

# **GENERAL CONDITIONS OF THE CONTRACT**

THE PENNSYLVANIA STATE UNIVERSITY

## **SCHEDULE OF ARTICLES**

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## ARTICLE 1 - GENERAL CONTRACT DEFINITIONS

### 1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the Form of Agreement 1-C or Form of Agreement DGS 1-C, hereinafter called the Agreement, General Conditions of the Contract, Drawings, Specifications, Addenda issued prior to receipt of bids, Form of Proposal, other documents listed in the Agreement, and those modifications to the Contract as follows:

- 1.1.1 Owner's written authorization to the Contractor for changes to the Work
- 1.1.2 Change Order
- 1.1.3 A written order for a minor change in the Work issued by the Professional

### 1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements either written or oral.

The Contract may be amended only by those modifications described in Paragraph 1.1.

### 1.3 OWNER

The Owner is The Pennsylvania State University, a corporation created and existing under the laws of the Commonwealth of Pennsylvania, hereinafter called the Owner, and shall mean the Owner or the Owner's authorized representative.

### 1.4 PROFESSIONAL

The Professional is the person lawfully licensed to practice architecture or engineering, or the firm employed to provide architectural or engineering services. The term "Professional" shall mean the Professional or the Professional's authorized representative.

### 1.5 CONTRACTOR

The Contractor is the individual, corporation, company, partnership, firm, or other organization that has contracted to perform the Work under the Agreement with the Owner. The term "Contractor" shall mean the Contractor or the Contractor's authorized representative.

### 1.6 SUBCONTRACTOR

A Subcontractor is a person or organization who contracts under, or for the performance of part or all of, the Contract between the Owner and the Contractor. The subcontract may be direct with the Contractor or with another Subcontractor. The term "Subcontractor" shall mean the Subcontractor or the Subcontractor's authorized representative.

### 1.7 THE WORK

The term "Work" shall mean whatever is done by or required of the Contractor to perform and complete its duties under this Contract, including the following: construction of the whole or a designated part of the Project; furnishing of any required surety bonds and insurance; and the provision or furnishing of labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, permits and licenses required of the Contractor, fuel, heat, light, cooling and all other utilities as required by this Contract.

## 1.8 THE PROJECT

The term "Project" shall comprise the Work defined by the Contract Documents and may include Work by the Owner or other Separate Contractors, or the Professional.

## 1.9 THE DRAWINGS

The Drawings are the graphic portion of the Contract Documents generally consisting of plans, elevations, sections, details, diagrams and schedules of the Work.

## 1.10 THE SPECIFICATIONS/PROJECT MANUAL

The Specifications are the written portion of the Contract Documents generally outlining the requirements for materials, equipment, construction systems, methods, standards, workmanship and performance necessary to properly complete the Work.

The Project Manual is the document assembled consisting of all the written portions for the Work including the Specifications, bidding requirements, sample forms, General Conditions and Special Requirements.

## 1.11 DAY

Whenever the word "day" is used in the Contract Documents, it shall be interpreted to mean a calendar day unless otherwise noted.

## 1.12 THE CONTRACT SUM

The Contract Sum is the total compensation payable to the Contractor for performing the Work as specified in the Contract Documents or subsequently adjusted by modification to the Contract.

## 1.13 CLAIM

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims must be made by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

## 1.14 SCOPE OF WORK

All Work reasonably contemplated, required, implied or reasonably inferable by the Contract Documents, whether or not explicitly contained in the Contract Documents.

## 1.15 SUBSTANTIAL COMPLETION

"Substantial Completion" shall mean that stage in the progression of the Work when the Work is sufficiently complete in accordance with this Contract that the Owner can enjoy beneficial use or occupancy of the Work and can utilize the Work for its intended purpose. See Article 12 Section 5 for procedures regarding substantial completion.

## ARTICLE 2 - CONTRACT DOCUMENTS

### 2.1 OWNERSHIP AND USE OF DOCUMENTS

All Drawings, Specifications and other documents of the Work furnished by the Professional are and shall remain the Professional's property. They are not to be used by the Contractor on other projects without written consent of the Owner and the Professional.

### 2.2 COPIES FURNISHED - DRAWINGS AND SPECIFICATIONS

The Professional will furnish to the Contractor, free of charge, three copies of Drawings and Specifications for the execution of the Work. The Drawings will be prints on paper, unmounted. Any additional copies of the Drawings and Specifications which the Contractor may desire will be furnished at the cost of reproduction and delivery.

### 2.3 DRAWINGS AND SPECIFICATIONS AT THE SITE

The Contractor shall maintain at the site one copy of all Drawings, Specifications, Addenda, approved Shop Drawings, Product Data, Samples and Contract Modifications, in good order and marked to record all changes made during construction.

### 2.4 AS-BUILT AND RECORD DRAWINGS

The Contractor shall, at the time of substantial completion of the Work, deliver to the Professional the complete set of as-built drawings. The Professional will, within 30 days after receipt from the Contractor, transpose all changes recorded by the Contractor onto a full set of reproducible drawings, and CADD electronic media, compatible with the Owner's CADD system, which shall become the record drawings for the Project, and shall forward same to the Owner. A copy in CADD format compatible with the Owner's CADD system and a copy in .pdf format shall be forwarded to the Owner by the Professional. If Building Information Modeling is utilized on the project an additional alternate form of as-built/record drawings may be required to be submitted by both the Professional and Contractor.

### 2.5 INTERRELATIONSHIP AND INTENT OF DOCUMENTS

- 2.5.1 The intent of this Contract is to require complete, correct, and timely execution of the Work. Any Work that may be required, implied, or inferred by the Contract Documents, or any one or more of them, as necessary to produce the intended result shall be provided by the Contractor for the Contract Price.
- 2.5.2 This Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.
- 2.5.3 When a word, term, or phrase is used in this Contract, it shall be interpreted or construed, first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.
- 2.5.4 The words "include," "includes," or "including," as used in this Contract, shall be deemed to be followed by the phrase, "without limitation."
- 2.5.5 The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, nonspecified act, failure, refusal, omission, event, occurrence, or condition shall be deemed not to constitute a material breach of this Contract.
- 2.5.6 Words or terms used as nouns in this Contract shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires a contrary meaning.
- 2.5.7 The Contractor shall have a continuing duty to read, carefully study and compare each of the Contract Documents, the Shop Drawings, and the Product Data and shall give written notice to the Owner of any inconsistency, ambiguity, error or omission which the Contractor may discover with respect to these documents before proceeding with the affected Work. The issuance, or the express or implied approval by the Owner or the Professional of the Contract Documents, Shop Drawings, or Product Data shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such approval be evidence of the Contractor's compliance with this Contract. The Owner has requested the Professional to only prepare documents for the Project, including the Drawings and Specifications for the Project, which are accurate, adequate, consistent, coordinate and sufficient for construction. **HOWEVER, THE OWNER MAKES NO REPRESENTATION OR WARRANTY OF ANY NATURE WHATSOEVER TO THE CONTRACTOR CONCERNING**



SUCH DOCUMENTS. By the execution hereof, the Contractor acknowledges and represents that it has received, reviewed, and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representation or warranties by the Owner concerning such documents as no such representation or warranties have been or are hereby made.

- 2.5.8 Neither the organization of any of the Contract Documents into divisions, sections, paragraphs, articles, (or other categories), nor the organization or arrangement of the Design, shall control the Contractor in dividing the Work or in establishing the extent or scope of the Work to be performed by Subcontractors.
- 2.5.9 The interrelation of the Drawings, the Specifications and the schedules is as follows:
- 2.5.9.1 The Drawings establish the quantities, dimensions and details.
- 2.5.9.2 The Specifications determine the nature and installation of the various materials and equipment.
- 2.5.9.3 The schedules give the locations.
- 2.5.9.4 The Drawings and Specifications are complementary and what is required by one shall be as binding as if shown or mentioned in both.
- 2.5.9.5 Should the Drawings disagree with one another, or with the Specifications, the better quality or greater quantity of Work or materials shall be performed or furnished. Dimensions given on Drawings govern small scale Drawings.
- Dimensions given on Drawings govern scale measurements, and large scale details govern small scale drawings. In case of discrepancy in the Dimensions, in the Drawings, in the schedules, or in the Specifications, the matter shall be promptly submitted to the Professional who will promptly make a determination, after advice and consent of the Owner, in writing.
- 2.5.9.6 The "Scope of the Work," usually placed in the front part of each Section of the Specifications, is intended to designate the scope and locations of all items of the Work included therein, either generally or specifically. It is not intended to limit the Scope of Work should plans, schedules or notes indicate an increased scope. Inadvertent omission of an item from its proper section of the Specifications and its inclusion in another section shall not relieve the Contractor of responsibilities for the item specified.

### ARTICLE 3 – CONTRACT INTEGRITY PROVISIONS

It is essential that those who seek to contract with the Commonwealth of Pennsylvania ("Commonwealth") observe high standards of honesty and integrity. They must conduct themselves in a manner that fosters public confidence in the integrity of the Commonwealth contracting and procurement process.

#### 3.1 DEFINITIONS

For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Section:

- 3.1.1 "Affiliate" means two or more entities where (a) a parent entity owns more than fifty percent of the voting stock of each of the entities; or (b) a common shareholder or group of shareholders owns more than fifty percent of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.
- 3.1.2 "Consent" means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by

prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of the execution of this contract.

- 3.1.3 “Contractor Related Parties” means any affiliates of the Contractor and the Contractor’s executive officers, Pennsylvania officers and directors, or owners of 5 percent or more interest in the Contractor.
- 3.1.4 “Financial Interest” means either:
  - 3.1.4.1 Ownership of more than a five percent interest in any business; or
  - 3.1.4.2 Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.
- 3.1.5 “Gratuity” means tendering, giving, or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the Governor’s Code of Conduct, Executive Order 1980-18, the 4 Pa. Code §7.153(b), shall apply.
- 3.1.6 “Non-bid Basis” means a contract awarded or executed by the Commonwealth with Contractor without seeking bids or proposals from any other potential bidder or offeror.

## 3.2 FURTHER CONTRACTOR INTEGRITY AGREEMENTS

In furtherance of this policy, Contractor agrees to the following:

- 3.2.1 Contractor shall maintain the highest standards of honesty and integrity during the performance of this contract and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements applicable to Contractor or that govern contracting or procurement with the Commonwealth.
- 3.2.2 Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to the Contractor activity with the Commonwealth and Commonwealth employees and which is made known to all Contractor employees. Posting these Contractor Integrity Provisions conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.
- 3.2.3 Contractor, its affiliates, agents, employees and anyone in privity with Contractor shall not accept, agree to give, offer, confer, or agree to confer or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order of the Governor of Pennsylvania, statement of policy, management directive or any other published standard of the Commonwealth in connection with performance of work under this contract, except as provided in this contract.
- 3.2.4 Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material under this contract, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Contractor’s financial interest prior to Commonwealth execution of the contract. Contractor shall disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than Contractor’s submission of the contract signed by Contractor.
- 3.2.5 Contractor certifies to the best of its knowledge and belief that within the last five (5) years Contractor or Contractor Related Parties have not:
  - 3.2.5.1 been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;

- 3.2.5.2 been suspended, debarred or otherwise disqualified from entering into any contract with any governmental agency;
  - 3.2.5.3 had any business license or professional license suspended or revoked;
  - 3.2.5.4 had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust; and
  - 3.2.5.5 been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.
- 3.2.6 If Contractor cannot so certify to the above, then it must submit along with its bid, proposal or contract a written explanation of why such certification cannot be made and the Commonwealth will determine whether a contract may be entered into with the Contractor. The Contractor's obligation pursuant to this certification is ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to immediately notify the Commonwealth in writing if at any time during the term of the contract it becomes aware of any event which would cause the Contractor's certification or explanation to change. Contractor acknowledges that the Commonwealth may, in its sole discretion, terminate the contract for cause if it learns that any of the certifications made herein are currently false due to intervening factual circumstances or were false or should have been known to be false when entering into the contract.
- 3.2.7 Contractor shall comply with the requirements of the Lobbying Disclosure Act (65 Pa.C.S. §13A01 et seq.) regardless of the method of award. If this contract was awarded on a Non-bid Basis, Contractor must also comply with the requirements of the Section 1641 of the Pennsylvania Election Code (25 P.S. §3260a).
- 3.2.8 When Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or these Contractor Integrity Provisions has occurred or may occur, including but not limited to contact by a Commonwealth officer or employee which, if acted upon, would violate such ethical standards, Contractor shall immediately notify the Commonwealth contracting officer or the Office of the State Inspector General in writing.
- 3.2.9 Contractor, by submission of its bid or proposal and/or execution of this contract and by the submission of any bills, invoices or requests for payment pursuant to the contract, certifies and represents that it has not violated any of these Contractor Integrity Provisions in connection with the submission of the bid or proposal, during any contract negotiations or during the term of the contract, to include any extensions thereof. Contractor shall immediately notify the Commonwealth in writing of any actions for occurrences that would result in a violation of these Contractor Integrity Provisions. Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of the State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
- 3.2.10 Contractor shall cooperate with the Office of the State Inspector General in its investigation of any alleged Commonwealth agency or employee breach of ethical standards and any alleged Contractor non-compliance with these Contractor Integrity Provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of an Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Office of the State Inspector General to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or

form that refer to or concern this contract. Contractor shall incorporate this paragraph in any agreement, contract or subcontract it enters into in the course of the performance of this contract/agreement solely for the purpose of obtaining subcontractor compliance with this provision. The incorporation of this provision in a subcontract shall not create privity of contract between the Commonwealth and any such subcontractor, and no third party beneficiaries shall be created thereby.

- 3.2.11 For violation of any of these Contractor Integrity Provisions, the Commonwealth may terminate this and any other contract with Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these Provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this contract, and debar and suspend Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

#### ARTICLE 4 – CONTRACTOR RESPONSIBILITY PROVISIONS

For the purpose of these provisions, the term contractor is defined as any person, including, but not limited to, a bidder, offeror, loan recipient, grantee or lessor, who has furnished or performed or seeks to furnish or perform, goods, supplies, services, leased space, construction or other activity, under a contract, grant, lease, purchase order or reimbursement agreement with the Commonwealth of Pennsylvania (Commonwealth). The term contractor includes a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other public entity in the Commonwealth.

##### 4.1 CONTRACTOR CERTIFICATIONS

- 4.1.1 The contractor certifies, in writing, for itself and its subcontractors required to be disclosed or approved by the Commonwealth, that as of the date of its execution of this Bid/Contract, that neither the Contractor, nor any such subcontractors, are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot so certify, then it agrees to submit, along with its Bid/Contract, a written explanation of why such certification cannot be made.
- 4.1.2 The Contractor also certifies, in writing, that as of the date of its execution of this Bid/Contract it has no tax liabilities or other Commonwealth obligations, or has filed a timely administrative or judicial appeal if such liabilities or obligations exist, or is subject to a duly approved deferred payment plan if such liabilities exist.
- 4.1.3 The Contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the Contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to inform the Commonwealth if, at any time during the term of the Contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or, to the best knowledge of the Contractor, any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.
- 4.1.4 The failure of the Contractor to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the Contract with the Commonwealth.
- 4.1.5 The Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.

