

# GENERAL CONDITIONS OF THE CONTRACT

## THE PENNSYLVANIA STATE UNIVERSITY

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# **Article 1 GENERAL CONTRACT DEFINITIONS**

## **1.1 THE CONTRACT DOCUMENTS**

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

1.1.2 Owner's written authorization to the Contractor for changes to the Work

1.1.3 Change Order

1.1.4 A written order for a minor change in the Work issued by the Professional

## **1.2 THE CONTRACT**

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

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

## **1.3 OWNER**

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

## **1.4 PROFESSIONAL**

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

## **1.5 CONTRACTOR**

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

## **1.6 SUBCONTRACTOR**

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

## **1.7 THE WORK**

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

## **1.8 THE PROJECT**

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

## **1.9 THE DRAWINGS**

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

**1.10 THE SPECIFICATIONS/PROJECT MANUAL**

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

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

**1.11 DAY**

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

**1.12 THE CONTRACT SUM**

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

**1.13 CLAIM**

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

**1.14 SCOPE OF WORK**

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

**1.15 SUBSTANTIAL COMPLETION**

"Substantial Completion" shall mean that stage in the progression of the Work when the Work is sufficiently complete in accordance with this Contract that the Owner can enjoy beneficial use or occupancy of the Work and can utilize the Work for its intended purpose.

**1.16 ELECTRONIC PROJECT MANAGEMENT INFORMATION SYSTEM (PMIS)**

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

## **Article 2 CONTRACT DOCUMENTS**

**2.1 OWNERSHIP AND USE OF DOCUMENTS**

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

**2.2 COPIES FURNISHED - DRAWINGS AND SPECIFICATIONS**

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

**2.3 DRAWINGS AND SPECIFICATIONS AT THE SITE**

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

**2.4 AS-BUILT AND RECORD DRAWINGS**

The Contractor shall, at the time of substantial completion of the Work, deliver to the Professional the complete set of as-built drawings. The Professional will, within 30 days after receipt from the Contractor, transpose all changes recorded by the Contractor onto a full set of reproducible

drawings, and CADD electronic media, compatible with the Owner's CADD system, which shall become the record drawings for the Project, and shall forward same to the Owner. A copy in CADD format compatible with the Owner's CADD system and a copy in .pdf format shall be forwarded to the Owner by the Professional. If Building Information Modeling is utilized on the project an additional alternate form of as-built/record drawings may be required to be submitted by both the Professional and Contractor.

## 2.5 INTERRELATIONSHIP AND INTENT OF DOCUMENTS

- 2.5.1 The intent of this Contract is to require complete, correct, and timely execution of the Work. Any Work that may be required, implied, or inferred by the Contract Documents, or any one or more of them, as necessary to produce the intended result shall be provided by the Contractor for the Contract Price.
- 2.5.2 This Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.
- 2.5.3 When a word, term, or phrase is used in this Contract, it shall be interpreted or construed, first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.
- 2.5.4 The words "include," "includes," or "including," as used in this Contract, shall be deemed to be followed by the phrase, "without limitation."
- 2.5.5 The specification herein of any act, failure, refusal, omission, event, occurrence, or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence, or condition shall be deemed not to constitute a material breach of this Contract.
- 2.5.6 Words or terms used as nouns in this Contract shall be inclusive of their singular and plural forms unless the context of their usage clearly requires a contrary meaning.
- 2.5.7 The Contractor shall have a continuing duty to read, carefully study and compare each of the Contract Documents, the Shop Drawings, and the Product Data and shall give written notice to the Owner of any inconsistency, ambiguity, error, or omission which the Contractor may discover with respect to these documents before proceeding with the affected Work. The issuance, or the express or implied approval by the Owner or the Professional of the Contract Documents, Shop Drawings, or Product Data shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such approval be evidence of the Contractor's compliance with this Contract. The Owner has requested the Professional to only prepare documents for the Project, including the Drawings and Specifications for the Project, which are accurate, adequate, consistent, coordinate, and sufficient for construction. **HOWEVER, THE OWNER MAKES NO REPRESENTATION OR WARRANTY OF ANY NATURE WHATSOEVER TO THE CONTRACTOR CONCERNING SUCH DOCUMENTS.** By the execution hereof, the Contractor acknowledges and represents that it has received, reviewed, and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated, and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representation or warranties by the Owner concerning such documents as no such representation or warranties have been or are hereby made.
- 2.5.8 Neither the organization of any of the Contract Documents into divisions, sections, paragraphs, articles, (or other categories), nor the organization or arrangement of the Design, shall control the Contractor in dividing the Work or in establishing the extent or scope of the Work to be performed by Subcontractors.
- 2.5.9 The interrelation of the Drawings, the Specifications and the schedules is as follows:
  - 2.5.9.1 The Drawings establish the quantities, dimensions, and details.
  - 2.5.9.2 The Specifications determine the nature and installation of the various materials and equipment.
  - 2.5.9.3 The schedules give the locations.

2.5.9.4 The Drawings and Specifications are complementary and what is required by one shall be as binding as if shown or mentioned in both.

2.5.9.5 Should the Drawings disagree with one another, or with the Specifications, the better quality or greater quantity of Work or materials shall be performed or furnished.

Dimensions given on Drawings govern small scale Drawings. Dimensions given on Drawings govern scale measurements, and large-scale details govern small scale drawings. In case of discrepancy in the Dimensions, in the Drawings, in the schedules, or in the Specifications, the matter shall be promptly submitted to the Professional who will promptly make a determination, after advice and consent of the Owner, in writing.

2.5.10 The "Scope of the Work," usually placed in the front part of each Section of the Specifications, is intended to designate the scope and locations of all items of the Work included therein, either generally or specifically. It is not intended to limit the Scope of Work should plans, schedules or notes indicate an increased scope. Inadvertent omission of an item from its proper section of the Specifications and its inclusion in another section shall not relieve the Contractor of responsibilities for the item specified.

