

**PENNSYLVANIA CONVENTION CENTER AUTHORITY
COMMONWEALTH OF PENNSYLVANIA**

**STANDARD FORM OF AGREEMENT
FOR FACILITIES PROJECTS**

GENERAL CONDITIONS

ARTICLE 1

GENERAL PROVISIONS

1.1 CONTRACT DOCUMENTS

- 1.1.100 The Contract Documents consist of the agreement, notice to contractors, the bid proposal, the contract bonds (if specified), all riders, drawings and specifications, Special Requirements, General Requirements, and addenda issued to the contract. A modification is (1) a written amendment to the contract signed by both parties or (2) a change order. A modification may be made only after execution of the contract. The work specified in the contract includes all labor, equipment, and materials required and incorporated to complete the work specified in and according to all the Contract Documents.
- 1.1.101 The Contract Documents are complementary, and what is required by any one of the Contract Documents shall be binding as if required by all. The intention of the documents is to include all labor, materials, equipment, and other items necessary for the proper execution and completion of the work. Work not covered under any heading, section, branch, class, or trade of the specifications need not be supplied unless it is required elsewhere in the Contract Documents or is reasonably inferable therefrom as being necessary to produce the intended results. If there is a conflict between the drawings and the specifications, the more stringent specification shall prevail. Words which have well-known technical or trade meaning are used herein in accordance with such recognized meanings.
- 1.1.102 Where the work is shown in complete detail on only half or a portion of a drawing or there is an indication of continuation, the remainder being shown in outline, the work drawn out in detail shall be understood to apply to other like portions of the structure. On all work of a remodeling nature or installation within present buildings, the actual situation at the site controls any information given which may affect the quantity, size, and quality of materials required for a satisfactorily completed contract, whether or not such information is indicated on the drawings or within the specifications.
- 1.1.103 Unless otherwise noted in the Contract Documents, the Authority will provide the Contractor three (3) complete sets of stamped drawings and specifications for permitting, free of charge. The Contractor shall reimburse the Authority if additional sets are required beyond the three provided.

All drawings, specifications, and copies thereof furnished by the Professional are and shall remain the property of the Authority. They are not to be used on any other project, without permission of the Authority, and, with the exception of one contract set for each party to the contract, are to be returned to the Authority on request at the completion of the work.

1.2 GOVERNING LAW

This Agreement shall be governed by and construed in accordance with laws of the Commonwealth of Pennsylvania, notwithstanding any conflict-of-laws doctrines of said jurisdiction to the contrary and without the aid of any canon, custom or rule of law requiring construction against the draftsman. With respect to any suit, action or proceeding relating to this Agreement, Consultant hereby submits to the exclusive jurisdiction of the courts of the

Commonwealth of Pennsylvania.

1.3 NOTICES

Wherever the term "notice" is used, such notices to be effective shall be in writing and if to the Authority shall be mailed certified mail, postage and fees prepaid, or delivered to the Authority, and if to the Professional shall be similarly mailed or delivered to him at this address set forth in the caption of this Agreement, unless and until notice of another address shall be given hereunder, in which case notices shall be so delivered or mailed to the address last so given.

1.4 INTEGRATION

This Agreement contains all the terms and conditions agreed to by the parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement exist.

1.5 NO THIRD PARTY RIGHTS

The Contractor agrees to indemnify and hold harmless the Authority and the Commonwealth of Pennsylvania against any costs incurred by the Authority or the Commonwealth of Pennsylvania (including without limitation amounts paid pursuant to judgments or settlements and as counsel fees) in consequence of any claim by a third party against the Authority or the Commonwealth of Pennsylvania, including without limitation any claim by an employee of the Authority or the Commonwealth of Pennsylvania, the Contractor or a subcontractor and any claim by a subcontractor or another contractor, whether filed before or after final payment, based on actual or alleged damage to or destruction of property or injury to persons allegedly caused by the Contractor, or any subcontractor, or by their respective employees, in connection with the work.

The Authority shall promptly notify the other party of the assertion of any claim against which the Authority or the Commonwealth is held harmless pursuant to this condition, shall give such other party the opportunity to defend any such claim, and shall not settle any such claim without the approval of the indemnifying party.

1.6 HOLD HARMLESS

The Contractor shall indemnify and hold harmless the Authority, the Construction Manager, the Professional, their agents and employees from and against all claims, damages, losses and expenses including attorneys' fees arising out of or resulting from the performance of the work, including any and all design work performed by or for the Contractor, provided that any such claim, damage, loss or expense: (1) is 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 (2) is caused in whole or in part by any negligent act or omission of the Contractor, any subcontractor, any one directly or indirectly employed by any of them, or any one for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

In any and all claims against the Authority, Construction Manager or the Professional or any of their agents or employees by any employee or the Contractor, any subcontractor, any one directly or indirectly employed by any of them or any one for whose acts any of them may be liable, the indemnification obligations shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under workmen's compensation acts, disability benefit acts or other employee benefit acts.

The obligations of the Contractor under this Section shall not extend to the liability of the Construction Manager, Professional, their agents or employees 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 Construction Manager, Professional, their agents or employees provided such giving, or failure to give, is the primary cause of the injury or damages.

1.7 OFFSET PROVISIONS

The Contractor, by execution of the agreement, certifies that it has no outstanding tax liability to Pennsylvania; authorizes the Department of Revenue to release information related to its tax liability to the Authority; and, 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 an agreement with the Commonwealth.

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

1.8 not used

1.9 CONTRACTOR RESPONSIBILITY PROVISIONS

- A. Contractor certifies that it is not currently under suspension or debarment by the Commonwealth, any other state, or the federal government, and if the contractor cannot so certify, then it agrees to submit along with the bid proposal a written explanation of why such certification cannot be made.
- B. If contractor enters into any subcontracts or employs under this contract any subcontractors/individuals who are currently suspended or debarred by the Commonwealth or the federal government or who become suspended or debarred by the Commonwealth or the federal government during the term of this contract or any extensions or renewals thereof, the Commonwealth shall have the right to require the contractor to terminate such subcontracts or employment.
- C. The contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of Inspector General for investigations of the contractor's compliance with the terms of this or any other agreement between the contractor and the Commonwealth which results in the suspension or debarment of the contractor. Such costs shall include, but 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.

1.10 not used

1.11 not used

1.12 AMERICAN 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 the benefits, services, programs, and activities provided by the Pennsylvania Convention Center Authority through contracts with outside contractors.

The contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania, the Pennsylvania Convention Center Authority and their

respective officers and employees from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against any of the foregoing as a result of the contractor's failure to comply with the provisions of the paragraph above.

1.13 ASSIGNMENT

This agreement shall be binding on the parties hereto, their heirs, executors, administrators, successors and assigns, but it may not be assigned by the Contractor without the prior written consent of the Authority.

1.14 ASSIGNMENT OF ANTITRUST CLAIMS

The contractor and the Authority recognize that in actual economic practice, overcharges by the contractor's suppliers, resulting from the violations of State or Federal anti-trust laws are, in fact, borne by the Authority. As part of the consideration for the award of this contract, and intending to be legally bound, contractor assigns to the Commonwealth all rights, title and interest in and to any claims contractor now has, or may hereafter acquire, under State or Federal anti-trust laws relating to the goods or services which are the subject of this contract.