- 4.1.6 Contractor may obtain a current list of suspended and debarred Commonwealth contractors by either searching the Internet at <http://www.dgs.state.pa.us/> or contacting the:

Department of General Services  
Office of Chief Counsel  
603 North Office Building  
Harrisburg, PA 17125  
Telephone No: (717) 783-6472  
FAX No: (717) 787-9138

## ARTICLE 5 - INSURANCE

### 5.1 CONTRACTOR'S INSURANCE

- 5.1.1 Before commencing the Work and as a condition precedent to payment, the Contractor shall procure and maintain the following insurance, in amounts not less than that specified for each type:

- 5.1.1.1 **Workers' Compensation** for statutory obligations imposed by workers' compensation and occupational disease laws. **Employers' Liability** insurance shall be provided with limits not less than:

- a) \$500,000 bodily injury by accident per accident
- b) \$500,000 bodily injury by disease policy limit
- c) \$500,000 bodily injury by disease per employee

- 5.1.1.2 **Business Automobile Liability** (bodily injury liability and property damage liability) for all owned, leased, hired, non-owned vehicles with limits not less than \$1,000,000 Combined Single Limit.

- 5.1.1.3 **Commercial General Liability** insurance including coverage for bodily injury, property damage, and personal and advertising injury, for premises and operations, products and completed operations, and contractual liability arising from all operations, written on an occurrence basis with limits not less than:

#### FOR PROJECTS UNDER \$1,000,000

- a) Per occurrence: \$1,000,000
- b) General aggregate: \$2,000,000
- c) Products/completed operations aggregate: \$2,000,000
- d) Personal and advertising injury limit: \$1,000,000
- e) Medical Expense Limit: \$10,000

The Contractor shall maintain completed operations liability insurance for not less than one year after Substantial Completion, or as required by the Contract Documents, whichever is longer.

#### FOR PROJECTS OVER \$1,000,000

- a) Per occurrence: \$5,000,000
- b) General aggregate: \$5,000,000
- c) Products/completed operations aggregate: \$5,000,000
- d) Personal and advertising injury limit: \$5,000,000
- e) Medical Expense Limit: \$10,000

The Contractor shall maintain completed operations liability insurance for not less than two years after Substantial Completion, or as required by the Contract Documents, whichever is longer.

5.1.1.4 **Professional Liability** insurance: Where professional services are being provided by licensed and non-licensed professionals, the Contractor shall obtain, either itself or through the Design Professional, professional liability insurance for claims arising from the negligent performance of professional services under this Agreement (including, but not limited to, acts, errors, or omissions of the company and its employees), which shall be written for not less than One Million dollars (\$1,000,000) or the total of the Design Fee portion of the Contract, whichever is greater, per claim and in the aggregate. The Professional Liability insurance shall include prior acts coverage sufficient to cover all services rendered by the Contractor. This coverage shall be continued in effect for 3 year(s) after the Date of Substantial Completion.

5.1.1.5 **Pollution Liability** insurance: If the nature of the Work involves professional services, evaluating, testing, remediation, abatement, removal, storage, and transportation of hazardous materials or substances or pollutants, the Contractor and those Subcontractors involved in such work shall obtain Pollution Liability insurance applicable to their work, for bodily injury and property damage with limits not less than:

FOR PROJECTS UNDER \$1,000,000

- a) Per occurrence or claim: \$1,000,000
- b) Aggregate: \$1,000,000

FOR PROJECTS OVER \$1,000,000

- a) Per occurrence or claim: \$5,000,000
- b) Aggregate: \$5,000,000

The Pollution Liability insurance must include coverage for completed operations extending three (3) years after final acceptance of the project by the owner or such longer period as the contract documents may require. The definition of property damage shall include clean-up costs. If the insurance is written on a claims-made basis, the policy retroactive date shall be prior to the start of the Contractor's / supplier's/ vendor's work, and the renewal policies shall maintain the same retroactive date.

5.1.2 The insurance limits required for the Employers' Liability, Business Automobile Liability and CGL coverage required under subsection 5.1.1 may be provided by a combination of primary and Excess or Umbrella Liability policies.

5.1.3 The Owner must be named on the Contractor's Commercial General Liability insurance as an additional insured.

5.1.4 The Contractor shall maintain in effect all insurance coverage required under Article 3 with insurance companies lawfully authorized to do business in the jurisdiction in which the Project is located.

- 5.1.5 If the Contractor fails to obtain or maintain any insurance coverage required under this Agreement, the Owner may purchase such coverage and charge the expense to the Design-Builder, or terminate this Agreement.
- 5.1.6 Insurance policies required under subsection 5.1 shall contain a provision that the insurance company or its designee must give the Owner written notice transmitted in paper or electronic format: (a) 30 days before coverage is non-renewed by the insurance company and (b) within 10 business days after cancelation of coverage by the insurance company.
- 5.1.7 Prior to commencing the Work and upon renewal or replacement of the insurance policies, the Contractor shall furnish the Owner with certificates of insurance until one year after Substantial Completion or longer if required by the Contract Documents. In addition, if any insurance policy required under subsection 5.1 is not to be immediately replaced without lapse in coverage when it expires, exhausts its limits, or is to be cancelled, the Contractor shall give Owner prompt written notice upon actual or constructive knowledge of such condition.
- 5.1.8 The Contractor's insurance shall be primary and non-contributory to the University's insurance.
- 5.1.9 Failure of the Contractor to procure, carry, and maintain the required insurance shall not relieve the Contractor, and any Subcontractor thereof, of any obligation or liability assumed under this Agreement, nor of any obligation or liability imposed by law.
- 5.1.10 Any self-insured retentions, deductibles, and exclusions in coverage in the insurance required shall be assumed by and at the sole risk of the Contractor.

## 5.2 PROPERTY INSURANCE

- 5.2.1 Before commencing the Work, the Owner shall obtain and maintain a Builder's Risk Insurance Policy upon the entire Project for the full cost of replacement at the time of loss. In addition to the Owner this insurance shall also name the Contractor, Subcontractors, Subsubcontractors, Material Suppliers and/or Design-Professional as named insureds. This insurance shall be written as a Builder's Risk Policy or equivalent form to cover risks of physical loss except those specifically excluded by the insurance policy, and shall insure (a) at least against the perils of fire, lightning, explosion, windstorm, hail, smoke, aircraft (except aircraft, including helicopter, operated by or on behalf of Contractor) and vehicles, riot and civil commotion, theft, vandalism, malicious mischief, debris removal, flood, earthquake, earth movement, water damage, wind damage, testing if applicable, collapse however caused, and (b) damage resulting from defective design, workmanship or material and material or equipment stored offsite, onsite or in transit. This insurance policy shall provide for a waiver of subrogation in favor of the named insureds. This insurance shall remain in effect until final payment has been made or until no person or entity other than the Owner has an insurable interest in the property to be covered by this insurance, whichever is sooner. Partial occupancy or use of the Work shall not commence until the Owner has secured the consent of the insurance company or companies providing the insurance coverage required in this subsection. Before commencing the Work, the Owner shall provide a copy of the property policy or policies obtained in compliance with this subsection.
- 5.2.1.1 The Builder's Risk property insurance has a deductible. If the Contractor suffers a Builders Risk loss covered by this insurance, the Contractor shall be responsible for the first \$25,000 of such deductible. If the Owner or insurer increases the required

minimum deductibles above the amounts so identified or if the Owner elects to purchase this insurance with voluntary deductible amounts, the Owner shall be responsible for payment of the additional costs not covered because of such increased or voluntary deductibles. Contractor's payment towards the deductible of a loss covered by this insurance will not exceed \$25,000 per occurrence.

5.2.2 If the Owner does not intend to purchase the property insurance required by this Agreement, including all of the coverages and deductibles described herein, the Owner shall give written notice to the Contractor and the Design-Professional before the Work is commenced. The Contractor may then provide insurance to protect its interests and the interests of the Subcontractors and Subsubcontractors, including the coverage of deductibles. The cost of this insurance shall be charged to the Owner in a Change Order. The Owner shall be responsible for all of Contractor's costs reasonably attributed to the Owner's failure or neglect in purchasing or maintaining the coverage described above.

5.2.2.1 If the Owner does not obtain insurance to cover the risk of physical loss resulting from Terrorism, the Owner shall give written notice to the Contractor before the Work commences. The Contractor may then provide insurance to protect its interests and the interests of the Subcontractors and Subsubcontractors against such risk of loss, including the coverage of deductibles. The cost of this insurance shall be charged to the Owner in a Change Order.

5.2.3 Owner and Contractor waive all rights against each other and their respective employees, agents, contractors, subcontractors and subsubcontractors, and design professionals for damages caused by risks covered by the property insurance except such rights as they may have to the proceeds of the insurance and such rights as the Contractor may have for the failure of the Owner to obtain and maintain property insurance in compliance with subsection 5.2.1.

5.2.4 RISK OF LOSS Except to the extent a loss is covered by applicable insurance, risk of loss or damage to the Work shall be upon the Contractor until the Date of Substantial Completion, unless otherwise agreed to by the Parties.

### 5.3 OWNER'S INSURANCE

5.3.1 BUSINESS INCOME INSURANCE The Owner may procure and maintain insurance against loss of use of the Owner's property caused by fire or other casualty loss.

5.3.2 OWNER'S LIABILITY INSURANCE The Owner shall maintain its own liability insurance for protection against claims arising out of the performance of this Agreement, including loss of use and claims, losses and expenses arising out of the Owner's acts or omissions.

## ARTICLE 6 - GOVERNING LAWS

### 6.1 GOVERNING LAW

This Contract shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of laws provisions) and the decisions of the Pennsylvania courts. The Contractor consents to the jurisdiction of any court of the Commonwealth of Pennsylvania and any federal courts in Pennsylvania, waiving any claim or defense that such forum is not convenient or proper. The Contractor agrees that any such court shall have jurisdiction over it, and consents to service of process in any manner authorized by Pennsylvania law.



## 6.2 COMPLIANCE WITH LAWS

The Contractor at all times shall observe and comply with all Federal, State and Local laws, by-laws, ordinances, codes and regulations, in any manner affecting the conduct of the Work or applying to any employees on the Project, as well as all orders or decrees which have been promulgated or enacted, or which may be promulgated or enacted during the progress of the Work, by any legal bodies or tribunals having authority or jurisdiction over the Work, materials, employees or the Contract.

Contractor shall indemnify and save harmless the Owner and all its officers, employees and agents from all suits, actions, or claims of any character or description brought for, made on account of, or arising from the violation of any such law, by-law, ordinance, regulation, order or decree.

## 6.3 TAXES

The Contractor shall pay sales, consumer, use and similar taxes for the Work on portions thereof provided by the Contractor which are legally enacted when bids are received, whether or not yet effective or merely scheduled to go into effect.

The Contractor is obligated to pay all Pennsylvania sales tax with the exception of those items for which an exemption might be claimed under Sales and Use Tax Regulation 150 (S31.11--SS31.16).

The Contractor shall agree to assign and transfer to the Owner all its rights to sales and use tax which may be refunded as a result of a claim for refund for material purchased in connection with this contract. The Contractor further agrees that it will not file a claim for refund for any sales or use tax which is the subject of this assignment. The Contractor shall incorporate this Owner's right to any and all Subcontracts.

## 6.4 ROYALTIES AND PATENTS

The Contractor shall pay all royalties and license fees, and defend all suits or Claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof, except that the Owner shall be responsible for all such royalties and license fees and loss when a particular design or process, or the product of a particular manufacturer or manufacturers is specified; provided, however, if the Contractor has reason to believe the design, process or product specified constitutes an infringement of a patent, the Contractor shall be responsible for such royalties, license fees and loss unless the Contractor promptly gives such information to the Owner and the Professional.

## 6.5 FEDERAL CLEAN AIR ACT

The Contractor agrees to fully protect, indemnify, hold harmless and defend the Owner against any and all liability, including assessed violation fines, for failure to comply with the Federal Clean Air Act [42 U.S.C. §7401 et seq., amended 1990], with regards to handling, venting, and/or disposing of any and all refrigerants used in the performance of the Work. A copy of employee(s) or subcontractor(s) Federal Certification numbers shall be provided to the Owner upon request.

## ARTICLE 7 - STANDARDS, SUBSTITUTIONS, AND SHOP DRAWINGS

### 7.1 STANDARDS

Whenever a material, product or process is specified by reference to a governmental, trade association or similar standard, it shall comply with the requirements of the latest publication thereof, and amendment thereto, in effect on the bid date. Such standards are as effectively part of the Contract Documents as if therein printed.

### 7.2 SUBSTITUTIONS

The various materials, products or equipment specified in the Specifications are mentioned for the purpose of establishing a standard of quality and cost. It is not the intent to limit to any one product, but rather to set up the same as the standard desired or acceptable and to establish a basis of equality.

Where trade or proprietary names, catalog numbers and manufacturers of materials, products or equipment are used or specified, whether or not followed by the words "or equal as approved by the Professional," materials, products or equipment to be equal in quality to that mentioned in the Specifications will be acceptable. It will be up to the Contractor, supplier and/or vendors to prove by the submission of proper data that their product is equal in quality to that specified.

These standards of quality were established and made only after careful study by the Professional and will, therefore, be strictly adhered to and all substandard materials, products or equipment will be rejected. Each Subcontractor, supplier and/or vendor shall in securing a substitution, submit a request in writing through the Contractor.

This request will then be forwarded to the Professional.

The Contractor shall obtain written approval of the Professional for all such substitutions of material, products, or equipment not less than five (5) working days before bids are due.

When submitting a request for a substitution, the requestor shall clearly indicate the item to be substituted, and shall include all calculations, catalog data, literature and/or drawings, so the substitution can be properly evaluated and processed in the shortest period of time.

Verbal communication regarding substitutions will not be construed as acceptance by the Professional and Owner, only written approvals on all substitutions will be valid.

The Professional will be the sole judge in evaluating and approving substitutions, and the Professional's decisions with the Owner's approval will be final.

No substitution for the above-named products or processes will be permitted after award of Contract, except as provided for below.

- (i) The Contractor may submit substitute products or processes for consideration, fully documented as stated above, and accompanied by Contractor's proposal the amount to be deducted from the Contract sum.
- (ii) A substitution submitted by the Contractor for reason that a product is not available will not be considered unless written proof is submitted that a firm order for the product was placed within 45 days after Notice to Proceed.

### 7.3 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES

Shop drawings, product data and samples are defined as follows:

- 7.3.1 Shop Drawings are drawings, diagrams, illustrations, schedules, performance charts, brochures and other data prepared by the Contractor, or any Subcontractor, manufacturer, supplier or distributor which illustrate some portion of the Work.
- 7.3.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.
- 7.3.3 Samples are physical examples furnished by the Contractor to illustrate materials, equipment or workmanship, and to assist in the establishment of standards by which the Work will be judged.

Shop Drawings, Product Data and Samples are not Contract Documents. The purpose of their submittal is to demonstrate how the Contractor proposes to comply with the information given and the design concept outlined in the Contract Documents.

- 7.3.4 Shop Drawing Submittal Schedule: Based on the priorities of the construction schedule, the Contractor shall submit a shop drawing submittal schedule on or before the Second Regular Job Conference.

The Professional shall review and check the shop drawing submittal schedule within fifteen (15) days of receipt from the Contractor.

