STANDARD FORM OF AGREEMENT
BETWEEN THE DEPARTMENT AND CONTRACTOR

This AGREEMENT, Executed this _____ day of _____19__, by and between the Department of General Services, created by Act No. 45 of JULY 22, 1975, hereinafter called "DEPARTMENT" and _____ of _____ a corporation incorporated under the Laws of the State of _____ its successors and assigns, hereinafter called "CONTRACTOR".

OR

This AGREEMENT, executed this _____ day of _____19__, by and between the Department of General Services, created by Act No. 45 of JULY 22, 1975, hereinafter called "DEPARTMENT" and _____ of _____his, her or their heirs, executors, administrators and assigns, hereinafter called "CONTRACTOR".

ARTICLE 1 - THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, the Notice to Bidders, the Instructions to Bidders, the Bid Form, the Contract Bonds, the Conditions of the Contract (General, Special, Supplementary and other Conditions), the drawings of all the Contracts, the specifications of all the Contracts, all Bulletins and addenda issued prior to execution of this Agreement, all change orders, and the Administrative Procedures of the Bureau of Construction. These form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein.

ARTICLE 2 - THE WORK

The Contractor shall perform all the Work required by the Contract Documents for the construction of_____
_____

ARTICLE 3 - PROFESSIONAL

The Professional for this project is_____
_____

ARTICLE 4 - TIME OF COMMENCEMENT AND COMPLETION

The Work to be performed under this Contract shall be commenced upon the effective date of the Contract. The Contractor shall commence operations on site no later than ten (10) days after the Initial Job Conference and shall complete all Contract work to the satisfaction and approval of the Department, on or before _____. Contractor further agrees that time is of the essence of this Contract, and that, if it fails to

complete the work within the time specified above, the Contractor will pay the Department, as Liquidated Damages, and not as a penalty for such failure, the sum of _____ dollars ($_____) per day for each and every calendar day after the completion date until the Work is completed and accepted. The Department may extend the completion date of the Contract for causes set forth in the General Conditions of the Contract and, which, in fact, delay the completion of said work. In such case, Contractor is liable for said Liquidated Damages only after the expiration of the extended period.

ARTICLE 5 - CONTRACT SUM

The Department will pay the Contractor for the performance of the Work, subject to additions and deductions by contract modification or change order, as provided in the General Conditions of the Contract, the contract sum of _____ dollars ($_____). Payment will be made as set forth in the General Conditions of the Contract. Deductions from or additions to said sum will be made as set forth in the Conditions of the Contract.

ARTICLE 6 - PROGRESS PAYMENTS

Based upon applications for payment submitted to the Department by the Contractor, the Department will make progress payments on account of the Contract sum to the Contractor, as provided in the General Conditions of the Contract.

ARTICLE 7 - FINAL PAYMENT

Final payment, constituting the entire unpaid balance of the Contract sum, will be paid by the Department to the Contractor within thirty (30) days after Final Inspection of the Work, if the Contract has been fully performed, and a Final Application for Payment has been submitted, as provided in the General Conditions of the Contract.

ARTICLE 8 - UNIT PRICES

Unit Prices contained in the Bid Proposal for additions to or deductions from estimated quantities are (acceptable and are, therefore, incorporated)(are not acceptable and are, therefore, not incorporated)as part of the Contract.

ARTICLE 9 - MISCELLANEOUS PROVISIONS

9.1 Terms used in the Agreement which are defined in the Conditions of the Contract have the meanings designated in those Conditions.

9.2 In addition to any other guarantees or warrantees, the Contractor covenants and agrees, after acceptance of the Work performed under this Contract, to remedy without cost to the Department, any such defect provided said defects in the judgment of the Department, or its successors having jurisdiction in the premises, are caused by defective or inferior materials, equipment or workmanship. If the corrective work is not completed within thirty (30) days after notification by the Department to the Contractor, the Department may do the work and submit those costs to the Surety Company for reimbursement.

9.3 The Contract Bonds given by the Contractor conditioned upon the faithful performance of the Contract and for the payment of labor, material, equipment rental and public utility service claims are attached to this contract and are made a part of it. No third party shall acquire any rights against the Department under the Contract Documents.

9.4 The Contractor agrees to abide by and be bound by the Laws of Pennsylvania relating to and regulating the hours and conditions of employment.

9.5 Any person, co-partnership, association or corporation furnishing labor, material, equipment or renting equipment or rendering public utility services in connection with performance of this Contract has a right of action to recover the cost thereof from the Contractor and the surety on the Bond given to secure the payment of such labor, material, equipment or equipment rental and services rendered by public utility as though such person or corporation had been named as obligee in such Bond. For those who do not have a contract directly with the contractor, this right of action may not be exercised unless the contractor is notified of the claim within ninety days from the last performance of labor or provision of materials. The contractor shall include in all of its subcontracts or supply contracts a provision requiring that its subcontractors and suppliers notify, in writing, their subcontractors and suppliers of this requirement. It is hereby agreed that no third party rights arise against the Department for any reason under this Section, and Contractor hereby agrees to so inform all subcontractors in writing.

ARTICLE 10 - CONTRACT COMPLIANCE REGULATIONS

See Paragraph 15.33 of the 1999 General Conditions of Contract. Also made a part of this Contract by incorporation by reference, and as if fully set forth herein, are all State and Federal Laws prohibiting discrimination in hiring or employment opportunities.

IN WITNESS WHEREOF, The Department of General Services and the Contractor, if incorporated, have caused this contract to be executed the day and year above written.

COMMONWEALTH OF PENNSYLVANIA
ACTING THROUGH THE DEPARTMENT
OF GENERAL SERVICES

_____ (Date)

_____
Secretary of General Services
_____(Date)

Witness:

_____ (Date)

_____
Contractor-Individual (Date)

Witness:

_____
Contractor-Partnership (Date)

(Corporate Seal)

_____
Contractor-Corporation (Date)

Attest:

By:_____
President or Vice President (Date)

_____
Secretary or Treasurer (Date)

Approved as to legality
and form

I hereby certify that funds in
the amount of $_____
are available under
Appropriation Symbol _____

_____
Office of General Counsel(Date)

_____
Comptroller (Date)

_____
Office of Attorney General

CONTRACT BOND

KNOW ALL PERSONS BY THESE PRESENTS, That we the undersigned _____
_____
as Principal and _____
(Surety Company)
_____
(Address)
a Corporation organized and existing under the Laws of the State of _____ and authorized to transact business in Pennsylvania, as surety, are held and firmly bound unto the Department of General Services as hereinafter set forth, in the full and just several sums of

(A)_____ Dollars($_____) for faithful performance of the Contract as designated in Paragraph "A"; and

(B)_____Dollars($_____ _____)for payment for labor, material equipment rental and public utility services as designated in Paragraph "B".

Sealed with our respective seals and dates this _____ day of _____.

WHEREAS, the above Principal has entered into a Contract with the Department of General Services dated the _____day of _____, _____ for _____ upon certain terms and conditions in said Contract more particularly mentioned; and

WHEREAS, It is one of the Conditions of the Award of the Department of General Services pursuant to which said Contract is about to be entered into, that these presents be executed;

NOW, THEREFORE, the joint and several conditions of this obligation are such:

A. That, if the above Principal as Contractor shall well and faithfully do and perform the things agreed by it to be done and performed according to the terms of said Contract and General Conditions, including the plans and specifications therein referred to and made part thereof, and such alterations as may be made in said plans and specifications as therein provided and which are hereby made part of this Bond the same as though they were fully set forth herein, and shall indemnify and save harmless the Department of General Services and all of its officers, agents and employees from any expense incurred through the failure of said Contractor to complete the Work as specified and for any damages growing out of the manner of performance of said Contract by said Contractor or its Subcontractors, or its or

their agents or servants, including, but not limited to, patent trademark and copyright infringements, then this part of this obligation shall be void; otherwise, it shall be and remain in full force and effect.

B. That, if the above Principal shall and will promptly pay or cause to be paid all sums of money which may be due by the Principal or any of its Subcontractors to any person, co-partnership, association or corporation for all material furnished and labor supplied or performed in the prosecution of the Work, whether or not the said material or labor entered into and become component parts of the Work or improvements contemplated, and for rental of equipment used, and services rendered by public utilities in, or in connection with, the prosecution of such Work, then this part of this obligation shall be void; otherwise, it shall be and remain in full force and effect.

C. It is further agreed that any alterations which may be made in the terms of the Contract or in the Work to be done or materials to be furnished or labor to be supplied or performed, or equipment to be rented, or public utility services to be rendered, or the giving by the Department of General Services of any extension of time for the performance of the Contract, or the reduction of the retained percentage as permitted by the Contract, or any other forbearance on the part of either the Department of General Services or the Principal to the other, shall not in any way release the Principal and the surety or sureties or either or any of them, their heirs, executors, administrators, successors or assigns, from their liability hereunder; notice to the surety or sureties of any such alterations, extension or forbearance being hereby waived.

D. The Principal and Surety hereby jointly and severally agree with the Obligee herein that every person, co-partnership, association or corporation which, whether as subcontractor or as a person otherwise entitled to the benefits of this Bond, has furnished material or supplied or performed labor or rented equipment used in the prosecution of the Work as above provided and any public utility, which has rendered services, in, or in connection with, the prosecution of such Work, and, which has not been paid in full therefor, may sue in assumpsit on this Bond in his, their, or its name and prosecute the same to final judgment for such sum or sums as may be justly due him, them, or its, and have execution thereon; provided, however, that the Department of General Services shall not be liable for the payment of any costs or expenses of such suit to a third party under any theory of law of equity.

E. Recovery by any persons, co-partnership, association or corporation hereunder is subject to the provisions of the Act of May 15, 1998, P.L. 358, No. 57, 62 Pa.C.S §§101-4509, as amended, which Act is incorporated herein and made a part hereof, as fully and completely as though its provisions were fully and at length herein recited, except that, where said Act refers to the Commonwealth of Pennsylvania or a Department thereof, it is deemed to refer to the Department of General Services.

IN WITNESS WHEREOF, The said Principal and Surety have duly executed this Bond under seal the day and year above written.

Witness:

_____ (Date)	_____ Principal- Individual (Date)
(Corporate Seal)	_____ Surety
_____ PA Resident Agent (Date)	By:_____ Attorney-in-Fact (Date)

Witness:

_____	_____ Principal-Partnership (Date)
(Corporate Seal)	_____ Surety
_____ PA Resident Agent (Date)	By:_____ Attorney-in-Fact (Date)

Attest:

_____ Secretary or Treasurer (Date)	By:_____ President or Vice President (Date)
(Corporate Seal)	_____ Surety
_____ PA Resident Agent (Date)	By:_____ Attorney-in-Fact (Date)

Approved as to Legality and Form

_____ Office of Chief Counsel (Date)	_____ Office of Attorney General

DEPARTMENT OF GENERAL SERVICES

GENERAL CONDITIONS
OF THE
CONSTRUCTION CONTRACT

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GENERAL CONDITIONS OF THE CONTRACT

ARTICLE 1: DEFINITIONS

Whenever in this Contract the following words and expressions occur, they have the following meanings.

1.1: Agreement for Professional Services. The Agreement for Professional Services is the Contract between the Department and its Professional, which represents the entire and integrated Agreement between them.

1.2: Biweekly. Biweekly means an event occurring every two weeks.

1.3: Change Order. A change order is a written order signed by the Department directing the Contractor to make changes which the changes clause of the contract authorizes the Department to order. The change order may be either with the consent of the Contractor or a unilateral order by the Department.

1.4: Consultant. A consultant is a specialist retained by the Department or the Professional for the performance of its specialty.

1.5: The Contract. The Contract Documents are the Contract. The Contract represents the entire and integrated agreement between the parties to it and supersedes all prior negotiations, representations, or agreements, either written or oral.

1.6: Contract Bonds. The Contract Bonds are the bonds to be executed by one or more surety companies legally authorized to do business in the Commonwealth of Pennsylvania for the faithful performance of the contract and for payment of labor and material, as required by the Department.

1.7: Contract Completion Date. The Contract Completion Date is the date specified in the Contract for completion of the Work.

1.8: The Contract Documents. The Contract Documents include the Agreement, Notice to Bidders, the Instructions to Bidders, the Bid Form, the Contract Bonds, the Conditions of the Contract (General, Special, Supplementary, and other Conditions), the drawings of all Contracts, the specifications of all Contracts, all bulletins and addenda issued prior to execution of the Agreement, all change orders, and the Administrative Procedures of the Bureau of Construction.

1.9: Contractor. The Contractor is the person or organization identified as such in the Agreement and is referred to throughout the Contract Documents, as if singular in number. The term Contractors means each separate Prime Contractor.

1.10: Contract Start Date. The Contract Start Date for purposes of calculating dates for completion of the contract, is the initial job conference.

1.11: Contract Sum. The Contract sum is the total amount payable by the Department to the Contractor for the performance of the work under the Contract Documents.

1.12: Days. Days mean calendar days unless specifically stated otherwise in the contract.

1.13: Department. The Department is the Department of General Services of the Commonwealth of Pennsylvania, or any authorized representative, and is referred to throughout the Contract Documents as if singular in number.

1.14: Director of Engineering and Architecture. The Director of Engineering and Architecture is the administrative head of the Bureau of Engineering and Architecture. The Bureau of Engineering and Architecture may serve as the Professional on a project.

1.15: Director of Construction. The Director of Construction is the administrative head of the Bureau of Construction of the Department and is vested with the responsibility for project construction in accordance with the Contract Documents.

1.16: Effective Date of Contract. The effective date of the contract is the date on which the last Commonwealth official who is required to execute the contract, executes it.

1.17: Field Order. A field order is a record of a minor adjustment in the Work that results in no change in cost or duration of the contract.

1.18: Institution. The Institution is the particular facility of the Using Agency where the Project will occur.

1.19: Lead Contractor. The Lead Contractor is the Prime Contractor, which coordinates the progress of the Work. The Lead Contractor will be designated in the specifications.

