



**pennsylvania**  
DEPARTMENT OF GENERAL SERVICES

**GENERAL CONDITIONS  
OF THE CONSTRUCTION CONTRACT  
2022 Edition**

**HARRISBURG, PENNSYLVANIA**

# GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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# GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

## ARTICLE 1: DEFINITIONS

Whenever in this Contract the following words and expressions occur, they have the following meanings, which shall be construed in conjunction with the applicable definitions of the Commonwealth Procurement Code:

- 1.1 **ADMINISTRATIVE PROCEDURES:** The Department's construction procedures manual to be followed for various administrative functions, as set forth therein.
- 1.2 **AGREEMENT FOR PROFESSIONAL SERVICES:** The Agreement for Professional Services and any Special Conditions, in addition to any Amendments, between the Department and the Professional. The Agreement for Professional Services is commonly referred to as the "Agreement" or "Professional Agreement".
- 1.3 **AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES:** The contract, including any amendments, between the Department and its Construction Manager for Construction Management Services.
- 1.4 **APPLICATION FOR PAYMENT (A.K.A. INVOICE OR INVOICE APPROVAL-PAY APPLICATION):** The information submitted by the Contractor pursuant to the Administrative Procedure for Department's review and/or release of payment.
- 1.5 **BENEFICIAL OCCUPANCY:** The date upon which the Professional certifies and the Department concurs that the Work is sufficiently complete, in accordance with the Contract Documents, so that the Client Agency may use, occupy or operate the Project as fit for the use for which it was intended. The Department, in its sole discretion, reserves the right to designate a portion of the Project for the Professional's certification of beneficial occupancy.
- 1.6 **BI-WEEKLY:** An event occurring every two weeks.
- 1.7 **CHANGE ORDER:** A written order signed by the Department directing the Contractor to make changes that the Contract authorizes the Department to order. The change order may be either with the consent of the Contractor or a unilateral order by the Department. The Contract Sum may only be changed by Change Order.
- 1.8 **CLIENT AGENCY:** This term refers to any executive agency, government agency, independent agency, state-affiliated entity, or state-related institution that will ultimately use the completed Project, which includes the Work covered by the construction contract.
- 1.9 **COMMONWEALTH:** The Commonwealth of Pennsylvania.
- 1.10 **CONSTRUCTION MANAGER:** The consultant retained by the Department to act as the Department's designee and authorized representative to manage the Project. If the Department does not retain a Construction Manager, any reference in the General Conditions to "Construction Manager" shall be interpreted to mean the Department's representative from the Bureau of Construction.
- 1.11 **CONSULTANT:** A specialist retained by the Department, the Construction Manager or the Professional for the performance of its specialty.

- 1.12 **CONTRACT:** A written agreement consisting of the Contract Documents, as defined in Article I of the Standard Construction Contract and executed by all parties in accordance with the Commonwealth Attorneys Act. The Contract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral. To the extent that any of these documents are amended by statute, the statutory language will control.
- 1.13 **CONTRACT BONDS:** The bonds required by the Contract Documents which must be executed by one or more surety companies legally authorized to do business in the Commonwealth of Pennsylvania including, but not limited to, bonds for the faithful performance of the contract and for payment of labor and material, as required by the Department.
- 1.14 **CONTRACT COMPLETION DATE:** The date calculated by adding the Contract Duration and any approved Extensions of Time to the Construction Contract Start Date for the completion of the Work.
- 1.15 **CONTRACT DOCUMENTS:** The documents listed in Article 1 of the Standard Construction Contract. To the extent that any of these documents are amended by statute, the statutory language will control.
- 1.16 **CONTRACT DURATION:** The number of calendar days set forth in the Contract Documents for completion of the Work, also referred to as Contract Time.
- 1.17 **CONTRACT LIMITS:** The area designated in the Contract Documents as the limit of construction within which the Contractor may perform the Work.
- 1.18 **CONTRACT START DATE:** For purposes of calculating dates for completion of the Work, this is the date upon which the Initial Job Conference is held for the Project.
- 1.19 **CONTRACT SUM:** The total amount payable by the Department to the Contractor for the performance of the Work under the Contract Documents.
- 1.20 **CONTRACTOR:** The person or organization identified as such in the Contract and is referred throughout the Contract Documents, as singular in number. Unless otherwise indicated, the Contractor is a Prime Contractor. The Contractor may be referred to throughout these General Conditions as the “Prime Contractor”, when the term is needed for clarity. The term “Contractors” means the group of Prime Contractors working on the Project.
- 1.21 **DAYS:** Calendar days unless specifically stated otherwise in the Contract.
- 1.22 **DEFICIENCY ITEM:** Any work or activity, either performed or unperformed, which the Department will not certify as being performed in accordance with the Contract Documents.
- 1.23 **DEPARTMENT:** The Department of General Services of the Commonwealth of Pennsylvania, also known as “DGS”, or any authorized representative or designee, and is referred throughout the Contract Documents as singular in number.
- 1.24 **DEPARTMENT’S DESIGNATED REPRESENTATIVE:** The Department’s employee from the Bureau of Construction assigned to the Project to manage construction.
- 1.25 **DEPARTMENT OF LABOR AND INDUSTRY PLAN REVISION SUBMISSION:** The revised set of Construction documents submitted by the Professional to the Department of Labor and

Industry for approval of design and construction changes made after the UCC Building Permit is issued. This “Plan Revision Submission” is also referred to as the “Department of Labor and Industry Record Drawings” and shall be submitted in accordance with PA L&I and PA UCC requirements. Receipt of the approved Plan Revision Submission is required before an L&I Occupancy Permit will be issued

- 1.26 **DIRECTOR OF CONSTRUCTION:** The Department’s employee who is the administrative head of the Bureau of Construction of the Department.
- 1.27 **DIRECTOR OF DESIGN:** The Department’s employee who is the administrative head of the Bureau of Design.
- 1.28 **E-Builder Enterprise Software.** The electronic software utilized on Department projects during all phases of design, procurement, award and construction administration. The Department, the Professional, and all Prime Contractors will utilize the e-Builder Enterprise Software Program (e-Builder) for all Work and administrative duties provided under this Contract. Any and all notifications, requests, submittals, approvals, etc. between the Department, the Prime Contractors, the Professional, and/or the Construction Manager (if a CM is assigned to the Project) shall be through the e-Builder system.
- 1.29 **EFFECTIVE DATE OF CONTRACT:** The date on which the last Commonwealth official who is required to execute the contract executes it.
- 1.30 **EXTENSION OF TIME:** A Department approval of additional calendar days to the contract duration.
- 1.31 **FIELD ORDER:** A record of a minor adjustment in the Work that results in no change in cost or duration of the Contract.
- 1.32 **FINAL INSPECTION:** A review of the Work conducted by the Professional, when requested by the Contractor, to determine whether the Project is substantially complete. If, as a result of this inspection, the Work is determined to be substantially complete, the Professional generates a certificate of completion and a Punch List of uncompleted items and a reasonable cost of completion.
- 1.33 **LABOR & INDUSTRY:** The Commonwealth of Pennsylvania’s Department of Labor & Industry also referred to as “L&I”.
- 1.34 **LEAD CONTRACTOR:** The Prime Contractor designated in the specifications to coordinate the progress of the Work.
- 1.35 **LETTER OF INTENT:** A letter might be issued by the Department at the time of contract award if, in the Department’s sole discretion, such letter is necessary on the Project. If issued, the Contractor may rely upon the letter to initiate the scope of Work described in the letter before there is a fully executed contract with the Department and to incur costs in conducting the described scope of Work.
- 1.36 **MANUFACTURER:** A firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications and who receives compensation from the Contractor, pursuant to the terms of a purchase order or invoice, to provide any material and/or any equipment to the Project. Nothing contained in the Contract Documents between the Contractor and the Department creates any contractual relationship between the Department and any Manufacturer. A Manufacturer

lacks privity of Contract to the Department and every Manufacturer agrees that it neither acquires nor intends to acquire any rights against the Department on a third party beneficiary theory or any other theory.

- 1.37 **MILESTONE:** An indication on the Project Schedule that designates the start or completion of a significant construction activity
- 1.38 **NOTICE OF DEFICIENCY:** A document to record non-conforming work, deficient work and/or schedule slippage.
- 1.39 **OFF-SITE WORK:** All Work that is not physically carried out within the Contract Limits.
- 1.40 **ON-SITE WORK:** All Work that is physically carried out within the Contract Limits.
- 1.41 **POSTCONSUMER RECOVERED PAPER:** Any paper, paperboard and fibrous wastes from retail stores, office buildings, homes and so forth, after they have been passed through their end-usage as a consumer item including: used corrugated boxes, old newspapers, old magazines, mixed waste paper, tabulating cards and used cordage, as well as all paper, paperboard and fibrous wastes that enter and are collected from municipal solid waste.
- 1.42 **PRIME CONTRACTOR:** Any Contractor holding a Contract with the Department for construction of the Project.
- 1.43 **PROFESSIONAL:** The Commonwealth employee or the Architectural and/or Engineering firm retained by the Department. The term may also include the Architectural and/or Engineering firm's authorized representative or consultant(s).
- 1.44 **PROJECT:** The total Work to be performed by all the separate Prime Contractors under the Project Number.
- 1.45 **PROJECT SCHEDULE:** The Critical Path Method (CPM) schedule prepared as a result of the affirmative contractual obligation to coordinate the Work through the cooperative efforts of each Prime Contractor on the Project. .
- 1.46 **RECORD DRAWINGS:** Terminology used by the Department to identify contract prints or drawings, corrected with suitable markings to show all changes or variations from the original contract drawings, including all items uncovered during the Work and showing details of the work as actually built, including but not limited to horizontal and vertical dimensional references of all concealed pipe, conduit and other lines and equipment and similar items.  
  
"Record Drawings" are not the same as the Department of Labor and Industry "Plan Revision" submission.
- 1.47 **RECOVERED MATERIALS:** Waste material and byproducts which have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process.
- 1.48 **REGIONAL DIRECTOR:** The Department's employee who manages the Department construction employees within the geographical area of the Project.
- 1.49 **REQUEST FOR INFORMATION:** A written question issued by the Contractor seeking clarification of the Contract Documents.

- 1.50 **SAMPLES:** Physical examples furnished by the Contractor to illustrate materials, equipment or workmanship, and to establish standards by which the work will be judged.
- 1.51 **SECRETARY:** The administrative head of the Department of General Services.
- 1.52 **SMALL BUSINESS:** Those Small Businesses that have registered with the Commonwealth and completed the self-certification process on the Department's web site.
- 1.53 **SMALL DIVERSE BUSINESS:** Department verified Minority Business Enterprises (MBEs), Woman Business Enterprises (WBEs), Service-Disabled Veteran Business Enterprises (SDVBEs), Disability-Owned Business Enterprises (DOBE), or LGBT Business Enterprises (LGBTBE) or other business otherwise deemed disadvantaged by the Uniform Certification Program.
- 1.54 **SPECIFICATION:** A description of the physical or functional characteristics or the nature of a construction item, including a description of any requirement for inspecting, testing or preparing a construction item for delivery. The specifications are a part of the Contract Documents and must be interpreted in conjunction with the other Contract Documents, as specified further in the General Conditions.
- 1.55 **SUBCONTRACTOR:** A person or organization that has a Contract with the Contractor to perform any of the Work. The term Subcontractor is referred throughout the Contract Documents as singular in number and means a Subcontractor or its authorized representative. The Contractor and every Subcontractor agree that there is no privity of contract between the Department and any Subcontractor and that, to the extent set forth by law, the Subcontractor has no direct cause of action against the Department for any claim arising out of the Project.
- 1.56 **SUBMITTALS:** Administrative or technical information, including but not limited to drawings, diagrams, illustrations, schedules, performance charts, brochures, catalog data, and other data that are prepared by the Contractor or any Subcontractor, manufacturer, supplier, or distributor, and which illustrate some portion of the Work or how it fits in relation to other parts of the Work.
- 1.57 **SUBSTANTIALLY COMPLETE:** When the Work on the Contract is sufficiently completed in accordance with the Contract Documents and certified by the Department and the Professional so that the Project or specified part(s) of the Project can be used, occupied or operated for its intended use. In no event shall a Project be certified as substantially complete until at least 90% of the Work has been completed and accepted by the Department and is capable of Beneficial Occupancy.
- 1.58 **SUB-SUBCONTRACTOR:** A person or organization that has a Contract with a Subcontractor to perform any of the Work. The term Sub-subcontractor is referred throughout the Contract Documents as singular in number and means a Sub-subcontractor or its authorized representative. The Contractor, every Subcontractor and every Sub-subcontractor agree that there is no privity of contract between the Department and any Sub-subcontractor and that, to the extent set forth by law, the Sub-subcontractor has no direct cause of action against the Department for any claim arising out of the Project.
- 1.59 **SUPERINTENDENT:** The Contractor's representative at the Project site. The Superintendent is responsible for continuous field supervision, coordination and completion of the Work, and, unless another person is designated in writing by the Contractor, for the prevention of accidents. The Superintendent shall have full authority to act on behalf of the Contractor in relation to Project activities and associated work.

- 1.60 **SUPPLIER:** An individual, firm, partnership, association, corporation or other legal entity who receives compensation from the Contractor, pursuant to the terms of a purchase order or invoice, to provide any material and/or any equipment to the Project. Nothing contained in the Contract Documents between the Contractor and the Department creates any contractual relationship between the Department and any Supplier. A Supplier lacks privity of Contract to the Department and every Supplier agrees that it neither acquires nor intends to acquire any rights against the Department on a third party beneficiary theory or any other theory.
- A. Stocking Supplier:** a firm that owns, operates, or maintains a store, warehouse, or other establishment, in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.
- B. Nonstocking Supplier:** Nonstocking supplier does not carry inventory but orders materials from a manufacturer, manufacturer's representative or a stocking supplier. In order for a non-stocking supplier to receive credit, it must perform a useful business function by engaging in meaningful work (i.e., negotiating price; and determining quality and quantity; and ordering materials; and paying for the materials).
- 1.61 **UNIFORM CONSTRUCTION CODE (UCC):** Pennsylvania's Uniform Construction Code (35 P.S. §7210.101 *et seq.*) that grants the Pennsylvania Department of Labor & Industry sole jurisdiction over state-owned buildings. A general description and important links can be found at [www.dli.pa.gov](http://www.dli.pa.gov) and clicking on the Uniform Construction Code Link. The Contractor is responsible for compliance as set forth in the UCC and these General Conditions.
- 1.62 **VETERAN BUSINESS ENTERPRISE:** Department verified Veteran-Owned Small Business Enterprises (VBEs) or a Service-Disabled Veteran-Owned Small Business Enterprises (SDVBEs).
- 1.63 **WORK:** The construction and services required by Contract Documents, whether completed or partially completed, including all labor, materials, equipment and services provided or to be provided by a construction contractor to fulfill its obligations. The Work may constitute the whole or a part of the Project.

## **ARTICLE 2: EXECUTION, CORRELATION, INTENT, AND INTERPRETATIONS**

- 2.1 **CONTRACT EXECUTION.** The Department and the Contractor shall sign the Contract Documents. The Professional shall seal all drawings. The Licensed Consultant(s) of the Professional shall sign and seal for their part of the Work. No oral contract or conversation with any officer, agent, or personnel of the Department, or Client Agency, or with the Professional, either before or after the execution of this Contract, shall affect or modify any of the terms or obligations of the Contract Documents.
- 2.2 **CONTRACT ADMINISTRATION.** The Department and all Prime Contractors will use the e-Builder Construction Enterprise Software (e-Builder) for this Project. Any and all notifications, requests, submittals, approvals, etc. between the Department, the Prime Contractors, the Professional, and/or the Construction Manager (if a CM is assigned to the Project) shall be through the e-Builder system. The Prime Contractor shall become familiar with and utilize the e-Builder system for all construction for this Contract.

Throughout the Contract Documents where it states to notify, submit, request, etc., another party, the Prime Contractor shall use the e-Builder system for such duty.

- 2.3 **CONTRACT INTERPRETATION.** The Contract Documents are complementary and what is required by any one of the Contract Documents is binding as if required by all. The intention of the Contract Documents is to include all labor, materials, equipment, services and other items or conditions 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 as being necessary to produce the intended results.

The omission of words or phrases for brevity of the Contract Documents, the inadvertent omission of words or phrases, or obvious typographical or written errors shall not nullify the Department's or their representative's interpretation so long as that interpretation is reasonably inferable from the Contract Documents as a whole. Except as noted otherwise, references to standard specifications or publications or associations, bureaus, or organizations shall mean the latest edition or revision of the referenced standard specification or publication as of the date of the Invitation for Bids. Words that have well-known technical or trade meanings are used in this Contract in accordance with such recognized meanings.

In the event of conflict in the Contract Documents, the priorities stated below shall govern:

1. Addenda shall govern over all other Contract Documents, and subsequent addenda shall govern over prior addenda only to the extent modified.
2. Special Conditions shall govern over all specifications, General Conditions, and drawings.
3. Specifications and drawings shall govern over the General Conditions.
4. If there is a conflict regarding quantities or quality of products in the Contract Documents, the higher quantity or quality product shall be delivered.
5. If there is a conflict between the contract drawings and the specifications, the specifications shall prevail.

- 2.4 **CONTRACT ORGANIZATION.** The organization of the specifications into divisions, sections and articles and the arrangement of drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

- 2.5 **CONTRACT DETAIL.** Where the Work is shown in complete detail on only a portion of a drawing or there is an indication of continuation, the remainder being depicted or described in an outline or schematic form, the Work drawn out in detail applies to other like portions of the structure.

- 2.6 **CONTRACT ERRORS OR CONFLICTS.** 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 in writing to the Department and the Professional. The Professional, with appropriate input from the Department, will review the matter and issue an interpretation to the Contractor in writing within seven (7) calendar days after the Professional receives the Contractor's Request for Information.

- 2.7 **OWNERSHIP AND AVAILABILITY OF CONTRACT DOCUMENTS.** Unless otherwise provided in the Contract Documents, the e-Builder Enterprise Software (e-Builder) will be the electronic document repository for the Contract Documents. The drawings and specifications are available in e-Builder for download and printing by the Contractor. All Contract Documents and any copies/prints made by the Contractor are and shall remain the property of the Department.
- 2.8 **CONTRACT NOTIFICATIONS** Any and all notifications, requests, submittals, approvals, etc. between the Department, the Prime Contractors, and the Construction Manager (if a CM is assigned to the Project) shall be through the e-Builder.

### **ARTICLE 3: THE PROFESSIONAL**

- 3.1 **ADMINISTRATION OF CONTRACT.** The Professional will assist the Department and/or the Department's designee, in administering the Construction Contracts. The Professional will review and execute (if acceptable) all Department forms that require the Professional's review and signature under the Contract. The Professional will also review submittals as provided in the Submittal Article of these General Conditions. The Professional shall assist the Department, if requested, in the review of Extension of Time requests and claims of any type.
- 3.2 **PROFESSIONAL SITE VISITS.** The Professional will attend the number of meetings listed in their Agreement. The meetings include Job Conferences and all special meetings and Project Site conferences required by the Department and/or the Department's designee during periods of active construction in accordance with the terms of their Agreement. The Professional or Professional's Consultants will visit the site for a full day, up to eight hours, at such intervals and duration as deemed necessary by the Department, to review the respective phases of the Work in order to achieve the requirements of each Contract, with a maximum number of visits as set forth in the Agreement. When directed by the Department, the Professional and Professional's Consultants will attend any and all meetings and job conferences that are required by the Department. A meeting on a given day is counted as one (1) meeting regardless of the number of attendees; however, a consultant will not be required to attend more than one meeting per thirty (30) days of the construction duration while work related to the Consultant's expertise is ongoing without an additional meeting being counted towards the number of meetings set forth in the Agreement. The Professional will review the progress of the Work, including the completeness of the construction contractors' installation drawings, and take actions necessary or appropriate to assist in achieving the compliance with the Contract Documents and submit a Progress Report.
- 3.3 **PROFESSIONAL ACCESS TO WORK.** The Professional, its Consultants and authorized representatives shall have access to the Work at all times. The Contractor shall provide the facilities for such access so the Professional may perform its functions under the Contract Documents.
- 3.4 **PROFESSIONAL INTERPRETATION OF DOCUMENTS.** The Professional is the initial interpreter of the requirements of the Contract Documents. The Professional will, within seven (7) days after receipt of a request, (in the form of a Request for Information) render an interpretation. All interpretations by the Professional will be consistent with the Contract Documents. In its capacity as interpreter, the Professional will exercise its best efforts to interpret the documents impartially. Any dispute regarding such interpretation shall be handled in accordance with the Disputes Article of these General Conditions.
- 3.5 **REJECTION OR STOPPAGE OF WORK.** Whenever the Professional observes deficiencies or observes the Contractor failing to execute the Work in accordance with the Contract

Documents, the Professional will promptly notify the Contractor of all such deficiencies and will issue such notices of Non-Compliant Work that the Professional deems appropriate. The Professional will recommend rejection of work that does not conform to the Contract Documents and immediately notify the Department of the recommendation of rejection. The Professional will recommend stoppage of Contractors' work or special testing whenever such testing or stoppage is necessary, in the Professional's opinion, to achieve compliance of the finished Work with the Contract Documents. Neither the Professional's authority to make recommendations under this paragraph, nor any decision made by the Professional in good faith to either exercise or not to exercise such authority shall give rise to any duty or responsibility of the Professional to the Contractor, or any Subcontractor, any of their agents or employees, or any other person performing any of the Work.

- 3.6 **PROFESSIONAL REVIEW OF CHANGE ORDERS.** The Professional will prepare specifications and drawings necessary for the Department to authorize change orders in accordance with the Change Order Article of these General Conditions. The Professional will review all costs submitted by the Contractor for all Change Orders and advise the Department and/or the Department's designee, of the Professional's acceptance or rejection of the scope and cost of the change order within seven (7) days of the Professional's receipt of the Contractor's cost estimate. The Professional will provide written justification to the Department and/or the Department's designee to substantiate disputed costs.
- 3.7 **NON-CONFORMING WORK.** If the Professional is required to design corrective work to remedy defective or nonconforming Work by the Contractor, the cost for any and all additional professional services shall be paid by the Contractor, provided that the Professional submits those costs to the Department and the Contractor within thirty (30) days after the completion of said additional services. The Department shall review the corrective work and/or drawings that are prepared by the Professional in order to determine if the corrective work and/or drawings fall within the original scope of the Contract.
- 3.8 **RECORD DOCUMENTS.** On the day of Final Inspection, the Contractor shall deliver to the Professional a complete set of contract prints in PDF format, corrected with suitable markings to show all changes or variations from the original contract, including all items uncovered during the work and showing the details of the work as actually built, including but not limited to horizontal and vertical dimensional references of all concealed pipe, conduit and other lines and equipment.
- 3.9 **PROFESSIONAL NOT RESPONSIBLE FOR CONTRACTOR MEANS/METHODS/TECHNIQUES.** The Professional is not responsible for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work since these are solely the Contractor's responsibilities.
- 3.10 **PROFESSIONAL NOT RESPONSIBLE FOR CONTRACTOR ACTS OR OMISSIONS.** The Professional will not be responsible for the acts or omissions of any Contractor, or any Subcontractor, or any of their agents or employees, or any other persons performing any of the Work.
- 3.11 **CONTRACTOR NOT AN INTENDED THIRD PARTY BENEFICIARY OF THE PROFESSIONAL AGREEMENT.** The Contractor is not an intended third party beneficiary of the Professional Agreement between the Department and the Professional. Nothing in the Contract Documents between the Department and the Contractor should be construed to authorize any person not a party to the Professional Agreement to maintain any lawsuit involving that contract, unless otherwise provided by law.
- 3.12 **REPLACEMENT OF PROFESSIONAL.** In case of the termination of the Agreement for Professional Services, the Department may appoint a new Professional whose status

under the Contract Documents shall be that of the former Professional. The decision of whether or not to terminate a Professional and appoint a new Professional rests solely with the Department.

#### **ARTICLE 4: THE DEPARTMENT**

- 4.1 **EASEMENTS AND RIGHTS OF ACCESS.** If necessary, the Department will secure and pay for easements for permanent structures with a right of access to the structures. If such easements are insufficient for the erection of temporary construction facilities and storage of materials, the Contractor shall obtain easements and space as necessary at no cost to the Department.
- 4.2 **ADMINISTRATIVE PROCEDURES.** The Administrative Procedures are included in the Contract Documents and are incorporated by reference and made a part hereof, as if fully set forth herein. In the event there is any redundancy, conflict, contradiction, discrepancy or inconsistency between any portions of or criteria set forth in the Administrative Procedures and the other Contract Documents, the most restrictive or demanding of the criteria shall take precedence over any less restrictive or less demanding criteria as determined by the Department and/or the Department's designee.
- 4.3 **SEPARATE PRIME CONTRACTS.** The Department reserves the right to award other Contracts in connection with other portions of the Project (Prime Contracts) under these or similar conditions of the Contract. When separate Prime Contracts are awarded for different portions of the Project, the "Contractor" in the Contract Documents in each case is the Contractor which signs each separate Prime Contract. Each Contractor shall have an affirmative duty to cooperate with every other Prime Contractor on the Project.
- 4.4 **DEPARTMENT NOT RESPONSIBLE FOR CONTRACTOR MEANS/METHODS/TECHNIQUES.** The Department is not responsible for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work since these are solely the Contractor's responsibilities.
- 4.5 **DEPARTMENT IS NOT RESPONSIBLE FOR CONTRACTOR ACTS OR OMISSIONS.** The Department will not be responsible for the acts or omissions of any Contractor, or any of its subcontractors, or any of their agents or employees, or any other persons performing any of the Work for the Contractor.
- 4.6 **DEPARTMENT'S ACCESS TO THE WORK.** The Department will, at all times, be provided full access to any area the Department deems necessary in order to perform its responsibilities. The Contractor shall provide the facilities for such access so the Department may perform its functions under the Contract Documents.
- 4.7 **DEPARTMENT'S USE AND/OR OCCUPANCY OF THE WORK.** The Department may use or permit the Client Agency to use or occupy any completed or partially completed portions of the Work, whether or not the time may have expired for completing the entire Work or said portions of Work. Such use or occupancy shall not be deemed an acceptance of the portion of the Work so taken or used. Prior to such use or occupancy, an assessment of the Work to be occupied by the Client Agency shall be made by the Department and the Professional to determine if it is in conformity with the Contract Documents. Any damage subsequent to the inspection due solely to the use and occupancy of the completed portion is not the responsibility of the Contractor.