## **Article 3 INSURANCE**

### **3.1 CONTRACTOR'S INSURANCE**

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

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

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

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

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

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

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

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

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

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

The Contractor shall maintain completed operations liability insurance for

not less than two years after Substantial Completion, or as required by the Contract Documents, whichever is longer.

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

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

FOR PROJECTS UNDER \$1,000,000

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

FOR PROJECTS OVER \$1,000,000

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

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

- 3.1.3 The insurance limits required for the Employers' Liability, Business Automobile Liability and CGL coverage required under subsection 3.1.1 may be provided by a combination of primary and Excess or Umbrella Liability policies.
- 3.1.4 The Owner must be named on the Contractor's Commercial General Liability insurance as an additional insured.
- 3.1.5 The Contractor shall maintain in effect all insurance coverage required under Article 3 with insurance companies lawfully authorized to do business in the jurisdiction in which the Project is located.
- 3.1.6 If the Contractor fails to obtain or maintain any insurance coverage required under this Agreement, the Owner may purchase such coverage and charge the expense to the Design-Builder or terminate this Agreement.
- 3.1.7 Insurance policies required under subsection 3.1 shall contain a provision that the insurance company or its designee must give the Owner written notice transmitted in paper or electronic format: (a) 30 days before coverage is non-renewed by the insurance company and (b) within 10 business days after cancelation of coverage by the insurance company.
- 3.1.8 Prior to commencing the Work and upon renewal or replacement of the insurance policies, the Contractor shall furnish the Owner with certificates of insurance until one year after Substantial Completion or longer if required by the Contract Documents. In addition, if any insurance policy required under subsection 3.1 is not to be immediately replaced without lapse in coverage when it expires, exhausts its limits, or is to be cancelled, the Contractor



shall give Owner prompt written notice upon actual or constructive knowledge of such condition.

- 3.1.9 The Contractor's insurance shall be primary and non-contributory to the University's insurance.
- 3.1.10 Failure of the Contractor to procure, carry, and maintain the required insurance shall not relieve the Contractor, and any Subcontractor thereof, of any obligation or liability assumed under this Agreement, nor of any obligation or liability imposed by law.
- 3.1.11 Any self-insured retentions, deductibles, and exclusions in coverage in the insurance required shall be assumed by and at the sole risk of the Contractor.

### 3.2 PROPERTY INSURANCE

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

3.2.1.1 The Builder's Risk property insurance has a deductible. If the Contractor suffers a Builders Risk loss covered by this insurance, the Contractor shall be responsible for the first \$25,000 of such deductible. If the Owner or insurer increases the required minimum deductibles above the amounts so identified or if the Owner elects to purchase this insurance with voluntary deductible amounts, the Owner shall be responsible for payment of the additional costs not covered because of such increased or voluntary deductibles. Contractor's payment towards the deductible of a loss covered by this insurance will not exceed \$25,000 per occurrence.

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

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

- 3.2.3 Owner and Contractor waive all rights against each other and their respective employees, agents, contractors, subcontractors and sub-subcontractors, and design professionals for damages caused by risks covered by the property insurance except such rights as they may have to the proceeds of the insurance and such rights as the Contractor may have for

the failure of the Owner to obtain and maintain property insurance in compliance with subsection 3.2.1.

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

### 3.3 OWNER'S INSURANCE

- 3.3.1 Business Income Insurance: The Owner may procure and maintain insurance against loss of use of the Owner's property caused by fire or other casualty loss.
- 3.3.2 Owner's Liability Insurance: The Owner shall maintain its own liability insurance for protection against claims arising out of the performance of this Agreement, including loss of use and claims, losses and expenses arising out of the Owner's acts or omissions.

## Article 4 GOVERNING LAWS

### 4.1 GOVERNING LAW

The Contract shall be governed by the law of the Commonwealth of Pennsylvania. In the event litigation arises out of this Contract, the parties agree to submit any claim to the competent courts of Centre County, Pennsylvania.

### 4.2 COMPLIANCE WITH LAWS

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

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

### 4.3 PREVAILING WAGE ACT

The Contractor is hereby notified that this Contract is subject to the provisions, duties, obligations, remedies and penalties of the Pennsylvania Prevailing Wage Act, Act No. 442, August 15, 1961 (P.L. 987), and as amended August 9, 1963, Act No. 342; and said Act is incorporated herein by reference as fully as though the same were here set forth at length.

### 4.4 TAXES

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

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

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

### 4.5 ROYALTIES AND PATENTS

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

#### 4.6 Federal Clean Air Act

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

### **Article 5 STANDARDS, SUBSTITUTIONS, AND SHOP DRAWINGS**

#### 5.1 STANDARDS

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

#### 5.2 SUBSTITUTIONS

The various materials, products or equipment specified in the Specifications are mentioned for the purpose of establishing a standard of quality and cost. It is not the intent to limit to any one product, but rather to set up the same as the standard desired or acceptable and to establish a basis of equality. Where trade or proprietary names, catalog numbers and manufacturers of materials, products or equipment are used or specified, whether or not followed by the words "or equal as approved by the Professional," materials, products, or equipment to be equal in quality to that mentioned in the Specifications will be acceptable. It will be up to the Contractor, supplier and/or vendors to prove by the submission of proper data that their product is equal in quality to that specified.

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

This request will then be forwarded to the Professional.

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

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

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

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

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

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

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

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

- 5.3.1 Shop Drawings are drawings, diagrams, illustrations, schedules, performance charts, brochures and other data prepared by the Contractor, or any Subcontractor, manufacturer, supplier, or distributor which illustrate some portion of the Work.

