with all applicable codes and standards in effect at the time bidding documents are issued. All requests for deviation shall be documented by the A/E in writing and subject to approval by CDB.
- 2.5 **Legal Responsibility.** Notwithstanding any other provision herein, the A/E shall perform all of its services in conformity with the standards of reasonable care and skill of the profession. The A/E shall be responsible for the performance of persons retained by the A/E and states that its consultants, subcontractors, agents, employees and officers shall possess the experience, knowledge and character to properly perform their duties.
- 2.6 **Standard of Project Quality.** The A/E shall exercise professional expertise and judgment in establishing a standard of quality appropriate for each project and its budget. The standard shall be communicated to CDB and the Using Agency early in the design process for review.
- 2.7 **A/E's Consultants.** The A/E shall employ, and be contractually responsible for, all consultants necessary for the performance of the services herein described and be required to complete the project scope. Professional consultants shall be pre-qualified in their respective professions with CDB. The A/E shall complete and submit Appendix B to the agreement listing all consultants to be used on the project. A/E shall include in Appendix B, all consultants as listed on CDB Form 255. Exceptions to this requirement may be requested by the A/E in writing and addressed to the CDB Administrator of Contract Administration for consideration.
- 2.8 **Construction Supervision.** The A/E shall not be responsible for construction means, methods, techniques, sequences, procedures, supervision or for safety precautions and programs in conjunction with the project or work thereon.
- 2.9 **Contractor Performance Evaluation.** The A/E will, at the completion of construction and as requested by the CDB Project Manager (PM), prepare an evaluation of each contractor's performance.
- 2.10 **Defaulting Contractor.** The A/E, in the event of default by any contractor, agrees to work in concert with CDB and the surety for the defaulted contractor to ensure completion of the contract. The A/E may be entitled to additional compensation for services provided in assisting CDB in completion of the defaulted contract.
- 2.11 **Redesign.** Should the lowest responsible competitive bid obtained on any contract be in excess of the final detailed statement of probable construction costs, to the extent that CDB elects not to award the project, CDB may request the A/E, in consultation with CDB, redesign and re-bid the project within the statement of probable construction costs at no additional compensation including miscellaneous expenses such as bid document printing and postage. However, should CDB elect not to redesign, the A/E shall not lose its right to compensation in accordance with Article 6.
- 2.12 **Addenda and Change Orders.** Upon notice or discovery, and as directed by the CDB PM, the A/E shall perform the required professional services to issue an addenda to the bidding documents, or change orders to the contract documents, to correct or clarify errors, omissions, or ambiguities. This service shall be performed without additional compensation.

- 2.13 **Project Schedule.** The project schedule is included in the agreement as shown on Appendix A. The A/E will be required to maintain the schedule without delay. Changes to the schedule will be by written modification duly executed by both parties.

ARTICLE 3 CDB RIGHTS AND RESPONSIBILITIES

3.1 Project Manager.

- A. CDB will designate a PM for the project who shall be CDB's primary representative in the administration of this agreement. The A/E will report to the PM.
- B. The CDB PM shall be the liaison between the A/E and the Using Agency. All correspondence between the A/E and the Using Agency shall be communicated to the PM.

- 3.2 **CDB Review.** CDB shall have the right to review and accept the A/E's submittal of the respective phases of design services for conformance with the provisions of this agreement and to require a written response to all questions raised regarding such services. CDB's review and any acceptance of the A/E's submittal does not relieve the A/E of its responsibilities.

- 3.3 **Interpretation of Agreement.** CDB shall have the authority to determine questions of fact that arise in relation to the interpretation of this agreement and the A/E's performance hereunder. However, such determinations, except terminations of the contract, are subject to alternative dispute resolution (ADR) as described herein. Unless the parties agree otherwise, such determinations and/or mediation procedures shall not be cause for delay of the performance of this agreement. The A/E shall proceed diligently with the performance of this agreement and in accordance with CDB's decision whether or not the A/E or anyone else has an active claim pending. Continuation of the performance of this agreement shall not be construed as a waiver of any rights accruing to the A/E.

- 3.4 **Error/Omission Change Order Policy.** CDB reserves the right to recover from the A/E all or a portion of the costs associated with change orders issued to correct errors or work omitted in the construction documents prepared by the A/E. Consequential damages, including any delay of work or damages incurred by other parties due to errors and omissions may be included in the recovery.

- 3.5 **Ownership, Dissemination and Publication of Documents.** The drawings, specifications, reports, renderings, models, electronic media and all such other documents to be prepared and furnished by the A/E pursuant to this agreement, including the copyrights, shall be the property of CDB. All documents listed above may be issued for informational purposes without additional compensation to the A/E. The A/E is prohibited from using any materials noted herein for any purpose that may misrepresent the services they provided.

- 3.6 **A/E Performance Evaluations.** CDB will evaluate the performance of the A/E at the completion of the design and construction phases or as deemed appropriate. CDB may also request the Using Agency or contractors to evaluate the A/E. The A/E has the right to review and respond to its performance evaluations.

ARTICLE 4 COMPENSATION AND PAYMENT

- 4.1 **Appendix A.** An attachment to the agreement that delineates the compensation to the A/E for the various services agreed upon and establishes the project schedule. Each compensation amount or reimbursable budgets established will be exclusive for that service only and shall not be used for other services without written modification duly executed by both parties per [Article 4.3](#).

4.2 **Basic Services Fee.** As compensation for design, bidding, construction and close-out phase services under the agreement, the A/E shall receive the basic services fee as set forth in Appendix A.

- A. **Design Phase Compensation.** Progress payments shall be paid to the A/E upon successful completion of each level. Progress payments proportional to the percentage of completion of services may be made monthly. To be eligible for monthly progress payments, A/E shall submit evidence of services completed that is acceptable to the CDB PM.
- B. **Bidding Phase Compensation.** This compensation is payable upon completion of the analysis of bids received and submittal of acceptable electronic and paper bidding documents to CDB. Compensation for services performed in this phase is payable to the A/E regardless of CDB's ability to award the project based on bids received as compared to available funds.
- C. **Construction Phase Compensation.** Progress payments will be paid to the A/E in installments proportional to the percentage of construction completed.
- D. **Project Closeout Phase Compensation.** This compensation is payable in one lump sum payment upon completion of all contracted services as set forth in Article 16, (Project Closeout Phase), except the requirements set forth in Article 16.7, (Nine Month Inspection), are not required to be completed as a pre-requisite for full payment. In circumstances of protracted duration of the closeout phase through no fault of the A/E, the A/E may petition the CDB PM for partial compensation for services completed.
- E. The expense of administering subcontracts shall be considered a basic service.

4.3 **Changes in Contract Scope or Compensation**

- A. Changes to the contract may only be made by written modification duly executed by both parties.
- B. A/E will not perform any work outside the written scope of work or any work reflecting a scope change (as described in [Article 4.4](#)) until a written modification pertaining to same has been executed.
- C. Reimbursables (including on-site observation) may only be expended per the line-item description and amount listed on Appendix A. No reimbursable work may be authorized or paid for in excess of the individual line item amount or for work other than the individual line item description.
- D. Upon receipt of the A/E's final payment application and in accordance with [Article 16.8.C](#), CDB shall be permitted to make final adjustments to the budgetary values indicated on lines B., E. and F. on Appendix A to reflect actual expenditures without written modification duly executed by the contracting parties.

4.4 **Changes in Scope and Funding.** Should CDB elect to change the project scope to the extent that services to be performed by the A/E are substantially altered, then CDB and the A/E will negotiate an equitable adjustment in the A/E's compensation per Article 4.3.

- A. Changes to design requested or approved by CDB in the preparation of the bidding documents may be compensable as additional services if the requested change adds services or requires revisions to previously accepted documents.
- B. Supplemental funding of a project shall not be cause for additional compensation without substantial modification to the scope of work or scope of A/E services.