## **ARTICLE 5: THE CONSTRUCTION MANAGER**

### **This Article only applies if a Construction Manager is retained for the Project**

#### **5.1 INFORMATION AND SERVICES REQUIRED OF THE CONSTRUCTION MANAGER.**

- A. The Construction Manager shall carry out the duties specified in the Contract acting as an authorized representative/designee of the Department.
  - 1. The Construction Manager will determine in general that the Work is being performed in accordance with the requirements of the Contract Documents, will keep the Department informed of the progress of the Work, and will endeavor to guard the Department against defects and deficiencies in the Work.
  - 2. The Construction Manager will assist in the coordination of the activities of all Prime Contractors. Each Prime Contractor has an affirmative duty to coordinate Work with the other Prime Contractors. Nothing in this Article relieves the Contractors of their coordination responsibilities.
  - 3. The Construction Manager will not have control over or charge of and will not be responsible for construction means, methods, or techniques or for safety procedures and programs in connection with the Work, since these are solely the Contractor's responsibility.
  - 4. The Construction Manager will review, certify and recommend to the Department payment for all acceptable Applications for Payment from the Contractor, including final payment.
  - 5. The Construction Manager will review and advise the Department on Change Orders.
- B. At a point in time no later than the Initial Job Conference, the Construction Manager shall provide all Prime Contractors a list of its principal staff assignments, including the Site Representative and other personnel to be in attendance at the site, identify individuals, their duties and responsibilities and list their addresses and telephone numbers.
- C. For purposes of this Contract, the Contractor shall consider and assume that any requisite approval shall be deemed to have been given by the Department for any such authority exercised by the Construction Manager.
- D. Except as expressly stated in the Contract, the Construction Manager shall have no authority and no liability to relieve the Contractor of any of its obligations under the Contract.
- E. It is not the intention of these Contract Documents to inhibit communications between the Professional, the Construction Manager and the Contractor as it relates to clarification, interpretation and other issues related to progressing of the Work. The Professional is available to discuss issues, provided such discussions or communications are coordinated with the Construction Manager.

- F. If, in the opinion of the Construction Manager, an emergency occurs affecting the Work or adjoining property, the Construction Manager may, without relieving the Contractor of any of its duties and responsibilities under the Contract, instruct the Contractor to execute all such Work or to do all such things as may, in the opinion of the Construction Manager, be necessary to abate or reduce the risk. The Contractor shall immediately comply, despite the absence of approval of the Department, with any such instruction of the Construction Manager.
- G. The Construction Manager's Site Representative will be responsible for the Construction Management of this Project and shall carry out all required duties and exercise such authority as may be required under the terms of this Contract, including but not limited to reviewing Change Orders, Applications for Payment and Extensions of Time.
- H. The Construction Manager's Site Representative will execute the duties and authorities vested in the Construction Manager. The Construction Manager's Site Representative has been fully vested with a level of authority that is adequate to execute the requirements of the Construction Management for this Project. The Contractor is expected to and allowed to rely upon the directions that may be provided from the Construction Manager's Site Representative.
- I. Any communication given by the Construction Manager's Site Representative to the Contractor in accordance with such delegation shall have the same effect as though given by the Construction Manager or the Department.
- J. The Construction Manager may appoint any number of persons from its staff to assist in the carrying out of the Construction Manager's duties. Such assistants shall have no authority to issue any instructions to the Contractor unless such instruction may be necessary to enable the Contractor to carry out their duties and to secure their acceptance of materials, equipment or workmanship as being in accordance with the Contract, and any instructions given by any of them for those purposes shall be deemed to have been given by the Construction Manager.
- K. Projects with a Construction Manager will be conducted with the e-Builder Enterprise Software. Any notifications and/or instructions given by the Construction Manager to the Contractor shall be through e-Builder. If the Construction Manager considers it necessary to give any such instruction orally, the Contractor shall comply with such instruction. The Construction Manager will, within 24 hours, reduce the oral instructions to a writing and submit to the Contractor through e-Builder.
- L. In all cases of misunderstanding and disputes, verbal instructions that were not subsequently reduced to writing as discussed above in the preceding subparagraph will not be considered binding upon the Department. The Contractor must produce evidence in support of its contentions and shall advance no claim in the absence of such evidence, or use, or attempt to use any conversation with any parties against the Construction Manager, the Professional or the Department, or in prosecuting any claim against the Construction Manager, the Professional or the Department.
- M. Wherever, under the Contract, the Construction Manager is required to exercise its discretion by:

1. Giving decision, opinion or consent; or
2. Expressing satisfaction or dissatisfaction; or
3. Determining value; or
4. Otherwise taking action which may affect the rights and obligations of the Department or the Contractor,

the Construction Manager shall exercise such discretion impartially within the terms and conditions of the Contract and having regard to all the circumstances. To the extent the Contractor disagrees with the Construction Manager's determination on an issue, any such decision, opinion, consent, expression of satisfaction, or dissatisfaction, determination of value or action may be subject to the Disputes Article of these General Conditions of the Contract.

- N. The Construction Manager's failure to insist on strict compliance with any term, condition or provision of this Contract or instruction under it, or to exercise any right, remedy, privilege or power provided under this Contract, or the Construction Manager's waiver of any breach, shall not relieve the Contractor of responsibility for compliance with the Contract requirements and shall neither waive nor prevent the Construction Manager or the Department from subsequently requiring strict compliance with that term, condition, provision, instruction, right, remedy, privilege or power.

- 5.2 **CONSTRUCTION MANAGER'S ACCESS TO THE WORK.** The Construction Manager or the authorized representative of the Construction Manager, will at all times be provided full access to any area it deems necessary in order to perform its responsibilities to assist coordination of the Work. The Contractor shall provide the facilities for such access so the Construction Manager may perform its functions under the Contract Documents.
- 5.3 **REPLACEMENT OF CONSTRUCTION MANAGER.** In case of the termination of the Agreement for Construction Management Services, the Department may appoint a new Construction Manager whose status under the Contract Documents shall be that of the former Construction Manager. The decision of whether or not to replace and/or appoint a new Construction Manager or to assume construction management responsibilities is solely within the Department's discretion.
- 5.4 **THE CONSTRUCTION MANAGER NOT RESPONSIBLE FOR CONTRACTOR ACTS OR OMISSIONS.** The Construction Manager is not be responsible for the acts or omissions of any Contractor, or any of its subcontractors, or any of their agents or employees, or any other persons performing any of the Work for the Contractor.
- 5.5 **CONTRACTOR NOT AN INTENDED THIRD PARTY BENEFICIARY OF THE CONSTRUCTION MANAGER'S AGREEMENT.** The Contractor is not an intended third party beneficiary of the Agreement for Construction Management Services between the Department and the Construction Manager. Nothing in the Contract Documents between the Department and the Contractor should be construed to authorize any person not a party to the Agreement for Construction Management Services to maintain any lawsuit involving that contract, unless otherwise provided by law.

## **ARTICLE 6: THE CONTRACTOR**

- 6.1 **REVIEW OF CONTRACT DOCUMENTS AND SITE CONDITIONS.**
- A. **PROCUREMENT STAGE INVESTIGATION AND DOCUMENT REVIEW:** During the procurement stage, the Contractor had an affirmative duty to examine the nature and location of

the Work, the soil and rock conditions and the character, quality and quantity of the materials that are required for the Work. Any geotechnical information available for review on the Project is provided for informational purposes only; it is not to be relied upon by the Contractor. The Contractor also has a duty to carefully study and compare the Contract Documents for consistency and to the physical conditions of the job site. If the Contractor did not request a clarification during the bid stage with regard to the site conditions or discrepancies within the Contract Documents, the Contractor may not submit a claim after award of contract alleging insufficient data, ambiguity in the documents, incorrectly assumed conditions or misunderstanding.

**B. POST-AWARD INVESTIGATION AND DOCUMENT REVIEW:**

1. **Site Conditions** – If, after award, the Contractor finds any material change in the condition of the site since the time of bidding, the Contractor must immediately inform the Professional in writing of the changed site conditions. The Professional, after consulting with and obtaining the Department's approval, and within seven (7) days after receipt of Contractor's notification, will address the alleged material change in the site conditions and notify the Contractor of such review.
2. **Contract Documents** – If, after award, the Contractor contends that there are discrepancies or errors in the drawings and/or the specifications, the Contractor must submit the contention as a Request for Information to the Professional and the Department within 10 days after discovering the alleged discrepancy.
  - a. If the Department determines that the discrepancy/error constitutes a patent condition that should have been discovered during the procurement stage (See, 6.1(A)) no additional time or compensation will be granted to the Contractor.
  - b. If the Department determines the discrepancy constitutes a latent condition that would not be reasonably susceptible of being discovered during the procurement stage, the Department will consider granting additional time and/or compensation to the Contractor, depending upon the specific nature of the condition.

**6.2 DUTY TO COORDINATE THE WORK WITH OTHER PRIME CONTRACTORS.**

- A. The Contractor explicitly acknowledges that it has a contractual duty to coordinate the Work within their Contract with the Work to be performed on the Project by all other Prime Contractors.
- B. The Contractor agrees that this duty to coordinate exists between each Prime Contractor on the Project and that each Prime Contractor is an intended third party beneficiary of each Contract between the Department and each Prime Contractor.
- C. The Contractor agrees that their duty to coordinate the Work includes reviewing the other Prime Contractors' submittals in e-Builder for coordination purposes.
- D. The Contractor further agrees that the efforts of the Construction Manager (if one is used) and the Department to facilitate the coordination of the Work shall not release or in any way diminish the Contractors' duty to coordinate the Work.
- E. If the Contractor sustains any damage as a result of any act or omission of any other Prime Contractor having a Contract with the Department or through an act or omission of a Subcontractor of such Prime Contractor, the Contractor shall have no claim against the Department, the Professional or the Construction Manager for such

damage, but shall have a right to recover such damage from the other Prime Contractor.

- F. If any other Prime Contractor on the Project sustains any damage through any act or omission of the Contractor or a Subcontractor of the Contractor, the Contractor agrees to reimburse such other Prime Contractor for all such damages and to indemnify and hold the Department, the Construction Manager and the Professional harmless from all such claims.
- G. The Contractor shall indemnify and hold the Department, the Construction Manager and the Professional harmless from any and all claims or judgments for damages and from costs and expenses to which the Department may be subjected or which it may suffer or incur by reason of the Contractor's failure to comply with directions promptly.
- H. The exercise of the right of the Construction Manager or the Department to permit or require others to perform Work in or about the construction site shall not relieve the Contractor from any liability for loss or damage, or from any of its obligations under this Contract. No agreement or arrangement between the Contractor and others as to a division or proportionate share of liability for loss or damage incurred, or of the cost of insurance shall in any way relieve the Contractor from any liability or damage, or from any of its obligations under this Contract.
- I. Each Prime Contractor shall afford other Prime Contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall properly connect and coordinate its Work with the Work awarded by the Department to other Contractors.

6.3 **PROJECT COORDINATION.** Project Coordination shall be facilitated among the Prime Contractors through the use of e-Builder, professional conduct and adherence to the Contract Specifications and the General Conditions, including, but not limited to, the following subparagraphs, which shall not be construed to be the exclusive means of achieving a properly coordinated Project:

- A. Each Contractor acknowledges the complex nature of the Project, the sequential nature of the Work to be performed under all of the Prime Contracts and the concurrent operations of this Project.
- B. Each Contractor shall become thoroughly familiar with the requirements of the Contract Documents, including the General Conditions of the Contract, the Administrative Procedures of the Contract, the Project Schedule and the Scope of Work for the Project.
- C. Close coordination shall be required of each Contractor with the Construction Manager, other Prime Contractors, the Department and others having an interest in the Project to assure that Work on-site, access to and from the site and the general conduct of operations is maintained in a safe and efficient manner, and that disruption and inconvenience to existing streets and the surrounding community is minimized.
- D. Each Contractor is responsible for coordinating their Work with every Prime Contractor on this Project.
- E. The Contractor shall, whenever conditions permit, proceed without delay and maintain the Project Schedule. All operations shall be conducted so as to comply with all applicable laws, ordinances and regulations.

- F. The Contractor shall maintain free access to all buildings, gates and areas of the site for emergency vehicles, service vehicles and firefighting equipment and at no time shall block off or close roadways or fire lanes without providing auxiliary roadways and means of entrance acceptable to the Department.
- G. There may be limited parking at the site. Each Contractor and their sub-contractors must limit temporary parking of company vehicles and storage of materials as can be accommodated within the limits of the construction site and staging area as directed by the Department unless noted otherwise within the Contract Documents. All transportation to the site is the responsibility of each Prime Contractor. Contractors shall not park in spaces reserved for State employees. If more than one ticket is issued to an individual for parking violations, the Department has the authority to prohibit the owner of the vehicle(s) from continuing work at the site.
- H. Prime Contractors shall work similar hours in order to prosecute the Work under an orderly and systematic means. If there is a disagreement between Prime Contractors relative to the normal work hours, the Department shall establish the hours to be worked by all Prime Contractors. No claim of hardship shall be made by any Prime Contractor as a result of the Department's decision.
  - 1. Whenever the Contractor intends to depart from normal work hours, it shall notify the Department at least forty-eight (48) hours in advance, unless there is an emergency-type condition requiring immediate repair or attention. If such an emergency condition occurs, the Contractor shall provide immediate notification to the Department. Failure of the Contractor to give such timely notice may be cause for the Department to require the removal or uncovering of Work performed without the knowledge of the Department, at no additional costs or Extension of Time, regardless of whether or not the Work is deemed properly installed.
- I. The Contractor shall coordinate the Work with all other Contractors as outlined in the Coordination Drawings so that interference between mechanical, electrical, architectural and structural Work, including existing services, will be avoided. The Prime Contractors shall also coordinate the Work so as to provide the maximum practical space for operation, repair, removal, and testing of equipment. The Prime Contractors shall keep pipes, ducts, conduit and the like as close as possible to ceiling slab, walls, and columns to take up a minimum amount of space. The Prime Contractors shall locate pipes, ducts, conduits and equipment so that they do not interfere with the intended use of eyebolts and other lifting devices.
- J. Particular attention shall be given to coordination and correlation of submittals as to the requirements of the Contract Documents regarding:
  - 1. Motor size;
  - 2. Motor service connections for size and type of materials;
  - 3. Equipment size and supports;
  - 4. Piping routing;
  - 5. Penetration of materials and fire stopping; and
  - 6. Connections to another Contractor's Work.
- K. Contractors shall coordinate Work to determine exact locations of outlets, pipes, diffusers and pieces of equipment to avoid interference with properly installed Work.

- L. The Contractor shall be responsible for a complete operating system as designated within the Contract Documents. Major items for Mechanical Work are specified in Division 15 and Electrical Work in Division 16. This may not be the complete extent of this Work, however, since requirements may appear in other locations within the Contract Documents. Mechanical and Electrical Work shall be verified with other sections. Contractors performing that Work shall supply sufficient information for completing the system.
- M. As various areas or parts of the site and building are complete, or otherwise suitable for the subsequent Contractors to commence Work, those Contractors shall be allowed to deliver materials and start Work. Such phased commencement shall be in accordance with the Project Schedule. Prior to commencing Work at any area or part, certain contract requirements shall be met for that area or part, such as verification of conditions as specified. Material lay down areas shall be coordinated with the Department and other Contractors.

6.4 **COORDINATION.** The Lead Contractor is principally responsible for the coordination of the Project Work. Each Contractor is to coordinate all of its Work with the Work of other Contractors for proper function and sequence to avoid construction delays. If necessary, in instances when the Lead Contractor and the other affected Prime Contractor(s), after due diligence, cannot agree on a coordination decision, the Department will upon request from one or more of the Prime Contractors, make a determination resolving the coordination issue and take whatever action(s) the Department deems necessary, including, but not limited to:

1. Withholding any payment otherwise due until the Contractor(s) comply with the Construction Manager's or the Department's direction; and/or
2. Directing others to perform portions of the Work and deducting the cost of the Work from the Contractor's Contract balance; and/or
3. Deleting through credit Change Orders any and all portions of the Work.

The Department's decision in no way releases the Prime Contractors from their continuing duty to coordinate the Work. The final coordination decision of the Department will be observed, accepted, and fully followed by all Contractors and their subcontractors on the Project, subject only to the dispute procedure set out in these General Conditions of the Contract. The progress of the Work in accordance with the final coordination decisions of the Department shall not be delayed pending any such dispute proceeding.

6.5 **COORDINATION OF SUBCONTRACTORS.**

- A. The Contractor shall be responsible for all acts of its subcontractors utilized under this Contract, and for their compliance with all terms and provisions of the Contract applicable to their performance. The Contractor shall continuously coordinate the Work of all subcontractors to assure proper processing and progress of the Work. The Contractor shall require each Subcontractor to comply with the following:
  1. Examine the technical submittals and the Work of other Prime Contractors and all sections of the specifications to the extent necessary for satisfactory installation of its Work, and connection between its Work and the Work of other Prime Contractors; and
  2. Coordinate its Work accordingly; and
  3. Cooperate with other Contractors and Subcontractors toward timely and satisfactory completion of the Project.

- B. Subcontractors proposed by the Contractor will not be acceptable to the Department if evidence exists or arises during the Work that the proposed subcontractors are unable or unwilling to comply with the requirements of the Contract Documents which govern the Work of the subcontractors involved, or if the Subcontractors have experience which is inconsistent with requirements for the Work of the Subcontractors. In these instances, the Contractor will not be entitled to a change in the Contract Sum or Contract Duration and shall propose substitute Subcontractors for unacceptable Subcontractors. Any delays to the Project due to the delay in proposing acceptable subcontractors is the responsibility of the Contractor.
- C. The failure of any Subcontractor to complete its portion of the Work in a satisfactory manner within the proper time will not relieve the Contractor of responsibility for the proper and satisfactory execution and completion of the entire Work.

6.6 **MEANS, METHODS AND TECHNIQUES OF CONSTRUCTION.** The Contractor is solely responsible for all construction means, methods, techniques, procedures, and safety programs in connection with the work under the Contract unless the contract documents require other and additional responsibilities from the Contractor. Neither the Professional nor the Department will be responsible for construction means, methods, techniques or procedures, or for safety precautions or programs in connection with the Work, since these are solely within the Contractor's responsibility.

6.7 **USE OF SITE.** The Contractor shall confine its apparatus, the storage of its equipment, tools and materials, and its operations and workers to the limits of contract as permitted by law, ordinances, permits, the Contract Documents and the Department. The Contractor shall not unreasonably encumber the site with any materials or equipment. The Lead Contractor shall have the authority to identify the lay down area based upon the Project Schedule.

6.8 **MOBILIZATION.** Mobilization limits shall be consistent with the description set forth in the Administrative Procedures. The following items are included as mobilization, and cannot be included separately on the breakdown:

- Contractor's field office
- Department's field office (unless otherwise specified in specifications)
- Heating, lighting and telephone for the field offices
- Installation for the offices
- Installation of signs
- Site survey
- Construction fence, if required
- Sidewalk bridge, where required and built to all applicable OSHA requirements
- Safety and first aid equipment
- Temporary power setup
- Temporary power distribution
- Temporary water
- Temporary sanitary

- 6.9 **JOB CONFERENCES.** Job Conferences may be held as often as required but shall be held at least bi-weekly and must be attended by all Contractors. **Regardless of the status of the Work, all Contractors must have a representative authorized to make all decisions and representations affecting the Contractor attend each Job Conference.** The names of the authorized representatives of the Contractor shall be uploaded on the form provided into e-Builder at the Initial Job Conference. The Department and the Professional shall also attend every Job Conference. The Department shall schedule the dates and times of Job Conferences in e-Builder. Failure to attend bi-weekly Job Conferences or any other mandatory meeting (unless excused by the Department) constitutes a breach of this Contract.

Any delays or damages incurred by other Contractors due to the failure of a Contractor to attend the Job Conference may be deducted from the absent Contractor's balance if a Prime Contractor submits a request for such action to the Department in accordance with the Disputes Article of these General Conditions.

- 6.10 **CONTRACTOR'S STAFF AND PHONE NUMBERS.** Within ten (10) days of receipt of the Contract, the Contractor shall submit to the Department's Project Manager the New User Form with a maximum of three (3) proposed principal staff that will be assigned to the Project. This shall include the name, address, email address, and telephone numbers of the Contractor's Superintendent and other personnel assigned to the Project. The Department will input the information provided on the New User Form to allow the Contractor access to e-Builder.

6.11 **DRAWINGS AND SPECIFICATIONS AT THE SITE.**

- A. The Contractor shall maintain in good order at the site, for the Department and the Professional, one (1) paper copy of all drawings and specifications. All addenda, contract modifications, change orders and requests for information shall be posted to these documents at the applicable locations. As appropriate, these documents will be updated daily to record accurately as-built conditions, selections and changes.
- B. The Contractor shall also maintain at the site one (1) paper copy of approved shop drawings, catalog data, operating and maintenance instructions, certificates, warranties, samples and similar submittals. These shall be available to the Department and Professional at all times, and they shall be delivered to the Professional as part of the Operation and Maintenance Instruction Manuals described in these General Conditions.
- C. The Contractor shall also maintain one (1) paper copy of approved coordination drawings, to include as-built conditions, selections and changes to be submitted to the Professional and included as part of the Operation and Maintenance Instruction Manuals. The Contractor shall include the value of the Record Drawings as a line item on its schedule of values, which shall be not less than 10% of the amount included for mobilization. The amount included is subject to the approval of the Department.

- 6.12 **PROVISION OF LABOR AND MATERIALS.** Unless otherwise specifically noted, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and all other facilities and services necessary for the proper execution and completion of the Work.

- 6.13 **RESPONSIBILITY FOR THOSE PERFORMING WORK.** The Contractor is responsible to the Professional, the Department and all other Prime Contractors for the acts and/or omissions of all of its employees and all subcontractors, their agents and employees, and

all other persons performing any of the Work under a contract or purchase order with the Contractor.

- 6.14 **EQUIPMENT AND MATERIALS.** The Contractor shall furnish and deliver the necessary equipment and materials in ample quantities and as frequently as required to avoid delay in the progress of the Work. The Contractor's materials or equipment shall not interfere with the orderly progress of the Work, nor endanger the lives of any operators or persons within the vicinity of the stored equipment or materials, nor to cause damage to the adjacent property or highways. Any damage resulting from the operations of such equipment to any person or property is the responsibility of the Contractor in accordance with the Insurance paragraph of these General Conditions.
- 6.15 **SUPERVISION.** If a Contractor has more than one Contract on the Project, it must provide a separate Superintendent for each Prime Contract. The Contractor shall provide on-site supervision by an employee who shall act as the duly authorized and competent Superintendent. If the Contractor fails to comply with the provisions of this paragraph, the Department may: (1) withhold any payments which are or may become due to the Contractor; and/or (2) suspend the work at the expense of the Contractor, including the cost associated with the impact on the work of the other Prime Contractors; and/or (3) take a credit for each day the Contractor did not have the approved Superintendent on site.
- A. **ON SITE:** This Superintendent shall be on-site during the progress of the Work, including any time when any Work is being performed by any Prime Contractor or any subcontractor that will impact the Work of the Contractor. The Superintendent shall represent the Contractor, and all communications given to the Superintendent shall be binding as if given to the Contractor. The Superintendent must attend all Monthly Schedule Update Meetings and every bi-weekly job conference. The Monthly Schedule Update Meetings shall be scheduled and chaired by the Superintendent for the Lead Contractor.
- B. **QUALIFICATIONS:** At the Initial Job Conference, the Contractor shall submit to the Department the name and qualifications of its Superintendent. This Superintendent shall also be uploaded, by the Contractor, to e-Builder on the Superintendent Form. The Superintendent must meet the qualifications in the specifications and be acceptable to the Department. The Contractor shall not change its Superintendent at any time during the Project without the prior written approval of the Department, and must submit to the Department, in writing, justification for the change, along with the name and qualifications of the individual whom the Contractor proposes to be the new Superintendent. The Department reserves the right to require a change in the Superintendent if the Superintendent's performance is deemed by the Department to be inadequate.
- 6.16 **GOOD ORDER AMONG EMPLOYEES.**
- A. The Contractor shall enforce good order and conduct among its employees at all times. Every employee shall be skilled in the performance of work assigned to that employee. All construction personnel shall be respectful of all Commonwealth employees and the general public.
- B. Any incidents of disrespect, verbal abuse, threatening statements, acts indicating a violation of the Contractor's Drug and Alcohol policy, unwelcome comments, unwelcome interaction or any form of harassment from any construction personnel toward any Commonwealth employee, designee employees, or the general public is strictly prohibited. Any such act shall constitute sufficient cause for the Department to demand that the Contractor dismiss the person(s) from the job site.

- C. If any Contractor's personnel ignores or refuses to take action on any requirements of the Contract Documents, ignores or refuses to take immediate action to correct any endangerment to the health and safety of the public, as solely determined by the Department then this action and/or inaction shall be sufficient cause for the Department to demand that the Contractor dismiss the person(s) from the job site.
  - D. When, in the sole determination of the Department, it would be in the best interest of the Project and the Commonwealth to have a Contractor's personnel removed from the Project for the reasons described above, then the Department may demand that the Contractor dismiss from the job site. Any violation is sufficient cause for the Department to direct that the Contractor remove such person from employment on the Project, and direct that they shall not be re-employed on that Project without the consent of the Department. Such actions taken by the Department shall not constitute grounds for a delay claim. The Department will not be responsible for any delays caused to the Project due to any individual being removed from the Project.
- 6.17 **PERMITS AND FEES.** In compliance with the Pennsylvania Construction Code Act (PCCA), 35 P.S. §7210.101 to §7210-1103, as amended (a.k.a. Uniform Construction Code Statute or UCC), only the Department of Labor and Industry has jurisdiction for plan and specification review and inspection authority over all State-owned buildings and facilities. Consequently, Prime Contractors on Department projects shall not obtain any building permits from local authorities. The Contractor, shall, however, continue to obtain and pay all fees for all other necessary permits, licenses and certificates required by law or otherwise for the proper execution and completion of its Work. The Contractor shall furnish proof of payment for all such items, or proof that no such items are required. This proof must be furnished prior to the second Invoice. The Contractor will be reimbursed for the actual cost of such items by change order and the Contractor will not be entitled to any mark-up on the items unless otherwise authorized by the Department.
- 6.18 **PCCA/UCC INSPECTIONS & COMPLIANCE WITH APPLICABLE LAWS, ORDINANCES, REGULATIONS, ETC.**
- A. 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 any of the Contract Documents conflicting with applicable laws, ordinances, regulations, rules and orders of any public authority in any respect, it shall promptly submit a Request for Information. Any conflicts will be addressed by the Professional and Department. If the Contractor performs any work knowing it to be contrary to such applicable laws, ordinances, regulations, rules or orders of any public authority, and without such RFI to the Department, it assumes full responsibility for that action and shall bear all costs attributable thereto.
  - B. This Project shall be subject to the Pennsylvania Construction Code Act (PCCA) and the Uniform Construction Code Statute. Each Prime Contractor shall become familiar, and is responsible for complying, with all aspects of the PCCA and the UCC, including but not limited to the site inspection procedure set forth in the Department of Labor & Industry's Inspection Procedures. For purposes of inspection, the Contractor shall be deemed the "owner" as described in the PCCA/UCC. The most recent list of inspections required by L&I can be found on L&I's website.
  - C. Each Prime Contractor must include the PCCA/UCC inspections (to the extent they are applicable to their scope of Work on this Project) in the Project Schedule created pursuant to the applicable paragraph(s) in the General Conditions and Administrative Procedures.

- D. The L&I mandated advance notice, defined for each inspection activity, shall be considered and included as lead time in the development of the Project Schedule. Each Prime Contractor shall assume the responsibility of the permit applicant/permit holder as applicable. Each Prime Contractor shall be responsible to contact L&I to schedule the required inspections in accordance with the inspection procedures outlined in the Building Permit. Failure by any one Prime Contractor to do so shall not be cause for a delay claim against the Department. A copy of the Building Permit, which includes a list of the required inspections and the time frames for notifying the Department of Labor & Industry, is available from the Department.
- E. Contractors shall provide 48 hours prior notice to the Department for all L&I Inspections scheduled for any portion of their work. Results of the L&I Inspection with noted deficiencies and any required re-inspection shall be provided to the Department by commencement of work the following work day.