- 5.3.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.
- 5.3.3 Samples are physical examples furnished by the Contractor to illustrate materials, equipment, or workmanship, and to assist in the establishment of standards by which the Work will be judged.  
Shop Drawings, Product Data and Samples are not Contract Documents. The purpose of their submittal is to demonstrate how the Contractor proposes to comply with the information given and the design concept outlined in the Contract Documents.
- 5.3.4 Shop Drawing Submittal Schedule: Based on the priorities of the construction schedule, the Contractor shall submit a shop drawing submittal schedule on or before the Second Regular Job Conference.  
The Professional shall review and check the shop drawing submittal schedule within fifteen (15) days of receipt from the Contractor.

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

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

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

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

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

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

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

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

omissions in the shop drawings, product data, or samples. The approval of a separate item shall not indicate approval of an assembly in which the item functions.

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

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

Work done contrary to this procedure shall be at the risk and expense of the Contractor. All shop drawings used for fabrication and erection shall be those approved by the Professional, without change. If change is found to be necessary on any approved shop drawings or sample, it shall be resubmitted to the Professional for review and approval.

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

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

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

## **Article 6 KNOWLEDGE OF CONTRACT REQUIREMENTS**

### **6.1 NOTICE**

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

### **6.2 EXAMINATION AND CONDITIONS AT THE SITE**

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

### **6.3 EXAMINATION OF CONTRACT DOCUMENTS**

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

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

The Contractor shall at once report to the Professional errors, inconsistencies or omissions discovered. The Contractor shall not be liable to the Owner or Professional for damage resulting

from errors, inconsistencies, or omissions in the Contract Documents unless the Contractor recognized such error, inconsistency or omission and failed to report it to the Professional. If the Contractor performs any construction activity knowing it involves a recognized error, inconsistency, or omission in the Contract Documents without such notice to the Professional, the Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction.

6.4 LABOR

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

## **Article 7 CONTRACT ADMINISTRATION**

7.1 7.1 GENERAL ADMINISTRATION

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

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

## 7.2 CONTRACT ADMINISTRATION COMMUNICATIONS AND INTERPRETATION

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

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

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

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

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

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

## 7.3 ACCESS TO AND INSPECTION OF THE WORK

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

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

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

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

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

The Work will be subject to inspection by the Owner and by representatives of the Professional as outlined above; however, such representatives are not authorized to make oral changes in any provision of the Drawings or Specifications except as provided in Article 9, Changes in the Work. Changes resulting from such inspections will be processed in the manner prescribed in Article 9. The absence or presence of the Owner shall not relieve the Contractor from any requirements of the Contract.

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

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

#### 7.4 SEPARATE CONTRACTS

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

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

If part of this Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, this Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Professional apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Upon receipt of such report, the Professional shall make a determination as to the unsuitability of such other construction. Failure of this Contractor to so report shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable and which may develop in the Owner's or Separate Contractor's construction after the execution of this Contractor's Work.

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

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

#### 7.5 CLAIMS AND DISPUTES

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

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



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

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

- 7.5.3 Claims for Additional Cost: If the Contractor wishes to make Claim for an increase in the Contract Sum, the Contractor shall give written notice of such claim to the Professional and the Owner within twenty-one (21) days after the occurrence of the event or first appearance of the condition giving rise to such Claim and before proceeding to execute the Work. The failure by the Contractor to give such notice within the time permitted and prior to executing the Work shall constitute a waiver of claim for additional compensation. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Paragraph 8.5.

In connection with any claim by the Contractor against the Owner for compensation in excess of the Contract Price, any liability of the Owner for the Contractor's costs shall be strictly limited to direct costs incurred by the Contractor and shall in no event include indirect costs or consequential damages of the Contractor. The Owner shall not be liable to the Contractor for claims of third parties, including Subcontractors, unless and until liability of the Contractor has been established therefore in a court of competent jurisdiction.

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

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

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

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

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

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

- 7.5.5 Injury or Damage to Person or Property: If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding twenty-one (21) days after first becoming aware of such injury or damage. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in Subparagraphs 7.5.3 or 7.5.4 respectively.
- 7.5.6 Decision of the Professional: Claims, including those alleging an error or omission by the Professional, shall be referred initially to the Professional for action as provided in Subparagraph 7.5.7. A decision by the Professional, as provided in Subparagraph 7.5.7, shall be required as a condition precedent to litigation of a Claim between the Contractor and Owner as to all such matters arising prior to the date final payment is due, regardless of (1) whether such matters relate to execution and progress of the Work or (2) the extent to which the Work has been completed. The decision by the Professional in response to a Claim shall not be a condition precedent to litigation in the event (1) the position of Professional is vacant, (2) the Professional has not received evidence or has failed to render a decision within agreed time limits, (3) the Professional has failed to take action required under Subparagraph 7.5.7 within thirty (30) days after the Claim is made, (4) forty-five (45) days have passed after the Claim has been referred to the Professional.
- 7.5.7 Resolution of Claims and Disputes: The Professional will review Claims and take one or more of the following preliminary actions within ten (10) days of receipt of a Claim: (1) request additional supporting data from the claimant, (2) submit a schedule to the parties indicating when the Professional expects to take action, (3) reject the Claim in whole or in part, stating reasons for rejection, (4) recommend approval of the Claim by the other party or (5) suggest a compromise. The Professional may also, but is not obligated to, notify the surety of the nature and amount of the Claim.

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

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

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

## 7.6 CONTRACT TERMINATION

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

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

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

If the Contractor shall generally not pay its debts as they become due or shall admit in writing its inability to pay its debts, or shall make a general assignment for the benefit of creditors; or if the Contractor shall commence any case, proceeding or other action seeking to have an order for relief entered in its behalf as debtor or to adjudicate it as bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its property; or if the Contractor shall take any action to authorize or in contemplation of any of the actions set forth above in this paragraph, then this Agreement will automatically terminate upon written notification by Owner to Contractor and its surety.