1.20: Notice of Deficiency. A deficiency notice is a document to record non-conforming work, deficient work and/or schedule slippage.

1.21: Prime Contractor. The Prime Contractor is any Contractor which holds a Contract with the Department for construction services on the Project.

1.22: Professional. The Professional is the Architect and/or Engineer retained by the Department or the Professional's authorized representative or consultant(s).

1.23: The Project. The project is the total Work to be performed under this and the other separate prime contracts.

1.24: Off-Site Work. Off-site work is all work which is not physically carried out on the site where the project will occur.

1.25: On-Site Work. On-site work is all work which is physically carried out on the site where the project will occur.

1.26: Samples. Samples are physical examples furnished by the Contractor to illustrate materials, equipment or workmanship, and to establish standards by which the work will be judged.

1.27: Secretary. The Secretary is the administrative head of the Department of General Services.

1.28: Subcontractor. A subcontractor is a person or organization which has a Contract with the Contractor to perform any of the work. The term subcontractor is referred to throughout the Contract Documents as if singular in number and means a subcontractor or its authorized representative.

1.29: Submittals. Submittals are drawings, diagrams, illustrations, schedules, performance charts, brochures, catalog data, and other data that are prepared by the Contractor or any subcontractor, manufacturer, supplier, or distributor, and which illustrate some portion of the work or how it fits in relation to other parts of the work.

1.30: Sub-Subcontractor. A sub-subcontractor is a person or organization who has a Contract with a subcontractor to perform any of the work. The term sub-subcontractor is referred to throughout the Contract Documents as if singular in number and means a sub-subcontractor or its authorized representative.

1.31: Substantial Completion of the Work. The date of Substantial Completion of the Work is the date on which the Professional certifies and the Department approves that the Work is 90% complete.

1.32: Superintendent. The Superintendent is the Contractor's representative at the project site. The Superintendent is responsible for continuous field supervision, coordination and completion of the Work, and, unless another person is designated, in writing, by the Contractor to the Department, for the prevention of accidents. The Superintendent shall have full authority to act on behalf of the Prime Contractor in relation to Project activities and associated work.

1.33: Supplier. A Supplier is a person or organization that has a contract with the contractor to provide goods, materials and/or equipment.

1.34: Using Agency. The Using Agency is the Department, Board, Commission, State Agency, State University, State-aided College or University or Land Grant University of the Commonwealth of Pennsylvania, or any entity requesting the Project, which includes the Work covered by the Contract.

1.35: The Work. The Work means all services and labor necessary to produce the construction required by the Contract Documents. It also includes all material and equipment incorporated or to be incorporated into such construction.

ARTICLE 2: EXECUTION, CORRELATION, INTENT AND INTERPRETATIONS

2.1: Contract Execution. The Contract Documents shall be signed in triplicate by the Department and the Contractor. All drawings shall be sealed by the Professional. The Licensed Consultant(s) of the professional shall sign and seal for their part of the Work.

2.2 Contract Interpretation. The Contract Documents are complementary, and what is required by any one of the Contract Documents is binding as if required by all. The intention of the Documents is to include all labor, materials, equipment and other items or conditions necessary for the proper execution and completion of the Work ready for its intended use. Work not covered under any heading, section, branch, class or trade of the specifications need not be supplied unless it is required elsewhere in the Contract Documents or is reasonably inferable therefrom as being necessary to produce the intended results. If there is a conflict between the drawings and the specifications, the specifications shall prevail. If there is a conflict between the General Conditions and the specifications, the specifications shall prevail. If there is a conflict between the General Conditions and the Special Requirements, the Special Requirements shall prevail. If there is a conflict regarding quantities or quality of products in the Contract Documents, the higher quantity or quality product shall be delivered unless written clarification is provided by the Professional stating otherwise.

Words which have well-known technical or trade meanings are used in this contract in accordance with such recognized meanings.

2.3: Contract Organization. The organization of the specifications into divisions, sections and articles, and the arrangement of drawings shall not control the contractor in dividing the Work among subcontractors or in establishing the extent of Work to be performed by any trade.

2.4: Contract Detail. Where the Work is shown in complete detail on only a portion of a drawing, or there is an indication of continuation, the remainder being shown in outline, the Work drawn out in detail applies to other like portions of the structure.

2.5: Contract Errors or Conflicts. If the Contractor, in the course of construction finds any conflict, error or discrepancy on or among the Contract Documents, such conflict, error or discrepancy shall be immediately referred to the Professional in writing. The Professional, with appropriate input from the Department, will review the matter and issue an interpretation to the Contractor in writing within seven (7) days after receipt of the Contractor’s written request.

2.6: Copies of Contract Documents. Unless otherwise provided in the Contract Documents, the Contractor will be furnished one (1) complete, reproducible set of drawings and specifications. If additional sets are required for the project, the Contractor shall pay for the cost of providing additional specifications and drawings.

2.7: Ownership of Documents. All drawings, specifications and copies thereof furnished by the Professional are and shall remain the property of the Department. They are not to be used on any other project, and, with the exception of one Contract set for each party to the Contract, are to be returned to the Department on request at the completion of the Work.

ARTICLE 3: PROFESSIONAL

3.1: Administration of Contract. The Professional, in cooperation with the Department, shall provide administration of the construction Contracts, including performance of the functions hereinafter described.

3.2: Professional Site Visits. The Professional shall visit the site at least biweekly during periods of active construction, review the performance of the Work and take such action, as is necessary or appropriate to achieve the requirements of the Contract drawings and specifications, including advising the Department's Inspectors as to particular matters to watch for and guard against. The Professional shall

have its consultant(s) visit the site periodically during their respective phases of the Work at such intervals as may be reasonably deemed necessary by the Department, to observe the respective phases of the Work in order to achieve the requirements of the Contract Documents. If the Professional deems it necessary for its consultants to visit the site at times other than those requested by the Department it shall arrange such visits. In addition to the above biweekly visits to the project site, the Professional shall attend any and all project site conferences, which the Department determines are necessary. The Professional must submit written reports to the Department and all prime Contractors on all special meetings and job site visits within seven days of the visit. The Professional is not responsible for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work.

3.3: Professional Access to Site. The Professional, its consultants and authorized representatives shall at all times have access to the Work, wherever it is in preparation and progress. The Contractor shall provide the facilities for such access so the Professional may perform its functions under the Contract Documents.

3.4: Professional Review of Forms. The Professional will review and execute all Department forms which require its review and signature under the Contract.

3.5: Professional Interpretation of Documents. The Professional is the initial interpreter of the requirements of the Contract Documents. The Professional will within seven (7) days after receipt of a written request, render in writing such interpretation. All interpretations by the Professional shall be consistent with the Contract Documents. In its capacity as interpreter, it will exercise its best efforts to insure faithful performance by both the Department and the Contractor and will not show partiality to either. Further reference should be made to Sections 14.1 through 14.6 for disputes under the Contract.

3.6: Rejection of Work. The Professional is authorized to recommend rejection of Work which does not conform to the Contract Documents and shall immediately notify the Department of such rejection. The Professional must make recommendations to the Construction Regional Director as soon as possible, but in no event later than twenty-four (24) hours after discovering work that is not in conformance or any unforeseen condition, to direct any or all Contractors to stop any portion of the Work, or to require special inspection or testing of the Work as provided in Section 5.31, whenever such action is necessary or advisable to insure the proper implementation of the Contract Documents. Neither the Professional's authority to make recommendations under this Subparagraph, nor any decision made by it in good

faith either to exercise or not to exercise such authority shall give rise to any duty or responsibility of the Professional to the Contractor, or any subcontractor, any of their agents or employees, or any other person performing any of the Work.

3.7: Professional Review of Submittals. The Professional will review submittals as provided in Article 8.

3.8: Professional Review of Change Orders. The Professional will prepare specifications and drawings necessary for the Department to authorize change orders in accordance with Article 10. The Professional shall review all costs submitted by the Contractor for all Change Orders and advise the Department in writing of their acceptance or rejection within seven days of its receipt of the costs. Justification must be provided to substantiate disputed costs.

3.9: Professional Review of As-Built Documents. The Professional at the time of substantial completion, shall receive from the Contractors, all as-built record field drawings, shop drawings and record data, as needed, in order to prepare as-built record drawings. The Professional shall review said documents for accuracy and compliance with the Contract Documents and submit them to the Department with its reproducible record drawings.

3.10: Professional Not Responsible for Contractor Acts or Omissions. The Professional will not be responsible for the acts or omissions of any Contractor, or any subcontractor, or any of their agents or employees, or any other persons performing any of the Work.

3.11: Replacement of Professional. In case of the termination of the Agreement for Professional Services, the Department may appoint a new Professional whose status under the Contract Documents shall be that of the former Professional. The decision of whether or not to appoint a new Professional is solely the Department's.

3.12: Non-Conforming Work. If corrective work or drawings are required of the Professional, due to defective or non-conforming work by the Contractor, the cost for additional professional services shall be borne by the Contractor, provided that the Professional submits those costs to the Department and the Contractor within thirty (30) days after the completion of said additional services. The Department shall review for approval the corrective work and/or drawings which are prepared by the Professional in order to determine that the corrective work and/or drawings fall within the original scope of the Contract.

3.13: Professional Review of Extension of Time Requests. The Professional shall assist the Department, if requested, in the review of Extension of Time requests and claims of any type.

ARTICLE 4: THE DEPARTMENT

4.1: Easements and Rights of Access. If necessary, the Department will secure and pay for easements for permanent structures with right of access to the structures. If such easements are insufficient for the erection of temporary construction facilities and storage of materials, the Contractor shall provide easements and space as necessary.

4.2: Administrative Procedures. The Department shall issue to the Contractor all the Administrative Procedures in effect and hereinafter promulgated by the Department, all of which Administrative Procedures are incorporated herein by reference and made a part hereof, as if fully set forth herein.

4.3: Separate Prime Contracts. The Department reserves the right to award other Contracts in connection with other portions of the project under these or similar Conditions of the Contract. When separate Prime Contracts are awarded for different portions of the project, the "Contractor" in the Contract Documents in each case is the Contractor which signs each separate Prime Contract.

ARTICLE 5: CONTRACTOR

5.1: Review of Contract Documents and Site Conditions. The Contractor shall carefully study and compare the Contract Documents and physical conditions of the job site. If the Contractor, in the course of the work, finds any discrepancy between the plans or specifications and the physical condition of the locality, or any errors in plans or specifications, the Contractor must immediately inform the Professional in writing of the discrepancy or error. The Professional, after consulting with and obtaining the Department's approval, and within seven (7) days after receipt of Contractor's request, shall clarify the discrepancy or error and notify the Contractor in writing.

5.2: Supervision and Construction Procedures. The Contractor is solely responsible for all construction means, methods, techniques procedures, and safety programs in connection with the work under the Contract.

5.3: Coordination of the work. The Lead Contractor and other Prime Contractors are responsible for the coordination of the work. Whenever the Lead Contractor and the other affected Prime Contractors cannot agree on a coordination decision, the Lead Contractor will recommend to the Department what actions are required to result in coordination. The final coordination

decision of the Department will be observed, accepted, and fully followed by all Prime Contractors and their subcontractors on the project, subject only to the disputes procedure set out in Article 14 of the General Conditions. The progress of the work in accordance with the final coordination decisions of the Department shall not be delayed, pending any such arbitration proceeding.

5.4: Supervision. The Contractor shall provide supervision for each prime contract at the project site by a duly authorized and competent superintendent, when the Contractor is carrying out any work on the site or when any work is being performed at the project site by any Prime Contractor or any subcontractor which will impact the work of the Contractor as determined by the Department. The Superintendent must be acceptable to the Department. If a Contractor has more than one Contract, it must provide a separate Superintendent for each Prime Contract. The Department may demand of the Contractor the dismissal from the job site of any person employed by the Contractor who the Department determines is incompetent or guilty of misconduct. The Contractor shall submit to the Department the name and qualifications of its Superintendent at the time of the Initial Job Conference. The Contractor shall not change its Superintendent without written approval of the Department, and must submit to the Department, in writing, justification for the change, along with the name and qualifications of the individual whom the Contractor proposes to be the new Superintendent. The Department may withhold any payments, which are or may become due to the Contractor, or the Department may suspend the work at the expense of the Contractor, if the Contractor fails to comply with the provisions of this paragraph.

5.5: Surveys and Laying Out Work. The Contract drawings shall be used for all dimensions in laying out the work under this Contract. The Lead Contractor shall utilize a competent surveyor, whose name and qualifications shall be submitted to the Department at the time of the Initial Job Conference, to lay out the building lines, walls, floor elevations, etc. from the initial points established on the drawings. The Surveyor shall take as a basis the figures on the plans, and shall lay out all intersections, all building lines at corners and centers, test and check all elevations and levels, locate levels and plumb lines of walls, beams and columns and other parts of the construction as the work progresses. Other Prime Contractors are responsible for laying out their work from the points established by the Lead Contractor. All work of every description shall be laid out by the Contractor, who is solely responsible for its correctness. All expenses in connection with this work shall be paid for by the Contractor.

5.6: Provision of Labor and Materials. Unless otherwise specifically noted, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and all other facilities and services necessary for the proper execution and completion of the work.

5.7: Use of Equipment. Contractor shall furnish such equipment and/or materials necessary for the proper prosecution of the work in an acceptable manner and at a satisfactory rate of progress. The equipment used on any portion of the work shall be such as not to endanger the lives of the operators or any persons in the vicinity of the equipment nor cause damage to adjacent property or highways. Any damages resulting from the operations of such equipment to any person or property is the responsibility of the Contractor in accordance with Sections 9.9 through 9.15.

5.8: Good Order Among Employees. The Contractor shall at all times enforce good order and conduct among its employees. Every employee shall be skilled in the performance of work assigned to that employee. Any violation is sufficient cause for the Department to direct that the Contractor remove such person from employment on the project, and direct that they shall not be re-employed on that project without the written consent of the Department.