6.19 **SURVEYS, LAYING OUT AND EXECUTION OF THE WORK.**

- A. The Contract Drawings shall be used for all dimensions in laying out the Work under this Contract.
- B. Each Prime Contractor is responsible for laying out their work from the points established by the drawings.
- C. The Contractor shall utilize a competent licensed surveyor to lay out the Work from the initial points established on the drawings.
- D. The surveyor shall take as a basis the figures on the plans, and shall lay out all intersections, all building lines at corners and centers, test and check all elevations and levels, locate levels and plumb lines of floors, walls, beams and columns and other parts of the construction as the Work progresses.
- E. All Work of every description shall be laid out by the Contractor, who is solely responsible for its correctness. The Contractor shall pay for all expenses in connection with this Work.
- F. The Contractor shall furnish approved copies of all information (site plans, technical data, topographic surveys, Record Drawings, etc.) to other Prime Contractors as necessary for the purpose of coordination of the Work. The Contractor shall submit one copy of its survey notes to the Department for record keeping. Submission of the survey notes does not relieve the Contractor of its duty to identify discrepancies on the site or in the Contract Documents.
- G. All significant monuments and benchmarks identified by the Contractor shall be preserved for use by other Contractors. Receiving these monuments and benchmarks from another Contractor does not relieve each Contractor of the responsibility for its own layout, including specific layout required by applicable sections of the Contract Documents.

6.20 **DISCREPANCY OR INTERFERENCE WITH OR BY THE WORK OF OTHER CONTRACTORS.**

- A. Since the proper execution or results of any part of the Contractor's Work will depend upon the Work of other Prime Contractor(s) (or such other Prime Contractor's Subcontractor(s)) the Contractor shall inspect and promptly report in writing to the Professional, the Department and/or the Department's designee, and the Contractor(s) whose Work is allegedly incorrect describing any discrepancies,

defects or delays in the Work done by other Prime Contractor(s) that render it unsuitable for such proper execution and results.

1. If the Contractor begins physical work, the Department assumes that the Contractor has inspected and reported any of these discrepancies.
  2. In the event that any Prime Contractor commences Work, failure of the Contractor to so coordinate, inspect and report constitutes an acceptance of the other Prime Contractor's Work as fit and proper to receive its Work. This excludes defects that may develop in the other Prime Contractor's Work after the execution of the Contractor's Work. If such defects occur, the Contractor who installed the defective Work shall be responsible to correct its Work accordingly.
- B. The Contractor's Work shall be conducted so as to not interfere with the Work of any other Contractors. In the event that any Prime Contractor does not complete the various portions of the Work in cooperation with the other Prime Contractors, and as a result, causes damages or injury to any other Prime Contractor, the damaged or injured Prime Contractor may submit a request for the Department to withhold funds, or settle by contract or arbitration such claim or dispute in accordance with the provisions of the Dispute Article of these General Conditions.
- C. Each Contractor shall be liable for all damage or destruction caused directly or indirectly (including, but not limited to delay and inefficiency claims) by its operations to all parts of the Work, both temporary and permanent, and to all adjoining property.

**6.21 EXISTING UTILITIES AND SERVICES.**

- A. The Contractor shall comply with all notification requirements established by applicable law relative to protection of underground utilities and shall also check the location of existing utilities required to remain in place, including those overhead or underground, and take all necessary precautions to prevent injury or damage during the performance of the Work.
- B. Each Contractor doing excavation work is responsible for costs associated with locating all existing underground utilities prior to commencing excavation, including utilities that are owned and operated by the Department of General Services or the Client Agency.
- C. Each Contractor shall be responsible for the associated cost of any utility interruption and repair due to this excavation if the utility location was not requested, and/or proper location procedures were not performed and/or followed prior to commencing excavation.
- D. The Contractor responsible for damaging the utility shall immediately notify the utility company and the Department and assume the cost of restoring the service of any utility disrupted due to excavation, or any Contractor action, whatever the circumstance. The Department reserves the right to immediately restore the service of any utility disrupted due to actions of a Contractor and to deduct the cost of such restoration from the responsible Contractor's next Invoice.

- E. Utilities and/or other services, which are shown, or not shown but encountered, shall be protected by the Contractor from any damage from any Work and operations of the Contract, unless or until they are abandoned. If the utilities or services are not abandoned at time of damage, the Contractor shall immediately assume the cost of repairing any damage from its Work or operations and assume the cost of restoring the utilities and services to the condition that existed prior to the damage.
  - F. The Contractor and Subcontractor of any tier shall be responsible for all damage to the Project including the existing building and grounds due to its operation under this Contract. Repair or replacement of damaged items shall be to the satisfaction of the Department.
- 6.22 **INTERRUPTION OF EXISTING SERVICES:** Whenever it becomes necessary to interrupt existing services in use by the Client Agency, such as sewer, water, gas and steam lines, and electric service, the Contractor responsible for working outside of normal working hours shall perform the Work during such hours, as required by the Department in coordination with Client Agencies or other tenants, so as to complete the work and restore all existing services with minimal interruption or disruption to the Department, Client Agencies or other tenant. The Contractor responsible for the Work shall continue its work on a twenty-four (24) hour basis until the Work is completed and the service restored, or at such alternate time required by the **Department, its designee, or the Client Agency or other tenants**. Before beginning such Work, the Contractor shall request and receive approval from the Department to establish a time when interruption of the service will cause a minimum of interference with the activities of the Client Agency. **The Contractor's request to interrupt ANY SERVICE must be submitted to the Department in e-Builder at least FIFTEEN (15) CALENDAR DAYS PRIOR to the date of the desired interruption.**
- 6.23 **CONTRACTOR PERFORMING EXCAVATION OR DEMOLITION.** The Contractor performing excavation or demolition work shall fully comply with the requirements of the Pennsylvania One Call Act (Act 287-74, approved December 10, 1974, as amended) relative to protection of underground utilities, to the extent that this language conflicts with Act 287-74, the statutory language controls. Protection of underground utilities shall include, but not be limited to:
- A. Ascertaining the approximate location and type of utility lines adjacent to and within the contract limits by inspecting drawings or obtaining a list of utility companies' lines adjacent to and within the contract limits from the County Recorder of Deeds and then contacting the utility company.
  - B. Three (3) business days before excavation or demolition, request information from the utility companies regarding the steps Contractors should take to avoid damage.
  - C. Provide the Department and each equipment operator or blaster with information obtained in (A) and (B) above.
  - D. Report to the Department and the utility company any damage to utility line made or discovered in the course of the work.
  - E. Alert the Department and any occupants of premises as to emergency created or discovered.
  - F. Provisions of (A), (B) and (C) do not apply in an emergency. An emergency is any condition constituting a clear and present danger to life or property caused by escaping gas, exposed wires or other utility line breaks or defects.

- G. Each Contractor shall be responsible for all dewatering as noted under Environmental Quality Control and per the specifications.

6.24 **OBSERVATION AND/OR INSPECTION OF THE WORK BY OTHERS.** Observation of the Work by the Department or observation/inspection of the Work by the Professional shall not relieve the Contractor of full responsibility for completing the Work in accordance with the Contract Documents. Work performed without direct observation by the Department or Professional shall not relieve the Contractor of full responsibility for completing the Work in accordance with the Contract Documents. The Contractor's responsibilities include, but are not limited to, performance, supervision, scheduling and coordination of the Contractor's Work.

6.25 **COORDINATION DRAWINGS FOR SLEEVES AND OPENINGS.**

- A. Contractors requiring sleeves and openings for their work in any deck, concrete slab or wall shall furnish to the Department and all other Prime Contractors involved a complete set of location sketch drawings showing size and shape of openings. An electronic set of the Contract Drawings is available in e-Builder. Each Prime Contractor must complete these sketch drawings in accordance with the construction schedule. Each Prime Contractor is responsible for reviewing every other Prime Contractor's drawings so that there will be no interference and/or conflict with its portion of the Work. Any potential conflict or interference shall be reported in writing to the **Lead Contractor**, with copies to the Department and the Professional. The Lead Contractor is principally responsible for coordinating and resolving any interferences and/or conflicts identified by the Prime Contractors. Disputes arising out of this paragraph shall be resolved in accordance with the Coordination Disputes paragraph of these General Conditions.
- B. The responsibility for identifying and dimensioning floor, wall, and ceiling systems penetrations lies with the Contractor whose Work penetrates these systems. The location, elevation, and dimensions of the opening, as well as installation of sleeves, fire safing, escutcheons and inserts shall be the responsibility of the Contractor requiring the opening or penetration. All Prime Contractors whose Work encompasses concrete, masonry, and ceiling installation shall provide openings required by other Contractors as agreed to in the previous paragraph.
1. The need for the opening or penetration, as well as the details, shall be given to the appropriate Contractor no later than seven (7) days prior to the wall, floor, or ceiling system being formed or installed, based on the current progress of the Work. The Contractor will be responsible to maintain the coordination of all penetrations during the construction with each other Contractor.
  2. Any Contractor who fails to provide adequate notification or details to the wall, floor or ceiling Contractor shall be responsible for providing the openings in accordance with the provisions of the Cutting and Patching paragraphs of these General Conditions.
  3. Cutting and Patching of penetrations through existing systems or through systems completed earlier in the Project are the responsibility of the Contractor requiring the penetration.
  4. Cutting of metal deck in floors and roof openings is the responsibility of the Contractor requiring the opening. Deck shall not be removed until the day the penetration is to be made. The Contractor shall verify that conduits, piping or structural components installed above or below the deck are clear of the opening prior to cutting and patching.

5. At all openings that create a potential safety concern, the Prime Contractor who created the opening shall be responsible to provide adequate and safe protection.
- 6.26 **CUTTING AND PATCHING OF NON-ROOF SYSTEM WORK.** The Contractor shall, at its own cost, do all cutting, fitting and/or patching of existing materials required for its Work to the minimal extent necessary in accordance with the Contract Documents or to make its several parts fit together properly, and fit it to receive or be received by work of other Contractors. Any cutting, patching or excavation by the Contractor shall be supervised and performed in a workmanlike manner that will not endanger persons nor damage or endanger the Work or any fully or partially completed construction of any other Prime Contractor. The Contractor making the cut shall be responsible for restoration of work or any adjacent repairs. Any cost incurred by another Prime Contractor or the Department due to non-conforming or improperly sequenced work shall be borne by the Prime Contractor responsible therefore. Any damages to the new or existing facility shall be borne by the Contractor responsible for the damage.
- 6.27 **CUTTING AND PATCHING OF ROOF SYSTEMS.** Unless otherwise specified, each Contractor is responsible for its own cutting and patching of existing roof systems necessitated by its Work. The cutting and patching must be performed by a qualified Contractor/Subcontractor. The cutting and patching must maintain any current warranty or bond on the roofing, and, whether under warranty or not, must be done in accordance with the manufacturer's written directions.
- 6.28 **CLEANING THE PROJECT.**
- A. Each Prime Contractor shall keep the building and grounds maintained free from accumulations of waste materials, rubbish and debris.
  - B. The Contractor shall maintain a clean and safe passageway for the Department, the Professional and others utilizing the facility.
    1. Each Contractor shall insure that their Work shall not damage streets connecting to the Project, which shall be protected from mud, sand, and stones/gravel. Streets and adjacent property sites shall be kept free from run-off, litter, and/or debris in any form from the project site. Mud, litter, and/or debris from the construction site that appears on adjacent property sites shall be removed immediately. All mud collected on vehicle tires shall be removed by each Contractor before leaving the construction area. If any mud or debris from the project site collects on the streets, it shall be removed immediately by the responsible Contractor to prevent any hazards to vehicular or pedestrian traffic, as well as from entering the storm sewer system. All streets and property sites adjacent to the project site shall be cleaned of construction related debris, dust, litter, and mud daily.
    2. Each Contractor is prohibited from discharging any waste products from concrete trucks or from concrete coring work, or any other unsuitable materials, fluids or other products on the site, or into the storm sewer system.
    3. If the responsible Prime Contractor fails to comply with these requirements, the Department reserves the right, with twenty-four (24) hours prior notice to the responsible Prime Contractor, to assign another Contractor to clean and/or remove mud, trash, litter, debris, or any unauthorized discharge from the project and/or the adjacent streets or properties. In such case, the cost of the cleaning and/or removal, or mobilization for cleaning and/or removal shall be deducted by the Department from the responsible Prime Contractor's next Application for Payment.

- C. The Contractor, and subcontractors of any tier, shall be responsible for and include in its bid, the cost for cleanup and removal from the site of its identifiable debris including, but not limited to, bulky debris, packaging containers, unused materials and equipment, and materials unsuitable for disposal by standard commercial procedures (i.e., masonry and concrete materials, crates, combustible items, etc.).
- D. If the Contractor(s) fails to maintain a satisfactory cleanup program, the Department will issue a twenty-four (24) hour notice of deficiency. If the Contractor does not respond to the notice from the Department, then the Department shall arrange for the performance of the cleanup and backcharge the Contractor(s) for all costs associated with the cleanup.
- E. All construction salvage materials, not including items specified elsewhere to be returned to the Department, become the property of the Contractor and shall be taken from the premises. On-site storage of materials and equipment, other than for use in this Project, will not be permitted.
- F. No rubbish or debris shall be dropped from a height of more than six feet, or thrown out of any window or opening without a chute.
- G. The following, which is not all-inclusive, lists the cleaning levels required by each Contractor as applicable to the scope of Work included in its Contract prior to Final Inspection:
  - 1. Remove labels which are not required as permanent labels;
  - 2. Clean transparent materials, including mirrors and window/door glass, to a polished condition;
  - 3. Remove substances which are noticeable as vision-obscuring materials;
  - 4. Clean exposed exterior and interior hard-surfaced finishes to a dirt-free condition, free of dust, stains, paint splatters, films and similar noticeable distracting substances. Except as otherwise indicated, avoid disturbance of natural weathering of exterior surfaces. Restore reflective surfaces to original reflective condition;
  - 5. Clean concrete floors; in non-occupied spaces, broom clean; remove all stains, marks, paint, rust, etc. caused by construction activities.
  - 6. Clean plumbing fixtures to a sanitary condition, free of stains, including those resulting from water exposure; and
  - 7. Clean mechanical and electrical equipment, ductwork and replace all filters.
- H. Prior to Final Inspection, in addition to the cleaning specified above, the site shall be prepared for occupancy by a thorough cleaning, including removal of all trash, rocks, wood and / or debris as required. Roadways and sidewalks shall be washed and swept clean. These activities shall be coordinated by the Lead Contractor.
- I. Before the acceptance of the Project by the Department at the Final Inspection, all visible finished surfaces and materials shall be thoroughly cleaned and/or retouched by the responsible Contractor at its own cost and shall be left in a clean and unblemished condition to the satisfaction of the Department. Surfaces that are to be finished shall have all plaster, mortar and other surplus materials removed before beginning painting, varnishing and other finishing.

- 6.29 **REPAIR OF DAMAGED WORK.** The Department shall coordinate the repair of all new Work as well as existing Work required remaining but which becomes damaged during the course of the Work. This repair work shall include, but not be limited to, restoration of surfaces to the original condition, grading, landscaping or seeding, pavement markings and refinishing.
- 6.30 **CHASES AND OPENINGS.** The General Contractor (.1) or, if no General Contractor, the Contractor indicated in the Contract Documents will construct or have built into new walls, new partitions and new floors, all such chases and openings as are required for the Project. Each Prime Contractor will be responsible to confirm that the chases and openings affecting its Work are installed in accordance with the drawings submitted to the General Contractor.
- 6.31 **CHASES AND OPENINGS AFTER CONSTRUCTION OF WALLS.** If cutting of chases and openings is required after construction of walls, partitions or floors is completed, the Department may require the Work to be performed in such a manner as to result in unmarred Work, even to the extent of requiring the removal and rebuilding of walls and partitions, all of which shall be at the sole cost of the responsible Contractor.
- 6.32 **TESTS.** If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Work to be inspected, tested or approved, the Contractor shall give the Department timely notice of its readiness and of the date arranged, so the Department may observe such inspection, testing or approval. The Contractor shall be responsible for scheduling such inspections, tests and approvals and shall bear all costs of such inspections, tests and approvals, unless otherwise provided.
- A. All expenses incurred in the collection, packing and delivering of samples or materials or equipment to the Project site shall be paid for by the Contractor.
  - B. The Contractor shall pay the costs of transporting samples from the Project site to the laboratory and for the testing of same, except where otherwise noted in the General Conditions, specifications, or called for in the Contract drawings.
  - C. Approved samples to be incorporated in the building shall be returned to the Project site by the testing laboratory under the supervision of the Contractor.
  - D. The Contractor shall bear all costs of such inspections, tests and approvals, including such assistance, labor, electricity, fuels, storage, apparatus and instruments as are normally required for examining, measuring and testing any materials or Work and shall supply samples of materials, before incorporation in the Work, for testing as may be selected and required by the Department or the Professional.
  - E. Prior to testing, inspection or verification, the Department may require sign-off by the Contractor's representative affirming that the item of Work or installation is complete and ready for such testing, inspection or verification.
  - F. Work requiring testing, inspection or verification of probable compliance of Work shall not proceed to be concealed, covered or closed up until approval is given by the Department. Examples of work to be reviewed before being concealed include but are not limited to: sub-grades prior to backfilling, verification of rebar and formwork prior to placing concrete, and installed Work in concealed spaces before the space is closed.
  - G. The non-productive downtime or delay in an operation required to provide the reasonable opportunity for testing or verification by the Department constitutes a

portion of the Contract Work and is included in the Contractor's contract price. No claim for additional compensation will be allowed related to establishment and timely observation of testing or verification of Work.

- H. Testing or verification by the Department shall in no way relieve the Contractor of its obligation to meet all the requirements of the Contract Documents.
  - I. Contractor is responsible for all Quality Control testing as specified in the Contract Documents.
- 6.33 **SPECIAL TESTING.** If, after the commencement of the Work, the Department determines that any work requires special inspection, testing or approval not included in the Tests Paragraph of these General Conditions, the Department will direct the Contractor to order such special inspection, testing or approval, and the Contractor shall give notice as in the Tests Paragraph of these General Conditions.
- A. If such special inspection or testing reveals a failure of the Work to comply with the requirements of the Contract Documents, or with respect to the performance of the Work, with laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, the Contractor shall bear all costs thereof, including the Professional's additional services made necessary by such failure.
  - B. If the work is in compliance, the Department shall bear such costs and an appropriate change order shall be issued to the Contractor.
- 6.34 **CERTIFICATES OF INSPECTION.** The Contractor is responsible to secure any required certificates of inspection, testing or approval. Such required certificates of inspection, testing and approval include those required by the UCC. The Contractor shall deliver such certificates to the Professional and the Department within seven (7) days after the Contractor secures the certificate.
- 6.35 **OBSERVATION OF TESTING.** The Professional and, where required by the Uniform Construction Code, Labor and Industry, shall observe the inspections, tests or approvals required by the Tests and Special Testing Paragraphs of these General Conditions, and it shall be the Contractor's responsibility to serve sufficient notice to the Professional and where required by the UCC, to Labor and Industry, of such inspections, tests or approvals to enable the timely inspection of the Work without impacting the project schedule.
- A. **UCC REQUIRED TESTING OBSERVATION AND/OR INSPECTION.** When the UCC requires any special testing to be observed, inspected and approved by the Department of Labor and Industry, each respective Prime Contractor shall be responsible to contact Labor and Industry sufficiently in advance to allow Labor and Industry to schedule such observation, inspection and approval of such testing. Each Prime Contractor is responsible for determining whether the UCC requires the Department of Labor and Industry's approval of the testing. The Work shall remain accessible and exposed for inspection by Labor and Industry.
- 6.36 **EFFECT OF TESTS.** Neither the observations of the Professional nor inspections, tests or approvals by persons other than the Contractor relieve the Contractor from its obligations to perform the work in accordance with the Contract Documents.
- 6.37 **ENVIRONMENTAL QUALITY CONTROL.** The Contractor and its Subcontractors shall perform their work in a manner which minimizes the possibility of air, water, land and noise pollution.

- A. Each Contractor shall be responsible for all dewatering to prevent surface water and ground water from entering excavations (including foundations and drilled piers), from ponding on prepared subgrades and from flooding the Project site and surrounding areas.
  - B. Each Contractor shall be responsible to protect subgrades from softening, undermining, washout, and damage by rain or water accumulation. Each Contractor shall reroute surface water runoff away from excavated areas. No Contractor shall allow water to accumulate in excavations. No Contractor shall use excavated trenches as temporary drainage ditches.
  - C. Each Contractor shall be responsible for installing a dewatering system to keep subgrades dry and convey ground water away from excavations. Each Contractor shall maintain the dewatering system until dewatering is no longer required.
- 6.38 **SOLID WASTE**. Storage, collection, transportation and final disposal of solid waste shall be in accordance with the Solid Waste Management Act regulations and standards of the Department of Environmental Protection (DEP). Immediately upon the effective date of the contract, the Contractor shall begin to obtain, at its cost, the necessary permit(s) from DEP and conduct waste disposal on site approved under this permit. A copy of this permit must be submitted to the Department before commencing waste disposal. A record of receipt of the waste material that is signed by the waste company certified to receive the waste material acknowledging receipt and proper disposal must be provided to the Department.
- 6.39 **COMPLIANCE WITH STATUTES & REGULATIONS ADMINISTERED BY DEP**. The Contractor shall comply with all statutes and regulations of the Commonwealth of Pennsylvania concerning environmental quality control administered by DEP. These statutes and regulations include those listed in the Environmental Statement set forth in the Instructions to Bidders (which is included as part of the Contract Documents ) and, but not limited to, the Clean Streams Law, the Clean Water Act, Pennsylvania Sewage Facilities Act, Air Pollution Control Act, Surface Mining Conservation and Reclamation Act, Bituminous Coal Open Pit Mining Conservation Act, Dams and Encroachments Act, Water Well Driller's Act, Water Works Act and Atomic Energy Act, all as amended to date. The Contractor is responsible for any violations and shall secure all required permits. Erosion control measures are shown on drawings and specifications and/or specified in the General Requirements. An erosion control permit, if required, will be obtained by the Professional.
- 6.40 **BURNING OF MATERIALS**. Burning of materials from clearing and grubbing operations, periodic and final clean-up, and all related construction, shall be governed by local codes and ordinances and/or DEP regulations. For each day that the Contractor may contemplate open burning, it shall secure approval from DEP. Failure to secure permission for open burning will require the Contractor to remove material from the project site and dispose of it in a manner acceptable to DEP.
- 6.41 **SUSPENSION FROM METAL ROOF DECKS – NEW AND EXISTING**. Ductwork, conduit, ceiling systems, lighting fixtures or any other miscellaneous equipment shall not be suspended from metal roof decks. These components shall only be suspended from the structural members or a suspension system supported by the structural members. All concentrated loads must be submitted for review by the Professional. If the concentrated loads are not approved, the Prime Contractor furnishing the equipment must provide an acceptable means of distributing the load.
- 6.42 **ASPHALT OR TAR KETTLES**. Asphalt or tar kettles shall not be used inside of or on the roof of any building. Fired kettles shall not be left unattended. There shall be at least one

portable fire extinguisher with a minimum 20 B: C rating within thirty feet of each fired kettle and one additional portable fire extinguisher with the same rating by the work area.

- 6.43 **INSULATION.** All insulation incorporated into the project **must** contain the minimum percentage of post-consumer recovered paper or recovered material as shown below for the applicable product:

<b>MATERIAL TYPE</b>	<b>PERCENT BY WEIGHT</b>
Cellulose loose – fill and spray on	75% post-consumer recovered paper
Perlite Composite Board	23% post-consumer recovered paper
Plastic rigid foam, polyisocyanurate/polyurethane	
Rigid Foam	9% recovered material
Foam-in-Place	5% recovered material
Glass Rigid Foam	6% recovered material
Phenolic Rigid Foam	5% recovered material
Rock Wool	50% recovered material

- 6.44 **ENFORCEMENT OF INSULATION REQUIREMENT.** The Contractor may be required to provide the Commonwealth with documentary evidence that the insulation provided for the Project was produced with the required minimum percentage of post-consumer recovered paper or recovered material.

6.45 **LANDSCAPING PRODUCTS RECYCLED CONTENT.**

- A. **REQUIREMENT:** All landscaping products offered by the Contractor or included in the final product and sold to the Commonwealth **MUST** contain the minimum percentage of post-consumer and recovered material content as shown below for the applicable products:

<b>LANDSCAPING PRODUCTS</b>	<b>RECOVERED MATERIAL CONTENT</b>
Hydraulic Mulch: Paper Wood/Paper	100% (post-consumer) 100% (total)
Compost Made From Yard Trimmings and/or Food Waste	Purchase or use compost made from yard trimmings, leaves, grass clippings and/or food wastes for applications such as landscaping, seeding of grass or other plants, as nutritious mulch under trees and shrubs, and in soil erosion control and soil reclamation. The Department further recommends implementing a composting system for these materials when agencies have an adequate volume and sufficient space.
Garden Hose: Rubber and/or Plastic	60% (post-consumer)
SOAKER HOSE Rubber and/or Plastic	60% (post-consumer)
Lawn and Garden Edging: Rubber and/or Plastic	30% (post-consumer)/30-100% total

LANDSCAPING PRODUCTS	RECOVERED MATERIAL CONTENT
Landscaping Timber and Posts: HDPE Mixed Plastics/Sawdust HDPE/Fiberglass Other Mixed Resins	25% (post-consumer)+50% (recovered) 50% (post-consumer)+50% (recovered) 75% (post-consumer)+20% (recovered) 50% (post-consumer)+45% (recovered)

- B. POST-CONSUMER MATERIAL: Any product generated by a business or consumer that has served its intended end use, and that has been separated or diverted from solid waste for the purposes of collection, recycling and disposition.
- C. RECOVERED MATERIAL: Refers to waste materials and by-products which have been recovered or diverted from solid waste, but does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.
- D. CONTRACTOR’S CERTIFICATION: Contractor certifies that the landscaping product(s) which the Contractor is offering contains the required minimum percentage of post-consumer and recovered material content as shown in the above chart for the product.
- E. MANUFACTURER’S CERTIFICATION: In addition to the Contractor’s Certification, a Manufacturer’s Certification must be completed and signed by the manufacturer before payment will be made to the Contractor for the delivered items. A Manufacturer’s Certification form identical to the form shown below must be used. Contractors are not required to submit the completed and signed Manufacturer’s Certification form with their bid or proposal. **The Commonwealth shall have no obligation to pay for the item(s) until a properly completed and signed manufacturer’s certification is submitted for the delivered item.**
- F. ENFORCEMENT: The Contractor may be required, after delivery of the landscaping product(s), to provide the Commonwealth with documentary evidence that the landscaping product(s) were in fact produced with the required minimum percentage of post-consumer and recovered material content.