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

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

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

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

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

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

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

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

7.6.3.4 If the Contractor and the Owner fail to agree on the settlement amount, the matter will be handled as a dispute through the procedures as outlined in Subparagraphs 7.5.6 and 7.5.7.

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

## **Article 8 CONSTRUCTION**

### **8.1 CONSTRUCTION SCHEDULE, FIELD MEASUREMENTS AND SUPERVISION**

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

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

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

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

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

### **8.2 SUBCONTRACTS**

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

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

The Contractor agrees to bind every Subcontractor, and every Subcontractor agrees to be bound, by the terms of the Agreement, the General Conditions of the Contract, and the Drawings and Specifications insofar as they are applicable to the Subcontractor's respective portion of the Work. The Contractor shall furthermore fully inform each of its Subcontractors, prior to executing an

agreement with conformance with related documents and to submit Cost Estimates and Change Order proposals in complete and full analytical detail when so required or requested. The Contractor shall indemnify the Owner for any Subcontractor's claim which may result from the failure of the Contractor to incorporate the provisions of this Contract in the Contractor's agreements with any of its Subcontractors.

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

8.2.1.1 Assignment is effective only after termination of the Contract by the Owner for cause pursuant to Subparagraph 7.6.2 and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor in writing.

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

### 8.3 PERMITS, FEES AND NOTICES

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

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

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

### 8.4 ACTS AND OMISSIONS

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

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

### 8.5 PROTECTION OF PERSONS AND PROPERTY

8.5.1 OSHA: It shall be the duty and responsibility of the Contractor and all its Subcontractors and their agents and employees, and other persons performing portions of the Work under a contract with the Contractor to be familiar and comply with all requirements of Public Law 91-596, the Occupational Safety and Health Act of 1970 (OSHA) and all amendments thereto, and to enforce and comply with all of the provisions of this Act.

8.5.2 Construction Safety Requirements: Contractor is obligated to adhere to the safety requirements as outlined in the following: Construction Safety Requirements, The Pennsylvania State University, Office of Physical Plant, Design and Construction Standards, Division 00, Sub-Section 00 01 00.

8.5.3 Emergencies: In an emergency affecting safety of persons or property, the Contractor shall act, at its discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be considered in accordance with Paragraph 7.5 and Article 9.

8.5.4 Precautions: The Contractor shall take appropriate precautions for safety of and shall provide necessary protection to prevent damage, injury, or loss to:

8.5.4.1 Employees of the Owner at the Work and other persons who may be affected thereby.

8.5.4.2 The Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors.

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

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

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

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

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

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

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

8.5.6 Property Damage Repair: The Contractor shall promptly remedy any damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Subparagraphs 8.5.4.2 and 8.5.4.3 caused in whole or in part by the Contractor, a Subcontractor, their agents and employees or any other persons performing portions of the Work under a contract with the Contractor.

## 8.6 MATERIALS AND WORKMANSHIP

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

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

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

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

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

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

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

unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a Separate Contractor the Contractor's consent to cutting or otherwise altering the Work.

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

## 8.7 TESTS AND INSPECTIONS

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

In addition, the Owner or the Professional may require special inspection, testing or approval of material or Work for compliance with the requirements of the Contract Documents. Upon direction of the Owner and Professional, the Contractor shall promptly arrange for such special testing, inspection, or approval procedure. Should the material or Work fail to comply with the requirements of the Contract Documents, the Contractor shall bear all costs of the testing, inspection, or approval as well as the cost of replacement of unsatisfactory material or Work as provided by Paragraph 8.8; otherwise, the Owner shall bear such costs and an appropriate Change Order shall be issued.

## 8.8 UNCOVERING, REJECTION AND CORRECTION OF WORK

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

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

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

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

If the Contractor fails to correct rejected or nonconforming Work, the Owner may correct it in accordance with Paragraph 8.9.

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

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

8.9.1 Owner's Right to Stop the Work: If the Contractor fails to correct rejected or nonconforming Work as required in Subparagraph 8.8.2 or fails to carry out Work in accordance with the Contract Documents the Owner may, in writing, order the Contractor to stop the Work, or any portion thereof until the proper corrective action has been implemented.

- 8.9.2 Owner's Right to Carry Out the Work: If the Contractor fails or neglects to carry out the Work in accordance with the Contract Documents, or ceases Work for a period of seven (7) consecutive days, the Owner may, without prejudice to other remedies the Owner may have, perform, or cause to be performed the Work.

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

#### 8.10 CONSTRUCTION FENCING

The General Contractor shall be required to provide a construction fence enclosing the area of the work within the central limits. Construction fencing is also required for trailers and stored material that may be located outside the area of work. Fencing material should be adequate to protect persons and property in accordance with the University's Contractor Safety Requirements as referenced in sub-Article 8.1.

#### 8.11 EXISTING UNDERGROUND UTILITIES

- 8.11.1 The existence and locations of underground utilities indicated on the drawings are not guaranteed. The Contractor shall investigate and verify in the field before starting any work.
- 8.11.2 All excavation within three (3) feet of any existing underground utility line shall be accomplished by hand labor. Extreme caution shall be used in this area to prevent any damage to existing facilities.
- 8.11.3 The Contractor shall adequately protect from damage (including shoring, if necessary), all underground utilities uncovered or exposed. The Contractor shall be responsible for all damage to existing underground utilities caused by its work and shall repair by a method approved by the University.
- 8.11.4 Utilities serving existing buildings, installation, or facilities shall not be interrupted until the Contractor has made the necessary arrangements with and has received approval from the University.
- 8.11.5 In the event that interruption of any existing utility service is necessary, the responsible Contractor shall be required to make all arrangements for shutdown and start-up of such service with the University representative.
- 8.11.6 The University Park campus is traversed by a 12" high pressure gas transmission line. The Contractor must follow precautions and requirements as outlined on the plan set. The routing of the gas line is available on the OPP website ([opp.psu.edu](http://opp.psu.edu)), at OPP Design and Construction Standards, Division 00, Sub-Section 3000.06. The Contractor must review the project location relative to the gas routing and coordinate all requirements with Columbia Gas.