1.15 LIENS

In accordance with applicable Commonwealth Law 49 P.S. 1303, the parties hereto hereby specifically waive the right to file any mechanics or other lien or claim for work done or material furnished in or about the performance of this Agreement, and it is hereby expressly agreed that no such claim or claims shall be filed by anyone and that the Contractor shall not file nor permit any subcontractor, material man, mechanics or other person under him to file, nor shall any such contractor, subcontractor, material man or other person file any mechanics or other lien or claim for work done or material furnished in or about the performance of this Contract against the Authority, the Commonwealth of Pennsylvania, and/or the ground upon which the structure or work herein provided for is erected or done, or against any structure thereon erected or to be erected, or against any structure or property whatsoever covered by the Contract.

1.16 NONDISCRIMINATION

The Commonwealth's nondiscrimination / sexual harassment clause, as found in the Bid Proposal Form, is hereby incorporated by reference.

1.17 THE PROFESSIONAL

If retained and so designated by the Authority, a Professional architect or engineer may act as the agent for the Authority in the administration of the contract and may perform any or all of the functions stated herein. The Professional will, as determined by agreement with the Authority, visit the site to review progress in accordance with the contract drawings and specifications, attend job conferences, approve applications for payments, make progress reports to the Authority and review and accept/reject the Contractor's Schedule of Values.

The Professional has the authority to interpret the Contract Documents, reject work which does not conform to the Contract Documents, review and approve shop drawings, prepare drawings and specifications for change orders or modifications, participate in completion inspections, prepare as-built drawings, and review and approve all catalog data, manufacturers operating and maintenance instructions, certificates, warranties, written guarantees, and related documents required by the contract. The Professional may perform additional functions as determined by the Authority necessary to protect the Authority's interest.

1.18 THE CONSTRUCTION MANAGER

If retained and so designated by the Authority, a Construction Manager (CM) may also act as the agent for the Authority in the administration of the contract and may perform any or all of the functions stated herein, as determined by agreement with the Authority. The Construction Manager may visit the site to review progress according to the contract drawings and

specifications, independent of or in conjunction with the Professional. The Construction Manager may, with concurrence of the Professional, reject work that does not conform to the Contract Documents and safe working practices.

As and on behalf of the owner, the CM shall have authority to review with the Professional materials, workmanship, and equipment incorporated, or submitted for incorporation in the work. They shall review and provide an evaluation of the Contractor's testing, inspection, quality assurance, and certification program to the Professional, and they shall review and prepare an independent evaluation of the amount of the request for payment for acceptability of the quantity and quality of work performed or materials and equipment provided, and prepare and/or evaluate prepared schedules for the work.

The Construction Manager shall review the Contractor's construction practices and advise on unsafe working conditions during execution of the work. The Construction Manager shall work with the Professional as the Authority's representative in the administration of the Authority's interest in the project.

ARTICLE 2

2.1 THE AUTHORITY REPRESENTATIVES

Representatives designated by the Authority will have the authority to inspect the work and to reject all work not performed in accordance with the contract provisions. In addition, only those representatives so designated have authority to change, modify, or alter the work or incur or cause to be incurred additional obligations beyond the contract provisions.

2.2 THE AUTHORITY'S RIGHT TO CARRY OUT THE WORK

If the Contractor fails to carry out the work in accordance with the Contract Documents or fails to perform any provision of the agreement, the Authority may, after three (3) working days written notice to the Contractor, and without prejudice to any other remedy the Authority may have, make good such failures. In such case, an appropriate change order shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting such failures, including the cost for the Professional's additional services made necessary by such failure. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor and/or the Contractor's Surety shall pay the difference to the Authority.

2.3 RIGHT TO AWARD CONTRACTS

The Authority reserves the right to award other contracts in connection with other portions of the project under these similar conditions of this agreement.

ARTICLE 3

THE CONTRACTOR'S RIGHTS AND RESPONSIBILITIES

3.1 COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee (excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business). For breach or violation of this warranty, the Authority shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, or

contingent fee.

3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS

- 3.2.100 The Contractor shall perform the work according to good quality industry standards, practices, and procedures, and in accordance with the Contract Documents and submittals approved.
- 3.2.101 The Contractor shall accept all conditions as found upon examination of the site, and take field measurements and verify field conditions and compare carefully such measurements and conditions with the Contract Documents before commencing activities. If the Contractor, in the course of construction finds any conflict, error or discrepancy on or among the Contract Documents, such conflict, error or discrepancy shall be immediately referred to the Professional in writing.

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

- 3.3.100 The Contractor shall supervise and direct the work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for the work performed and have control over construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the work, unless the Contract Documents give other instructions.
- 3.3.101 The Contractor shall provide all labor, materials, and equipment necessary for the proper prosecution of the work in an acceptable manner and at a satisfactory rate of progress.
- 3.3.102 The Contractor shall be responsible for the acts and omissions of all their employees, all subcontractors and their agents and employees, and all other persons performing portions of the work under a contract with the Contractor.
- 3.3.103 Inclement weather, including but not limited to cold or freezing weather, shall not be considered an excuse for non-performance of work under this contract. The Contractor shall use such methods of protecting as may be necessary to continue to work throughout the period of inclement weather.

3.4 LABOR AND MATERIALS

- 3.4.100 The Contractor shall enforce strict discipline and good order and conduct among their employees and other persons carrying out the contract. Every employee shall be fit and skilled in the performance of tasks assigned to them.
- 3.4.101 Wages: Prior to submitting a Proposal, each Proposer must familiarize itself with all current working conditions, including but not limited to the labor environment and all applicable laws, codes, ordinances, contracts, agreements, rules and regulations that will affect the delivery of the services to be provided by the Proposer.
- 3.4.102 Products incorporated into the Work: The Authority anticipates the Contractor will provide products (i.e., products, materials, and equipment as defined in Section 016000 - Product Requirements) to be incorporated into the work of the project that are new, undamaged, and unused at the time of the installation, unless otherwise indicated in the Contract Documents. The Contractor shall produce, upon request, evidence supporting the source of materials used in the work.

The products provided under the contract shall meet or exceed the quality specified in the Contract Documents. The burden of proof of quality for all products provided rests with the Contractor. The costs incurred for substantiating quality shall be borne by the Contractor. If the Authority accepts substituted materials of a lesser quality than specified, the Authority shall be entitled to a credit equal to the difference in cost of the products specified and the

products provided.

The Contractor shall comply with the requirements of the Reciprocal Limitations 1998-Act 57 Commonwealth Procurement Code; Act 146 of 1986, the Trade Practices Act of July 23, 1968 P.L. 686 (71 P.S. 773.101 et seq.); and Act 3 of March 3, 1978, P.L. 6, commonly referred to as the "Steel Products Procurement Act", as outlined in the Special Requirements.

3.5 TAXES

Refer to Bid Document.

3.6 PERMITS, FEES, AND NOTICES

3.6.100 The Contractor shall obtain and pay for all permits, licenses and certificates required by Law and/or any public authority for the proper execution and completion of its work. The Contractor shall furnish proof of payment for all such permits, licenses and certificates, or proof that no permits, licenses or certificates are required. This proof must be furnished before the second request for payment.

3.6.101 The Contractor shall give all notices and comply with all applicable Laws, ordinances, regulations, rules and orders of any public authority bearing on the performance of the work. If the Contractor observes that any of the Contract Documents is at variance therewith in any respect, it shall promptly notify the Professional in writing. The Professional will make any necessary modifications. If the Contractor performs any work knowing it to be contrary to such applicable laws, ordinances, regulations, rules or orders, and without such written notice to the Professional, it assumes full responsibility therefor and shall bear all costs attributable thereto.