**MANUFACTURER CERTIFICATION**

(To be submitted with invoice for each order)

**TO BE COMPLETED BY MANUFACTURER:**

NAME OF MANUFACTURER: \_\_\_\_\_

ADDRESS OF MANUFACTURER: \_\_\_\_\_

FEDERAL EMPLOYER I.D. NO.: \_\_\_\_\_

CONTRACT OR REQUISITION NO. \_\_\_\_\_

NAME OF CONTRACTOR: \_\_\_\_\_

ADDRESS OF CONTRACTOR: \_\_\_\_\_

Type of landscaping product(s) which the manufacturer furnished to the contractor: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**CERTIFICATION:** I, the undersigned officer of the above-named manufacturer, do hereby certify that I am authorized to provide this certification on behalf of the above-named manufacturer and that the type of construction product(s) listed above which my company furnished to the contractor named above for the referenced contract or purchase requisition, contained not less than \_\_\_\_\_% post-consumer materials and \_\_\_\_\_% recovered materials as those terms are defined in the invitation for bids. I understand that this document is subject to the provisions of the Unsworn Falsification of Authorities Act (18 Pa C.S. § 4904).

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of Signatory

\_\_\_\_\_

TITLE

DATE

6.46 **CONSTRUCTION PRODUCTS RECYCLED CONTENT.**

- A. **REQUIREMENT:** All construction products offered by the Contractor, or included in the final product offered by the Contractor and sold to the Commonwealth **must** contain the minimum percentage of postconsumer and recovered material content as shown in the chart below for the applicable products.
- B. **POST-CONSUMER MATERIAL:** Material or finished product that has served its intended use and has been diverted or recovered from waste destined for disposal, having completed its life as a consumer item. Post-consumer material is part of the broader category of recovered material.
- C. **RECOVERED MATERIAL:** Refers to waste materials and by-products which have been recovered or diverted from solid waste, but does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.
- D. **CONTRACTOR’S CERTIFICATION:** Contractor certifies that the construction product(s), which the Contractor is offering, contains the required minimum percentage of postconsumer and recovered material content as shown above for the product.
- E. **MANUFACTURER’S CERTIFICATION:** In addition to the Contractor’s Certification, a Manufacturer’s Certification must be completed and signed by the manufacturer before payment will be made to the Contractor for the delivered items. A Manufacturer’s Certification form identical to the form shown below must be used. The Contractor is not required to submit the completed and signed Manufacturer Certification form with their proposal. **The Commonwealth shall have no obligation to pay for the item(s) until a properly completed and signed manufacturer’s certification is submitted for the delivered item.**
- F. **ENFORCEMENT:** The Contractor may be required, after delivery of the construction product(s), to provide the Commonwealth with documentary evidence that the construction product(s) were in fact produced with the required minimum percentage of post-consumer and recovered material content.

Construction Products	MATERIAL	% of Post-Consumer Materials	% of Total Recovered Materials
Structural Fiberboard	Recovered Materials	-	80
Laminated Paperboard	Post-consumer Paper	100	-
Rock Wool Insulation	Slag	-	75
Fiberglass Insulation	Glass Cullet	-	20
Cellulose Insulation (loose-fill and spray-on)	Post-consumer Paper	75	-
Perlite Composite Board Insulation	Post-consumer Paper	23	-
Plastic Rigid Foam, Polyisocyanurate/ Polyurethane: Rigid Foam Insulation	Recovered Material	-	9
Foam-in-Place Insulation	Recovered Material	-	5
Glass Fiber Reinforced Insulation	Recovered Material	-	6
Phenolic Rigid Foam Insulation	Recovered Material	-	5
Floor Tiles (heavy duty/commercial use)	Rubber Plastic	90 -	- 90
Patio Blocks	Rubber or Rubber Blends Plastic or Plastic Blends	90 -	- 90
Polyester Carpet Fiber Face	Polyethylene terephthalate	25	-

	(PET) resin		
Latex Paint: --Consolidated <sup>1</sup> --Reprocessed <sup>2</sup> -----White, Off-White, Pastel Colors -----Grey, Brown, Earthtones, and Other Dark Colors	Recovered Material  Recovered Material Recovered Material	100  20 50	-  - -
Shower and Restroom Dividers/Partitions:	Plastic Steel <sup>4</sup>	20 16 67	- 9 33
Carpet Cushion: --Bonded Polyurethane --Jute --Synthetic Fibers --Rubber	Old Carpet Cushion Burlap Carpet Fabrication Scrap Tire Rubber	15 40 - 60	- - 100 -
Railroad Grade Crossing Surfaces --Concrete --Rubber <sup>3</sup> --Steel <sup>4</sup>	Coal Fly Ash Tire Rubber Steel	- - 16 67	15 85 9 33

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<sup>1</sup> Consolidated latex paint used for covering graffiti, where color and consistency of performance are not primary concerns.

<sup>2</sup> Reprocessed latex paint used for interior and exterior architectural applications such as wallboard, ceiling, and trim; gutterboards; and concrete, stucco, masonry, wood, and metal surfaces.

<sup>3</sup> The recommended recovered materials content for rubber railroad grade crossing surfaces are based on the weight of the raw materials, exclusive of any additives such as binders or additives

<sup>4</sup> The recommended recovered materials content levels for steel in this table reflect the fact that the designated items can be made from steel manufactured from either a Basic Oxygen Furnace (BOF) or an Electric Arc Furnace (EAF). Steel from the BOF process contains 25-30% total recovered materials, of which 16% is post-consumer steel. Steel from the EAF process contains a total of 100% recovered steel, of which 67% is post-consumer.

**MANUFACTURER CERTIFICATION**

(To be submitted with invoice for each order)

TO BE COMPLETED BY MANUFACTURER:

NAME OF MANUFACTURER: \_\_\_\_\_

ADDRESS OF MANUFACTURER: \_\_\_\_\_

FEDERAL EMPLOYER I.D. NO.: \_\_\_\_\_

CONTRACT OR REQUISITION NO. \_\_\_\_\_

NAME OF CONTRACTOR: \_\_\_\_\_

ADDRESS OF CONTRACTOR: \_\_\_\_\_

Type of construction product(s) which the manufacturer furnished to the contractor: \_\_\_\_\_

CERTIFICATION: I, the undersigned officer of the above-named manufacturer, do hereby certify that I am authorized to provide this certification on behalf of the above-named manufacturer and that the type of construction product(s) listed above which my company furnished to the contractor named above for the referenced contract or purchase requisition, contained not less than \_\_\_\_\_% post-consumer materials and \_\_\_\_\_% recovered materials as those terms are defined in the invitation for bids. I understand that this document is subject to the provisions of the Unsworn Falsification of Authorities Act (18 Pa C.S. § 4904).

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of Signatory

\_\_\_\_\_  
TITLE DATE

- 6.47 **STORAGE ENCLOSURE**. The Contractor shall provide, at its cost, a suitable, substantial and watertight storage enclosure in which it shall store all materials that might be damaged by the weather. A Mobile trailer type is acceptable. The Contractor is responsible for maintaining and removing this enclosure at its cost. All storage enclosures shall be of sufficient size to hold all the Contractor's subject materials on the site at one time and shall have floors raised at least six (6) inches above the ground on heavy joists or sleepers. Storage enclosures shall have sufficient natural ventilation to preclude condensation.
- 6.48 **NO STORAGE IN EXISTING BUILDINGS**. The Contractor shall not store any materials in any existing building or beyond the contract limits as defined by the drawings without prior authorization from the Department.
- 6.49 **OPERATION AND MAINTENANCE INSTRUCTION MANUALS**. The Contractor shall, for its scope of work, carefully compile during the progress of the work indexed operation and maintenance manuals to include methods of care and cleaning of all types of visible surface materials, both interior and exterior, and descriptions of all systems and equipment, methods of operations and all warranties thereof. Descriptions shall give pertinent diagrams, identifying charts, color coding, connections, lubricating instructions, and single line and detailed wiring diagrams, using manufacturers' printed information where possible. Where manufacturers' printed information is not available, the Contractor shall obtain written instructions prepared by subcontractors and sub-subcontractors. The Contractor shall include names, addresses and phone numbers of all subcontractors and sub-subcontractors, and of service firms of each mechanical item, for the Client Agency's use after expiration of the guarantee period. At the time of Final Inspection, the Contractor shall submit a rough draft of the manual through the Submittal Process in e-Builder for approval by the Professional. After approval and before final payment, Contractor shall furnish the corrected and indexed Operation and Maintenance Instruction Manual in PDF electronic format to the Professional to be turned over to the Department for issuance to the Client Agency. The complete Operation and Maintenance Instruction Manual shall also be uploaded to e-Builder.
- 6.50 **RECORD DRAWINGS**. At the time of Final Inspection, the Contractor shall use the Submittal Process to submit to the Professional a complete set of contract color prints in PDF format, corrected with suitable markings to show all changes or variations from the original contract, including all items uncovered during the work and showing the details of the work as actually built, including but not limited to horizontal and vertical dimensional references of all concealed pipe, conduit and other lines and equipment.
- 6.51 **WARRANTY AND GUARANTEE**. In addition to the Contract Bond, the Contractor shall unconditionally warrant and guarantees equipment, materials and workmanship against patent or latent defects arising from faulty equipment, faulty materials, faulty workmanship or negligence for a period of twelve (12) months following the date of Final Inspection of the Work or beneficial occupancy (whichever occurs first) unless other warranties found within the Contract Documents specify or indicate longer periods. The Contractor shall replace such defective equipment, materials or workmanship without cost to the Department. The Contractor shall warrant that such equipment, material or workmanship furnished under this Contractor shall be furnished in conformance with the Contract Documents. All work not conforming to these standards may be considered non-conforming.
- A. If items of equipment or material carry a manufacturer's warranty for any period in excess of twelve (12) months, then the manufacturer's warranty shall apply for that particular piece of equipment or material. The Contractor shall replace such defective equipment or materials, without cost to the Department, within the manufacturer's

warranty period. Nothing in this paragraph relieves the Contractor or surety of its obligations under the performance bond.

- B. The Contractor shall assign and deliver to the Professional through the Submittal Process all warranties for review as part of the Operations & Maintenance submission. The Professional will transfer the warranties to the Department. The warranty provided in this Paragraph shall be in addition to, and not in limitation of, any other warranty or remedy provided by Law or by the Contract Documents.
- C. If there is a substitution of material or equipment in accordance with the Substitution Paragraph, the Contractor warrants that such installation, construction, material or equipment will perform to the standard of the item originally specified. The Contractor explicitly warrants the merchantability, and the fitness for use and quality of all substituted items provided for or by it.
- D. The Department may bring an action for latent defects that were hidden or not readily apparent to the Department at the time of beneficial occupancy or final acceptance, whichever occurred first, in accordance with applicable law and/or the Contract Bond.

This paragraph, "Warranty and Guarantee," in no way limits the applicability of the Contract Bond.

6.52 **TAXES.** The Contractor shall take full advantage of the Department of Revenue's "Pennsylvania Exemption Certificate" (REV-1220, as amended) for all "Building Machinery and Equipment" as defined and administered by the Department of Revenue, installed under the Contract. Otherwise, the Contractor shall pay all sales, consumer, use and other similar taxes required by law and have an affirmative duty to seek a refund or reimbursement of sales tax from Department of Revenue for costs that were included in the Contract. Once those savings are received by the Contractor, they shall be transferred back to the Department through a credit change order(s). Additional information is available on the Department of Revenue's web site. Credit changes orders for such tax refunds or reimbursements shall be equal to the actual tax refund or reimbursement amount(s) less ten percent (10%) for administrative costs.

6.53 **OFFSET OF AMOUNTS DUE TO COMMONWEALTH.** The Contractor, by execution of the Contract, 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 Department; and authorizes the Commonwealth to offset the amount of any state tax or Contractor liability owed to the Commonwealth by the Contractor or its affiliates and subsidiaries, as well as any other amount due to the Commonwealth from the Contractor not being contested on appeal by the Contractor, against any payments due the Contractor under this or any other contract with the Commonwealth. The certification of no outstanding tax liability is a material representation of fact, which the Department relies upon 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 initiation of civil, criminal and/or debarment proceedings.

6.54 **NONDISCRIMINATION AND SEXUAL HARASSMENT.** During the term of the Contract, the Contractor agrees as follows:

- A. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the Contractor, each subcontractor, or any person acting on behalf of the Contractor or subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the *Pennsylvania Human Relations Act*

- (PHRA) and applicable federal laws, against any citizen of this commonwealth who is qualified and available to perform the work to which the employment relates.
- B. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract.
  - C. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, in the provision of services under the contract.
  - D. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against employees by reason of participation in or decision to refrain from participating in labor activities protected under the *Public Employee Relations Act*, *Pennsylvania Labor Relations Act* or *National Labor Relations Act*, as applicable and to the extent determined by entities charged with such Acts' enforcement, and shall comply with any provision of law establishing organizations as employees' exclusive representatives.
  - E. The Contractor and each subcontractor shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their employees in writing of the policy. The policy must contain a provision that sexual harassment will not be tolerated and employees who practice it will be disciplined. Posting this Nondiscrimination/Sexual Harassment Clause conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contracted services are performed shall satisfy this requirement for employees with an established work site.
  - F. The Contractor and each subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of PHRA and applicable federal laws, against any subcontractor or supplier who is qualified to perform the work to which the contract relates.
  - G. The Contractor and each subcontractor represent 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 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.
  - H. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that those provisions applicable to subcontractors will be binding upon each subcontractor.

- I. 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.
- J. 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.

**6.55 CONTRACTOR EVALUATIONS**

- A. The Contractor, by entering the Construction Contract, consents to the evaluation of its performance by the Department and/or the Department's designee and understands that any such evaluation may be used in future procurements to determine Contractor's responsibility. The Department and/or the Department's designee shall provide the Contractor with notice of any unsatisfactory evaluations and the reasons therefore. Contractor shall be entitled to submit a reply.

**ARTICLE 7: SUBCONTRACTORS/SUPPLIERS**

- 7.1 **CONTRACTOR'S INTEREST IN SUBCONTRACTOR/SUPPLIER.** Pursuant to the Contractor Integrity Provisions set forth in the Instructions to Bidders, a Contractor may not, except with the consent of the Commonwealth, have a financial interest in any other Contractor, Subcontractor, or Supplier providing services, labor, or material on this project. The Contractor is required to disclose the names of all Subcontractors and/or Suppliers in which the Contractor has a financial interest, and which will be utilized in the Project. This information must be disclosed either with the bid (if known prior to bid opening) or when your subcontractor and/or supplier subcontracts are submitted. If the Department has any objection to the Subcontractors and/or Suppliers provided, the Contractor shall promptly propose another Subcontractor and/or Supplier to whom the Department does not have an objection. The Department's acceptance of the Subcontractors and/or Suppliers will be deemed to be consent for the purposes of the Contractor Integrity Provisions. Failure to disclose the names of such Subcontractors and/or Suppliers for which the Contractor has a financial interest is a violation of the Contractor Integrity Provisions. For violations 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 the 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. The Contractor shall not replace any Subcontractor and/or Supplier previously selected and/or approved by the Department, without prior notification to the Department and receipt of the Department's approval for such substitution.
- 7.2 **SUBCONTRACTOR/SUPPLIER RESPONSIBILITY.** If the Contractor enters into any subcontracts or purchase orders under this Contract with Subcontractors or Suppliers currently suspended or debarred by the Commonwealth, or who become suspended or debarred by the Commonwealth during the term of this Contract or any extensions or renewals of it, the Department may require the Contractor to terminate such Contract.

- 7.3 **CONTRACTOR RESPONSIBILITY FOR ACTIONS AND COMPLIANCE.** The Contractor shall be responsible for all acts of its Subcontractors and Suppliers utilized under this Contract, and for their compliance with all terms and provisions of the Contract applicable to their performance. The Contractor shall continuously coordinate the Work of all Subcontractors to assure proper processing and progress of the Work.
- A. The Contractor shall require each Subcontractor to comply with the following:
1. Examine the shop drawings and the Work of other Prime Contractors and all sections of the specifications to the extent necessary for satisfactory installation of its Work, and connection between its Work and the Work of other Prime Contractors; and
  2. Coordinate its Work accordingly; and
  3. Cooperate with other Contractors and Subcontractors toward timely and satisfactory completion of the Project.
- B. The failure of any Subcontractor to complete its portion of the Work in a satisfactory manner within the proper time will not relieve the Contractor of responsibility for the proper and satisfactory execution and completion of the entire Work.

- 7.4 **ACTS AND OMISSIONS OF SUBCONTRACTORS.** The Contractor acknowledges its full responsibility to the Department for the actions, inactions, and omissions of its Subcontractors, and of the persons and firms either directly or indirectly employed by them, equally to the extent that the Contractor is responsible for the actions, inactions, and omissions of persons and firms directly or indirectly employed by it. The Contractor acknowledges that it remains fully responsible for the proper performance of its Contract whether work is performed by the Contractor's own forces or by Subcontractors engaged by the Contractor.

- 7.5 **SUBCONTRACTS AND PURCHASE ORDERS.**
- A. **SUBCONTRACTORS:**
1. All Work performed for the Contractor by a Subcontractor shall be done pursuant to a written subcontract between the Contractor and the Subcontractor.
  2. The form of the written subcontract must be the same for all Subcontractors.
  3. All subcontracts between the Contractor and each Subcontractor **must:**
    - a. Be signed by both parties;
    - b. Contain Provisions that:
      - i. Set forth the amount the Subcontractor is to be paid; and
      - ii. Describe the scope of Work to be performed by the Subcontractor; and
      - iii. Preserve and protect the rights of the Department and the Professional under the Contract with respect to the Work to be performed under the Subcontract, so that the subcontracting thereof will not prejudice such rights; and
      - iv. Require that such Work be performed in accordance with the requirements of the Contract Documents; and
      - v. Require submission to the Contractor of applications for payment under each Subcontract to which the Contractor is party, in reasonable time

to enable the Contractor to apply for payment in accordance with the provisions of the Prompt Payment Schedule (62 Pa. C. S. §3931-§3939) and the provisions of these General Conditions governing payment by the Department; and

vi. 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 Department; and

vii. Prior to commencing onsite or offsite work, require each Subcontractor to comply with the provisions of the Public Works Employment Verification Act (43 P.S. §§ 167.1 – 167.11), which requires subcontractors to utilize the Federal E-Verify program to verify the employment eligibility for every new employee hired after January 1, 2013 and to submit to the Department through e-Builder, using the Subcontractor Information Form, a Commonwealth Public Works Verification Form available on the Department's web site at [www.dgs.state.pa.gov](http://www.dgs.state.pa.gov).

viii. Require each Subcontractor to include provisions in each of its subcontracts regarding the applicability of the Public Works Employment Verification Act (43 P.S. §§ 167.1 – 167.11), information regarding the use of the Federal E-Verify program, and reference to the Department's web site to obtain a downloadable copy of the Commonwealth Public Works Employment Verification Form required to be submitted to the Department by the Prime Contractor through e-Builder using the Subcontractor Information Form.

ix. Require acknowledgement by the Subcontractor that the Subcontractor is without privity of Contract with the Department and that the Subcontractor agrees by signing the Subcontract that it neither acquires or intends to acquire any rights against the Department on a third party beneficiary theory or any other theory; and

x. Require each Subcontractor to notify its Subcontractors, in writing, that their rights of recovery against the bond of the Contractor for failure of payment may not be exercised unless the Contractor is notified of the claim within ninety (90) days from the last performance of labor or provision of materials and/or equipment; and

xi. Obligate each Subcontractor to specifically consent to all provisions of this Article of the General Conditions of the Contract; and

xii. Contain the following certification language:

1. **Certification:** I, the undersigned officer of the Prime Contractor, do certify that, to the best of my knowledge, this subcontract complies with the provisions of the Subcontractor Article of the General Conditions of the Contract with the Department of General Services. I understand that by signing this document I certify that this document is subject to the provisions of the Unsworn Falsifications to Authorities (18 P.S. §4904). I acknowledge that if my company does not comply with the terms of the Subcontractor Article my firm may be subject to suspension for a period up to three (3) months and/or debarment from bidding on any Commonwealth of Pennsylvania Public Works Projects for a period of three (3) years.

xiii. The Contractor agrees that failure to incorporate these terms in its Subcontracts is a material breach of the terms of the Contract Documents. The Contractor will have five (5) days, as required by the Administrative

Procedures, to provide proof in writing that such a deficiency in its subcontract documents has been remedied. Failure to provide proof within five (5) days shall constitute grounds for default of the Contractor by the Department.

4. The Contractor shall submit in e-Builder a copy of all subcontracts for Work to be performed on the Project to the Department for the Project **prior to the commencement of any Work by the Subcontractor.**
5. The Contractor shall also submit in e-Builder a copy of every subcontract with Small Diverse Businesses and Veteran Business Enterprises for the Department's Bureau of Diversity, Inclusion and Small Business Opportunities compliance requirements.
6. The Contractor shall identify the work to be subcontracted on a separate line item on the Schedule of Values, as described more completely in the Administrative Procedures.

**B. MANUFACTURERS AND SUPPLIERS:**

1. Manufacturers and Suppliers do not have to sign Purchase Orders.
2. For every purchase order with a Small Diverse Business/ Veteran Business Enterprise Supplier and Small Diverse Business/ Veteran Business Enterprise Manufacturer, the Contractor shall submit a copy of the purchase order in e-Builder for the Department's Bureau of Diversity, Inclusion and Small Business Opportunities compliance requirements. The purchase order for a Nonstocking Supplier must include the fee or commission paid to the Nonstocking Supplier.
3. The Contractor shall identify all material and/or equipment that will be supplied by a Small Diverse Business/ Veteran Business Enterprise Supplier or a Small Diverse Business/ Veteran Business Enterprise Manufacturer on a separate line item (per Supplier/Manufacturer, not per material and/or equipment) on the Schedule of Values.

7.6 **No CONTRACTUAL RELATIONSHIP BETWEEN DEPARTMENT AND SUBCONTRACTOR.** Nothing contained in the Contract Documents creates any contractual relationship between the Department and any Subcontractor, Sub-Subcontractor or any of its authorized representatives. Nothing contained in the Contract Documents creates any contractual relation between the Professional and any Subcontractor, Sub-Subcontractor or any of its authorized representatives. Nothing contained in the Contract Documents creates any contractual relation between the Construction Manager (if there is one on the Project) and any Subcontractor, Sub-Subcontractor or any of its authorized representatives. The Contractor is not an intended third party beneficiary of the Professional Agreement or the Construction Manager's Contract. Nothing in the Contract Documents between the Department and the Contractor should be construed to authorize any person not a party to the Standard Construction Contract, the Professional Agreement or Construction Manager's Contract to maintain any lawsuit involving that contract, unless otherwise provided by law.

7.7 **No CONTRACTUAL RELATIONSHIP BETWEEN DEPARTMENT AND SUPPLIER OR MANUFACTURER.** Nothing contained in the Contract Documents creates any contractual relationship between the Department and any Supplier/Manufacturer or its authorized representatives. Nothing contained in the Contract Documents creates any contractual relation between the Professional and any supplier/manufacturer or its authorized representatives. Nothing contained in the Contract Documents creates any contractual relation between the Construction Manager (if there is one on the Project) and any supplier/manufacturer. The supplier/manufacturer is not an intended third party

beneficiary of the Professional Agreement or the Construction Manager's Contract. Nothing in the Contract Documents between the Department and the Contractor should be construed to authorize any person not a party to the Standard Construction Contract, the Professional Agreement or Construction Manager's Contract to maintain any lawsuit involving that contract, unless otherwise provided by law.

- 7.8 **PAYMENT OF SUBCONTRACTOR BY CONTRACTOR GOVERNED BY PROMPT PAYMENT SCHEDULE.** Payments to the Subcontractor are subject to the provisions of the Commonwealth Procurement Code (62 Pa. C. S. §3931 *et seq.*) *also known as the "Prompt Payment Schedule"*. The general description set forth in the General Conditions does not relieve the Contractor from strict compliance with the requirements of the Prompt Payment Schedule. Nothing described in these General Conditions is intended to impose a duty greater than that imposed by the Prompt Payment Schedule. In the event of any discrepancy between this language and the language of the Schedule, the Schedule controls.
- 7.9 **FAILURE OF DEPARTMENT TO MAKE PROGRESS PAYMENT.** If the Department fails to pay some or all of an approved Invoice for any cause which is the fault of the Contractor and not the fault of a particular Subcontractor, the Contractor shall pay that Subcontractor, upon demand made by the Subcontractor at any time after the approved Invoice should otherwise have been issued, for its Work to the extent completed, less the retained percentage.
- 7.10 **INSURANCE RECEIPTS.** The Contractor shall pay each Subcontractor a just share of any insurance moneys received by the Contractor under the Insurance Article of these General Conditions of the Contract.
- 7.11 **PERCENTAGE OF COMPLETION.** The Department may, on request, furnish to any Subcontractor, if practicable, information regarding percentages of completion certified to the Contractor due to work done by such Subcontractor.
- 7.12 **NO OBLIGATION ON PART OF DEPARTMENT TO PAY SUBCONTRACTOR, SUPPLIER, OR MANUFACTURER.** Subcontractor, Supplier, or Manufacturer issues concerning delayed and non-payment should be addressed to the Contractor and the Contractor's payment bond surety. The Department shall have no obligation to pay or to ensure the payment of any moneys to any Subcontractor, Supplier, or Manufacturer except as may otherwise be required by law. Subcontractors, Suppliers, and Manufacturer acknowledge they have no direct cause of action (unless otherwise provided by law) against the Professional, the Construction Manager (if there is one on the Project) or the Department relating to any payment issues.
- 7.13 **SUBCONTRACTOR AND SUPPLIER CLAIMS.** The Contractor agrees to require the Subcontractor and/or Supplier to submit all claims for extras, extensions of time or for damages to the Contractor in the manner provided in the Contract Documents for claims by the Contractor against the Department in accordance with the Disputes Article of these General Conditions. Since neither Subcontractors nor Suppliers have privity of contract with the Department, they may not pursue a claim directly against the Department.

## **ARTICLE 8: PROJECT SCHEDULE**

- 8.1 **DEPARTMENT RESERVATION OF RIGHTS.** The Department reserves the right to accept the Project Schedule developed, signed and submitted by the Contractors, while preserving exceptions to any defects in the means, methods, sequences, durations and/or logic which the Department believes exist in the schedule. The acceptance of the updated

Project Schedule by the Department in no way relieves the Prime Contractors from their duty to coordinate amongst themselves and shall not make the Department, its designee or the Professional a guarantor of the Project Schedule.

Upon request, the Lead Contractor shall provide to the Department, in hardcopy and electronic format (format to be determined by the Department), all the planning data used to develop the Project Schedule. This planning data shall include, but is not limited to:

1. Job Sequences;
2. Activity Logic;
3. Man loading;
4. Crew sizes;
5. Number of shifts planned per working day;
6. Number of crews per shift; and
7. Equipment loading.

8.2 **TIME OF THE ESSENCE.** All time limits stated in the Contract Documents are of the essence. The Contractor shall perform the Work expeditiously with adequate forces using all calendar days to complete the Work no later than the Contract Completion Date.

8.3 **IF LETTER OF INTENT ISSUED.** If the Department elects to issue a Letter of Intent pursuant to §906 of the Commonwealth Procurement Code, the Letter will list and describe the Work to commence prior to the Effective Date of Contract.