#### 8.12 CLEANUP

The Contractor shall keep the premises clean at all times of dirt, rubbish and debris resulting from the Work, and shall remove rubbish and debris in metal containers at the end of each working day. The Contractor shall remove rubbish and cartons resulting from the installation of fixtures and equipment. Prior to substantial completion of the Work, the Contractor shall do the final cleaning and polishing of the surfaces of the Contractor's installations as may be required by the various Specifications sections. The Contractor, in addition, shall employ a professional cleaning organization to remove all paint and stains from glass, and to wash all glass, throughout the Work, to clean and polish the finished surface of all fixtures, equipment and accessories and to vacuum clean all floors.

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

#### 8.13 CONSTRUCTION WASTE MANAGEMENT

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



subcontractors. The waste management plan is to be submitted and approved by the OPP Project Leader.

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

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

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

## Article 9 CHANGES IN THE WORK

### 9.1 CHANGES

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

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

### 9.2 CHANGE ORDERS

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

It is recognized by the parties hereto and agreed by them that the Specifications and Drawings may or may not be complete or free from errors, omissions and imperfections or require changes or additions in order for the Work to be completed in accordance with the Contract Documents and to the satisfaction of Owner and that, accordingly, it is the express intention of the parties, notwithstanding any other provisions in this Contract, that any errors, omissions or imperfections in such Specifications and Drawings or any changes in or additions to same or to the Work ordered by Owner and any resulting delays in the Work or increases in Contractor's costs and expenses, shall not constitute or give rise to any claim, demand or cause of action of any nature whatsoever in favor of Contractor, whether for breach of contract, quantum merit, or otherwise; provided, however, that Owner shall be liable to Contractor for the sum stated to be due Contractor in any Change Order approved and signed by both parties, it being agreed hereby that such sum, together with any extension of time contained in said Change Order, shall constitute full compensation to Contractor for all costs, expenses and damages to Contractor, whether direct, consequential or otherwise in any ways incident to, arising out of, or resulting directly or indirectly from the Work performed by Contractor under such Change Order.

### 9.3 CHANGE ORDER CONTRACT SUM ADJUSTMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9.3.6 If no mutual agreement can be reached between the Owner and the Contractor as to the method to complete the Work covered by a Change Order, the change in the Contract Price, if any, shall then be determined on the basis of the reasonable expenditures or savings of those performing, deleting, or revising the Work attributable to the change. In such case, the Contractor shall present, in such form and with such contents and details as the Owner requires, an itemized accounting of such expenditures or savings, plus appropriate supporting data for inclusion in a Change Order. Reasonable expenditures or savings shall be limited to the following: reasonable costs of materials, supplies, or equipment, including delivery costs; reasonable costs of labor and fringe benefits required by agreement or custom; reasonable rental or Owner costs of machinery and equipment exclusive of hand tools whether rented from the Contractor or others; actual costs of premiums for all bonds and insurance only when supported by paid invoice specific to change, permit fees, and sales, use, or other taxes related to the Work. In no event shall any expenditure or savings associated with the Contractor's home office or other non-job site overhead expense be included in any change in the Contract Price. Allowance for overhead and profit shall be determined in accordance with Subparagraph 9.3.5.

9.3.7 If a Change Order submission is rejected and the work is considered part of the Contract Price by the Professional and Owner, work shall be considered a claim to the Contract. Pending final resolution of a Claim, unless otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Contract. If the Contractor refuses to complete the work the Owner may proceed in accordance with Subparagraph 8.9.2.

9.3.8 Mark-up on bond premium increases and/or insurance premium increases due to Change Orders is not permitted.

#### 9.4 CHANGE ORDER CONTRACT TIME ADJUSTMENTS

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

#### 9.5 MINOR CHANGES IN THE WORK

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

9.6 NOTICE TO SURETY: CONSENT

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

9.7 EFFECT OF EXECUTED CHANGE ORDER

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

## **Article 10 CONTRACT COMPLETION TIME**

10.1 NOTICE TO PROCEED

The Contractor agrees to begin the Work contemplated by this Contract within Ten (10) days after receipt of an executed contract or as directed by Owner and the Contractor is required to complete the Work in the time stated therein and in the Agreement.

10.2 PROGRESS AND COMPLETION

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

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

10.3 DELAYS AND EXTENSIONS OF TIME

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

Claims relating to time shall be made in accordance with applicable provisions of Subparagraph 7.5.

This Paragraph 10.3 does not preclude recovery of damages for delay by the Owner under other provisions of the Contract Documents.

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

10.4 COMPLETION AND LIQUIDATION DAMAGES

The Contractor shall substantially complete all of the Work included in the Contract Documents ready for the Owner's use and occupancy, in the Contract Time noted in the Contractor's Form of Proposal and the Agreement subject to extensions of Contract Time as provided in Paragraph 10.3 above. Pursuant to the provisions of Paragraph 10.4, for each calendar day's delay in said completion, the Contractor shall pay to the Owner as liquidated damages, and not as a penalty, the sum in the amount noted in the Project Manual and the Agreement. The Contractor and its surety shall be liable for the amount thereof.

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

#### 10.5 SUBSTANTIAL COMPLETION

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

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

## 10.6 PARTIAL OCCUPANCY

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

The procedures for the preparation of a list of items to be completed or corrected, Partial Occupancy Inspection and Inspection Reports are to be followed as outlined in Paragraph 10.5 above.

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

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

## Article 11 PAYMENTS AND COMPLETION

Contractor Payment Application (CPA) process referenced in this Article shall be as per the Owners Project Management Information System (PMIS) as described Article 14.3.