4.5 **Contract Administration Fee.** The Contract Administration Fee (CAF) is three percent (3.0%) of the basic services fee plus all additional services fees rounded down to the next hundred dollars as shown on Appendix A. The full amount of this Fee shall be invoiced by the A/E on the initial progress payment request. Prior to the approval of the second progress payment request and no later than 20 calendar days after receipt of the warrant for the initial payment request, the A/E

shall direct to the Office of Fiscal Management of CDB, a check or money order made payable to CDB in the amount of the CAF. Additional CAF imposed as a result of an increase of basic services and/or additional services fees shall be invoiced in the first subsequent pay request and paid to CDB as stated above.

4.6 **Additional Services.** The A/E shall provide additional services germane to the agreement when authorized by CDB in writing. Compensation, as agreed to and set forth in such authorization, will be based on a negotiated lump sum fee. Payment for additional services shall be made upon completion of the services or as otherwise agreed upon in writing with CDB.

- A. At CDB's option, compensation may be based on a negotiated not-to exceed fee payable at DWE times the overhead and profit multiplier rate shown on Appendix A. Evidence of DWE and time expended shall be furnished to receive payment.
- B. Change orders which alter the project scope shall, with prior approval of the PM, be prepared and processed as additional services.

4.7 **On-Site Representative Compensation.** Appendix A indicates the allowance for on-site compensation. A/E must provide site visit reports to receive compensation as set-forth herein. Should the A/E anticipate a need for additional on-site compensation, a written request for said expenses shall be submitted to CDB for review in a timely fashion. No additional on-site observation beyond that authorized in the contract shall be done until a modification has been executed per Article 4.3.

- A. The A/E shall be reimbursed the actual direct wage expense (DWE) of the approved on-site representative times the overhead and profit multiplier indicated in Appendix A. Proof of the on-site representative's DWE shall be submitted with the applicable pay requests.
- B. Full-time, on-site representatives (5 days/week) shall not be reimbursed for travel time. Part-time on-site representatives may bill up to a maximum of three hours per day of actual travel time to and from the project site at their DWE rate times the overhead and profit multiplier indicated in Appendix A.

4.8 **Reimbursable Expenses.** The A/E shall be reimbursed for actual costs of each reimbursable service as set forth in Appendix A. Unless approved in writing by CDB, no mark-up will be allowed. The A/E shall provide evidence of an authorized expense when requesting any reimbursement. Should the A/E require additional reimbursable expenses or wish to change the allocation of funds assigned to the individual reimbursable line items in Appendix A, a written request for said change shall be submitted to CDB for review in a timely fashion. No reimbursable work shall be authorized or expenditure made until a modification has been processed per Article 4.3.

4.9 **Withholding of Payments.**

- A. CDB may withhold payments, in whole or in part, for a material breach of the agreement, including but not limited to, the A/E's failure to perform services or meet the schedule, design errors or omissions, failure to pay consultants and failure to adhere to terms of this agreement.
- B. Pursuant to 15 ILCS 405/10.05, CDB reserves the right to withhold payments as a set off when the A/E is liable to CDB in connection with any agreement, past or present, that the A/E has performed for CDB.
- C. CDB will notify the A/E in writing and in accordance with the Prompt Payment Act or the offset provisions (if applicable) when any payments are withheld. In the event of any

withholding, CDB will promptly investigate the facts and will make payments when the grounds for withholding have been removed.

- 4.10 **Pay Request.** A/E requests for compensation shall be in accordance with Appendix A of the agreement and as described in this section.
- 4.11 **Performance of Services.** Payments of the Basic Services fee are based, in part, on the assumption that the entire contracted scope of services will be performed. If the entire contracted scope of services is not performed by the A/E, then CDB reserves the right to recoup monies in order to achieve a fair and reasonable compensation.

ARTICLE 5 INSURANCE REQUIREMENTS

- 5.1 **General.** The A/E shall purchase and maintain insurance coverage as set forth herein for the life of the agreement. CDB shall exercise sole discretion to determine the acceptability of the A/E's insurance carriers as of the time of contract execution. Subsequent to execution, if the A/E chooses to change carriers, CDB approval is required. Subsequent to execution, if CDB requires the A/E to change carriers due to an erroneous acceptability determination, the additional cost of the change shall be borne by CDB.
- 5.2 **A/E's Duty to Maintain Insurance.** The A/E shall have the duty to confirm that the terms of all insurance comply with the agreement. No action or failure to act on the part of CDB shall constitute a waiver of any requirement.
- 5.3 **Failure to Maintain.** If CDB determines at any time that the insurance does not meet the requirements, this shall constitute a material breach of the agreement and CDB shall provide prompt notice to the A/E and, in its sole discretion, may take measures to protect itself and the public from the effect of the A/E's breach.
- 5.4 **Evidence of Insurance.**
- A. The A/E shall file with CDB evidence of complete coverage of all insurance required with the original signature of the insurance company's authorized agent. Fax copies will be accepted:
 - 1. A binder or certificate of insurance, or
 - 2. The complete insurance policy.
 - B. The agreement will not be executed until acceptable evidence of coverage is on file with CDB. The A/E shall, at its own expense and delay, cease operations if the insurance required is terminated or reduced below the required amounts of coverage. CDB may stop payment to the A/E if the insurance required is terminated or reduced below the required amounts of coverage. In no event shall any failure of CDB to receive policies or certificates or to demand receipt be construed as a waiver of the A/E's obligation to obtain and keep in force the required insurance and to provide the required evidence of insurance.
 - C. The Certificates of Insurance shall include CDB and the Using Agency as additional named insureds for occurrences arising, in whole or part, out of the work and operations performed. This does not apply to Workers Compensation and Professional Liability policies.

5.5 **General Liability Insurance Requirements.**

A. **Comprehensive Automobile Liability.**

1. Required minimum insurance coverages. The policy shall cover owned, non-owned and hired vehicles.
 - a. \$ 500,000 Bodily Injury Per Person
 - b. \$1,000,000 Bodily Injury Per Occurrence
 - c. \$ 500,000 Property Damage Per Occurrence
 - d. \$1,000,000 Combined Single Limit Coverage for bodily injury and property damage per occurrence in the same aggregate limit will be accepted in lieu of the separate limits specified.

B. **Commercial General Liability.** Include coverage for premises and operations, broad form property damage, products completed operations, independent contractor's personal injury liability, and contractual obligations. Coverage shall not be excluded because of the A/E's negligence.

1. The general aggregate limit shall be endorsed on a per project basis.
 - a. \$1,000,000 Bodily Injury Per Person
 - b. \$1,000,000 Bodily Injury Aggregate Limit
 - c. \$ 500,000 Property Damage per Occurrence
 - d. \$1,000,000 Property Damage Aggregate Limit
 - e. \$1,000,000 Combined Single Limit Coverage for bodily injury and property damage per occurrence and, in the same aggregate limit, will be accepted in lieu of the separate limits specified above.

C. **Umbrella or Excess of Loss Coverage.** If the limits specified in Article 5.5.A and 5.5.B are not met, an Umbrella or Excess Liability policy of not less than \$1,000,000 for any one occurrence and subject to the same aggregate over the Comprehensive Automobile Liability and Commercial/Comprehensive General Liability coverages is acceptable.

5.6 **Worker's Compensation Requirements.**

A. **Statutory Requirement.** Worker's compensation shall be provided in accordance with the provisions of the Illinois Worker's Compensation Act, as amended. Notwithstanding the rating and financial size categories stated in this article, coverage may be provided by a group self-insurer authorized in Section 4(a) of the Act and approved pursuant to the rules of the Illinois Department of Insurance.

B. The A/E may use a Self-Insured Plan for Worker's Compensation Insurance if the plan is approved by the State of Illinois. For approval, the A/E shall obtain a certificate from the Illinois Industrial Commission, Office of Self-Insurance Administration, Springfield office.

C. Employers Liability

- | | | |
|----|-----------------------|-----------|
| 1. | Each accident | \$500,000 |
| 2. | Disease-policy limit | \$500,000 |
| 3. | Disease-each employee | \$500,000 |

D. The worker's compensation insurance carrier, or self insurance service agency where applicable, shall certify that, to the best of its knowledge, the A/E has properly reported wage and workforce data and made premium payments in compliance with Illinois' rates and worker classifications.