3.6.102 The Contractor shall pay all royalties and license fees. It shall defend all suits or claims for infringement of any patent rights and shall save the Authority harmless from loss on account thereof. The Authority shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified. However, if the Contractor has reason to believe that the designing process or product specified is an infringement on a patent, it shall be responsible for such loss unless it promptly gives such information to the Authority.

3.7 SUPERINTENDENT

3.7.100 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. The superintendent is responsible for continuous field supervision, coordination and completion of the work, and for the prevention of accidents.

3.7.101 Job conferences shall be scheduled by the Authority and shall be attended by the superintendent or a representative of the Contractor authorized to make all decisions and representations affecting the contract and its progress in the project.

3.8 PROGRESS SCHEDULE

3.8.100 Immediately upon receipt of Notice to Proceed, the Contractor for general construction on the project shall furnish to each separate prime Contractor within fourteen (14) days a schedule of the proposed prosecution of the work under their contract. Each separate prime Contractor shall submit to the Contractor for general construction within twenty-one (21) days after issuance of the Notice to Proceed, a schedule of the proposed prosecution of their work. The

Contractor for general construction shall then submit to the Professional, CM, and the Authority within twenty-eight (28) days after issuance of the Notice to Proceed, a complete project schedule signed by all prime contractors indicating their approval, and showing in detail to the satisfaction of the Professional, CM and the Authority, the proposed dates for the performance of each phase of the work under each contract for the entire project.

- 3.8.101 In the event that the Authority, after the commencing of on-site work, grants an extension of time for sixty (60) days or more to a Contractor, the Contractor receiving the extension of time shall prepare a revised progress schedule for their prime contract. The Contractor involved in the extension shall forward their revised progress schedule to the Authority representatives within thirty (30) days from the approval of their extension. In no event will the granting of an extension of time to a one prime Contractor automatically entitle any other prime Contractor to an extension of time.
- 3.8.102 The Contractor shall complete portions of the work in such order of time as may be stated in the specifications or as required in the progress charts as approved by all prime Contractors and the Authority. The Authority may require the Contractor to apply additional resources to maintain the project schedule, if the Contractor negligently fails to process the work according to the approved project schedule, at no additional cost to the Authority. If the Contractor shall refuse or fails to proceed as directed by the Authority, the Authority may find the Contractor in breach of their contract and/or declare the Contractor in default.
- 3.8.103 In lieu of the project schedule requirements specified in this section, the Authority may specify alternate scheduling procedures in the General Requirements. In that case, the Contractor shall comply with those provisions and a project schedule need not be submitted as specified herein.

3.9 SHOP DRAWINGS

- 3.9.100 The Contractor shall prepare and submit, in accordance with Section 013300-Submittal Procedures, the necessary shop drawings, diagrams, illustrations, schedules, performance charts, brochures, catalog information and other data required to support the proposed installation methods and establish standards by which the work will be judged, according to and within the time schedule submitted by the Contractor and approved by the Professional and the Authority. The times for submission of shop drawings shall be mutually established so as not to delay the project or require a time extension to the contract completion date, without agreement by the Authority.
- 3.9.101 The Professional's approval of shop drawings 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 Professional in writing of such deviation at the time of submission, has noted the deviation on the shop drawings, and the Professional has given written approval of the specific deviation. The Professional's approval also does not relieve the Contractor from responsibility for errors or omissions in the shop drawings or samples.
- 3.9.102 No portion of the work requiring a shop drawing or sample submission shall be commenced until the submission has been approved by the Professional. Any work commenced by the Contractor prior to final approval of the shop drawings and/or samples by the Professional is performed by the Contractor at its own risk.

3.10 JOB CONDITIONS

- 3.10.100 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permit and the Contract Documents and shall not unreasonably encumber the site with any materials or equipment, unless otherwise permitted by the Authority. The Contractor shall at all

times keep the work site free from accumulation of waste materials or rubbish carried by their operations.

The site of the work is defined by limit of contract line shown on the drawings. Contractors may only extend their work beyond this line as may be necessary to satisfy requirements of all permits and to make utility and service connections. Before starting any work beyond the limit of contract, the Contractor will submit to the Professional and the Authority a description of the proposed work for their review and approval.

The Contractor shall cooperate in the arrangements of their work as necessary to least affect the administration or operation of any present building, and shall protect their materials. Existing utility services roads and access ways will not be interrupted without prior approval by the Authority. The Contractor will comply with the Authority's prescribed times for acceptable outage periods.

- 3.10.101 The Contractor shall at all times afford other contractors reasonable access to the site, material storage areas, and shall perform their work so as not to interfere with the work of other contractors.
- 3.10.102 The Contractor shall be responsible for providing temporary heat, light and water as necessary to execute and protect their work, and shall maintain adequate ventilation of the work site to ensure proper air quality for human breathing, material protection, and safety equipment operations.
- 3.10.103 The Contractor shall be responsible to obtain all approvals and certificates of occupancies from local and state authorities having jurisdiction over the project, and submit the completed documents to the Authority.

ARTICLE 4

CLAIMS AND DISPUTES

4.1 CLAIMS FOR CONCEALED OR UNKNOWN CONDITIONS

- 4.1.100 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 (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 Contractor shall be given to the Authority promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions.
- 4.1.101 The Authority 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 conditions at the site are not materially different from those indicated in the Contract Documents, no change in the terms of the Contract is justified. No adjustment shall be made to the contract sum, however, for concealed conditions encountered during cutting and patching of work.

4.2 CLAIMS FOR ADDITIONAL TIME OR COST

- 4.2.100 If the Contractor wishes to make a claim for an increase in the Contract Sum, written notice shall be given to the Authority before proceeding to execute the work.

- 4.2.101 If the Contractor wishes to make a claim for an increase in Contract Time, written notice shall be given, including an estimate of cost and of probable effect of delay on the progress of the work. If adverse weather conditions are the basis for a claim for additional time, such claim shall be documented by data from a recognized weather authority substantiating that weather conditions were abnormal for the period and could not have been reasonably anticipated. The Contractor shall also substantiate that weather conditions had an adverse effect on the scheduled construction.
- 4.2.102 No claims for increased costs, charges, expenses, or damages of any kind, except as provided in the General Conditions, shall be made by the Contractor against the Authority for any delays or hindrances from any cause whatsoever, including but not limited to strikes, walkouts or work stoppages during the progress of any portion of the work. The Authority may, however, compensate the Contractor for any such delays by extending the time for completion of the work, as provided in the Contract, which extensions shall constitute the exclusive remedy between the parties.