### 11.1 SCHEDULE OF VALUES

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

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

11.1.1 Quantity: Total number of items for each portion or Unit of Work as determined from the Contract Documents.

11.1.2 Labor: On-site labor required for the handling and installation of material from point of delivery at site.

11.1.3 Material: Cost of material as delivered to site for installation and erection.

11.1.4 Other Costs: Rental equipment, depreciation, site office, administration, overhead and profit, testing, survey and layout, samples, and other costs not included in Labor and Material.

11.1.5 Cost per Unit: Total of Labor, Material, and Other Cost for each portion or Unit of Work derived from the total Quantity of same.

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

### 11.2 APPLICATIONS FOR PAYMENT

Except as otherwise agreed in writing by the parties, and except for any amounts withheld or disallowed due to deficiencies or errors in documentation as defined in Paragraph 11.5 below, payment of progress and final payment applications shall be due from the Owner forty-five (45) days after submission of a complete and accurate CPA.

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

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

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

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

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

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

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

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

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

### 11.3 PAYMENTS FOR STORED MATERIAL

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

11.3.1 Such materials or equipment shall have been fabricated or assembled specifically for the Project and delivered to storage no earlier than needed for the orderly progress of the Work as demonstrated by the Progress Schedule.

11.3.2 Title to such materials or equipment shall pass to the Owner pursuant to the Contractor's bill of sale which shall contain a guarantee of replacement thereof in the event of damage thereto or disappearance thereof due to any cause. Payment by the University for stored material will be made only upon receipt of the Contractor's paid-in-full invoice from the manufacturer or supplier.

11.3.3 In the case of off-site storage, the Contractor shall also provide consent of Surety to such payment and insurance of such materials or equipment against the perils set forth in Paragraph 3.3, both while in storage and during transportation to the site.

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

11.3.5 Any other documentation as requested by the Owner.

### 11.4 CONTRACTOR PAYMENT APPLICATION (CPA)

Based on observations of the Work by the Professional and/or the Owner, recommendations will be made within seven (7) days (except as otherwise provided in Paragraph 11.5.8 below) after receipt from the Contractor, approval of CPA payment or notify the Contractor and Owner in writing of the Professional's reason(s) for withholding its recommendation in whole or in part as provided in Paragraph 11.5 below.

Contractor will submit the CPA to the Owner. The Owner may forward to the Professional. The Professional shall review and comment on the CPA so as to indicate the disapproval of those items for which payment is to be withheld or disallowed and to indicate the corrected values, and shall forward to the Owner for further processing, except that, should the Professional disapprove payment of the entire progress payment, the disapproved CPA will be returned to the Contractor, with notification of said return provided to the Owner by the Professional.

Approval of the CPA shall constitute a representation by the Professional to the Owner that the Work has progressed to the point indicated on the Application, and that to the best of the

Professional's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents.

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

The CPA MUST include the following: **(Failure to submit any of the following will deem the CPA incomplete)**

First/Progress Payment

- Steel Certifications – If no steel was used, fill out the form and choose option 1A.
- Weekly Certified Payroll.
- DBE Section completion, as applicable, in addition, if a DGS project a Small Diverse Business Utilization Report (SDBUR) shall also be attached.

11.5 WITHHOLDING OF PAYMENT

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

- 11.5.1 Retainage of six (6) percent of the amount otherwise due shall be withheld from each progress payment before Substantial Completion. Owner may, in its sole discretion, reduce the amount to be retained at any time.
- 11.5.2 Defective Work not yet remedied by the Contractor or defective work, in the opinion of the Owner, not likely to be remedied by the Contractor.
- 11.5.3 Third party claims filed or reasonable evidence indicating probable filing of such claims.
- 11.5.4 Failure of the Contractor to make payments promptly and properly to Subcontractors or others.
- 11.5.5 Any evidence that the Work cannot be completed for the unpaid balance of the Contract Sum.
- 11.5.6 Damage to the Owner, another Contractor, or any third party.
- 11.5.7 Any evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay.
- 11.5.8 Failure to carry out the Work in accordance with the Contract Documents.
- 11.5.9 Errors in Documentation: If a CPA is filled out incorrectly or incompletely, or if there is any other defect or impropriety, the Professional or Owner shall give notice through the process to the Contractor within ten (10) working days after receipt of the CPA, and the Owner shall make payment for the correct amount to the Contractor provided the CPA is approved by the Professional in accordance with this Agreement.
- 11.5.10 Lack of required submissions as outlined in the General Conditions of the Contract. If the Contractor and Professional cannot agree on a revised amount, the CPA will be processed in accordance with Article 11.4.



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

#### 11.6 PAYMENTS TO SUBCONTRACTORS

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

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

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

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

#### 11.7 FAILURE OF PAYMENT

If the Professional does not recommend approval of payment, through no fault of the Contractor, within fourteen (14) days after receipt of the CPA, or if the Owner does not pay the Contractor within a reasonable time the amount certified by the Professional, then the Contractor may, upon seven (7) additional days' written notice to the Owner and Professional, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately, and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay, and start-up, which shall be accomplished as provided in Article 9.

#### 11.8 FINAL COMPLETION AND FINAL PAYMENT

11.8.1 Notification: When the Work is completed, the Contractor shall provide notification of the Contractor's readiness for inspection through the PMIS Punchlist process. The Owner and Professional shall review, confirm, and verify the Punchlist within the process instance. When the Contract is fully performed, the Owner will make final payment to the Contractor.

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

- Steel Certifications – If no steel was used, fill out the form and choose option 1A.
- Contractor's Affidavit for Final Payment and Waiver of Mechanics Liens - an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might in any way be responsible, have been paid or will be paid or otherwise satisfied within thirty (30) days after receipt of final payment from the Owner.
- Consent of Surety to Final Payment
- Certified Payroll
- DBE Section completion, as applicable, in addition if a DGS project a Small Diverse Business Utilization Report (SDBUR) shall also be attached.
- All maintenance manuals, as-built drawings and warranty certificates that may be required. If any third party fails or refuses to provide a release of claim or waiver of lien as required by Owner, the Contractor shall furnish a bond satisfactory to the Owner to indemnify the Owner from liability.

