pennsylvania

DEPARTMENT OF GENERAL SERVICES

GENERAL CONDITIONS

FOR

DESIGN-BUILD CONTRACTS

2024 Edition

HARRISBURG, PENNSYLVANIA

GENERAL CONDITIONS
OF THE CONSTRUCTION CONTRACT

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GENERAL CONDITIONS
OF THE DESIGN-BUILD CONTRACT

ARTICLE 1: DEFINITIONS

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

1.1 **ADMINISTRATIVE PROCEDURES**: The Department of General Services' ("Department" or "DGS") construction procedures manual to be followed for various administrative functions.

1.2 **APPLICATION FOR PAYMENT (A.K.A. INVOICE OR INVOICE APPROVAL-PAY APPLICATION)**: The information submitted by the Contractor pursuant to the Administrative Procedure for Department's review and/or release of payment.

1.3 **BENEFICIAL OCCUPANCY**: The date upon which the Design-Build Contractor's Retained Professional (DBC's Retained Professional) certifies and the Department concurs that the Work is sufficiently complete, in accordance with the Contract Documents, so that the Client Agency may use, occupy or operate the Project as fit for the use for which it was intended. The Department, in its sole discretion, reserves the right to designate a portion of the Project for the DBC's Retained Professional's certification of beneficial occupancy.

1.4 **BI-WEEKLY:** An event occurring every two weeks.

1.5 **BRIDGING DOCUMENTS:** The documents that are part of the Request for Proposals that delineate the design intent, performance requirements, and design requirements of the Department. The Bridging Documents are included as Appendices and any other relevant parts of the Request for Proposal that define the requirements of that the DBC shall comply with.

1.6 **CHANGE ORDER:** A written order signed by the Department directing the Design-Build Contractor (DBC) to make changes that the Contract authorizes the Department to order. The change order may be either with the consent of the DBC or a unilateral order by the Department. The Contract Sum may only be changed by Change Order.

1.7 **CLIENT AGENCY**: This term refers to any executive agency, government agency, independent agency, state-affiliated entity, or state-related institution that will ultimately use the completed Project, which includes the Work covered by the construction contract. This term is referred to in the Commonwealth Procurement Code as "Using Agency" (62 Pa. C.S. § 103).

1.8 **COMMONWEALTH**: The Commonwealth of Pennsylvania.

1.9 **CONSTRUCTION MANAGER**: If the Department retains a Construction Manager (CM) at any point during the Project, the Construction Manager shall be the consultant retained by the Department to act as the Department's designee and authorized representative to manage the Project. If the Department does not retain a Construction Manager, any reference in the General Conditions to "Construction Manager" shall be interpreted to mean the Department's representative from the Bureau of Construction.

1.10 **CONSULTANT**: A specialist retained by the Department, the Construction Manager or the DBC's Retained Professional for the performance of its specialty.

1.11 **CONTRACT**: A written agreement consisting of the Contract Documents, as defined in Article

I of the Design Build Contract and executed by all parties in accordance with the Commonwealth Attorneys Act. The Contract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral. To the extent that any of these documents are amended by statute, the statutory language will control.

1.12 **CONTRACT BONDS**: The bonds required by the Contract Documents which must be executed by one or more surety companies legally authorized to do business in the Commonwealth of Pennsylvania including, but not limited to, bonds for the faithful performance of the contract and for payment of labor and material, as required by the Department.

1.13 **CONTRACT COMPLETION DATE**: The date calculated by adding the Contract Duration and any approved Extensions of Time to the Contract Start Date for the completion of the Work.

1.14 **CONTRACT DOCUMENTS**: The documents listed in Article 1 of the Design Build Contract. To the extent that any of these documents are amended by statute, the statutory language will control.

1.15 **CONTRACT DURATION**: The number of calendar days set forth in the Contract Documents for completion of the Work, also referred to as Contract Time.

1.16 **CONTRACT LIMITS**: The area designated on the Contract Documents as the limit of construction within which the DBC may perform the Work.

1.17 **CONTRACT START DATE**: For purposes of calculating dates for completion of the Work, this is the date upon which the Initial Job Conference is held for the Project.

1.18 **CONTRACT SUM**: The total amount payable by the Department to the DBC for the performance of the Work under the Contract Documents.

1.19 **DAYS**: Calendar days unless specifically stated otherwise in the Contract.

1.20 **DEFICIENCY ITEM**: Any work or activity, either performed or unperformed, which the Department will not certify as being performed in accordance with the Contract Documents.

1.21 **DEPARTMENT**: The Department of General Services of the Commonwealth of Pennsylvania, also known as “the Department” or “DGS”, or any authorized representative or designee, and is referred throughout the Contract Documents as singular in number.

1.22 **DEPARTMENT’S DESIGNATED REPRESENTATIVE**: The Department’s employee assigned to the Project from the Bureau of Pre-Construction to manage design and from the Bureau of Construction assigned to the Project to manage construction.

1.23 **DEPARTMENT OF LABOR AND INDUSTRY PLAN REVISION SUBMISSION:** The revised set of Construction Documents submitted by the DBC’s Retained Professional to the Department

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

1.24 **DESIGN BUILD CONTRACTOR (A.K.A. DBC)**: The person or organization identified as such in the Contract and is referred throughout the Contract Documents, as singular in number. Unless otherwise indicated, the Design Build Contractor (DBC) is the Contractor.

1.25 **DESIGN-BUILD CONTRACTOR'S RETAINED PROFESSIONAL (DBC'S RETAINED PROFESSIONAL)**: The licensed engineer(s) and/or architect(s) retained by the DBC to provide necessary design services under the DBC Contract. The term DBC's Retained Professional is referred to throughout the Contract Documents as if singular in number and means a person or firm and/or persons or firms that have contractual responsibility for all or any portion of the Project design.

1.26 **DIRECTOR OF CONSTRUCTION**: The Department's employee who is the administrative head of the Bureau of Construction of the Department.

1.27 **DIRECTOR OF DESIGN**: The Department's employee who is the administrative head of the Bureau of Design.

1.28 **E-Builder Enterprise Software (e-Builder).** The electronic software utilized on the Department projects during and after award of contract and throughout construction administration.

The Department, the DBC's Retained Professional, and the DBC will utilize the e–Builder for all Work and administrative duties after award of contract and throughout construction administration.

After award of contract and throughout construction administration, any and all notifications, requests, submittals, approvals, etc. between the Department, the DBC, the DBC's Retained Professional, and/or the Construction Manager (if a CM is assigned to the Project) shall be through the e-Builder system.

1.29 **EFFECTIVE DATE OF CONTRACT**: The date on which the last Commonwealth official who is required to execute the contract executes it.

1.30 **EXTENSION OF TIME**: An approval by the Department of additional calendar days to the contract duration.

1.31 **FIELD ORDER**: A record of a minor adjustment in the Work that results in no change in cost or duration of the Contract.

1.32 **FINAL INSPECTION**: A review of the Work conducted by the DBC's Retained Professional, when requested by the DBC, to determine whether the Project is substantially complete. If, as a result of this inspection, the Work is determined to be substantially complete, the DBC's Retained Professional generates a certificate of completion and a Punch List of uncompleted items and a reasonable cost of completion.

1.33 **LABOR & INDUSTRY**: The Commonwealth of Pennsylvania's Department of Labor & Industry also referred to as "L&I".

1.34 **LETTER OF INTENT**: A letter might be issued by the Department at the time of contract award if, in the Department's sole discretion, such letter is necessary on the Project. If issued, the DBC may rely upon the letter to initiate the scope of Work described in the letter before there is a fully executed contract with the Department and to incur costs in conducting the described scope of Work.

1.35 **MANUFACTURER**: A firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications and who receives compensation from the DBC, pursuant to the terms of a purchase order or invoice, to provide any material and/or any equipment to the Project. Nothing contained in the Contract Documents between the DBC and the Department creates any contractual relationship between the Department and any manufacturer. A manufacturer lacks privity of Contract to the Department and every manufacturer agrees that it neither acquires nor intends to acquire any rights against the Department on a third party beneficiary theory or any other theory.

1.36 **MILESTONE**: An indication on the Project Schedule that designates the start or completion of a significant design or construction activity

1.37 **MODIFICATION**: Amendments to the Contract, which can only be made by an approved Change Order, Field Order, or Extension of Time. Modifications can be made only after execution of the Contract.

1.38 **NOTICE OF DEFICIENCY**: A document to record non-conforming work, deficient work and/or schedule slippage.

1.39 **OFF-SITE WORK**: All Work that is not physically carried out within the Contract Limits.

1.40 **ON-SITE WORK**: All Work that is physically carried out within the Contract Limits.

1.41 **ORIENTATION MEETING**: The meeting scheduled, according to the Administrative Procedures, to familiarize the DBC and the DBC's Retained Professional with Departmental procedures and processes.

1.42 **OWNER** – References to Owner in this Request for Proposal shall refer to **either the Department of General Services or the Client Agency**. Where the context of the usage does not make it clear which is intended, the Proposer or DBC shall submit an RFI requesting clarification.

1.43 **POSTCONSUMER RECOVERED PAPER**: Any paper, paperboard and fibrous wastes from retail stores, office buildings, homes and so forth, after they have been passed through their end-usage as a consumer item including: used corrugated boxes, old newspapers, old magazines, mixed waste paper, tabulating cards and used cordage, as well as all paper, paperboard and fibrous wastes that enter and are collected from municipal solid waste.

1.44 **PROJECT**: The total Work to be performed by all the DBC under the Project Number.

1.45 **PROJECT SCHEDULE**: The Critical Path Method (CPM) schedule prepared as a result of the affirmative contractual obligation to coordinate the Work through the cooperative efforts of the DBC on the Project.

1.46 **RECORD DRAWINGS**: Terminology used by the Department to identify contract prints or drawings, corrected with suitable markings to show all changes or variations from the original contract drawings, including all items uncovered during the Work and showing details of the work as actually built, including but not limited to horizontal and vertical dimensional references of all concealed pipe, conduit and other lines and equipment and similar items. "Record Drawings" are not the same as the Department of Labor and Industry "Plan Revision" submission.

1.47 **RECOVERED MATERIALS**: Waste material and byproducts which have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process.

1.48 **REGIONAL DIRECTOR**: The Department's employee who manages the Department's construction employees within the geographical area of the Project.

1.49 **REQUEST FOR INFORMATION**: A written question submitted by the DBC to the Department seeking clarification of the Contract Documents.

1.50 **SAMPLES**: Physical examples furnished by the DBC to illustrate materials, equipment or workmanship, and to establish standards by which the work will be judged.

1.51 **SECRETARY**: The administrative head of the Department of General Services.

1.52 **SMALL BUSINESS**: Those Small Businesses that have registered with the Commonwealth and completed the self-certification process on the Department's web site.

1.53 **SMALL DIVERSE BUSINESS**: Department verified small Minority Business Enterprises (MBEs), Woman Business Enterprises (WBEs), Service-Disabled Veteran-Owned Small Business Enterprises (SDVBEs), Disability-Owned Business Enterprises (DOBE), or LGBT Business Enterprises (LGBTBE) or other business otherwise deemed disadvantaged by the Uniform Certification Program.

1.54 **SPECIFICATION**: A description of the physical or functional characteristics or the nature of a construction item, including a description of any requirement for inspecting, testing or preparing a construction item for delivery. The specifications are a part of the Contract Documents and must be interpreted in conjunction with the other Contract Documents, as specified further in the General Conditions.

1.55 **SUBCONTRACTOR**: A person or organization that has a contract with the DBC to perform any of the Work. The term subcontractor is referred throughout the Contract Documents as singular in number and means a subcontractor or its authorized representative.

1.56 **SUBMITTALS**: Administrative or technical information, including but not limited to drawings, diagrams, illustrations, schedules, performance charts, brochures, catalog data, and other data that are prepared by the DBC or any subcontractor, manufacturer, supplier, or distributor, and which illustrate some portion of the Work or how it fits in relation to other parts of the Work.

1.57 **SUBSTANTIALLY COMPLETE**: When the Work on the Contract is sufficiently completed in accordance with the Contract Documents and certified by the Department and the DBC's Retained Professional so that the Project or specified part(s) of the Project can be used, occupied or operated for its intended use. In no event shall a Project be certified as substantially complete until at least 90% of the Work has been completed and accepted by the Department and is capable of Beneficial Occupancy.

1.58 **SUB-SUBCONTRACTOR**: A person or organization that has a Contract with a subcontractor to perform any of the Work. The term sub-subcontractor is referred throughout the Contract

Documents as singular in number and means a sub-subcontractor or its authorized representative. The DBC, every subcontractor, and every sub-subcontractor agree that there is no privity of contract between the Department and any sub-subcontractor and that, to the extent set forth by law, the sub-subcontractor has no direct cause of action against the Department for any claim arising out of the Project.

1.59 **SUPERINTENDENT**: The DBC'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 DBC, for the prevention of accidents. The Superintendent shall have full authority to act on behalf of the DBC in relation to Project activities and associated work.

1.60 **SUPPLIER**: An individual, firm, partnership, association, corporation or other legal entity who receives compensation from the DBC, pursuant to the terms of a purchase order or invoice, to provide any material and/or any equipment to the Project. Nothing contained in the Contract Documents between the DBC and the Department creates any contractual relationship between the Department and any supplier. A supplier lacks privity of Contract to the Department and every supplier agrees that it neither acquires nor intends to acquire any rights against the Department on a third party beneficiary theory or any other theory.

A. Stocking Supplier: a firm that owns, operates, or maintains a store, warehouse, or other establishment, in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

B. Nonstocking Supplier: Nonstocking supplier does not carry inventory but orders materials from a manufacturer, manufacturer's representative or a stocking supplier. In order for a non-stocking supplier to receive credit, it must perform a useful business function by engaging in meaningful work (i.e., negotiating price; and determining quality and quantity; and ordering materials; and paying for the materials).