The Contractor shall thereafter submit all shop drawings, product data and samples in accordance with the approved submittal schedule.

The Contractor shall review all shop drawings, product data and samples for compliance with the Contract Documents and shall certify that the Contractor has done so by stamp, or otherwise, affixed to each copy thereof. Submittal data presented without such certification will be returned without review or other comment, and any delay resulting therefrom will be the Contractor's responsibility. At the time of submission, the Contractor shall inform the Professional and Owner in writing of any deviation in the shop drawings, product data or samples from the requirements of the Contract Documents.

By approving and submitting shop drawings, product data and samples, the Contractor thereby represents that the Contractor has determined and verified all field measurements, field construction criteria, materials, catalog numbers and similar data, or will do so, and that the Contractor has checked and coordinated each shop drawing, product data and sample with the requirements of the Work and the Contract Documents and shall so certify as required above.

The Professional shall review, approve and process, subject to the right of review by the Owner, shop drawings, product data, samples, and other submissions of the Contractor as to compliance with the Contract Documents and for conformity to and harmony with the design concept of the Project and for compliance with the requirements of the Contract Documents. The Professional shall not approve any substitution of or deviation from specified materials and/or equipment without first obtaining the Owner's consent.

The Professional shall return the approved shop drawings or detailed notation for resubmission if required, within twenty-one (21) calendar days after receipt from the Contractor. The Professional shall act on any resubmissions within fifteen (15) calendar days of receipt thereof. A detailed log shall be maintained by the Professional as to time of receipt of the shop drawings and time of return with adequate notes as to their disposition.

If the Contractor considers any correction indicated on the revised shop drawings to constitute a change to the Contract Drawings or Specification, written notice shall be given promptly to the Owner and the Professional.

The Contractor shall make any corrections required and shall resubmit the required number of corrected copies of the shop drawings, product data, or new samples of materials until approved. The Contractor shall direct specific attention in writing to any new revisions other than the corrections requested on previous submissions. No Work requiring a shop drawing, product data, or sample submission shall be commenced until the submission has been approved. All such Work shall be in accordance with contract documents which shall include approved shop drawings, product data, and samples.

The approval of the shop drawings, product data or samples shall not relieve the Contractor of responsibility for any deviation from the requirements of the Contract Documents unless the Contractor has informed the Owner and the Professional in writing of such deviation at the time of submission and the Owner or the Professional has not objected to the specific deviation. The approval shall not relieve the Contractor from responsibility for errors or omissions in the shop drawings, product data, or samples. The approval of a separate item shall not indicate approval of an assembly in which the item functions.

The Owner reserves the right to review all Submittal data. No Work required by these submittals shall be commenced until the submittal has been approved by the Professional and Owner.

The approval of shop drawings, product data and samples by the Professional shall not be construed as a complete check, but will indicate only that the general method of construction and detailing is satisfactory. Approval of shop drawings, product data and samples will not relieve the Contractor of the responsibility for any error which may exist therein, and the Contractor shall be responsible for the dimensions and design of adequate connections, details, and the satisfactory construction of all Work.

Work done contrary to this procedure shall be at the risk and expense of the Contractor. All shop drawings used for fabrication and erection shall be those approved by the Professional, without change.

If change is found to be necessary on any approved shop drawings or sample, it shall be resubmitted to the Professional for review and approval.

The number of copies of shop drawings and other submittals will be established at the Initial Job Conference. The Contractor shall bear the cost of all required shop drawing reproductions and scanning, if applicable. The project may opt to use an electronic submittal process and the Contractor shall bear the cost of all submissions in the required electronic .pdf format.

If the project opts to use an electronic submittal process the Contractor is required to submit a complete set of approved electronic submittals in .pdf format organized by CSI division to the Owner at the time of Substantial Completion.

All Operation and Maintenance data is required to be submitted in electronic .pdf format to the Owner subsequent to approval by the Professional. The Contractor is required to organize information by system and CSI division. Exact requirements to be outlined by the Owner. One hard copy may also be requested by the Owner.

## ARTICLE 8 - KNOWLEDGE OF CONTRACT REQUIREMENTS

### 8.1 NOTICE

The Contractor, its Subcontractors and materialmen shall consult in detail the Project Manual, the General Conditions of the Contract, all Divisions and Sections of the Specifications, all Drawings, and all Addenda to the Project Manual for instructions and requirements pertaining to the Work, and at its and their cost shall provide all labor, materials, equipment and services necessary to furnish, install and complete the Work in strict conformance with all provisions thereof.

### 8.2 EXAMINATION AND CONDITIONS AT THE SITE

The Contractor is responsible for having visited the site and having ascertained and informed itself, its Subcontractors and materialmen, of all pertinent local conditions such as location, accessibility, and general character of the site or building, the character and extent of existing Work within and adjacent to the site, any other Work being performed thereon at the time of the submission of the Contractor's proposal, and subsurface conditions. Any failure to do so will not relieve the Contractor from responsibility for successfully performing the Work without additional expense to the Owner.

### 8.3 EXAMINATION OF CONTRACT DOCUMENTS

The Contractor will be held to have examined the Contract Documents, and Modifications thereto, as they may affect subdivisions of the Work and to have informed itself, its Subcontractors, Sub-subcontractors and materialmen of all conditions thereof affecting the prosecution of the Work.

The Scope of the Work for the Contract is not necessarily limited to the description of each section of the Specifications and the illustrations shown on the drawings. Include all minor items not expressly indicated in the Contract Documents, or as might be found necessary as a result of field conditions, in order to complete the Work as it is intended, without any gaps between the various subdivisions of Work of the Contractor, or between the Work of all Subcontractors.

The Contractor shall at once report to the Professional errors, inconsistencies or omissions discovered. The Contractor shall not be liable to the Owner or Professional for damage resulting from errors, inconsistencies or omissions in the Contract Documents unless the Contractor recognized such error, inconsistency or omission and failed to report it to the Professional. If the Contractor performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Professional, the Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction.

## 8.4 LABOR

The Contractor will be held to be thoroughly familiar with all conditions affecting labor in the location of the Project, including, but not limited to, unions, incentive pay, procurement, living and commuting conditions, and to have informed its Subcontractors and Sub-subcontractors thereof.

## ARTICLE 9 - CONTRACT ADMINISTRATION

### 9.1 GENERAL ADMINISTRATION

The Professional will provide general administration of the Contract beginning with the execution of the Agreement between the Contractor and the Owner until expiration of the Contractor's one year guarantee period against defective materials, equipment and/or workmanship.

The Professional shall advise and consult with the Owner and will have authority to act on behalf of the Owner to the extent provided in the Contract Documents. The extent of the Professional's duties and responsibilities and the limitations of the Professional's authority as outlined hereunder shall not be modified without written agreement between the Owner and the Professional.

### 9.2 CONTRACT ADMINISTRATION COMMUNICATIONS AND INTERPRETATION

9.2.1 Communications: The Owner assumes no responsibility for any understanding given or representation made orally by the Owner's agents prior to the execution of this Contract, unless such understanding(s) or representation(s) are expressly stated in the Contract. The Owner assumes no responsibility for any conclusions or interpretations made by the Contractor. Any failure by the Contractor to become acquainted with available information will not relieve the Contractor from responsibility for properly estimating the difficulty or cost of successfully performing the Work or mutually agreed changes thereto.

The Owner's instructions to the Contractor will generally be issued through the Professional except that the Owner reserves the right on appropriate occasions to issue instructions directly to the Contractor through the Owner's designated representative.

Communications by and with the Professional's consultants shall be through the Professional. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with the Owner's Separate Contractors shall be through the Owner.

All instructions affecting contract sum, contract time, or contract interpretation shall be confirmed expeditiously in writing with copies furnished to the Professional, the Owner's designated representatives, and the Contractor by the party issuing the instruction. No instruction affecting the Professional's design liability shall be issued without the Professional's prior written consent.

9.2.2 Interpretation: The Professional will be, in the first instance, the interpreter of the requirements of the Contract Documents. The Professional will, within a reasonable time, render such interpretation as the Professional may deem necessary for the proper execution or progress of the Work. All interpretations by the Professional shall be defined in writing and/or by drawing and shall be consistent with the intent of the Contract Documents. In its capacity as interpreter, the Professional will exercise its best efforts to insure faithful performance by the Contractor.

The Professional's decisions on matters relating to aesthetic effect will be final with the Owner's consent and if consistent with the intent expressed in the Contract Documents.

### 9.3 ACCESS TO AND INSPECTION OF THE WORK

The Professional, the Owner and their authorized representatives shall be provided full and safe access to the Work at all times by the Contractor for their observation and/or inspection of same.

The Professional, or an authorized and qualified representative, shall visit the project periodically as required by the Owner during periods of active construction, review the progress of the Work, and take such actions as in the Professional's judgment are necessary or appropriate to achieve the requirements of the Contract Drawings and Specifications in the Work of the Contractor, including advising the Owner as to particular matters to watch and guard against. The Professional will have its consultants visit the site periodically as required during their respective phases of the Work at such intervals as may reasonably be deemed necessary by the Owner and the Professional, to review their respective phases of the Work in order to achieve the requirements of the Contract Drawings and Specifications.

In addition to the above, the Professional shall be required to attend, at the determination of the Owner, any and all project site conferences dealing with interpretation of the Contract Documents.

The Owner shall be consulted by the Contractor on matters pertaining to the Work and shall transmit instructions of the Professional regarding the Work to the Contractor.

The Owner will, in addition to the Professional's inspection, inspect all Work under Contract. While the Owner will assist the Contractor in obtaining additional information in explanation of the Contract Documents and will serve as liaison between the Contractor and the Professional, the Owner is not empowered to authorize deviations from the Contract, except by a written modification as identified in Paragraph 1.1, nor to enter into the Contractor's area of responsibility for supervision and construction means, methods, techniques, sequences, procedures or coordination or for safety of persons and property. The fact that the Owner may have permitted faulty Work or Work not in accordance with the Contract Documents to be performed shall not relieve the Contractor from any responsibility to perform fully in accordance with the Contract.

The Work will be subject to inspection by the Owner and by representatives of the Professional as outlined above; however, such representatives are not authorized to make oral changes in any provision of the Drawings or Specifications except as provided in Article 11, Changes in the Work. Changes resulting from such inspections will be processed in the manner prescribed in Article 11. The absence or presence of the Owner shall not relieve the Contractor from any requirements of the Contract.

The Owner reserves the right to inspect, at their sources, all materials, supplies or services not manufactured or performed within the Contractor's on-site facility. Such inspection shall not constitute acceptance, nor shall it replace in any way the Contractor's responsibility for inspection or requirement to furnish acceptable materials.

The Owner will notify the Contractor of any non-compliance with the Contract Documents and the action required; and, the Contractor shall take immediate corrective action. If the Contractor fails or refuses to take prompt action, the Owner may issue an order stopping all or part of the Work until the Contractor takes appropriate action. No part of the time lost due to any such stop orders shall be made the subject of claim for extension of time or for excess costs or damages by the Contractor.

#### 9.4 SEPARATE CONTRACTS

The Owner reserves the right to award other, separate contracts in connection with other portions of the Project under these or similar conditions of the Contract and/or to perform construction or operations related to the Project with the Owner's own forces.

When separate contracts are awarded for different portions of the Project, the term "this Contractor" shall mean the Contractor referred to in these Contract Documents, and the term "Separate Contractor" shall mean the Contractor who executes each separate Owner/Contractor Agreement.

If part of this Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, this Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Professional apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Upon receipt of such report, the Professional shall make a determination as to the unsuitability of such other construction. Failure of this Contractor to so report shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as

to defects not then reasonably discoverable and which may develop in the Owner's or Separate Contractor's construction after the execution of this Contractor's Work.

This Contractor shall promptly remedy damage wrongfully caused by this Contractor to completed or partially completed construction or to property of the Owner or Separate Contractors. Should this Contractor cause damage to the Work or property of any Separate Contractor on the Project, this Contractor shall, upon due notice, endeavor to settle with such other Contractor by agreement. If such Separate Contractor sues the Owner on account of any damage alleged to have been so sustained, the Owner shall notify this Contractor who shall defend such proceedings and pay all costs in connection therewith, and if any judgment against the Owner arises therefrom, this Contractor shall pay or satisfy it.

This Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate this Contractor's construction and operations with theirs as required by the Contract Documents.

## 9.5 CLAIMS AND DISPUTES

9.5.1 Claims: Claims by either party must be made within twenty-one (21) days after occurrence of the event giving rise to such Claim or within twenty-one (21) days after the claimant first becoming aware or reasonably should have become aware of the condition giving rise to the Claim, whichever is later. Claims must be made by written notice. An additional Claim made after the initial Claim has been implemented by Change Order will not be considered unless submitted in a timely manner.

Pending final resolution of a Claim unless otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

9.5.2 Claims for Concealed or Unknown Conditions: If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or discoverable by the Contractor or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and no later than forty-eight (48) hours after first observance of the conditions. The Professional will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Professional determines that the conditions at the site are not materially different from those indicated in the Contract Documents or discoverable by the Contractor and that no change in the terms of the Contract is justified, the Professional shall so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within twenty-one (21) days after the Professional has given notice of the decision.

The failure by the Contractor to make the written notice and claims as provided in this subparagraph shall constitute a waiver by the Contractor of any claim arising out of or relating to such concealed or unknown condition.

9.5.3 Claims for Additional Cost: If the Contractor wishes to make Claim for an increase in the Contract Sum, the Contractor shall give written notice of such claim to the Professional and the Owner within twenty-one (21) days after the occurrence of the event or first appearance of the condition giving rise to such Claim and before proceeding to execute the Work. The failure by the Contractor to give such notice within the time permitted and prior to executing the Work shall constitute a waiver of claim for additional compensation. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Paragraph 10.5.

In connection with any claim by the Contractor against the Owner for compensation in excess of the Contract Price, any liability of the Owner for the Contractor's costs shall be strictly limited to direct costs incurred by the Contractor and shall in no event include indirect

costs or consequential damages of the Contractor. The Owner shall not be liable to the Contractor for claims of third parties, including Subcontractors, unless and until liability of the Contractor has been established therefore in a court of competent jurisdiction.

- 9.5.4 Claims for Additional Time: If the Contractor wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given to the Professional and the Owner at the time of any Change Order proposal submitted. If the Contractor believes additional time is involved for reasons including but not limited to (1) changes ordered to the Contract or because of (2) strikes, (3) lockouts, (4) fire, (5) unusual delay in transportation, (6) or any cause beyond the Contractor's control, which constitute a justifiable delay, Claim shall be filed in accordance with the procedure established herein.

If unusual inclement weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions prevented the execution of major and/or critical items of the Work.

Unusual inclement weather as used herein means unusually severe weather which is beyond the normal weather recorded and expected for the locality and/or the season or seasons of the year. Normal weather shall be determined based on records for the closest stations of the United States Environmental Data Service and for a period of ten (10) years.

Any claim for extension of time on account of labor strike or lock-out shall be supported by a certificate of all facts concerning the strike, including, but not limited to, the dates, the crafts(s) concerned, the reason for the strike, efforts to resolve the dispute, and efforts to minimize the impact of the strike on progress.

Any claim for extension of time on account of delays in transportation, or for failure of suppliers, shall be supported by a certificate of all the facts involved, demonstrating that the delays were beyond the Contractor's control and including, but not limited to, the Contractor's efforts to overcome such delays.