4.3 DISPUTES WITH THE AUTHORITY

- 4.3.100 The Contractor shall carry on the work and maintain the progress schedule during any claims, disputes questions, other related matters or proceedings unless otherwise agreed to in writing by the Contractor and the Authority.
- 4.3.101 In the event of any dispute, claim, question or other matter (hereinafter called disputed item) the Contractor shall immediately refer the disputed item in writing to the Authority Project Manager for a Determination, which said Determination shall be rendered in writing within a reasonable time.
- 4.3.102 Disputed items by the Contractor must be made known by written notice within 21 days after occurrence of the event giving rise to such disputed item, or within 21 days after the Contractor first recognizes the condition giving rise to the disputed item, whichever is later.
- 4.3.103 Claims Procedure: Determinations made by the Authority Project Manager shall be subject to the claims procedure as described herein. Any disputed item which the Contractor may have against the Authority under this contract, except those settled under these provisions, shall be subject to the following procedure for the resolution of same:
- A. Dispute Conference. Any disputed item which the Contractor may have against the Authority under this contract or any breach thereof that has been referred to the Authority Project Manager, except as has been waived by the failure of the Contractor to present a timely claim in accordance with this section, shall be subject to negotiation at a Dispute Conference. A Dispute Conference shall be scheduled by the Authority upon the written demand of the Contractor if submitted no later than thirty (30) days after the date of the Determination by the Authority Project Manager.
- B. Pre-Claim Hearing. Upon written demand by the Contractor, all disputed items which the Contractor may have against the Authority which have not been resolved at a Dispute Conference shall be heard at a Pre-Claim Hearing chaired by the Authority Director for Engineering & Capital Projects.

No demand for a Pre-Claim Hearing shall be made later than thirty (30) days after the date on which the Contractor has received a decision rendered by the Authority Project Manager as a result of a Dispute Conference, or from the fortieth (40th) day after the Dispute Conference was held, if the Contractor has not received a decision. Failure to demand a Pre-Claim Hearing within the required time period shall result in the decision of the Dispute Conference becoming final and binding upon the Contractor.

4.4 DISPUTES WITH OTHER CONTRACTORS

- 4.4.100 The Authority shall have no obligation to any third parties for any claim, nor be a party to any claims, disputes or actions between prime contractors or subcontractors concerning such additional expense or damage. Nor shall such claims or disputes be subject to Board of Claims proceedings.
- 4.4.101 Should the Contractor, either directly or by the Contractor's subcontractors, or their respective agents, servants, or employees, cause damage or injury to the property or work of any other prime contractor or contractors, or by failing to perform the Contractor's work (including the work of the Contractor's subcontractors) hereunder with due diligence, delay any other prime contractors who shall suffer additional expense or damage thereby, the parties involved in such dispute shall settle by agreement or arbitrate said claim, dispute or disputes by referring same to the American Arbitration Association. Said dispute or disputes shall be determined pursuant to the construction industry arbitration rules of the American Arbitration Association then in effect. Notice of the demand for arbitration shall be filed in writing with the other prime Contractors and with either the Philadelphia or Pittsburgh Regional Office of the American Arbitration Association, and a copy shall be filed with the professional and the Authority. The demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen.
- 4.4.102 It is agreed by all parties that disputes or actions between Contractors concerning the additional expense or damage herein before mentioned shall not delay completion of the work which shall be continued by the parties, subject to the rights herein before provided. It is agreed by the parties to the contract (the Authority as promisee and the Contractor as promisor) that the intent of this clause is to benefit the other prime Contractors on the project or related projects and to serve as an indication of the mutual intent of the Authority and the Contractor that this clause raise such other prime Contractors to the status of third party beneficiaries only as to the terms and conditions of sections entitled Subcontractors and Disputes with the Authority. The Contractor agrees that these sections are provided as a benefit to the Contractor and that they specifically exclude claims against the Authority for delay or other damages.
- 4.4.103 The Contractor agrees that all claims, disputes and other matters in question between prime Contractors, which arise out of, or are related to this contract or the breach thereof shall be settled by agreement or resolved by arbitration in accordance with the construction industry arbitration rules of the American Arbitration Association then in effect, unless the parties mutually agree otherwise. This agreement to arbitrate shall be in consideration of the fact that all prime Contractors agree to this same arbitration provision as provided in each separate prime contract and that arbitration of all claims disputes and other matters in question shall be held within a reasonable time after the claim, dispute or other matter in question has arisen.

ARTICLE 5

SUBCONTRACTORS

- 5.1** A Contractor may not, except with the consent of the Authority, have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project. Failure to disclose the names of such subcontractors and/or suppliers shall be sufficient grounds for termination of this contract. Such failure may also be grounds for the initiation of civil or criminal proceedings.

- 5.2** Subcontractors employed by the prime contractors are solely responsible to the prime Contractor, and shall have no contractual relationship with the Authority.
- 5.3** All work performed for the Contractor by a subcontractor shall be pursuant to an appropriate agreement between the Contractor and the subcontractor. All agreements between Contractors and subcontractors shall contain provisions that:
- A. Preserve and protect the rights of the Authority and the Professional under the Agreement with respect to the work to be performed under the subcontract, so that the subcontracting thereof will not prejudice such rights.
 - B. Require that such work be performed in accordance with the terms, conditions and requirements of the Contract Documents.
 - C. Require that all claims for additional costs, extensions of time or otherwise with respect to subcontracted portions of the work, shall be submitted to the Contractor in the manner provided in the Contract Documents for like claims by the Contractor upon the Authority.
 - D. Require that each subcontractor and/or supplier fully warrants and guarantees for the benefit of the Authority as purchaser the effectiveness, fitness for the purpose intended, quality and merchantability of any item provided and/or installed by such subcontractor.
 - E. Require that the subcontractor is without privity of Contract to the Authority and that it agrees by signing the subcontract that it neither acquires nor intends to acquire any rights against the Authority on a third party beneficiary theory or any others.
- 5.4** The Contractor shall not sublet any part of this contract without written approval of the Authority. Within 30 days of a Notice to Proceed, the Contractor shall submit a list of all subcontractors they propose to use for written approval by the Authority. In all cases, this shall be prior to the first application for payment being submitted.
- 5.5** The Authority has the right to direct the Contractor to replace any subcontractor that the Authority objects to, for reasons that:
- A. The subcontractor has failed to work in accordance with the contract provisions, rules and regulations regarding Contractor performance, contract compliance, good order and conduct of their employees.
 - B. The subcontractor has defaulted or failed to perform on previous Authority projects.
 - C. The subcontractor has been suspended or debarred from doing business with the Commonwealth. The Contractor shall then submit another subcontractor for approval.
- Should there be a cost differential to the Contractor, the Contractor shall submit evidence to that fact, and the Contract Sum shall be increased or decreased by the cost difference by an appropriate Change Order.

ARTICLE 6

CHANGES IN THE WORK

6.1 RIGHT TO ORDER CHANGES

- 6.1.100 The Authority, without invalidating the agreement, may order changes in the work within the general scope of the agreement consisting of additions, deletions, or other revisions. The contract sum and time shall be adjusted accordingly, as they relate to the cost of the work, and

impact on completion of the work. The Contractor agrees that payment under any method shall be the exclusive compensation for such addition, deletion, or other revision to the original agreement.

- 6.1.101 Minor changes in the work not affecting the contract sum or extension of time, consistent with the intent of the Contract Documents, may be directed by the Authority without additional compensation or time extension.
- 6.1.102 Work that can reasonably be done concurrently with other contract work, without significant addition of labor or equipment or increasing the contract completion date, will not be subject to time extension.

6.2 CHANGE ORDERS

- 6.2.100 The cost or credit of changed work will be determined by one of the methods described herein:
 - A. By a detailed cost breakdown properly itemized. The breakdown shall include size, quantity, type, etc., and may include a maximum of fifteen percent (15%) markup to labor costs and a maximum of ten percent (10%) markup to material and equipment costs for overhead and profit.