1.61 **UNIFORM CONSTRUCTION CODE (UCC)**: Pennsylvania's Uniform Construction Code (35 P.S. §7210.101 *et seq.*) that grants the Pennsylvania Department of Labor & Industry sole jurisdiction over state-owned buildings. A general description and important links can be found at www.dli.pa.gov and clicking on the Uniform Construction Code Link. The DBC is responsible for compliance as set forth in the UCC and these General Conditions.

1.62 **VETERAN BUSINESS ENTERPRISE**: Department verified Veteran-Owned Small Business Enterprises (VBEs) or Service-Disabled Veteran-Owned Small Business Enterprises (SDVBEs).

1.63 **WORK**: The construction and services required by Contract Documents, whether completed or partially completed, including all labor, materials, equipment and services provided or to be provided by a DBC to fulfill its obligations. The Work may constitute the whole or a part of the Project.

ARTICLE 2: EXECUTION, CORRELATION, INTENT, AND INTERPRETATIONS

2.1 **CONTRACT EXECUTION**. The Department and the DBC shall sign the Contract Documents. The DBC's Retained Professional shall seal all drawings. The licensed consultant(s) of the DBC's Retained Professional shall sign and seal for their part of the Work. No oral contract or conversation with any officer, agent, or personnel of the Department, or Client Agency, or with the DBC's Retained Professional, either before or after the execution of this Contract, shall affect or modify any of the terms or obligations of the Contract Documents.

2.2 **CONTRACT ADMINISTRATION**. The Department and the DBCs will use the e-Builder Construction Enterprise Software (e-Builder) for this Project. Any and all notifications, requests, submittals, approvals, etc. between the Department, the DBC, the DBC's Retained Professional, and/or the Construction Manager (if a CM is assigned to the Project) shall be through the e-Builder system. The DBC shall become familiar with and utilize the e-Builder system for all aspects of this Contract. Throughout the Contract Documents where it states to notify, submit, request, etc., another party, the DBC shall use the e-Builder system for such duty.

2.3 **CONTRACT INTERPRETATION**. The Contract Documents are complementary and what is required by any one of the Contract Documents is binding as if required by all. The intention of the Contract Documents is to include all labor, materials, equipment, services and other items or conditions necessary for the proper execution and completion of the Work. Work not covered under any heading, section, branch, class or trade of the specifications need not be supplied, unless it is required elsewhere in the Contract Documents or is reasonably inferable as being necessary to produce the intended results.

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

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

A. Addenda shall govern over all other Contract Documents, and subsequent addenda shall govern over prior addenda only to the extent modified.

B. Special Conditions shall govern over all specifications, General Conditions, and drawings.

C. Specifications and drawings shall govern over the General Conditions.

D. If there is a conflict regarding quantities or quality of products in the Contract Documents, the higher quantity or quality product shall be delivered.

E. **If there is a conflict between the contract drawings and the specifications, the specifications shall prevail.**

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

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

2.6 **CONTRACT ERRORS OR CONFLICTS**. If the DBC, in the course of construction, finds any conflict, error or discrepancy on or among the Contract Documents, such conflict, error or discrepancy shall be immediately referred in writing to the Department and the DBC's Retained Professional. The DBC's Retained Professional, with appropriate input from the Department, will review the matter and issue an interpretation to the DBC in writing within seven (7) calendar days after the DBC's Retained Professional receives the DBC's Request for Information.

2.7 **OWNERSHIP AND AVAILABILITY OF CONTRACT DOCUMENTS**. Unless otherwise provided in the Contract Documents, the e-Builder Enterprise Software (e-Builder) will be the electronic document repository for the Contract Documents. The drawings and specifications are available in e-Builder for download and printing by the DBC. All Contract Documents and any copies/prints made by the DBC are and shall remain the property of the Department.

2.8 **CONTRACT NOTIFICATIONS** Any and all notifications, requests, submittals, approvals, etc. between the Department, the DBCs, and the Construction Manager (if a CM is assigned to the Project) shall be through the e-Builder.

ARTICLE 3: THE DBC'S RETAINED PROFESSIONAL'S RESPONSIBILITIES AND SERVICES

3.1 **Relationship between the Department, DBC and Retained Professional.** The DBC's Retained Professional shall be a single entity under contract to the DBC and shall engage as subcontractors and/or consultants, qualified professionals as appropriate for all design, testing and related services required for the Project. As such the DBC has ultimate responsibility to the Department for the design and/or the DBC's Retained Professional's coordination of the work of multiple professionals utilized for different portions of the Work. The DBC's Retained Professional is responsible to the DBC and only the DBC may give instructions which bind the DBC's Retained Professional. Although the Department will obtain a copy of the fully executed contract between the DBC and the DBC's Retained Professional, the Department will not assume any privity or liability for the performance of the DBC/DBC's Retained Professional contract. The DBC is constructing the Project for the Department on behalf of the Client Agency in accordance with the Contract Documents. Neither the Client Agency nor the DBC's Retained Professional may change scope or direct that items be included in the design that will increase the Contract Amount. All requests for such changes must be submitted to the Department by either the Client Agency or the DBC.

3.2 **Consultants.** The DBC's Retained Professional's responsibilities include the coordination for all its subcontractors and/or consultants and in the several branches of the architectural and engineering professions.

3.3 **Representation as to Qualifications.** The DBC represents that the DBC's Retained Professional and all consultants, agents, servants, employees, officers and subcontractors possess and shall possess the required licenses and certifications, the experience, knowledge, and skills necessary to qualify them individually for the particular duties they perform. The DBC warrants that the DBC's Retained Professional shall perform the design in accordance with all engineering and architectural principles, practices and methods generally accepted as standards of the industry for projects similar in nature, size and complexity to this project. The Department may demand of the DBC, with written justification to the DBC's Retained Professional, the removal from the Project of any person employed by the DBC's Retained Professional who the Department deems to be insufficiently qualified for that portion of the Work or who is incompetent or guilty of misconduct.

3.4 **DBC's Retained Professional's Liability Insurance.**

A. The DBC's Retained Professional and any subcontractors and/or consultants of the DBC's Retained Professional that are required to provide sealed documents shall secure and maintain Professional Liability Insurance as specified in the RFP.

B. If the DBC's Retained Professional or any consultant is a Joint Venture, one DBC Retained Professional Liability Insurance policy covering the Joint Venture, or separate policies covering the individual joint ventures may be furnished. If separate policies covering the individual joint ventures are furnished, each policy must provide the minimum coverage for each occurrence as called for in the RFP and must together be equal to at least the aggregate amounts.

C. Alternately, the DBC's Retained Professional may be covered under the DBC policies as provided for in the RFP. The DBC is ultimately responsible for the Project design and any errors, omissions or other acts covered by professional liability insurance

and shall ensure that the DBC and the DBC's Retained Professional are adequately and appropriately covered by insurance.

3.5 **Coordination of Separate Subcontracts.** The DBC's Retained Professional shall coordinate the plans and Specifications for all of its subcontracts and/or consultants to insure against omissions, conflicts, overlaps or duplications of any items of work or materials on the Project.

3.6 **Selected Construction Management.** When the Department has determined, at any point in the design or construction phase, that a Construction Manager will be used to provide to the Department selected services, including but not limited to, cost estimating, scheduling, constructability review, value engineering, and construction administration, the DBC's Retained Professional shall generally cooperate with the Construction Manager. The DBC's Retained Professional shall promptly make available to the Construction Manager, in appropriate formats, the drawings, specifications and other information pertinent to the selected construction management services.

3.7 **Responsibility**. The DBC's Retained Professional is responsible for the compliance of the Contract Documents related to Design with all applicable permits, laws, regulations and ordinances of all commissions, agencies and governments, federal, state and local, insofar as they are applicable to, and have jurisdiction over, the Project. The DBC's Retained Professional shall make all required submittals to, and shall obtain all required approvals from, the applicable agency in a timely manner so as not to cause delays to the Project.

3.8 **Cooperation with Local Bodies.** During the design of the Project, the Retained Professional shall keep the local government informed about the Project and comply with any applicable requirements of local zoning, planning and supervisory bodies. If any of these requirements vary with the RFP and substantially increase the cost of the Project, or should any required approvals be withheld by the local bodies, the Retained Professional shall immediately notify both the DBC and the Department in writing of the issue.

3.9 **DBC's Retained Professional's Interpretation of Documents.** The DBC's Retained Professional is the initial interpreter of the requirements of the Contract Documents related to Design. The DBC's Retained Professional will, within seven (7) days after receipt of a written request, render in writing such interpretation and shall copy the Department on all such correspondence rendering an interpretation of the Contract Documents. All interpretations by the DBC's Retained Professional shall be consistent with the Contract Documents.

3.10 **DBC's Retained Professional's Review of Submittals.** The installing contractor or subcontractor must submit items to be incorporated into the Project for review to the DBC's Retained Professional. The DBC's Retained Professional will then review submittals as provided in these General Conditions. The DBC's Retained Professional shall cooperate with the Department to develop a list of approved shop drawings, approved descriptive data, approved catalogue cuts, and approved technical data to be submitted to the Department for review.

3.11 **Replacement of DBC's Retained Professional.** If the DBC terminates the DBC's Retained Professional, the DBC may hire a new Retained Professional whose status under the Contract Documents shall be that of the former DBC's Retained Professional. The decision of whether or not to terminate the DBC's Retained Professional rests solely with the DBC. The Department expressly reserves the right to evaluate and either accept or reject the DBC's replacement Retained Professional. The DBC will not hire a replacement Retained Professional without the prior written consent of the Department.

3.12 **Coordination with Existing Facilities and Utilities.** The DBC's Retained Professional, its subcontractors and/or consultants shall consult with the Department and the Client Agency to obtain all necessary data for coordinating the Project with existing structures and all support utilities. The DBC's Retained Professional shall consult with the Department regarding any correlation of design with future planning. The DBC's Retained Professional shall confirm in writing to the Department, through the DBC, all data furnished to the DBC's Retained Professional in this connection and the data's adequacy. The DBC's Retained Professional shall verify the information provided in the RFP regarding the various public services and utility companies, such as gas, electric, water, steam, waste water treatment/disposal, surface water disposal, telephone and communication, the commitment of their capability to service this Project, and shall submit same to the Department as part of its design submissions. The DBC's Retained Professional shall bring to the Department's immediate attention any reservations to this commitment by the utility companies, such as in-house engineering and construction costs and any inconsistencies regarding the locations and characteristics of such utilities between the actual field conditions and those indicated.

3.13 **Visits to Site During the Design Stage of the Project.** The DBC's Retained Professional, its subcontractors and/or consultants shall visit the Project Site as required and shall obtain and study available record drawings, investigate existing conditions, visual topographic and site data, and the Client Agency's available future plans for the purpose of obtaining any and all pertinent or necessary information as to local conditions not required to be shown, or shown without complete detail, in the RFP, on the Plat of Survey and Report of Surveyor furnished by the Department, as may affect the design of the Project and the necessity for special provisions or wording in the specifications. The DBC's Retained Professional shall verify in writing to the Department, through the DBC, no later than with its preliminary submission, that it has requested and obtained pertinent interference documentation from all utility companies and any other entity that may have underground or concealed lines or objects in the area of the proposed construction. The DBC's Retained Professional shall verify existing conditions by visual inspection and measurement and not by sole reliance on record documents or land survey. If corrective or additional work becomes necessary by reason of such failure to obtain all necessary, clarifying and available data for a proper and correct design of the Project, the cost of such corrective work shall be borne by the DBC.

3.14 **Submittal Schedule.** The DBC shall submit all necessary submittals to the DBC's Retained Professional in accordance with a submittal schedule established by the DBC and its subcontractors. The submittal schedule shall be established by the DBC and distributed to the Department no later than the first Job Conference held after the Orientation Meeting.

3.15 **Scheduling of Submissions.** During the design stage, the DBC's Retained Professional shall schedule and coordinate its work so the Client Agency has adequate time and opportunity to review and accept both the preliminary and the final design concepts prior to the scheduled submissions to the Department. During design, the DBC's Retained Professional shall coordinate its work with the Client Agency to keep the agency current with the project development. The DBC's Retained Professional must obtain acceptance in a timely manner to permit the Work to continue on schedule.

3.16 **Preliminary Design Submission.** Upon receipt of Letter of Intent from the Department, the DBC shall have the DBC's Retained Professional, based on the RFP, prepare the Preliminary Design Submission Documents.

3.17 **Reports During Design on Special Conditions Relating to Operations and Maintenance.** The DBC's Retained Professional shall familiarize itself with the Client Agency's normal operating and maintenance programs and shall submit with the

Preliminary Design Submission, reports on any special operating or maintenance procedures required by the design. If the design does not require departures from the Client Agency's normal procedures, the DBC's Retained Professional shall submit a signed statement to that effect to the Department with the Preliminary Design Submission.

3.18 **Final Design Submission.** Upon receipt of the Department's written acceptance of the Preliminary Design Submission, the DBC's Retained Professional shall develop the Final Design Documents.

3.19 **Access to Work and On-Site Representation.** The DBC's Retained Professional, its subcontractors and/or consultants and authorized representatives shall, at all times have access to the Work, wherever it is in preparation and progress. The DBC shall provide the facilities and means for such access so the DBC's Retained Professional may perform its functions under the Contract Documents.

3.20 **Visits to the Site During Construction.** The DBC's Retained Professional, or an authorized and qualified representative, shall visit the site at least bi-weekly, or more often as required by the construction activities and progress during periods of active construction. The DBC's Retained Professional shall review the progress of the Work, including the completeness of the DBC's record prints. The DBC's Retained Professional's subcontractors and/or consultants must visit the site at such intervals as deemed necessary by the Department or the DBC's Retained Professional, to review their respective phases of the Work in order to achieve the requirements of the Contract. In addition, the DBC's Retained Professional is to attend any and all project site conferences that are determined by the Department to be necessary to clarify the Contract Documents related to Design. The DBC's Retained Professional is not responsible for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work.

3.21 **Progress Reports as to Construction.** The DBC's Retained Professional shall, within seven (7) days of each site visit, submit written reports to the Department, through the DBC, relative to the progress of the Work. The Progress Reports to the Department shall include the findings of the Retained Professional, its subcontractors and/or consultants on each of their visits.