If the Contractor fails to make such claim as required in this subparagraph within twenty-one (21) days of such occurrence giving rise to the claim, any claim for extension of time shall be waived.

- 9.5.5 Injury or Damage to Person or Property: If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding twenty-one (21) days after first becoming aware of such injury or damage. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in Subparagraphs 9.5.3 or 9.5.4 respectively.

- 9.5.6 Decision of the Professional: Claims, including those alleging an error or omission by the Professional, shall be referred initially to the Professional for action as provided in Subparagraph 9.5.7. A decision by the Professional, as provided in Subparagraph 9.5.7, shall be required as a condition precedent to litigation of a Claim between the Contractor and Owner as to all such matters arising prior to the date final payment is due, regardless of (1) whether such matters relate to execution and progress of the Work or (2) the extent to which the Work has been completed. The decision by the Professional in response to a Claim shall not be a condition precedent to litigation in the event (1) the position of

Professional is vacant, (2) the Professional has not received evidence or has failed to render a decision within agreed time limits, (3) the Professional has failed to take action



required under Subparagraph 9.5.7 within thirty (30) days after the Claim is made, (4) forty-five (45) days have passed after the Claim has been referred to the Professional.

9.5.7 Resolution of Claims and Disputes: The Professional will review Claims and take one or more of the following preliminary actions within ten (10) days of receipt of a Claim: (1) request additional supporting data from the claimant, (2) submit a schedule to the parties indicating when the Professional expects to take action, (3) reject the Claim in whole or in part, stating reasons for rejection, (4) recommend approval of the Claim by the other party or (5) suggest a compromise. The Professional may also, but is not obligated to, notify the surety of the nature and amount of the Claim.

If a Claim has been resolved, the Professional will prepare or obtain appropriate documentation.

If a Claim has not been resolved, the party making the Claim shall, within ten (10) days after the Professional's preliminary response, take one or more of the following actions: (1) submit additional supporting data requested by the Professional, (2) modify the initial Claim or (3) notify the Professional that the initial Claim stands.

If a Claim has not been resolved after consideration of the foregoing and of further evidence presented by the parties or requested by the Professional, the Professional will notify the parties in writing that the Professional's decision will be made within seven (7) days. Upon expiration of such time period, the Professional will render to the parties the Professional's written decision relative to the Claim, including any change in the Contract Sum or Contract Time or both. If there appears to be a possibility of a Contractor's default, the Professional may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

## 9.6 CONTRACT TERMINATION

9.6.1 Termination by Contractor: If the Work is stopped for a period of ninety (90) days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing any of the Work under a contract with the Contractor, then the Contractor may, upon ten (10) additional days' written notice to the Owner and the Professional, terminate the Contract and recover from the Owner payment for all Work executed and for any loss sustained upon any materials, equipment, tools, construction equipment and machinery, including reasonable profit associated with such Work or losses and reasonable expenses resulting from such termination.

If the cause of the Work stoppage is removed prior to the end of the ten (10) day notice period, the Contractor may not terminate the Contract.

9.6.2 Termination by Owner: If the Contractor refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials to perform the Work, or disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is in violation of a provision of the Contract Documents, or fails to so prosecute the Work as to insure its completion, within the time, or any extension thereof, specified in this Contract, then the Owner may, without prejudice to any right or remedy and after giving the Contractor and its surety ten (10) days' written notice, terminate the Work and services of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor. In such case, the Contractor shall not be entitled to receive any further payment until the Work is finished.

If the Contractor shall generally not pay its debts as they become due or shall admit in writing its inability to pay its debts, or shall make a general assignment for the benefit of creditors; or if the Contractor shall commence any case, proceeding or other action seeking to have an order for relief entered in its behalf as debtor or to adjudicate it as bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or

composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its property; or if the Contractor shall take any action to authorize or in contemplation of any of the actions set forth above in this paragraph, then this Agreement will automatically terminate upon written notification by Owner to Contractor and its surety.

Should the surety fail to respond within fifteen (15) days following the date of the notice of termination given to the surety and fail to pursue completion of the Work with diligence acceptable to the Owner, the Owner may arrange for completion of the Work and deduct the cost thereof from the unpaid Contract Sum remaining, including the cost of additional

Professional services made necessary by such default or neglect, in which event no further payment shall then be made by the Owner until all costs of completing the Work shall have been paid.

If the unpaid balance of the Contract Sum exceeds the costs of finishing the Work, including compensation for the Professional's additional services made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor or its surety shall pay the difference to the Owner. This obligation for payment shall survive the termination of the Contract.

9.6.3 Termination for Convenience of Owner: Prior to, or during the performance of the Work, the Owner reserves the right to terminate the Contract for unforeseen causes including but not limited to court orders, loss of funding, acts of the federal government to discontinue the Work, etc., that may occur. Upon such an occurrence, the following procedures will be adhered to:

9.6.3.1 The Owner will immediately notify the Professional and the Contractor in writing, specifying the effective termination date of the Contract.

9.6.3.2 After receipt of the notice of termination, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due at that point in the Contract:

- (1) Stop all Work.
- (2) Place no further subcontracts or orders for materials or services.
- (3) Terminate all subcontracts.
- (4) Cancel all material and equipment orders as applicable.
- (5) Take action that is necessary to protect and preserve all property related to this Contract which is in the possession of the Contractor.

9.6.3.3 Within one hundred eighty (180) days of the date of the notice of termination, the Contractor shall submit a final termination settlement proposal to the Owner based upon costs up to the date of termination, reasonable profit on Work done only, and reasonable demobilization costs. If the Contractor fails to submit the proposal within the time allowed, the Owner may determine the amount due to the Contractor because of the termination and shall pay the determined amount to the Contractor.

9.6.3.4 If the Contractor and the Owner fail to agree on the settlement amount, the matter will be handled as a dispute through the procedures as outlined in Subparagraphs 9.5.6 and 9.5.7.

9.6.4 Written Notice: Written notice shall be considered to have been duly given if delivered in person to the individual or member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by United States mail to the last business address known.

## ARTICLE 10 - CONSTRUCTION

## 10.1 CONSTRUCTION SCHEDULE, FIELD MEASUREMENTS, AND SUPERVISION

10.1.1 Construction Schedule: The Contractor, promptly after being awarded the Contract, shall prepare and submit for approval by the Professional, a construction schedule for the Work. The schedule shall not exceed time limits as contained in the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

The construction schedule shall be coordinated with the Contractor's shop drawing submittal schedule.

10.1.2 Field Measurements: The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the Professional at once.

10.1.3 Supervision: The Contractor shall supervise and direct the Work. The Contractor shall be solely responsible for all construction means, methods, techniques, safety, sequences and procedures, and for coordinating all portions of the Work under the Contract. The Contractor shall be responsible for inspection of portions of Work already performed under this Contract to determine that such portions are in proper condition to receive subsequent Work.

The Contractor shall employ a competent superintendent who shall be in attendance at the Project site during the progress of the Work. The superintendent shall be satisfactory to the Owner, and shall not be changed except with the written approval of the Owner unless the superintendent leaves the employment of the Contractor. The superintendent shall represent the Contractor and shall have full authority to act on the Contractor's behalf. All communications given to the superintendent shall be as binding as if given to the Contractor. All oral communications affecting contract time, contract cost and contract interpretation will be confirmed in writing.

## 10.2 SUBCONTRACTS

As soon as practicable after the execution of the Contract, the Contractor shall submit to the Professional, for approval, a list of all Subcontractors, including those who are to furnish materials or equipment, that the Contractor and/or its major Subcontractors propose to employ in the construction of the Project. The Contractor shall not employ any Subcontractor to whom the Professional or Owner may have an objection.

A change in any approved Subcontractor or the addition of any new Subcontractor can only be made with the written approval of the Owner and Professional.

The Contractor agrees to bind every Subcontractor, and every Subcontractor agrees to be bound, by the terms of the Agreement, the General Conditions of the Contract, and the Drawings and Specifications insofar as they are applicable to the Subcontractor's respective portion of the Work. The Contractor shall further more fully inform each of its Subcontractors, prior to executing an agreement with, conformance with related documents and to submit Cost Estimates and Change Order proposals in complete and full analytical detail when so required or requested. The Contractor shall indemnify the Owner for any Subcontractor's claim which may result from the failure of the Contractor to incorporate the provisions of this Contract in the Contractor's agreements with any of its Subcontractors.

10.2.1 Contingent Assignment of Subcontracts: Each subcontract agreement for a portion of the Work is hereby assigned by the Contractor to the Owner provided that:

10.2.1.1 Assignment is effective only after termination of the Contract by the Owner for cause pursuant to Subparagraph 9.6.2 and only for those subcontract

agreements which the Owner accepts by notifying the Subcontractor in writing.

- 10.2.1.2 Assignment is subject to the prior rights of the surety obligated under bond relating to the Contract.

### 10.3 PERMITS, FEES, AND NOTICES

The Contractor shall secure and pay for, with the exception of the building permit, all other permits, fees, licenses and inspections necessary for the proper execution and completion of the Work which are customarily secured after execution of the Agreement and which are legally required.

It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Professional and Owner in writing, and necessary changes shall be accomplished by appropriate modification.

If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Professional and Owner, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs.

### 10.4 ACTS AND OMISSIONS

The Contractor shall be responsible for acts and omissions of the Contractor's employees and Subcontractors, their agents and employees and other persons performing portions of the Work under a contract with the Contractor.

The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Professional in the Professional's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

### 10.5 PROTECTION OF PERSONS AND PROPERTY

- 10.5.1 OSHA: It shall be the duty and responsibility of the Contractor and all its Subcontractors and their agents and employees, and other persons performing portions of the Work under a contract with the Contractor to be familiar and comply with all requirements of Public Law 91-596, the Occupational Safety and Health Act of 1970 (OSHA) and all amendments thereto, and to enforce and comply with all of the provisions of this Act.
- 10.5.2 Construction Safety Requirements: Contractor is obligated to adhere to the safety requirements as outlined in the following: Construction Safety Requirements, The Pennsylvania State University, Office of Physical Plant, Design and Construction Standards, Division 00, Sub-Section 00 01 00.
- 10.5.3 Emergencies: In an emergency affecting safety of persons or property, the Contractor shall act, at its discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be considered in accordance with Paragraph 9.5 and Article 11.
- 10.5.4 Precautions: The Contractor shall take appropriate precautions for safety of and shall provide necessary protection to prevent damage, injury or loss to:
  - 10.5.4.1 Employees of the Owner at the Work and other persons who may be affected thereby.
  - 10.5.4.2 The Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors.

10.5.4.3 Other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, all necessary safeguards for safety and protection, including posting of danger signs, installing project fencing, and other warnings against hazards.

When the use of explosives are necessary for execution of the Work and such use is approved by the Owner, the Contractor shall conform to the procedures specified.

The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

10.5.5 Hazardous Material: The Contractor and all its Subcontractors and their agents and employees and other persons performing portions of the Work under a contract with the Contractor shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic material.

If the Contractor encounters or suspects hazardous or toxic material, the Contractor shall advise the Owner immediately.

The Work in the affected area shall not be resumed by the Contractor until the hazardous material has been removed or rendered harmless by the Owner.

10.5.6 Property Damage Repair: The Contractor shall promptly remedy any damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Subparagraphs 10.5.4.2 and 10.5.4.3 caused in whole or in part by the Contractor, a Subcontractor, their agents and employees or any other persons performing portions of the Work under a contract with the Contractor.

## 10.6 MATERIALS AND WORKMANSHIP

The Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

All Work shall be executed in accordance with the Contract Documents, complete in all parts and in accordance with approved practices and customs, the finish specified and of the best workmanship. Unless otherwise specified, all materials and equipment incorporated in the Work under the Contract shall be new.

The Contractor shall provide, without extra charge, all incidental items required as a part of the Work, even though not particularly specified nor indicated and, if the Contractor has good reason for objecting to the use of a material, appliance, or method of construction as shown or specified, the Contractor shall register its objections to the Professional, in writing, sending a copy to the Owner; otherwise, the Contractor shall proceed with the Work, with the understanding that a satisfactory job is required.

10.6.1 Use of Site: The Contractor shall confine operations at the site to areas indicated in the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

Subject to prior approval of the Owner, the Contractor may use spaces within the building for shops and the storage of materials and equipment. Every space so used shall be repaired, patched, cleaned and restored to new condition by the Contractor.

10.6.2 Cutting and Patching: The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a Separate Contractor except with consent of the Owner and of such Separate Contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a Separate Contractor the Contractor's consent to cutting or otherwise altering the Work.

The Contractor or a Subcontractor or Sub-subcontractor requiring the cutting of openings in, or relocation of, Work installed by others shall have such openings cut and patched and relocations made by the trade skilled in performing the particular Work; and such cutting, patching and relocation shall be at the expense of the Contractor, Subcontractor, or Sub-subcontractor requiring the opening or relocation.

## 10.7 TESTS AND INSPECTIONS

Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of authorities having jurisdiction shall be made at an appropriate time. The Contractor shall schedule and coordinate such tests, inspections and approvals with the independent testing laboratory. The Owner or Owner's agent will retain the testing services unless indicated otherwise by the contract documents. The Contractor shall give the Professional timely notice of when and where tests and inspections are to be made so the Professional may observe such procedures.

In addition, the Owner or the Professional may require special inspection, testing or approval of material or Work for compliance with the requirements of the Contract Documents. Upon direction of the Owner and Professional, the Contractor shall promptly arrange for such special testing, inspection or approval procedure. Should the material or Work fail to comply with the requirements of the Contract Documents, the Contractor shall bear all costs of the testing, inspection or approval as well as the cost of replacement of unsatisfactory material or Work as provided by Paragraph 10.8; otherwise, the Owner shall bear such costs and an appropriate Change Order shall be issued.

## 10.8 UNCOVERING, REJECTION, AND CORRECTION OF WORK

10.8.1 Uncovering of Work: If any portion of the Work is covered contrary to the Professional's or the Owner's request or to the requirements of the Contract Documents, it must, if requested by the Professional or Owner, be uncovered for observation by the Professional or Owner. All costs of uncovering, recovering and replacing of Work not installed in accordance with the Contract Documents shall be borne by the Contractor and with no change in Contract Time.

Any other portion of the Work requested to be uncovered by the Professional or the Owner and found not to be in accordance with the Contract Documents shall be replaced by the Contractor. The Contractor shall bear all the costs of uncovering and replacing of such Work. If the portion of Work uncovered is found to be in accordance with the Contract Documents, the costs of uncovering and recovering shall be paid by the Owner by appropriate Change Order.

10.8.2 Rejection and Correction of Work: Any Work rejected by the Professional or the Owner or found not to be in accordance with the Contract Documents shall be corrected promptly by the Contractor at its cost and with no change in Contract Time.

The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or Separate Contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

If the Contractor fails to correct rejected or nonconforming Work, the Owner may correct it in accordance with Paragraph 10.9.

- 10.8.3 Acceptance of Nonconforming Work: If the Owner prefers to accept Work found not to be in accordance with the Contract Documents, the Owner may do so, in which case the Contract Sum will be reduced downward appropriately as determined by the Owner.