5.9: Warranty. The Contractor warrants to the Department that all materials and equipment furnished under this Contract are new, unless otherwise specified, and that all work is of good quality, free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards may be considered defective or non-conforming. If required by the Professional or the Department, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Where there is a substitution of material or equipment in accordance with Section 15.22, the Contractor warrants that such installation, construction, material, or equipment will perform to the standard of the item originally specified. The Contractor explicitly warrants the merchantability, and the fitness for use and quality of all substituted items provided for or by it. The Contractor shall assign and deliver to the Professional all warranties for review. The Professional will transfer them to the Department. The warranty provided in this section shall be in addition to, and not in limitation of, any other warranty or remedy provided by Law or by the Contract Documents.

5.10 Taxes. The Contractor shall pay all sales, consumer, use and other similar taxes required by Law.

5.11 Offset of Amounts Due to Commonwealth. The Contractor, by execution of the Contract certifies that it has no outstanding tax liability to Pennsylvania; authorizes the Department of Revenue to release information related to its tax liability to the Department of General Services; and, authorizes the Commonwealth to set off any State and local tax liabilities of the Contractor or any of its subsidiaries, as well as any other amount due to the Commonwealth from the Contractor, not being contested on appeal by the Contractor, against any payment due to the Contractor under a contract with the Commonwealth.

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

5.12: Permits and Fees. The Contractor shall obtain all permits, licenses, review fees, sewer and/or water tap in fees and certificates required by Law for the proper execution and completion of its work. The Contractor shall furnish proof of payment for all such items, or proof that no such items are required. This proof must be furnished prior to the second request for payment. With the exception of the permit required in Section 5.40, the Contractor will be reimbursed for the actual cost of such items by change order. The Contractor will not be entitled to any mark-up on the item.

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

5.14: Responsibility for those Performing Work. The Contractor is responsible to the Professional, the Department and all other Prime Contractors for the acts and/or omissions of all of its employees and all subcontractors, their agents and employees, and all other persons performing any of the Work under a contract with the Contractor.

5.15: Drawings and Specifications at the Site. The Contractor shall maintain in good order at the site, for the Department and the Professional, one record copy of all drawings, specifications, bulletins, addenda, contract modifications, change orders and requests for information. As appropriate, the above will be updated daily to record accurately as-built conditions, selections and changes. The Contractor shall also maintain at the site one record copy of approved shop drawings, catalog data, operating and maintenance instructions, certificates, warranties, samples and similar submittals. These shall be available to the Department and Professional at all times, and they shall be delivered to the Professional as part of the Operation and Maintenance Instruction Manuals described in Section 15.9. The Contractor shall include the value of the record drawings as a line item on its schedule of values, which shall be not less than 10% of the amount included for mobilization. The amount included is subject to the approval of the Department.

5.16: Coordination of Work with other Contractors. The Contractor shall afford other Prime Contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall properly connect and coordinate its work with the work awarded by the Department to other Contractors.

5.17: Discrepancy in Work which affects other Contractors. If any part of the Contractor's work depends for proper execution or results upon the work of any other Prime Contractor, the Contractor shall inspect and promptly report in writing to the Professional and the Department any apparent discrepancies or defects in such work that render it unsuitable for such proper execution and results. Failure of the Contractor to so inspect and report constitutes an acceptance of the other Prime Contractor's work as fit and proper to receive its work, except as to defects which may develop in the other Prime Contractor's work after the execution of the Contractor's work.

5.18: Interference with Work of Other Contractors. The work shall be conducted so as to not interfere with the work of other Contractors. If any part of a Contractor’s work depends for proper execution or results upon work being done by another Prime Contractor (or such other Prime Contractor’s Subcontractor) not under contract to the Contractor, it shall inspect and promptly report in writing to the Professional and the Department any interference, defects, or delays in the work done or being done by the other Prime Contractors (or their Subcontractors). In the event that any Prime Contractor does not complete the various portions of the work in general harmony, and other Prime Contractors are damaged or injured by the failure to so act in harmony, the Prime Contractor damaged or injured may submit a request for the Department to withhold funds, or settle by

agreement or arbitration such claim or dispute in accordance with the provisions of Sections 14.4 through 14.6.

5.19: Use of Site. The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents. The Contractor shall not unreasonably encumber the site with any materials or equipment.

5.20: Cutting and Patching of Work. The Contractor shall do all cutting, fitting or patching of existing materials required for its work to make its several parts fit together properly, and shall not endanger any work by cutting, excavating or otherwise altering the work, or any part of it. All costs incurred by other Prime Contractors, which result from defective or ill-timed work of a Contractor, shall be borne by the Contractor responsible for the installation of defective or ill-timed work. Any damages to the existing facility shall be borne by the Contractor responsible for the damage. Paragraph 10.8 does not apply to concealed or unforeseen conditions, which are encountered by the Contractor in performing the work that is required under this paragraph. Work shall be completed to the satisfaction of the Department and the Professional.

5.21: Cleaning Up. The Lead Contractor is responsible for general broom cleaning at its cost in addition to the specific cleaning provided in Section 5.22 applicable to each separate Prime Contractor. The Lead Contractor shall, at least once weekly, remove from the premises all discarded material and rubbish described in Section 5.22 resulting from the work of all Contractors and assure that the building premises and surrounding streets are clean and free of such materials.

5.22: Waste Disposal. The Contractor at all times shall keep the premises free from accumulation of waste materials or rubbish caused by its operations. Contractor shall promptly remove from the premises all empty cartons, boxes, crates and containers belonging to it, including cleaning and removal of all materials attached to lavatory, tub and similar fixtures used as a protection during shipment and installation. Contractor shall promptly remove from the premises all excess excavated material that is on the premises, as a result of its excavation, provided such material is not required elsewhere on the project for fill to attain elevations shown on the drawings. Contractor shall at its cost pick up, move and deposit at a location or locations on the premises designated by the Lead Contractor all discarded material and rubbish resulting from its work, other than as described above.

5.23: Cleaning of Surfaces. The surfaces that are to be finished shall have all plaster, mortar and other surplus materials removed before painting, varnishing and other finishing is begun. Before the acceptance of the project by the Department at the Final Inspection, all visible finished surfaces and materials shall be thoroughly cleaned and/or retouched by the responsible Prime Contractor at its cost and shall be left in a clean and unblemished condition to the satisfaction of the Department.

5.24: Failure of Contractor to Clean. If the Contractor fails to clean up, the Department may assign the work to another Contractor, and the cost of the clean up will be charged to the Contractor failing to clean up.

5.25: Disputes Between Contractors Concerning Cleaning. If a dispute arises between the Prime Contractors as to their responsibility for cleaning up as required by this section, the Department may authorize a Contractor to perform the cleanup and charge the cost of it to the several Contractors as the Department determines to be appropriate.

5.26: Coordination Drawings. Contractors requiring sleeves and openings for their work in any deck, concrete slab or wall shall furnish to the Professional and all other Prime Contractors involved a complete set of location sketch drawings in triplicate showing size and shape of openings. Completion of these drawings must be consistent with the construction sequence. Each Prime Contractor is responsible for reviewing the drawings in order that there will be no interference and/or conflict in its portion of the work. When this review is finalized, the Contractor shall submit these drawings to the Department and the Professional in a final workable form. Sepia reproducible prints of the Contract Drawings may be obtained from the Professional at cost for this purpose.

5.27: Chases and Openings. The General Contractor will construct, or have built, into new walls, new partitions, and new floors, all such chases and openings as are required. Each Prime Contractor will be responsible to see that the chases and openings affecting its work are installed in accordance with the drawings submitted to the General Contractor.

5.28: Chases and Openings after Construction of Walls. Should the cutting of chases and openings be required after construction of walls, partitions and floors is completed, the Department may require the work to be performed in such a manner as to result in unmarred work, even to the extent of requiring the removal and rebuilding of walls and partitions, all of which shall be at the sole cost of the responsible Prime Contractor.

5.29: Tests. If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any work to be inspected, tested or approved, the Contractor shall give the Department timely notice of its readiness and of the date arranged, so the Professional may observe such inspection, testing or approval. The Contractor shall bear all costs of such inspections, tests and approvals, unless otherwise provided.

(1) All expenses incurred in the collection, packing and delivering of samples or materials or equipment to the job site shall be paid for by the Contractor.

(2) The Contractor shall pay the costs of transporting samples from the job site to the laboratory and for the testing of same, except where otherwise noted in the General Conditions, specifications, or called for in the Contract drawings.

(3) Approved samples to be incorporated in the building shall be returned to the job site by the testing laboratory under the supervision of the Contractor.

5.30: Special Testing. If, after the commencement of the work, the Department determines that any work requires special inspection, testing or approval not included in 5.29, the Department will, by written authorization, instruct the Contractor to order such special inspection, testing or approval, and the Contractor shall give notice as in Section 5.29. If such special inspection or testing reveals a failure of the work to comply with the requirements of the Contract Documents or with respect to the performance of the work, with laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, the Contractor shall bear all costs thereof, including the Professional's additional services made necessary by such failure. If the work is in compliance, the Department shall bear such costs, and an appropriate change order shall be issued.

5.31: Certificates of Inspection. Required certificates of inspection, testing or approval shall be secured by the Contractor and delivered by it to the Professional and the Department within 7 days of it being secured by the Contractor.

5.32: Professional Observation of Testing. If the Professional wishes to observe the inspections, tests or approvals required by Sections 5.29 and 5.30, it shall do so promptly and, where practicable, at the source of supply.

5.33: Effect of Tests. Neither the observations of the Professional in its administration of the construction Contract, nor inspections, tests or approvals by persons other than the Contractor shall relieve the Contractor from its obligations to perform the work in accordance with Contract Documents.

5.34: Unclassified Excavation. Excavation, if required for this project, will be unclassified and will include all types of earth and soil, any pebbles, boulders, and bedrock; municipal trash, rubbish and garbage; and all types of debris of the construction industry such as wood, stone, concrete, plaster, brick, mortar, steel and iron shapes, pipe, wire asphaltic materials, paper and glass. Unclassified excavation does not include unforeseen concrete foundations, walls, or slabs.

5.35: Removal of Unclassified Materials. All materials encountered which are identified by section 5.34 as unclassified shall be removed to the required widths and depths to create a finished product as shown and/or noted on the drawings and as written in the specifications. No additional compensation shall be made to the Contractor of this unclassified excavation.

5.36: Unclassified Material Not Considered Concealed Condition. The materials defined by section 5.34 as unclassified are not concealed conditions or unknown physical conditions below the surface for purposes of section 10.8.

5.37: Existing Utilities. The Contractor shall check the location of existing utilities required to remain in place, including those overhead or underground, and take all necessary precautions to prevent injury or damage during the performance of the contract and shall be responsible for any and all damages thereto.

5.38: Contractor Performing Excavation or Demolition. The Contractor performing excavation or demolition work, shall fully comply with the requirements of Act 287-74, as amended, approved December 10, 1974, relative to protection of underground utilities which shall include, but not be limited to:

(1) Ascertain approximate location and type of utility lines at the site by inspecting drawings or by obtaining a list of utility companies' lines on the site from the County Recorder of Deeds and then contacting the utility company.

(2) Three (3) days before excavation or demolition, request information from the utility companies regarding the steps Contractors should take to avoid damage.

(3) Provide each equipment operator or blaster with information obtained in (1) and (2) above.

(4) Report to the utility company any damage to utility line made or discovered in the course of the work.

(5) Alert occupants of premises as to emergency created or discovered.

(6) Provisions of (1), (2) and (3) do not apply in an emergency. An emergency is any condition constituting a clear and present danger to life or property be escaping gas, exposed wires or other utility line breaks or defects.

5.39: Environmental Quality Control. The Contractor and its Subcontractors shall perform their work in a manner which minimizes the possibility of air, water, land and noise pollution in accordance with Section 5.13.

5.40: Solid Waste. Storage, collection, transportation and final disposal of solid waste shall be in accordance with the Solid Waste Management Act regulations and standards of the Department of Environmental Protection (DEP). Immediately upon the effective date of the contract, the Contractor shall obtain, at its cost, the necessary permit(s) from DEP and conduct waste disposal on sites approved under this permit. A copy of this permit must be submitted to the Department before commencing waste disposal.

5.41: Compliance with Statutes and Regulations Administered by DEP. The Contractor shall comply with all statutes and regulations of the Commonwealth of Pennsylvania concerning environmental quality control administered by DEP. These include but are not limited to, the Clean Streams Law, the Clean Water Act, Pennsylvania Sewage Facilities Act, Air Pollution Control Act, Surface Mining Conservation and Reclamation Act, Bituminous Coal Open Pit Mining Conservation Act, Dams and Encroachments Act, Water Well Driller’s Act, Water Works Act and Atomic Energy Act, all as amended to date. The Contractor is responsible for any violations and shall secure all required permits. Erosion control measures are shown on drawings and specifications and/or specified in the General Requirements. An erosion control permit, if required, will be obtained by the Professional.

5.42: Burning of Materials. Burning of materials from clearing and grubbing operations periodic and final clean-up, and all related construction, shall be governed by local codes and ordinances and/or the regulations of DEP. For each day that the Contractor may contemplate open burning, it shall secure written approval for DEP. Failure to secure permission for open burning will require the Contractor to remove material from the project site and dispose of it in a manner acceptable to DEP.

5.43: Insulation for Construction Projects. All insulation incorporated into the project **must** contain the minimum percentage of postconsumer recovered paper or recovered material as shown below for the applicable product:

Material Type	**Percent by Weight**
Cellulose loose – fill and spray on	75% postconsumer recovered paper
Perlite Composite Board	23% postconsumer recovered paper
Plastic rigid foam, polyisocyanurate/polyurethane	
Rigid Foam	9% recovered material
Foam-in-Place	5% recovered material
Glass Rigid Foam	6% recovered material
Phenolic Rigid Foam	5% recovered material
Rock Wool	50% recovered material

5.44: Postconsumer Recovered Paper. Postconsumer recovered paper is defined as "Any paper, paperboard and fibrous wastes from retail stores, office buildings, homes and so forth, after they have been passed through their end-usage as a consumer item including: used corrugated boxes, old newspapers, old magazines, mixed waste paper, tabulating cards and used cordage, as well as all paper, paperboard and fibrous wastes that enter and are collected from municipal solid waste."