- 5.7 **Professional Liability Insurance Requirements.** Professional liability insurance shall cover the A/E against claims the A/E may become obligated to pay arising out of the performance of the A/E under the agreement and caused by any error or omission of the A/E or of any person employed by the A/E, or any others for whom the A/E is liable. The limit amount of the insurance shall be on a per claim basis.
- A. The required coverage is stated in the agreement.
 - B. If project funding increases, the required coverage amount may be increased by modification.

ARTICLE 6 TERMINATION AND SUSPENSION OF THE AGREEMENT

- 6.1 **Suspension.** CDB may suspend this agreement upon written notice. With any suspension of at least 12 months, the agreement will be subject to renegotiation. The A/E shall be paid for services performed prior to the suspension plus any reimbursable expenses then due.
- 6.2 **Termination for Convenience of the State.** CDB may terminate this agreement on ten (10) calendar days written notice to the A/E for the best interest of the State of Illinois. The A/E shall deliver to CDB all drawings, specifications, reports, models, electronic media and all such other documents to be prepared and furnished by the A/E in the performance of services under this agreement, whether complete or in progress, within a time prescribed by CDB in writing. The A/E shall be compensated for services performed prior to the termination date plus any reimbursable expenses then due and other reasonable and unavoidable non-labor costs. Notwithstanding this, payments for work performed made previous to the termination are based on the assumption that the entire contracted scope of services will be performed. CDB reserves the right to recoup any or all previous payments, and the right to deduct from the payments then or thereafter due the A/E, in order to establish a fair and reasonable amount of final compensation.
- 6.3 **Availability of Appropriation; Sufficiency of Funds.** This agreement is contingent upon and subject to the availability of sufficient funds. CDB may terminate or suspend this agreement, in whole or in part, without penalty or further payment being required, if (i) sufficient funds for this agreement have not been appropriated or otherwise made available to CDB by the State or the Federal funding source, (ii) the Governor or CDB reserves funds, or (iii) the Governor or CDB determines that funds will not or may not be available for payment. CDB shall provide notice, in writing, to the A/E of any such funding failure and its election to terminate or suspend the contract as soon as practicable. Any suspension or termination pursuant to this Section will be effective upon the date of the written notice, unless otherwise indicated.
- 6.4 **Termination for Cause.** If the A/E fails to perform any of its obligations under this agreement, CDB may, after ten (10) calendar days written notice during which period the A/E fails to perform such obligations, terminate the agreement. This shall be without prejudice to any other remedy CDB may have. CDB reserves the right to recoup any or all previous payments, or deduct from payments due the A/E, then or thereafter, for the cost of correcting such deficiencies with a completing A/E and, including but not limited to, the cost of additional A/E services made necessary by such failure to perform. CDB may take possession of any jobsite facilities, records, etc. and use same to the full extent they could have been used by the A/E. If CDB's expenses in completing the agreement exceed the unpaid balance or the agreement sum, the A/E shall pay the difference to CDB.
- A. Should CDB terminate the A/E after bidding and prior to completion of the project, CDB shall not waive any claim it may have as a result of errors or omissions, except that the terminated A/E shall not be liable for any changes to the documents made by another A/E contracted by CDB to complete the project.

- 6.5 **Contract Ending Date.** The agreement shall terminate on the contract ending date as shown on Appendix A. Changes to the contract ending date will be done by written modification duly executed by the contracting parties.

ARTICLE 7 GENERAL PROVISIONS

- 7.1 **Governing Law.** This agreement shall be governed by the laws of the State of Illinois.
- 7.2 **Severability of Clauses.** It is agreed that the illegality or invalidity of any term or clause of this agreement shall not affect the validity of the remainder of this agreement, and the agreement shall remain in full force and effect as if such illegal or invalid term or clause were not contained herein.
- 7.3 **Waiver of Breach.** The waiver by either party of any breach of this agreement shall not constitute a waiver as to any other breach.
- 7.4 **Written Notice.** Written notice shall be deemed to have been given on the date of the postmark if sent through the U.S. Postal Service or other mail service, and on the date of transmittal if sent by fax or Internet E-mail. Any notice shall be sent to the last known business address of the recipient. If the intended recipient does not actually receive the notice, upon notice of same the sender must send a duplicate to the intended recipient within five days. When not actually received, timely notice must be established by the sender through competent evidence such as U.S. Postal Service records of registration, certification or certificate; or a fax machine-printed confirmation of receipt.
- 7.5 **Obligations Survive.** The obligations or duties imposed upon the A/E under the agreement shall survive any termination or closeout of the agreement.
- 7.6 **Successors and Assigns.** CDB and the A/E each binds itself, its partners, successors and assigns and legal representative to other party hereto and the partners, successors, assigns and legal representative of such other party in respect to all covenants, agreements and obligations contained herein.
- 7.7 **Independent Contractor.** The A/E is an independent contractor and in providing its services under this agreement shall not represent to any third party that its authority is greater than that granted to it under the terms of the agreement.
- 7.8 **Work of other Professional Service Firms and Contractors.** CDB reserves the right to execute other agreements in connection with the project.
- 7.9 **Indemnification.** The A/E hereby agrees to indemnify, keep and save harmless, CDB, the Using Agency and the State of Illinois and their respective board members, officers, agents and employees, in both individual and official capacities, against all suits, claims, damages, losses and expenses, including attorneys' fees which are the result of an error, omission or negligent act of the A/E or any of its employees or agents arising out of or resulting from the performance of service under this agreement, except where such is due to the active negligence of the party seeking to be indemnified. This provision is applicable to the full extent as allowed by the laws of the State of Illinois and not beyond any extent which would render this provision void or unenforceable.
- 7.10 **Non-Assignment.** The A/E acknowledges that CDB is induced to enter into this agreement by, among other things, the professional qualifications of the A/E. The A/E agrees that neither this agreement nor any right or obligations hereunder may be assigned in whole or in part to another firm, without the prior written approval of CDB.

- 7.11 **Fair Employment Practice.** The A/E agrees in performing this agreement to comply with all statutory employment requirements, including, but not limited to, the provisions of the Illinois Human Rights Act (775 ILCS 5/1-101 et seq.) and the Public Works Employment Discrimination Act (775 ILCS 10/1 et seq.).
- 7.12 **Record Keeping and Right to Audit.** In accordance with 30 ILCS 500/20-65, the A/E shall maintain, for a minimum of three (3) years after the completion of the agreement, adequate books, records, and supporting documents to verify the amounts, receipts, and uses of all disbursements of funds passing in conjunction with the agreement. These records shall be available for the review and audit by CDB, the Auditor General, Chief Procurement Officer, or their designees. The A/E agrees to cooperate fully with any such audit and shall provide full access to all relevant materials. Failure to maintain the records required by this provision shall establish a presumption in favor of the State for the recovery of any funds paid by the State under the agreement for which adequate records are not available, through some fault of the A/E, to support their purported disbursement. The A/E or consultant shall not impose a charge for audit or examination of the A/E's or consultant's books or records.
- 7.13 **Blank.**
- 7.14 **Confidentiality.** The A/E shall keep all information concerning the project confidential, except for communications incident to completion of the project between the CDB, the A/E, Using Agency, and the assigned contractors, and their independent subcontractors, suppliers, and sub-consultants, and except for publicity approved by CDB and communications in connection with filings with governmental bodies having jurisdiction over the design and construction of the project.
- 7.15 **Cooperation with CDB's Consultants.** The A/E agrees to cooperate with any consultant retained by CDB, but the A/E shall not be contractually responsible for such consultants.