#### 10.9 OWNER'S RIGHT TO STOP AND/OR CARRY OUT THE WORK

- 10.9.1 Owner's Right to Stop the Work: If the Contractor fails to correct rejected or nonconforming Work as required in Subparagraph 10.8.2 or fails to carry out Work in accordance with the Contract Documents the Owner may, in writing, order the Contractor to stop the Work, or any portion thereof until the proper corrective action has been implemented.
- 10.9.2 Owner's Right to Carry Out the Work: If the Contractor fails or neglects to carry out the Work in accordance with the Contract Documents, or ceases Work for a period of seven (7) consecutive days, the Owner may, without prejudice to other remedies the Owner may have, perform or cause to be performed the Work.

In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the cost of performing Work pursuant to this subsection. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

#### 10.10 CONSTRUCTION FENCING

The General Contractor shall be required to provide a construction fence enclosing the area of the work within the central limits. Construction fencing is also required for trailers and stored material that may be located outside the area of work. Fencing material should be adequate to protect persons and property in accordance with the University's Contractor Safety Requirements as referenced in sub-Article 10.5.2.

#### 10.11 EXISTING UNDERGROUND UTILITIES

- 10.11.1 The existence and locations of underground utilities indicated on the drawings are not guaranteed. The Contractor shall investigate and verify in the field before starting any work.
- 10.11.2 All excavation within three (3) feet of any existing underground utility line shall be accomplished by hand labor. Extreme caution shall be used in this area to prevent any damage to existing facilities.
- 10.11.3 The Contractor shall adequately protect from damage (including shoring, if necessary), all underground utilities uncovered or exposed. The Contractor shall be responsible for all damage to existing underground utilities caused by its work and shall repair by a method approved by the University.
- 10.11.4 Utilities serving existing buildings, installation, or facilities shall not be interrupted until the Contractor has made the necessary arrangements with and has received approval from the University.
- 10.11.5 In the event that interruption of any existing utility service is necessary, the responsible Contractor shall be required to make all arrangements for shutdown and start-up of such service with the University representative.
- 10.11.6 The University Park campus is traversed by a 12" high pressure gas transmission line. The Contractor must follow precautions and requirements as outlined on the plan set. The routing of the gas line is located on the Office of the Physical Plant website ([opp.psu.edu](http://opp.psu.edu)). The Contractor must review the project location relative to the gas routing and coordinate all requirements with Columbia Gas.

#### 10.12 CLEANUP

The Contractor shall keep the premises clean at all times of dirt, rubbish and debris resulting from the Work, and shall remove rubbish and debris in metal containers at the end of each working day. The Contractor shall remove rubbish and cartons resulting from the installation of fixtures and equipment. Prior to substantial completion of the Work, the Contractor shall do the final cleaning and polishing of the

surfaces of the Contractor's installations as may be required by the various Specifications sections. The Contractor, in addition, shall employ a professional cleaning organization to remove all paint and stains from glass, and to wash all glass, throughout the Work, to clean and polish the finished surface of all fixtures, equipment and accessories and to vacuum clean all floors.

If the Contractor fails to clean up as outlined above, the Owner may do so and the cost thereof shall be charged to the Contractor.

### 10.13 CONSTRUCTION WASTE MANAGEMENT

The contractor is required to recycle and/or salvage 75% of construction, demolition, and land clearing waste. A waste management plan is to be developed for the project which outlines how you will achieve the required recycling rate, including materials to be recycled or salvaged, materials handling requirements, and how you will communicate the plan to your crews and subcontractors. The waste management plan is to be approved by the OPP Project Leader and submitted with the initial pay application.

At the end of the project, prior to final payment, the contractor is required to submit a calculation documenting that the project achieved a 75% diversion rate. Final payment will be held until this documentation is received. The documentation should include a tabulation of the total waste material, quantities diverted and the means by which diverted. A signature declaring that the requirements have been met must be included.

If the 75% diversion requirement is not met it will be documented on the contractor evaluation and this failure to meet the requirement is grounds for removal from the prequalification list.

If this project is attempting to achieve LEED certification, the LEED process to achieve the Construction Waste Management credit(s) supersedes this section.

## ARTICLE 11 - CHANGES IN THE WORK

### 11.1 CHANGES

Except as provided in this article, no order, oral statement or direction of the Professional or the Owner shall be treated as a Change Order or entitle the Contractor to an adjustment to the Contract Sum and/or the Contract Time.

The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and the Contract Time being adjusted accordingly. All such changes in the Work shall be authorized by Change Order and shall be performed under the applicable conditions of the Contract Documents. If such changes cause an increase or decrease in the Contractor's cost of, and/or time required for, performance of the Contract, an equitable adjustment shall be made and confirmed in writing in a Change Order.

### 11.2 CHANGE ORDERS

A Change Order is a written order to the Contractor, signed by the Owner and issued after execution of the Contract, authorizing a change in the Work and/or an adjustment in the Contract Sum and/or the Contract Time. The Contract Sum and the Contract Time may be changed only by Change Order. A Change Order signed by the Contractor indicates the Contractor's agreement therewith, including the adjustment in the Contract Sum and/or the Contract Time. The Contractor shall submit all change orders on the Owner's latest Change Order Summary and Cost Breakdown forms. Failure to submit the correct forms, or the required information, will result in rejection.

It is recognized by the parties hereto and agreed by them that the Specifications and Drawings may or may not be complete or free from errors, omissions and imperfections or require changes or additions in order for the Work to be completed in accordance with the Contract Documents and to the satisfaction of Owner and that, accordingly, it is the express intention of the parties, notwithstanding any other provisions in this Contract, that any errors, omissions or imperfections in such Specifications and Drawings or any changes in or additions to same or to the Work ordered by Owner and any resulting



delays in the Work or increases in Contractor's costs and expenses, shall not constitute or give rise to any claim, demand or cause of action of any nature whatsoever in favor of Contractor, whether for breach of contract, quantum merit, or otherwise; provided, however, that Owner shall be liable to Contractor for the sum stated to be due Contractor in any Change Order approved and signed by both parties, it being agreed hereby that such sum, together with any extension of time contained in said Change Order, shall constitute full compensation to Contractor for all costs, expenses and damages to Contractor, whether direct, consequential or otherwise in any ways incident to, arising out of, or resulting directly or indirectly from the Work performed by Contractor under such Change Order.

### 11.3 CHANGE ORDER CONTRACT SUM ADJUSTMENTS

Adjustments in the contract price for Work covered by a Change Order shall be computed on the basis of one or more of the following procedures. The Contractor shall have a maximum time of fourteen (14) calendar days to submit change order pricing, unless otherwise directed by the Owner.

11.3.1 Unit Prices: Unit prices as stated in the Contract Documents or subsequently mutually agreed upon by the Owner and the Contractor for the increase or reduction in the Work or portion thereof.

Unit prices shall be inclusive of all costs and shall be applied to units of measure as defined in the Contract Documents for each category of Work.

11.3.2 Lump Sum: A lump sum agreed upon by the Owner and Contractor based on an estimated cost of the increase or reduction in the Work properly itemized and supported by sufficient substantiating data to permit evaluation.

11.3.3 Actual Cost: The actual cost of the Work as determined from job records after the completion of the extra Work. For Work done under this paragraph, the Contractor shall maintain and submit to the Owner for review and approval as directed by the Owner, accurate accounts of all costs and supporting data. There shall be a lump sum cost-not-to-exceed agreed upon by the Owner and Contractor before this provision is used.

11.3.4 Net Cost of Increase or Reduction in the Work: The net cost of the estimated or actual cost of the Work shall be the actual or prorated cost of:

11.3.4.1 Labor at the prevailing rate of wages and fringe benefits.

11.3.4.2 Materials entering permanently into the Work, including delivery to the site.

11.3.4.3 The ownership or rental cost of construction equipment at actual cost, prorated for the time necessary for the Work.

11.3.4.4 Power and consumable supplies for the operation of power equipment at actual cost, prorated for the time necessary for the Work.

11.3.4.5 Insurance and bond costs only when supported by paid invoice.

11.3.4.6 When a change in the Work includes a category or categories of Work both added to and deleted from the Contract, the total quantities of added Work and of deleted Work shall be determined separately for each category and the appropriate Unit Price or net cost of the Work shall be the difference between the two total quantities.

11.3.5 Gross Cost of Increase or Reduction in the Work: The gross cost to the Owner for the estimated or the actual cost of the Work performed by the Contractor or Subcontractor shall include the net cost of the Work to the Contractor or Subcontractor plus an allowance for overhead and profit. The Contractor or Subcontractor **actually performing the Work** will be allowed a maximum markup for overhead and profit of 10% on labor, material and equipment (not including sales tax). Markup on sales tax is not permitted.

In addition to the markups allowed for labor, material, and equipment for the Contractor or

Subcontractor **actually performing the Work**, the Owner will pay a maximum aggregate markup of 10% for Subcontractor management on the **actual** cost of the Work performed regardless of tier. **No other costs or markups will be permitted by any other tiered Contractor or Subcontractor.**

- 11.3.6 If no mutual agreement can be reached between the Owner and the Contractor as to the method to complete the Work covered by a Change Order, the change in the Contract Price, if any, shall then be determined on the basis of the reasonable expenditures or savings of those performing, deleting, or revising the Work attributable to the change. In such case, the Contractor shall present, in such form and with such contents and details as the Owner requires, an itemized accounting of such expenditures or savings, plus appropriate supporting data for inclusion in a Change Order. Reasonable expenditures or savings shall be limited to the following: reasonable costs of materials, supplies, or equipment, including delivery costs; reasonable costs of labor and fringe benefits required by agreement or custom; reasonable rental or Owner costs of machinery and equipment exclusive of hand tools whether rented from the Contractor or others; actual costs of premiums for all bonds and insurance only when supported by paid invoice specific to change, permit fees, and sales, use, or other taxes related to the Work. In no event shall any expenditure or savings associated with the Contractor's home office or other non-job site overhead expense be included in any change in the Contract Price. Allowance for overhead and profit shall be determined in accordance with Subparagraph 11.3.5.
- 11.3.7 If a Change Order submission is rejected and the work is considered part of the Contract Price by the Professional and Owner, work shall be considered a claim to the Contract. Pending final resolution of a Claim, unless otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Contract. If the Contractor refuses to complete the work the Owner may proceed in accordance with Subparagraph 10.9.2.
- 11.3.8 Mark-up on bond premium increases and/or insurance premium increases due to Change Orders is not permitted.

#### 11.4 CHANGE ORDER CONTRACT TIME ADJUSTMENTS

Adjustments in the time required for performance of the Contract for Work covered by a Change Order shall be as agreed upon by the Owner and the Contractor as part of the Change Order. If the parties are unable to agree on the time extension or reduction, the Professional shall make a determination of the time extension or reduction to be allowed for a change.

#### 11.5 MINOR CHANGES IN THE WORK

The Professional, with the Owner's approval, will have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time. Such changes will be effected by written order which the Contractor shall carry out promptly.

#### 11.6 NOTICE TO SURETY: CONSENT

The Contractor shall notify and obtain the consent and approval of the Contractor's surety with reference to all Change Orders if such notice, consent or approval are required by the Contractor's surety or by law. The Contractor's execution of the Change Order shall constitute the Contractor's warranty to the Owner that the surety has been notified of and consents to such Change Order, and the surety shall be conclusively deemed to have been notified of such Change Order and to have expressly consented thereto.

#### 11.7 EFFECT OF EXECUTED CHANGE ORDER

The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work, this Contract as thus amended, the Contract Price and the Contract Time. The Contractor, by executing the Change Order, waives and forever releases any claim against the Owner for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order.

## ARTICLE 12 - CONTRACT COMPLETION TIME

### 12.1 NOTICE TO PROCEED

The Contract Time will begin on the date designated in the Notice to Proceed issued by the Owner and the Contractor is required to complete the Work in the time stated therein and in the Agreement.

### 12.2 PROGRESS AND COMPLETION

Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

### 12.3 DELAYS AND EXTENSIONS OF TIME

If the Contractor is delayed at any time in progress of the Work by an act or neglect of the Owner or Professional, or of an employee of either, or of a separate Contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unavoidable casualties or other causes beyond the Contractor's control, or by delay authorized by the Owner, or by other causes which the Professional determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Professional may determine with the Owner's approval.

Claims relating to time shall be made in accordance with applicable provisions of Subparagraph 9.5.

This Paragraph 12.3 does not preclude recovery of damages for delay by the Owner under other provisions of the Contract Documents.

Apart from extension of time, no payment or claim for damages shall be made to the Contractor as compensation for damages for any ordinary delays or hindrances from any cause whatsoever in the progress of the Work, notwithstanding whether such delay be avoidable or unavoidable.

### 12.4 COMPLETION AND LIQUIDATION DAMAGES

The Contractor shall substantially complete all of the Work included in the Contract Documents ready for the Owner's use and occupancy, in the Contract Time noted in the Contractor's Form of Proposal and the Agreement subject to extensions of Contract Time as provided in Paragraph 12.3 above. Pursuant to the provisions of Paragraph 12.4, for each calendar day's delay in said completion, the Contractor shall pay to the Owner as liquidated damages, and not as a penalty, the sum in the amount noted in the Project Manual and the Agreement. The Contractor and its surety shall be liable for the amount thereof.

Any delay attributable to lack of coordination or cooperation by or between the Contractor and its Subcontractor(s) will not be recognized by the Owner as the basis for any claim for increase in the Contract Sum or Contract Time.

### 12.5 SUBSTANTIAL COMPLETION

When the Contractor considers that the Work, or a portion thereof which the Owner wishes or agrees to accept separately, is substantially complete in accordance with Paragraph 1.15, the Contractor shall prepare for submission to the Professional and the Owner a list of items to be completed or corrected. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. When the Professional and the Owner, on the basis of an inspection, determine that the Work is substantially complete, the Professional or Owner will then prepare a Substantial Completion Inspection Report which shall establish the Date of Substantial Completion; shall state the responsibilities of the Owner and the Contractor for maintenance, heat, utilities, operation of permanent equipment, warranty and insurance; and shall fix the time within which the Contractor shall complete the items listed therein. The Substantial Completion Inspection Report shall be submitted to the Contractor as their notification of the responsibilities assigned to each of them.

The Contractor shall be charged with any cost for reinspection resulting from substantial differences between the Contractor's list of items to be completed or corrected and the list of items resulting from the Professional and Owner's inspection.

#### 12.6 PARTIAL OCCUPANCY

The Owner may take occupancy or make use of any substantially completed portion of the Work at any stage.

The procedures for the preparation of a list of items to be completed or corrected, Partial Occupancy Inspection and Inspection Reports are to be followed as outlined in Paragraph 12.5 above.

The Contractor agrees that the Owner may place and install as much material, equipment and furnishings as is possible during construction without interfering with orderly progress of the Work and prior to use and occupancy of the various parts of the Work, and further agrees that such placing and installation shall not evidence completion of the Work or signify the Owner's acceptance of the Work or any part thereof.

Partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

### ARTICLE 13 - PAYMENTS AND COMPLETION

#### 13.1 SCHEDULE OF VALUES

Upon execution of the Agreement between the Owner and the Contractor, the Contractor shall submit to the Professional for approval, a breakdown of the Contract price itemizing material and labor for the various classifications of the Work. The breakdown will be used as the basis for the progress payments of the Contract.