The Contractor may include a maximum of ten-percent (10%) total markup to any subcontractor costs for overhead and profit. Subcontractors cannot exceed the markups stated herein for labor, material, or equipment costs.

- B. By unit prices stated in the bid proposal.
 - C. From prices as agreed upon in the Schedule of Values.
- 6.2.101 The Contractor shall not be entitled to profit which is lost as a result of deleted work, but shall be entitled to the overhead attributed to the items of work deleted from the Schedule of Values only when the contract completion date is not reduced.

6.3 UNILATERAL CHANGE ORDER

- 6.3.100 In the event that agreement cannot be reached as to the cost or credit of the changed work, the Authority shall prepare a cost estimate, and the Contractor will be issued a unilateral change order to proceed with the changed work at a cost not-to-exceed the Authority's estimate. The Contractor shall proceed with the work and maintain accurate records of the actual cost of labor and material to perform the work.
- 6.3.101 Upon completion of the work, if the Contractor's actual cost including profit and overhead for the work does not exceed the Authority's not-to-exceed cost estimate, a new change order will be issued in the amount of the Contractor's actual cost.
- 6.3.102 If the work is not completed, and if the Contractor's actual cost has equaled or exceeded the not-to-exceed limit of the unilateral change order, the Authority will audit the Contractor's actual cost and subsequently attempt to negotiate a cost for the remaining work. If agreement cannot be reached for the remaining work, another unilateral change order will be issued at the Authority's revised cost estimate to complete the work. In this case, the Contractor retains the right to claim for equitable adjustment under the disputes clause of this agreement.

ARTICLE 7

TIME

- 7.1 The time specified for the contract completion is the number of calendar days from the date of

the Notice to Proceed. The date for commencement of the work is the date of the Notice to Proceed. On site work shall commence no later than ten (10) days after the date of the Notice to Proceed.

- 7.2** Time extensions may be granted for events impacting the work beyond the control of the Contractor if the changed condition impacts a work item on the critical path of the project schedule, and the scheduled substantial completion date is extended.

ARTICLE 8

PAYMENTS AND COMPLETION

- 8.1** The Contractor warrants and guarantees that title to all work, materials, and equipment covered by an application for payment, whether incorporated in the project or not, will pass to the Authority upon the receipt of such payment, free and clear of all terms, claims, security interests, or encumbrances.

8.2 PAYMENTS

- 8.2.100 Performance by the contractor in accordance with the provisions of the contract shall entitle the contractor to payment by the Authority. The Authority shall pay the contractor according to the provisions of this section for all items that appear on the application for payment and have been satisfactorily completed. Applications for payment will not be considered to be acceptable unless they meet all the requirements specified in Section 012900 - Payment Procedures and as outlined elsewhere in the contract documents.

8.2.101 Schedule of Values:

The contract sum is stated in the agreement and is the total amount payable for the performance of the work in compliance with the Contract Documents. Before any application for payment can be submitted, the Contractor shall submit to the Authority for its approval a detailed breakdown of the costs indicating a schedule of quantities and values for the items of work included in the contract, as required in Section 012900-Payment Procedures. Each item in the Schedule of Values shall include its proper share of overhead and profit.

The Schedule of Values, when approved by the Authority shall be used as a basis for the Contractor's application for payments. This Schedule of Values may also be used to determine the cost or credit to the Authority resulting from the changes in the work.

- 8.2.102 The Authority may decline to approve any Application for Payment, or portion thereof, because of subsequently discovered evidence or subsequent inspections, which may nullify the whole or part of any Application for Payment previously issued, to such extent as may be necessary to protect the Authority from loss because of:

- A. Defective work not remedied.
- B. Failure of the Contractor to make payments properly to subcontractors or for labor, materials, and equipment.
- C. Reasonable evidences that the work cannot be completed for the unpaid balance of the Contract Sum.
- D. Reasonable 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.

E. Unsatisfactory prosecution of the work by the Contractor.

8.2.103 Retainage:

Normally, payment of the total amount will be made upon substantial completion, final inspection, and acceptance of the work. However, when a contract exceeds \$10,000 and upon written request, partial payments may be made after completion of portions of the work. To ensure proper performance of the contract, the Authority shall retain from all partial payments an amount not to exceed ten percent (10%) of the amount due the contractor until fifty percent (50%) of the contract is completed. The sum to be withheld from the contractor after the contract is fifty percent (50%) completed shall not exceed five percent (5%) of the value of the completed work based on monthly progress payment requests.

When the contract is fifty percent (50%) completed, one half of the amount retained by the Authority shall be returned to the contractor. However, the architect, engineer, or Authority project representative must approve the application for payment for reduction in retainage. The contractor must be making satisfactory progress, and there must be no specific cause for greater withholding.

All money retained by the Authority may be withheld from the contractor until substantial completion of the contractor. However, in the event a dispute arises between the Authority and any prime contractor, which dispute is based upon increased costs claimed by one prime contractor occasioned by delays or other actions of another prime contractor, additional retainage in the sum of one and one-half times the amount of any possible liability may be withheld until such time as a final resolution is agreed to by all parties directly or indirectly involved, unless the contractor causing the additional claim furnishes a bond satisfactory to the Authority to indemnify the Authority against the claim.

In absence of sufficient reason, within 20 days of receipt of payment of retainage, the contractor shall pay all subcontractors with which it has contracted their earned share of the retainage payment the contractor received.

8.2.104 Withholding of Payments for Good Faith Claims

The Authority may withhold payment for deficiency items according to the terms of the contract. If the Authority withholds payment from a contractor for a deficiency item, the Authority shall notify the contractor of the deficiency item within the timeframe specified in the contract or 15 calendar days of the date that the application for payment is received.

The Contractor may withhold payment from any subcontractor who is responsible for any deficiency item for good faith claims. If a contractor withholds payment from a subcontractor for a deficiency item, it must notify the subcontractor or supplier and the Authority of the reason within 15 calendar days of the date after receipt of the notice of the deficiency item from the Authority.

8.2.105 Payments to Subcontractors

For the purposes of this section, the contract between the contractor and the subcontractor is presumed to incorporate the terms of the contract between the contractor and the Authority. When a subcontractor has performed in accordance with the provisions of the contract, a contractor shall pay to the subcontractor, and each subcontractor shall in turn pay to its subcontractors, the full or proportioned amount received for each such subcontractor's work and material, 14 days after receipt of a progress payment. Neither the Authority nor any Professional shall have any obligation to pay or see to the payment of any monies to any subcontractor except as may be otherwise required by law.

8.2.106 Substantial Completion and Final Payment:

For all contracts containing a provision for retainage, the design professional shall make a final inspection within 30 days receipt of a request by the contractor for final inspection and

application for final payment. If the work is substantially complete, the design professional shall issue a certificate of substantial completion and a final certificate for payment.

The Authority shall make payment in full within 45 days except as provided for in Article 8.2.103 Retainage, less only one and one-half times the amount required to complete any then-remaining uncompleted minor items, which amount shall be certified by the design professional and, upon receipt by the Authority of any guarantee bonds which may be required, in accordance with the contract, to ensure proper workmanship for a designated period of time. The certificate of substantial completion given by the design professional shall list in detail each uncompleted item and a reasonable cost of completion. Final payment of any amount withheld for the completion of the minor items shall be paid upon completion of the uncompleted items listed in the certificate of substantial completion of the design professional.