8.4 **COMMENCEMENT OF OFF-SITE WORK IF LETTER OF INTENT NOT ISSUED.** If the Department does not issue a Letter of Intent, the date of commencement of Off-Site Work is the Effective Date of Contract.

8.5 **INITIAL JOB CONFERENCE.** The Initial Job Conference will be held within thirty (30) calendar days from the Effective Date of Contract.

8.6 **COMMENCEMENT OF ON-SITE WORK.** On-site work will commence within ten (10) calendar days after the Initial Job Conference.

8.7 **PROJECT SCHEDULE PREPARATION.**

A. **CPM:** Unless directed otherwise by the Department in the specifications, the project management tool commonly called the Critical Path Method (CPM) scheduling system will be used on this Project for planning, scheduling implementation and reporting of all Work to be performed under this Contract, including all activities of Subcontractors, equipment vendors and Suppliers. Unless directed otherwise by the Department, the precedence diagramming method shall be used in preparing the Project Schedule and all related network diagrams. Primavera Project Planner P6 version 18 (or more current versions) shall be used by all Prime Contractors to maintain the Project Schedule, unless all Contractors agree upon and request the Department's permission to utilize alternate software. The Project Schedule network plan, including all appropriate milestone dates and the computer-produced reports shall be part of the Contract Documents. The following outline is provided to indicate to all Contractors the scope of the scheduling work and the responsibility of all Contractors to comply with this method. The CPM Schedule shall be developed, prepared, and submitted in accordance with this paragraph and the requirements of the Scheduling Administrative Procedure. **No Contractor shall assert any claim**

**whatsoever for any delay or additional cost incurred in connection with the development of the CPM Schedule.**

- B. SCOPE: The CPM will be used to establish and control the Project Schedule. This system will be implemented by the Lead Contractor using the services of a qualified Subcontractor or the Lead Contractor's own in-house staff.
- C. COOPERATION OF CONTRACTORS: To the extent necessary for the Lead Contractor to reflect the Contractors' proposed plan for completion of its Work in a computerized CPM Project Schedule network diagram, the Contractors shall meet with and assist the Lead Contractor and furnish information as directed in a Letter of Intent or otherwise directed subsequent to award of Contract. All Work shall be done in accordance with accepted CPM planning and scheduling methods and it shall be the responsibility of all Contractors to cooperate fully with the Lead Contractor and with each other to create and update the CPM schedule as required. The Project Schedule, including all updates, will reflect the decisions of all Contractors as to sequences, durations, construction logic, and all means and methods of construction. Each Contractor must provide persons of sufficient skill and information of sufficient detail to enable the Lead Contractor to prepare and update the CPM Schedule. The Contractors shall allocate to home office and field office costs sufficient financial resources to enable the Contractor to fulfill their responsibilities for coordinating and cooperating in the creation and maintenance of the CPM Schedule.
- D. DUE DATES: Each Contractor expressly acknowledges the duty to cooperate fully with these scheduling requirements.
1. If the Department issued a Letter of Intent authorizing the Contractors to commence scheduling activities, the Contractors shall commence scheduling within the scope as instructed in the Letter.
  2. **The Department will only review and pay (if the application is otherwise acceptable) the Contractor's Invoice #1 without an integrated Progress Schedule being submitted and accepted by the Department in e-Builder. If there is no Project Schedule submitted and accepted after Invoice #1, the Department will withhold payments from every Contractor until such time as there is an accepted Project Schedule.**
- E. PRELIMINARY PROJECT SCHEDULE: The CPM Project Schedule will be developed by the Lead Contractor in the form of a CPM arrow network or CPM precedence diagram from the information provided by the Contractors.
1. Unless a Letter of Intent was issued directing otherwise, within seven (7) calendar days of the Effective Date of Contract, the Lead Contractor shall furnish each Contractor a draft progress schedule of the proposed prosecution of the Work under that Contractor's Contract.
  2. Within seven (7) calendar days of receipt of the Lead Contractor's draft progress schedule, each separate Contractor shall submit to the Lead Contractor a schedule of the proposed prosecution of its Work, which the Contractor has integrated with the Lead Contractor's Work. The information provided by the Contractors to the Lead Contractor shall include all proposed sequences of operation, time estimates to complete operations, man loading, data from subcontractors, material supplies, and vendors required for the preparation of the Project Schedule. Each Contractor shall cooperate with the Lead Contractor to aid in the preparation of the draft Project Schedule. The Lead Contractor may conduct a meeting with each of the other Contractors to discuss details and inclusion of all of their Work in the draft Project Schedule.

3. The Lead Contractor shall prepare and submit to the Professional and the Department within forty-five (45) calendar days of the Effective Date of Contract, the completely integrated Project Schedule in CPM format, signed by all Contractors, indicating their approval, and showing in detail, to the acceptance of the Department, the proposed coordinated dates for the performance of each part of the Work under each Contract on the Project. The submission of the Project Schedule, and all subsequent updates, shall be done in e-Builder as stated below, as well as in PDF format and by hard copy (including all requested sorts and arrangements; utilizing color print). The attachments in e-Builder shall include all unlocked data files in the Primavera scheduling system used to develop the schedule. The start date on the schedule shall be the Initial Job Conference and end with the Contract Completion Date.
4. Seasonal weather conditions shall be considered by the Contractors in the planning and scheduling of all Work influenced by high or low ambient temperatures to insure the completion of all Contract Work within the allotted Contract Time and milestone completion dates.
5. The accepted Project Schedule must meet the specified Project duration as indicated in the Contract.
6. The accepted Project Schedule shall consider and include all time durations associated with UCC Inspection criteria by the PA Department of Labor and Industry, along with all other testing and inspections required by contract. It must take into account the advance notice needed for L&I Inspectors as defined by the UCC Building Permit criteria.

F. MILESTONES:

1. The Project Schedule shall identify Construction Progress Milestones for the Project. A Milestone is to signify the start and/or completion date of a specific activity that is significant to completing the Project on schedule. The Lead Contractor is to fully consider the sequence of operations, time estimates and other scheduling influences of all the Contractors when establishing the Milestones. By signing off on the Progress Schedule, the Contractors are also agreeing to the Milestones set forth on the schedule. Any and all milestones that are not completed on schedule will require a Recovery Plan from the Contractors.
  2. Selected Milestones shall be taken from activities that are found within the Critical Path of the Project Schedule and shall be linked to work activities in the Critical Path by the means of either Predecessors or Successors.
  3. Milestones are not an activity but, rather, a start or finish of a series of activities. Milestones are not stand alone and shall be linked to other activities in the work path with predecessors or successors. The use of open-ended logic will not be accepted.
  4. **Failure to provide full cooperation in the preparation of the CPM Schedule and any Updated Schedules will be sufficient reason for declaring the Contractor in default.**
- G. SCHEDULING INFORMATION: The following information/data for the Project Schedule will be submitted to the Lead Contractor. The information to be supplied by each Prime Contractor to the Lead Contractor shall include, but is not limited to:

1. The Prime Contractor's means and methods of construction; and
2. Job sequences; and

3. Activity durations in calendar days (excluding material deliveries and approval of shop drawings);
    - a. one (1) calendar day shall be the minimum duration.
    - b. thirty (30) calendar days shall be the maximum duration.
  4. Construction activities for display of all salient features of the Work of each Contractor, including but not limited to:
    - a. placing of orders for materials; and
    - b. submission of shop drawings for approval; and
    - c. approval of shop drawings; and
    - d. delivery of material; and
    - e. all work activities to be performed by each Contractor; and
    - f. priority submittal schedule.
- H. FORMATION OF FINAL PROJECT SCHEDULE: Once the Project Schedule information has been compiled, the Lead Contractor will generate a fully integrated Project Schedule for the Project in draft form. If the completion date indicated on the schedule exceeds the Contract Completion Date or if there appears to be a defect in the construction sequences, duration, or logic, the information used to develop the arrow network diagram or precedence diagram will be reviewed by the Lead Contractor and all other Prime Contractors. After discussion and revisions of the information and data, the Lead Contractor will utilize this revised data to produce a revised fully integrated Project Schedule. The procedure will be repeated as necessary to obtain a final Project Schedule that meets the Contract Completion Date as set forth in the Contract documents. This final Project Schedule is to be submitted to the Department within 30 days of the Effective Date of the contract or sooner if required by a Letter of Intent. The hard copy of the completed final Project Schedule will show:
1. Activity identification;
  2. Activity description;
  3. Activity percentage completed;
  4. Calendar dates for early start of each activity;
  5. Calendar dates for early finish of each activity;
  6. Calendar dates for late start of each activity;
  7. Calendar dates for late finish of each activity;
  8. Individual activity float;
  9. Activities critical to completion (i.e., identify all items on the critical path) of the project on schedule;
  10. Milestones; and
  11. That the Schedule is within the contract completion duration.

All Prime Contractors will approve the Project Schedule and each update to the schedule. The Lead Contractor will upload the approved Project Schedule for access by all other Prime Contractors, the Professional, and the Department's Regional Office for review.

- 8.8 **WORK DURING FORMATION OF PROJECT SCHEDULE.** Until the final Project Schedule is signed by all Prime Contractors and accepted by the Department, each Prime Contractor must proceed with the Work utilizing all the information available to them, including but not limited to coordination meetings with other Prime Contractors, attendance at Job Conferences, two week look ahead activities, weekly superintendent's meetings, draft CPM schedules used in the development of the final Project Schedule, and any other means necessary to maintain work progress until such time as the Project Schedule is complete and accepted. As such, no Contractor shall assert any claim whatsoever for any delay or additional cost incurred with the development of the Project Schedule.
- 8.9 **THE DEPARTMENT SHALL OWN THE FLOAT.** No float shall be used by the Contractor without a request from the Contractor and subsequent directive from the Department. Total float is defined as the amount of time between the early start date and the late start date, or the early finish date and the late finish date, for each and every activity in the Project Schedule. Extensions of time to interim milestone dates or the Contract Completion Date under this Contract will be granted only to the extent that equitable time adjustments to the activity or activities affected by the contract modification or delay exceeds the total float of the affected or subsequent paths and extends any interim milestone date or the Contract Completion Date. Such determination shall be made at the sole discretion of the Department.
- 8.10 **SCHEDULING DISPUTES:** The Lead Contractor and other Prime Contractors are responsible for coordination of the Work. Disputes between the Lead Contractor and one (1) or more other Prime Contractors or disputes between two (2) or more Prime Contractors pertaining to the creation of the Project Schedule, Schedule Updates or any Recovery Schedule, the furnishing of additional resources to meet the project schedule and/or the administration of the construction shall be submitted promptly to the Department for a decision. The decision of the Department will be observed, accepted, and fully followed by all Prime Contractors and their subcontractors on the Project, subject only to the commencement of a dispute or arbitration proceeding pursuant to Disputes Article of these General Conditions. The progress of the Work, as determined by the decision, shall not be delayed while awaiting the outcome of any such dispute proceeding.
- 8.11 **MAINTAINING THE PROJECT SCHEDULE.**
- A. Each Prime Contractor shall ensure that such manpower, materials, facilities, and equipment is applied to the Work, and shall work such hours as approved, including night shifts, overtime operations, Sundays, and holidays, as may be necessary, to maintain its progress in accordance with the Project Schedule so that no delays are caused to other Prime Contractors engaged in the Project and to insure the progress and completion of the Work within the time allowed by the Contract and as permitted by the Department.
  - B. If any Prime Contractor fails to maintain progress according to the schedule or causes delay to another Prime Contractor, the delaying Prime Contractor shall furnish such additional manpower, equipment, additional shifts or other measures that are necessary, or as the Lead Contractor directs, to bring its operations up to schedule without any additional cost or expense to the Department.
  - C. If the Prime Contractor refuses or fails to keep up with the Project Schedule or fails to proceed as directed by the Department, the Department will note this refusal/failure in the Contractor Responsibility Program and will consider suspension of the Contractor in accordance with Section 531 of the Commonwealth Procurement Code. The Department may also, in its sole discretion, find the Prime Contractor in breach of its Contract and/or declare the Contractor in default of its Contract in accordance with the Termination Article of these General Conditions.

- 8.12 **PROJECT SCHEDULE UPDATING.** The Project Schedule will be updated and issued at least once per month by the Lead Contractor.
- A. **MANDATORY MONTHLY SCHEDULE UPDATE MEETING.** The Lead Contractor will upload into e-Builder, at least once per month, updates of the Project Schedule. All Prime Contractors shall attend a Monthly Schedule Update Meeting, which shall be scheduled in e-Builder. It is mandatory that all Prime Contractors provide their updated information to the Lead Contractor seven (7) calendar days prior to the Monthly Update Meeting. The Department reserves the right to request additional updates, at no cost to the Department, from any Contractor. The Lead Contractor shall provide documentation in e-Builder confirming the Monthly Update Meetings, stating the date, time, and attendance. At sole discretion of the Department, the Lead Contractor shall be required to hold the mandatory monthly schedule update meeting at a suitable location approved by the Department with necessary provisions to accommodate all required attendees of the Prime Contractors, the Department and Professional. All necessary computer hardware and software (to include but not limited to laptop, projector and other necessary peripheral devices, and scheduling software etc.) shall be provided by the Lead Contractor so that the CPM schedule update can be projected for all meeting attendees to view. Lead Contractor shall have the approved scheduler attend the meeting to produce real time updates to the schedule based upon input from meeting attendees. The schedule file utilized during the meeting shall have all schedule update information provided to the Lead Contractor by the other Prime Contracts already incorporated.
- B. At the conclusion of the Monthly Schedule Update Meeting, all information collected will be checked by the Lead Contractor against the current Project Schedule. After all revisions in logic and time estimates have been noted, the schedule (including all drafts necessary to reach agreement) will be generated, reviewed, and approved by all Prime Contractors to indicate their concurrence. The Updated Project Schedule will be uploaded to the Schedule Submission in e-Builder by the Lead Contractor within three (3) calendar days after the Monthly Update Meeting for the other Prime Contractors, the Professional, and the Department to view. The submission of Updated Project Schedule to the Department, Professional, and Construction Manager shall be done by hard copy (including all requested sorts and arrangements; utilizing color print), and in electronic format (computer disk or file) containing all data files in the Primavera scheduling system used to develop the schedule.
- C. Upon request, the Lead Contractor shall provide to the Department, in hardcopy and electronic format (format to be determined by the Department), its planning data used to develop the updates of the Schedule. This planning data includes, but is not limited to:
1. Job Sequences;
  2. Activity Logic;
  3. Man loading;
  4. Crew sizes;
  5. Number of shifts planned per working day;
  6. Number of crews per shift; and
  7. Equipment loading.
- D. As part of the Job Conference, all activities scheduled to begin in the projected work for the next two weeks will be reviewed in a schedule look-ahead.

- E. The Department reserves the right to reject Invoices or Applications for Payment from those Prime Contractors not complying with this Section.

8.13 **RECOVERY PLAN.**

- A. **EVENTS THAT TRIGGER THE NEED FOR A RECOVERY PLAN:** The Department may issue a Recovery Notice demanding that the Lead Contractor, after coordinating with the other Prime Contractors, submit a Progress Recovery Plan (narrative) upon the occurrence of any of the following events:
  - 1. The progress of the Work or a single activity falls behind the contract time as shown in a currently updated and approved Project Schedule by more than fifteen (15) calendar days; or
  - 2. A missed milestone; or
  - 3. When an updated Project Schedule provides a completion date past the Contract Completion Date; or
  - 4. When a late start or late finish for any activity does not come within the time allowed by the current Project Schedule.
  - 5. When, in the sole opinion of the Department, it appears likely that the Work will not be completed within the Contract Time.
- B. The Prime Contractor(s) responsible for the occurrence will work with the Lead Contractor to prepare a Recovery Plan indicating that all future activities, Project completion and occupancy dates will be met within the Contract Time. The Recovery Plan shall be developed and received by the Department within three (3) calendar days of receipt of the Recovery Notice. The Recovery Plan shall be implemented immediately unless otherwise directed by the Department.
- C. In order to create and maintain the Recovery Plan, the Prime Contractor(s) agree(s) to undertake, but not be limited to, some or all of the following actions at no additional cost to the Department: increase the manpower, the number of working hours per shift, the number of shifts per day, the number of working days per week, the quantity of equipment, or any combination of the foregoing, and reschedule such activities to bring the project back on schedule.
- D. Failure of any Prime Contractor to comply with these requirements shall be considered grounds for a determination by the Department that the Prime Contractor is failing to prosecute the Work with sufficient diligence to ensure its completion within the Contract Time and is failing to comply with the Contract Time provisions of the Contract. Such determination may result in default and/or suspension and/or debarment of the Contractor.
- E. The Department's acceptance of the Recovery Plan does not relieve the Prime Contractors of the responsibility for the accuracy of the schedule and for the Prime Contractors' obligations to meet the Contract Completion Date. The Department's acceptance of the Recovery Plan does not constitute approval or warranty of the Prime Contractors' means, methods, and techniques of construction. The Department reserves the right to review any Recovery Plan to determine if it satisfies the Project Schedule. If the Recovery Plan does not satisfy the Project Schedule, the Department may elect to prepare a Recovery Plan, to which the Prime Contractors must adhere. The costs incurred by the Department in preparing the Recovery Plan will be assessed against the Prime Contractors on a *pro rata* basis (based upon individual contract price/all contracts awarded on the Project) by credit change order.

- F. If an updated monthly Project schedule provides a completion date past the Contract Completion Date, then a Recovery Plan is required, not an Extension of Time. The Recovery Plan will be attached to the Project Schedule Update.

8.14 **REQUESTS FOR EXTENSIONS OF TIME CHANGE ORDER.** All requests for Extensions of Time shall be submitted to the Department through the change order process in e-Builder as discussed in the Administrative Procedures. Reasons clearly substantiating the request shall be included or the request may be denied. All such requests must be filed within ten (10) calendar days of the end of the event or issue that caused the alleged delay.

8.15 **EFFECT OF GRANT OF EXTENSIONS OF TIME CHANGE ORDER TO OTHER CONTRACTORS.** Activity time delays shall not automatically merit an extension of the Contract Completion Date of this or any other Contract. The granting of an Extension of Time Change Order to one Prime Contractor does not automatically entitle any other Prime Contractor to an Extension of Time Change Order.

8.16 **EXTENSIONS OF TIME CHANGE ORDER AND IMPACT ON SCHEDULE.**

- A. A change order, field order (i.e., a no cost change order) or delay may not affect existing critical activities or cause non-critical activities to become critical. Change orders, field orders or delays may result in the Department giving the Contractor part of or the entire available total float that may exist within an activity chain on the Network, thereby not causing any effect on any interim milestone date or the Contract Completion Date of this Contract. The Project Schedule shall not excuse the performance of the Contractor from activities not indicated on the Project Schedule.
- B. If the Department, for any period after the commencement of On-Site Work, approves an Extension of Time Change Order to any Prime Contractor, the Lead Contractor is required to prepare a revised Project Schedule and provide copies to all Prime Contractors through e-Builder. All Prime Contractors are required to provide the Lead Contractor with information necessary to create the revised Project Schedule within seven (7) calendar days upon notice of approval of an Extension of Time Change Order. If a revised Project Schedule is requested, the Lead Contractor must send the revised Project Schedule, approved by all Prime Contractors, to the Professional and the Department within fourteen (14) calendar days of the approval of the Extension of Time Change Order. If the time limits set out in this Paragraph are not met, or the Prime Contractors are unable to reach agreement on the Project Schedule, the Department reserves the right to prepare the schedule which will be adhered to by all Prime Contractors. All costs incurred by the Department in preparing the schedule will be assessed to the Prime Contractors on a *pro rata* share (based upon individual Contract price/all Contracts awarded on the Project) by credit change order or at the Department's discretion.
- C. Upon approving an Extension of Time Change Order, the monthly updating of the Project Schedule may result in changes in the dates on which activities and the Project itself are expected to be completed. The process of updating the Project Schedule does not constitute Department approval of requests for Extensions of Time and does not replace the process of seeking extensions in accordance with both the applicable provisions of the General Conditions of the Contract and the Administrative Procedures, both of which will be strictly enforced. To substantiate and support any timely filed requests for Extensions of Time Change Order, the Prime Contractor(s) must submit, through the Lead Contractor, CPM Schedules (based upon the current Project Schedule in effect at the time the Extension of Time Change Order is submitted) with and without the asserted delay. The Prime Contractor(s) must also establish that the delay is justifiable in accordance with the Requests for Extensions of Time Change Order paragraph of these General Conditions. Data

drawn from the Project Schedule will also be used by the Department in assessing responsibility for liquidated damages if any Prime Contractor causes an unjustified delay.

- D. The Milestones shall be updated and adjusted within ten (10) calendar days of the Department approving any Prime Contractor an Extension of Time Change Order. If a Recovery Plan that was accepted by the Department requires modification of any future Milestone, the Project Schedule and Milestones must be revised accordingly. The Milestones shall be updated and adjusted each time the Project Schedule is revised so that the two instruments remain coordinated.
- E. Adjusting the Project Schedule through the use of a Recovery Plan does not constitute approval by the Department of any request for an Extension of Time Change Order and does not replace the process of seeking extensions of time in accordance with the Extension of Time Change Order paragraph in this Article of these General Conditions and the Administrative Procedures, which provisions will be strictly enforced. If a Prime Contractor submits a timely filed request for an Extension of Time Change Order, that Prime Contractor must also submit, through the Lead Contractor, a proposed Milestone schedule with and without the asserted delay.

8.17 **DELAYS AND EXTENSIONS OF TIME.** If the Contractor is delayed by:

- 1. A Critical Activity on the current Progress Schedule that is beyond the control or responsibility of the Contractor; or
- 2. Labor disputes; or
- 3. Fire; or
- 4. Unavoidable casualties; or
- 5. Delay due to suspension of work, as provided in Article 15 of these General Conditions; or
- 6. Any cause that the Department determines may justify the delay;

then the Contract Time may be extended by the approval of the Department, through an Extension of Time Change Order, for such reasonable time as the Department may determine. The Department will respond to a Contractor's timely request for extension of time Change Order within thirty (30) calendar days of the Department's receipt of such request.

8.18 **UNFAVORABLE WEATHER.** Unfavorable weather, including but not limited to rain, snow, and cold or freezing weather, is not an excuse for stopping Work under the Contract.

- A. The Prime Contractor shall use such methods of protection as may be necessary to continue the Work throughout the period of unfavorable weather.
- B. If, after using such methods of protection, the Prime Contractor cannot continue, a Request for an Extension of Time Change Order may be submitted in e-Builder for the Department's consideration and if approved it will be excusable and non-compensable.

8.19 **EXTENSIONS OF TIME NOT AN ADMISSION OF LIABILITY FOR DELAY.** The approval of an Extension of Time only constitutes a release by the Department of the Department's ability to assess liquidated damages against the Contractor for the number of days granted by the Extension of Time. The Department's approval of an Extension of Time

**shall not** be construed or interpreted by any Contractor as an admission that the Department is liable for delay damages. The Contractor agrees that the Department's grant of an Extension of Time will not be used as an admission by the Department of any liability for delay in any subsequent dispute regarding delays. This Paragraph does not preclude either the Contractor's rights or the Department's rights to pursue a claim for damages under other provisions of the Contract Documents.

## **ARTICLE 9: SUBMITTALS and COORDINATION DRAWINGS**

### 9.1 **SUBMITTALS.**

- A. A Submittal Register, which is a listing of the submittals needed for the Project, will be created by the Professional and uploaded to e-Builder for the Contractor's use. The Contractor will use this Submittal Register when creating their Submittal Schedule. The Professional's Submittal Register shall serve as the basis of the Prime Contractor's Submittal Schedule and is not by any means an all-inclusive list of submittals required for the project. The Contractors are responsible for reviewing all Contract Documents to fully develop an all-inclusive list of required submittals for the project and utilizing that list when creating the Submittal Schedule.
- B. The Contractor shall review the Professional's Submittal Register in e-Builder and submit all necessary submittals, whether or not listed on the Submittal Register, through the Submittal Process to the Professional for review and approval. The Professional shall then forward all approved submittals to the Department and consultants in e-Builder with the Submittal Schedule
- C. Submittals shall be in accordance with the Contract Documents and include, but not be limited to, such items as:
  1. Contractor's, Subcontractor's, manufacturer's or fabricator's shop drawings.
  2. Descriptive literature including, but not limited to:
    - a. Catalog cuts
    - b. Diagrams
    - c. Operation charts or curves
    - d. Test reports
    - e. Samples
    - f. Operations and maintenance manual, including parts lists
    - g. Certifications
    - h. Warranties
    - i. Manufacturer
  3. Coordination Drawings as required.
- D. The Professional's approval of submittals does not relieve the Contractor of the responsibility for any deviation from the requirements of the Contract Documents, unless:
  1. The Contractor has informed the Professional of such deviation in an attachment to their submittal at the time of submission; and
  2. The Contractor has noted the deviation on the shop drawings; and

3. The Professional has given approval of the specific deviation. The Professional's approval also does not relieve the Contractor from responsibility for errors or omissions in the submittals.

**If each of these three steps is not performed, the Contractor will not be relieved of the responsibility for executing the Work in complete conformity with the Contract Documents, even though the submittals have been approved.**

**Failure to mention a deviation shall be construed as a non-conformance with the Contract Documents. The Contractor shall be responsible for all costs associated with bringing the Work back into conformance with the Contract Documents, including costs incurred by any other Prime Contractor, the Professional and the Department as a result of such non-conformance.**

- E. The Contractor shall review, approve and submit all submittals required by the Contract Documents or required subsequently by the Department or the Professional in accordance with the Submittal Schedule in an orderly sequence so as to cause no delay in its Work or in the Work of any other Prime Contractor. Submittals shall be properly identified as specified in the Administrative Procedures and in such manner as the Department may require.
- F. By approving and submitting submittals, the Contractor represents that such submittals are sufficient for review purposes and that it has determined and verified all field measurements, field construction criteria, materials, catalog numbers and similar data and that it has checked and coordinated each submittal with the requirements of the Work and of the Contract Documents. Where field measurements and field construction criteria are not verifiable at the date of the submittal, the Contractor shall ensure that dimensions will be held when constructed.
- G. Submittals will be reviewed and approved within fourteen (14) calendar days of the submission dates established by the Submittal Schedule, unless the Department and the Professional approve a different period of time. The fourteen calendar days span the time from upload of the submittal by the Contractor to the date the Professional transmits the return submittal through e-Builder. The Submittal Schedule shall take transmittal times into account when time periods are reviewed. Review and approval are only for conformance with the design concept of the Project and with the information given in the Contract Documents. Approval of a separate item does not indicate approval of an assembly in which the item functions. Approval of submittals shall be carried out on the Project in accordance with the Administrative Procedures. All submittals must be complete and meet the requirements of the entire specification. The Prime Contractor shall be responsible for all costs associated with delays of the Project incurred as a result of submittal incompleteness and/or disapprovals.
- H. The Contractor shall make any corrections required and shall resubmit submittals until approved. The resubmission shall be acted upon within ten (10) calendar days of its receipt, unless the Department and the Professional approve a different period of time. The ten (10) day period begins on the first full day after the Contractor uploads the resubmission and ends on the date the Professional sends the resubmission to the Contractor. Submittals uploaded earlier than the date established by the Submittal Schedule are not required to be returned until ten (10) days after the date established for the submittal by the Submittal Schedule.