The schedule shall be tabulated into subcontracts and trades, for each of which the Quantity, Labor, Material, Other Cost and resulting final Cost per Unit shall be indicated. Labor, Material, Other Cost, Cost per Unit and Quantity generally include but are not necessarily limited to the following:

- 13.1.1        Quantity: Total number of items for each portion or Unit of Work as determined from the Contract Documents.
- 13.1.2        Labor: On-site labor required for the handling and installation of material from point of delivery at site.
- 13.1.3        Material: Cost of material as delivered to site for installation and erection.
- 13.1.4        Other Costs: Rental equipment, depreciation, site office, administration, overhead and profit, testing, survey and layout, samples and other costs not included in Labor and Material.
- 13.1.5        Cost per Unit: Total of Labor, Material and Other Cost for each portion or Unit of Work derived from the total Quantity of same.

The Contractor's monthly application for payment shall reflect the same items as outlined above. Unit costs shall be realistic for their part of the Work.

#### 13.2 APPLICATIONS FOR PAYMENT

Except as otherwise agreed in writing by the parties, and except for any amounts withheld or disallowed due to deficiencies or errors in documentation as defined in Paragraph 13.5 below, payment of progress and final payment applications shall be due from the Owner forty-five (45) days after the end of a billing period or forty-five (45) days after delivery of the Application for Payment, whichever is later.

Within ten (10) calendar days of the effective date hereof, the Contractor shall submit to the Owner and to the Professional a Schedule of Values allocating the Contract Price to the various portions of the Work. The Contractor's Schedule of Values shall be prepared in such form, with such detail, and supported by such data as the Professional or the Owner may require to substantiate its accuracy. The Contractor shall not imbalance its Schedule of Values nor artificially inflate any element thereof. The violation of this provision by the Contractor shall constitute a material breach of this Contract. The Schedule of Values shall be used only as a basis for the Contractor's Applications for Payment and shall only constitute such basis after it has been acknowledged in writing by the Professional and the Owner.

Ten (10) days before the date established for each progress payment submittal to the Owner, the Contractor shall submit to the Professional an itemized Application Certificate of Payment for construction activities completed in accordance with the approved Schedule of Values and which shall reflect the appropriate retainage as outlined.

Such application shall be supported by such data substantiating the Contractor's right to payment as the Owner may require, including weekly payroll certification (Commonwealth of Pennsylvania Department of Labor and Industry form LLC-25) if applicable.

Such applications may include requests for payment on account of changes in the Work which have been properly authorized by Change Order and fully executed.

Such applications shall not include requests for payment of amounts the Contractor does not intend to pay to a Subcontractor or material supplier because of a dispute or other reason.

The Contractor warrants that title to all Work covered by an Application Certificate of Payment will pass to the Owner at the time of payment. The Contractor further warrants that upon submittal of an Application Certificate of Payment all Work for which Certificates of Payment have been previously issued and payments received from the Owner shall be free and clear of liens, Claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a Claim by reason of having provided labor, materials and equipment relating to the Work.

This provision shall not be construed as relieving the Contractor from the sole responsibility for the care and protection of materials and Work upon which payments have been made or the restoration of any damaged Work, or as a waiver of the right of the Owner to require the fulfillment of all of the terms of the Contract.

Payments to the Contractor shall not be construed to release the Contractor or its surety from any obligations under this Contract.

A Certificate of Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

### 13.3 PAYMENTS FOR STORED MATERIAL

Payments on account of materials or equipment not incorporated in the Work but delivered and suitably stored at the site, or at some other location agreed upon in writing, will be made by the Owner subject to the following conditions:

- 13.3.1 Such materials or equipment shall have been fabricated or assembled specifically for the Project and delivered to storage no earlier than needed for the orderly progress of the Work as demonstrated by the Progress Schedule.
- 13.3.2 Title to such materials or equipment shall pass to the Owner pursuant to the Contractor's bill of sale which shall contain a guarantee of replacement thereof in the event of damage thereto or disappearance thereof due to any cause. Payment by the University for stored material will be made only upon receipt of the Contractor's paid-in-full invoice from the manufacturer or supplier.
- 13.3.3 In the case of off-site storage, the Contractor shall also provide consent of Surety to such payment and insurance of such materials or equipment against the perils set forth in Paragraph 5.3, both while in storage and during transportation to the site.

13.3.4 Raw materials or other materials or equipment readily duplicated or usable on other projects will be paid for only after the materials are incorporated into the Project.

13.3.5 Any other documentation as requested by the Owner.

#### 13.4 CERTIFICATES OF PAYMENT

Based on observations of the Work, the Professional, will either recommend, within seven (7) days (except as otherwise provided in Paragraph 13.5.8 below) after receipt from the Contractor, approval of payment on the Application Certificate of Payment or notify the Contractor and Owner in writing of the Professional's reason(s) for withholding its recommendation in whole or in part as provided in Paragraph 13.5 below.

The Professional shall mark the Certificate of Payment so as to indicate the disapproval of those items for which payment is to be withheld or disallowed and to indicate the corrected values, and shall forward the Certificate of Payment to the Owner for further processing, except that, should the Professional disapprove payment of the entire progress payment, the disapproved Certificate of Payment will be returned to the Contractor, with notification of said return provided to the Owner by the Professional. Approval of the Certificate of Payment shall constitute a representation by the Professional to the Owner that the Work has progressed to the point indicated on the Application, and that to the best of the Professional's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents.

The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the Professional. The issuance of a Certificate of Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate of Payment will not be a representation that the Professional has (1) made exhaustive or continuous on-site inspections to check the quality and quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum. Upon Substantial Completion of the Work and upon written request of the Contractor, certification by the Professional and approval of the Owner, retainage for the uncompleted portion of the Work may be reduced to a percentage mutually agreed upon by all parties.

Application/Certificate of payment applications MUST include the following: **(Failure to submit any of the following will deem the Application/Certificate of Payment incomplete)**

#### First Payment

- Application/Certificate of Payment (Must be signed by the Contractor, the OPP Representative, and if applicable the AE Representative, the correct PSU Project Number must be provided on the form)
- Schedule of Values / Continuation Sheet
- Steel Certifications – If no steel was used, fill out the form and choose option 1A
- OSHA 30-Hour Certified
- Waste Management Plan
- Site Specific Safety Plan
- Weekly Payroll Certification
- PSU Diverse Business Utilization Report **(If no participation, return form stating so) - not required for DGS projects**
- Small Diverse Business Utilization Report (SDBUR) **(If no participation, return form stating so) - for DGS projects only**

## Progress Payment

- Application/Certificate of Payment (Must be signed by the Contractor, the OPP Representative, and if applicable the AE Representative, the correct PSU Project Number must be provided on the form)
- Schedule of Values / Continuation Sheet
- Steel Certifications – If no steel was used, fill out the form and choose option 1A
- Weekly Payroll Certification
- PSU Diverse Business Utilization Report (**If no participation, return form stating so**) - **not required for DGS projects**
- Small Diverse Business Utilization Report (SDBUR) (**If no participation, return form stating so**) **for DGS projects only**

### 13.5 WITHHOLDING OF PAYMENT

The Professional or the Owner may decline to make payment, may withhold funds, and if necessary, demand the return of some or all of the amounts previously paid to the Contractor or nullify that part of any Application Certificate of Payment to such extent as may be necessary to protect the Owner from loss because of any of the following:

- 13.5.1 Retainage of six (6) percent of the amount otherwise due shall be withheld from each progress payment before Substantial Completion. Owner may, in its sole discretion, reduce the amount to be retained at any time.
- 13.5.2 Defective Work not yet remedied by the Contractor or defective work, in the opinion of the Owner, not likely to be remedied by the Contractor.
- 13.5.3 Third party claims filed or reasonable evidence indicating probable filing of such claims.
- 13.5.4 Failure of the Contractor to make payments promptly and properly to Subcontractors or others.
- 13.5.5 Any evidence that the Work cannot be completed for the unpaid balance of the Contract Sum.
- 13.5.6 Damage to the Owner, another Contractor, or any third party.
- 13.5.7 Any evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay.
- 13.5.8 Failure to carry out the Work in accordance with the Contract Documents.
- 13.5.9 Errors in Documentation: If a Certificate of Payment is filled out incorrectly or incompletely, or if there is any other defect or impropriety in a Certificate of Payment, the Professional or Owner shall give written notice to the Contractor within ten (10) working days after receipt of the Certificate, and the Owner shall make payment for the correct amount to the Contractor provided the Certificate of Payment is approved by the Professional in accordance with this Agreement.
- 13.5.10 Lack of required submissions as outlined in the General Conditions of the Contract.

If the Contractor and Professional cannot agree on a revised amount, the Professional will promptly issue a Certificate of Payment for the amount which the Professional is able to recommend to the Owner.

When the above reason(s) for withholding recommendation or nullifying any part of a Certificate of Payment are removed, recommendation and payment will be made for amounts previously withheld.

### 13.6 PAYMENTS TO SUBCONTRACTORS

Upon receipt of payment from the Owner, the Contractor shall promptly pay each Subcontractor, out of the amount paid to the Contractor the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in similar manner.

The Professional or Owner will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Professional and Owner on account of portions of the Work done by such Subcontractor.

Neither the Owner nor Professional shall have an obligation to pay or to see to the payment of money to a Subcontractor.

Payment to material suppliers by the Contractor shall be treated in a manner similar to that provided above.

### 13.7 FAILURE OF PAYMENT

If the Professional does not recommend approval of payment, through no fault of the Contractor, within fourteen (14) days after receipt of the Contractor's Application of Payment, or if the Owner does not pay the Contractor within a reasonable time the amount certified by the Professional, then the Contractor may, upon seven (7) additional days' written notice to the Owner and Professional, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, which shall be accomplished as provided in Article 11.

### 13.8 FINAL COMPLETION AND FINAL PAYMENT

13.8.1 Notification: When the Work is completed, the Contractor shall notify the Professional and Owner in writing that the Work will be ready for final inspection on a definite date. Upon verification by the Professional that the Work is ready for final inspection and acceptance, the Professional and Owner will make a final inspection and, when the Work is found acceptable under the Contract Documents and the Contract is fully performed, the Owner will make final payment to the Contractor.

13.8.2 Final Payment Documentation: The final payment for the remaining retained percentage shall not become due until the Contractor submits to the Professional for transmittal to the Owner the following: **(Failure to submit any of the following will deem the Application/Certificate of Payment incomplete)**

- Application/Certificate of Payment (Must be signed by the Contractor, the OPP Representative, and if applicable the AE Representative, the correct PSU Project Number must be provided on the form)
- Certificate of Completion
- Schedule of Values / Continuation Sheet
- Steel Certifications – If no steel was used, fill out the form and choose option 1A
- Contractor's Affidavit for Final Payment - an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might in any way be responsible, have been paid or will be paid or otherwise satisfied within thirty (30) days after receipt of final payment from the Owner
- Waiver of Mechanics Liens
- Consent of Surety to Final Payment
- Construction Waste Management Documentation – If no participation, send form back stating so
- OSHA Recordable Accident Data – If no accidents were recorded, send form back stating so



- Weekly Payroll Certification
- PSU Diverse Business Utilization Report **(If no participation, return form stating so) - not required for DGS projects**
- Small Diverse Business Utilization Report (SDBUR) **(If no participation, return form stating so) - for DGS projects only**
- All maintenance manuals, as-built drawings and warranty certificates that may be required. If any third party fails or refuses to provide a release of claim or waiver of lien as required by Owner, the Contractor shall furnish a bond satisfactory to the Owner to indemnify the Owner from liability

13.8.3 Final Payment: Acceptance of final payment by the Contractor shall constitute a waiver of all claims by the Contractor except those specifically enumerated in writing previously and identified in writing as unsettled at the time of final payment.

The making of final payment shall constitute a waiver of Claims by the Owner except those arising from any of the following:

- 13.8.3.1 Liens, Claims, security interests or encumbrances arising out of the Contract and unsettled.
- 13.8.3.2 Failure of the Work to comply with the requirements of the Contract Documents.
- 13.8.3.3 Terms of special warranties required by the Contract Documents.

## ARTICLE 14 – PREVAILING WAGE ACT AND ENHANCED MINIMUM WAGE

### 14.1 PREVAILING WAGE ACT

- 14.1.1 The Contractor is hereby notified that this Contract is subject to the provisions, duties, obligations, remedies and penalties of the Pennsylvania Prevailing Wage Act, Act No. 442, August 15, 1961 (P.L. 987), and as amended August 9, 1963, Act No. 342; and said Act is incorporated herein by reference as fully as though the same were here set forth at length.
- 14.1.2 It shall be the duty of every public body that proposes the making of a contract for any project of public work to determine from the secretary the prevailing minimum wage rates which shall be paid by the contractor to the workmen upon such project. Reference to such prevailing minimum rates shall be published in the notice issued for the purpose of securing bids for such project of public work. Whenever any contract for a project of public work is entered into, the prevailing minimum wages as determined by the secretary and subject to the enhanced minimum wage provisions contained hereunder shall be incorporated into and made a part of such contract and shall not be altered during the period such contract is in force.
- 14.1.3 Not less than the prevailing minimum wages as determined hereunder shall be paid to all workmen employed on public work.
- 14.1.4 Every contractor and subcontractor shall keep an accurate record showing the name, craft and the actual hourly rate of wage paid to each workman employed by him in connection with public work, and such record shall be preserved for two years from the date of payment. The record shall be open at all reasonable hours to the inspection of the public body awarding the contract and to the secretary.

### 14.2 ENHANCED MINIMUM WAGE

Contractor agrees to pay no less than \$12.00 per hour to its employees for all hours worked directly performing the services called for in this Contract/Lease, and for an employee's hours performing ancillary services necessary for the performance of the contracted services or lease when such employee spends at least twenty per cent (20%) of their time performing ancillary services in a given work week.

### 14.3 ADJUSTMENTS

Beginning July 1, 2019, and annually thereafter, the minimum wage rate shall be increased by \$0.50 until July 1, 2024, when the minimum wage reaches \$15.00. Thereafter, the minimum wage rate would be increased by an annual cost-of-living adjustment using the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) for Pennsylvania, New Jersey, Delaware, and Maryland. The applicable adjusted amount shall be published in the Pennsylvania Bulletin by March 1 of each year to be effective the following July 1.

### 14.4 EXCEPTIONS

These Enhanced Minimum Wage Provisions shall not apply to employees:

- 14.4.1 Exempt from the minimum wage under the Minimum Wage Act of 1968;
- 14.4.2 Covered by a collective bargaining agreement;
- 14.4.3 Required to be paid a higher wage under another state or federal law governing the services, including the Prevailing Wage Act and Davis-Bacon Act; or,
- 14.4.4 Required to be paid a higher wage under any state or local policy or ordinance.

### 14.5 NOTICE

Contractor shall post these Enhanced Minimum Wage Provisions for the entire period of the contract conspicuously in easily-accessible and well-lighted places customarily frequented by employees at or near where the contracted services are performed.

### 14.6 RECORDS

Contractor must maintain and, upon request and within the time periods requested by the Commonwealth, furnish all employment and wage records necessary to document compliance with these Enhanced Minimum Wage Provisions.

### 14.7 SANCTIONS

Failure to comply with these Enhanced Minimum Wage Provisions may result in the imposition of sanctions, which may include, but shall not be limited to, termination of the contract, nonpayment, debarment or referral to the Office of General Counsel for appropriate civil or criminal referral.