Payment under this section will be made upon satisfactory completion of the work specified in the Contract Documents and completion of all requirements listed in Section 012900 - Payment Procedures.

8.3 ACCEPTANCE OF WORK

8.3.100 An application for progress payment, a progress payment, or any partial or entire use or occupancy of the project by the Authority shall not constitute an acceptance of any work not in accordance with the Contract Documents.

8.3.101 Partial Occupancy or Use:

The Authority may occupy or use any completed or partially completed portion of the work at any stage when such portion is so designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer, and authorized by public authorities having jurisdiction over the work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Authority and the Contractor have accepted in writing the responsibilities assigned to each of them for payments, security, maintenance, heat, insurance, etc.

Immediately prior to such partial occupancy or use, the Authority, Contractor, and Design Professional shall jointly inspect the area in order to determine and record the condition of the work, and agree to the period for correction of this work and as to the commencement of warranties.

8.4 Any person, co-partnership, association, or corporation furnishing labor, material, equipment or renting equipment or rendering public utility services in connection with performance of this contract shall have a right of action to recover the cost thereof from the Contractor and the Surety on the bond given to secure the payment for such labor, material, equipment or equipment rental and services rendered by public utility as though such person or corporation had been named as obligee in such bond; subject to the provisions of the act 1998 Act 57 Commonwealth Procurement Code.

8.5 NO ESTOPPEL OR WAIVER OF LEGAL RIGHTS

8.5.100 Neither the Authority nor the Professional shall be precluded or estopped by the measurements or approved applications for payment made or given by any of them or by any of their agents or employees, at any time, either before or after the completion and acceptance of the work and payment thereof, from showing the true and correct amount and character of the work performed and materials and equipment furnished by the Contractor. The Authority and/or the Professional may show at any time, that any such measurements or approved applications for payment are untrue or incorrectly made in any particular; or that the work or materials, equipment or any parts thereof do not conform to the Contract Documents.

8.5.101 The Authority shall have the right to reject the whole or any part of the aforesaid work or

materials and equipment should the said measurements or approved applications for payment be found or be known to be inconsistent with the terms of the contract, or otherwise improperly given. The Authority shall not be precluded or estopped, notwithstanding any such measurements or approved applications for payment in accordance therewith, from demanding and recovering from the Contractor or their Surety, or both, such damages as it may sustain by reason of the Contractor's failure to comply with the terms of the Contract Documents, or on account of any over-payments made on any approved applications for payment.

- 8.5.102 Neither the acceptance by the Authority or the Professional or any of their agents or employees, nor any certificate approved for payment of money; nor any payments for, nor acceptance of the whole or any part of the work by the Authority, nor any extension of time, nor any position taken by the Authority or its employees, shall operate as a waiver of any portion of the contract or any power herein reserved by the Authority or any right to damages. A waiver of any breach of the contract will not be held to be a waiver of any other or subsequent breach.

ARTICLE 9

PROTECTION OF PERSONS AND PROPERTY

9.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs required under their portion of the work and maintained during the term of the contract.

9.2 SAFETY OF PERSONS AND PROPERTY

- 9.2.100 The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

- A. All employees on the work, and all other persons who may be affected thereby.
- B. All the work materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Contractor or any of their subcontractors.
- C. Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

- 9.2.101 The Contractor shall comply with all applicable, laws, ordinances, rules, regulations and orders of any public authority having jurisdiction of the safety of persons or property or to protect them from damage, injury or loss. The Contractor shall erect and maintain as required by existing conditions and progress of the work, until the acceptance of the completion of their portion of the project, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities.

- 9.2.102 The Contractor shall designate a responsible member of their organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated in writing by the Contractor to the Authority and the Professional.

- 9.2.103 Explosives shall not be used in the work without specific written approval by the Authority of the Contractor's plan for storage and use of them for accomplishing the work, and the Contractor providing the local Blasting Permit if required, the license for the person doing the blasting, and the Certificate for Insurance indicating blasting is included in the coverage.

9.3 EMERGENCIES

In any emergency affecting the safety of persons or property, the Contractor shall act, at their discretion, to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Contractor because emergency work shall be determined as provided in Changes in the Work.

ARTICLE 10

INSURANCE

10.1 GENERAL

10.1.100 All policies shall be issued by insurance companies known to be financially sound and authorized to conduct such business under the laws of the Commonwealth of Pennsylvania.

10.1.101 Coverage shall be maintained without interruption from the date of commencement of the work until the date of final payment and termination of any coverage required to be maintained after final payment.

10.1.102 Insurance required herein shall also name the Authority of the Commonwealth of Pennsylvania as an additional insured, as its interest may appear, and Additional Insured Endorsements shall be provided along with the Certificates of Insurance.

10.1.103 Certificates of Insurance: A Certificate of Insurance acceptable to the Authority shall be filed with the Authority prior to the Authority issuing a Notice to Proceed. In no case shall any commencement of work on site be permitted until the required Certificates of Insurance have been provided and accepted by the Authority.

A. The Certificates of Insurance shall contain a provision that "coverage afforded under the policies will not be canceled, allowed to expire, or in any way changed, including alterations to the conditions of the policy, until at least thirty (30) days written notice has been given, by registered mail, to the Authority".

The Contractor will be responsible to ensure these notifications occur. Furthermore, should there be no notifications of policy expirations, terminations, or alterations of the insurance coverage, it will be the understanding of the Authority that the insurance coverage will be as required in the Contract, or as has been indicated in the latest issued Certificate of Insurance accepted by the Authority.

B. All exclusions to the insurance policies shall be either provided on the Certificate of Insurance, or attached to it as a List of Exclusions. Such exclusions must be acceptable to and agreed to by the Authority. If no such listing is provided, it will be understood by the Authority that there are no exclusions to the policies.

C. The deductible amounts for the coverage provided shall be indicated by the insurance company or companies providing the policies. This information shall be sent along with the Certificates of Insurance.

10.1.104 Copies of all insurance policies shall be made available upon request of the Authority.

10.1.105 At any time the insurance provisions of the agreement, as described herein, are not being maintained, the work of the Contractor may be terminated or suspended, according to the provisions of Article 12-Suspension of the Work and Article 13-Termination of the Work

Agreement.

10.2 CONTRACTOR'S LIABILITY INSURANCE

10.2.100 The Contractor shall purchase and maintain such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations under the Contract, whether such operations be by the Contractor or by a subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- A. Claims under Workers Compensation Disability Benefit and other similar employee benefit Acts. Employees Liability Insurance, with a minimum of \$1,000,000 aggregate coverage, is to be provided on the same operations.
- B. Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees.
- C. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees.
- D. Claims for damages because of injury to or destruction of tangible property including loss of use resulting therefrom.

10.2.101 The Contractor's commercial general liability insurance and automobile liability insurance shall be written for not less than \$500,000 for injuries including accidental death to any one person, and subject to the same limit for each person, in an amount not less than \$3,000,000 for each occurrence. The Contractor's property damage liability insurance shall be in an amount not less than \$3,000,000 for each occurrence.

10.2.102 The commercial general liability insurance shall:

- A. Include completed operations and products liability coverage.
- B. Shall include contractual liability coverage as necessary to meet the Contractor's obligations under Third Party Indemnification and Authority Indemnification and Hold Harmless.
- C. Shall include the special property damage liability coverage commonly referred to as XCU (explosion, collapse, and underground damage), unless the Authority approves a Contractor's request to exclude this coverage.
- D. Shall include adequate protection against special hazards when required, i.e.: blasting, etc.