- I. When resubmitting submittals, the Contractor shall direct specific attention to any revisions made, other than the corrections requested by the Professional on previous submissions, by noting such revisions on the resubmissions.
- J. The Professional's approval of shop drawings or samples does not relieve the Contractor of responsibility for any deviation from the requirements of the Contract Documents, unless the Contractor has informed the Professional of such deviation at the time of submission, has noted the deviation on the submittals, and the Professional has given approval of the specific deviation. The Professional's approval also does not relieve the Contractor from responsibility for errors or omissions in the submittals. Failure to mention a variation shall be construed as a non-conformance with the Contract Documents. The Contractor shall be responsible for all costs associated with bringing the Work back into conformance with the Contract Documents, including costs incurred by any other Prime Contractor, the Professional and the Department as a result of such non-conformance.
- K. No portion of the Work requiring a submittal shall be commenced until the submittal has been approved. Any Work commenced by the Contractor prior to final approval of the submittal is performed by the Contractor at its own risk.
- L. Each Contractor shall be responsible for accessing e-builder and reviewing every other Prime Contractors' approved submittals for consistency and interface with its Work. Any exception taken to the content of another Contractor's approved submittal must be coordinated/resolved between the Contractors within three (3) calendar days of the Contractor's approved submittal being uploaded to e-Builder. If the exception cannot be coordinated/resolved, it must be presented to the Professional through the RFI process in e-Builder within seven (7) calendar days of the Contractor's approved submittal being uploaded to e-Builder.

9.2 **SUBMITTAL SCHEDULE.**

- A. Each Contractor shall, within seven (7) days of the Effective Date of the Contract review the Professional's Submittal Register in e-Builder and prepare and submit a Submittal Schedule with all necessary submittals, whether or not listed on the Submittal Register, to the Lead Contractor, organized by related specification section number sequences, showing all items requiring submission . The Submittal Schedule shall be submitted in e-Builder as prescribed by the Administrative Procedures.
- B. The Contractor's initial Submittal Schedule shall include the following, at a minimum:
  - 1. Submittal breakdown by Specification Section number and division; and
  - 2. Scheduled date for initial submittal of item; and
  - 3. Days required after return of an approved submittal to order, fabricate and deliver the specific item to the site.
- C. **The Submittal Schedule shall be integrated and tied to the logic of activities in the Project Schedule by the Lead Contractor to ensure adequate review time is included in the activity durations for all items on the Submittal Schedule.**
- D. Each Contractor shall comply with the Submittal Schedule and submit items within the order and dates established therein. Each Contractor shall not be permitted to stack the submittals in a manner that would inundate the Professional in such a manner that the submittals cannot be reviewed and decided upon in a timely manner.

- E. Submittals relating to materials and equipment that require advanced approval shall be scheduled and submitted before the Contractor issues a purchase order or otherwise acquires the materials or equipment.
- F. Drawings of component items forming a system or that are interrelated shall be organized and submitted concurrently. Certifications to be submitted with the drawings shall be so scheduled. The Submittal Schedule shall be coordinated with the Schedule of Values to ensure delivery and payment requests are projected accurately.
- G. Neither the Department, its designee, nor the Professional will be responsible for the failure of the Contractor to properly schedule the process of material/product design, submittal, review, fabrication, delivery and storage/installation.
- H. The Department may require the Contractor to add and/or delete items on the Submittal Schedule at any time.
- I. The approved Submittal Schedule will become a part of the Contract and the Contractors must comply with it. The Contractor shall provide to the Lead Contractor sufficient information to permit the Lead Contractor to revise and/or update the Submittal Schedule monthly to take into account all changes and coordinate this Submittal Schedule with the Project Schedule. Each such revised edition and/or revision to the Submittal Schedule shall be resubmitted to the Department for approval. This Submittal Schedule shall be coordinated with related submittals of all Prime Contractors.

9.3 **COORDINATION AND SEQUENCING OF SUBMITTALS.**

- A. The Contractor shall coordinate preparation and processing of submittals with the performance of the Work and the Project Schedule so the Work will not be delayed by the submittal process.
- B. The Contractor shall coordinate and sequence different categories of submittals for the same Work and for interfacing units of Work, so that one will not be delayed by the coordination of the Professional's review with another.
- C. No delay damages or time extensions will be granted for time lost due to late, inadequate or uncoordinated submittals or for the time required to resubmit late, inadequate or uncoordinated submittals.
- D. The Contractor shall be responsible to determine items that will require long lead time to procure. Adequate time shall be allowed for long lead items that require submittals to be made early during the course of the Work in the Submittal Schedule and Project Schedule.
- E. No delay damages or time extensions will be granted for lack of consideration being given to long lead items.

9.4 **COORDINATION DRAWINGS.**

- A. **All Contractors are required to participate in the creation and updating of one complete composite set of Coordination Drawings to pre-plan the installation of General, HVAC, Electrical, Fire Protection, Plumbing and other Work as required.**

- B. The Department may consider the completion of Coordination Drawings for each Contract as a condition of approval for any Invoice involving any material or equipment delivered or for any Work by these Contractors.**
- C. The purpose of these Coordination Drawings is to identify coordination problems and interferences prior to installation. The Contractors shall prepare and submit Coordination Drawings for any Work where close coordination is required for installation of products and materials fabricated off-site by separate Contractors, and where limited space availability necessitates maximum utilization of space for efficient installation of different components. Coordination Drawings are required for all equipment rooms, floors, spaces and other areas in which the Work of two or more trades or Contractors is to be installed and in which the potential for conflict or interference exists, or as determined by the Department.
- D. The HVAC Contractor will be the Lead Contractor for purposes of the Coordination Drawings and shall facilitate the Coordination Drawing Process between Prime Contractors.**
- E. The HVAC Contractor will prepare background drawings that will be distributed to all of the other Contractors for them to mark-up and return to the HVAC Contractor.
- F. The Coordination Drawings shall:
1. Show the Work of all Contractors impacted; and
  2. Be drawn to a scale not smaller than 1/4" = 1'-0" (30" x 42" sheet size); and
  3. Show clearly in both plan and elevation that all Work can be installed without interference; and
  4. Show the interrelationship of equipment and systems to indicate coordination among trades; and
  5. Indicate required installation sequences; and
  6. Be based on submitted shop drawings and Contract Documents, and include equipment foundations, all equipment, piping, conduit, ductwork, panels, control centers and related appurtenances.
- G. The Department may assist, if requested, in the resolution of conflicts or disputes with locations of Work items found by the Contractors during the preparation of the Coordination Drawings.
- H. The HVAC Contractor will incorporate items indicated on the marked-up drawings onto the background drawings and upload these final Coordination Drawings to e-Builder for other Contractors use. One paper set and one PDF electronic format, in its native software of the Coordination Drawings are to be provided to the Department.
- I. Since the preparation of Coordination Drawings acceptable to the Department is a contract requirement, the cost is to be included in each Contractor's bid.**

**Any Work installed prior to approval of Coordination Drawings shall be at the Contractor's risk. Subsequent relocation required to avoid interferences shall be made without additional expense or time extensions to the Department.**

- 9.5 **STANDARDS OF QUALITY.** Where trade names, catalog number and manufacturers of material or equipment are specified, they are mentioned for the purpose of establishing a standard of quality, performance, and appearance, and for establishing a standard for

competitive bidding. If the Contractor wishes to utilize material or equipment that they believe is of the same type, but manufactured by others than those named in the specifications, the Contractor shall certify that the material or the equipment is equal in quality, performance and appearance to that mentioned in the specifications. The Contractor shall submit to the Professional and the Department, subsequent to the Award of Contract, a request to install such material or equipment. The Contractor's request shall include a comprehensive description of the material or equipment proposed to be utilized as an equal, including engineering, construction, and dimension and performance data. Within thirty (30) days after receipt of the Contractor's request, the Professional will render a determination to the Contractor, which is final. If the Contractor refuses or fails to proceed in accordance with the Professional's determination, the Department may issue cure or non-conformance notices and/or declare the Contractor in default.

- 9.6 **SUBSTITUTION OF MATERIALS.** If the Contractor desires to furnish materials or equipment other than that which is specified, the Contractor shall submit to the Professional a comprehensive description of the material or equipment proposed for substitution, including engineering, construction, dimension, performance and appearance data, along with a statement of the cost involved. The Professional, with the approval of the Department, shall render a determination to the Contractor. If the substituted material or equipment is approved, the Contractor is responsible for any and all costs incurred to implement the substitution and for eliminating any additional time that may be needed as a result of implementing the substitution. If the cost of the substituted item is less than the specified item, the Department is entitled to a credit for the difference between the cost of the substituted item and the item specified.

## **ARTICLE 10: PROTECTION OF PERSON & PROPERTY AND INSURANCE AND INDEMNIFICATION**

- 10.1 **SAFETY PRECAUTIONS AND PROGRAMS.** The Contractor shall recognize that it is important to business to prevent the occurrence of incidents that lead to occupational injuries or illnesses. The Contractor is responsible for initiating, maintaining and supervising all safety precautions and programs required under its portion of the Work.
- 10.2 **SAFETY OVERVIEW.** The Contractor and its subcontractors of all tiers will be responsible for the safety and security of its employees under their control and as to its area of Work.
- A. The Contractor and its Subcontractor(s) of any tier shall be required to have its company Safety Program in place and implemented throughout the duration of the project.
  - B. The Contractor will have a Site Safety Program, maintain injury records as required by OSHA. Upon request by the Department, the Contractor shall make available the Site Safety Program, information on injury logs, safety meetings and their topics, inspection reports and other items concerning Project safety.
  - C. The Contractor will inform the Department of any Federal or State inspection, and the Department will receive copies of all Federal and State inspection reports, citations, penalties, abatement dates, etc.
  - D. All Contractors will give full cooperation to all authorized Inspectors, who may periodically inspect the Project without notice.
- 10.3 **SAFETY OF PERSONS AND PROPERTY.** 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 involved in the Work and all other persons who may be affected thereby; and
- B. All the Work and all 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 its subcontractors of any tier; and
- C. Other property within the Contract Limits 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; and
- D. All areas of the Project site where unauthorized entry or presence would present a potential hazard to the health and safety of trespassers shall be adequately posted to prevent access by unauthorized personnel.

10.4 **COMPLIANCE WITH SAFETY LAWS.** The Contractor shall comply at all times with all applicable Federal, Commonwealth, and local laws, ordinances, rules, regulations and orders of any public authority having jurisdiction for the safety of persons or property and to protect them from damage, injury or loss. The Contractor shall erect and maintain, as required by existing conditions and progress of the Work, 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 until the acceptance of all on-site physical work, change order work, and/or demobilization. All areas of the Project shall be hardhat areas. All persons within the Contract Limits are required to be protected by protective helmets in compliance with Occupational Safety & Health Administration (OSHA) requirements.

10.5 **EMPLOYEE SAFETY ORIENTATION AND SAFETY MEETINGS.**

- A. Each Contractor and its Subcontractor(s) of any tier shall follow OSHA requirements regarding the recognition and avoidance of unsafe conditions and the regulations applicable to the work environment.
- B. The Contractor and each Subcontractor shall also provide a company-specific basic site and safety orientation to each individual before they begin Work on the Project. This orientation shall cover general safety rules, potential hazards, site work rules, wearing of protective equipment, etc. The Contractor and each Subcontractor shall keep a record of all attendees and topics discussed.
- C. The Contractor and each of its subcontractors shall hold weekly Toolbox Talks Meetings at the Project site.

10.6 **FIRST AID TREATMENT.**

- A. The Contractor shall keep on site a first aid kit supplied according to current regulations and shall have a certified person trained in first aid and CPR to cover those periods outside of normal project working hours.

10.7 **PROJECT EQUIPMENT.**

- A. Each Contractor and its Subcontractor(s) of any tier will supply all necessary equipment and take the required precautions to maintain the equipment according to the current regulations and Contract Documents. The Contractor shall accept the responsibility to assure that all of the necessary safety equipment is supplied and used as required.

- B. Each Contractor shall clearly mark its name on each and every piece of its equipment on-site. The name shall be marked in a place on the equipment that is clearly visible.
- C. All tools, saws and mechanical equipment utilized by the Contractor shall have protective safety devices in operating order when using the equipment.

10.8 **EMPLOYEE AND VISITOR DRESS REQUIREMENTS.**

- A. This Project shall be a hardhat Project and, all supervisors, employees and visitors shall be required to wear a suitable hardhat while on the Project site.
- B. Other appropriate personal protective equipment shall be provided and worn as required for personal safety and protection.

10.9 **EMERGENCY NOTIFICATION.** A procedure will be established by each Contractor to provide emergency communications to all individuals on the site. This procedure will not be used to handle routine calls to individuals.

10.10 **COMPLIANCE WITH SAFETY REGULATIONS.**

- A. The Contractor's failure to comply with the safety requirements will be considered as non-compliance with the Contract and may result in remedial action as provided by the Contract.
- B. Even though the Department has no duty regarding the Contractor's compliance with safety regulations, if the Department notifies any Contractor of any safety issue, the Contractor shall make all reasonable efforts to correct the condition or act.

If a Contractor or Subcontractor refuses to correct the safety issue, condition or act, the Department, in its sole discretion, may take any other action it deems appropriate.

All costs incurred due to correcting the Contractor's safety issue, condition, or act shall be borne by the Contractor which created the safety issue, condition or act and costs will be back-charged to this Contractor.

- C. Each Contractor shall be responsible for payment of all fines and/or claims for damages levied for deficiencies relating to conduct of Contractor's Work.

10.11 **EXPLOSIVES.** Unless permitted in the specifications, the use of explosives and other hazardous materials or equipment is not permitted for the execution of the Work. If explosives are permitted, the Contractor shall observe the utmost care, performing such Work with experienced personnel and in accordance with all Federal, Commonwealth, local, Departmental, and institutional regulations, so as not to endanger life or property. Rock encountered within five (5) feet of pipelines or buildings shall be removed without blasting. All explosives shall be stored in a secure and safe manner, in strict conformity with all Federal, Commonwealth and municipal regulations and all such storage shall be clearly marked "Dangerous-Explosives" and shall be in the care of competent watchmen at all times. The Contractor shall provide insurance in accordance with the special insurance provision in these General Conditions relating to "Blasting". The Contractor shall be responsible for all damages caused by the use of explosives, hazardous materials and/or equipment, and blasting and shall notify the Department of any claims of damage associated with this Paragraph at the time of claim.

- 10.12 **REMEDICATION OF DAMAGES.** The Contractor shall remedy all damages or loss to any property caused in whole or in part by the Contractor, any Subcontractor, any sub-subcontractor, or anyone directly or indirectly employed by any of them. If damage or loss is attributable to faulty drawings or specifications or to the acts or omissions of the Department or Professional, and the damage or loss is not attributable to any fault or negligence of the Contractor, then the Contractor shall not provide remediation.
- 10.13 **LOADS.** The Contractor shall not load or permit any part of the Work to be loaded so as to endanger the safety of persons or property.
- 10.14 **CONTRACTOR'S LIABILITY INSURANCE.** The Contractor, during the progress of the Work and until the acceptance of all on-site physical work, change order work, and/or demobilization, shall purchase and maintain such insurance as will protect it from claims set forth below which may arise out of or result from the Contractor's operations under the Contract, whether such operations are performed by itself or by any Subcontractor:
1. Claims under Worker's Compensation Disability Benefit and other similar employee benefit Acts; and
  2. Claims for damages because of bodily injury, occupational sickness or disease, or death of its employees, and claims insured by usual personal injury liability coverage; and
  3. Claims for damages because of bodily injury, sickness or disease, or death, of any person other than its employees, and claims insured by usual personal injury liability coverage; and
  4. Claims for damages because of injury to or destruction of tangible property including loss of use resulting therefrom.
- 10.15 **INSURANCE LIMITS.** The insurance required by this Article shall be written for not less than any limits of liability specified in this Article, or required by Law.
- 10.16 **CERTIFICATES OF INSURANCE.** Certificates of Insurance complying to this Article and acceptable to the Department shall be filed with the Department prior to the commencement of on-site work. These certificates shall contain a provision that coverages afforded under the policies shall not be canceled or changed until at least thirty (30) calendar days notice has been given to the Department. Renewal certificates must be provided to the Department prior to the expiration of the prior policy as stated on the certificate. The insurance certificate shall also name the Commonwealth of Pennsylvania, the Construction Manager, if there is one on the project, and the Professional as additional insureds.
- 10.17 **COMMERCIAL GENERAL LIABILITY AND PROPERTY DAMAGE LIABILITY INSURANCES.** The Contractor's commercial general liability insurance shall be in an amount not less than \$1,000,000 per occurrence, including accidental death, to any person and subject to the same limit for each occurrence, and in an amount not less than \$2,000,000 in the aggregate. This policy must list general aggregate and completed operations aggregate. This policy shall not have any exclusion for explosion, underground, or collapse (XC&U). The Contractor's property damage liability insurance shall be in an amount not less than \$2,000,000 for each occurrence.
- A. For Subcontractors, the Contractor shall either:
1. Require each of its Subcontractors to procure and to maintain Subcontractors' commercial general liability, automobile liability, and property damage liability insurance of the type and in the same amounts as specified in this subsection for

the life of its subcontract and/or until the acceptance of all of its on-site physical work, change order work, and/or demobilization;

**OR**

2. Insure the activity of its Subcontractors in its own policy.
  - B. If required by a Special Condition, by law, or the Contractor deems necessary, the Contractor's and its Subcontractors' liability insurance shall include additional riders providing for adequate protection against the indicated special hazards (e.g., blasting, flooding, underpinnings, pollution, etc.).
  - C. The Contractor must submit to the Department, within ten (10) calendar days from the Initial Job Conference, and prior to the beginning of on-site work, the subcontractor's and sub-subcontractor's certificates of insurance which name the Commonwealth of Pennsylvania and Commonwealth Agency as an additional insured.
- 10.18 **PROPERTY INSURANCE.** The Contractor shall, until all physical on-site work is complete, including change order work, punch list work, demobilization or seasonal work, maintain insurance on all insurable work included in the Contract against loss or damage by fire and lightning and those perils covered by the extended coverage endorsement. Insurable work includes work both interior and exterior of any building being constructed. The property insurance must include a Builder's Risk Policy or an installation floater that covers all risks. The Contractor and all subcontractors are required to produce certificates of insurance, naming the Commonwealth of Pennsylvania and Commonwealth Agency as an additional insured.
- 10.19 **COMMERCIAL AUTOMOBILE LIABILITY INSURANCE.** The Contractor's Commercial Automobile Liability Insurance shall be in an amount not less than a \$1,000,000 Combined Single Limit (CSL) or in the alternative, provided that there is not Commercial Automobile Policy, then a separate limit under the General Liability Policy providing for \$1,000,000 Non-Owned and Hired liability.
- 10.20 **UNMANNED AIRCRAFT SYSTEMS/UNMANNED AERIAL VEHICLES/DRONES INSURANCE.** The Contractor, if it chooses to use such a drone device, shall have, or its Subcontractor shall have, specific UAS/UAV/Drone insurance and shall adhere to all Federal Aviation Administration (FAA) regulations and all Federal, State, and Local laws, ordinances, and regulations regarding their use on the Project site. The Contractor shall notify the Department of its intended use of this device and provide the insurance certificate to the Department prior to its use. The Contractor shall be responsible for all damages caused by the use of these devices and shall notify the Department of any claims of damage associated with this Paragraph at the time of claim.
- 10.21 **RISK TO CONSTRUCTION WORK.** The risk of damage to the construction work is that of the Contractor and surety. No claims for such loss or damage will be recognized by the Department, nor will such loss or damage excuse the complete and satisfactory performance of the Contract by the Contractor.
- 10.22 **UNACCEPTABLE SURETY OR INSURANCE COMPANY.** If the surety on the bonds or the insurance company providing the required coverage becomes unsatisfactory to the Department, the Contractor must promptly furnish such additional security or insurance coverage as may be required to protect the interest of the Department. The Contractor shall furnish the Department, when requested, satisfactory proof of coverage of each type of Bond and/or insurance required. Failure to comply with this provision shall result in the cessation of the Work, and shall be sufficient grounds to withhold any further payments due the Contractor and/or to declare the Contractor in default. The Department will not

consider any claim for an Extension of Time, costs, or damages because of time lost due to such instance brought by the noncompliant Contractor. The noncompliant Contractor shall be responsible for damages incurred by other Prime Contractors in accordance with these General Conditions.

10.23 **INDEMNIFICATION.**

- A. The Contractor shall hold harmless and indemnify the Commonwealth, Department, and the Professional and their agents and employees against any and all third party claims, demands and actions based upon or arising out of any activities performed by the Contractor and its employees and agents under this Contract, provided the Commonwealth gives Contractor prompt notice of any such claim of which it learns. Pursuant to the Commonwealth Attorneys Act (71 P.S. Section 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.
- B. Notwithstanding the above, neither party shall enter into any settlement without the other party'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.

10.24 **INDEMNIFICATION NOT LIMITED BY EMPLOYEE BENEFITS ACTS.** In any and all claims against the Commonwealth, Department, or the Professional or any of their agents or employees, by any employee of the Contractor or any Subcontractor, the indemnification obligations under this Article 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.

10.25 **INDEMNIFICATION DOES NOT COVER THE CONSTRUCTION MANAGER'S OR THE PROFESSIONAL'S ACTIONS.** The obligations of the Contractor under this Article shall not extend to the liability of the Construction Manager (if retained for the Project) or the Professional, the Professional's consultants, agents, or employees arising out of:

- A. The preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications; or
- B. The giving of, or the failure to give, directions or instructions by the Professional, its agents or employees, provided such giving, or failure to give, is the primary cause of the injury or damages.

10.26 **WORKPLACE DRUG AND ALCOHOL POLICY.** The Department is committed to providing a safe workplace for the workers assigned to the Project, promoting high standards of employee health and fostering productivity. Contractor shall establish a drug and alcohol policy for the project with the goal of maintaining a work environment that is free from the effects of the use of illegal drugs and alcohol. Anyone employed at the Project site will comply with the contractor's drug and alcohol policy.

The Department reserves the right to amend this procedure upon notice to the Prime Contractor.

- A. **COMPLIANCE PROCEDURE:** The Department reserves the right to audit any drug and alcohol policy program required by this specification to verify compliance results within twenty-four (24) hours of the Department's notification of intent to audit. The Department shall have free right of access to all relevant records of the Prime Contractor and their subcontractors for this purpose, provided such record disclosures are within the scope of the Commonwealth of Pennsylvania's Department of Health and Human Services guidelines pertaining to confidentiality of employee records.

The Contractor's pre-engagement employees who receive a positive test result shall immediately leave the project site. Transportation of employees receiving a positive test result is the direct responsibility of the employing Prime Contractor. Furthermore, pre-engagement employees receiving a positive test result shall not be permitted to return to the project site earlier than ninety (90) days from the date of the positive test. At that time, the employee must be tested again.

## **ARTICLE 11: CHANGES IN THE WORK**

- 11.1 **CHANGES.** The Department, without invalidating the Contract, may direct changes in the Work within the general scope of the Contract, consisting of additions, deletions or other revisions. All such changes in the Work will be authorized by Change Order or Field Order.
- A. **The Contractor agrees that payment under any method noted within this Article will be the exclusive compensation for such addition, deletion, or other revision to the original Contract, including any and all costs associated with acceleration, stacking and re-sequencing of forces required by the change in order to maintain the Project Schedule.**
- B. If it is not possible to complete the Work in accordance with the Project Schedule by acceleration, stacking or re-sequencing, the Contractor may request an Extension of Time. Adequate information and proper form submission must be provided to validate this request. The Department reserves the right to deny requests not accompanied by adequate information and proper form submissions.
- C. The language in this Article must be construed in conjunction with the detailed language of the Administrative Procedures.
- D. The Department reserves the right to require SDB or VBE participation on change orders for additional work not already subject to an SDB or VBE commitment.
- 11.2 **COST OF CHANGE ORDER.** The debit or credit cost to the Department resulting from a change in the Work shall be determined in accordance with the Change Order Administrative Procedure as determined by the Department.
- 11.3 **DISAGREEMENT AS TO COST OR CREDIT FOR CHANGE ORDER.** If the Department and the Contractor cannot agree as to the cost or credit to the Department resulting from a change in the Work, the Department shall determine the cost or credit. The Contractor **must** proceed with the Change Order work under this Article if directed to do so by the Department. The Contractor may submit any dispute for cost to the Department in accordance with the Dispute Resolution Article of these General Conditions. The Department may, in the Department's sole discretion, monitor any or all disputed cost work on a time and material force account basis. If the Department approves the change as a force account Change Order, the Contractor would be required to show proof of

incurred cost as stipulated under the provisions of Change Order Administrative Procedure.

11.4 **UNIT PRICES SET OUT IN BID OR PROPOSAL.** This paragraph shall not be invoked without the Department's approval. If unit prices were required in the Contract Documents and subsequently agreed upon, and, if the quantities originally contemplated increased in excess of 125% or decreased below 75% of the original contract quantity, the applicable unit prices may be equitably adjusted by Change Order to prevent such hardship, at the sole discretion of the Department. The Contractor must provide evidence that is acceptable to the Department that a hardship exists before an adjustment will be made.

11.5 **UNCLASSIFIED EXCAVATION.**

- A. Excavation, if required for this Project, will be unclassified and will include all types of earth and soil, any pebbles, boulders, and bedrock, municipal trash, rubbish and garbage, and all types of debris of the construction industry such as wood, stone, concrete, plaster, brick, mortar, steel and iron shapes, pipe, wire asphaltic materials, paper and glass. Unclassified excavation does not include unforeseen concrete foundations, walls, or slabs.
- B. All materials encountered which are identified as described in the previous paragraph as unclassified shall be removed to the required widths and depths to create a finished product as shown and/or noted on the drawings and as written in the specifications. No additional compensation or time shall be given to the Contractor for this unclassified excavation.
- C. Any unclassified items described in paragraphs B and C above that are discovered during any excavation are not concealed conditions or unknown physical conditions below the surface for purposes of the Concealed Conditions paragraph of these General Conditions.

11.6 **CONCEALED CONDITIONS.**

- A. The Department recognizes two types of concealed conditions which might be encountered during the performance of the Work, namely:
  - 1. Concealed conditions which are unascertainable from the plans, Contract Documents, visits to the site, or reasonable investigation, and which are at variance with the conditions indicated by the Contract Documents; or
  - 2. Unknown physical conditions below the surface of the ground of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract.
- B. The Contractor has twenty-four (24) hours after the first observance of the concealed condition to provide notice to the Department.
- C. If the Department decides that either of the two concealed conditions described above in (A) has occurred during construction, then the Contract Sum shall be equitably adjusted by Change Order. No adjustment shall be made to the Contract Sum under this paragraph, however, for concealed conditions encountered during cutting and patching of Work.
- D. In the event that concealed or unknown conditions described above in (A) preclude either the Contractor or the Department from establishing either a methodology or a

quantity of work to be priced into a Change Order before commencement and performance of Work, the Department reserves the right to do any of the following:

1. If only the quantity of Work is unknown, the Department may issue a Change Order to perform work in a quantity established by the Department. The Department will monitor the actual quantities and, upon completion of the Work, issue a second Change Order to adjust the original quantity.
2. If the Department deems that either the methodology and/or scope of the Change Order are indeterminable, the Department may issue an exploratory Change Order to determine the appropriate methodology and scope before issuing a follow-up Change Order to complete the Work. If the Department determines, after review of the results of the exploratory Change Order, that this Change Order was not successful in establishing the methodology or scope of work, the Department may opt for performing and monitoring the entire Change Order Work on a time and material force account basis. If the Department decides to proceed in this manner, the Contractor will be required to show proof of incurred cost as stipulated under the provisions of Change Order Administrative Procedure.