5.45: Recovered Materials. Recovered materials are defined as "waste material and byproducts which have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process.

5.46: Enforcement of Insulation Requirement. The Contractor may be required to provide the Commonwealth with documentary evidence that the insulation provided for the project was produced with the required minimum percentage of postconsumer recovered paper or recovered material.

5.47: Storage Shed. The Contractor shall, at its cost, provide upon the premises, where directed by the Department, and maintain and remove when directed, suitable substantial watertight storage shed in which it shall store all materials which might be damaged by the weather. Mobile trailer type is acceptable. All storage sheds shall be of sufficient size to hold all the subject materials on the site at one time and shall have floors raised at least six (6) inches above the ground on heavy joists or sleepers. Storage sheds shall have sufficient natural ventilation to preclude condensation.

5.48: No Storage in Existing Buildings. The Contractor shall not store any materials in any existing building or beyond the contract limits as defined by the drawings without prior written authorization from the Department.

5.49: Mobilization. The Contractor may include on the breakdown 1.5 percent of the contract award, not to exceed $90,000, for mobilization costs for contracts up to $6,000,000. On contracts exceeding $6,000,000, mobilization costs in excess of $90,000 will be determined by negotiation with the Department before submission of the cost breakdown. The following items are included as mobilization, and cannot be included separately on the breakdown:

Contractor's field office
Inspector's field office (unless otherwise specified in specifications)
Heating, lighting and telephone
Installation for the offices
Installation of signs
Site survey
Construction fence, if required
Sidewalk shelter, where required
Safety and first aid equipment
Temporary power setup
Temporary power distribution
Temporary water
Temporary sanitary

ARTICLE 6: SUBCONTRACTORS

6.1: Contractors Interest in Subcontractor. Pursuant to Management Directive 215.8, as amended October 12, 1988, a contractor may not, except with the consent of the Commonwealth, have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project.

The contractor will be requested to disclose the names of all subcontractors and/or suppliers in which the contractor has a financial interest, and which will be utilized in the project. This information must be disclosed on Form GSC-23, Request for Approval of Materials and/or Subcontractors. Commonwealth acceptance of the subcontractors and/or suppliers will be deemed to be consent for the purposes of Management Directive 215.8.

Failure to disclose the names of such subcontractors and/or suppliers is sufficient grounds for termination of this contract. Such failure may also be grounds for the initiation of civil or criminal proceedings.

6.2: Subcontractor/Supplier Agreement. All work performed for the Contractor by a Subcontractor or supplier of materials shall be pursuant to an appropriate agreement between the Prime Contractor and the subcontractor or supplier (and where appropriate between subcontractors and sub-subcontractors). The agreement must be a fully executed agreement and include the amount the Subcontractor, Sub-Subcontractor or supplier is to be paid for the work to be performed or for the materials to be supplied. All agreements between Contractors and subcontractors or suppliers and between subcontractors and sub-subcontractors for work performed on the project shall be forwarded to the Department by the Prime Contractor prior to the commencement of any work by a subcontractor or a sub-subcontractor or supply of material by a supplier and shall contain provisions that (for purposes of this remainder of this Article, the word subcontractor is to be read to include a supplier of material.):

(1) Preserve and protect the rights of the Department and the Professional under the Contract with respect to the work to be performed under the subcontract, so that the subcontracting thereof will not prejudice such rights;

(2) Require that such work be performed in accordance with the requirements of the Contract Documents;

(3) Require submission to the Contractor of applications for payment under each subcontract to which the Contractor is a party, in reasonable time to enable the Contractor to apply for payment in accordance with Article 11;

(4) Require that all claims for additional costs, extensions of time or otherwise with respect to subcontracted portions of the work shall be submitted to the Contractor (via any subcontractor or sub-subcontractor where appropriate) in the manner provided in the Contract Documents for like claims by the Contractor upon the Department;

(5) Require that each subcontractor and/or supplier fully warrants and guarantees for the benefit of the Department as purchaser the effectiveness, fitness for the purpose intended, quality and merchantability of any item provided and/or installed by such subcontractor;

(6) Require that the subcontractor is without privity of Contract to the Department and that it agrees by signing the subcontract that it neither acquires nor intends to acquire any rights against the Department on a third party beneficiary theory or any others.

(7) Require each subcontractor to notify its subcontractors and suppliers, in writing, that their right of recovery against the bond of the Prime Contractor for failure of payment may not be exercised unless the Prime Contractor is notified of the claim within ninety (90) days from the last performance of labor or provision of materials; and,

(8) Obligate each subcontractor to specifically consent to all provisions of Article 6.

6.3: No Contractual Relationship Between Department and Subcontractor. Nothing contained in the Contract Documents creates any contractual relation between the Department or the Professional and any subcontractor, sub-subcontractor or supplier.

6.4: Payment to Subcontractors. Performance by a Subcontractor in accordance with the provisions of the contract entitles the Subcontractor to payment from the party with which the Subcontractor has contracted. For purposes of this section, the contract between the Contractor and Subcontractor is presumed to incorporate the terms of the contract between the Contractor and the Department.

6.5: Contractor Disclosure of Due Date for Progress Payments from Department. The Contractor shall disclose to a Subcontractor, before a subcontract is executed, the due date for receipt of progress payments from the Department. If the Contractor fails to accurately disclose the due date to a Subcontractor, the Contractor must pay the Subcontractor as though the Department has paid the Contractor within 45 days of receipt of its application for payment. This section does not apply to a change in due dates because of conditions beyond the Contractor’s control, including, but not limited to, design changes, change orders or delays in construction due to weather conditions.

6.6: Time for Subcontractor Payment. When a Subcontractor has performed in accordance with the provisions of the contract, the Contractor shall pay to the Subcontractor, the full or proportional amount received for each Subcontractor’s work and material, based on work completed or services provided under the contract, within 14 days of receipt of a progress payment.

6.7: Interest on Subcontractor Payments. If any progress payment is not made to a Subcontractor by the due date the Contractor shall pay to the Subcontractor, in addition to the amount due, interest as computed at the rate determined by the Secretary of Revenue for interest payments on overdue taxes or the refund of taxes as provided in Sections 806 and 806.1 of the

Act of April 9, 1929 (P.L. 343, No. 176), known as “The Fiscal Code,” and any subsequent amendments to those sections.

6.8: Deficiency Items. The Contractor may withhold payment from any Subcontractor responsible for a deficiency item. The Contractor shall pay any Subcontractor according to the provisions of this section for any item which appears on the application for payment and which has been satisfactorily completed.

6.9: Notification of Deficiency Item. If a Contractor withholds payment from a Subcontractor for a deficiency item, it must notify the Subcontractor or Supplier and the contracting body of the reasons within 15 calendar days of the date after receipt of the notice of the deficiency item from the owner.

6.10: Failure of Department to Make Progress Payment. If the Department fails to issue an approved Application for Payment for any cause which is the fault of the Contractor and not the fault of a particular subcontractor, the Contractor shall pay that subcontractor, upon demand made by the subcontractor at any time after the approved Application for Payment should otherwise have been issued, for its work to the extent completed, less the retained percentage.

6.11: Insurance Receipts. The Contractor shall pay each subcontractor a just share of any insurance moneys received by the Contractor under Article 9, and shall require each subcontractor to make similar payments to its sub-subcontractors.

6.12: Percentage of Completion. The Department may, on request, furnish to any subcontractor, if practicable, information regarding percentages of completion certified to the Contractor on account of work done by such subcontractor.

6.13: No Obligation on Part of Department to Pay Subcontractor. Neither the Department nor the Professional shall have any obligation to pay, or to see to the payment of, any moneys to any subcontractor except as may otherwise be required by law.

6.14: Subcontractor Responsibility. If the Contractor enters into any agreements under this Contract with Subcontractors or suppliers, which are currently suspended or debarred by the Commonwealth, or who become suspended or debarred by the Commonwealth during the term of this Contract or any extensions or renewals of it, the Department may require the Contractor to terminate such Contract.

ARTICLE 7: SCHEDULE

7.1: Time of the Essence. All time limits stated in the Contract Documents are of the essence.

7.2: Commencement of Off-Site Work. The Date of Commencement of off-site work is the date upon which the last Commonwealth official who is required to execute the contract, executes it.

7.3: Initial Job Conference. The Initial Job Conference will be held within thirty days from the effective date of the contract.

7.4: Commencement of On-Site Work. On-site work will commence within ten days after the Initial Job Conference.

7.5: Contract Completion Date. The Contractor shall carry the Work forward expeditiously with adequate forces and shall complete it no later than the Contract Completion Date.

7.6: Progress Schedule. Within seven days of the effective date of the Contract, the Lead Contractor on the project shall furnish each separate Prime Contractor a schedule of the proposed prosecution of the work under its Contract. Within seven days of receipt of the Lead Contractor's schedule, each separate Prime Contractor shall submit to the Lead Contractor a schedule of the proposed prosecution of the work under its respective Contract. The Lead Contractor shall prepare and submit to the Professional and the Department, within thirty days of the effective date of the Contract the completely integrated progress chart, signed by all Prime Contractors, indicating their approval, and showing in detail to the satisfaction of the Professional and the Department, the proposed coordinated dates for the performance of each part of the work under each contract on the project. In no event shall any activity, indicated on the integrated progress chart exceed a 20 day duration. In the event that the Department, for any period after the commencement of on-site work, grants an extension of time to any Prime Contractor, the Lead Contractor may be required by the Department to prepare a revised integrated progress chart and provide copies to all Prime Contractors. All Prime Contractors are required to provide the Lead Contractor with information necessary to create the revised integrated schedule. If a revised integrated progress chart is requested, the Lead Contractor must send the revised integrated progress chart, signed by all Prime Contractors, within ten days of the approval of the extension of time. If the time limits set out in this section are not met, or the Contractors are unable to reach agreement on the integrated progress chart, the Department will prepare the schedule which will be adhered to by all contractors. All costs incurred by the Department in preparing the schedule

will be assessed to the Contractors on a pro rata share by credit change order.

7.7: Completion of Work in Order Stated. The Contractor shall complete parts of the work in the order stated in the specifications or as indicated in the Progress Chart. The Department may require the Contractor to supply, at no cost to the Department, additional forces, equipment, tools and materials and/or provide for an increase in working hours; and/or increase the number of working days per week in order to keep up with the Progress Chart. If the Contractor refuses or fails to proceed as directed by the Department, the Department may find the Contractor in breach of its Contract and/or declare the Contractor in default.

7.8: Milestones. With the Progress Chart submitted to the Department, the Lead Contractor shall submit construction progress Milestones for the Project. Milestones not completed on schedule will require Recovery Plan from the Contractors. The Contractor's responsibility for the Milestones and Recovery Plans is as follows:

(1) SCOPE - With the Progress Chart submitted to the Department for its approval, the Lead Contractor shall submit construction progress Milestones for the project. A Milestone is to signify the completion date of a specific activity of one or more contracts that is significant to completing the project on schedule. The Lead Contractor is to fully consider the sequence of operations, time estimates and other scheduling influences of all the Contractors when establishing the Milestones. The Milestones must be in agreement with the activities shown on the Progress Chart. Each Contractor must show at least one Milestone in each month of the scheduled construction period. By signing off on the Progress Chart the Contractors are also agreeing to the Milestones set forth on the schedule. The Milestones must be signed by all Prime Contractors, indicating their agreement with them.

(2) RECOVERY PLAN - The Lead Contractor, acting in concert with the other Prime Contractors, must furnish to the Department, the Professional and the other Prime Contractors, a Recovery Plan whenever a Milestone activity is not completed by the established date. The Recovery Plan is to be submitted to the Department within ten (10) days after the missed date. The Recovery Plan shall explain why the Milestone was missed and shall detail how the work progress can be brought back on schedule using additional shifts, overtime, additional manpower, concurrent operations, or other means available to the Contractors.

(3) UPDATES:

a) The Milestones shall be updated and adjusted within ten (10) days after each instance an Extension of Time is granted. If a Recovery Plan, accepted by the Department, requires modification of any future Milestone, the Progress Charts and Milestones must be revised accordingly. The Milestones shall be updated and adjusted each time the Progress Charts are revised so that the two instruments remain coordinated.

b) The progress of adjusting schedules by a Recovery Plan does not constitute approval of requests for Extensions of Time and does not replace the process of seeking Extensions of Time in accordance with Paragraph 7.9, which provisions will be strictly enforced. In supporting timely filed requests for Extensions of Time, the Contractors must submit, through the Lead Contractor, proposed Milestone schedules with and without the asserted delay.

(4) ACCEPTANCE - The Department's acceptance of the Milestones and Recovery Plan does not relieve the Contractors of the responsibility for the accuracy of the schedules and for the Contractor's obligations to meet the contractual completion date. Neither does the acceptance constitute approval or warranty of the Contractor's means and methods of construction. The Department reserves the right to review any recovery plan to determine if it satisfies the integrated progress schedule. If it does not the Department may prepare a recovery schedule to which the contractors must adhere. The costs incurred by the Department in preparing the recovery schedule will be assessed to the Contractors on a pro rata basis by credit change order.

7.9: Delays and Extensions of Time. If the Contractor is delayed at anytime in the progress of the work by any act or neglect of the Department or the Professional, or by any employee of either, or by changes ordered in the work, by labor disputes, fire, unavoidable casualties, or by delay due to suspension of work, as provided in Sections 12.1 through 12.5, or by any cause that the Department determines may justify the delay, then the Contract time may be extended, by the approval of the Department, of an Extension of Time for such reasonable time as the Department may determine, in accordance with Section 7.10. The Department will respond to the request for Extension of Time within forty-five days of its receipt.