ARTICLE 8 ALTERNATIVE DISPUTE RESOLUTION (ADR)

- 8.1 **General.** Except as otherwise provided below, CDB will resolve disputes and its decision will prevail unless otherwise removed to a court of competent jurisdiction. Before any party files litigation it shall submit the dispute to ADR, and all parties and their subcontractors or agents who are involved in the dispute shall participate in the ADR. CDB expressly retains all rights under the Articles titled CDB Rights and Responsibilities and Termination and Suspension of the Agreement contained herein. CDB's exercise of its rights shall not be subject to ADR, but disputes concerning amounts due and owing are subject to ADR. Legal rights and remedies of any party that may be provided by law shall not be waived or tolled by participation in ADR, unless otherwise agreed in writing.
- 8.2 **Not a Cause for Delay.** CDB decisions or pending ADR shall not be cause for delay of the work. The A/E shall proceed diligently with the performance of this agreement and in accordance with CDB's decision whether or not the A/E or anyone else has an active claim pending. Continuation of the performance of this agreement shall not be construed as a waiver of any rights accruing to the A/E.
- 8.3 **Definitions.**
- A. **Dispute:** Any contested claim or matter growing out of the project or CDB's project contracts regarding payment or time for performance, but not including personal injury cases (including worker injuries), vehicle accidents, contractor-subcontractor matters in the nature of lien actions, employment matters, contract suspension or termination, contractor prequalification suspension, or any other action on prequalification.

- B. **Parties:** Parties to a dispute shall be defined broadly to include anyone who may have a stake in the dispute or whose participation is perceived as essential to resolution, whether or not there is a direct contractual relationship. Parties shall also include any other entity holding a contract with CDB whose performance of its contract relates in any way to the dispute or claim.
 - C. **ADR:** ADR is a process conducted with the assistance of a neutral person or persons the parties agree is unbiased and qualified to understand the dispute and make the determinations that may be required. Forms of ADR that may be utilized include, but are not limited to, mediation, mini-trials, a dispute resolution board, or resolution through expert opinion, but do not include arbitration or binding decisions.
- 8.4 **Cooperation.** In the event that disputes arise, CDB and the A/E agree to exercise good faith efforts to resolve the matter fairly, amicably and in a timely manner. Litigation shall be considered as a last resort to be employed only when ADR methods fail. At the request of any party to a dispute, regardless of dollar amount, CDB and the A/E agree to cooperate in resolution by first conferring with the other parties and by submitting the matter to ADR. CDB and the A/E agree that ADR shall be a condition precedent to filing a Court action or administrative proceeding seeking economic recovery greater than \$25,000. When ADR is utilized, the A/E and CDB agree to have in attendance a person with actual authority to resolve the dispute. When approval of CDB's Board is required, CDB personnel shall be exempt from the requirement but shall notify all concerned at the earliest possible time when it is apparent the Board approval will be required for ultimate resolution. If the parties to the dispute cannot agree on a form for ADR or a neutral to facilitate the ADR, then CDB shall make the determination and its determination shall be final.
- 8.5 **Sharing Expenses.** All parties to ADR shall share the expense of the neutral equally or on a pro rata basis if agreed. Individuals must bear their own costs such as travel expenses, attorney fees, or fees charged by consultant hired by the individual.
- 8.6 **Subconsultants.** The A/E shall require its subconsultants to agree to and be bound by this provision.
- 8.7 **Confidentiality.** All ADR procedures shall be strictly confidential. Neither statements made during the course of ADR nor documents generated for the purpose of ADR shall be discoverable in any subsequent litigation. In no event shall a mediator or other neutral party engaged to assist in ADR be deposed or called to testify in any subsequent litigation.

ARTICLE 9 STATUTORY REQUIREMENTS

- 9.1 **General.** The A/E shall comply with all State and Federal requirements governing the design of the project and this agreement. The A/E, in cooperation with CDB, shall review the project and determine if any of the statutory requirements apply.
- 9.2 **Federally Funded Projects.** Certain projects may be funded in full or in part with federal funds which may have specific restrictions. On federally funded projects, standards of the federal agency may supplement or take precedence. Special requirements for individual projects will be provided by the CDB PM.

ARTICLE 10 GENERAL SERVICES

- 10.1 **General.** The A/E shall provide the services indicated herein in accordance with the terms and conditions of the agreement.

- 10.2 **Design Criteria and Policies.** CDB has adopted certain design policies in force at the time of execution of this agreement that shall be incorporated into the A/E's basic services. A/E shall comply with all applicable design policies and submission requirements as set forth in the CDB Design and Construction Manual.
- 10.3 **Meetings.** The A/E shall be in attendance at, and record minutes of, all meetings required by this agreement throughout the course of the project as set forth herein. A/E shall distribute copies of meeting minutes to participants and other interested parties as directed by the CDB PM within seven (7) calendar days. A/E consultants shall attend each meeting as appropriate or as requested by the CDB PM.
- A. Orientation / Fee Negotiation
 - B. Design Submittal Review(s)
 - C. Pre-Bid
 - D. Pre-Construction
 - E. Construction Pay/Progress
 - F. Substantial Completion
 - G. Final Acceptance
- 10.4 **Monthly Progress Reports.** The A/E shall submit monthly progress reports of design/construction activities to the CDB PM. Failure to submit monthly reports may result in delay to A/E's progress payments. The report shall include:
- A. Activities completed and items pending since last report.
 - B. Projected progress.
 - C. Comparison of schedule and actual progress.
 - D. Decisions or information required.
- 10.5 **Site Surveys.** The A/E shall be required to provide or obtain surveys essential to the design and construction of the project as a basic service. A/E is responsible for obtaining its own benchmarks, location of utilities and topography information for establishing building and site improvements locations.
- 10.6 **Utility Agreements.** The A/E shall review each agreement between a public utility and the Using Agency to confirm that the proposed utility service capacity, equipment, entrance location(s) and routing path has been provided to meet the requirements of the project design. The A/E shall include all utility costs in the Proposed Project Cost Budget (PPCB) form at 100% design submittal.
- 10.7 **Permits.** When specifically directed by CDB, prior to the bidding phase, the A/E shall provide the local authority (or authorities, where more than one local authority has jurisdiction) with sufficient design documents as it may require for purposes of review and/or issuance of general building permits. A/E shall provide CDB with all review correction notices or comments issued by the local authority. When directed by CDB, A/E shall make corrections to the documents and resubmit to the local authority for review and/or issuance of permits.

A/E shall design to the standards necessary to receive permits from municipal, state and federal agencies having jurisdiction over any aspect of the project. (EPA, IEPA, Army Corps of Engineers, Water Reclamation Districts, etc.), and shall be responsible to submit for and obtain such permits.

- 10.8 **Application of Professional Seals.** Final technical reports and all bidding documents shall contain a legible seal, signature, date and license expiration date of the architect, structural engineer or professional engineer responsible for the document or under whose supervision the document was prepared.
- A. Drawings, including record drawings, shall be sealed in the prescribed manner above.
 - B. For project manuals and technical reports the seal shall be provided by the design professional responsible for the overall coordination of the project. If more than one design professional has responsibility for portions of the work, additional seals may be provided on the cover, or on a separate signature sheet immediately following the table of contents.
 - C. CDB will waive the requirement for professional seal for asbestos abatement projects prepared by a Certified Industrial Hygienist (CIH), providing the CIH binds a copy of its valid IDPH issued license in the Project Manual immediately after the Table of Contents and provides two additional copies of the license to the CDB PM.

ARTICLE 11 PROJECT BUDGET AND ESTIMATING

11.1 Project Budget.

- A. The project budget is the total funding available for the project. Any changes to the project budget will be issued in writing by the PM. The construction budget indicated on Appendix A is the funds available for construction. The Design Budget indicated on Appendix A represents ninety percent, (90%), of the construction budget. The Base Bid design cannot exceed the design budget unless authorized in writing by CDB.
- B. The A/E shall use the Proposed Project Cost Budget form (PPCB), to show the distribution of the project costs.

11.2 **Contingency Budget.** Ten percent, (10%), of the construction budget shall be set aside for the project contingency. When appropriate, CDB may permit the base bid to be designed up to 95 percent of the construction budget for selected projects.

11.3 **Alternate Bids.** The A/E shall prepare the bidding documents to include all elements of the work. When the base bid design clearly exceeds the design budget, the A/E shall evaluate the components of the design and move any portion not essential to the function of the project to an alternate bid. All alternate bids shall be clearly identified on the PPCB form.