### 14.8 SUBCONTRACTORS

Contractor shall include the provisions of these Enhanced Minimum Wage Provisions in every subcontract so that these provisions will be binding upon each subcontractor.

## ARTICLE 15 - CONTRACT WARRANTY PERIOD

### 15.1 WARRANTY

Except as otherwise specified, the Contractor warrants and guarantees all Work against defects in materials, equipment and/or workmanship for a period of one (1) year from the date of Substantial Completion of the entire Project or Partial Occupancy of any portion thereof and for that period of time noted in any special or extended warranty.

This period of one (1) year shall be extended with respect to portions of the Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work.

If building commissioning work is not complete at the time of substantial completion, the warranty period for all related building systems may be extended by the Owner. Documentation by the Owner shall be submitted at the time of substantial completion indicating the building systems not yet properly

commissioned. Once the building systems have been completed to the satisfaction of the Owner, a letter will be issued by the Owner indicating the listing of building systems and equipment with the revised warranty period. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation or normal wear and tear under normal usage.

This warranty and guarantee is not the exclusive remedy of the Owner but is in addition to the general obligation of the Contractor to faithfully perform the Contract, and it in no way limits the responsibility of the Contractor for faulty materials or workmanship.

### 15.2 CORRECTION OF DEFECTS

Upon receipt of written or verbal notice from the Owner or Professional of the discovery of any defects in materials, equipment and/or workmanship, the Contractor shall remedy the defects and replace any property damaged therefrom occurring within the warranty and guarantee period. Any defects discovered in materials, equipment and/or workmanship which are included in any manufacturer's written warranty certificate shall be remedied in accordance with the manufacturer's recommendations and procedures.

If any of the Work is found to be not in accordance with the requirements of the Contract Documents, including substitutions not properly approved and authorized, such Work will be considered defective and shall be corrected promptly by the Contractor after receipt of notice from the Owner or Professional.

If the Contractor, after notice, fails to proceed promptly and remedy such defects within thirty (30) days or within another period of time which has been agreed to in writing, in compliance with the terms of the warranty and guarantee, the Owner may have the defects corrected and the Contractor and its surety shall be liable for all expenses incurred.

### 15.3 ONE-YEAR INSPECTION

Prior to the expiration of the one (1) year guarantee period against defective materials, equipment and/or workmanship, the Professional and Owner shall conduct an inspection to determine any other defects in material, equipment and/or workmanship not previously noticed and corrected as outlined in Paragraph 15.2 above.

Should any additional defects be discovered, the Contractor, upon receipt of written notice from the Professional or Owner, shall promptly remedy the defects and replace any property damaged therefrom.

If the Contractor, after notice, fails to proceed promptly and remedy such defects within thirty (30) days or within another period of time which has been agreed to in writing, in compliance with the terms of the warranty and guarantee, the Owner may have the defects corrected and the Contractor and its surety shall be liable for all expenses incurred.

## ARTICLE 16 - EQUAL EMPLOYMENT OPPORTUNITY

### 16.1 NON-DISCRIMINATION AND SEXUAL HARASSMENT CLAUSE

During the term of this Contract, Contractor agrees as follows:

16.1.1 Contractor shall not discriminate or retaliate against any employee, applicant for employment, any independent Contractor or any other person because of race, color, religious creed, ancestry, national origin, service in the uniformed services (as defined in state and federal law), veteran status, age, sex, sexual orientation, marital or family status, pregnancy, pregnancy-related conditions, physical or mental disability, gender, perceived gender, gender identity, genetic information or political ideas, or any other basis prohibited by the Pennsylvania Human Relations Act (PHRA) or applicable federal law.

Contractor shall take affirmative action to ensure that applicants are employed, and that employees or agents are treated during employment, without regard to their race, color, religious creed, ancestry, national origin, service in the uniformed services (as defined in state and federal law), veteran status, age, sex, sexual orientation, marital or family status, pregnancy, pregnancy-related conditions, physical or mental disability, gender,

perceived gender, gender identity, genetic information or political ideas, or any other basis prohibited by law. Such affirmative action shall include, but is not limited to, the following: Employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training.

Contractor shall post in conspicuous, well-lighted places, available to employees, agents, applicants for employment and other persons, notices to be provided by the contracting agency setting forth the provisions of this non-discrimination clause.

- 16.1.2 Contractor shall in solicitations or advertisements placed by it or on its behalf state all qualified applicants will receive consideration for employment without regard to race, color, religious creed, ancestry, national origin, age, or sex.
- 16.1.3 Contractor shall send each labor union or workers' representative with which it has a collective bargaining agreement or other contract or understanding, a notice advising said labor union or workers' representative of its commitment to this non-discrimination clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment. Similar notices shall be sent to every other source of recruitment utilized by Contractor.
- 16.1.4 The Contractor and each subcontractor represents that it is presently in compliance with and will maintain compliance with all applicable federal, state, and local laws, regulations and policies relating to nondiscrimination and sexual harassment. The Contractor and each subcontractor further represents that it has filed a Standard Form 100 Employer Information Report ("EEO-1") with the U.S. Equal Employment Opportunity Commission ("EEOC") and shall file an annual EEO-1 report with the EEOC as required for employers' subject to *Title VII of the Civil Rights Act of 1964*, as amended, that have 100 or more employees and employers that have federal government contracts or first-tier subcontracts and have 50 or more employees. The Contractor and each subcontractor shall, upon request and within the time periods requested by the Commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to their books, records, and accounts, including EEO-1 reports, and permit access to their books, records, and accounts by the contracting agency and the Bureau of Diversity, Inclusion and Small Business Opportunities for purpose of ascertaining compliance with provisions of this Nondiscrimination / Sexual Harassment Clause.
- 16.1.5 It shall be no defense to a finding of a non-compliance with Executive Order 1972-1 or any regulations issued by the Pennsylvania Human Relations Commission or this non-discrimination clause that recipient had delegated some of its employment practices to any union, training program or other source of recruitment which prevents it from meeting its obligations.
- 16.1.6 Where the practices of a union or any training program or other source of recruitment will result in the exclusion of minority group persons, so that Contractor will be unable to meet its obligations under Executive Order 1972-1 or any regulations issued by the Pennsylvania Human Relations Commission or this non-discrimination clause, the Contractor shall then employ and fill vacancies through other employment procedures without regard to race, color, religious creed, ancestry, national origin, sex, or age, taking affirmative action to obtain qualified minority group persons.
- 16.1.7 Contractor shall comply with all rules, regulations and orders issued by the Governor, the Attorney General, and the Human Relations Commission relating to laws, prohibiting discrimination in hiring or employment opportunities. In the event of Contractor's non-compliance with the non-discrimination clause of this Contract or with any such rules, regulations or orders, this Contract may be cancelled, terminated or suspended in whole or in part, and recipient may be declared ineligible for further Commonwealth contracts, and such other sanctions may be imposed and remedies invoked as provided by rule, regulation or order of the Governor, Attorney General, or the Human Relations Commission, or as otherwise provided by law.

- 16.1.8 Contractor shall furnish all information and reports required by the Governor, Attorney General, and the Human Relations Commission and will permit access to its books, records and accounts by the contracting agency and the Human Relations Commission, for purposes of investigation to ascertain compliance with provisions of Executive Order 1972-1 or any regulations issued by the Pennsylvania Human Relations Commission or this non-discrimination clause.
- 16.1.9 Contractor shall actively recruit minority Subcontractors or Subcontractors with substantial minority representation among their employees.
- 16.1.10 Contractor shall include the provisions of this Non-Discrimination and Sexual Harassment Clause in every Subcontract or Purchase Order, so that such provisions will be binding upon each Subcontractor or vendor or other person.
- 16.1.11 The terms used in this non-discrimination clause shall have the same meaning as in the Contract Compliance Regulations issued by the Pennsylvania Human Relations Commission, 16 Pa. Code Ch. 49.
- 16.1.12 The Contractor's and each subcontractor's obligations pursuant to these provisions are ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor and each subcontractor shall have an obligation to inform the Commonwealth if, at any time during the term of the contract, it becomes aware of any actions or occurrences that would result in violation of these provisions.
- 16.1.13 The Commonwealth may cancel or terminate the contract and all money due or to become due under the contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.

#### ARTICLE 17 – AMERICANS WITH DISABILITIES ACT

Pursuant to federal regulations promulgated under the authority of The Americans with Disabilities Act, 28 C.F.R. § 35.101 et seq., the Contractor understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this contract or from activities provided for under this contract. As a condition of accepting and executing this contract, the contractor agrees to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. § 35.130, and all other regulations promulgated under Title II of The Americans with Disabilities Act which are applicable to all benefits, services, programs, and activities provided by the Commonwealth through contracts with outside contractors.

The contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth as a result of the Contractor's failure to comply with the provisions of paragraph 1 above.

#### ARTICLE 18 – PERFORMANCE AND PAYMENT BONDS

At the time of signing the Contract and before it becomes effective, the Contractor and its surety, acceptable to the Owner, shall execute the following bonds which shall become binding upon the award of the Work to the Contractor:

A performance bond at 100 percent of the contract amount, conditioned upon the faithful performance of the contract in accordance with the plans, specifications and conditions of the contract. Such bond shall be solely for the protection of the Commonwealth Agency.

A payment bond at 100 percent of the contract amount. Such bond shall be solely for the protection of claimants supplying labor or materials to the prime contractor to whom the contract was awarded, or to any of its subcontractors, in the prompt payment of all such material furnished or labor supplied or

performed in the prosecution of the work. "Labor or materials" include public utility services and reasonable rentals of equipment, but only for the periods when the equipment rented is actually used at the site.

The Bonds shall be written by a Surety authorized to do business in the Commonwealth of Pennsylvania and shall be delivered to the Owner prior to award of Contract and within three (3) days of the Owner's request thereof. The Attorney-in-Fact who signs the Bonds must be a resident of the Commonwealth of Pennsylvania and shall file with each Bond a certified and effectively dated copy of the Attorney-in-Fact's Power of Attorney.

The Contractor shall pay all premiums for all bonds.

Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor or Owner shall promptly furnish a copy of the bonds or shall permit a copy to be made.

#### ARTICLE 19 - INDEMNITY

To the fullest extent permitted by law, the Contractor shall appear for and defend, indemnify, and hold harmless the Owner, Professional, Professional's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, of whatsoever nature caused in whole or in part by the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Article 19.

In claims against any person or entity indemnified under this Article 19 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Article 19 shall not be limited by a limitation on amount or type of damages, compensation or benefits payment by or for the Contractor or a Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

The obligations of the Contractor under this Article 19 shall not extend to the liability of the Professional, the Professional's consultants, and agents and employees of any of them arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the Professional, the Professional's consultants, and agents and employees of any of them, provided such giving or failure to give is the primary cause of the injury or damage.

The status of the Contractor in the Work to be performed by it under this Contract is that of an Independent Contractor and as such the Contractor shall properly safeguard against any and all personal injury including death, or damage to the public, to public and private property, materials, and things; and as such, the Contractor alone shall be responsible for any and all damage, loss, or injury to persons or property that may arise or be incurred in or during the conduct or progress of said Work without regard to whether or not the Contractor, its Subcontractors, Agents, or Employees have been negligent; and the Contractor shall keep the Owner and Professional indemnified from and discharged of and from any and all responsibility and liability for risks and casualties of every description, as provided in the Agreement between the Owner and the Contractor.

#### ARTICLE 20 – ENVIRONMENTAL STATEMENT

##### 20.1 STATEMENT

According to the Commonwealth Procurement Code, Act of May 15, 1998, P.L. 358, No. 57, 62 Pa. C.S. §§ 101-4509, all invitations for bid and Requests for Proposals for construction projects issued by any government agency shall set forth any provision of Federal and State statutes, rules and regulations dealing with the prevention of environmental pollution and the preservation of public natural resources that affect the projects. The Bidder or Proposer is hereby notified that this Project is subject to those

statutes, rules, and regulations listed in the schedules identified below, and the Work must be carried out in compliance with these statutes, rules and regulations.

## 20.2 STATE LAW

- 20.2.1 **Purdon's Statutes - Title 3 (Agriculture)**
- 20.2.2 **Purdon's Statutes - Title 16 (Counties)**
- 20.2.3 **Purdon's Statutes - Title 18 (Crimes and Offenses)**
- 20.2.4 **Purdon's Statutes - Title 24 (Education)**
- 20.2.5 **Purdon's Statutes - Title 30 (Fish)**
- 20.2.6 **Purdon's Statutes - Title 32 (Forests, Waters and State Parks)**
- 20.2.7 **Purdon's Statutes - Title 34 (Game)**
- 20.2.8 **Purdon's Statutes - Title 35 (Health and Safety)**
- 20.2.9 **Purdon's Statutes - Title 36 (Highways and Bridges)**
- 20.2.10 **Purdon's Statutes – Title 37 APPENDIX (Historical & Museums)**
- 20.2.11 **Purdon's Statutes - Title 43 (Labor)**
- 20.2.12 **Purdon's Statutes - Title 52 (Mines and Mining)**
- 20.2.13 **Purdon's Statutes - Title 58 (Oil and Gas)**
- 20.2.14 **Purdon's Statutes Title 63 (Professions and Occupations)**
- 20.2.15 **Purdon's Statutes - Title 64 (Public Lands)**
- 20.2.16 **Purdon's Statutes - Title 71 (State Government)**
- 20.2.17 **Purdon's Statutes - Title 72 (Taxation and Fiscal Affairs)**
- 20.2.18 **Purdon's Statutes – Title 73 (Trade and Commerce)**
- 20.2.19 **Purdon's Statutes - Title 75 (Vehicles)**
- 20.2.20 **Purdon's Statutes - Title 77 (Workmen's Compensation)**
- 20.2.21 **Other Statutes**
- 20.2.22 **Pennsylvania Constitution - Article I, Section 27 (Adopted May 18, 1971)**

## 20.3 FEDERAL LAW

### ARTICLE 21 – PUBLIC WORKS EMPLOYMENT VERIFICATION ACT

The contractor is hereby notified that this contract is for a public work and the Contractor is therefore subject to the provisions, duties, obligations, remedies and penalties of the Public Works Employment Verification Act, 43 P.S. §§167.1-167.11, which is incorporated herein by reference as if fully set forth herein. Contractors subject to said Public Works Employment Verification Act are required to utilize the Federal E-Verify program to verify the employment eligibility of each new employee hired after January 1, 2013 and to submit to the Department a Commonwealth Public Works Employment Verification Form available on the Department's web site at [www.dgs.pa.gov](http://www.dgs.pa.gov).

## ARTICLE 22 – RECIPROCAL LIMITATIONS ACT

The work on this Project must be performed in accordance with the Reciprocal Limitations Act, which requires DGS:

- a. In the award of contracts, exceeding \$10,000 for the erection, construction, alteration, improvement or repair of any building or other public work, or the purchase or lease of any goods, supplies, equipment, printing or materials, to give resident bidders a preference against a nonresident bidder from any state that gives or requires a preference to bidder from that state. The amount of the preference shall be equal to the amount of the preference applied by the state of the nonresident bidder. A resident bidder is a person, partnership or corporation or other business entity authorized to transact business in Pennsylvania and having a bona fide establishment for transacting business within Pennsylvania at which it was transacting business on the date when bids for the public contract were first solicited.
- b. In the erection, construction, alternation, improvement or repair of any public building or other public work, and in all purchases of goods, supplies, equipment, printing or materials, not to specify, use or purchase any goods, supplies, equipment, printing or materials which are produced, manufactured, mined, grown or performed in any state that prohibits the specification for, use, or purchase of such items in or on its public building or other works, when such items are not produced, manufactured, mined, grown or performed in such state.