10.2.103 Subcontractors Insurance:

- A. The Contractor shall either require each of its subcontractors to procure and to maintain during the life of its subcontractor's commercial general liability, automobile liability, and property damage liability insurance of the type and in the same amounts as specified in this Article, or insure the activity of its subcontractors in its own insurance policies.
- B. The Contractor shall require each subcontractor to provide Worker's Compensation and Employer's Liability insurance covering all persons employed by such subcontractors on work to be performed on this contract.

- C. The Contractor must submit to the Authority, prior to any subcontractors or sub-subcontractors commencing of any on site work, evidence that the subcontractors or sub-subcontractors are covered by insurance as required herein.

10.3 PROPERTY INSURANCE

- 10.3.100 The Contractor shall purchase and maintain property insurance for all insurable work included in the Contract, in the amount of the original Contract Sum as well as subsequent modifications thereto, in the names of the Authority and the Contractor as their respective interests may appear, in full 100% of the insurable value thereof, including:
 - A. Items of labor and materials connected therewith whether in or adjacent to the structure insured.
 - B. Materials in place or to be used as part of the permanent construction, including surplus materials, protective fences, bridges, temporary structures, miscellaneous materials and supplies incident to the work.
- 10.3.101 The property insurance will include and fully protect the interest of the Authority, the Commonwealth of Pennsylvania, the Contractor, subcontractors, and sub-subcontractors. The Contractor shall submit to the Authority for its approval all items deemed to be uninsurable.
- 10.3.102 Property insurance shall be on an all-risk policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse due to ice and snow, temporary structures, and debris removal as associated hereto.
- 10.3.103 The risk of damage to the construction work due to the perils covered by the said property insurance with extended coverage, is that of the Contractor, and no claims for such loss or damage will be recognized by the Authority, nor will such loss or damage excuse the complete and satisfactory performance of the Contract by the Contractor.
- 10.3.104 Partial occupancy or use in accordance with Article 8.3.101 Partial Occupancy or Use shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise.

ARTICLE 11

UNCOVERING AND CORRECTION OF WORK

11.1 UNCOVERING OF WORK

- 11.1.100 Work performed under the contract is subject to inspection by the Authority. If a portion of the work is covered contrary to the request of the Authority or Professional, it must, if required by the Authority or Professional, be uncovered for its observation, and replaced at the Contractor's expense without change in Contract Time.
- 11.1.101 If a portion of the work has been covered which the Authority or Professional has not specifically requested to observe prior to being covered, the Authority or Professional may request to see such work, and it shall be uncovered by the Contractor. If such work is found to be in accordance with the Contract Documents, the cost of uncovering and replacement shall be charged to the Authority.

If the work is not in accordance with the Contract Documents, the work will be removed and

replaced by the Contractor, within the period specified by the Authority by written notice, at no additional cost to the Authority. The Authority may, upon failure by the Contractor to replace the nonconforming work, have the work removed and replaced at the Contractor's expense.

11.2 CORRECTION OF DEFECTIVE OR NON-CONFORMING WORK

11.2.100 The Contractor shall promptly correct all work rejected by the Authority or Professional as defective or as failing to conform to the Contract Documents, whether observed before or after substantial completion and whether or not fabricated, installed or completed. All defective or non-conforming work shall be promptly removed from the site. The Contractor shall bear all costs of correcting such rejected work, including the cost of the Professional's additional services and any additional cost incurred by the Authority. Should the Contractor fail to respond in an expedient manner, the Authority may correct the work under Article 2.2-the Authority's Right to Carry Out the Work.

11.2.101 If, within one year after the date of substantial completion and acceptance of all work performed under the Contract or within such longer period of time as may be prescribed by Law or by the terms of any applicable special guarantee required by the Contract Documents, any of the work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct it promptly after receipt of a written notice from the Authority to do so, unless the Authority has previously given the Contractor a written acceptance of such specific condition. The Authority shall give such notice promptly after discovery of the condition.

If required, the Maintenance Bond hereto attached and made a part hereof shall provide a guarantee in the sum of ten percent (10%) of the total Contract sum of the work done for the correction and remedy of such defect. If the corrective work is not completed within thirty (30) days after notification by the Authority to the Contractor, the Authority may do the work and submit those costs to the Contractor's Surety for reimbursement.

11.2.102 The Contractor shall bear the cost of making good all work of other Prime Contractors destroyed or damaged by such removal or correction.

11.2.103 If the Contractor does not remove such defective or non-conforming work within the time fixed by written notice from the Authority, the Authority may remove it and may store the materials or equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within ten (10) days thereafter, the Authority may, upon ten (10) additional days written notice, sell such work at auction or at private sale and, after deducting all the costs that should have been borne by the Contractor pursuant to the provisions of this paragraph, shall account for the net proceeds of the sale. If such proceeds of sale do not cover all costs that the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate change order shall be issued. If the payments then or thereafter due to Contractor are not sufficient to cover such amount, the Contractor and/or the Contractor's Surety shall pay the difference to the Authority.

11.2.104 The obligations of the Contractor under this section are in addition to and not in limitation of any obligations imposed upon the Contractor by special guarantees required by the Contract Documents or otherwise prescribed by law. Correction of defective work in no way reduces or eliminates the Contractor's responsibilities under the warranty provisions of the contract.

11.3 ACCEPTANCE OF NON-CONFORMING WORK

If the Authority elects to accept non-conforming work, it may do so instead of requiring its correction or removal and replacement. If nonconforming work is accepted, a change order shall be issued to reflect an appropriate reduction in the Contract Sum to reflect the actual cost reduction of the change in the work, or, if the amount is determined after final payment, it shall be paid by the Contractor and/or its Surety. In this case, all the costs of uncovering and recovering the work shall be at the expense of the Contractor, and which costs shall not be included as part of any deduct change order.

ARTICLE 12

SUSPENSION OF THE WORK

12.1 SUSPENSION OF WORK FOR CONVENIENCE

12.1.100 The Authority may order the Contractor in writing to suspend all or any part of the work for such period of time as it may determine to be appropriate for the convenience of the Authority. This paragraph does not apply under conditions enumerated in Paragraph 12.2--Suspension of Work due to Unfavorable Conditions.

12.1.101 If the performance of all or any part of the work is, for an unreasonable period of time, suspended by the Authority, an adjustment shall be made for any increase in the cost of performance of this Contract (excluding profit) necessarily caused by such unreasonable suspension. The Contract shall be modified in writing accordingly. No adjustment shall be made under this clause for any suspension to the extent that performance would have been so suspended by any other cause, including the fault or negligence of the Contractor; or for which an equitable adjustment is provided for or excluded under any other provision of this Contract.

12.1.102 No claim under this clause shall be allowed unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension. The claim may not be asserted later than the date of Final Completion under the Agreement.

12.2 SUSPENSION OF WORK DUE TO UNFAVORABLE CONDITIONS

12.2.100 If, in the judgment of the Authority, the Contractor is taking undue risk of damage to any part of a structure or installation by proceeding with the work during unfavorable weather or other conditions, then the Authority may suspend the work temporarily, either wholly or in part for such periods as are necessary. In case of such suspension, a proper extension of time will be allowed as provided herein, but no allowance will be made to the Contractor for any expense or damages resulting from the suspension. The failure of the Authority to suspend the work does not relieve the Contractor of its responsibility to perform the work in accordance with the Contract Documents.