- A. Alternate bids may not be included in the project without permission of the PM.
- B. The A/E shall develop in conjunction with the Using Agency and the PM, an order of priority to be used in awarding alternates.
- C. When the base bid design fully accomplishes the scope of work, alternate bids that enhance the base bid qualifies for additional service compensation.
- D. CDB may negotiate an adjustment to the construction phase services fee for services not rendered as a result of not awarding any alternate.

11.4 **Estimates.** Estimates of probable construction costs shall be prepared at each stage of the project design phase. The A/E shall submit these estimates with each review submittal. Itemized and detailed final estimates incorporating all addenda are required prior to the bid opening. CDB reserves the right to cancel the bid opening if the estimate is not submitted prior to the bid

opening. The A/E shall be responsible for all costs incurred including re-bidding for failure to comply with the provisions of this Article.

ARTICLE 12 DESIGN PHASE

12.1 Programming.

- A. A project scope statement will be supplied by CDB for projects with a simple or well-defined scope. The scope may contain background and justification for the project and quantification of work items contained in the project. The project scope statement will define the project budget.
- B. For new construction and major rehabilitation projects, CDB may provide a program statement describing proposed program activities, space requirements, and equipment needs.
- C. In the event a program statement is not provided by CDB and programming is required from the A/E, it will be considered as an additional service with compensation negotiated.

12.2 Moveable Equipment. The responsibility for specifying, purchase and installation of moveable equipment is that of the Using Agency and the Department of Central Management Services.

- A. The A/E shall cooperate by providing the Using Agency with dimensional, color finish, etc. information necessary to specify any equipment not included in the CDB project.
- B. A/E will be compensated with Additional Services for any design and specification related to moveable equipment requested by CDB beyond that described above.

12.3 Telecommunications, Technology and Audio/Visual. Telecommunications, technology and audio/visual equipment for State facilities generally falls under the jurisdiction of the Department of Innovation and Technology. The PM and Using Agency will instruct the A/E when/where outlets, conduits, wiring, etc. are to be included in the CDB project. Coordinate with Utility Company and other agencies.

12.4 Program Analysis.

- A. Review and coordinate the data contained in the project scope statement, consult with designated representatives of CDB and the Using Agency when required and visit the project site to obtain a thorough understanding of the existing conditions and the project.
- B. Provide a program analysis report containing the coordinated project scope supplemented by all other information necessary to form a complete basis for the project design. Including field verification of any information provided by CDB and the Using Agency.
 - 1. For remodeling projects, A/E shall provide a statement of the status of asbestos inspections and/or abatement. The A/E shall review the asbestos inspection report and/or management plan, where available, and note any possible disturbances of asbestos-containing materials as a result of the project. Provide a listing of the type and quantity of materials tested positive that will be disturbed. Note also, any materials listed as “assumed” to be positive for containing asbestos and indicate the quantity of samples proposed to be taken and sampled to verify the assumed condition. CDB Form 9 as provided in the CDB Manual for Statewide Asbestos Surveys (most current edition) is an acceptable format for this purpose.

2. Opinion of probable construction costs including asbestos abatement in scope itemization format. Include CDB CAF (3.0%), and 10% contingency budget.
 3. Estimated duration of project construction schedule including asbestos abatement.
- C. Resolve, in consultation with CDB and the Using Agency, any discrepancies in the project scope or budget prior to proceeding to the applicable design phase as set forth in the project schedule as indicated on Appendix A of the agreement.

12.5 **Schematic Design.**

- A. Based on the program analysis, A/E shall prepare up to three (3) design studies for review and consideration by CDB and the Using Agency. Design studies may include written descriptions and alternatives, drawings and other documents as appropriate.
- B. Cost estimates for each schematic design study shall be provided.
- C. Upon review and comment of the schematic design by CDB and the Using Agency, the A/E shall proceed to the applicable design level for one of the proposed designs as modified by any comment during the review.

12.6 **Design Development.**

- A. Prepare design development submittal based on the program analysis and accepted schematic design if included in the agreement. Submittal shall illustrate the resolution of all building and site elements.
- B. A/E shall not proceed beyond design development phase until provided with a written statement properly endorsed by CDB and the Using Agency signifying acceptance of the proposed design. Acceptance statement shall include all agreed upon revisions to the design submitted.

12.7 **Bidding Documents.**

- A. Prepare bidding documents consisting of Project Manual, Bid Form(s), and Drawings based on the accepted design development submittal, including all agreed upon revisions, in a form suitable for public bidding of contracts in conformance with the Illinois Procurement Code, and CDB Rules and Regulations.
- B. Documents shall be submitted and reviewed at the stages of completion as set forth in Appendix A. Each submittal will contain, (at a minimum) the Project Manual, Drawings, detailed cost estimate and PPCB form.
- C. Additional information to be submitted to the CDB by the 100 percent bidding documents submittal includes the final code analysis/regulatory review action checklist, copies of all permits and approvals, proposed list of critical work, explanation of factors used in determining specified construction duration and executed utility agreements, as applicable.

12.8 **Review Process.**

- A. Submit documents for review as required by the agreement. The A/E shall provide up to ten (10) sets of review documents for CDB and Using Agency for each review. CDB shall reimburse A/E for additional review sets.

- B. Following the reviews, the A/E shall respond to the PM in writing to all review comments and questions within 14 calendar days.

ARTICLE 13 BIDDING PHASE

- 13.1 **General.** All bidding documents require the approval of CDB prior to the A/E printing and distributing documents to the public. Upon approval, the A/E shall sign, seal and date all drawings and the project manual with the same date. Dates shall reflect the most recent state of completion.
- 13.2 **Official Advertisement for Bids.** The Illinois Procurement Code 30 ILCS 500/1 requires that contracts shall be advertised at least fourteen (14) calendar days before the bid opening. The A/E shall provide type of contract(s) to be bid and estimate information necessary for the advertisement to the CDB PM.
- 13.3 **Document Distribution.** The reproduction and distribution of bidding documents is the responsibility of the A/E. The A/E shall maintain an accurate record of all vendor provided printing costs. "In-House" printing of bid sets is permitted when included in the agreement.
 - A. The A/E shall distribute bid documents to all interested bidders, subcontractors, suppliers, etc.
 - B. Plan holders shall make a reasonable plan deposit, (as determined by the A/E with PM concurrence), or be a member of a non-cash deposit program in accord with the advertisement for bids. The A/E shall comply with all CDB supported non-cash deposit programs. The plan deposit may be cash or company check. Plan holders that return bidding documents within forty-five (45) calendar days of the bid opening shall have their deposit returned to them. The A/E will return the deposit within 10 days of receipt of bidding documents if the plans are in good reusable condition. The contractors awarded the work shall not be required to return their bidding documents but their deposits shall be returned to them. An accurate record of all deposits shall be kept by the A/E and submitted to the PM. All deposits not returned shall be credited to the A/E printing reimbursable account and reported with the A/E's regular pay requests.
 - C. Plan holders shall not be charged handling and postage to obtain bidding documents for the number of sets included in Appendix A of the agreement. Additional sets above the number listed in Appendix A shall be a reimbursable to the agreement. Postage to return documents shall be at the plan holder expense.
 - D. The following individuals and offices shall receive the bidding documents, or portions of the bidding documents as directed by the project manager. These individuals and offices shall be listed on the plan holder lists.
 - 1. Dodge Plan Rooms. The A/E shall send one complete set of bidding documents to the F.W. Dodge Corporation Plan Room in Springfield, IL. Projects located in the northern region shall also be filed at the Chicago office. Projects located in the southern region shall also be filed at the St. Louis Area office.
 - 2. Other Plan Rooms. All participating plan rooms are listed on the CDB Website under Procurement Opportunity Information, General Bid Information.