3.22 **Interpreter.** The Department, or its designee, who created the RFP shall interpret the DBC's Retained Professional's Contract Documents' compliance with the design and performance intent of the RFP documents. The DBC's Retained Professional shall be the interpreter of the Contract Documents related to Design themselves. Interpretation shall comply with Article 2 of these General Conditions.

3.23 **Standards of Quality.** If the DBC wishes to utilize material or equipment that is of the same type as specified, but manufactured by others than those named in the specifications of either the RFP, bridging or prototype documents (if any), the DBC shall certify at the time of submittals that the material or the equipment is equal in quality, performance and appearance to that mentioned in the specifications. No substitutions or "equal" submissions can be made to proprietary items.

3.24 **Review of Contractors' Shop Drawings and Materials.** The DBC's Retained Professional shall review and approve shop drawings for compliance with the Contract Documents, and process as provided in these General Conditions and the Administrative Procedures. The DBC's Retained Professional shall review and approve all samples, materials, and other submissions of the DBC for conformity to and harmony with the design concept of the Project and for compliance with the requirements of the Contract Documents. The DBC's Retained Professional shall request from the DBC and may rely

on bona fide test data, certifications and other evidence submitted by the DBC as needed to establish conformity with the contract requirements prior to approving material and products submitted.

3.25 **Approval of Shop Drawings.** Time is of the essence on this Project. The DBC's Retained Professional shall return all approved shop drawings, or detailed notation for resubmission if required, promptly and in accordance with the terms of its agreement with the DBC. Failure of the DBC and/or its subcontractor(s) to deliver required submittals to the DBC's Retained Professional and/or the DBC's Retained Professional's failure to deliver required submittals to the Department for review and acceptance in accordance with the accepted schedule and procedures shall not reduce the time allocated for the Department review and acceptance nor constitute grounds for increased project duration. The Department's acceptance of a separate item does not indicate acceptance of an assembly in which the item functions. A detailed log shall be maintained by the DBC's Retained Professional as to time of receipt of the shop drawings and time of return with adequate notes as to their disposition.

3.26 **Non-Conforming Work.** If corrective work or drawings are required from the DBC's Retained Professional due to defective or non-conforming work by the DBC, the cost for the DBC's Retained Professional's additional services shall be borne by the DBC. The Department shall review for acceptance the corrective work and/or drawings which are prepared by the DBC's Retained Professional in order to determine that the corrective work and/or drawings fall within the original scope of the Contract.

3.27 **DBC's Retained Professional's Review of Record Documents.** The DBC's Retained Professional shall, prior to substantial completion, receive from the DBC all record field drawings, shop drawings and record data, as needed, in order to prepare Record Drawings. The DBC's Retained Professional shall review said documents for accuracy and compliance with the Contract Documents and, after final approval, submit required documents to the Department as in accordance with Section 3.29 in this Article.

3.28 **Operations and Maintenance Data.** Prior to Final Inspection of the Project, the DBC's Retained Professional shall collect from the DBC, as provided in the Construction Documents, a final draft of the Operation and Maintenance Instructions Manuals prepared by the DBC and its various subcontractors. The DBC's Retained Professional shall review the draft for completeness including all pertinent shop drawings, diagrams, catalog data, manufacturers operating instructions, manufacturer's or supplier's maintenance instructions, certificates, warranties, guarantees and other pertinent operating and maintenance data. The DBC's Retained Professional shall indicate its approval of the draft with correction if necessary or request a revised draft and resubmission of the manual for the DBC's Retained Professional's review and approval. Upon receipt of the two (2) final bound manuals from the DBC, the DBC's Retained Professional shall review them for accuracy and content, and when they meet with its approval, the DBC's Retained Professional shall forward to the Department the two (2) copies and two (2) identical, additional copies in electronic format(s) and on media acceptable to the Department prior to Final Inspection. See Article 6 for additional information.

3.29 **"Record Drawings" for Department of Labor & Industry.** The DBC is responsible for submitting to the Department of Labor and Industry a revised set of Design Documents for approval for changes made during construction that are not in accordance with the Design Documents submitted for permitting. This revised set of construction shall be referred to as "L&I Record Drawings" and shall be submitted in accordance with L&I UCC requirements.

3.30 **Final Inspection.** If the Department and the DBC's Retained Professional concur that the Work is substantially complete, the DBC's Retained Professional will produce and deliver to the DBC, at Final Inspection, a list of uncompleted items and a reasonable cost of completion (Punch List). The Punch List shall list in detail each uncompleted item and a reasonable cost of completion for each Punch List item. The Department shall be given the opportunity to review and accept the contents of the Punch List. The DBC's Retained Professional will participate in any subsequent inspection to determine if the items are completed. See Article 14 Project Closeout for additional information.

ARTICLE 4: THE DEPARTMENT

4.1 **EASEMENTS AND RIGHTS OF ACCESS**. If necessary, the Department will secure and pay for easements for permanent structures with a right of access to the structures. If such easements are insufficient for the erection of temporary construction facilities and storage of materials, the DBC shall obtain easements and space as necessary at no cost to the Department.

4.2 **ADMINISTRATIVE PROCEDURES**. The Administrative Procedures are included in the Contract Documents and are incorporated by reference and made a part hereof, as if fully set forth herein. In the event there is any redundancy, conflict, contradiction, discrepancy or inconsistency between any portions of or criteria set forth in the Administrative Procedures and the other Contract Documents, the most restrictive or demanding of the criteria shall take precedence over any less restrictive or less demanding criteria as determined by the Department and/or the Department's designee.

4.3 **DEPARTMENT NOT RESPONSIBLE FOR DBC MEANS/METHODS/TECHNIQUES**. The Department is not responsible for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work since these are solely the DBC's responsibilities.

4.4 **DEPARTMENT IS NOT RESPONSIBLE FOR DBC ACTS OR OMISSIONS**. The Department will not be responsible for the acts or omissions of any DBC, or any of its subcontractors, or any of their agents or employees, or any other persons performing any of the Work for the DBC.

4.5 **DEPARTMENT'S ACCESS TO THE WORK**. The Department will, at all times, be provided full access to any area the Department deems necessary in order to perform its responsibilities. The DBC shall provide the facilities for such access so the Department may perform its functions under the Contract Documents.

4.6 **DEPARTMENT'S USE AND/OR OCCUPANCY OF THE WORK**. The Department may use or permit the Client Agency to use or occupy any completed or partially completed portions of the Work, whether or not the time may have expired for completing the entire Work or said portions of Work. Such use or occupancy shall not be deemed an acceptance of the portion of the Work so taken or used. Prior to such use or occupancy, an assessment of the Work to be occupied by the Client Agency shall be made by the Department and the DBC's Retained Professional to determine if it is in conformity with the Contract Documents. Any damage subsequent to the inspection due solely to the use and occupancy of the completed portion is not the responsibility of the DBC.

ARTICLE 5: THE CONSTRUCTION MANAGER

(This Article only applies if a Construction Manager is retained for the Project)

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

A. The Construction Manager shall carry out the duties specified in the Contract acting as an agent and authorized representative/designee of the Department.

1. The Construction Manager will determine in general that the Work is being performed in accordance with the requirements of the Contract Documents, will keep the Department informed of the progress of the Work, and will endeavor to guard the Department against defects and deficiencies in the Work.
2. The Construction Manager will assist in the coordination of the activities of the DBC. The DBC has an affirmative duty to coordinate Work with its subcontractors and/or consultants. Nothing in this Article relieves the DBC of their coordination responsibilities.
3. The Construction Manager will not have control over or charge of and will not be responsible for construction means, methods, or techniques or for safety procedures and programs in connection with the Work, since these are solely the DBC's responsibility.
4. The Construction Manager will review, certify and recommend to the Department payment for all acceptable Application ns for Payment from the DBC, including final payment.
5. The Construction Manager will review and advise the Department on Change Orders.

B. At a point in time no later than the Initial Job Conference, the Construction Manager shall provide the DBC a list of its principal staff assignments, including the Site Representative and other personnel to be in attendance at the site, identify individuals, their duties and responsibilities and list their addresses and telephone numbers.

C. For purposes of this Contract, the DBC shall consider and assume that any requisite approval shall be deemed to have been given by the Department for any such authority exercised by the Construction Manager.

D. Except as expressly stated in the Contract, the Construction Manager shall have no authority and no liability to relieve the DBC of any of its obligations under the Contract.

E. It is not the intention of these Contract Documents to inhibit communications between the DBC’s Retained Professional, the Construction Manager and the DBC as it relates to clarification, interpretation and other issues related to progressing of the Work.

F. If, in the opinion of the Construction Manager, an emergency occurs affecting the Work or adjoining property, the Construction Manager may, without relieving the DBC of any of its duties and responsibilities under the Contract, instruct the DBC to execute all such Work or to do all such things as may, in the opinion of the Construction Manager, be necessary to abate or reduce the risk. The DBC shall immediately comply, despite the absence of approval of the Department, with any such instruction of the Construction Manager.

G. The Construction Manager's Site Representative will be responsible for the Construction Management of this Project and shall carry out all required duties and exercise such authority as may be required under the terms of this Contract, including but not limited to reviewing Change Orders, Applications for Payment and Extensions of Time.

H. The Construction Manager's Site Representative will execute the duties and authorities vested in the Construction Manager. The Construction Manager's Site Representative has been fully vested with a level of authority that is adequate to execute the requirements of the Construction Management for this Project. The DBC is expected to and allowed to rely upon the directions that may be provided from the Construction Manager's Site Representative.

I. Any communication given by the Construction Manager's Site Representative to the DBC in accordance with such delegation shall have the same effect as though given by the Construction Manager or the Department.

J. The Construction Manager may appoint any number of persons from its staff to assist in the carrying out of the Construction Manager’s duties. Such assistants shall have no authority to issue any instructions to the DBC unless such instruction may be necessary to enable the DBC to carry out their duties and to secure their acceptance of materials, equipment or workmanship as being in accordance with the Contract, and any instructions given by any of them for those purposes shall be deemed to have been given by the Construction Manager.

K. Projects with a Construction Manager will be conducted with the e-Builder Enterprise Software. Any notifications and/or instructions given by the Construction Manager to the DBC shall be through e-Builder. If the Construction Manager considers it necessary to give any such instruction orally, the DBC shall comply with such instruction. The Construction Manager will, within 24 hours, reduce the oral instructions to a writing and submit to the DBC through e-Builder.

L. In all cases of misunderstanding and disputes, verbal instructions that were not subsequently reduced to writing as discussed above in the preceding subparagraph will not be considered binding upon the Department. The DBC must produce evidence in support of its contentions and shall advance no claim in the absence of such evidence, or use, or attempt to use any conversation with any parties against the Construction Manager, or the Department, or in prosecuting any claim against the Construction Manager, the DBC’s Retained Professional or the Department.

M. Wherever, under the Contract, the Construction Manager is required to exercise its discretion by:

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

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

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

5.2 **CONSTRUCTION MANAGER'S ACCESS TO THE WORK**. The Construction Manager or the authorized representative of the Construction Manager, will at all times be provided full access to any area it deems necessary in order to perform its responsibilities to assist coordination of the Work. The DBC shall provide the facilities for such access so the Construction Manager may perform its functions under the Contract Documents.

5.3 **REPLACEMENT OF CONSTRUCTION MANAGER**. In case of the termination of the Agreement for Construction Management Services, the Department may appoint a new Construction Manager whose status under the Contract Documents shall be that of the former Construction Manager. The decision of whether or not to replace and/or appoint a new Construction Manager or to assume construction management responsibilities is solely within the Department's discretion.

5.4 **THE CONSTRUCTION MANAGER NOT RESPONSIBLE FOR DBC ACTS OR OMISSIONS**. The Construction Manager is not be responsible for the acts or omissions of any DBC, or any of its subcontractors, or any of their agents or employees, or any other persons performing any of the Work for the DBC.

5.5 **DBC NOT AN INTENDED THIRD PARTY BENEFICIARY OF THE CONSTRUCTION MANAGER'S AGREEMENT**. The DBC is not an intended third party beneficiary of the Agreement for Construction Management Services between the Department and the Construction Manager. Nothing in the Contract Documents between the Department and the DBC should be construed to authorize any person not a party to the Agreement for Construction Management Services to maintain any lawsuit involving that contract, unless otherwise provided by law.

ARTICLE 6: THE DESIGN-BUILD CONTRACTOR

6.1 **REVIEW OF CONTRACT DOCUMENTS AND SITE CONDITIONS**.

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

B. POST-AWARD INVESTIGATION AND DOCUMENT REVIEW:

1. Site Conditions – If, after award, the DBC finds any material change in the condition of the site since the time of bidding, the DBC must immediately inform the DBC's Retained Professional in writing of the changed site conditions. The DBC's Retained Professional, after consulting with and obtaining the Department's approval, and within seven (7) days after receipt of DBC's notification, will address the alleged material change in the site conditions and notify the DBC of such review.

2. Contract Documents – If, after award, the DBC contends that there are discrepancies or errors in the drawings and/or the specifications included with the Request for Proposals, the DBC must submit the contention as a Request for Information to the DBC's Retained Professional and the Department within 10 days after discovering the alleged discrepancy.

    a. If the Department determines that the discrepancy/error constitutes a patent condition that should have been discovered during the procurement stage (See, 6.1(A)) no additional time or compensation will be granted to the DBC.

    b. If the Department determines the discrepancy constitutes a latent condition that would not be reasonably susceptible of being discovered during the procurement stage, the Department will consider granting additional time and/or compensation to the DBC, depending upon the specific nature of the condition.

6.2 **COORDINATION**. The DBC is solely responsible for the coordination of the Work, ensuring the proper function and sequence to avoid delays. The progress of the Work shall not be delayed by any disputes between the DBC and any subcontractors and/or suppliers.