7.10: Requests for Extensions of Time. All requests for Extensions of Time shall be made to the Department in writing on the form provided by the Department for requesting Extensions of Time, in accordance with the Administrative Procedures. All such requests must be filed within ten days of the end of the event or issue, which caused the alleged delay.

7.11: Effect of Grant of Extensions of Time on other Contractors. In no event will the granting of an Extension of Time to one Contractor automatically entitle any other prime contractor to an Extension of Time.

7.12: Recovery of other Damages. This Section does not exclude the recovery of damages by either party under other provisions of the Contract Documents.

ARTICLE 8: SUBMITTALS

8.1: Submittals. Contractors shall submit all necessary submittals to the Professional in accordance with a priority submittal schedule established by the Professional and the Contractors. The priority submittal schedule shall be determined no later than the first Job Conference held after the Initial Job Conference.

8.2: Required Drafting. When drafting is required, transparent reproductions of shop drawings (one of each drawing) shall be submitted by the Contractor during the checking period prior to the required submittal and within the time period that is established in the submittal schedule (see Paragraph 8.1), in order to enable the Professional to make corrections in pencil, reproduce them for its records, and return for correction of the original shop drawing tracings. Contractor shall include in its submittal one line print of each transparency for the Professional to keep as a record. Until shop drawings are approved by the Professional as being in compliance with the Contract Documents, the Contractor shall resubmit them in the manner last marked for correction. When shop drawings are noted "approved" for compliance with Contract Documents by the Professional, the Contractor shall have ten (10) sets of final shop drawings printed and furnished to the Professional. Where no special drafting is involved, such as cuts of standard equipment, catalog cuts, and other matter so printed in quantity, the printed matter may be submitted instead of the transparencies.

8.3: Variations from Contract Documents. The Contractor shall review, stamp with its approval and submit, in accordance with the submittal schedule established by the Professional and the Contractor, in orderly sequence so as to cause no delay in its work or in the work of any other Contractor, all submittals required by the Contract Documents or required subsequently by

the Professional for modifications. Submittals shall be properly identified as specified, or in such manner as the Professional may require. If the submittals show variations from the Contract requirements, because of standard shop practice or other reason, the Contractor must make specific mention of such variations on the submittal and in its letter of submission. Such variations are accepted only when specifically approved by the Professional. If mention of variations is not made, the Contractor will not be relieved of the responsibility for executing the work in complete conformity with the Contract, even though the shop drawings, or samples have been approved.

8.4: Contractor Representations. By approving and submitting submittals, the Contractor represents that it has determined and verified all field measurements, field construction criteria, materials, catalog numbers and similar data, or will do so, and that it has checked and coordinated each shop drawing and sample with the requirements of the work and of the Contract Documents.

8.5: Professional Review of Submittals. The Professional will review and approve submittals within fourteen days of the submission dates established by the submittal schedule, unless a different period of time is approved by the Professional and the Department. The fourteen day period is the time from receipt of the submittal by the Professional to the time of return of the submittal by the Professional. The Professional's review and approval is only for conformance with the design concept of the project and with the information given in the Contract Documents. The Professional's approval of a separate item does not indicate approval of an assembly in which the item functions.

8.6: Contractor Corrections to Shop Drawings. The Contractor shall make any corrections required by the Professional and shall resubmit the required number of corrected copies of shop drawings or new samples until approved. The resubmission shall be acted upon by the Professional within ten (10) days of its receipt. When resubmitting submittals, the Contractor shall direct specific attention to any revisions made, other than the corrections requested by the Professional on previous submissions, by noting such revisions on the resubmitted submittals.

8.7: Affect of Professional Approval. The Professional's approval of shop drawings or samples does not relieve the Contractor of responsibility for any deviation from the requirements of the Contract Documents, unless the Contractor has informed the Professional in writing of such deviation at the time of submission, has noted the deviation on the submittals, and the Professional has given written approval of the specific deviation. The Professional's approval also does not relieve the

Contractor from responsibility for errors or omissions in the submittals.

8.8: Approval Required before Commencement of Work. No portion of the work requiring a submittal shall be commenced until the submittal has been approved by the Professional. Any work commenced by the Contractor prior to final approval of the submittals by the Professional is performed by the Contractor at its own risk.

8.9: Submittal Schedule. Each Prime Contractor shall prepare and submit to the Lead Contractor, along with the Progress chart prepared in accordance with 7.6, a submittal schedule showing all items requiring submission. The submittal schedule shall be prepared in accordance with paragraph 8.13 "Initial Schedule." This submittal schedule shall then be integrated by the lead Contractor and tied to the logic of activities in the project schedule.

8.10: Drawings of Component Items. Drawings of component items forming a system or that are interrelated shall be correlated and submitted concurrently. Certifications to be submitted with the pertinent drawings shall be so scheduled.

8.11: Required Format. The Submittal Schedule shall be submitted in a format as prescribed by and to the level of detail required by the Administrative Procedures.

8.12: Initial Schedule. The Prime Contractor's initial Submittal Schedule shall include the following as a minimum:

(A) Submittal breakdown by Specification Section number and division;

(B) Scheduled date for initial submittal of item; and

(C) Days required after return of an approved submittal to order, fabricate and deliver the specific item to the site.

8.13: Contractor Solely Responsible to Properly Schedule. Neither the Department nor the Professional will be responsible for failure of the Contractor to properly schedule the process of material/product design, submittal, review, fabrication, delivery and storage/installation.

8.14: Addition of Items to Schedule. The Department may require the Contractor to add and/or delete items on the Submittal Schedule at any time.

8.15: Approved Submittal Schedule Part of Contract. The approved Submittal Schedule will become a part of the Contract and the Contractor must comply with it. The Contractor shall revise and/or update the Submittal Schedule monthly to take into account all changes and coordinate with the Project Schedule. Each such revised edition and/or revision to the Submittal Schedule shall be resubmitted to the Department for approval.

8.16: Approval of source of Material and Subcontractors. Contractor shall submit on Department form, fifteen days of the effective date of the Contract, for contracts up to and including $1,000,000, and within forty-five days on contracts above $1,000,000, the names and addresses of all manufacturers, producers, and subcontractors or other sources of each item of material or equipment to be used on the job, except those specifically excluded in the specifications, and shall indicate on the form the quality of such material and equipment.

ARTICLE 9: PROTECTION OF PROPERTY, INSURANCE AND INDEMNIFICATION

9.1: Safety Precautions and Programs. The Contractor is responsible for initiating, maintaining and supervising all safety precautions and programs required under its portion of the work.

9.2: Safety of Persons and Property. The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

(1) All employees on the work, and all other persons who may be affected thereby;

(2) All the work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Contractor or any of its subcontractors or sub-subcontractors; and

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

9.3: Compliance with Safety Laws. The Contractor shall comply with all applicable laws, ordinances, rules, regulations and orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. The Contractor shall erect and maintain as required by existing conditions and progress of the work, until the acceptance of the completion of its portion of the project,

all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities.

9.4: Explosives. If the use of explosives and other hazardous materials or equipment is necessary for the prosecution of the work, the Contractor shall observe the utmost care, performing such work with experienced personnel and in accordance with all Federal, State, local, Departmental and institutional regulations, so as not to endanger life or property. Rock encountered within a minimum of five (5) feet of pipelines or buildings shall be removed without blasting. All explosives shall be stored in a secure and safe manner, in strict conformity with all Federal, State and municipal regulations and all such storage shall be marked clearly, "Dangerous-Explosives" and shall be in the care of competent watchmen at all times. The Contractor shall provide insurance in accordance with the special insurance provision in these General Conditions relating to "Blasting".

9.5: Remediation of Damages. All damages or loss to any property referred to in Section 9.2 caused in whole or in part by the Contractor, any subcontractor, any sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, shall be remedied by the Contractor, except damage or loss attributable to faulty drawings or specifications or to the acts or omissions of the Department or Professional or anyone employed by either of them or for whose acts either of them may be liable, and which damage or loss is not attributable to the fault or negligence of the Contractor.

9.6: Site Safety Officer. The Contractor shall designate a responsible member of its organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent, unless otherwise designated in writing by the Contractor to the Department and the Professional.

9.7: Loads. The Contractor shall not load or permit any part of the work to be loaded so as to endanger its safety.

9.8: Emergencies. In any emergency affecting the safety of persons or property, the Contractor shall act to prevent threatened damage, injury or loss. Any additional compensation or Extension of Time claimed by the Contractor on account of emergency work shall be determined as provided in Sections 10.1 through 10.10 for changes in the work.

9.9: Contractor's Liability Insurance. The Contractor, during the progress of the work and until Final Inspection, or upon completion of the entire contract, shall purchase and maintain such insurance as will protect it from claims set forth below which may arise out of or result from the Contractor's operations under the Contract, whether such operations by itself or by any subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable:

(1) Claims under Worker's Compensation Disability Benefit and other similar employee benefit Acts;

(2) Claims for damages because of bodily injury, occupational sickness or disease, or death of its employees, and claims insured by usual personal injury liability coverage;

(3) Claims for damages because of bodily injury, sickness or disease, or death, of any person other than its employees, and claims insured by usual personal injury liability coverage; and

(4) Claims for damages because of injury to or destruction of tangible property including loss of use resulting therefrom.

9.10: Insurance Limits. The insurance required by Section 9.9 shall be written for not less than any limits of liability specified in Section 9.12, or required by Law, and shall include contractual liability insurance as applicable to the Contractor's obligations under Sections 9.16 through 9.18. The insurance shall also name the Commonwealth of Pennsylvania as an additional insured as its interests may appear.

9.11: Certificates of Insurance. Certificates of Insurance acceptable to the Department shall be filed with the Department prior to the commencement of on site work. These certificates shall contain a provision that coverages afforded under the policies will not be canceled or changed until at least ninety (90) days written notice has been given to the Department.

9.12: Comprehensive General Liability and Automobile Liability Insurances. The Contractor's comprehensive general liability insurance and automobile liability insurance required by Section 9.10 shall be in an amount not less than $1,000,000 for injuries, including accidental death, to any one person and subject to the same limit for each person, and in an amount not less than $2,000,000 each occurrence. The Contractor's property damage liability insurance shall be in an amount not less than $2,000,000 each occurrence. The Contractor shall either:

(1) Require each of its subcontractors to procure and to maintain during the life of its subcontract, subcontractors' comprehensive general liability, automobile liability, and property damage liability insurance of the type and in the same amounts as specified in this subsection; or

(2) Insure the activity of its subcontractors in its own policy. The Contractor's and its subcontractors' liability insurance shall include adequate protection against the following special hazards, when required:

BLASTING $1,000,000

The Prime Contractor must submit to the Department, within ten days from the Initial Job Conference, and prior to the beginning of on site work, evidence that all subcontractors and sub-subcontractors are covered by insurance.

9.13: Property Insurance. The Contractor, during the progress of the work, and until Final Inspection, or upon completion of the entire Contract, shall maintain insurance on all insurable work included in the Contract against loss or damage by fire and lightning and those perils covered by the extended coverage endorsement. Insurable work includes work both inside and outside of any building being constructed. The insurance, which must include an installation floater which covers all risks, must be in the names of the Department and the Contractor as their respective interests may appear, in full insurable value thereof as will fully protect the interests of the Department and the Commonwealth, the Contractor, subcontractors, and sub-subcontractors. The Contractor shall submit to the Department for its approval all items it deems to be uninsurable.

9.14: Risk to Construction Work. The risk of damage to the construction work due to the perils covered by the said fire policy with extended coverage, as well as any other hazard which might result in damage to the construction work, is that of the Contractor and surety, and no claims for such loss or damage will be recognized by the Department, nor will such loss or damage excuse the complete and satisfactory performance of the Contract by the Contractor.

9.15: Unacceptable Surety or Insurance Company. Should any surety on the Bonds or insurance company providing the required coverage become unsatisfactory to the Department, the Contractor must promptly furnish such additional security or insurance coverage as may be required to protect the interest of the Department. The Contractor shall, from time to time, furnish the Department, when requested, satisfactory proof of coverage of each type of Bond and/or insurance required. Failure to comply

with this provision shall result in the cessation of the work, and shall be sufficient grounds to withhold any further payments due the Contractor and/or to declare the Contractor in default.

9.16: Indemnification. The Contractor shall indemnify and hold harmless the Department and the Professional and their agents and employees from and against all claims, damages, losses and expenses, including attorneys' fees arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense: (1) is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property, including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

9.17: Indemnification Not Limited by Employee Benefits Acts. In any and all claims against the Department or the Professional or any of their agents or employees by any employee of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligations under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under Worker's Compensation Acts, Disability Benefit Acts or other employee benefit Acts.

9.18: Indemnification does not cover Professional's Actions. The obligations of the Contractor under this Section shall not extend to the liability of the Professional, its agents or employees arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (2) the giving of, or the failure to give, directions or instructions by the Professional, its agents or employees, provided such giving, or failure to give, is the primary cause of the injury or damages.

ARTICLE 10: CHANGES IN THE WORK

10.1: Changes. The Department, 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 being adjusted accordingly. All such changes in the Work will be authorized by change order. The Prime Contractor agrees that payment under any method noted within this Article, will be the exclusive compensation for such addition, deletion, or other revision to the original Contract including any and all costs associated with acceleration,

stacking and resequencing of forces required by the change to maintain the Project Schedule. If it is not possible to complete the work within the Project Schedule by acceleration, stacking or resequencing, the Contractor must request an extension of time pursuant to Article 7.

10.2: Changes Only by Change Order. A Change Order is a written order to the Contractor, signed by the Department, and issued after the execution of the Contract, authorizing a change in the Work or an adjustment in the Contract sum or the Contract time. The Contract sum may be changed only by Change Order.