3. CDB Offices. Bidding documents shall be distributed at the time of public distribution to various CDB personnel and sections as listed below:
 - a. PM - one set of bidding documents, PPCB, plus detailed estimate.
 - b. CDB Fair Employment Practices Technician - one project manual
 - c. Construction Technician - one printed set of bid drawings along with one set of drawings and project manual on compact disk (CD).
 - d. CDB Contracts unit – one project manual, detailed estimate and PPCB.
 - e. CDB Bid Receiving Office (other than Springfield) - one project manual, and PPCB plus one detailed estimate.
 4. Using Agency. Two sets of bidding documents.
- 13.4 **Plan Holder Lists.** Periodically, the A/E shall submit the list of plan holders, including address, telephone number, and contract(s) the plan holder intends to bid to the PM. A list of plan holders shall be submitted to the PM for verification of contractor's pre-qualification no later than seven (7) calendar days prior to the bid opening date. A/E shall submit a final list of plan holders to the PM and CDB Bid Officer on each day bids are received.
- 13.5 **Addenda.** The A/E shall prepare all required addenda.
- A. All addenda, including all revised drawings and sections, must be approved by the PM prior to distribution. A/E shall allow sufficient time for CDB review and acceptance of each addendum.
 - B. Plan holders, CDB and the Using Agency shall receive copies of all addenda.
 - C. Pre-bid conference minutes and bid tabulations are not to be issued as addenda.
- 13.6 **Bid Openings.** The A/E shall attend all bid openings for the project unless specifically excused by the PM.
- A. A/E shall provide bid results to all parties that require the information. CDB will provide A/E with one set of bid tabulations at the bid opening. In the event the PM excused the A/E from attending the bid opening, the PM will telefax the bid tabulations to the A/E.
 - B. For projects that have a coordinating contractor, A/E shall provide the assigned contractor bid tabulations to the coordinating contractor bidders within two (2) business days. These bid tabulations are to be issued for informational purposes only and shall not be issued as an addendum.
- 13.7 **Bid Analysis.** A/E shall provide assistance to CDB to identify the apparent successful bidder or bidders.
- A. Review all product substitutions submitted in accordance with procedures set forth in Standard Documents for Construction and provide CDB with a written recommendation to accept or reject the proposed substitution.
 - B. Review all unit prices submitted and provide written recommendation or rejection.
 - C. Bids submitted that fail to acknowledge all addenda issued shall be reviewed. A/E will be requested to attest that, in the A/E's opinion, the addenda not acknowledged is, or is not, work related for that particular contract.

- D. Bids submitted that contain additional verbiage applied by the bidder shall be reviewed. A/E will be requested to attest whether, in the A/E's opinion, the additional verbiage does or does not constitute a qualifying statement.
 - E. When lowest bid received differs substantially from all other bids received, A/E shall contact the low bidder and review the bid as it pertains to the requirements of the project. Report findings to the CDB Project Manager in writing.
 - F. When single bids are received, A/E shall provide the CDB Project Manager with a written explanation of all efforts used to obtain bidders and include an informed opinion addressing the suspected reason(s) a single bid was received.
- 13.8 **Contract Award.** CDB will notify the A/E and all successful bidders of our intent to award a contract by copy of the Notice of Award (NOA) letter.
- 13.9 **Presumption of Award.** A/E shall not discuss with bidders, news media, etc., any presumption of award until the award is decided by CDB.

ARTICLE 14 CONSTRUCTION PHASE

- 14.1 **General.** The A/E shall perform administrative duties during this phase of the project.
- 14.2 **CDB's Representative.** The A/E shall consult and advise CDB and act as CDB's representative as provided in the Standard Documents for Construction and herein. CDB's instructions to the contractors may be issued through the A/E who shall have authority to act on behalf of CDB to the extent provided in this document and the Standard Documents for Construction.
- 14.3 **Construction Documents.** The A/E shall issue documents stamped and dated "Issued for Construction" to the contractors. A/E shall include all addenda issued during bidding within the documents.
- A. Each contractor will receive construction documents in quantity as determined by CDB up to a maximum of six sets. The contractor may purchase additional sets for a charge to cover reproduction and handling.
- 14.4 **Contractor Submittals / Shop Drawings, Product Data, Samples.**
- A. A/E shall review and monitor all required submittals for timeliness and conformance with the contract documents and project schedule. A/E shall review and respond to submittals within 14 calendar days.
 - B. Each submittal shall be stamped, dated, and either initialed or signed by the reviewer. The reviewer shall provide clear instruction to the contractor of any corrective action to be taken.
 - C. The A/E shall only review those materials and equipment specified in the contract documents. The A/E shall not make changes in the contract requirements through the review of submittals. The contractor may not submit and gain approval of material substitutions through the shop drawing review process.
 - D. If in reviewing the submittal the A/E determines that contract changes are required, notify the CDB PM and request approval of the required changes prior to returning the submittal to the contractor.

- E. No activity requiring review of submittals shall be commenced without A/E approval. The A/E shall notify the contractor to cease the activity until approval is obtained. The contractor shall be liable to replace any work that is not in compliance with the subsequently reviewed submittal.
 - F. The contractors are responsible for any applicable licensing with the appropriate authority in accordance with the Contractor Licenses Section of the Standard Documents for Construction. The A/E shall receive and review all applicable licenses prior to that contractor or tradesman commencing any work. Evidence of proper licenses shall be forwarded to the CDB PM. The A/E shall not knowingly allow any work to commence or accept any work installed by a non-licensed firm or tradesman where licenses are required.
- 14.5 **Contractor's Schedule of Values (CSV).** The A/E shall review the CSV form for each contractor to ensure each item of work required for the contract is indicated and all values are expressed in separate line item costs for material and labor prior to any contractor making application for payment.
- A. The Standard Documents for Construction requires that a percentage of the work be performed by the contractor's own forces. The A/E shall reject any contractor's schedule of values that does not comply with this requirement.
 - B. The A/E and CDB must approve all changes to the CSV subsequent to the initially approved document.
- 14.6 **Construction Schedule.** The A/E shall review the schedule for conformance with the contract requirements.
- 14.7 **Contractor Stored Materials.**
- A. The A/E shall attest to the existence of any stored materials, its protection and identification in accordance with the Contract Documents by initialing the appropriate item on the Stored Material Log, (SML).
 - B. CDB will compensate the A/E for travel and review time to inspect off-site stored materials at the hourly billable rate for on-site representative up to a maximum of eight (8) hours total. A/E is not required to inspect materials stored at any location which cannot be inspected within this compensation limit. A/E shall reject contractor requests for stored material inspection and payment until such time the contractor moves the material to a location within the compensation limit.
- 14.8 **Interpretations.** When requested by CDB or a contractor, the A/E shall provide interpretation of the contract documents. A/E shall prepare and distribute supplementary drawings, specifications and instructions as necessary to communicate the interpretation. A/E shall expedite all interpretations in such a manner as to not adversely affect the project schedule or sequence of work and to avoid the potential for a claim by the contractor.
- 14.9 **Claims and Disputes.**
- A. A/E shall record any observed occurrence or work that might result in a claim for a change in contract time or amount. Any disputes or claims shall be referred directly to the CDB PM. A/E shall enter the claim or dispute into a claims log and provide a current copy of the log to CDB at each monthly progress/pay meeting.
 - B. A/E shall review each claim or dispute, including documentation of any time, money or other expenditure made in connection with it. A/E shall provide a written response,

interpretation and recommendation for resolution to the claimant and CDB. CDB shall make a final determination on all disputes unless removed to ADR and/or the Courts.

- C. While work is in progress, A/E shall observe, measure and verify costs incurred that are related to the dispute. Immediately notify the CDB PM if additional on-site representation is required to monitor the disputed work.

14.10 Change Orders.

- A. Only the CDB PM can authorize the A/E to prepare a Request for Proposal/Change Order (RFP/CO). The A/E shall prepare an RFP/CO for each contract affected by the proposed change.
- B. The A/E shall prepare each RFP/CO including supplemental drawings and/or specifications to fully describe the change in the work. When requested by the CDB PM, the A/E shall submit a cover letter to the change order package explaining the need for the contract change.
- C. The A/E shall review the contractor's proposal for completeness and conformance with the RFP/CO and contract documents. Where change orders require additional clarification or additional back-up, the A/E shall obtain such information from the contractors prior to forwarding the change order package to CDB.
- D. The A/E shall recommend issuance of a change order to CDB. Recommending issuance shall mean that the A/E has reviewed all quantities, prices and other data in the contractors' proposal and has found such to be reasonable and in conformance with the provisions of the Contract Documents.
- E. When applicable, the A/E shall be responsible for obtaining the signatures of the coordinating contractor and Using Agency representative prior to forwarding the change order package to CDB.
- F. When requested by CDB, the A/E and any consultants shall be required to attend Board meetings to explain any change orders presented for Board approval.