12.2.101 The Authority may require a suspension of the work if, in its opinion, unforeseen conditions warrant such stoppage. When the Authority directs resumption of the work, the Contractor shall resume full operations within a period of ten (10) days after the date of written notice to do so. The Authority is not liable for any damage or anticipated profits on account of the work being suspended.

12.2.102 Any work done by the Contractor during the period of suspension is its responsibility. The contractor shall receive no payment for the work unless the construction is subsequently resume and the work done during the intervals of suspension can be utilized in the resumed work.

12.2.103 Suspensions of work as outlined above shall not in themselves operate to extend the Contract date of completion. Requests for extensions of time shall be submitted in writing by the Contractor, setting forth its reasons for the extension.

12.3 SUSPENSION OF WORK FOR FAULT OF THE CONTRACTOR

Should the Contractor fail to comply with the orders of the Authority relative to any particular parts of the work, the Authority may suspend the work on any or all parts until its orders respecting the particular parts are complied with. In case of such suspension, which shall be considered due to the fault of the Contractor, no extension of time shall be given and no allowance will be made for the expenses incurred by the Contractor during the suspension period.

ARTICLE 13

TERMINATION OF THE AGREEMENT

13.1 TERMINATION FOR CONVENIENCE

13.1.100 The Authority may, at any time and for any reason, terminate this Agreement for the convenience of the Authority. In such case, the Contractor shall be paid (and shall accept payment) for that portion of the entire Contract actually performed to the date of termination, excluding, however, any loss of anticipated profits. Disputes as to the sum payable to the Contractor shall be settled in accordance with the Disputes Article of the Agreement.

13.1.101 Such termination shall be effective in the manner and at the time specified in such notice and shall be without prejudice to any claims that the Authority may have against the Contractor. Upon receipt of such notice from the Authority, the Contractor shall immediately discontinue all work and the placing of all orders for materials and equipment, facilities and supplies in connection with the performance of this Contract. The Contractor shall cancel promptly all existing orders and terminate work under all subcontracts so far as such orders and work are chargeable to this Contract. The Contractor shall take such measures for the protection of the property of the Authority as may be directed by the Authority.

13.1.102 Upon termination of this Agreement, as provided by this paragraph, full and complete adjustment and payment of all amounts due the Contractor arising out of this Agreement as determined by an audit conducted by or for the Authority, as soon as practicable after such termination, shall be made as follows:

- A. The Authority shall reimburse the Contractor for all costs incurred to date of termination, including reasonable overhead and expense made in the performance of this Contract, less amounts previously paid.
- B. The Authority shall also reimburse the Contractor for all costs to which the Contractor has been subjected or is legally liable for by reason of the termination of this Contract, including reasonable costs related to cancellation of orders, termination of subcontracts, etc.
- C. The Authority shall also reimburse the Contractor for the reasonable cost of providing protection of the property of the Authority as directed by the notice of termination.
- D. The sum total of the payments made under this paragraph shall not exceed the total amount of the Agreement, less payments previously made.
- E. Title to all property accruing to the Authority by reason of the termination of this Contract shall immediately vest in the Authority, and the Contractor will execute and deliver to the Authority all papers necessary to transfer title.

- F. The Authority or its representative shall be afforded full access to all books, correspondence, data and papers of the Contractor relating to this Contract in order to determine the amount due.

13.2 TERMINATION FOR DEFAULT OF THE CONTRACTOR

- 13.2.100 If the Contractor persistently or repeatedly refuses or fails to supply enough properly skilled workmen or proper materials, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or fails to proceed as directed by the Authority, or performs the work unsuitably, or neglects or refuses to remove materials or replace rejected work, or discontinues the prosecution of the work without approval of the Authority, or otherwise is guilty of a substantial violation of a provision of the Contract Documents, then the Authority may, without prejudice to any of its other rights or remedies, give the Contractor and its Surety written notice that the Contractor has seven (7) days from the date of the Authority's notice to cure the default set forth in the notice.

The discretion to declare the Contractor in default is solely the Authority's, and, no party, whether bound by Agreement to the Authority or attempting to raise a third party relationship, which this Contract specifically precludes, has standing to raise the failure of the Authority to exercise its discretion, if default is the basis of a claim against the Authority.

Should the Contractor fail to cure said default within the specified time, the Authority may terminate the Agreement between the Authority and the Contractor and may take possession of the site and of all materials, equipment, tools, construction equipment and machinery, which is owned by the Contractor, located on the property and may finish the work by whatever method it may deem expedient.

- 13.2.101 In such case, the Contractor is not entitled to receive any further payment until the work is finished, at which time the Contractor shall be paid any excess remaining. If the unpaid balance of the Contract sum exceeds the cost of finishing the work, including compensation for the Professional's additional services and any other damages which the Authority has incurred in accordance with the Agreement, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor or the Surety or both shall pay the difference to the Authority.
- 13.2.102 In the event the Authority wrongfully terminates the contract, as determined by disputes resolution procedures in the disputes section of the General Conditions, such termination shall be considered termination for convenience. The Contractor shall be paid only for the work completed to the termination date and for the materials delivered to the site that is peculiar to the project, and for other costs incidental to termination to the date of termination.

ARTICLE 14

DEFINITIONS

- 14.1** As used in these General Conditions, and in the Agreement, the following definitions shall be described herein, unless the context clearly dictates otherwise.
- A. Agreement means the Agreement or Contract, for construction services of which these general conditions are made a part. The term "Agreement" shall be interchangeable with the term "Contract" throughout this document.
 - B. Change Order is a written order to the Contractor, signed by the Authority, and issued after the execution of the Contract, authorizing a change in the work or an adjustment in the Contract sum or the Contract time. The Contract sum and the Contract time may be changed only by change order.

- C. Claim or Disputed Item means 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.
- D. Contract Sum is the sum stated in the Agreement, and, including authorized adjustments, is the total amount payable by the Authority to the Contractor for performance of the work under the Contract Documents.
- E. Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for substantial completion of the work.
- F. Contractor, or Prime Contractor shall be the entity with whom the Authority shall enter into an agreement to provide the means and methods to construct the Project in accordance with the Contract Documents.
- G. Deficiency Item is work performed but which the design professional, the contractor, or the inspector will not certify as being completed according to the contract.
- H. Final Completion is when the project is completed, in accordance with the Contract Documents.
- I. Inspector is the person authorized or engaged by the Authority to inspect the work performed and materials furnished pursuant to a contract to determine whether the work completed is in compliance with the contract.
- J. Professional is a person or entity that acts as an agent for the Authority in the administration of the contract and may perform any functions deemed necessary as determined through agreement with the Authority.
- K. Subcontractor is a person or entity who has contracted to furnish labor or materials to or has performed labor for a contractor or another subcontractor in connection with a contract.
- L. Substantial Completion is the stage in the progress of the work when the work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Authority can occupy or utilize the work for its intended use. In no event shall a project be certified as substantially complete until at least 90% of the work on the project is completed.
- M. Authority shall mean the Authority or Pennsylvania Convention Center Authority authorizing the contract or any authorized representative thereof.
- N. Work includes all services and labor necessary to produce the construction required by the Contract Documents. It also includes all material and equipment incorporated or to be incorporated into such construction.

END OF SECTION