### 22.1 LIST OF DISCRIMINATING STATES

22.1.1 States which apply preference favoring in-state bidders for supplies and the amount of such preference, (that may affect this contract), as found by DGS:

<u>STATE</u>	<u>PREFERENCE</u>
Alaska	7% (timber, lumber and manufactured lumber products originating in the state)
Arizona	5% (construction materials produced or manufactured in the state only)
Hawaii	10%
Illinois	10% (coal only)
Iowa	5% (coal only)
Louisiana	10% (steel rolled in Louisiana)
Montana	7% (all other products)
Montana	3% (for non-residents offering in-state goods, supplies, equipment and materials)
New Mexico	5%
Oklahoma	5%
Virginia	4% (coal only)
Washington	5% (fuels mined or produced in the state only)
Wyoming	5%

22.1.2 States which apply preference favoring in-state bidders and the amount of such preference, (that may affect this contract), as found by DGS:

<u>STATE</u>	<u>PREFERENCE</u>
Alaska	7% (supplies only)
Arizona	5% (construction materials from Arizona resident dealers only)
California	5% (for supply contracts only in excess of \$100,000.00)
Connecticut	10% (supplies only)
Montana	3%
New Mexico	5% (supplies only)
South Carolina	2% (under \$2,500,000.00)
	1% (over \$2,500,000.00)



	this preference does not apply to construction contracts nor where the price of a single unit exceeds \$10,000.00
West Virginia	2.5% for construction, repair of improvements of any buildings
Wyoming	5%

22.1.3 States that prohibit the use of out-of-state goods, supplies, equipment, materials or printing and the prohibition that may affect this contract as found by DGS:

<u>STATE</u>	<u>PROHIBITION</u>
Georgia	Forest products only
Indiana	Coal
New Jersey	For bidders for the following items: major household appliances, chain link fence, portable sanitation units, glass, glazier supplies, storage batteries, carpet and cushion, shades, room air conditioning, electrical supplies, plumbing supplies, hardware supplies, fasteners, lumber, building supplies, audio-visual/video equipment, fire extinguishers, fire hose, motor oils, fuel oil, photographic supplies, Venetian blinds, drapes, paper towel dispensers, water hose
New Mexico	Construction

## 22.2 CALCULATION OF PREFERENCES

In calculating the preference, the amount of a bid submitted by a Pennsylvania bidder shall be reduced by the percentage preference that would be given to a nonresident bidder by its state of residence. Similarly, the amount of a bid offering Pennsylvania goods, supplies, equipment, materials and printing shall be reduced by the percentage preference which would be given to another bidder by the state where the goods, supplies, equipment, materials or printing are produced, manufactured, mined, grown or performed.

## ARTICLE 23 – RIGHT TO KNOW LAW

The Pennsylvania Right-to-Know Law (RTKL), 65 P.S. §§ 67.101-3104, applies to this Contract. For the purpose of these provisions, the term “the Commonwealth” shall refer to the contracting Commonwealth agency.

### 23.1 RTKL NOTICE

If the Commonwealth needs the Contractor’s assistance in any matter arising out of the RTKL related to this Contract, it shall notify the Contractor using the legal contact information provided in this Contract. The Contractor, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the Commonwealth.

23.1.1 Upon written notification from the Commonwealth that it requires the Contractor’s assistance in responding to a request under the RTKL for information related to this Contract that may be in the Contractor’s possession, constituting, or alleged to constitute, a public record in accordance with the RTKL (“Requested Information”), the Contractor shall:

23.1.1.1 Provide the Commonwealth, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in the Contractor’s possession arising out of this Contract that the Commonwealth reasonably believes is Requested Information and may be a public record under the RTKL; and

22.1.1.2 Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Contract.

### 23.2 TRADE SECRET

If the Contractor considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the Contractor considers exempt from production under the RTKL, the Contractor must notify the Commonwealth and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of the Contractor explaining why the requested material is exempt from public disclosure under the RTKL.

### 23.3 RELIANCE ON CONTRACTOR

The Commonwealth will rely upon the written statement from the Contractor in denying a RTKL request for the Requested Information unless the Commonwealth determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the Commonwealth determine that the Requested Information is clearly not exempt from disclosure, the Contractor shall provide the Requested Information within five (5) business days of receipt of written notification of the Commonwealth's determination.

### 23.4 INDEMNIFICATION

If the Contractor fails to provide the Requested Information within the time period required by these provisions, the Contractor shall indemnify and hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth.

### 23.5 REIMBURSEMENT

The Commonwealth will reimburse the Contractor for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.

### 23.6 APPEALS

The Contractor may file a legal challenge to any Commonwealth decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, the Contractor shall indemnify the Commonwealth for any legal expenses incurred by the Commonwealth as a result of such a challenge and shall hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth, regardless of the outcome of such legal challenge. As between the parties, the Contractor agrees to waive all rights or remedies that may be available to it as a result of the Commonwealth's disclosure of Requested Information pursuant to the RTKL.

### 23.7 CONTINUING OBLIGATIONS

The Contractor's duties relating to the RTKL are continuing duties that survive the expiration of this Contract and shall continue as long as the Contractor has Requested Information in its possession.

## ARTICLE 24 – SOVEREIGN IMMUNITY AND COMMONWEALTH HELD HARMLESS

### 24.1 NO WAIVER

Nothing in this Agreement between the Commonwealth and the Contractor shall be deemed to waive or otherwise affect the sovereign immunity of the Commonwealth and its agencies, officers, and employees, or to subject the Commonwealth party to any liability not expressly authorized by law. The Contractor shall indemnify and hold harmless the Commonwealth from and against all claims, damages, losses and expenses, including attorneys' fees arising out of or resulting from the performance of the Work or services, provided that any such claim, damage, loss or expense is:

- 24.1.1       Attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property, including the loss of use resulting therefrom; and

- 24.1.2 Caused in whole or in part by any negligent act or omission of the Contractor or any subcontractor.

## 24.2 OFFICE OF THE ATTORNEY GENERAL

Pursuant to the Commonwealth Attorneys Act 71 P.S. § 732-101, et. seq., the Office of Attorney General (OAG) has the sole authority to represent the Commonwealth in actions brought against the Commonwealth. The OAG may, however, in its sole discretion and under such terms as it deems appropriate, delegate its right of defense. If OAG delegates the defense to the Contractor, the Commonwealth will cooperate with all reasonable requests of Contractor made in the defense of such suits.

## 24.3 SETTLEMENTS

Notwithstanding the above, the Contractor shall not enter into any settlement without the Commonwealth's written consent, which shall not be unreasonably withheld. The Commonwealth may, in its sole discretion, allow the Contractor to control the defense and any related settlement negotiations.

## 24.4 EMPLOYEES

In any and all claims against the Commonwealth by any employee of the Contractor or any subcontractor, the indemnification obligations under this Section shall not be limited on the amount or type of damages, compensation, or benefits payable by or for the Contractor or any subcontractor under Worker's Compensation Acts, Disability Benefit Acts, or other employee benefit Acts.

## ARTICLE 25 – STEEL PRODUCTS PROCUREMENT ACT – CERTIFICATIONS

### 25.1 EXCLUSIVITY

In accordance with the Steel Products Procurement Act of March 3, 1978, P.L. 6, as amended (73 P.S. Sections 1881 et seq.), only steel products as defined in the Act shall be used or supplied in the performance of the contract or any subcontracts thereunder.

### 25.2 SUPPLIES

In the performance of the Contract the Contractor, subcontractors, materialmen or suppliers shall use only: 1) steel products, rolled, formed, shaped, drawn, extruded, forged, cast, fabricated, or otherwise similarly processed by a combination of two or more of such operations, from steel made in the United States by the open hearth, basic oxygen, electric furnace, bessemer or other steel making process; and 2) cast iron products made in the United States.

### 25.3 CERTIFICATIONS

The Contractor shall certify that all steel and cast iron products to be used or supplied in the performance of the Contract comply with this Act. No payment will be made to the Contractor for steel and cast iron products until such certification has been received.

### 25.4 INSUFFICIENT QUANTITY

This section shall not apply in any case where the Client Agency, in writing, determines that steel and/or cast iron products as herein described are not produced in the United States in sufficient quantities to meet the Contract needs.

### 25.5 RECOVERABLE PAYMENTS

The Client Agency shall not provide for or make any payments to any person who has not complied with the Act. Any such payments made by the Client Agency to anyone that should not have been made as a result of the Act, shall be recoverable directly from the Contractor, subcontractor, manufacturer or supplier that did not comply with the Act.

## 25.6 FURTHER PROHIBITIONS

In addition to the withholding of payments, any person who willfully violates any of the provisions of the Act shall be prohibited from submitting any bids to any public agency for a period of five (5) years from the date of the determination that a violation has occurred. In the event the person who violates the provisions of the Act is a subcontractor, manufacturer or supplier, such person shall be prohibited from performing any work or supplying any materials to a public agency for a period of five (5) years from the date of the determination that a violation has occurred.

## 25.7 BINDING OF SUBCONTRACTORS

The Contractor shall include the provisions of the Steel Products Procurement Act in every subcontract and supply contract, so that the provisions of the Act shall be binding upon each subcontractor and supplier.

## 25.8 TRADE NAMES

Where trade names, catalog numbers and manufacturers of material or equipment are specified, they are mentioned therein for the purpose of establishing a standard of quality, performance and appearance, and for establishing a standard of competitive bidding. The use of this descriptive information will not relieve the contractor from compliance with all aspects of the Act.

## ARTICLE 26 – TAX OFFSET PROVISION

### 26.1 CERTIFICATIONS

The Contractor, by execution of the Contract:

- 26.1.1 Certifies that the Contractor has no outstanding tax liability to the Commonwealth of Pennsylvania;
- 26.1.2 Authorizes the Department of Revenue to release information related to its tax liability to the Department of General Services; and
- 26.1.3 Authorizes the Commonwealth to set off any state and local tax liabilities of the Contractor or any of its subsidiaries, as well as any other amount due to the Commonwealth from the Contractor, not being contested on appeal by the Contractor, against any payment due to the Contractor under a contract with the Commonwealth.

### 26.2 MATERIAL REPRESENTATION

The certification of no outstanding tax liability is a material representation of fact upon which reliance is placed by the Department in entering into the contract. If it is later determined that the Contractor knowingly rendered an erroneous certification, the Department may find the Contractor in default and terminate the contract. Such erroneous certification may also be grounds for the initiation of civil or criminal proceedings.

## ARTICLE 27 – TRADE PRACTICES ACT

The Work on this Project must be performed in accordance with the Trade Practices Act. The Contractor shall not use, or permit to be used in the Work, any aluminum or steel products made in a foreign country that discriminates against aluminum or steel products manufactured in Pennsylvania. The countries of Brazil, South Korea, Spain, Mexico and Argentina have been found to discriminate against certain products manufactured in Pennsylvania. Therefore, the purchase or use of those countries' products, as listed below, is not permitted on this Project.

### 27.1 COUNTRIES

- 27.1.1 Brazil: welded carbon steel pipes and tubes; carbon steel wire rod; tool steel; certain stainless steel products, including hot-rolled stainless steel bar; stainless steel wire rod and

cold-formed stainless steel bar; pre-stressed concrete steel wire strand; hot-rolled carbon steel plate in coil; hot-rolled carbon steel sheet and cold-rolled carbon steel sheet.

- 27.1.2 Spain: certain stainless steel products, including stainless steel wire rod, hot-rolled stainless steel bars and cold-formed stainless steel bars; pre-stressed concrete steel wire strand; certain steel products including hot-rolled steel plate, cold-rolled carbon steel plate, carbon steel structural shapes, galvanized carbon steel sheet; hot-rolled carbon steel bars and cold-formed carbon steel bars.
- 27.1.3 South Korea: welded carbon steel pipes and tubes; hot-rolled carbon steel plate and hot-rolled carbon steel sheet and galvanized steel sheet.
- 27.1.4 Mexico: certain iron-metal construction castings, including manhole covers, rings and frames, catch basin frames and grates, cleanout covers, grates, meter boxes, valve boxes; galvanized carbon steel sheet; cold-rolled carbon steel sheet; carbon steel plate in coil; carbon steel plate cut to length; and small diameter carbon steel plate welded pipe.
- 27.1.5 Argentina: carbon steel wire rod and cold-rolled carbon steel sheet.

## 27.2 PENALTIES

Penalties for violation of this paragraph may be found in the Trade Practices Act. Penalties include becoming ineligible for Public Works projects for a period of three years.

## ARTICLE 28 - MISCELLANEOUS PROVISIONS

### 28.1 RIGHTS AND REMEDIES

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

No actions or failure to act by the Owner, Professional or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

### 28.2 SMOKING AND TOBACCO POLICY

Smoking and the use of tobacco are prohibited in and on all University owned or leased properties, facilities, and vehicles, per University Policy AD 32.

### 28.3 ELECTRONIC PROJECT MANAGEMENT INFORMATION SYSTEM (PMIS)

The Owner has implemented an electronic PMIS, "e-Builder", an internet-based information and project communication system that will allow the entire project team to collaborate in a centralized and secured repository for all projects.

The Contractor shall utilize the PMIS during all phases of the project, unless directed otherwise by the Owner. All project specific correspondence, workflow processes, and documentation will be stored and routed within the PMIS. The Contractor and the Owner shall agree on file name convention of submissions in advance.

The Contractor, or those direct-employee(s) responsible, on each project will be expected to participate in the necessary training to use the PMIS effectively. Periodic training sessions on the PMIS will be provided by the Owner. Registration will be through Penn State's Learning Resource Network (LRN). It is the responsibility of the Contractor to coordinate with the Owner regarding the training schedule and to register via the LRN. All costs for personnel time, travel, meals, and lodging to attend the training shall be borne by the Contractor and, as such, will not be reimbursed by the Owner.

The Contractor shall obtain, at their own cost, the necessary equipment and web connections to access and utilize the PMIS. The Contractor will not incur any registration fees or licensing costs to utilize the PMIS.

The Owner will not entertain or acknowledge any amendment requests by the Contractor for claimed inefficiencies or other costs related to the implementation and subsequent use of the PMIS.

#### 28.4 USE OF UNMANNED AIRCRAFT (UA)

If the Work involves the use of UA (Drones), and if UA use is approved by the Penn State Project Manager assigned to the job in question, the Professional and those Subconsultants involved in UA use must follow all applicable federal regulations and the requirements of Penn State policy SY45 (<https://policy.psu.edu/policies/sy45>), which defines the requirements for use of UA on property owned or controlled by Penn State. In addition, a request to operate UA must be submitted to Penn State's UA Operations Manager, as specified at: <https://www.research.psu.edu/UasOperations>. UA flight operations may not proceed until approval is granted by the UA Operations Manager.

### GENERAL CONDITIONS OF THE CONTRACT