6.3 **COORDINATION OF SUBCONTRACTORS**. The DBC shall be responsible for all acts of its subcontractors utilized under the DBC Contract and for their compliance with all terms and provisions of the Design Build Contract applicable to their performance. The DBC shall continuously coordinate the Work of all subcontractors to assure proper processing and progress of the Work. The DBC shall require each subcontractor, at a minimum, to comply with the following:

A. Examine all shop drawings and the Work of other subcontractors and all sections of the specifications to the extent necessary for satisfactory performance of the Work and connection of its Work and the Work of other subcontractors;

B. Coordinate its Work accordingly;

C. Cooperate with other subcontractors toward timely and satisfactory completion of the Project.

The DBC's MEP subcontractors shall not be removed from the Project without DGS' review and acceptance. Subcontractors are also subject to review by DGS as set forth in the Administrative Procedures. The DBC will not receive an extension of time or additional compensation for the removal of any unacceptable subcontractors. The failure of any subcontractor to complete its portion of the Work in a satisfactory manner within the proper time will not relieve the DBC of responsibility for the proper and satisfactory execution and completion of the entire Work.

6.4 **MEANS, METHODS AND TECHNIQUES OF CONSTRUCTION**. The DBC is solely responsible for all construction means, methods, techniques, procedures, and safety programs in connection with the work under the Contract unless the contract documents require other and additional responsibilities from the DBC. Neither the DBC's Retained Professional nor the Department nor the CM (if there is one) will not be responsible for construction means, methods, techniques or procedures, or for safety precautions or programs in connection with the Work, since these are solely within the DBC's responsibility.

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

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

DBC's field office

DGS/CM field office (unless otherwise specified in specifications)

Heating, lighting and telephone for the field offices

Installation for the offices

Installation of signs

Site survey

Construction fence, if required

Sidewalk bridge, where required and built to all applicable OSHA requirements

Safety and first aid equipment

Temporary power setup

Temporary power distribution

Temporary water

Temporary sanitary

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

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

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

A. The DBC shall maintain in good order at the site, for the Department and the DBC's Retained Professional, one (1) paper copy of all drawings and specifications. All addenda, contract modifications, change orders and requests for information shall be posted to these documents at the applicable locations. As appropriate, these documents will be updated daily to record accurately as-built conditions, selections and changes.

B. The DBC shall also maintain at the site one (1) paper copy of approved shop drawings, catalog data, operating and maintenance instructions, certificates, warranties, samples and similar submittals. These shall be available to the Department and DBC's Retained Professional at all times, and they shall be delivered to the DBC's Retained Professional as part of the Operation and Maintenance Instruction Manuals described in these General Conditions.

C. The DBC shall also maintain one (1) paper copy of approved coordination drawings, to include as-built conditions, selections and changes to be submitted to the DBC's Retained Professional and included as part of the Operation and Maintenance Instruction Manuals. The DBC shall include the value of the Record Drawings as a line item on its schedule of values, which shall be not less than 10% of the amount included for mobilization. The amount included is subject to the approval of the Department.

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

6.11 **RESPONSIBILITY FOR THOSE PERFORMING WORK**. The DBC is responsible to the Department for the acts and/or omissions of all of its employees and all subcontractors, their agents and employees, and all other persons performing any of the Work under a contract or purchase order with the DBC.

6.12 **EQUIPMENT AND MATERIALS**. The DBC shall furnish and deliver the necessary equipment and materials in ample quantities and as frequently as required to avoid delay in the progress of the Work. The DBC's materials or equipment shall not interfere with the orderly progress of the Work, nor endanger the lives of any operators or persons within

the vicinity of the stored equipment or materials, nor to cause damage to the adjacent property or highways. Any damage resulting from the operations of such equipment to any person or property is the responsibility of the DBC in accordance with the Insurance paragraph of these General Conditions.

6.13 **SUPERVISION**. The DBC shall provide on-site supervision by an employee who shall act as the duly authorized and competent Superintendent. If the DBC fails to comply with the provisions of this paragraph, the DGS may: (1) withhold any payments which are or may become due to the DBC; and/or (2) suspend the work at the expense of the DBC, including taking a credit for each day the DBC did not have the approved Superintendent on site.

A. ON SITE: This Superintendent shall be on-site during the progress of the Work, including any time when any Work is being performed by any subcontractor that will impact the Work of the DBC. The Superintendent shall represent the DBC, and all communications given to the Superintendent shall be binding as if given to the DBC. The Superintendent must attend all Monthly Schedule Update Meetings and every bi-weekly job conference. The Monthly Schedule Update Meetings shall be scheduled and chaired by the Superintendent.

B. QUALIFICATIONS: At the Initial Job Conference, the DBC shall submit to the Department the name and qualifications of its Superintendent. This Superintendent shall also be uploaded, by the DBC, to e-Builder on the Superintendent Form. The Superintendent must meet the qualifications in the specifications and be acceptable to DGS. The DBC shall not change its Superintendent at any time during the Project without the prior written approval of the DGS, and must submit to DGS, in writing, justification for the change, along with the name and qualifications of the individual whom the DBC proposes to be the new Superintendent. DGS reserves the right to require a change in the Superintendent if the Superintendent's performance is deemed by DGS to be inadequate.

6.14 **GOOD ORDER AMONG EMPLOYEES**.

A. The DBC shall enforce good order and conduct among its employees at all times. Every employee shall be skilled in the performance of work assigned to that employee. All construction personnel shall be respectful of all Commonwealth employees and the general public.

B. Any incidents of disrespect, verbal abuse, threatening statements, acts indicating a violation of the DBC's Drug and Alcohol policy, unwelcome comments, unwelcome interaction or any form of harassment from any construction personnel toward any Commonwealth employee, designee employees, or the general public is strictly prohibited. Any such act shall constitute sufficient cause for the Department to demand that the DBC dismiss the person(s) from the job site.

C. If any DBC's personnel ignores or refuses to take action on any requirements of the Contract Documents, ignores or refuses to take immediate action to correct any endangerment to the health and safety of the public, as solely determined by the Department then this action and/or inaction shall be sufficient cause for the Department to demand that the DBC dismiss the person(s) from the job site.

D. When, in the sole determination of the Department, it would be in the best interest of the Project and the Commonwealth to have a DBC's personnel removed from the Project for the reasons described above, then the Department may demand that the DBC dismiss from the job site. Any violation is sufficient cause for the Department to

direct that the DBC remove such person from employment on the Project, and direct that they shall not be re-employed on that Project without the consent of the Department. Such actions taken by the Department shall not constitute grounds for a delay claim. The Department will not be responsible for any delays caused to the Project due to any individual being removed from the Project.

6.15 **PERMITS AND FEES**. In compliance with the Pennsylvania Construction Code Act (PCCA), 35 P.S. §7210.101 to §7210-1103, as amended (a.k.a. Uniform Construction Code Statute or UCC), only the Department of Labor and Industry has jurisdiction for plan and specification review and inspection authority over all State-owned buildings and facilities. Consequently, the DBC on DGS projects shall not obtain any building permits from local authorities. The DBC, shall, however, continue to obtain and pay all fees for all other necessary permits, licenses and certificates required by law or otherwise for the proper execution and completion of its Work. The DBC shall furnish proof of payment for all such items, or proof that no such items are required. This proof must be furnished prior to the second Invoice. The DBC will be reimbursed for the actual cost of such items by change order and the DBC will not be entitled to any mark-up on the items unless otherwise authorized by the Department.

Sewer and Water Tapping Fees shall be reimbursed to the DBC by Change Order without mark-up.

6.16 **PCCA/UCC INSPECTIONS & COMPLIANCE WITH APPLICABLE LAWS, ORDINANCES, REGULATIONS, ETC**.

A. The DBC 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 DBC observes any of the Contract Documents conflicting with applicable laws, ordinances, regulations, rules and orders of any public authority in any respect, it shall promptly submit a Request for Information. Any conflicts will be addressed by the DBC's Retained Professional and Department. If the DBC performs any work knowing it to be contrary to such applicable laws, ordinances, regulations, rules or orders of any public authority, and without such RFI to the Department, it assumes full responsibility for that action and shall bear all costs attributable thereto.

B. This Project shall be subject to the Pennsylvania Construction Code Act (PCCA) and the Uniform Construction Code Statute. The DBC shall become familiar, and is responsible for complying, with all aspects of the PCCA and the UCC, including but not limited to the site inspection procedure set forth in the Department of Labor & Industry's Inspection Procedures. For purposes of inspection, the DBC shall be deemed the "owner" as described in the PCCA/UCC. The most recent list of inspections required by L&I can be found on L&I's website.

C. The DBC must include the PCCA/UCC inspections (to the extent they are applicable to their scope of Work on this Project) in the Project Schedule created pursuant to the applicable paragraph(s) in the General Conditions and Administrative Procedures.

D. The L&I mandated advance notice, defined for each inspection activity, shall be considered and included as lead time in the development of the Project Schedule. The DBC shall assume the responsibility of the permit applicant/permit holder as applicable. The DBC shall be responsible to contact L&I to schedule the required inspections in accordance with the inspection procedures outlined in the Building Permit. Failure by the DBC to do so shall not be cause for a delay claim against the Department. A copy of the Building Permit, which includes a list of the required inspections and the time frames for notifying the Department of Labor & Industry, is available from the Department.

E. The DBC shall provide 48 hours prior notice to the Department for all L&I Inspections scheduled for any portion of their work. Results of the L&I Inspection with noted deficiencies and any required re-inspection shall be provided to the Department by commencement of work the following work day.

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

A. The Contract Drawings shall be used for all dimensions in laying out the Work for this Contract.

B. The DBC shall utilize a competent, licensed surveyor, whose name and qualifications shall be submitted to the Department for approval at the time of the Orientation Meeting, to lay out the building lines, walls, floor elevations, and other required elements from the initial points established on the Drawings by the DBC's Retained Professional. The DBC shall not change its surveyor 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 DBC proposes to be the new surveyor.

C. The Surveyor shall take as a basis the figures on the plans and shall lay out all intersections and 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 lay out other parts of the construction as the Work progresses.

D. All Work of every description shall be laid out by the DBC, who is solely responsible for its correctness. The DBC shall bear expenses in connection with this Work.

E. The DBC shall submit one copy of its survey notes to the Department for record keeping. Submission of the survey notes does not relieve the DBC of its duty to identify discrepancies on the site or in the Contract Documents.

F. The DBC shall examine the conditions under which the Work is to be installed and notify the Department in writing of any discrepancies. The DBC is not to proceed until the required corrections are accomplished or written direction is given by the Department. The DBC shall be responsible for correct location, dimensions and elevations of its Work. Commencement of Work implies acceptance of prior Work as it relates to the DBC's Work.

G. All operations shall be neatly and carefully organized to maximize space utilization and provide the most orderly execution of the Work. The DBC shall carefully plan the layout and review any questionable installations or operations with the DBC's Retained Professional and the Department, if necessary.

6.18 **EXISTING UTILITIES AND SERVICES.**

A. The DBC shall comply with all notification requirements established by applicable law relative to protection of underground utilities and shall also check the location of existing utilities required to remain in place, including those overhead or underground, and take all necessary precautions to prevent injury or damage during the performance of the Work.

B. When performing excavation, the DBC is responsible for costs associated with locating all existing underground utilities prior to commencing excavation, including utilities that are owned and operated by the Department of General Services or the Client Agency.

C. The DBC shall be responsible for the associated cost of any utility interruption and repair due to this excavation if the utility location was not requested, and/or proper location procedures were not performed and/or followed prior to commencing excavation.

D. If the DBC damages a utility, the DBC shall immediately notify the utility company and the Department (and the CM if one has been retained) and assume the cost of relocating the service of any utility disrupted due to excavation, or any DBC action, whatever the circumstance. The Department reserves the right to immediately restore the service of any utility disrupted due to actions of the DBC and to deduct the cost of such restoration from the DBC's next Invoice.

E. Utilities and/or other services, which are shown, or not shown but encountered, shall be protected by the DBC from any damage from any Work and operations of the Contract, unless or until they are abandoned. If the utilities or services are not abandoned at time of damage, the DBC shall immediately assume the cost of repairing any damage from its Work or operations and assume the cost of restoring the utilities and services to the condition that existed prior to the damage.

F. The DBC and subcontractors of any tier shall be responsible for all damage to the Project including the existing building and grounds due to its operation under this Contract. Repair or replacement of damaged items shall be to the satisfaction of the Department.

6.19 **INTERRUPTION OF EXISTING SERVICES**: Whenever it becomes necessary to interrupt existing services in use by the Client Agency, such as sewer, water, gas and steam lines, and electric service, the DBC responsible for working outside of normal working hours shall perform the Work during such hours, as required by the Department in coordination with Client Agencies or other tenants, so as to complete the work and restore all existing services with minimal interruption or disruption to the Department, Client Agencies or other tenant. The DBC responsible for the Work shall continue its work on a twenty-four (24) hour basis until the Work is completed and the service restored, or at such alternate time required by the **Department, its designee, or the Client Agency or other tenants**. Before beginning such Work, the DBC shall request and receive approval from the Department to establish a time when interruption of the service will cause a minimum of interference with the activities of the Client Agency. **The DBC's request to interrupt ANY SERVICE must be submitted to the Department in e-Builder at least FIFTEEN (15) CALENDAR DAYS PRIOR to the date of the desired interruption**.

6.20 **DBC PERFORMING EXCAVATION OR DEMOLITION**. If the DBC performs excavation or demolition work, it shall fully comply with the requirements of the Pennsylvania One Call Act (Act 287-74, approved December 10, 1974, as amended) relative to protection of underground utilities, to the extent that this language conflicts with Act 287-74, the statutory language controls. Protection of underground utilities shall include, but not be limited to:

A. Ascertaining the approximate location and type of utility lines adjacent to and within the contract limits by inspecting drawings or obtaining a list of utility companies' lines adjacent to and within the contract limits from the County Recorder of Deeds and then contacting the utility company.

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

C. Provide the Department and each equipment operator or blaster with information obtained in (A) and (B) above.

D. Report to the Department and the utility company any damage to utility line made or discovered in the course of the work.

E. Alert the Department and any occupants of premises as to emergency created or discovered.

F. Provisions of (A), (B) and (C) do not apply in an emergency. An emergency is any condition constituting a clear and present danger to life or property caused by escaping gas, exposed wires or other utility line breaks or defects.