- 11.7 **NO CLAIMS FOR ADDITIONAL COST OR TIME.** 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 Department 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 Department may, however, address such non-compensable 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.
- 11.8 **MINOR CHANGES IN THE WORK.** The Department may direct minor changes in the Work (such as minor relocations or field revisions) that the Department and the Contractor mutually agree do not involve an adjustment in the Contract Sum or an extension of the Contract time and which are not inconsistent with the intent of the Contract Documents. Such changes may only be enacted by no cost Change Order, or by other order. Such changes are binding on the Department and the Contractor. The Contractor shall carry out such no cost Change Orders promptly.
- 11.9 **DIRECTIVE TO COMMENCE CHANGE ORDER WORK.** The Department may direct the Contractor to commence Change Order Work prior to a fully executed Change Order. Such direction will not be given until the Department generates the scope and confirms that funding is available to complete the Change Order Work. The Contractor shall proceed immediately upon the Department's notification of the directive to the Contractor.

## **ARTICLE 12: NON-CONFORMING WORK AND CORRECTIONS**

- 12.1 **WORK COVERED CONTRARY TO REQUEST.** If any Work is covered contrary to the request of the Department or the Professional, the Work must, if required by the Department or the Professional, be uncovered for observation and replaced, at the Contractor's expense with no Extension of Time.
- 12.2 **UNCOVERING OF WORK.** If any Work has been covered which the Department, its designee or the Professional has not specifically requested to observe prior to being covered, the Department or Professional may request to see such Work and the Work shall be promptly uncovered by the Contractor.

- A. If such Work is found to be in accordance with the Contract Documents, the cost of uncovering and replacement shall be charged to the Department by appropriate Change Order.
  - B. If such Work is found to be not in accordance with the Contract Documents, the Contractor shall pay costs to make the Work conform and the cost of replacement, unless it is found that this condition was caused by another Prime Contractor. In that event, the Department shall pay the Contractor for such costs and will issue a credit Change Order for such costs from the responsible Prime Contractor(s).
- 12.3 **CORRECTION OF WORK REJECTED BY THE DEPARTMENT.** The Contractor shall promptly correct all Work rejected by the Department, its designee or the Professional as defective or as failing to conform to the Contract Documents. The correction must be implemented regardless of when such Work is observed and whether or not the Work was fabricated, installed or completed or whether such Work had been paid for by the Department. 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 Department and/or any other agency.
- 12.4 **CORRECTION OF WORK AFTER ACCEPTANCE.** If, after the date of Final Inspection and acceptance of all Work performed under the Contract, any of the Work is found to be defective or nonconforming, the Contractor shall correct such Work promptly after receipt of a notice from the Department, unless the Department has previously given the Contractor an acceptance of this specific condition. The Department should give such notice of rejection promptly after discovery of the condition. Approval or payment of an Invoice by the Department shall not constitute acceptance.
- 12.5 **CORRECTION AT NO COST TO THE DEPARTMENT.** All defective or nonconforming Work shall be promptly removed from the site, and the Work shall be corrected to comply with the Contract Documents without cost to the Department.
- 12.6 **COST OF DAMAGE TO OTHER CONTRACTORS' WORK.** The Contractor shall bear the cost of replacing all Work of any other Prime Contractor that is destroyed or damaged by the removal and/or correction of the Contractor's defective or non-conforming Work.
- 12.7 **FAILURE TO CORRECT DEFECTIVE OR NON-CONFORMING WORK.** If the Contractor does not remove such defective or nonconforming Work within the time set forth by the Department, the Department may have the defective or nonconforming Work removed, implement any corrective work by any means necessary, and issue a credit change order to the offending Contractor for all costs associated with the correction. Failure to correct defective or non-conforming work as directed by the Department may be cause for default and/or breach of contract.
- 12.8 **INVESTIGATION BY THE DEPARTMENT.** The Department reserves the right, upon investigation of installation of defective and/or nonconforming Work, to note this situation in the Contractor Responsibility Program and may consider suspension of the Contractor in accordance with Section 531 of the Commonwealth Procurement Code. The Department may also, in its sole discretion, find the Prime Contractor in breach of its Contract and/or declare the Contractor in default of its Contract in accordance with the Termination Article of these General Conditions.
- 12.9 **ACCEPTANCE OF NONCONFORMING WORK.** If the Department knowingly elects to accept nonconforming work, it may do so instead of requiring its removal and correction. If nonconforming work is accepted, a credit Change Order shall be issued to reflect an appropriate reduction in the Contract Sum, or, if the amount is determined after final payment, it shall be paid by the Contractor and/or the Contractor's surety.

- 12.10 **DEPARTMENT'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 Contract, the Department may, after **three (3) days** notice to the Contractor and without prejudice to any other remedy, carry out the Work in accordance with the Contract Documents, or correct such failures, defects, or non-conforming work. In such case, an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor the cost of carrying out the Work or correcting such failures, including the cost of the Department's designee and 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 Department.
- 12.11 **OBLIGATIONS OF CONTRACTOR NOT LIMITED BY THIS ARTICLE.** The obligations of the Contractor under this Article are in addition to, and not in limitation of, any obligations imposed upon the Contractor by the Contract Documents or otherwise prescribed by Law.

### **ARTICLE 13: PAYMENTS AND COMPLETION**

13.1 **SCHEDULE OF VALUES.**

- A. The language in this Article must be construed in conjunction with the detailed language of the applicable Administrative Procedure.
- B. Within forty five (45) days of the Effective Date of the Contract and prior to the first Invoice, the Contractor shall submit for the Department's and the Professional's approval, a detailed Schedule of Values, indicating values for line-items of the Work. The Schedule of Values must provide the aggregate total Contract sum, divided to facilitate payments to Subcontractors. The Schedule of Values shall be prepared in the e-Builder system and supported by such data required by the Department to substantiate its correctness in accordance with the following:
1. Each item in the Schedule of Values shall include its proper share of overhead and profit.
  2. When more than one building or structure is included in the Contract, the Contractor shall submit a Schedule of Values, indicating Unit Prices for all items of Work within the separate buildings, separate floor levels, site work and/or structures, or as deemed acceptable by the Department.
- C. This Schedule of Values, when accepted by the Department, will be used as a basis for the Contractor's invoices. This breakdown may also be used by the Department to determine the cost or credit to the Department resulting from the changes in the Work.

13.2 **INVOICE FOR PROGRESS PAYMENTS.**

- A. During the progress of the Work, the Contractor shall submit invoices of the value of the Work performed to the Department within the e-Builder Invoice Approval-Pay Application process. All invoices shall be supported by data, as required by the Department, substantiating the Contractor's right to payment. The Professional and the Department will review and accept the invoice for validity.
- B. **STORED MATERIALS:** If upon the determination of the Department as to reasonableness, payments for stored material which is scheduled to be installed

more than forty-five (45) days from request for payment are to be made to the Contractor on account of materials or equipment which are not yet incorporated in the Work, but are delivered and suitably stored in an appropriate facility or at the site. Such payments shall be conditioned upon submission by the Contractor of Bills of Sale forms provided by the Department to establish the Department's title to such materials or equipment. The Contractor shall remain responsible for all losses of materials and equipment that remain under its custody and control, regardless of the exclusions in insurance policies. Warranties do not begin until the date of final acceptance.

13.3 **CONTRACTOR WARRANTS TITLE TO ALL WORK PASSES FREE OF LIENS.** The Contractor warrants and guarantees that title to all work, materials and equipment covered by an Invoice, whether incorporated in the Project or not, will pass to the Department upon final acceptance by the Department. The title shall be free and clear of all liens, claims, security interests or encumbrances (hereinafter referred to in this Article as "liens"). The Contractor further guarantees that no work, materials or equipment covered by an Invoice was acquired by the Contractor, its employees, its Suppliers or its Subcontractors subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor, its employees, its Suppliers or its Subcontractors.

13.4 **NEITHER PAYMENT NOR OCCUPANCY CONSTITUTES ACCEPTANCE OF WORK NOT IN CONFORMANCE WITH CONTRACT DOCUMENTS.** Under no circumstances will any of the following occurrences constitute an acceptance of any Work not in accordance with the Contract Documents:

1. An approval of an application for a progress payment; or
2. Full or partial payment to the Contractor of any progress payment; or
3. Partial or entire use or occupancy of the Project by the Client Agency.

13.5 **PAYMENTS WITHHELD.**

A. The Department may decline to approve an Invoice in whole or in part if the Work has not progressed to the point indicated, or the quality and quantity of the Work is not in accordance with the Contract Documents. The Department and Professional may also decline to approve any Invoice, because of subsequently discovered evidence or subsequent inspections, which may nullify the whole or any part of any Invoice previously issued to such extent as may be necessary in their opinion to protect the Department from loss because of deficiency items, including but not limited to:

1. Defective/non-conforming work not remedied; or
2. Third party claims filed with reasonable evidence and costs by other Prime Contractors; or
3. Damages to another Prime Contractor; or
4. Reasonable doubt that the Work can be completed for the unpaid balance of the Contract Sum; or
5. Reasonable indication that the Work will not be completed within the contract time; or
6. Unsatisfactory prosecution of the Work by the Contractor, or
7. Failure of the Contractor to maintain insurance, or

8. Failure of the Contractor to properly submit the required administrative submittals.

B. If the Department withholds payment from the Contractor for any of the aforementioned reasons, the Department will provide notification to the Contractor of the reason for withholding payment within fifteen (15) days of the Department's receipt of the Invoice.

The Contractor may withhold payment from a Subcontractor, Supplier, or Manufacturer responsible for the defective/non-conforming item. If payment is withheld from the Subcontractor, Supplier, or Manufacturer for such defective/non-conforming item, the Contractor must notify the Subcontractor, Supplier, or Manufacturer and the Department (including the Construction Manager if applicable) of the reason for the withholding within 15 days of the date after the Contractor receives the notice of defective/non-conforming item from the Department.

13.6 **PAYMENT MADE WHEN GROUNDS ARE RESOLVED.** When issues for withholding payments are resolved to the Department's satisfaction, payment shall resume or be made to the Contractor for the amounts withheld. The grounds for withholding payment shall be considered resolved upon the Department's issuance of a notice indicating that the issue has been resolved.

13.7 **RETAINAGE.** The Department may retain a portion of the amount due the Contractor to ensure the proper performance of the Contract. In computing the amount payable in accordance with this Article on any current Invoice:

**A. The Department may deduct and retain up to six percent (6%) of the then total invoices until fifty percent (50%) of the Work has been satisfactorily physically completed as determined by the Department. Satisfactory completion includes compliance with the Contract Documents and meeting all Contract obligations.**

B. After fifty percent of the Contractor's Work is physically complete, the sum withheld by the Department shall not exceed three percent (3%) of the original Contract Sum. All money retained by the Department may be withheld from the Contractor until Substantial Completion of its Work.

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

13.8 **MONEY WITHHELD DUE TO CLAIMS OF ONE PRIME BASED ON DELAY OF ANOTHER CONTRACTOR.** In the event a dispute arises between Prime Contractors based upon increased costs claimed by one Prime Contractor occasioned by delays or other actions of another Prime Contractor, the Department may, upon receipt of evidence of actual or imminent damages, withhold the amount of such damages from the Prime Contractor causing the claim. This amount shall be withheld until such time as a final resolution is agreed to by all parties directly or indirectly involved, unless the Prime Contractor causing the additional claim furnishes a Bond satisfactory to the Department to indemnify the Department against the claim.

13.9 **DEPARTMENT DOES NOT MAKE PAYMENT.** If the Department fails to make payment to the Contractor within forty-five (45) days after receipt of an acceptable Invoice, the Contractor may file a claim for interest. No interest penalty payment shall be paid, however, if payment is made on or before the fifteenth (15<sup>th</sup>) calendar day after the payment due date. The Contractor is not entitled to stop work in any event, unless the Department

exercises its right to suspend the work, as provided in these General Conditions. According to 62 Pa. C.S. §3938, as amended, this failure to pay provision shall not apply if:

- A. The General Assembly failed to enact a budget for the fiscal year of payment; or
- B. The General Assembly failed to enact an operating budget for the fiscal year of payment or a capital budget for the capital project; or
- C. The Federal, State, or local government failed to pay funds designated or to be designated for the specific project.

13.10 **WORK CANNOT BE COMPLETED THROUGH NO FAULT OF CONTRACTOR.** If , after Final Inspection, items of Work cannot be completed because of any of the following conditions:

- A. Unseasonable considerations, such as bituminous paving, landscaping, etc.; or
- B. The Department agrees that particular items need not be completed until a subsequent date; or
- C. The Department delays the approval of the Final Invoice for any unreasonable length of time, (reasonableness shall be determined by the Professional and the Department)

the Department may agree to release partial payment of the remaining Contract balance to the Contractor. This payment shall be calculated by deducting one and one-half (1-1/2) times the dollar value of items on the punch list from the remaining Contract balance.

13.11 **Final Payment Not Due Until Conditions Met.** Neither the final payment nor the remaining retained percentage (if any) becomes due until the Contractor submits to the Department:

- A. An affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the work for which the Department might in any way be responsible, have been paid or otherwise satisfied by the Contractor; and
- B. Statements from the Contractor's Surety Company and the Contractor's certification on forms satisfactory to the Department as to Contractor's payment of all claims for labor, materials, equipment rentals and public utility services; and
- C. If required by the Department, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens arising out of the Contract, to the extent and in such form as is designated by the Department.

If any Subcontractor refuses to furnish a release or waiver, as required by the Department, the Contractor may furnish a Bond satisfactory to the Department to indemnify the Department against any such lien. If any such lien remains unsatisfied after all payments are made, the Contractor shall refund to the Department all moneys that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorney's fees.

13.12 **RELEASE OF FUNDS IF DELAY IN FINAL INSPECTION NOT DUE TO THE CONTRACTOR'S FAULT.** If Final Inspection is materially delayed through no fault of the Contractor, the Department shall, upon certification by the Professional, make payment of the balance due for that

portion of the Work fully completed and accepted by the Department. Such payment will not terminate the contract. If the remaining balance of Work not fully completed or corrected is less than the retainage, and, if performance and payment bonds have been furnished as required, the Contractor must submit to the Department, prior to certification of the payment, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted by the Department. Such payment shall be made under the terms and conditions governing final payment, except that it does not constitute a waiver of any of the Department's claims against the Contractor.

- 13.13 **FINAL PAYMENT AS WAIVER OF CLAIMS.** The making of final payment constitutes a waiver of all claims by the Department, **except** those arising from:
- A. Unsettled claims;
  - B. Faulty, nonconforming or defective work or material;
  - C. Failure of the work or material to comply with the requirements of the Contract Documents; or
  - D. Terms of any special warranties and/or special guarantees required by the Contract Documents.
- 13.14 **ACCEPTANCE OF FINAL PAYMENT AS WAIVER OF CLAIMS.** The acceptance of final payment by the Contractor constitutes a waiver of all claims by the Contractor against the Department.
- 13.15 **Payments Through Automated Clearing House.**
- A. The Department will make all payments to the Contractor through an Automated Clearing House (ACH).
  - B. The Contractor, within ten (10) days of receiving the Contract, must include their ACH information in their user profile in the Commonwealth's PA Supplier Portal.
  - C. The Contractor must submit a unique invoice number with each invoice submitted. The unique invoice number will be listed on the Commonwealth of Pennsylvania's ACH remittance advice to enable the Contractor to properly apply the Project's payment to the invoice submitted.
  - D. It is the Contractor's responsibility to ensure that the ACH information contained in SRM is accurate and complete. Failure to maintain accurate and complete information may result in delays in payment.

## **ARTICLE 14: PROJECT CLOSEOUT**

- 14.1. **CLOSEOUT GENERALLY.** Project closeout consists of a Final Inspection which is deemed to be a significant activity considered to be a Project Milestone. During the Final Inspection, a Punch List of incomplete Work will be generated as discussed below. The Contractor must complete all Punch List items within 30 calendar days after Final Inspection. It is the Contractor's responsibility to request Final Inspection and the Professional's and Department's responsibility to determine if the Work is substantially complete for Final Inspection to occur.
- 14.2. **FINAL INSPECTION.**
- A. A determination of substantial completion will occur within five (5) days from the request by the Contractor to the Department for a Final Inspection and an application

for final payment. If the work is determined to be at substantial completion, the Final Inspection shall be conducted within ten (10) days by the Professional with the observation by the Department. The Contractor or its authorized representative must be present throughout the duration of the Final Inspection.

1. The Department has the sole authority, in light of the Project's Scope of Work, to determine whether parts or the whole of the Project are ready for a Final Inspection.
- B. At the conclusion of the Final Inspection, the attendees shall review all of the remaining responsibilities of the Contractor, the remaining responsibilities of the Professional, the status of all pending change orders, the status of all pending Requests for Extension of Time Change Orders, the status of any pending claims against the Department or any other Prime Contractor and any other obligations of any party necessary to fulfill the requirements of the Contract Documents. Upon

completion of this review the Contractor, Professional and the Construction Regional Director or designee shall approve the punch list containing these items to indicate their concurrence with the remaining responsibilities of each party.

1. The Punch List shall indicate, in detail, all items requiring completion or correction and a reasonable cost of completion plus one and one-half times the aggregate value of the items.
2. The Contractor shall complete all Punch List items within thirty (30) calendar days of Final Inspection or show just cause to the satisfaction of the Professional and the Department why they cannot be completed. If satisfactory just cause is not shown, the Department may proceed under Article 12.10 Department's Right To Carry Out The Work.
3. The Department will make payment in full within 45 days of the submission of the accepted final application except as set out in this Article, less one and one-half times the amount required to complete any then-remaining uncompleted minor items, which amount shall be certified by the Professional. Payment of any amount withheld for the completion of the Punch List shall be paid upon completion of the items.

## **ARTICLE 15: SUSPENSION**

- 15.1. **SUSPENSION OF WORK DUE TO UNFAVORABLE CONDITIONS OR WEATHER.** If, in the judgment of the Department, the Contractor takes undue risk of damage to any part of a the Project, including, but not limited to, soil compaction, foundation excavation, concrete placement or any exterior building construction by proceeding with the Work during unfavorable weather or other conditions (not relating to the fault of the Contractor or the convenience of the Department), the Department may issue a notice of a temporary suspension of the Work for either the whole Contract or any part of the Contract, for such temporary period as the Department deems necessary. If the temporary suspension is due to unfavorable weather, the suspension may span the time period (days, weeks or months) encompassed by the unfavorable weather. In case of such suspension under this paragraph, a proper Extension of Time will be allowed for this excusable, non-compensatory delay, and the Contractor may not submit any claim for any expense or damages resulting from the suspension. The failure of the Department to suspend the Work does not relieve the Contractor of its responsibility to perform the Work in accordance with the Contract Documents.
- 15.2. **SUSPENSION OF WORK DUE TO FAULT OF CONTRACTOR.** If the Contractor fails to comply with the orders of the Department, the Professional or the Construction Manager relative to any particular parts of the Work, the Department may issue a notice of a temporary suspension of the Work for either the whole Contract or any part of the Contract until the orders respecting the particular parts are complied with by the Contractor. In case of this type of suspension, which shall be considered due to the fault of the Contractor, no Extension of Time shall be given and the Contractor may not submit any claim for any expenses incurred by the Contractor during the suspension period. Further, the Contractor may be liable for any and all damages incurred by other Prime Contractors due to the Contractor's actions.
- 15.3. **SUSPENSION OF WORK FOR THE CONVENIENCE OF THE DEPARTMENT.** The Department may issue a notice of a temporary suspension of the Work for the convenience of the Department for either the whole Contract or any part of the Contract for such period of time as the Department may determine to be appropriate. This Paragraph does not apply to suspensions due to unfavorable weather or to suspensions due to Contractor's fault.

- A. If the performance of all or any part of the Work is suspended by the Department, for an excessive period of time under this paragraph, an adjustment shall be made for any increase in the cost of performance of this Contract (excluding profit) necessarily caused by such excessive suspension. The Contract Sum shall be modified accordingly. The Department will not pay any costs under this paragraph to the extent:
1. Performance would have been concurrently suspended by any other cause, including weather, or the fault or negligence of the Contractor; or
  2. An equitable adjustment for the time period encompassed within the suspension has been provided for or excluded under any other provision of this Contract.
- B. Any claim for damages allegedly incurred under this paragraph shall be submitted under the Dispute Resolution Article, in an amount stated, at the next Field Dispute Resolution meeting after the date of the Department's letter terminating the suspension.
- 15.4. **RESUMPTION OF WORK**. When the Department directs resumption of the Work under this Article, the Contractor shall resume full operations within ten (10) days after the date of the Department's letter terminating the suspension. The Department is not liable for any damages or anticipated profits on account of the Work being suspended, except as described in the Paragraph entitled Suspension of Work for Convenience of the Department. Suspensions of Work as outlined in this Article shall not automatically extend the Contract Completion Date. A request for an Extension of Time may be submitted by the Contractor, setting forth its reasons for the extension, which the Department will review in accordance with the Administrative Procedures governing Extensions of Time.

## **ARTICLE 16: TERMINATION OF CONTRACT**

- 16.1. **TERMINATION FOR THE CONVENIENCE OF THE DEPARTMENT**. The Department, may, at any time and for any reason, terminate this Contract. In such case, the Contractor shall be paid (and shall accept payment) for that portion of the entire Contract actually performed satisfactorily as of the date of termination. Termination costs shall not include any loss of anticipated profits. Disputes as to the sum payable to the Contractor shall be settled in accordance with the provisions of the Dispute Article of these General Conditions of the Contract.
- 16.2. **EFFECT OF TERMINATION FOR THE CONVENIENCE OF THE DEPARTMENT**. A termination for the convenience of the Department, shall be effective in the manner and at the time specified in such notice and shall be without prejudice to any claims which the Department may have against the Contractor. Upon receipt of such notice from the Department, 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 promptly cancel 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 Department, as may be directed by the Department. Upon termination of this Contract, as provided by this paragraph, full and complete adjustment and payment of all amounts due the Contractor arising out of this Contract as determined by an audit conducted by or for the Department, as soon as practicable after such termination shall be made as follows:

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

16.3. **CONTRACTOR'S DEFAULT.** If the Contractor:

- A. Persistently or repeatedly refuses or fails to supply sufficient properly skilled workmen or proper materials;
- B. Persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction over the Project;
- C. Fails to proceed as directed by the Department;
- D. Performs the Work unsuitably;
- E. Refuses or fails to remove materials or replace rejected or non-conforming Work;
- F. Discontinues the prosecution of the Work without approval of the Department; or
- G. Otherwise breaches any material provision of this Contract,

then the Department, may, without prejudice to any of its other rights or remedies, give the Contractor and its Surety notice that the Contractor has seven (7) days from the date of the Department's letter to cure the default. If the Contractor fails to cure the default within the specified time, the Department may terminate the Contract between the Department and the Contractor and may take possession of the site and of all materials and equipment, which has been paid for by the Department as of the date of termination. The Department may finish the Work by whatever method the Department may deem expedient. Upon termination, 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, in accordance with the Unpaid Contract Balance Paragraph below. The

discretion to declare the Contractor in default rests solely with the Department. No party, whether bound by Contract to the Department or attempting to raise a third party relationship, which this Contract specifically precludes, may state a cause of action against the Department alleging the failure of the Department to exercise its discretion to terminate the Contractor.

- 16.4. **UNPAID CONTRACT BALANCE.** If after the Department defaults/terminates the Contractor, the unpaid balance of the Contract sum exceeds the cost of finishing the Work, including compensation for any Construction Manager's or Professional's Additional Services and any other damages that the Department has incurred in accordance with the Contract, such excess shall be paid to the Surety. If such costs exceed the unpaid balance, the Contractor or the surety or both shall pay the difference to the Department.
- 16.5. **SURETY REPLACEMENT OF CONTRACTOR.** If the Department defaults/terminates the Contractor, the surety will have thirty (30) days from the date of the termination letter to replace the terminated Contractor with a Completion Contractor that is acceptable to the Department. Any delay or other claims attributable to the termination of the Contractor by other prime contractors will be the responsibility of the Surety to pay.
- 16.6. **SURETY'S FAILURE TO PROVIDE REPLACEMENT CONTRACTOR.** If the surety fails to provide an acceptable Contractor within thirty (30) days from the date of the termination letter, the Department may contract with a Contractor to complete the Work in accordance with the Contract Documents.
- 16.7. **DEPARTMENT'S RIGHT OF RECOVERY.** The Department will hold the Surety responsible for any additional cost incurred by the Department as a result of the Contractor's termination, including but not limited to, delay cost, acceleration cost, direct cost and consequential and incidental cost incurred by the Department or any other Prime Contractor.

## **ARTICLE 17: DISPUTES**

- 17.1. **CONTRACTOR MUST CARRY ON WORK DURING THE DISPUTE PROCESS.** The Contractor may note that they are performing the Work under protest and may keep records of costs during the dispute resolution process but the Contractor shall not refuse to perform as directed by the Department. The Contractor must maintain the Project Schedule unless otherwise agreed to by the Department. If the Contractor fails or refuses to perform as directed, this action will constitute a breach of contract and the Department may default the Contractor and/or proceed to suspend and/or debar the Contractor.
- 17.2. **CONTRACTOR REQUEST FOR DEPARTMENT TO WITHHOLD FUNDS DUE TO DAMAGE BY OTHER CONTRACTOR(S).** With regard to any Work performed on the Project:
- A. If the Contractor, either itself or by its Subcontractor or Sub-subcontractors causes damage or injury to the property or Work of any Prime Contractor or Prime Contractors, or by failing to perform its Work (including Work of its Subcontractor or sub-subcontractors) with due diligence, delays any Prime Contractor or Prime Contractors, who suffer additional expense or damage as a result, the Department may, upon the receipt of a request from the Prime Contractor who has suffered additional expense or damage, withhold from the Contractor sufficient funds to cover the damages which have been incurred by the other Prime Contractor in accordance with these General Conditions of the Contract.
  - B. If the Department determines that the Prime Contractor submitting the claim is entitled to payment, the Department will process a credit change order for the amount

of the damages due to the other Prime Contractor, and the Department will process a credit change order to the other Prime Contractor in that amount.

- C. If the Contractor disputes the amount of the damages or that it is responsible for them, the Contractor may present the issue to the dispute resolution process commencing with a FDR Meeting described in this Article.
- D. It is agreed by all parties that disputes or actions between Prime Contractors concerning the additional expense or damage will not delay completion of the Work, which shall be continued by the parties, subject to the rights provided in these General Conditions.
- E. It is agreed by the parties to this Contract (the Department as promisee and the Contractor as promisor) that the intent of this Article 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 Department and the Contractor that this clause raise such other Prime Contractors to the status of intended third party beneficiaries of this Contract.