14.11 Contractors' Record Drawings. The A/E shall observe the contractors' record drawings at intervals appropriate to the construction, or not greater than every thirty (30) days. Notify CDB of any contractor's apparent failure to maintain up-to-date records in accordance with the contract documents.

14.12 Periodic Site Visits. As a basic service of this agreement, the A/E shall make periodic site visits as set forth herein and as reasonably necessary in accordance with the complexity of the contracted work and the scheduled construction activities. The A/E shall observe the construction operations and report on the progress and quality of the work being performed to determine, in general, that the work is proceeding in accordance with the approved construction schedule and that the materials, finishes and workmanship are in accordance with the contract documents.

The A/E is required to conduct periodic site visits when contractors are present on the site and installing their respective trade work. Site visits shall be made by appropriately experienced personnel with specific knowledge of the requirements of the project as designed and specified. Unless otherwise agreed, minimum site visits shall be as set forth below for each trade contract included in the project through substantial completion providing sufficient work is being performed. When minimal work is being performed, the A/E may make one all-inclusive project site visit in addition to the services provided in Article 14.12 B.

<u>Fee Group</u>	<u>Combined Work</u>	<u>General</u>	<u>Combined Work</u>	<u>MEP</u>
1 (R or N)	2 visits/month		4 visits/month	
2 (R or N)	2 visits/month		2/visits/month	
3 (R or N)	1 visit/month		1/visit/month	

- A. Combined General Work shall include demolition, civil and structural work. Combined MEP Work shall include mechanical, electrical, and plumbing systems work including, derivative specialty systems such as temperature control, building automation, fire alarm etc.
- B. Payment and Pay/Progress meetings are a basic service and are not compensable as a reimbursement expense, but are permissible in fulfilling the requirements of Article 14.12 providing:
 - 1. Contractors are present on site and installing their respective trade work.
 - 2. Observation is provided by appropriately experienced personnel with specific knowledge of the requirements of the project.
 - 3. Observation reports are filed in accordance with Article 14.14.
- C. CDB shall be notified immediately if, in the A/E's opinion, the materials, finishes and/or workmanship does not conform to the contract documents, requires special inspection or testing (beyond the specified requirements), or has been disapproved or rejected by the A/E.
- D. The A/E and the contractor shall be liable for the replacement and/or any damages incurred as a result of knowingly permitting non-specified material, or otherwise non-conforming work to be incorporated into the project.

14.13 On-Site Representative.

- A. When included in the agreement as a reimbursable service expense, the A/E may provide one or more representatives on-site to facilitate the progress of the project and report on special conditions and critical installations as delineated herein. The duties of the on-site representative are exclusive of Article 14.12 and are limited to:
 - 1. Observe installation of critical systems or components as set forth in Article 15.
 - 2. Observe and verify installed quantities of material specified in the project as an allowance.
 - 3. Observe specified field tests and CDB approved special testing recommended by A/E as a result of observations provided in Article 14.13.
 - 4. When specifically requested by CDB, or by a contractor with CDB concurrence, provide field clarification of document interpretations issued in accordance with Article 14.8.
 - 5. Observe, measure and verify costs incurred by contractors related to any disputes or claims.
 - 6. Prior to commencing the construction phase, A/E shall submit the name, resume', and DWE for each proposed on-site representative to the CDB PM for

approval. CDB shall provide written acceptance or rejection of each person proposed.

14.14 Observation Reports.

- A. A written report shall be submitted to the CDB PM for each site visit made under basic services and each on-site representative's visit. Each report shall be clearly identified as being provided as either a periodic site visit (14.12), or as an on-site representative site visit (14.13). Reports shall be submitted in a timely manner as the construction activity dictates. In no case shall submission interval exceed seven (7) days from the date of the site visit. CDB shall not provide any reimbursement for on-site representative visits without an observation report.
- B. CDB may withhold a portion of the construction phase fee if the A/E fails to provide observation reports as set forth herein.
- C. When directed by the CDB PM, the A/E shall provide copies of reports to the coordinating contractor, assigned contractors and Using Agency representatives.

ARTICLE 15 COMMISSIONING

- 15.1 A/E shall specify all tests required for all systems, equipment and devices to be tested. Specify testing procedures as appropriate. A/E shall witness tests, review and evaluate test reports and notify CDB promptly of any deficiencies. A copy of all test results shall be provided to CDB and the Using Agency.
- 15.2 A/E shall advise the CDB PM and Using Agency regarding on-site representation for observing specific work critical to the success of the project. A/E shall compile a list of work they have determined to be critical and submit it for CDB and Using Agency review at the 100% completion stage of design. The submittal shall include justification of the need for on-site representation, the A/E staff responsible for observing the work and an estimate of the duration/frequency of the observation with the resulting cost and overall impact on the on-site representation budget as indicated in Appendix A.
- 15.3 CDB, A/E and Using Agency will reach consensus regarding the submitted critical work list and advise the awarded contractors of the list at the Pre-Construction Meeting so that the A/E can be sufficiently notified and make arrangements for on-site representation.
- 15.4 A/E shall attest that each contractor, as required by the contract documents, perform a thorough and systematic performance test and start-up of their respective work. Each general, mechanical, electrical and fire suppression element and the total system shall be tested in the presence of the A/E, all appropriate consultants, and the Using Agency prior to substantial completion of the project. When requested, and if not previously provided in the contract documents, the A/E shall provide the contractor with all design criteria and system design/operation concepts to facilitate performance testing and start-up.
- 15.5 The A/E shall provide a report to CDB and the Using Agency that they have observed the performance testing and start-up process, and that each contractor has demonstrated that all systems comply with the requirements of the contract documents. The report shall include any changes and/or reconfiguration which may have occurred during the performance testing and start-up process.
- 15.6 The A/E shall attest that each contractor required by the contract documents provide the specified training of the Using Agency's designated personnel prior to substantial completion. The A/E

shall attend the training sessions to observe and provide any input into the operation and maintenance of the systems as designed.

ARTICLE 16 PROJECT CLOSEOUT PHASE

- 16.1 **General.** The A/E shall be responsible for certifying the completion of all contracts.
- 16.2 **Notification and Preliminary Inspection.** The contractor shall provide written notification to the A/E that the work, or a designated portion thereof, is substantially complete. This notification shall include a list of any incomplete items. The A/E shall then make a preliminary inspection of the work and preliminary punch list. If A/E is in agreement with the contractor, notify the CDB PM that a substantial completion inspection meeting is warranted.

The A/E shall prepare the certificate of substantial completion with the completed punch list and forward the package to the coordinating contractor and each assigned contractor.

- 16.3 **Guarantees, Warranties and Bonds.** At substantial completion, the A/E shall obtain from the contractors and assemble all guarantees, warranties, maintenance data and bonds. Check for coverage, start date and duration in accordance with the contract documents before forwarding to the Using Agency. The A/E shall obtain and deliver to the CDB PM a signed receipt for all materials turned-over to the Using Agency.

- A. The A/E shall obtain from each contractor a final list of all suppliers and subcontractors with complete names, addresses and telephone numbers of persons to be contacted for service and/or replacement of materials and equipment.

- 16.4 **Materials and Equipment.** The A/E shall confirm that all extra materials and equipment specified in the contract documents which are the property of CDB are properly identified, delivered and stored as specified. A/E shall obtain and transmit signed receipts of such deliveries by the contractor to the authorized agency or the Using Agency accepting the delivery. Proper identification shall include the CDB project number, project specification number, description of the item and its purpose for use, name, address and phone number of the contractor that provided the item.

- 16.5 **Notification and Final Inspection.** Upon contractor notification, the A/E shall make an inspection of the completed work. If the A/E is in agreement with the contractor that all of its work is complete, the A/E shall notify the CDB PM that a final acceptance meeting is warranted.