G. The DBC shall be responsible for all dewatering as noted under Environmental Quality Control and per the specifications.

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

6.22 **COORDINATION DRAWINGS FOR SLEEVES AND OPENINGS**. If the DBC or the DBC's subcontractors require sleeves and openings for their work in any deck, concrete slab or wall, they shall furnish to the DBC's Retained Professional a complete set of location sketch drawings showing size and shape of openings. Completion of these drawings must be consistent with the construction sequence. The DBC and the DBC's Retained Professional are 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 DBC shall submit these drawings in e-Builder to DGS and the DBC's Retained Professional in a final workable form.

6.23 **CUTTING AND PATCHING OF NON-ROOF SYSTEM WORK**. The DBC 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. Work shall be completed to the satisfaction of DGS.

6.24 **CUTTING AND PATCHING OF ROOF SYSTEMS**. Unless otherwise specified, the DBC is responsible for cutting and patching of existing roof systems necessitated by its Work. The cutting and patching must be performed by a qualified subcontractor. The cutting and patching must maintain any current warranty or bond on the roofing, and, whether under warranty or not, must be done in accordance with the manufacturer's written directions.

6.25 **CLEANING THE PROJECT**.

A. The DBC shall be responsible for the cost of cleaning and removing from the site its identifiable debris, including but not limited to, bulky debris, packaging containers, unused materials and equipment and materials not suitable for disposal by standard commercial procedures, such as masonry, concrete materials, crates and combustible items. Good housekeeping shall be observed at all times, and waste, debris, and garbage shall be removed daily or placed in appropriate waste containers outside of the work place and all materials, tools and equipment shall be stored in a safe and orderly fashion.

B. Prior to Final Inspection, the following is a list (which is not intended to be an all-inclusive list) of cleaning levels required by the DBC as part of basic contract Work:

1. remove labels which are not required as permanent labels.

2. clean transparent materials, including mirrors, windows, and doors to a polished condition.

3. remove substances which are noticeable as vision-obscuring materials.

4. clean exposed exterior and interior hard-surfaced finishes to a dirt-free condition, free of dust, stains, paint spatters, films and similar noticeable distracting substances. Except as otherwise indicated, avoid disturbance of natural weathering of exterior surfaces. Restore reflective surfaces to original reflective condition.

5. Clean concrete floors; in non-occupied spaces, broom clean. Remove all stains, marks, paint, rust, etc. caused by construction activities.

6. Clean plumbing fixtures to a sanitary condition, free of stains, including those resulting from water exposure.

7. Clean mechanical and electrical equipment, ductwork and replace all filters.

C. Prior to Final Inspection, in addition to the cleaning specified above, the site shall be prepared for occupancy by a thorough cleaning, including removal of all trash, rocks, wood and debris as required. Particular care shall be taken within all prison areas to remove and verify the removal of any tools, blades, fasteners, metal or other debris or any other object that could possibly be used as a weapon or projectile. Roadways and sidewalks shall be washed and swept clean.

D. The DBC shall maintain a clean and safe passageway for DGS and others utilizing the facility.

1. The DBC shall insure that the Work shall not damage streets connecting to the Project, which shall be protected from mud, sand, and stones/gravel. Streets and adjacent property sites shall be kept free from run-off, litter and/or debris in any form from the Project site. Mud, litter, and/or debris from the Project site that appears on adjacent property shall be removed immediately. All mud collected on vehicle tires shall be removed by the DBC before leaving the site. If any mud or debris from the Project collects on streets, it shall be removed immediately by the DBC to prevent any hazards to vehicular or pedestrian traffic, as well as from entering the storm sewer system.

2. The DBC is prohibited from discharging any waste products from concrete trucks or from concrete coring work or any other unsuitable materials, fluids or other products on the site or into the storm water system.

E. If the DBC fails to comply with these requirements, DGS reserves the right, with 24 hours prior notice to the DBC, to clean and/or remove mud, trash, litter, debris or any unauthorized discharge from the Project, adjacent streets or adjacent property. The cost of cleaning/removing and mobilization shall be deducted from the DBC's next application for payment.

6.26 **FAILURE OF DBC TO CLEAN**. If the DBC fails to clean up, DGS may estimate the value of the work and retain such costs from any applications for payment until such time as the work is performed to DGS's satisfaction.

6.27 **REPAIR OF DAMAGED WORK**. The Department shall coordinate the repair of all new Work as well as existing Work required remaining but which becomes damaged during the course of the Work. This repair work shall include, but not be limited to, restoration of surfaces to the original condition, grading, landscaping or seeding, pavement markings and refinishing.

6.28 **CHASES AND OPENINGS**. The DBC will construct, or have built, into new walls, new partitions, and new floors, all such chases and openings as are required. The DBC will be responsible to see that the chases and openings affecting its work are installed in accordance with the drawings submitted to DGS.

6.29 **CHASES AND OPENINGS AFTER CONSTRUCTION OF WALLS**. If cutting of chases and openings is required after construction of walls, partitions or floors is completed, the Department may require the Work to be performed in such a manner as to result in unmarred Work, even to the extent of requiring the removal and rebuilding of walls and partitions, all of which shall be at the sole cost of the DBC.

6.30 **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 DBC shall give the Department timely notice of its readiness and of the date arranged, so the Department may observe such inspection, testing or approval. The DBC shall be responsible for scheduling such inspections, tests and approvals and shall bear all costs of such inspections, tests and approvals, unless otherwise provided.

A. All expenses incurred in the collection, packing and delivering of samples or materials or equipment to the Project site shall be paid for by the DBC.

B. The DBC shall pay the costs of transporting samples from the Project site to the laboratory and for the testing of same, except where otherwise noted in the General Conditions, specifications, or called for in the Contract drawings.

C. Approved samples to be incorporated in the building shall be returned to the Project site by the testing laboratory under the supervision of the DBC.

D. The DBC shall bear all costs of such inspections, tests and approvals, including such assistance, labor, electricity, fuels, storage, apparatus and instruments as are normally required for examining, measuring and testing any materials or Work and shall supply samples of materials, before incorporation in the Work, for testing as may be selected and required by the Department.

E. Prior to testing, inspection or verification, the Department may require sign-off by the DBC's representative affirming that the item of Work or installation is complete and ready for such testing, inspection or verification.

F. Work requiring testing, inspection or verification of probable compliance of Work shall not proceed to be concealed, covered or closed up until approval is given by the Department. Examples of work to be reviewed before being concealed include but are not limited to: sub-grades prior to backfilling, verification of rebar and formwork prior to placing concrete, and installed Work in concealed spaces before the space is closed.

G. The non-productive downtime or delay in an operation required to provide the reasonable opportunity for testing or verification by the Department constitutes a portion of the Contract Work and is included in the DBC's contract price. No claim for additional compensation will be allowed related to establishment and timely observation of testing or verification of Work.

H. Testing or verification by the Department shall in no way relieve the DBC of its obligation to meet all the requirements of the Contract Documents.

I. The DBC is responsible for all Quality Control testing as specified in the Contract Documents.

6.31 **SPECIAL TESTING**. If, after the commencement of the Work, the Department determines that any work requires special inspection, testing or approval not included in the Tests Paragraph of these General Conditions, the Department will direct the DBC to order such special inspection, testing or approval, and the DBC shall give notice as in the Tests Paragraph of these General Conditions.

A. If such special inspection or testing reveals a failure of the Work to comply with the requirements of the Contract Documents, or with respect to the performance of the Work, with laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, the DBC shall bear all costs thereof, including the DBC's Retained Professional's additional services made necessary by such failure.

B. If the work is in compliance, the Department shall bear such costs and an appropriate change order shall be issued to the DBC.

6.32 **CERTIFICATES OF INSPECTION**. The DBC is responsible to secure any required certificates of inspection, testing or approval. Such required certificates of inspection, testing and approval include those required by the UCC. The DBC shall deliver such certificates to the Department within seven (7) days after the DBC secures the certificate.

6.33 **OBSERVATION OF TESTING**. The DBC's Retained Professional, where required by the Uniform Construction Code, Labor and Industry, shall observe the inspections, tests or approvals required by the Tests and Special Testing Paragraphs of these General Conditions, and it shall be the DBC's responsibility to serve sufficient notice to the DBC's Retained Professional and where required by the UCC, to Labor and Industry, of such inspections, tests or approvals to enable the timely inspection of the Work without impacting the project schedule.

A. UCC REQUIRED TESTING OBSERVATION AND/OR INSPECTION. When the UCC requires any special testing to be observed, inspected and approved by L&I, the DBC shall be responsible to contact L&I sufficiently in advance to allow L&I to schedule such observation, inspection and approval of such testing. The DBC is responsible for determining whether the UCC requires L&I's approval of the testing. The Work shall remain accessible and exposed for inspection by L&I.

6.34 **EFFECT OF TESTS**. Neither the observations of the DBC's Retained Professional nor inspections, tests or approvals by persons other than the DBC relieve the DBC from its obligations to perform the work in accordance with the Contract Documents.

6.35 **ENVIRONMENTAL QUALITY CONTROL**. The DBC and its subcontractors shall perform their work in a manner which minimizes the possibility of air, water, land and noise pollution.

A. The DBC shall be responsible for all dewatering to prevent surface water and ground water from entering excavations (including foundations and drilled piers), from ponding on prepared subgrades and from flooding the Project site and surrounding areas.

B. The DBC shall be responsible to protect subgrades from softening, undermining, washout, and damage by rain or water accumulation. The DBC shall reroute surface water runoff away from excavated areas. The DBC shall not allow water to accumulate in excavations. The DBC shall not use excavated trenches as temporary drainage ditches.

C. The DBC shall be responsible for installing a dewatering system to keep subgrades dry and convey ground water away from excavations. The DBC shall maintain the dewatering system until dewatering is no longer required.

6.36 **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 DBC shall begin to obtain, at its cost, the necessary permit(s) from DEP and conduct waste disposal on site approved under this permit. A copy of this permit must be submitted to the Department before commencing waste disposal. A record of receipt of the waste material that is signed by the waste company certified to receive the waste material acknowledging receipt and proper disposal must be provided to the Department.

6.37 **COMPLIANCE WITH STATUTES & REGULATIONS ADMINISTERED BY DEPARTMENT OF ENVIRONMENTAL PROTECTION (DEP)**. The DBC shall comply with all statutes and regulations of the Commonwealth of Pennsylvania concerning environmental quality control administered by DEP. These statutes and regulations include those listed in the Environmental Statement set forth in the Instructions to Bidders (which is included as part of the Contract Documents) and, but not limited to, the Clean Streams Law, the Clean Water Act, Pennsylvania Sewage Facilities Act, Air Pollution Control Act, Surface Mining Conservation and Reclamation Act, Bituminous Coal Open Pit Mining Conservation Act, Dams and Encroachments Act, Water Well Driller's Act, Water Works Act and Atomic Energy Act, all as amended to date. The DBC 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 DBC's Retained Professional.

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

6.39 **SUSPENSION FROM METAL ROOF DECKS – NEW AND EXISTING**. Ductwork, conduit, ceiling systems, lighting fixtures or any other miscellaneous equipment shall not be suspended from metal roof decks. These components shall only be suspended from the structural members or a suspension system supported by the structural members. All concentrated loads must be submitted for review by the DBC's Retained Professional. If the concentrated loads are not approved, the DBC must provide an acceptable means of distributing the equipment load.

6.40 **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 20B:C rating within thirty feet of each fired kettle and one additional portable fire extinguisher with the same rating by the work area.

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

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

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

6.43 **LANDSCAPING PRODUCTS RECYCLED CONTENT**.

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

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

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

B. POST-CONSUMER MATERIAL: Any product generated by a business or consumer that has served its intended end use, and that has been separated or diverted from solid waste for the purposes of collection, recycling and disposition.

C. RECOVERED MATERIAL: Refers to waste materials and by-products which have been recovered or diverted from solid waste, but does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

D. DBC'S CERTIFICATION: The DBC certifies that the landscaping product(s) which the DBC is offering contains the required minimum percentage of post-consumer and recovered material content as shown in the above chart for the product.

E. MANUFACTURER'S CERTIFICATION: In addition to the DBC's Certification, a manufacturer's Certification must be completed and signed by the manufacturer before payment will be made to the DBC for the delivered items. A manufacturer's Certification form identical to the form shown below must be used. The DBC is not required to submit the completed and signed manufacturer's Certification form with their bid or proposal. **The Commonwealth shall have no obligation to pay for the item(s) until a properly completed and signed manufacturer's certification is submitted for the delivered item.**

F. ENFORCEMENT: The DBC may be required, after delivery of the landscaping product(s), to provide the Commonwealth with documentary evidence that the landscaping product(s) were in fact produced with the required minimum percentage of post-consumer and recovered material content.

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MANUFACTURER CERTIFICATION

(To be submitted with invoice for each order)

TO BE COMPLETED BY MANUFACTURER:

NAME OF MANUFACTURER: _____

ADDRESS OF MANUFACTURER: _____

FEDERAL EMPLOYER I.D. NO.: _____

CONTRACT OR REQUISITION NO. _____

NAME OF DBC: _____

ADDRESS OF DBC: _____

Type of landscaping product(s) which the manufacturer furnished to the DBC: _____

_____

_____

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

_____
Signature

_____
Name of Signatory

_____

TITLE DATE

6.44 **CONSTRUCTION PRODUCTS RECYCLED CONTENT**.

A. REQUIREMENT: All construction products offered by the DBC, or included in the final product offered by the DBC and sold to the Commonwealth **must** contain the minimum percentage of postconsumer and recovered material content as shown in the chart below for the applicable products.

B. POST-CONSUMER MATERIAL: Material or finished product that has served its intended use and has been diverted or recovered from waste destined for disposal, having completed its life as a consumer item. Post-consumer material is part of the broader category of recovered material.

C. RECOVERED MATERIAL: Refers to waste materials and by-products which have been recovered or diverted from solid waste, but does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

D. DBC'S CERTIFICATION: The DBC certifies that the construction product(s), which the DBC is offering, contains the required minimum percentage of postconsumer and recovered material content as shown above for the product.