17.3. **ARBITRATION OF DISPUTES BETWEEN CONTRACTORS.** Contractors who have claims, disputes or other matters which arise out of, or are related to this Contract, or the breach which are between themselves and do not involve the Department may, at their option, submit such claims, disputes or other matters to 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 is in consideration of the fact that all other Prime Contractors agree to this same arbitration provision, as provided in each separate Prime Contract required for the construction of this project, and is specifically enforceable under the Prevailing Arbitration Law. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

- A. Notice of the demand for arbitration shall be filed in writing with the other Prime Contractors and with the Philadelphia or Pittsburgh, Pennsylvania, Regional Office of the American Arbitration Association. A copy of the demand shall be provided to the Department. The demand for arbitration shall be made within a reasonable time after the claim; dispute or other matter in question has arisen. The Department shall not be a party to the claim, dispute or other matter in question, but will be a witness in any arbitration at the request of any party to the arbitration.
- B. If the Contractors choose to submit the claim to arbitration, the Department shall not be a party to this arbitration nor shall such claim or dispute be subject to a Board of Claims proceeding.

17.4. **DISPUTE RESOLUTION IS A 3-STEP PROCESS.** The Contractor and the Department agree that any and all disputes arising out of this Contract are subject to a 3-step resolution process described in this Article. The Contractor and the Department agree that participation in each preceding step is a condition precedent to the Contractor's right to pursue any and all unresolved disputes to the next step.

17.5. **STEP 1: FIELD DISPUTE REVIEW MEETING.** The Field Dispute Review Meeting is the initial step in identifying and attempting to reach a timely and equitable resolution of the variety of issues that arise on any construction project. The nature and structure of each Field Dispute Review Meeting shall be flexible and consist of an informal, good-faith discussion of the current status of the Project, and identification of potential and actual disputes.

- A. PROJECT INTERVALS: A Field Dispute Review Meeting (“FDR Meeting”) will be scheduled by the Department to discuss issues arising as of the following intervals of the Project:
1. 50% of the Contract Duration has elapsed; and
  2. 75% of the Contract Duration has elapsed; and
  3. 100% of the Contract Duration has elapsed; or
  4. At any time deemed necessary by the Department.
- B. LOCATION: The Department will schedule a mutually convenient date and time for each FDR Meeting. If possible, the FDR Meeting should be convened at the Project site.
- C. ATTENDEES: All Prime Contractors shall attend each Field Dispute Review Meeting. The Professional shall attend each Field Dispute Review Meeting. The Department shall also attend the Field Dispute Review Meeting. The Department’s Designated Representative will chair the Meeting.
- D. PROCEDURE: As the Project progresses and the time for a FDR Meeting approaches, the Department should establish the date for the meeting during the discussion at a bi-weekly Job Conference.
1. The Contractor must start the Field Dispute Review Process in e-Builder. This information submitted will be available to the Department, the other Prime Contractors, and the Professional. The information should provide sufficient information to allow attendees to research potential disputes, review the Contract Documents, review the Project Schedule and examine site conditions prior to the Meeting. In all cases of misunderstanding and disputes, allegations that verbal instruction was given will not be considered. The Contractor must produce documentation in support of its contentions and shall advance no claim in the absence of such documentation, or use or attempt to use any conversation with any parties against the Professional or the Department, or in prosecuting any claim against the Professional or the Department.
  2. The Department shall convene the Field Dispute Review Meeting and, if necessary, ensure that attendees are introduced to each other.
    - a. The FDR Meeting shall not be subject to 2 Pa. C.S. (relating to administrative law and procedure).
    - b. Neither audio recording nor videotaping will be allowed during the FDR Meeting.
    - c. No transcripts will be taken but attendees are free to take their own notes.
    - d. The Meeting may be moved out to the field for visual inspection of the condition if necessary to understand and resolve the issue.
    - e. The Department will allow all parties a reasonable time to present and discuss the disputes raised in the Prime Contractors’ FDR Meeting Forms.
  3. The Contractor’s representative (an employee in the field familiar with the day-to-day work on this Contract) shall present a description of:
    - a. The Work performed since the last Field Dispute Review Meeting; and

- b. The Work to be performed in the near future; and
  - c. The status of disputes raised at the previous FDR Meeting; and
  - d. New disputes that have arisen since the previous FDR Meeting. For each new dispute:
    - i. Set forth the schedule impacts, which may only be presented using the current Project Schedule; and
    - ii. Set forth a proposed solution to the dispute, including:
      - 1. Days needed in any Extension of Time; and/or
      - 2. Damages attributed to the dispute; and
      - 3. Identify the party the Contractor believes is responsible for creating the dispute.
4. The Department's representative and/or another Prime Contractor if so identified in 3(d)(ii)(3) above shall present a description of:
- a. their understanding of the Work performed since the last FDR Meetings; and
  - b. the Work to be performed in the near future; and
  - c. status of disputes raised at the previous FDR Meeting; and
  - d. a response to the new dispute(s) raised by the Contractor, including:
    - i. the Department's and/or the Contractor's view of the schedule impact, which may only be presented using the current Project Schedule; and
    - ii. the Department's and/or the Contractor's response to the original Contractor's proposed solution; and
    - iii. the identity of the party the Department and or the Contractor believes is responsible for creating the dispute.
5. Within two weeks of the FDR Meeting, the Department will render a decision on the issues raised during the FDR Meeting. The decision will be uploaded to e-builder and available to all attendees. The decision is not binding upon any party.
6. If any party is dissatisfied with the decision reached at the FDR Meeting, they may appeal the decision to the second step in the dispute process.
7. **Any issue or dispute arising on the Project must be presented at the first FDR Meeting after the dispute arose. If a Contractor fails to raise an issue at the appropriate FDR Meeting then the Contractor is deemed to have waived the issue (e.g., an issue arising during the first 50% of contract duration must be presented at the 50% FDR Meeting and may not be presented at any subsequent FDR Meeting).**
8. **Only claims raised during an FDR Meeting may be appealed to the Claim Settlement Conference stage.**
- 17.6. **STEP 2: CLAIM SETTLEMENT CONFERENCE.** The second step in the dispute resolution process is a Claim Settlement Conference, which is a more formal step in the process and is described in general in §1712.1 of the Commonwealth Procurement Code. To the extent that this language conflicts with §1712.1, the statutory language controls.

- A. TIME TO FILE A CLAIM: Under this second step of the process, a Contractor may appeal the FDR Meeting decision by submitting a written claim to the Deputy Secretary for Public Works, 18<sup>th</sup> & Herr Streets, Harrisburg, PA 17125.
1. **Any issue or dispute arising on the Project that is not mutually resolved at the FDR Meeting stage may only be appealed to the Claim Settlement Conference stage. If the Contractor fails to pursue any unresolved FDR Meeting issue to a Claim Settlement Conference within the 6-month time frame set forth below, then the Contractor is deemed to have waived the issue.**
  2. **A claim accrues upon the date of the Department's written decision in Step 1. If the Contractor decides to appeal the decision reached at the FDR Meeting, the Contractor must file an appeal of the decision to the Deputy Secretary within six months of the date of the Department's written decision. If the Contractor fails to file a written request within this time period, the Contractor is deemed to have waived its right to assert the claim in any forum. The Deputy Secretary will disregard untimely claims.**
- B. CONTENTS OF THE CLAIM: The claim filed by the Contractor with the Deputy Secretary shall state **all grounds** upon which the Contractor asserts a controversy exists. The claim must contain, at a minimum:
1. The documentation submitted by the Contractor to the Department during the FDR Meeting to substantiate the Contractor's view of the issue; and
  2. The Department's decision.
- C. DATE OF THE CLAIM SETTLEMENT CONFERENCE: The Deputy Secretary or a designee may schedule a mutually convenient date and time for the Claim Settlement Conference.
- D. ATTENDEES: All parties identified in the Claim Packet or deemed necessary by the Department shall attend the Claim Settlement Conference. At a minimum, the Contractor, the Professional, and a representative from Department's Bureau of Construction, designated by the Director of Construction, shall attend the Claim Settlement Conference.
- E. PROCEDURE: If the Deputy Secretary deems the Claim Settlement Conference is necessary, the Deputy Secretary or a designee will convene the Claim Settlement Conference.
1. The Claim Settlement Conference shall not be subject to 2 Pa. C.S. (relating to administrative law and procedure).
  2. Neither audio recording nor videotaping will be allowed during the Claim Settlement Conference.
  3. No transcripts will be taken but attendees are free to take their own notes.
  4. The Deputy Secretary or a designee will allow all parties a reasonable time to present and discuss the issues.
  5. The Contractor's representative shall present a description of the issue, including:
    - a. the factual background of the issue;

- b. the schedule impacts, which may only be presented using the current Project Schedule; and
  - c. the proposed solution to the dispute, including:
    - i. days needed in any Extension of Time; and/or
    - ii. damages attributed to the dispute; and
    - iii. identify the party the Contractor believes is responsible for creating the dispute.
6. The Department's representative (or other Prime Contractor if so identified in 5c(iii) above) shall present a description of:
- a. a response to the dispute(s) raised by the Contractor, including:
    - i. the Department's and/or the Contractor's view of the schedule impact, which may only be presented using the current Project Schedule; and
    - ii. the Department's and/or the Contractor's response to the Contractor's proposed solution; and
    - iii. the identity of the party the Department and/or the Contractor believes is responsible for creating the dispute.
7. The Deputy Secretary may render a final determination on the contents of the Claim within 120 days of the receipt of the claim by the Deputy Secretary. The parties may, during the 120 day period, mutually agree to extend the 120-day deadline. The Department will confirm all agreements to extend the 120-day deadline in writing. If no decision is rendered within the 120 days of the receipt of the claim by the Deputy Secretary, and the Department has not confirmed in writing the parties agreement to extend the 120-day deadline, the claim is deemed to be denied on the 120<sup>th</sup> day. The determination of the Deputy Secretary shall be the final order of the Department with regard to the contents of the Claim.

17.7. **STEP 3: FILING A CLAIM AT THE BOARD OF CLAIMS**. The third step in the dispute resolution process is filing a Statement of Claim with the Board of Claims, which is a more formal step in the process and is described in general in §1712.1 and §1721 *et seq.* of the Commonwealth Procurement Code. To the extent that this language conflicts with §1712.1, the statutory language controls.

A. **TIME TO FILE A STATEMENT OF CLAIM.**

- 1. Within fifteen (15) days of the mailing date of the Deputy Secretary's final determination denying a claim; or
- 2. Within 135 days of the date the Contractor files a claim with the Deputy Secretary if no final determination has been rendered and no extension has been agreed to;

whichever occurs first, the Contractor may proceed to the third stage of the dispute resolution process by filing a claim with the Board of Claims in Harrisburg.

**Only claims that were raised during a Claim Settlement Conference may proceed to the Board of Claims.**

## **ARTICLE 18: COMMISSIONING**

- 18.1. **SCOPE OF WORK.** If deemed necessary by the Department during design, commissioning shall consist of the coordination of activities to verify that all building systems (mechanical, electrical, security, fire alarm, etc.) have been installed and are operating in accordance with the requirements specified in the Contract Documents. This scope shall also include approved installation, start-up training, testing and performance of all building equipment and systems.
- 18.2. **PROCEDURE.**
- A. The specifications contain the commissioning specifications for each Contract.
  - B. Within 30 days after the Initial Job Conference, the Department's Commissioning Agent will provide the Commissioning Plan to all Prime Contractors. This plan shall clarify in detail the schedule and responsibilities for Work to be completed during commissioning of the Project.
  - C. The schedule set forth in the Commissioning Plan shall then be integrated into the Project Schedule by the first monthly update,
  - D. Final commissioning will begin upon notice from any Prime Contractor to the Commissioning Agent (with a copy sent to the Department) that the system to be commissioned has been completed and is operational.
- 18.3. **PAYMENT FOR COMMISSIONING.**
- A. The HVAC (.2) Prime Contractor shall have a lump sum of 2% of the awarded contract value (or other percentage set forth by the Department in the specifications or during the bidding stage) retained as a distinct line item on the Schedule of Values for Final Commissioning. If applicable, other Prime Contractors' commissioning retainage shall be as indicated in the specification.
  - B. Progress payments can be submitted for systems that have been commissioned and approved by the Commissioning Agent. The total of these progress payments shall not exceed ½ of the total percentage retained for Final Commissioning.
  - C. Progress payments for commissioning shall be apportioned *pro rata* based on the scheduled values of the systems or equipment to be commissioned. All Applications for Payment that request release of any amount of the total percentage retainage for Final Commissioning must be submitted for review by the Commissioning Agent.
  - D. The remaining ½ of the total percentage for the Final Commissioning retainage is payable upon completion of seasonal testing results approved by the Commissioning Agent. Seasonal testing will span two seasons, to assure that commissioning addresses peak heating and cooling operation.

## **ARTICLE 19: MISCELLANEOUS CONDITIONS**

- 19.1. **PROJECT SIGN.** On or before the date of the first regularly scheduled Job Conference (after the Initial Job Conference), the Lead Contractor shall erect, at a prominent location (selected by the Department) a six-foot high by eight-foot wide (6'X 8') sign, well braced, and supported by 4"X 4" posts, identifying the Project under construction. The sign board may be constructed from weatherproof plywood, hardboard, or other smooth face material that will weather and remain intact throughout the Project. A three-inch (3") wood border

shall frame the sign. The sign shall be placed with the eight-foot (8') dimension horizontal. The base color of the sign shall be white weatherproof flat paint with red border. Lettering shall be in fast blue block letters and shall conform to the following:

COMMONWEALTH OF PENNSYLVANIA (4" LETTERS MIN.)  
THE DEPARTMENT OF GENERAL SERVICES (4" LETTERS MIN.)

[name], GOVERNOR (3" LETTERS MIN.)  
[name], SECRETARY, DEPT. OF GENERAL SERVICES (3" LETTERS MIN.)  
[name], SECRETARY, DEPT. OF (CLIENT AGENCY) (3" LETTERS MIN.)

PROJECT NO. D.G.S. [number] (3" LETTERS MIN.)  
[building name] (4" LETTERS MIN.)  
[facility name] (3" LETTERS MIN.)

[name]...PROFESSIONAL (3" LETTERS MIN.)

[name]... GENERAL CONTRACTOR (3" LETTERS MIN.)  
[name]... HEATING CONTRACTOR (3" LETTERS MIN.)  
[name]...PLUMBING CONTRACTOR (3" LETTERS MIN.)  
[name]...ELECTRICAL CONTRACTOR (3" LETTERS MIN.)

**NOTE:** For information shown in brackets Contractor shall check with the Regional Director's office for proper data.

Upon Completion of the work, or when directed by the Department, the Lead Contractor shall remove the sign.

The Contractor shall change the names provided on the sign should the individual names change during the course of the project. This shall be done at no additional cost to the Department.

- 19.2. **FOUNDATIONS FOR MECHANICAL EQUIPMENT.** The HVAC, Plumbing and Electrical Contractors shall furnish and install foundations and supports for all equipment installed under their respective Contracts. Foundations and supports shall include isolation mounting for noisy and vibrating equipment. Each Contractor shall provide sufficient dowels or anchors in bases as required for equipment supplied under its Contract. Such foundations and supports shall not be those concrete slabs or that integral concrete construction noted and dimensioned on the architectural and structural drawings, which are considered the responsibility of the Contractor for General Construction.
- 19.3. **SANITARY FACILITIES.** The Lead Contractor shall, at its cost, provide and maintain in a clean and sanitary condition, adequate and approved sanitary facilities in accordance with O.S.H.A. requirements. All facilities shall be screened against insects. When directed by the Department, the Contractor shall dismantle and remove these facilities and disinfect as required. Portable chemical toilets approved by the Pennsylvania Department of Health are acceptable. Under temporary field conditions, provisions shall be made to assure not less than one toilet facility is available.
- 19.4. **SANITARY FACILITIES AFTER LINES INSTALLED.** As soon as soil lines and water lines have been installed inside the building and tested successfully by the Plumbing Contractor, the Plumbing Contractor shall, at its cost, install two (2) lavatories and sufficient number of toilets according to the following table:

NUMBER OF WORKERS	MINIMUM NUMBER OF FACILITIES
20 or Less Workers	1
21 or More Workers	1 toilet seat and 1 urinal per 40
200 or More Workers	1 toilet seat and 1 urinal per 50

These shall be kept in working order by the Plumbing Contractor and in a clean and sanitary condition by the Lead Contractor. All supplies for these facilities shall be provided and restocked by the Lead Contractor.

- 19.5. **HOISTING FACILITIES.** The Contractor for General Construction shall erect, maintain and operate at its cost, hoisting facilities. In the event the hoisting facilities provided by the General Contractor are not available or are unable to accommodate the needs of other Prime Contractors, each Prime Contractor must provide hoisting facilities for its own work. All hoisting facilities must comply with the safety regulations of the Department of Labor and Industry.
- 19.6. **TEMPORARY VENTILATION.** The Contractor shall provide temporary ventilation to remove from the structure any excessive heat and/or humidity in enclosed portions of the Work, resulting from its construction operations so that the Work may be carried on without interruption and under correct conditions, including required dryness for installation of the various materials. Removing any dangerous or noxious fumes or particles suspended in the air is the responsibility of the Contractor whose construction operations caused these conditions to exist. Temporary equipment used for this temporary ventilation shall produce no hazard to the Work or to any person in or near it. The Contractor shall furnish all such temporary equipment; pay all costs for it and for its operation, including fuel and power supplies during operation both in and out of normal working hours. The Contractor shall remove the equipment when it is no longer required, or when so directed by the Department.
- 19.7. **WORK BEYOND LIMIT OF CONTRACT.** For purposes of performing the Work, the site is defined by the Limit of Contract lines shown on the drawings. The Contractor is responsible for any work performed beyond the limit of Contract.
- 19.8. **ADVERTISING.** No advertising is permitted within the Work area or adjacent area. This does not apply to corporate vehicles or attire.
- 19.9. **FEDERAL AND A.S.T.M. AND OTHER SPECIFICATIONS.** Reference to Federal, A.S.T.M. and other standard specifications, references and designations means those in effect at the date of bid. Basic codes and regulations incorporated by reference, standard regulations and codes refer to editions in effect at the date of proposals, including current addenda or errata. The most stringent section of each code applies.
- 19.10. **STORAGE AND STOCKPILING ON ROOFS.** No materials of any type may be stored or stockpiled overnight on roofs.
- 19.11. **AUDIT OF RECORDS.** The Department may, at reasonable times and places, audit the books and records of the Contractor. The Contractor shall maintain books and records related to the Contract for a period of three (3) years from the date of final payment. The Contractor shall include a requirement in contracts with subcontractors or suppliers that requires the Subcontractor or Supplier to maintain its records for the same length of time.

- 19.12. **TEMPORARY TRAFFIC CONTROL**. The Project site may have active pedestrian, bike or automobile traffic adjacent to site for the entire duration of the Project. If applicable, the Contractors shall incorporate, furnish and implement the following work as part of this Project.
- A. **TRAFFIC CONTROL – TEMPORARY TRAFFIC CONTROL GUIDELINES (PENNDOT PUBLICATION 213)**: The needs and control of all road users (motorists, bicyclists, and pedestrians within the highway, including persons with disabilities in accordance with the Americans with Disabilities Act of 1990 (ADA), Title II, Paragraph 35.130 and Temporary Traffic Control Guidelines (PennDOT Publication 213) through a Temporary Traffic Control (TTC) zone shall be an essential part of highway construction, utility work, maintenance operations, and the management of traffic incidents.
- Publication 213 applies to Contractors; utilities; Federal, State, County, township and municipal governments; and others performing applicable construction, maintenance, emergency or utility/permit work on highways or so closely adjacent to a highway that workers, equipment or materials encroach on the highway or interfere with the normal movement of traffic.
- 19.13. **REDUCTION OF NOISE**. The Contractor must take reasonable steps to minimize noise and shall perform work in accordance with local noise ordinances. The Contractor shall perform noise-producing work in less sensitive hours of the day or week as directed by the Department. The Contractor shall maintain noise-producing work at or below the decibel levels and within the time periods specified and shall perform construction activities involving repetitive, high-level impact noise only between 8:00 a.m. and 6:00 p.m. unless otherwise permitted by the Department and permissible by local ordinance.
- 19.14. **VISIBLE DUST EMISSIONS**. No person shall perform any construction, demolition, excavation, extraction, or other earthmoving activities unless appropriate measures are sufficiently implemented to limit Visible Dust Emissions (VDE) to 20% opacity and comply with the conditions for a stabilized surface area when applicable. The Contractor shall apply sufficient water to building exterior surfaces, and/or unpaved surface areas where equipment will operate to limit VDE to 20% opacity throughout the duration of razing and demolition activities or handling, storage, and transport of bulk materials on-site or off-site. The Contractor shall apply sufficient dust suppressants to unpaved surface areas within 100 feet where materials from razing or demolition activities will fall in order to limit VDE to 20% opacity. The Contractor shall also apply sufficient dust suppressants to unpaved surface areas where wrecking or hauling equipment will be operated in order to limit VDE to 20% opacity.

## **ARTICLE 20: LEGAL MATTERS**

- 20.1 **NO ESTOPPEL OR WAIVER OF LEGAL RIGHTS**. Neither the Department, its designee nor the Professional is precluded or estopped by the measurements or approved Applications for Payment made or given by the Department or the Professional or by any of their agents or employees, from showing the true and correct amount and character of the Work performed and materials and equipment furnished by the Contractor. The Department 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 specifications and the Contract. The Department may reject the whole or any part of the aforesaid Work or materials and equipment if the measurements or approved Applications for Payment are found or become known to be inconsistent with the terms of the Contract, or otherwise improperly given. The Department may, notwithstanding any such measurements or approved

Applications for Payment, demand and recover from the Contractor, its surety, or both, such damages as the Department may sustain by reason of the Contractor's failure to comply with the terms of the specifications and the Contract, or on account of any overpayments made on any approved Applications for Payment. Neither the acceptance by the Department 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 Department or the Professional, nor any Extension of Time, nor any position taken by the Department or the Professional or its employees, operates as a waiver of any portion of the Contract or any power herein reserved by the Department 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.

- 20.2 **LAW OF THE PLACE.** The Contract shall be governed by the Laws of the Commonwealth of Pennsylvania.
- 20.3 **SUCCESSORS AND ASSIGNS.** This Contract shall be binding on the parties hereto, their heirs, executors, administrators, successors and assigns. **No part of this Contract may be assigned by the Contractor without the prior consent of the Department.**
- 20.4 **CLAIMS FOR DAMAGES: LEGAL RELATIONS AND RESPONSIBILITIES.** Contracts covered by these General Conditions are not to be construed as being made for the benefit of any person or political subdivision not a party to this Contract, nor shall this Contract be construed to authorize any person or political subdivision, not a party to this Contract, to maintain any lawsuit hereunder, nor shall this Contract be construed to constitute the basis for the maintenance of any lawsuit by any person, or political subdivision not a party hereto.
- 20.5 **ROYALTIES AND PATENTS.** The Contractor shall pay all royalties and license fees. The Contractor shall defend all suits or claims for infringement of any patent rights and shall hold the Department harmless from loss on account thereof.
- 20.6 **PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT.** Pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Act 58 of 1997, as amended), all employers are required to report information on newly-hired employees to a designated state agency. The Commonwealth of Pennsylvania has designated the Department of Labor and Industry as that agency. For information concerning this requirement call 1-888-PAHIREs.
- 20.7 **Public Works Employment Verification Act.** If applicable to this Contract, 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.state.pa.gov](http://www.dgs.state.pa.gov).
- 20.8 **Steel Products Procurement 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 Steel Product Procurement Act, 73 P.S. §§1881-1887, as amended, which is incorporated herein by reference as if fully set forth herein. The Contractor must refer to the Department's web site at [www.dgs.pa.gov](http://www.dgs.pa.gov) for information regarding the Steel Products Procurement Act and the current list of exempt machinery and equipment steel products.

20.9 **PREVAILING MINIMUM WAGE PREDETERMINATION/DAVIS-BACON AND RELATED ACTS.** If applicable to this Contract, the Contractor is hereby notified that this Contract is subject to the provisions, duties, obligations, remedies and penalties of the Pennsylvania Prevailing Wage Act, 43 P.S. §165-1 et seq., as amended, which is incorporated herein by reference as if fully set forth herein. In compliance with said Pennsylvania Prevailing Wage Act, the Prevailing Minimum Wage Predetermination is hereto attached and made part hereof as approved by the Secretary of Labor and Industry. If a job classification is not covered by the Prevailing Wage Predetermination, the Contractor may not pay individuals in that classification less than the lowest rate for laborers, as set out in the predetermination.

If Davis-Bacon Wages are included and applicable to this Contract, the Contractor is hereby notified that this Contract is subject to the provisions, duties, obligations, remedies and penalties of the Davis-Bacon and Related Acts, 40 U.S.C. § 3141 et seq., as amended, which is incorporated herein by reference as if fully set forth herein and the following:

## **Title 29 - Labor**

### **Subtitle A - Office of the Secretary of Labor**

#### **Part 5 - Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)**

**Authority:** 5 U.S.C. 301; R.S. 161, 64 Stat. 1267; Reorganization Plan No. 14 of 1950, 5 U.S.C. appendix; 40 U.S.C. 3141 et seq.; 40 U.S.C. 3145; 40 U.S.C. 3148; 40 U.S.C. 3701 et seq.; and the laws listed in 5.1(a) of this part; Secretary's Order No. 01-2014 (Dec. 19, 2014), 79 FR 77527 (Dec. 24, 2014); 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114-74 at § 701, 129 Stat 584.

**Source:** 48 FR 19541, Apr. 29, 1983, unless otherwise noted.

#### **Subpart A - Davis-Bacon and Related Acts Provisions and Procedures**

**Source:** 48 FR 19540, Apr. 29, 1983, unless otherwise noted.

**Editorial Note:** Nomenclature changes to subpart A of part 5 appear at 61 FR 19984, May 3, 1996.

### **§ 5.5 Contract provisions and related matters.**

(a) The Agency head shall cause or require the contracting officer to insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, *Provided*, That such modifications are first approved by the Department of Labor):

(1) *Minimum wages.*

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits

on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

the workers.

(ii)

- (A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
  - (2) The classification is utilized in the area by the construction industry; and
  - (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- (iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv)

If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

20.10 **TOBACCO USE ON PROJECT SITE.** Use of tobacco products (smoke and smokeless) shall be restricted on site after the building has been enclosed (with permanent or temporary enclosures). Personnel found in noncompliance with this directive may be removed from the site upon discovery of this noncompliance.

20.11 **RIGHT-TO-KNOW LAW.**

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

B. 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.

C. 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:

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

D. 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.

E. 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.

F. 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.

G. 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.

H. 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.

I. 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.

20.12 **Non-Appropriation Clause.** The Commonwealth's obligations to make payments during any Commonwealth fiscal year succeeding the current fiscal year shall be subject to availability and appropriation of funds. When funds (state and/or federal) are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year period, the Commonwealth shall have the right to terminate the Contract or a Purchase Order. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under the Contract. Such reimbursement shall not include loss of profit, loss of use of money, or administrative or overhead costs. The reimbursement amount may be paid for any appropriations available for that purpose

**20.13 CONTRACTOR RESPONSIBILITY PROVISIONS.**

A. 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.

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.

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.

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. 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.

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.

6. The 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