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

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

11.8.3.1 Liens, Claims, security interests or encumbrances arising out of the Contract and unsettled.

11.8.3.2 Failure of the Work to comply with the requirements of the Contract Documents.

11.8.3.3 Terms of special warranties required by the Contract Documents.

## **Article 12 CONTRACT WARRANTY PERIOD**

### **12.1 WARRANTY**

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

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

If building commissioning work is not complete at the time of substantial completion, the warranty period for all related building systems may be extended by the Owner. Documentation by the Owner shall be submitted at the time of substantial completion indicating the building systems not yet properly commissioned. Once the building systems have been completed to the satisfaction of the Owner, a letter will be issued by the Owner indicating the listing of building systems and equipment with the revised warranty period. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation or normal wear and tear under normal usage.

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

### **12.2 CORRECTION OF DEFECTS**

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

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

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

### **12.3 ONE-YEAR INSPECTION**

Prior to the expiration of the one (1) year guarantee period against defective materials, equipment and/or workmanship, the Professional and Owner shall conduct an inspection to determine any other defects in material, equipment and/or workmanship not previously noticed and corrected as outlined in Paragraph 12.2 above.

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

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

## Article 13 EQUAL EMPLOYMENT OPPORTUNITY

### 13.1 NON-DISCRIMINATION CLAUSE

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

- 13.1.1 Contractor shall not discriminate against any employee, applicant for employment, any independent Contractor or any other person because of race, color, religious creed, ancestry, national origin, service in the uniformed services (as defined in state and federal law), veteran status, age, sex, sexual orientation, marital or family status, pregnancy, pregnancy-related conditions, physical or mental disability, gender, perceived gender, gender identity, genetic information or political ideas, or any other basis prohibited by law. Contractor shall take affirmative action to ensure that applicants are employed, and that employees or agents are treated during employment, without regard to their race, color, religious creed, ancestry, national origin, service in the uniformed services (as defined in state and federal law), veteran status, age, sex, sexual orientation, marital or family status, pregnancy, pregnancy-related conditions, physical or mental disability, gender, perceived gender, gender identity, genetic information or political ideas, or any other basis prohibited by law. Such affirmative action shall include, but is not limited to, the following: Employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training.
- Contractor shall post in conspicuous places, available to employees, agents, applicants for employment and other persons, notices to be provided by the contracting agency setting forth the provisions of this non-discrimination clause.
- 13.1.2 Contractor shall in solicitations or advertisements placed by it or on its behalf state all qualified applicants will receive consideration for employment without regard to race, color, religious creed, ancestry, national origin, age, or sex.
- 13.1.3 Contractor shall send each labor union or workers' representative with which it has a collective bargaining agreement or other contract or understanding, a notice advising said labor union or workers' representative of its commitment to this non-discrimination clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment. Similar notices shall be sent to every other source of recruitment utilized by Contractor.
- 13.1.4 It shall be no defense to a finding of a non-compliance with Executive Order 1972-1 or any regulations issued by the Pennsylvania Human Relations Commission or this non-discrimination clause that recipient had delegated some of its employment practices to any union, training program or other source of recruitment which prevents it from meeting its obligations.
- 13.1.5 Where the practices of a union or any training program or other source of recruitment will result in the exclusion of minority group persons, so that Contractor will be unable to meet its obligations under Executive Order 1972-1 or any regulations issued by the Pennsylvania Human Relations Commission or this non-discrimination clause, the Contractor shall then employ and fill vacancies through other employment procedures without regard to race, color, religious creed, ancestry, national origin, sex, or age, taking affirmative action to obtain qualified minority group persons.
- 13.1.6 Contractor shall comply with all rules, regulations and orders issued by the Governor, the Attorney General, and the Human Relations Commission relating to laws, prohibiting discrimination in hiring or employment opportunities. In the event of Contractor's non-compliance with the non-discrimination clause of this Contract or with any such rules, regulations or orders, this Contract may be cancelled, terminated or suspended in whole or in part, and recipient may be declared ineligible for further Commonwealth contracts, and such other sanctions may be imposed and remedies invoked as provided by rule, regulation or order of the Governor, Attorney General, or the Human Relations Commission, or as otherwise provided by law.
- 13.1.7 Contractor shall furnish all information and reports required by the Governor, Attorney General, and the Human Relations Commission and will permit access to its books, records and accounts by the contracting agency and the Human Relations Commission, for purposes of investigation to ascertain compliance with provisions of Executive Order 1972-

1 or any regulations issued by the Pennsylvania Human Relations Commission or this non-discrimination clause.

13.1.8 Contractor shall actively recruit minority Subcontractors or Subcontractors with substantial minority representation among their employees.

13.1.9 Contractor shall include the provisions of Paragraphs 13.1.1 through 13.1.10 in every Subcontract or Purchase Order, so that such provisions will be binding upon each Subcontractor or vendor or other person.

13.1.10 The terms used in this non-discrimination clause shall have the same meaning as in the Contract Compliance Regulations issued by the Pennsylvania Human Relations Commission, 16 Pa. Code Ch. 49.

## **Article 14 MISCELLANEOUS PROVISIONS**

### **14.1 RIGHTS AND REMEDIES**

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

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

### **14.2 SMOKING AND TOBACCO POLICY**

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

### **14.3 ELECTRONIC PROJECT MANAGEMENT INFORMATION SYSTEM (PMIS)**

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

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

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

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

### **14.4 USE OF UNMANNED AIRCRAFT (UA)**

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

## **Article 15 PERFORMANCE AND PAYMENT BONDS**

At the time of signing the Contract and before it becomes effective, the Contractor and its surety, acceptable to the Owner, shall execute two bonds each in the amount of 100% of the contract price of the Work awarded to the Contractor. The Bonds shall be written by a Surety authorized to do business in the

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

One bond shall be a performance bond covering the faithful performance by the Contractor of all covenants and agreements on the part of the Contractor contained in this Contract.