10.3: Cost of Change Order. The cost to the Department resulting from a change in the Work shall be determined in one or more ways in accordance with this Section, at the option of the Department:

(A) By a detailed cost breakdown properly itemized (the breakdown shall include size, quantity, type, subcontractors, etc., and may include a maximum of fifteen percent (15%) markup to labor costs for overhead and profit and a maximum of ten percent (10%) markup to subcontractors, material and equipment costs for overhead and profit);

(B) By unit prices stated in the bid proposal, specifications, or from prices agreed upon in the contract breakdown sheet; or

(C) By force account.

10.4: Value of Credit Change Order. The credit to the Department resulting from a change in the Work shall be determined in one or more of the following ways, at the option of the Department:

(A) By a detailed cost breakdown properly itemized (the breakdown shall include size, quantity, type, etc.) The credit must include credit for overhead on deleted work;

(B) By unit prices stated in the bid proposal, specifications, or from prices agreed upon in the contract breakdown sheet.

10.5: Disagreement as to Cost or Credit. If the Department and the Contractor cannot agree as to the cost or credit to the Department resulting from a change in the Work, said cost or credit shall be determined by the Department. The Contractor will proceed with the change order work under this Article if directed by the Department, and the cost may be

submitted by the Contractor to the Department when the Work is completed for a re-evaluation by the Department.

10.6: Force Account Change Orders. If none of the methods set forth in the "Change Orders" Section is utilized, the Department may direct the Contractor to proceed with the Work involved on a time and material (force account) basis, for which payment shall be as set out below:

(a) Labor. Hourly wage rate for all labor and foremen in direct charge of the specific operation shall be taken from the total column of the prevailing wage determination, which includes itemization of fringe benefits on wages to be paid by the Contractor. Other fringe benefits on wages over and above those included in the prevailing wage determination shall be listed separately and itemized, using percentages or hourly unit amounts. The following additional labor costs shall be itemized:

(i) Employer’s contributions for social security at the percentages legally required;

(ii) Unemployment taxes and contributions at the percentages legally required;

(iii) Worker’s Compensation Insurance at the policy percentage rate; and

(iv) Contractor’s Public Liability Insurance at policy rates, including additional blasting coverage when needed.

To the above labor cost may be added an amount not to exceed 15% for the Contractor’s overhead, general superintendence and profit. The additional bond costs directly attributable to the change order shall be added without the 15% markup.

(b) Materials. For all materials used the contractor shall receive the actual cost of such materials, including the six (6) percent Pennsylvania sales tax and freight charges as shown by original receipted bills (or copies thereof), to which may be added an amount not to exceed 10% for overhead, general superintendence and profit.

(c) Equipment. For any machinery, trucks, or equipment (exclusive of teamsters or operators or both), except small tools and equipment for which no rental is allowed, which it may be deemed necessary to use, the Department shall allow the Contractor the cost of renting such machinery, trucks or equipment, (which shall include fuel and lubricants) as are actually used in the performance of the

Work, to which may be added an amount not to exceed 10% for overhead, general superintendence and profit. If the Contractor owns the machinery, trucks, or equipment set out above, it may charge an appropriate rate for such machinery trucks or equipment which shall not exceed 60% of the normal rental rate.

(d) Subcontractors. Force account work may be performed by a subcontractor only when:

(i) The Contractor has obtained approval of the subcontractor from the Department; and

(ii) The Work will be performed by the Subcontractor in strict compliance with the General Conditions covering force account work. In such event, the Contractor shall receive the cost of any such contractor to which it may add an amount not to exceed 10% for overhead, general superintendence and profit.

10.7: Unit Prices set out in Bid. If unit prices are stated in the bid and subsequently agreed upon, and, if the quantities originally contemplated are so changed in a proposed change order, that application of the agreed unit price to the quantities of work proposed will create a hardship on the Department or the Contractor, the applicable unit prices shall be equitably adjusted by change order to prevent such hardship. The Contractor must provide evidence to the Department that a hardship exists before an adjustment will be made.

10.8: Concealed Conditions. In the performance of the work, should concealed conditions be encountered, which are unascertainable from the plans, Contract Documents, visits to the site and reasonable investigation, and, which are at variance with the conditions indicated by the Contract Documents; or should unknown physical conditions below the surface of the ground be of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract, be encountered, the Contract sum shall be equitably adjusted by change order upon claim by either party made within seven (7) working days after the first observance of the conditions. No adjustment shall be made to the Contract sum, however, for concealed conditions encountered during cutting and patching of work (see Section 5.20).

10.9: Claims for Additional Cost or Time. No claims for increased costs, charges, expenses, or damages of any kind, except as provided in the General Conditions, shall be made by the Contractor against the Department for any delays or hindrances from any cause whatsoever, including but not limited to strikes, walkouts or work stoppages during the progress of any

portion of the work. The Department may, however, compensate the Contractor for any such delays by extending the time for completion of the work, as provided in the Contract, which extensions shall constitute the exclusive remedy between the parties.

10.10: Minor Changes in the Work. The Department may order minor changes in the work not involving an adjustment in the Contract sum or an extension of the Contract time and not inconsistent with the intent of the Contract Documents. Such changes may be effected by written Field Order, as provided, or by other written order. Such changes are binding on the Department and the Contractor.

After an interpretation of the Contract Documents by the Professional, the Department may issue written field orders consistent with the Contract Documents without changing the Contract sum or Contract time. The Contractor shall carry out such Field Orders promptly.

10.11: Work Covered Contrary to Request. If any work is covered contrary to the request of the Department or Professional, it must, if required by the Department or Professional, be uncovered for its observation and replaced, at the Contractor's expense.

10.12: Uncovering of Work. If any other work has been covered which the Department or Professional has not specifically requested to observe prior to being covered, the Department or Professional may request to see such work, and it shall be uncovered by the Contractor. If such work is found to be in accordance with the Contract Documents, the cost of uncovering and replacement shall be charged to the Department by appropriate change order. If such work is found to be not in accordance with the Contract Documents, the Contractor shall pay such costs, unless it is found that this condition was caused by another Prime Contractor, as provided in Sections 4.3 and Sections 5.16 through 5.18. In that event, the Department shall pay the Contractor for such costs and require reimbursement of such costs from the responsible Prime Contractor.

10.13: Correction of Work Rejected by the Department. The Contractor shall promptly correct all work rejected by the Department or Professional as defective or as failing to conform to the Contract Documents, whether observed before or after substantial completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected work, including the cost of the Professional's additional services and any additional cost incurred by the Department and/or the requesting agency.

10.14: Correction of Work after Acceptance. If after the date of final completion and acceptance of all work performed under the Contract, any of the work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct it promptly after receipt of a written notice from the Department to do so, unless the Department has previously given the Contractor a written acceptance of such specific condition. The Department shall give such notice promptly after discovery of the condition.

10.15: Correction at no Cost to Department. All defective or non-conforming work under Sections 10.12 and 10.13 shall be promptly removed from the site, and the work shall be corrected to comply with the Contract Documents without cost to the Department.

10.16: Cost of Damage to Other Contractors Work. The Contractor shall bear the cost of making good all work of other Prime Contractors destroyed or damaged by such removal or correction.

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

10.18: Correction of the Work by the Department. If the Contractor fails to correct such defective or non-conforming work, the Department may correct it and charge the Contractor or its surety for the cost of correction.

10.19: Obligations of Contractor not limited by Section. The obligations of the Contractor under this section are in addition to and not in limitation of any obligations imposed upon the Contractor by special guarantees required by the Contract Documents or otherwise prescribed by Law.

10.20: Acceptance of Non-Conforming Work. If the Department elects to accept non-conforming work, it may do so instead of requiring its removal and correction. If non-conforming work is accepted, a change order shall be issued to reflect an appropriate reduction in the Contract sum, or, if the amount is determined after final payment, it shall be paid by the Contractor and/or the Contractor's surety.

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

ARTICLE 11: PAYMENTS AND COMPLETION

11.1: Schedule of Values. Within 45 days of the effective date of the contract and prior to the first Application for Payment, the Contractor shall submit for the Department's and the Professional's approval, a detailed Contract Breakdown Sheet, indicating a Schedule of Values of the Work. The schedule must aggregate the total Contract sum, divided so as to facilitate payments to subcontractors, in accordance with Sections 6.4 through 6.12, and be prepared in such form as specified by the Department and supported by such data required by the Department to substantiate its correctness. Each item in the Schedule of Values shall include its proper share of overhead and profit. When more than one building or structure is included in a project, each Prime Contractor shall submit a Contract Breakdown Sheet, indicating Unit Prices for all items of work within the separate buildings or structures. This schedule, when approved by the Department, will be used as a basis for the Contractor's Application for Payments. This schedule may also be used by the Department to determine the cost or credit to the Department resulting from the changes in the work.

11.2: Application for Progress Payments. During the progress of the work, in accordance with the Contract Documents, the Contractor shall prepare periodic estimates of the value of the work performed and shall submit to the Department itemized Applications for Payment on the form of the Department. The applications shall be supported by data, as required by the Department, substantiating the Contractor's right to payment.

The Professional and the Department will review the application for validity.

11.3: Stored Materials. If, upon the determination of the Department as to reasonableness, payments are to be made to the Contractor 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. Contractor shall remain responsible for all losses of materials and equipment, which remain under its custody and control, regardless of the exclusions in the insurance policies.

11.4: Contractor Warrants that Title to all Work Passes free of Liens. The Contractor warrants and guarantees that title to all work, materials and equipment covered by an Application for Payment, whether incorporated in the project or not, will pass to the Department upon the receipt of such payment by the Contractor, free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to in these Sections as "liens"; and that no work, materials or equipment covered by an Application for Payment was acquired by the Contractor, or by any other person performing the work at the site of furnishing materials and equipment for the project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

11.5: Neither Payment nor Occupancy Accepts Work not in Conformance with Contract Documents. No application for a progress payment, nor any progress payment, nor any partial or entire use or occupancy of the project by the requesting agency constitutes an acceptance of any work not in accordance with the Contract Documents.

11.6: Payments Withheld. The Department may decline to approve an Application for Payment in whole or in part if the Work has not progressed to the point indicated, or the quality and quantity of the work is not in accordance with the Contract Documents. The Department and Professional may also decline to approve any Applications for Payment, because of subsequently discovered evidence or subsequent inspections, which may nullify the whole or any part of any Application for Payment previously issued to such extent as may be necessary in their opinion to protect the Department from loss because of:

(1) Defective work not remedied;

(2) Claims filed or reasonable evidence indicating probable filing of claims;

(3) Reasonable doubt that the work can be completed for the unpaid balance of the contract sum;

(4) Damages to another Prime Contractor or Subcontractor;

(5) Reasonable indication that the work will not be completed within the contract time;

(6) Unsatisfactory prosecution of the work by the Contractor, or

(7) Failure of the Contractor to pay Subcontractors or suppliers. It is within the Department's discretion to withhold payment because of the Contractors failure to pay subcontractors or suppliers. The failure to withhold payment for this reason does not give rise to a cause of action on the part of the subcontractor or supplier.

(8) Failure of the Contractor to maintain insurance.

The Department will notify the Contractor of the reason for withholding payment within fifteen days of its receipt of the application for payment.

11.7: Payment Made when Grounds are Removed. When the grounds set out in Paragraph 11.6 are removed, payment shall be made for amounts withheld because of them.

11.8: Retainage. In computing the amount payable in accordance with this Article on any current Application for Payment:

(1) Six percent (6%) of the then total Applications for Payment shall be deducted and retained by the Department until fifty percent (50%) of the work called for by the Contract Documents has been satisfactorily completed and all Contract obligations have been met as determined by the Department.

(2) Upon completion of fifty percent (50%) of the work called for by the Contract Documents, the work having been satisfactorily completed and all Contract obligations having been met as determined by the Department, the retainage withheld by the Department shall be reduced to three percent (3%) of the original Contract sum.

11.9: Money Withheld Due to claims of one Prime Based on Delay of Another. In the event a dispute arises between the Department and any Prime Contractor, which dispute is based upon increased costs claimed by one Prime Contractor occasioned by delays or other actions of another Prime Contractor, additional retainage in the sum of one and one-half (1-1/2) times the amount of any possible liability may be withheld from the Prime

Contractor causing the additional claim until such time as a final resolution is agreed to by all parties directly or indirectly involved, unless the Prime Contractor causing the additional claim furnishes a Bond satisfactory to the Department to indemnify the Department against the claim.

11.10: Failure of Payment. If the Department fails to make payment to the Contractor within sixty days after receipt of the Application for Payment, the Contractor may file a claim under Section 14.3. Contractor is not entitled to stop work in any event, unless the Department exercises its right to suspend the work, as provided in Sections 12.1 through 12.3.

11.11: Occupancy. The Department may use or permit the Using Agency to use or occupy any completed or partially completed portions of the Work, whether or not the time may have expired for completing the entire work or said portions of work. Such use or occupancy shall not be deemed an acceptance of the portion of the work so taken or used. Prior to such use or occupancy, an inspection of the work to be occupied by the Using Agency shall be made by the Department and the Professional to determine if it is in conformity with the Contract. Any damage subsequent to the inspection due solely to the use and occupancy of the completed portion is not the responsibility of the Contractor.

11.12: Final Inspection. When the Contractor submits in writing to the Department a request for a Final Inspection and an application for final payment, final inspection will be made within 30 days of the receipt of the request for final inspection and application for final payment. If the work is substantially completed, the Professional will issue a certificate of final completion and a final certificate for payment and the Department will make payment in full within 45 days except as set out in this Article, less one and one-half times the amount required to complete any then-remaining uncompleted minor items, which amount shall be certified by the Professional. The certificate given by the Professional shall list in detail each uncompleted item and a reasonable cost of completion. Final payment of any amount withheld for the completion of minor items shall be paid upon completion of the items in the Certificate. The Contractor shall complete all items (items to be corrected and/or completed) within thirty (30) days after the date of Final Inspection or show just cause to the satisfaction of the Professional and the Department why they cannot be completed. If the Contractor does not complete the punch list items within thirty (30) days, or show just cause to the satisfaction of the Professional and the Department why they cannot be completed, the Department may correct those items and deduct the cost of completion from the amount retained.