E. MANUFACTURER'S CERTIFICATION: In addition to the DBC's Certification, a manufacturer's Certification must be completed and signed by the manufacturer before payment will be made to the DBC for the delivered items. A manufacturer's Certification form identical to the form shown below must be used. The DBC is not required to submit the completed and signed Manufacturer Certification form with their proposal. **The Commonwealth shall have no obligation to pay for the item(s) until a properly completed and signed manufacturer's certification is submitted for the delivered item.**

F. ENFORCEMENT: The DBC may be required, after delivery of the construction product(s), to provide the Commonwealth with documentary evidence that the construction product(s) were in fact produced with the required minimum percentage of post-consumer and recovered material content.

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

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

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[1] Consolidated latex paint used for covering graffiti, where color and consistency of performance are not primary concerns.
[2] Reprocessed latex paint used for interior and exterior architectural applications such as wallboard, ceiling, and trim; gutterboards; and concrete, stucco, masonry, wood, and metal surfaces.

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

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

MANUFACTURER CERTIFICATION

(To be submitted with invoice for each order)

TO BE COMPLETED BY MANUFACTURER:

NAME OF MANUFACTURER: _____

ADDRESS OF MANUFACTURER: _____

FEDERAL EMPLOYER I.D. NO.: _____

CONTRACT OR REQUISITION NO. _____

NAME OF DBC: _____

ADDRESS OF DBC: _____

Type of construction product(s) which the manufacturer furnished to the DBC: _____

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

_____
Signature

_____
Name of Signatory

_____

TITLE DATE

6.45 **STORAGE ENCLOSURE**. The DBC shall provide, at its cost, a suitable, substantial and watertight storage enclosure in which it shall store all materials that might be damaged by the weather. A Mobile trailer type is acceptable. The DBC is responsible for maintaining and removing this enclosure at its cost. All storage enclosures shall be of sufficient size to hold all the DBC's subject materials on the site at one time and shall have floors raised at least six (6) inches above the ground on heavy joists or sleepers. Storage enclosures shall have sufficient natural ventilation to preclude condensation.

6.46 **NO STORAGE IN EXISTING BUILDINGS**. The DBC shall not store any materials in any existing building or beyond the contract limits as defined by the drawings without prior authorization from the Department.

6.47 **OPERATION AND MAINTENANCE INSTRUCTION MANUALS**. The DBC shall, for its scope of work, carefully compile during the progress of the work indexed operation and maintenance manuals to include methods of care and cleaning of all types of visible surface materials, both interior and exterior, and descriptions of all systems and equipment, methods of operations and all warranties thereof. Descriptions shall give pertinent diagrams, identifying charts, color coding, connections, lubricating instructions, and single line and detailed wiring diagrams, using manufacturers' printed information where possible. Where manufacturers' printed information is not available, the DBC shall obtain written instructions prepared by subcontractors and sub-subcontractors. The DBC shall include names, addresses and phone numbers of all subcontractors and sub-subcontractors, and of service firms of each mechanical item, for the Client Agency's use after expiration of the guarantee period. At the time of Final Inspection, the DBC shall submit a rough draft of the manual through the Submittal Process in e-Builder for approval by the DBC's Retained Professional. After approval and before final payment, DBC shall furnish the corrected and indexed Operation and Maintenance Instruction Manual in PDF electronic format to the DBC's Retained Professional to be turned over to the Department for issuance to the Client Agency. The complete Operation and Maintenance Instruction Manual shall also be uploaded to e-Builder.

6.48 **RECORD DRAWINGS**. At the time of Final Inspection, the DBC shall use the Submittal Process to submit to the DBC's Retained Professional a complete set of contract color prints in PDF format, corrected with suitable markings to show all changes or variations from the original contract, including all items uncovered during the work and showing the details of the work as actually built, including but not limited to horizontal and vertical dimensional references of all concealed pipe, conduit and other lines and equipment.

6.49 **WARRANTY AND GUARANTEE.** In addition to the Contract Bond, the DBC shall unconditionally warrant and guarantees equipment, materials and workmanship against patent defects arising from faulty equipment, faulty materials, faulty workmanship or negligence for a period of twelve (12) months following the date of Final Inspection of the Work or beneficial occupancy (whichever comes first) unless other warranties found within the Contract Documents specify or indicate longer periods. The DBC shall replace such defective equipment, materials or workmanship without cost to the Department. The DBC shall warrant that such equipment, material or workmanship furnished under this DBC shall be furnished in conformance with the Contract Documents. All work not conforming to these standards may be considered non-conforming.

A. If items of equipment or material carry a manufacturer's warranty for any period in excess of twelve (12) months, then the manufacturer's warranty shall apply for that particular piece of equipment or material. The DBC shall replace such defective equipment or materials, without cost to the Department, within the manufacturer's warranty period. Nothing in this paragraph relieves the DBC or surety of its obligations under the performance bond.

B. The DBC shall assign and deliver to the DBC's Retained Professional through the Submittal Process all warranties for review as part of the Operations & Maintenance submission. The DBC's Retained Professional will transfer the warranties to the Department. The warranty provided in this Paragraph shall be in addition to, and not in limitation of, any other warranty or remedy provided by Law or by the Contract Documents.

C. If there is a substitution of material or equipment in accordance with the Substitution Paragraph, the DBC warrants that such installation, construction, material or equipment will perform to the standard of the item originally specified. The DBC explicitly warrants the merchantability, and the fitness for use and quality of all substituted items provided for or by it.

D. The Department may bring an action for latent defects that were hidden or not readily apparent to the Department at the time of beneficial occupancy or final acceptance, whichever occurred first, in accordance with applicable law and/or the Contract Bond.

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

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

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

ARTICLE 7: SUBCONTRACTORS/SUPPLIERS

7.1 **DBC'S INTEREST IN SUBCONTRACTOR/SUPPLIER**. Pursuant to the Contractor Integrity Provisions set forth in the Contract, the DBC may not, except with the consent of the Commonwealth, have a financial interest in any subcontractor, or supplier providing services, labor, or material on this project. The DBC is required to disclose the names of all subcontractors and/or suppliers in which the DBC has a financial interest, and which will be utilized in the Project. This information must be disclosed either with the bid (if known prior to bid opening) or when your subcontractor and/or supplier subcontracts are submitted. If the Department has any objection to the subcontractors and/or suppliers provided, the DBC shall promptly propose another subcontractor and/or supplier to whom the Department does not have an objection. The Department's acceptance of the subcontractors and/or suppliers will be deemed to be consent for the purposes of the Contractor Integrity Provisions. Failure to disclose the names of such subcontractors and/or suppliers for which the DBC has a financial interest is a violation of the Contractor Integrity Provisions. For violations of any of these Contractor Integrity Provisions, the Commonwealth may terminate this and any other contract with DBC, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all additional costs and expenses incurred in obtaining another DBC to complete performance under this contract, and debar and suspend DBC from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise. The DBC shall not replace any subcontractor and/or supplier previously selected and/or approved by the Department, without prior notification to the Department and receipt of the Department's approval for such substitution.

7.2 **SUBCONTRACTOR/SUPPLIER RESPONSIBILITY**. If the DBC enters into any subcontracts or purchase orders under this Contract with subcontractors or suppliers currently suspended or debarred by the Commonwealth, or who become suspended or debarred by the Commonwealth during the term of this Contract or any extensions or renewals of it, the Department may require the DBC to terminate such Contract.

7.3 **DBC RESPONSIBILITY FOR ACTIONS AND COMPLIANCE**. The DBC shall be responsible for all acts of its subcontractors and suppliers utilized under this Contract, and for their compliance with all terms and provisions of the Contract applicable to their performance. The DBC shall continuously coordinate the Work of all subcontractors to assure proper processing and progress of the Work.

A. The DBC shall require each subcontractor to comply with the following:

1. Examine the shop drawings and the Work of other subcontractors and all sections of the specifications to the extent necessary for satisfactory installation of its Work, and connection between its Work and the Work of other subcontractors; and
2. Coordinate its Work accordingly; and
3. Cooperate with other subcontractors toward timely and satisfactory completion of the Project.

B. The failure of any Sub to complete its portion of the Work in a satisfactory manner within the proper time will not relieve the DBC of responsibility for the proper and satisfactory execution and completion of the entire Work.

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

7.5 **SUBCONTRACTS AND PURCHASE ORDERS**.

A. SUBCONTRACTORS:

1. All Work performed for the DBC by a subcontractor shall be done pursuant to a written subcontract between the DBC and the subcontractor.
2. The form of the written subcontract must be the same for all subcontractors.
3. All subcontracts between the DBC and each subcontractor **must**:
    a. Be signed by both parties;
    b. Contain Provisions that:
        i. Set forth the amount the subcontractor is to be paid; and
        ii. Describe the scope of Work to be performed by the subcontractor; and
        iii. Preserve and protect the rights of the Department with respect to the Work to be performed under the Subcontract, so that the subcontracting thereof will not prejudice such rights; and
        iv. Require that such Work be performed in accordance with the requirements of the Contract Documents; and
        v. Require submission to the DBC of applications for payment under each Subcontract to which the DBC is party, in reasonable time to enable the DBC to apply for payment in accordance with the provisions of the Prompt Payment Schedule (62 Pa. C. S. §3931-§3939) and the provisions of these General Conditions governing payment by the Department; and
        vi. Require that all claims for additional costs, extensions of time or otherwise with respect to subcontracted portions of the Work shall be submitted to the DBC in the manner provided in the Contract Documents for like claims by the DBC upon the Department; and
        vii. Prior to commencing onsite or offsite work, require each subcontractor to comply with the provisions of the Public Works Employment Verification Act (43 P.S. §§ 167.1 – 167.11), which requires subcontractors to utilize the Federal E-Verify program to verify the employment eligibility for every new employee hired after January 1, 2013 and to submit to the Department through e-Builder, using the subcontractor Information Form, a Commonwealth Public Works Verification Form available on the Department's web site at www.dgs.state.pa.gov.
        viii. Require each subcontractor to include provisions in each of its subcontracts regarding the applicability of the Public Works Employment Verification Act (43 P.S. §§ 167.1 – 167.11), information regarding the use of the Federal E-Verify program, and reference to

the Department's web site to obtain a downloadable copy of the Commonwealth Public Works Employment Verification Form required to be submitted to the Department by the DBC through e-Builder using the subcontractor Information Form.

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

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

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

xii. Contain the following certification language:

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

xiii. The DBC agrees that failure to incorporate these terms in its Subcontracts is a material breach of the terms of the Contract Documents. The DBC will have five (5) days, as required by the Administrative Procedures, to provide proof in writing that such a deficiency in its subcontract documents has been remedied. Failure to provide proof within five (5) days shall constitute grounds for default of the DBC by the Department.

4. The DBC shall submit in e-Builder a copy of all subcontracts for Work to be performed on the Project to DGS for the Project **prior to the commencement of any Work by the subcontractor**.

5. The DBC shall also submit in e-Builder a copy of every subcontract with a Small Diverse Business and/or Veteran Business Enterprise in order to meet the Department's Bureau of Diversity, Inclusion and Small Business Opportunities compliance requirements.

6. The DBC shall submit in e-Builder a copy of any subcontract with a lower tier Small Diverse Business or Veteran Business Enterprise subcontractor if the DBC seeks to obtain credit toward their Small Diverse Business and or Veteran Business Enterprise commitments (see the Administrative Procedure for Small Diverse Business and Veteran Business Enterprise Participation).

7. The DBC shall identify the work to be subcontracted on a separate line item on the Schedule of Values, as described more completely in the Administrative Procedures.

B. MANUFACTURERS AND SUPPLIERS:

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

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

7.7 **NO CONTRACTUAL RELATIONSHIP BETWEEN DEPARTMENT AND SUPPLIER OR MANUFACTURER**. Nothing contained in the Contract Documents creates any contractual relationship between the Department and any supplier/manufacturer or its authorized representatives. Nothing contained in the Contract Documents creates any contractual relation between the Construction Manager (if there is one on the Project) and any supplier/manufacturer. The supplier/manufacturer is not an intended third party beneficiary of the Construction Manager's Contract. Nothing in the Contract Documents between the Department and the DBC should be construed to authorize any person not a party to the Design Build Contract or Construction Manager's Contract to maintain any lawsuit involving that contract, unless otherwise provided by law.

7.8 **PAYMENT OF SUBCONTRACTOR BY DBC GOVERNED BY PROMPT PAYMENT SCHEDULE**. Payments to the subcontractor are subject to the provisions of the Commonwealth Procurement Code (62 Pa. C. S. §3931 *et seq.) also known as the "Prompt Payment Schedule*". The general description set forth in the General Conditions does not relieve the DBC from strict compliance with the requirements of the Prompt Payment Schedule. Nothing described in these General Conditions is intended to impose a duty greater than that imposed by the Prompt Payment Schedule. In the event of any discrepancy between this language and the language of the Schedule, the Schedule controls.

7.9 **FAILURE OF DEPARTMENT TO MAKE PROGRESS PAYMENT**. If the Department fails to pay some or all of an approved Invoice for any cause which is the fault of the DBC and not the fault of a particular subcontractor, the DBC shall pay that subcontractor, upon

demand made by the subcontractor at any time after the approved Invoice should otherwise have been issued, for its Work to the extent completed, less the retained percentage.

7.10 **INSURANCE RECEIPTS**. The DBC shall pay each subcontractor a just share of any insurance moneys received by the DBC under the Insurance Article of these General Conditions of the Contract.

7.11 **PERCENTAGE OF COMPLETION**. The Department may, on request, furnish to any subcontractor, if practicable, information regarding percentages of completion certified to the DBC on account of work done by such subcontractor.

7.12 **NO OBLIGATION ON PART OF DEPARTMENT TO PAY SUBCONTRACTOR, SUPPLIER, OR MANUFACTURER**. Subcontractor, supplier, or manufacturer issues concerning delayed and non-payment should be addressed to the DBC and the DBC's payment bond surety. The Department shall have no obligation to pay or to ensure the payment of any moneys to any subcontractor, supplier, or manufacturer except as may otherwise be required by law. Subcontractors, suppliers, and manufacturer acknowledge they have no direct cause of action (unless otherwise provided by law) against the Construction Manager (if there is one on the Project) or the Department relating to any payment issues.