The other bond shall be a labor and material payment bond protecting all parties that have performed labor or supplied material on this Contract from suffering any loss due to the failure of the Contractor to pay any or all obligations incurred under this Contract.

The Contractor shall pay all premiums for all bonds.

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

## **Article 16 INDEMNITY**

To the fullest extent permitted by law, the Contractor shall appear for and defend, indemnify, and hold harmless the Owner, Professional, Professional's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, of whatsoever nature caused in whole or in part by the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Article 16.

In claims against any person or entity indemnified under this Article 16 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Article 16 shall not be limited by a limitation on amount or type of damages, compensation or benefits payment by or for the Contractor or a Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

The obligations of the Contractor under this Article 16 shall not extend to the liability of the Professional, the Professional's consultants, and agents and employees of any of them arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the Professional, the Professional's consultants, and agents and employees of any of them, provided such giving or failure to give is the primary cause of the injury or damage.

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

## **GENERAL CONDITIONS OF THE CONTRACT**

## SECTION D1

### NOTIFICATION OF CONTRACT REQUIREMENTS PERTAINING TO THE PREVAILING WAGE ACT

1. The Contractor shall pay no less than the wage rates as determined in the decision of the Secretary of Labor and Industry and shall comply with the conditions of the Pennsylvania Prevailing Wage Act approved August 15, 1961 (Act No. 442), as amended August 9, 1963 (Act No. 342), and the Regulations issued pursuant thereto, to assure the full and proper payment of said rates.
2. Such workmen shall be paid no less than such general prevailing minimum wage rates and such other provisions to assure payment thereof as heretofore set forth in this Section.
3. The Contract provisions shall apply to all work performed on the Contract by the Contractor and to all work performed on the Contract by all Subcontractors.
4. The Contractor shall insert in each of its subcontracts all of the stipulations contained in these required provisions and such other stipulations as may be required.
5. No workmen may be employed on the public work except in accordance with the classifications set forth in the decisions of the Secretary. In the event that additional or different classifications are necessary, the procedure set forth in Section 7 of these Regulations shall be followed.
6. All workmen employed or working on the public work shall be paid unconditionally, regardless of whether any contractual relationship exists or the nature of any Contractor, Subcontractor and workmen, not less than once a week without deduction or rebate, on any account, either directly or indirectly, except authorized deductions, the full amounts due at the time of payment, computed at the rates applicable to the time worked in the appropriate classification. Nothing in the Contract, the Act, or these Regulations shall prohibit the payment of more than the general prevailing minimum wage rates as determined by the Secretary to any workman on public work.
7. The Contractor and each Subcontractor shall post for the entire period of construction the wage determination decisions of the Secretary, including the effective date of any changes thereof, in a prominent and easily accessible place or places at the site of the work and at such a place or places used by them to pay workmen their wages. The posted notice of wage rates must contain the following information:
  - a. Name of project.
  - b. Name of public body of which it is being constructed.
  - c. The crafts and classifications of workmen listed in the Secretary's general prevailing minimum wage rate determinations for the particular project.
  - d. The general prevailing minimum wage rates determined for each craft and classification and the effective date of any changes.
  - e. A statement advising workmen that if they have been paid less than the general prevailing minimum wage rate for their job classification or that the Contractor and/or Subcontractor are not complying with the Act or these Regulations in any manner whatsoever, they may file a protest with the Secretary of Labor and Industry. Any workmen paid less than the rate specified in the Contract shall have a civil right of action for the difference between the wage paid and the wages stipulated in the Contract, which right of action must be exercised within six (6) months from the occurrence of the event creating such right.

8. The Contractor and all Subcontractors shall keep an accurate record showing the name, craft and/or classification, number of hours worked per day, and the actual hourly rate of wage paid (including employee benefits) to each workman employed by him in connection with the public work, and such record must include any deductions from each workman. The record shall be preserved for two years from the date of payment and shall be open at all reasonable hours to the inspection of the public body awarding the contract and to the Secretary or his duly authorized representative.
9. Apprentices shall be limited to such numbers as shall be in accordance with a bona fide apprenticeship program registered with and approved by the Pennsylvania Apprenticeship and Training Council, and only apprentices whose training and employment are in full compliance with the provisions of the Apprenticeship and Training Act approved July 14, 1961 (Act No. 304), and the Rules and Regulations issued pursuant thereto shall be employed on the public work project. Any workman using the tools of a craft who does not qualify as an apprentice within the provisions of this Subsection shall be paid the rate predetermined for journeymen in that particular craft and/or classification.
10. Wages shall be paid without any deductions except authorized deductions. Employers not parties to a contract requiring contributions for employee benefits which the Secretary has determined to be included in the general prevailing minimum wage rate shall pay the monetary equivalent thereof directly to the workmen.
11. Payment of compensation to workmen for work performed on public work on a lump-sum basis, or a piecework system, or a price certain for the completion of a certain amount of work, or the production of a certain result shall be deemed a violation of the Act and these Regulations, regardless of the average hourly earnings resulting therefrom.
12. Each Contractor and each Subcontractor shall file a statement each week and a final statement at the conclusion of the work on the Contract with the contracting agency, under oath, and in form satisfactory to the Secretary, certifying that all workmen have been paid wages in strict conformity with the provisions and if any wages remain unpaid to set forth the amount of wages due and owing to each workman respectively.
13. The provisions of the Act and these Regulations shall be incorporated by reference in the Contract.