11.13: When Work cannot be Completed through No Fault of Contractor. When, upon Final Inspection, items of work cannot be completed because of unseasonable considerations, such as bituminous paving, landscaping, etc., or, if the Department agrees that particular items need not be completed until a subsequent date, or, if the Department delays the final Application for Payment for any unreasonable length of time, the Department may agree to release payment to the Contractor, less one and one-half (1-1/2) times the dollar value of items on the punch list as mutually agreed upon by the Department and the Contractor, and less one and one-half (1-1/2) times the dollar value of uncompleted parts of items of the type described in this subsection.

11.14: Final Payment Not Due Until Conditions Met. Neither the final payment nor the remaining retained percentage becomes due until the Contractor submits to the Department:

(1) An affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the work for which the Department or its property might in any way be responsible, have been paid or otherwise satisfied;

(2) Statements of surety and the Contractor's certificate on forms satisfactory to the Department as to Contractor's payment of all claims for labor, materials, equipment rentals and public utility services; and

(3) If required by the Department, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens arising out of the Contract, to the extent and in such form as is designated by the Department.

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

11.15: Release of Funds due to Delay in Final Not Due to the Fault of the Contractor. If, after Final Inspection of the work, final completion is materially delayed through no fault of the Contractor, the Department shall, upon certification by the Professional, make payment of the balance due for that portion of the work fully completed and accepted. Such payment will not terminate the contract. If the remaining balance of work not fully completed or corrected is less than the retainage

stipulated in Section 11.8, and, if Bonds have been furnished as required, the Contractor must submit to the Department, prior to certification of the payment, the written consent of the surety to the payment of the balance due for that portion of the work fully completed and accepted. Such payment shall be made under the terms and conditions governing final payment, except that it does not constitute a waiver of any of the Department's claims against the Contractor.

11.16: Final Payment as Waiver of Claims. The making of final payment constitutes a waiver of all claims by the Department, except those arising from:

(1) Unsettled claims;

(2) Faulty or defective work or material;

(3) Failure of the work or material to comply with the requirements of the Contract Documents; or

(4) Terms of any special guarantees required by the Contract Documents.

11.17: Acceptance of Final Payment as Waiver of Claims. The acceptance of final payment by the Contractor constitutes a waiver of all claims by the Contractor.

ARTICLE 12: SUSPENSION

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

12.2: Resumption of Work. The Department may require a suspension of the work if, in its opinion, unforeseen conditions warrant such stoppage. When the Department directs resumption of the work, the Contractor shall resume full operations within a period of ten (10) days after the date of written notice to do so. The Department is not liable for any damage or anticipated profits on account of the work being suspended. Any work done by the Contractor during the period of suspension is its responsibility. The Contractor shall receive no payment for the work unless the construction is subsequently resumed and the work

done during the intervals of suspension can be utilized in the resumed work. Suspensions of work as outlined above shall not in themselves operate to extend the Contract date of completion. In accordance with Sections 7.9 through 7.11, requests for Extensions of Time shall be submitted in writing by the Contractor, setting forth its reasons for the extension.

12.3: Suspension of Work for the convenience of the Department. The Department may order the Contractor in writing to suspend all or any part of the work for such period of time as it may determine to be appropriate for the convenience of the Department. This Section does not apply under conditions enumerated in Sections 12.1 and 12.2.

12.4: Adjustment in Cost. If the performance of all or any part of the work is, for an unreasonable period of time, suspended by the Department, an adjustment shall be made for any increase in the cost of performance of this Contract (excluding profit) necessarily caused by such unreasonable suspension. The Contract shall be modified in writing accordingly. No adjustment shall be made under this clause for any suspension to the extent:

(1) That performance would have been so suspended by any other cause, including the fault or negligence of the Contractor; or

(2) For which an equitable adjustment is provided for or excluded under any other provision of this Contract.

12.5: Filing of Claim for Costs. No claim under this clause shall be allowed unless the claim, in an amount stated, is asserted in writing six months after the termination of such suspension.

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

ARTICLE 13: TERMINATION OF THE CONTRACT

13.1: Termination by the Department. The Department may, at any time and for any reason, terminate this Contract. In such case, the Contractor shall be paid (and shall accept payment) for that portion of the entire Contract actually satisfactorily performed to the date of termination, excluding, however, any loss of anticipated profits. Disputes as to the sum payable to

the Contractor shall be settled in accordance with the Provisions of Article 14.

13.2: Effect of Termination by Department. Such termination shall be effective in the manner and at the time specified in such notice and shall be without prejudice to any claims which the Department may have against the Contractor. Upon receipt of such notice from the Department, the Contractor shall immediately discontinue all work and the placing of all orders for materials and equipment, facilities and supplies in connection with the performance of this Contract. The Contractor shall cancel promptly all existing orders and terminate work under all subcontracts so far as such orders and work are chargeable to this Contract. The Contractor shall take such measures for the protection of the property of the Department as may be directed by the Department, upon termination of this Contract, as provided by this paragraph, full and complete adjustment and payment of all amounts due the Contractor arising out of this Contract as determined by an audit conducted by or for the Department, as soon as practicable after such termination shall be made as follows:

(1) The Department shall reimburse the Contractor for all costs incurred to date of termination, including reasonable overhead and expense for plant, made in the performance of this Contract, less amounts previously paid.

(2) The Department shall also reimburse the Contractor for all costs to which the Contractor has been subjected or is legally liable for by reason of the termination of this Contract, including reasonable costs related to cancellation of orders, termination of subcontracts, etc.

(3) The Department shall also reimburse the Contractor for the reasonable cost of providing protection of the property of the Department as directed by the notice of termination.

(4) The sum total of the payments made under this paragraph shall not exceed the total amount of the Contract, less payment previously made.

(5) Title to all property accruing to the Department by reason of the termination of this Contract shall immediately vest in the Department and the Contractor will execute and deliver to the Department all papers necessary to transfer title.

(6) Coincident with making final payment, the Contractor shall furnish the Department with a final release as provided in the Contract.

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

13.3: Contractor's Default. If the Contractor persistently or repeatedly refuses or fails to supply enough properly skilled workmen or proper materials, or persistently disregards Laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or fails to proceed as directed by the Department, or performs the work unsuitably, or neglects or refuses to remove materials or replace rejected work, or discontinues the prosecution of the work without approval of the Department, or otherwise is guilty of a substantial violation of a provision of the Contract Documents, then the Department may, without prejudice to any of its other rights or remedies, give the Contractor and its surety written notice that the Contractor has seven (7) days from the date of the Department's notice to cure the default set forth in the notice. Should the Contractor fail to cure said default within the specified time, the Department may terminate the Contract between the Department and the Contractor and may take possession of the site and of all materials, equipment, tools, construction equipment and machinery, which is owned by the Contractor, located on the property and may finish the work by whatever method it may deem expedient. In such case, the Contractor is not entitled to receive any further payment until the work is finished, at which time the Contractor shall be paid any excess remaining, in accordance with Section 13.4. The discretion to declare the Contractor in default is solely the Department's, and, no party, whether bound by Contract to the Department or attempting to raise a third party relationship, which this Contract specifically precludes, has standing to raise the failure of the Department to exercise its discretion, if default is the basis of a claim against the Department.

13.4: Unpaid Balance. If the unpaid balance of the Contract sum exceeds the cost of finishing the work, including compensation for the Professional's additional services and any other damages, which the Department has incurred in accordance with the Contract, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor or the surety or both shall pay the difference to the Department.

13.5: Surety Replacement of Contractor. If the Department terminates the Contractor under this article the surety will have thirty (30) days to replace the terminated Contractor with a Contractor which is acceptable to the Department.

13.6: Surety Failure to Provide Replacement Contractor. If the surety fails to provide an acceptable Contractor within thirty (30) days as set out in Section 13.5 the Department may contract with a contractor to complete the work in accordance with the contract documents.

13.7: Department's Right of Recovery. In any event the Department will hold the surety responsible for any additional cost incurred by the Department as a result of the termination including but not limited to delay cost, acceleration cost, direct cost and consequential and incidental cost incurred by the Department or any other Contractor.

ARTICLE 14: DISPUTES

14.1: Professional's and Other Interpretations. In the event of a dispute with the Professional's interpretation under Section 3.5, or, in the event of any other dispute, claim, question or other matter, the Contractor shall immediately refer the disputed item in writing to the Construction Regional Director and the Director of Construction of the Department for a determination. The determination will be rendered in writing within a reasonable time, after which the Contractor shall proceed with the work.

14.2: Interpretations Subject to Dispute Procedure. Such determination by the Construction Regional Director or the Director of Construction of the Department shall be subject to the claims procedure set forth in Section 14.3 hereof. The date of the determination by the Construction Regional Director or the Director of Construction is the date on which a claim accrues.

14.3: Disputes Between the Contractor and the Department. Any claim, dispute, question or other matter that the Contractor may have against the Department under this Contract, except as set forth in Section 14.4 hereof, is subject to the following procedure for its resolution:

(1) Any claim, dispute, question or other matter, which the Contractor may have against the Department under this Contract will be considered by the Deputy Secretary or his designee, if the Contractor files a written claim with the Deputy Secretary within six months after the date on which the claim accrued. No claim may be filed later than six months after it accrues.

(2) If the controversy is not resolved by mutual agreement, the Deputy Secretary will issue a decision in writing. The decision will:

(a) State the reasons for the action taken; and

(b) Inform the Contractor of its right to administrative and judicial review.

(3) A copy of the decision will be delivered to the Contractor by registered mail.

(4) The decision issued by the Deputy Secretary is final and conclusive unless the Contractor files a claim with the Board of Claims within thirty days of its receipt of the decision.

(5) If the Deputy Secretary does not issue a written decision within 120 days after the claim is filed, then the Contractor may proceed as if an adverse decision had been received. The 120 day period may be extended with the written consent of the Department and the Contractor.

(6) The Contractor shall carry on the work and maintain the Progress Schedule during the claims process, including Board of Claims proceedings, if any, unless otherwise agreed by it and the Department in writing.

14.4: Disputes or Actions Between Contractors. Should the Contractor, either itself or by its Subcontractor or Subcontractors or their respective agents, servants, or employees, cause damage or injury to the property or work of any Prime Contractor or Contractors, or by failing to perform its work (including work of its Subcontractor or Subcontractors) with due diligence, delay any Prime Contractor or Contractors, which suffer additional expense or damage as a result, the Department may, upon the receipt of a written request from the Prime Contractor who has suffered additional expense or damage withhold from the Contractor sufficient funds to cover the damages which have been incurred by the other Prime Contractor in accordance with Section 11.11 of these General Conditions. If the Contractor disputes the amount of the damages or that it is responsible for them, it may file a claim under Section 14.3 hereof. If it is determined that the Prime Contractor submitting the claim is entitled to payment, the Department will process a credit change order for the amount of the damages due to the other Prime Contractor, and it will process a change order to the other Prime Contractor in that amount. It is agreed by all parties that disputes or actions between Contractors concerning the additional expense or damage will not delay completion of the work, which shall be continued by the parties, subject to the rights hereinbefore provided. It is agreed by the parties to this contract (the Department as promisee and the Contractor as promissor) that the intent of this clause is to benefit the other Prime Contractors on the project or related projects and to serve as an indication of the mutual intent of the Department and the Contractor that this clause raise such other Prime Contractors to the status of third party beneficiaries only as to the terms and

conditions of Section 4.3, Sections 5.1 through 5.18 and Section 14.4. Any claim filed under this Section must be filed within sixty (60) days after the claim, dispute or other matter in question has arisen.

14.5: Arbitration of Claims between Contractors. At the Contractor's option, it may submit claims, disputes and other matters in question between Prime Contractors, which arise out of, or are related to this contract, or the breach thereof, as provided in Section 14.4, to arbitration, in accordance with the construction industry arbitration rules of the American Arbitration Association then in effect, unless the parties mutually agree otherwise. This agreement to arbitrate is in consideration of the fact that all other Prime Contractors agree to this same arbitration provision, as provided in each separate Prime Contract required for the construction of this project, and is specifically enforceable under the Prevailing Arbitration Law. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. If the Contractor chooses to submit the claim to arbitration, the Department shall not be a party to this arbitration nor shall such claim or dispute be subject to Board of Claims proceedings provided for in Section 14.3 hereof.

14.6: Notice of Demand for Arbitration. Notice of the demand for arbitration shall be filed in writing with the other Prime Contractors and with either the Philadelphia or Pittsburgh Regional Office of the American Arbitration Association. A copy of the demand shall be filed with the Professional and the Department. The demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. The Department shall not be a party to the claim, dispute or other matter in question, but shall be a witness in any arbitration at the request of any party to the arbitration.

ARTICLE 15: MISCELLANEOUS CONDITIONS

15.1: Photographs. The Lead Contractor, at its cost, shall furnish photographs of at least two (2) views of each building and other major features showing the progress of work each month and at the final completion of the project. Photographs shall be eight inches (8") by ten inches (10"), Black and White, glossy prints, unmounted. A description of the view and project number will be superimposed within each photograph. Two (2) copies of each photograph shall be delivered to the Department's Construction Inspector Supervisor on a monthly basis.

15.2: Project Sign. The Lead Contractor shall erect, at a prominent location, as selected by the Department, a six-foot by eight-foot (6'X 8') sign, well braced, and supported by 4"X 4" posts, identifying the project under construction. Sign board may be constructed from weatherproof plywood, hardboard, or other smooth face material that will weather and remain intact throughout the job. A three-inch (3") wood border shall frame the sign. The sign shall be placed with the eight-foot (8') dimension horizontal. The base color of the sign shall be white weatherproof flat paint with red border. Lettering shall be in fast blue block letters and shall conform to the following:

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

[ ] GOVERNOR (3" LETTERS MIN.)
[ ] SECRETARY (3" LETTERS MIN.)