7.13 **SUBCONTRACTOR AND SUPPLIER CLAIMS**. The DBC agrees to require the subcontractor and/or supplier to submit all claims for extras, extensions of time or for damages to the DBC in the manner provided in the Contract Documents for claims by the DBC against the Department in accordance with the Disputes Article of these General Conditions. Since neither subcontractors nor suppliers have privity of contract with the Department, they may not pursue a claim directly against the Department.

ARTICLE 8: PROJECT SCHEDULE

8.1 **DEPARTMENT RESERVATION OF RIGHTS**. The Department reserves the right to accept the Project Schedule developed, signed and submitted by the DBC, while preserving exceptions to any defects in the means, methods, sequences, durations and/or logic which the Department believes exist in the schedule. The acceptance of the updated Project Schedule by the Department in no way relieves the DBC from its duty to coordinate with itself and shall not make the Department, the Department's designee or the Construction Manager (if one is retained) a guarantor of the Project Schedule.

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

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

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

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

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

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

8.6 **COMMENCEMENT OF ON-SITE WORK**. On-site work may commence after the Initial Job Conference.

8.7 **PROJECT SCHEDULE PREPARATION**.

A. CPM: Unless directed otherwise by the Department in the specifications, the project management tool commonly called the Critical Path Method (CPM) scheduling system will be used on this Project for planning, scheduling implementation and reporting of all Work to be performed under this Contract, including all activities of the Retained Professional and its consultants, subcontractors, equipment vendors and suppliers. Unless directed otherwise by the Department, the precedence diagramming method shall be used in preparing the Project Schedule and all related network diagrams. Primavera Project Planner P6 version 8.3 (or more current versions) shall be used by the DBCs to maintain the Project Schedule. The Project Schedule network plan, including all appropriate milestone dates and the computer-

produced reports shall be part of the Contract Documents. The following outline is provided to indicate to the DBC the scope of the scheduling work and the responsibility of the DBCs to comply with this method. The CPM Schedule shall be developed, prepared, and submitted in accordance with this paragraph and the requirements of the Scheduling Administrative Procedure. **The DBC shall not assert any claim whatsoever for any delay or additional cost incurred in connection with the development of the CPM Schedule.**

B. SCOPE: The CPM will be used to establish and control the Project Schedule. This system will be implemented by the DBC using the services of a qualified subcontractor or the DBC's own in-house staff.

C. DUE DATES: The DBC expressly acknowledges the duty to cooperate fully with the below scheduling requirements.

1. If the Department issued a Letter of Intent authorizing the DBC to commence scheduling activities, the DBC shall commence scheduling within the scope as instructed in the Letter.
2. **The Department will only review and pay (if the application is otherwise acceptable) the DBC's Invoice #1 without an integrated Progress Schedule being submitted and accepted by the Department in e-Builder. If there is no Project Schedule submitted and accepted after Invoice #1, the Department will withhold payments from the DBC until such time as there is an accepted Project Schedule**.

D. PRELIMINARY PROJECT SCHEDULE: The CPM Project Schedule will be developed by the DBC in the form of a CPM arrow network or CPM precedence diagram.

1. Unless a Letter of Intent was issued directing otherwise, within seven (7) calendar days of the Effective Date of Contract, the DBC shall furnish the Department a draft progress schedule. The information provided by the DBC to the Department shall include all proposed sequences of operation, time estimates to complete operations, man loading, data from the Retained Professional and its consultants, subcontractors, material supplies, and vendors required for the preparation of the Project Schedule.
2. The DBC shall prepare and submit to the Department within thirty (30) calendar days of the Effective Date of Contract, the completely integrated Project Schedule in CPM format, showing in detail, to the acceptance of the Department, the proposed coordinated dates for the performance of each part of the Work under the Project. The submission of the Project Schedule, and all subsequent updates, shall be done in e-Builder as stated below, as well as in PDF format and by hard copy (including all requested sorts and arrangements; utilizing color print). The attachments in e-Builder shall include all unlocked data files in the Primavera scheduling system used to develop the schedule. The start date on the schedule shall be the Initial Job Conference and end with the Contract Completion Date.
3. Seasonal weather conditions shall be considered by the DBC in the planning and scheduling of all Work influenced by high or low ambient temperatures to insure the completion of all Contract Work within the allotted Contract Time and milestone completion dates.
4. The accepted Project Schedule must meet the specified Project duration as indicated in the Contract.

5. The accepted Project Schedule shall consider and include all time durations associated with submission of design documents for permitting, permit issuance, and UCC Inspection criteria by the PA Department of Labor and Industry, along with all other testing and inspections required by contract. It must take into account the advance notice needed for L&I Inspectors as defined by the UCC Building Permit criteria.

E. MILESTONES:

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

F. SCHEDULING INFORMATION: The following information/data for the Project Schedule will be submitted to the Department. The information shall include, but is not limited to:

1. The DBC's means and methods of construction; and
2. Job sequences; and
3. Activity durations in calendar days (excluding material deliveries and approval of shop drawings);
    a. one (1) calendar day shall be the minimum duration.
    b. thirty (30) calendar days shall be the maximum duration.
4. Construction activities for display of all salient features of the Work of the DBC, including but not limited to:
    a. placing of orders for materials; and
    b. submission of shop drawings for approval; and
    c. approval of shop drawings; and
    d. delivery of material; and
    e. all work activities to be performed by the DBC; and
    f. priority submittal schedule.

G. FORMATION OF FINAL PROJECT SCHEDULE: Once the Project Schedule information has been compiled, the DBC will generate a fully integrated Project Schedule for the Project in draft form. If the completion date indicated on the schedule exceeds the Contract Completion Date or if there appears to be a defect in the construction sequences, duration, or logic, the information used to develop the arrow network diagram or precedence diagram will be reviewed by the DBC and the Department. After discussion and revisions of the information and data, the DBC will utilize this revised data to produce a revised fully integrated Project Schedule. The procedure will be repeated as necessary to obtain a final Project Schedule that meets the Contract Completion Date as set forth in the Contract documents. This final Project Schedule is to be submitted to the Department within thirty (30) days of the Effective Date of the contract or sooner if required by a Letter of Intent. The hard copy of the completed final Project Schedule will show:

1. Activity identification;
2. Activity description;
3. Activity percentage completed;
4. Calendar dates for early start of each activity;
5. Calendar dates for early finish of each activity;
6. Calendar dates for late start of each activity;
7. Calendar dates for late finish of each activity;
8. Individual activity float;
9. Activities critical to completion (i.e., identify all items on the critical path) of the project on schedule;
10. Milestones; and
11. That the Schedule is within the contract completion duration.

The DBC will approve the Project Schedule and each update to the schedule. The DBC will upload the approved Project Schedule for access by the DGS Regional Office for review.

8.8 **WORK DURING FORMATION OF PROJECT SCHEDULE.** Until the final Project Schedule is signed by the DBC and accepted by the Department, the DBC must proceed with the Work utilizing all the information available to them, including but not limited to meetings with the Client Agency, design, coordination meetings, attendance at Job Conferences, two week look ahead activities, weekly superintendent's meetings, draft CPM schedules used in the development of the final Project Schedule, and any other means necessary to maintain work progress until such time as the Project Schedule is complete and accepted. As such, the DBC shall not assert any claim whatsoever for any delay or additional cost incurred with the development of the Project Schedule.

8.9 **THE DEPARTMENT SHALL OWN THE FLOAT**. **No float shall be used by the DBC without a request from the DBC and subsequent directive from the Department**. Total float is defined as the amount of time between the early start date and the late start date, or the early finish date and the late finish date, for each and every activity in the Project Schedule. Extensions of time to interim milestone dates or the Contract Completion Date under this Contract will be granted only to the extent that equitable time adjustments to the activity or activities affected by the Contract Modification or delay exceeds the total float of the affected or subsequent paths and extends any interim milestone date or the

Contract Completion Date. Such determination shall be made at the sole discretion of the Department.

8.10 **MAINTAINING THE PROJECT SCHEDULE**.

A. The DBC shall ensure that such manpower, materials, facilities, and equipment is applied to the Work, and shall work such hours as approved, including night shifts, overtime operations, Sundays, and holidays, as may be necessary, to maintain its progress in accordance with the Project Schedule so that there are no delays and to insure the progress and completion of the Work within the time allowed by the Contract and as permitted by the Department.

B. If the DBC fails to maintain progress according to the schedule or causes delay, the DBC shall furnish such additional manpower, equipment, additional shifts or other measures that are necessary, to bring its operations up to schedule without any additional cost or expense to the Department.

C. If the DBC refuses or fails to keep up with the Project Schedule or fails to proceed as directed by the Department, the Department will note this refusal/failure in the Contractor Responsibility Program and will consider suspension of the DBC in accordance with Section 531 of the Commonwealth Procurement Code. The Department may also, in its sole discretion, find the DBC in breach of its Contract and/or declare the DBC in default of its Contract in accordance with the Termination Article of these General Conditions.

8.11 **PROJECT SCHEDULE UPDATING**. The Project Schedule will be updated and issued at least once per month by the DBC.

A. **MANDATORY MONTHLY SCHEDULE UPDATE MEETING**. The DBC will upload into e-Builder, at least once per month, updates of the Project Schedule. The DBC shall attend a Monthly Schedule Update Meeting, which shall be scheduled in e-Builder. It is mandatory that the DBC provide its updated information to the Department seven (7) calendar days prior to the Monthly Update Meeting. The Department reserves the right to request additional updates, at no cost to the Department, from the DBC. The DBC shall provide documentation in e-Builder confirming the Monthly Update Meetings, stating the date, time, and attendance. At sole discretion of the Department, the DBC shall be required to hold the mandatory monthly schedule update meeting at a suitable location approved by the Department with necessary provisions to accommodate all required attendees of the DBC, the Department, and the DBC's Retained Professional. All necessary computer hardware and software (to include but not limited to laptop, projector and other necessary peripheral devices, and scheduling software etc.) shall be provided by the DBC so that the CPM schedule update can be projected for all meeting attendees to view. The DBC shall have the approved scheduler attend the meeting to produce real time updates to the schedule based upon input from meeting attendees. The schedule file utilized during the meeting shall have all schedule update information provided to the Department already incorporated.

B. At the conclusion of the Monthly Schedule Update Meeting, all information collected will be checked by the DBC against the current Project Schedule. The Updated Project Schedule will be uploaded to the Schedule Submission in e-Builder by the DBC within three (3) calendar days after the Monthly Update Meeting for the Department to view. The submission of Updated Project Schedule to the Department, DBC's Retained Professional, and Construction Manager shall be done by hard copy (including all requested sorts and arrangements; utilizing color print), and in

electronic format (computer disk or file) containing all data files in the Primavera scheduling system used to develop the schedule.

C. Upon request, the DBC shall provide to the Department, in hardcopy and electronic format (format to be determined by DGS), its planning data used to develop the updates of the Schedule. This planning data includes, but is not limited to:

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

D. As part of the Job Conference, all activities scheduled to begin in the projected work for the next two weeks will be reviewed in a schedule look-ahead.

E. The Department reserves the right to reject Invoices if the DBC does not complying with this Section.

8.12 **RECOVERY PLAN**.

A. EVENTS THAT TRIGGER THE NEED FOR A RECOVERY PLAN: The Department may issue a Recovery Notice demanding that the DBC, submit a Progress Recovery Plan (narrative) upon the occurrence of any of the following events:

1. The progress of the Work or a single activity falls behind the contract time as shown in a currently updated and approved Project Schedule by more than fifteen (15) calendar days; or
2. A missed milestone; or
3. When an updated Project Schedule provides a completion date past the Contract Completion Date; or
4. When a late start or late finish for any activity does not come within the time allowed by the current Project Schedule.
5. When, in the sole opinion of the Department, it appears likely that the Work will not be completed within the Contract Time.

B. The DBC will prepare a Recovery Plan indicating that all future activities, Project completion and occupancy dates will be met within the Contract Time. The Recovery Plan shall be developed and received by the Department within three (3) calendar days of receipt of the Recovery Notice. The Recovery Plan shall be implemented immediately unless otherwise directed by the Department.

C. In order to create and maintain the Recovery Plan, the DBC agree(s) to undertake, but not be limited to, some or all of the following actions at no additional cost to the Department: increase the manpower, the number of working hours per shift, the number of shifts per day, the number of working days per week, the quantity of equipment, or any combination of the foregoing, and reschedule such activities to bring the project back on schedule.

D. Failure of the DBC to comply with these requirements shall be considered grounds for a determination by the Department that the DBC is failing to prosecute the Work with sufficient diligence to ensure its completion within the Contract Time and is failing to comply with the Contract Time provisions of the Contract. Such determination may result in default and/or suspension and/or debarment of the DBC.

E. The Department's acceptance of the Recovery Plan does not relieve the DBC of the responsibility for the accuracy of the schedule and for the DBC's obligations to meet the Contract Completion Date. The Department's acceptance of the Recovery Plan does not constitute approval or warranty of the DBCDBCs' means, methods, and techniques of construction. The Department reserves the right to review any Recovery Plan to determine if it satisfies the Project Schedule. If the Recovery Plan does not satisfy the Project Schedule, the Department may elect to prepare a Recovery Plan, to which the DBC must adhere. The costs incurred by the Department in preparing the Recovery Plan will be assessed against the DBC by credit change order.

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

8.13 **REQUESTS FOR EXTENSIONS OF TIME CHANGE ORDER**. All requests for Extensions of Time shall be submitted to the Department through the change order process in e-Builder as discussed in the Administrative Procedures. Reasons clearly substantiating the request shall be included or the request may be denied. All such requests must be filed within ten (10) calendar days of the end of the event or issue that caused the alleged delay. Activity time delays shall not automatically merit an extension of the Contract Completion Date of this Contract.