- A. When the work is confirmed as finally accepted by the A/E and CDB, the A/E shall prepare and issue a Certificate of Final Acceptance to each contractor.
- B. The A/E shall expedite the closeout and final payment for each contractor as they complete their contractual obligations.

- 16.6 **Contractor Final Payment.** A/E shall process and certify final payment including retention only after all items of the contract are completed. A/E shall ensure that the final pay request package is complete in accord with the contract prior to forwarding to CDB.

- A. A/E shall obtain from the contractor all releases, waivers of lien, and the contractor's final declaration form (CDB Form CFD).
- B. A/E shall reconcile all waivers and provide a statement of final accounting to CDB when the final waivers are not for the full amount of the subcontract.

- C. The A/E shall complete a Contractor’s Performance Evaluation (CPE) and forward this along with the contractor’s final pay request to CDB.
 - D. The A/E shall acknowledge receipt of the contractor’s record drawings on the contractor’s final closeout package (CFCP) form. This form shall be used as a checklist of the required documentation for closeout and it shall be transmitted with the contractor’s final pay request to the CDB PM.
- 16.7 **Nine Month Inspection.** CDB will notify the A/E, who shall make arrangements with the Using Agency for an inspection of the contracted work nine months after substantial completion of the project. The A/E shall provide a written report of the inspection to CDB and the Using Agency within seven (7) calendar days. CDB shall notify affected contractor of any corrective action noted in the report.
- 16.8 **A/E Closeout.**
- A. Prior to CDB processing A/E’s final payment, A/E shall submit to CDB two sets of revised contract documents labeled “Record Construction Drawings,” which show all changes reported by the contractor(s), and all changes made by change orders, addenda, and clarifications made by the A/E during construction. Documents shall be submitted in electronic format. One blackline paper copy may also be submitted for use by the Using Agency’s on-site personnel. Verify requirement with the CDB PM.
 - 1. A/E shall provide a statement on the cover sheet certifying the following: “With this seal, we do hereby certify that no asbestos-containing materials were specified or approved for the construction identified within these documents.”
 - 2. For asbestos abatement projects and other projects that included asbestos abatement, the A/E shall complete an Asbestos Abatement Project Summary Report and forward it to the CDB PM. The report format can be found in the Appendix 5 of the Design and Construction Manual – “Project Manual Workbook for Asbestos, Lead, UST and PCB”.
 - B. A/E final payment is dependent upon final resolution of any fee adjustments required of CDB and/or required by the agreement.
 - C. A/E shall submit final payment under letterhead cover addressed to the CDB PM. Cover letter shall indicate that A/E takes no exception to CDB de-obligating un-used reimbursement funds without written modification duly executed by the contracting parties to the value indicated on line 11.K. (Do not pay line) of the Invoice-Voucher Form. A/E shall indicate specific amounts waived in line items B. (Additional Services), E. (On-Site Representative Compensation), and F. (Reimbursable Expenses) as applicable.

ARTICLE 17 CDB DESIGN DISCLOSURES AND CERTIFICATIONS

LEGAL ABILITY TO CONTRACT: A/E certifies it is under no legal prohibition on contracting with the State of Illinois, has no known conflicts of interest and further specifically certifies that:

- 17.1 **IDFPR Filing.** The A/E certifies the firm has complied with the necessary filing requirements of the Illinois Department of Financial and Professional Regulation, both individually and as a corporation or partnership.
- 17.2 **SOS Filing.** The A/E certifies the firm to be in good standing with the Illinois Secretary of State.

- 17.3 **Conformance with QBS Act.** The parties to this Agreement hereby certify that this Agreement is made in conformance with the Architectural, Engineering and Land Surveying Qualifications Based Selection Act (30 ILCS 535/1 et seq.) and further agree that additional selections relevant to this Agreement and subject to that Act shall also be in compliance.
- 17.4 **Solicitation of State Employees.** The A/E and consultant(s) shall notify CDB's Ethics Officer if it solicits or intends to solicit for employment any of CDB's employees during any part of the procurement process or during the term of the contract.
- 17.5 **A/E Disclosure.** The A/E shall provide CDB copies the A/E's completed and signed CDB Certifications, and the A/E's completed and signed CDB Disclosure Forms when submitting the signed contract. The Disclosures and Certification forms shall be submitted to CDB electronically as separate PDF documents.
- 17.6 **Consultant Disclosure.** The A/E shall submit on the attached Appendix B the names and CDB issued identification (ID) numbers (prequalification ID number or registration ID number) of all consultants. For all first tier consultants with a subcontract value greater than \$50,000 to be utilized by the A/E in the performance of this contract and any lower tier consultant with a subcontract value greater than \$50,000 and where the A/E retains the right to approve and/or make payments for work, the A/E shall provide CDB copies of the consultants' completed and signed CDB Certifications, and the consultants' completed and signed CDB Disclosure Forms within twenty (20) days of execution of this contract or of the subcontract, whichever is later. Each of the two documents shall be submitted to CDB electronically as separate PDF documents. The subcontract shall include reference for compliance with Illinois Procurement Code 30 ILCS 500/20-120. The A/E shall promptly notify CDB in writing of any additional or substitute consultants meeting the above criteria hired during the term of this contract (names, addresses, expected contract amount and CDB ID nos.). No work can be performed by these subcontractors until the Certifications and Disclosure documents have been reviewed and approved by the State Purchasing Officer.

17.7 **Endorsements.** This Agreement may be executed in any number of counterparts, each of which may be deemed an original. The following documents and attachments are included in this Agreement:

- A. Documents:
 - 1. Design and Construction Manual dated March 2009
 - 2. Supplement to DCM dated November 2020
 - 3. Standard Documents for Construction dated March 2009
 - 4. Supplement to SDC and SDC-CM dated November 2020

- B. Attachments:
 - 1. Appendix A - Compensation Rates & Schedule
 - 2. Appendix B - Consultants
 - 3. Appendix C - Standard Certifications
 - 4. Appendix D – Standard Disclosures
 - 5. Project Scope/Program Statement

This Agreement, together with the above attachments, constitutes the entire Agreement between the two parties superseding all previous understandings and agreements with respect to this project. Except as provided herein, this Agreement may be amended only by a written instrument signed by both parties.

In Witness Whereof, this Agreement has been duly made by the parties on the date last signed below.

Firm Name: _____ Using Agency: _____
By: _____ BY: _____
Printed Name: _____ Using Agency Authorized Representative
Title: _____ Date: _____ Printed Name _____

ATTEST: _____ Capital Development Board:
BY: _____
Executive Director Date
Printed Name Jim Underwood

Project Number: _____
Contract Number: _____

APPENDIX B

A/E'S SUBCONTRACTORS/CONSULTANTS

In compliance with Paragraph 2.7 of this agreement, the A/E submits the following list of proposed subcontractors/consultants to be employed on this project. No changes to this list are to be made without prior approval of CDB Administrator of Contract Administration.

If consultants are not employed on this project please indicate so by inserting the word "None" below.

Subcontractor/Consultant Name & Address	Discipline	Subcontractor/Consultant Fee (Approx.)	If Applicable
FEIN	Prequalification Expires:		<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Black <input type="checkbox"/> VBE <input type="checkbox"/> Hispanic <input type="checkbox"/> PBE <input type="checkbox"/> Asian American <input type="checkbox"/> American Indian or Alaskan Native
FEIN	Prequalification Expires:		<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Black <input type="checkbox"/> VBE <input type="checkbox"/> Hispanic <input type="checkbox"/> PBE <input type="checkbox"/> Asian American <input type="checkbox"/> American Indian or Alaskan Native
FEIN	Prequalification Expires:		<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Black <input type="checkbox"/> VBE <input type="checkbox"/> Hispanic <input type="checkbox"/> PBE <input type="checkbox"/> Asian American <input type="checkbox"/> American Indian or Alaskan Native
FEIN	Prequalification Expires:		<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Black <input type="checkbox"/> VBE <input type="checkbox"/> Hispanic <input type="checkbox"/> PBE <input type="checkbox"/> Asian American <input type="checkbox"/> American Indian or Alaskan Native