PROJECT NO. D.G.S. [789-6] (3" LETTERS MIN.)
[PHYSICAL EDUCATION BUILDING] (4" LETTERS MIN.)
[INDIANA UNIVERSITY OF PENNSYLVANIA] (3" LETTERS MIN.)

[HARRY A. JOHNSON]...Professional (3" LETTERS MIN.)

[JOHN R. DOE]....GENERAL CONTRACTOR (3" LETTERS MIN.)
[JONES CORP.]....HEATING CONTRACTOR (3" LETTERS MIN.)
[JOHN B. SMITH]..PLUMBING CONTRACTOR (3" LETTERS MIN.)
[GEORGE BLACK]...ELECTRICAL CONTRACTOR (3" LETTERS MIN.)

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

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

15.3: Foundations for Mechanical Equipment. The heating, plumbing and electrical Contractors shall furnish and install foundations and supports for all equipment installed under their respective Contracts. Foundations and supports shall include isolation mounting for noisy and vibrating equipment. Each Contractor shall provide sufficient dowels or anchors in bases as required for equipment supplied under its Contract. Such foundations and supports shall not be those concrete slabs or that integral concrete construction noted and dimensioned on the architectural and structural drawings, which are considered the responsibility of the Contractor for General construction.

15.4: Sanitary Facilities. Unless sanitary facilities are provided by the using agency, the Lead Contractor shall, at its cost, provide and maintain in a clean and sanitary condition adequate and approved sanitary facilities in accordance with

O.S.H.A. requirements. All facilities shall be screened against insects. When directed by the Department, the Contractor shall dismantle and remove these facilities and disinfect as required. Portable chemical toilets approved by the Pennsylvania Department of Health are acceptable. Under temporary field conditions, provisions shall be made to assure not less than one toilet facility is available.

15.5: Sanitary Facilities After Lines Installed. As soon as soil lines and water lines have been installed inside the building by the Plumbing Contractor, it shall, at its cost, install two (2) lavatories and sufficient number of toilets according to the following table:

NUMBER OF EMPLOYEES	MINIMUM NUMBER OF FACILITIES
20 OR LESS	1
20 OR MORE	1 Water Closet and 1 urinal per 40 workers
200 OR MORE	1 Water Closet and 1 urinal per 50 workers

These shall be kept in working order by the Plumbing Contractor and in a clean and sanitary condition by the Lead Contractor.

15.6: Hoisting Facilities. The Contractor for General construction shall erect, maintain and operate at its cost, hoisting facilities. In the event hoisting facilities of the General Contractor are not available, each Prime Contractor must provide hoisting facilities for its own work. All hoisting facilities must comply with the safety regulations of the Department of Labor and Industry.

15.7: Temporary Ventilation. The Contractor shall provide temporary ventilation to remove from the structure any excessive humidity in enclosed portions of the work, resulting from its construction operations, so that the work may be carried on without interruption and under correct conditions, including required dryness for installation of the various materials. Any dangerous or noxious fumes or particles suspended in the air are the responsibility of the Contractor whose construction operations caused these conditions to exist. Temporary equipment used shall produce no hazard to the work or to any person in or near it. The Contractor shall furnish all such equipment, pay all costs for it and for its operation, including fuel and power supplies during operation both in and out of normal working hours. The Contractor shall remove the equipment when it is no longer required, or when so directed by the Department.

15.8: Interruption of Existing Services. Whenever it becomes necessary to interrupt existing services in use by the facility, such as sewer, water, gas and steam lines, and electric service, the Contractor responsible for the work shall continue its work on a twenty-four (24) hour basis until work is completed and the service restored, or at such alternate time required by the Department. Before beginning such work, the Contractor shall apply in writing to and receive approval in writing from the authorities of the requesting agency and the Construction Inspector Supervisor of the Department to establish a time when interruption of the service will cause a minimum of interference with the activities of the requesting agency. The request to interrupt the power must be submitted at least five days prior to the desired interruption.

15.9: Operation and Maintenance Instruction Manuals. The Contractor shall for its scope of work carefully compile, during the progress of the work, indexed operation and maintenance manuals to include methods of care and cleaning of all types of visible surface materials, both interior and exterior, and descriptions of all systems and equipment and methods of operations thereof. Descriptions shall give pertinent diagrams, identifying charts, color coding, connections, lubricating instructions, and single line and detailed wiring diagrams, using manufacturers' printed information where possible. Where manufacturers' printed information is not available, Contractor shall obtain written instructions prepared by subcontractors and sub-subcontractors. Contractor shall include names, addresses and phone numbers of all subcontractors and sub-subcontractors, and of service firms of each mechanical item, for the requesting agency's use after expiration of the guarantee period. At the time of final inspection, Contractor shall submit a rough draft of the manual in a loose-leaf binder for approval by the Professional and the Department. After approval and before final payment, Contractor shall furnish two (2) corrected, indexed, bound copies to the Professional to be turned over to the Department for issuance to the using agency.

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

15.11: No Estoppel or Waiver of Legal Rights. Neither the Department nor the Professional is precluded or estopped by the measurements or approved Applications for Payment made or given by the Department or the Professional or by any of their agents or employees, from showing the true and correct amount and

character of the work performed and materials and equipment furnished by the Contractor. The Department and/or the Professional may show, at any time, that any such measurements or approved Applications for Payment are untrue or incorrectly made in any particular, or that the work or materials, equipment or any parts thereof do not conform to the specifications and the Contract. The Department may reject the whole or any part of the aforesaid work or materials and equipment should the said measurements or approved Applications for Payment be found or be known to be inconsistent with the terms of the Contract, or otherwise improperly given. The Department may, notwithstanding any such measurements or approved Applications for Payment in accordance therewith, demand and recover from the Contractor, its surety, or both, such damages as it may sustain by reason of the Contractor's failure to comply with the terms of the specifications and the Contract, or on account of any overpayments made on any approved Applications for Payment. Neither the acceptance by the Department or the Professional or any of their agents or employees, nor any certificate approved for payment of money, nor any payments for, nor acceptance of the whole or any part of the work by the Department, not any Extension of Time, nor any position taken by the Department or its employees, operates as a waiver of any portion of the Contract or any power herein reserved by the Department or any right to damages. A waiver of any breach of the Contract will not be held to be a waiver of any other or subsequent breach.

15.12: Law of the Place. The Contract shall be governed by the Law of the Commonwealth of Pennsylvania.

15.13: Successors and Assigns. This Contract shall be binding on the parties hereto, their heirs, executors, administrators, successors and assigns, but it may not be assigned by the Contractor without the prior written consent of the Department.

15.14: Written Notice. Written notice is duly served if delivered in person to the individual or member of the firm or to an officer of the corporation for whom it was intended, or mailed to its post office box address, if any, or addressed to the Contractor at its place of business as set forth in this Contract. Wherever the term "notice" is used, such notices to be effective shall be in writing and, if to the Department, shall be mailed by Certified or Registered mail, postage and fees prepaid, or shall be delivered, in person, to the Director of Construction, the Department of General Services, 18th & Herr Streets, Harrisburg, Pennsylvania 17125.

15.15: Claims for Damages: Legal Relations and Responsibilities. Contracts covered by these General Conditions are not to be construed as being made for the benefit of any person or political subdivision not a party to this Contract, nor

shall this Contract be construed to authorize any person or political subdivision, not a party to this Contract, to maintain any lawsuit hereunder, nor shall this Contract be construed to constitute the basis for the maintenance of any lawsuit by any person, other than as provided in Section 14.4 or political subdivision not a party hereto.

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

15.17: Advertising. No advertising is permitted on any of the work area or adjacent area, except as approved by the Department.

15.18: Inclement Weather. Inclement weather, including but not limited to cold or freezing weather, is not an excuse for the stopping of work under the Contract. The Contractor shall use such methods of protection as may be necessary to continue the work throughout the period of inclement weather.

15.19: Federal and A.S.T.M. and Other Specifications. Reference to Federal, A.S.T.M. and other standard specifications references and designations means those in effect at the date of bid.

15.20: Job Conferences. Job Conferences may be held as often as required but shall be held at least biweekly and must be attended by all Contractors, or by a representative of the Contractor who is authorized to make all decisions and representations affecting the Contract and its progress on the project. The names of the authorized representatives of the Contractor shall be submitted to the Department at the Initial Job Conference. The Construction Regional Director or Construction Inspector Manager or Construction Inspector Supervisor, and the Professional shall also attend Job Conferences. The Construction Regional Director shall advise all concerned of the dates and times of Job Conferences, which shall be attended whether or not a particular Contract may be affected. A failure to attend is a violation of this Contract.

15.21: Standards of Quality. Where trade names, catalog number and manufacturers of material or equipment are specified, they are mentioned therein for the purpose of establishing a standard of quality, performance, and appearance, and for establishing a standard of competitive bidding. If the contractor wishes to utilize material or equipment that is of the same type, but manufactured by others than those named in the specifications, the Contractor shall certify that the material or the equipment is equal in quality, performance and appearance to that mentioned in the specifications. The Contractor shall submit to the Professional and the Department, subsequent to the Award of Contract, a request to install such material or equipment. The Contractor's request shall include a comprehensive description of the material or equipment proposed to be utilized as equal, including engineering, construction, dimension and performance data. Within thirty (30) days after receipt of the Contractor's request, the Professional will render a written determination to the Contractor, which is final. If the Contractor refuses or fails to proceed as directed by the Department, the Department may declare the Contractor in default. The Contractor may file a claim for additional costs resulting from this decision.

15.22: Substitution of Materials. Should the Contractor desire to furnish materials or equipment other than that which is specified, the Contractor shall submit to the Professional and the Department a comprehensive description of the material or equipment proposed for substitution, including engineering, construction, dimension, performance and appearance data, along with a statement of the cost involved. The Professional, with the approval of the Department, shall render a written determination to the Contractor. If the substituted material or equipment is approved, The Contractor is responsible for any and all costs incurred as a result of the substitution. If the cost of the substituted item is less than the specified item, the Department is entitled to a credit for the difference between the cost of the substituted item and the item specified.

15.23: Standard Specifications and Codes. Basic codes and regulations incorporated by reference, standard regulations and codes refer to editions in effect at the date of proposals, including current addenda or errata. The most stringent section of each code applies.

15.24: Storage and Stockpiling on Roofs. No materials of any type may be stored or stockpiled overnight on roofs - new or existing.

15.25: Suspension from Metal Roof Decks - New and Existing. No metal roof decks may be used for suspension of ductwork, conduit, ceiling systems, lighting fixtures or any other miscellaneous equipment. These components shall be

suspended from the structural members or a suspension system supported by the structural members. All concentrated loads must be approved by the Professional. If the concentrated loads are not approved, the Prime Contractor furnishing the equipment must provide acceptable means of distributing the load.

15.26: Cutting and Patching of Roof Systems. Unless otherwise specified, each Contractor is responsible for its own cutting and patching of existing roof systems necessitated by its work. The cutting and patching must be performed by a qualified contractor/subcontractor. The cutting and patching must maintain any current warranty or bond on the roofing, and, whether under warranty or not, must be done in accordance with the manufacturer's written directions.

15.27: Asphalt or Tar Kettles. Asphalt or tar kettles shall not be used inside of or on the roof of any building. Fired kettles shall not be left unattended. There shall be at least one portable fire extinguisher with a minimum 20-B:C rating within thirty feet of each fired kettle and one additional portable fire extinguisher with the same rating on the roof work area.

15.28: As-Built Drawings. At completion of work and prior to final invoicing, prepare and deliver to the Professional a complete set of contract prints, corrected with suitable markings to show all changes or variations from the original contract, including all items uncovered during the work and showing the details of the work as actually built. Show horizontal and vertical dimensional references of all concealed pipe, conduit and other lines and equipment.

15.29: Audit of Records. The Department or its designee may, at reasonable times and places, audit the books and records of the Contractor. The Contractor shall maintain books and records related to the Contract for a period of three years from the date of final payment under the prime contract. The Contractor shall include a requirement in contracts with subcontractors or suppliers that requires the subcontractor or supplier to maintain its records for the same length of time.

15.30: Personal Responsibility and Work Opportunity Reconciliation Act. Pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, all employers are required to report information on newly-hired employees to a designated state agency. The Commonwealth of Pennsylvania has designated the Department of Labor and Industry as that agency. For information concerning this requirement call 1-888-PAHIRES.

15.31: Millenium Compliance. The Contractor warrants that each hardware, software, and firmware product delivered (or service performed) under this contract shall be able to accurately process date data (including, but not limited to calculating, comparing, and sequencing from, into, and between the twentieth and twenty-first centuries, including leap year calculations, when used in accordance with the product documentation provided by the Contractor, provided that all listed or unlisted products (e.g. hardware, software, firmware, etc.) used in combination with such product properly exchange date data with it.

15.32: Prevailing Minimum Wage Predetermination. The Contractor is hereby notified that this Contract is subject to the provisions, duties, obligations, remedies and penalties of the Pennsylvania Prevailing Wage Act, 43 P.S. Sections 165-1 et seq., which is incorporated herein by reference as if fully set forth herein. In compliance with said Pennsylvania Prevailing Wage Act, the Prevailing Minimum Wage Predetermination is hereto attached and made part hereof as approved by the Secretary of Labor and Industry.

If a job classification is not covered by the Prevailing Wage Predetermination, the Contractor may not pay individuals in that classification less than the lowest rate for laborers, as set out in the predetermination.

15.33: Non-Discrimination Clause. The Contractor agrees that:

(1) In the hiring of employees for the performance of work under the contract or any subcontractor, no contractor, subcontractor or any person acting on behalf of the contractor or subcontractor shall by reason of gender, race, creed or color discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.

(2) No contractor or subcontractor or any person on their behalf shall in any manner discriminate against or intimidate any employee hired for the performance of work under the contract on account of gender, race, creed or color.

(3) The contract may be canceled or terminated by the Department, and all money due or to become due under the contract may be forfeited for a violation of the terms or conditions of this portion of the contract.