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

A. A change order, field order (i.e., a no cost change order) or delay may not affect existing critical activities or cause non-critical activities to become critical. Change orders, field orders or delays may result in the Department giving the DBC part of or the entire available total float that may exist within an activity chain on the Network, thereby not causing any effect on any interim milestone date or the Contract Completion Date of this Contract. The Project Schedule shall not excuse the performance of the DBC from activities not indicated on the Project Schedule.

B. If the Department, for any period after the commencement of On-Site Work, approves an Extension of Time Change Order to the DBC, the DBC is required to prepare a revised Project Schedule and provide a copy through e-Builder. If a revised Project Schedule is requested, the DBC must send the revised Project Schedule to the Department within fourteen (14) calendar days of the approval of the Extension of Time Change Order. If the time limits set out in this Paragraph are not met, or the DBC is unable to reach agreement on the Project Schedule, the Department reserves the right to prepare the schedule which will be adhered to by all DBC. All costs incurred by the Department in preparing the schedule will be assessed to the DBC by credit change order or at the Department's discretion.

C. Upon approving an Extension of Time Change Order, the monthly updating of the Project Schedule may result in changes in the dates on which activities and the Project itself are expected to be completed. The process of updating the Project Schedule does not constitute Department approval of requests for Extensions of Time and does not replace the process of seeking extensions in accordance with both the applicable provisions of the General Conditions of the Contract and the

Administrative Procedures, both of which will be strictly enforced. To substantiate and support any timely filed requests for Extensions of Time Change Order, the DBC must submit CPM Schedules (based upon the current Project Schedule in effect at the time the Extension of Time Change Order is submitted) with and without the asserted delay. The DBC must also establish that the delay is justifiable in accordance with the Requests for Extensions of Time Change Order paragraph of these General Conditions. Data drawn from the Project Schedule will also be used by the Department in assessing responsibility for liquidated damages if the DBC causes an unjustified delay.

D. The Milestones shall be updated and adjusted within ten (10) calendar days of the Department approving any Extension of Time Change Order. If a Recovery Plan that was accepted by the Department requires modification of any future Milestone, the Project Schedule and Milestones must be revised accordingly. The Milestones shall be updated and adjusted each time the Project Schedule is revised so that the two instruments remain coordinated.

E. Adjusting the Project Schedule through the use of a Recovery Plan does not constitute approval by the Department of any request for an Extension of Time Change Order and does not replace the process of seeking extensions of time in accordance with the Extension of Time Change Order paragraph in this Article of these General Conditions and the Administrative Procedures, which provisions will be strictly enforced. If the DBC submits a timely filed request for an Extension of Time Change Order, it must also submit a proposed Milestone schedule with and without the asserted delay.

8.15 **DELAYS AND EXTENSIONS OF TIME**. If the DBC is delayed by:

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

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

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

A. The DBC shall use such methods of protection as may be necessary to continue the Work throughout the period of unfavorable weather.

B. If, after using such methods of protection, the DBC cannot continue, a Request for an Extension of Time Change Order may be submitted in e-Builder for the Department's consideration and if approved it will be excusable and non-compensable.

8.17 **EXTENSIONS OF TIME NOT AN ADMISSION OF LIABILITY FOR DELAY**. The approval of an Extension of Time only constitutes a release by the Department of the Department's ability to assess liquidated damages against the DBC for the number of days granted by the Extension of Time. The Department's approval of an Extension of Time **shall not** be construed or interpreted by the DBC as an admission that the Department is liable for delay damages. The DBC agrees that the Department's grant of an Extension of Time will not be used as an admission by the Department of any liability for delay in any subsequent dispute regarding delays. This Paragraph does not preclude either the DBC's rights or the Department's rights to pursue a claim for damages under other provisions of the Contract Documents.

ARTICLE 9: SUBMITTALS and COORDINATION DRAWINGS

9.1 **SUBMITTALS**.

A. A Submittal Register, which is a listing of the submittals needed for the Project, will be created by the DBC's Retained Professional and uploaded to e-Builder for the DBC's use. The DBC will use this Submittal Register when creating their Submittal Schedule. The DBC's Retained Professional's Submittal Register shall serve as the basis of the DBC's Submittal Schedule and is not by any means an all-inclusive list of submittals required for the project. The DBC is responsible for reviewing all Contract Documents to fully develop an all-inclusive list of required submittals for the project and utilizing that list when creating the Submittal Schedule.

B. The DBC shall review the DBC's Retained Professional's Submittal Register in e-Builder and submit all necessary submittals, whether or not listed on the Submittal Register, through the Submittal Process to the DBC's Retained Professional for review and approval. The DBC's Retained Professional shall then forward all approved submittals to the Department and consultants in e-Builder with the Submittal Schedule

C. Submittals shall be in accordance with the Contract Documents and include, but not be limited to, such items as:

1. DBC's, subcontractor's, manufacturer's or fabricator's shop drawings.
2. Descriptive literature including, but not limited to:
    a. Catalog cuts
    b. Diagrams
    c. Operation charts or curves
    d. Test reports
    e. Samples
    f. Operations and maintenance manual, including parts lists
    g. Certifications
    h. Warranties
    i. Manufacturer
3. Coordination Drawings as required.

D. The DBC's Retained Professional's approval of submittals does not relieve the DBC of the responsibility for any deviation from the requirements of the Contract Documents, unless:

1. The DBC has informed the DBC's Retained Professional of such deviation in an attachment to their submittal at the time of submission; and
2. The DBC has noted the deviation on the shop drawings; and
3. The DBC's Retained Professional has given approval of the specific deviation. The DBC's Retained Professional's approval also does not relieve the DBC from responsibility for errors or omissions in the submittals.

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

<u>Failure to mention a deviation</u> shall be construed as a non-conformance with the Contract Documents. The DBC shall be responsible for all costs associated with bringing the Work back into conformance with the Contract Documents, including costs incurred by the Department as a result of such non-conformance.

E. The DBC shall review, approve and submit all submittals required by the Contract Documents or required subsequently by the Department or the DBC's Retained Professional in accordance with the Submittal Schedule in an orderly sequence so as to cause no delay in its Work. Submittals shall be properly identified as specified in the Administrative Procedures and in such manner as the Department may require.

F. By approving and submitting submittals, the DBC represents that such submittals are sufficient for review purposes and that it has determined and verified all field measurements, field construction criteria, materials, catalog numbers and similar data and that it has checked and coordinated each submittal with the requirements of the Work and of the Contract Documents. Where field measurements and field construction criteria are not verifiable at the date of the submittal, the DBC shall ensure that dimensions will be held when constructed.

G. Submittals will be reviewed and approved within fourteen (14) calendar days of the submission dates established by the Submittal Schedule, unless the Department approves a different period of time. The 14 calendar days span the time from upload of the submittal by the DBC to the date the DBC's Retained Professional transmits the return submittal through e-Builder. The Submittal Schedule shall take transmittal times into account when time periods are reviewed. Review and approval are only for conformance with the design concept of the Project and with the information given in the Contract Documents. Approval of a separate item does not indicate approval of an assembly in which the item functions. Approval of submittals shall be carried out on the Project in accordance with the Administrative Procedures. All submittals must be complete and meet the requirements of the entire specification. The DBC shall be responsible for all costs associated with delays of the Project incurred as a result of submittal incompleteness and/or disapprovals.

H. The DBC shall make any corrections required and shall resubmit submittals until approved. The resubmission shall be acted upon within ten (10) calendar days of its receipt, unless the Department approves a different period of time. The ten (10) day period begins on the first full day after the DBC uploads the resubmission and ends on the date the DBC's Retained Professional sends the resubmission to the DBC. Submittals uploaded earlier than the date established by the Submittal Schedule are not required to be returned until ten (10) days after the date established for the submittal by the Submittal Schedule.

I. When resubmitting submittals, the DBC shall direct specific attention to any revisions made, other than the corrections requested by the DBC's Retained Professional on previous submissions, by noting such revisions on the resubmissions.

J. The DBC's Retained Professional's approval of shop drawings or samples does not relieve the DBC of responsibility for any deviation from the requirements of the Contract Documents. The DBC's Retained Professional's approval does not relieve the DBC from responsibility for errors or omissions in the submittals. Failure to mention a variation shall be construed as a non-conformance with the Contract Documents. The DBC shall be responsible for all costs associated with bringing the Work back into conformance with the Contract Documents, including costs incurred by the Department as a result of such non-conformance.

K. No portion of the Work requiring a submittal shall be commenced until the submittal has been approved. Any Work commenced by the DBC prior to final approval of the submittal is performed by the DBC at its own risk.

9.2 **SUBMITTAL SCHEDULE**.

A. Each DBC shall, within seven (7) days of the Effective Date of the Contract review the DBC's Retained Professional's Submittal Register in e-Builder and prepare and submit a Submittal Schedule with all necessary submittals, whether or not listed on the Submittal Register, showing all items requiring submission. The Submittal Schedule shall be submitted in e-Builder as prescribed by the Administrative Procedures.

B. The DBC's initial Submittal Schedule shall include the following, at a minimum:

1. Submittal breakdown by Specification Section number and division; and
2. Scheduled date for initial submittal of item; and
3. Days required after return of an approved submittal to order, fabricate and deliver the specific item to the site.

C. **The Submittal Schedule shall be integrated and tied to the logic of activities in the Project Schedule by the DBC to ensure adequate review time is included in the activity durations for all items on the Submittal Schedule**.

D. Submittals relating to materials and equipment that require advanced approval shall be scheduled and submitted before the DBC issues a purchase order or otherwise acquires the materials or equipment.

E. Drawings of component items forming a system or that are interrelated shall be organized and submitted concurrently. Certifications to be submitted with the drawings shall be so scheduled. The Submittal Schedule shall be coordinated with the Schedule of Values to ensure delivery and payment requests are projected accurately.

F. Neither the Department, its designee, will be responsible for the failure of the DBC to properly schedule the process of material/product design, submittal, review, fabrication, delivery and storage/installation.

G. The Department may require the DBC to add and/or delete items on the Submittal Schedule at any time.

H. The approved Submittal Schedule will become a part of the Contract and the DBCs must comply with it. Each such revised edition and/or revision to the Submittal Schedule shall be resubmitted to the Department for approval.

9.3 **COORDINATION AND SEQUENCING OF SUBMITTALS**.

A. The DBC shall coordinate preparation and processing of submittals with the performance of the Work and the Project Schedule so the Work will not be delayed by the submittal process.

B. The DBC shall coordinate and sequence different categories of submittals for the same Work and for interfacing units of Work, so the Work will not be delayed.

C. No delay damages or time extensions will be granted for time lost due to late, inadequate or uncoordinated submittals or for the time required to resubmit late, inadequate or uncoordinated submittals.

D. The DBC shall be responsible to determine items that will require long lead time to procure. Adequate time shall be allowed for long lead items that require submittals to be made early during the course of the Work in the Submittal Schedule and Project Schedule.

E. No delay damages or time extensions will be granted for lack of consideration being given to long lead items.

9.4 **COORDINATION DRAWINGS**.

A. The DBC shall create and update one complete composite set of Coordination Drawings to pre-plan the installation of General, HVAC, Electrical, Fire Protection, Plumbing and other Work as required.

B. The Department may consider the completion of Coordination Drawings as a condition of approval for any Application for Payment involving any material or equipment delivered or for any Work by the DBC or its subcontractors.

C. The purpose of these Coordination Drawings is to identify coordination problems and interferences prior to installation. The DBC shall prepare and submit Coordination Drawings for any Work where close coordination is required for installation of products and materials fabricated off-site by separate subcontractors, and where limited space availability necessitates maximum utilization of space for efficient installation of different components. Coordination Drawings are required for all equipment rooms, floors, spaces and other areas in which the Work of two or more trades is to be installed and in which the potential for conflict or interference exists, or as determined by the Department.

D. The DBC shall identify a subcontractor, person or entity to facilitate the Coordination Drawing Process between impacted subcontractors and, upon acceptance by the Department, such subcontractor, person or entity shall become the designated Coordination Drawing subcontractor.

E. The Coordination Drawing subcontractor will prepare background drawings that will be distributed to all of the other impacted subcontractors for them to mark-up and return to the Coordination Drawing subcontractor.

F. At a minimum, the Coordination Drawings shall:

1. Show the Work of all subcontractors impacted; and

2. Be drawn to a scale not smaller than 1/4" = 1'-0" (30" x 42" sheet size); and

3. Show clearly in both plan and elevation that all Work can be installed without interference; and

4. Show the interrelationship of equipment and systems to indicate coordination among trades; and

5. Indicate required installation sequences; and

6. Be based on submitted shop drawings, data files and Contract Documents, and include equipment foundations, all equipment, piping, conduit, ductwork, panels, control centers and related appurtenances.

G. The DBC is responsible to resolve any conflicts or disputes with locations of Work items found during the preparation of the Coordination Drawings.

H. The Coordination Drawing subcontractor will incorporate items indicated on the marked-up drawings onto the background drawings, print and/or distribute the final Coordination Drawings or data files as the DBC may elect. One set of reproducible record prints, electronic data files (in format and media acceptable to DGS) and, if requested, four sets of prints of the Coordination Drawings are to be issued to DGS.

I. Since the preparation of Coordination Drawings acceptable to DGS is a contract requirement, the cost is to be included in the DBC's cost proposal.

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

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

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

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

10.1 **SAFETY PRECAUTIONS AND PROGRAMS**. The DBC shall recognize that it is important to business to prevent the occurrence of incidents that lead to occupational injuries or illnesses. The DBC is responsible for initiating, maintaining and supervising all safety precautions and programs required under its portion of the Work.

10.2 **SAFETY OVERVIEW**. The DBC and its subcontractors of all tiers will be responsible for the safety and security of its employees under their control and as to its area of Work.

A. The DBC and its subcontractor(s) of any tier shall be required to have its company Safety Program in place and implemented throughout the duration of the project.

B. The DBC will have a Site Safety Program, maintain injury records as required by OSHA. Upon request by the Department, the DBC shall make available the Site Safety Program, information on injury logs, safety meetings and their topics, inspection reports and other items concerning Project safety.

C. The DBC will inform the Department of any Federal or State inspection, and the Department will receive copies of all Federal and State inspection reports, citations, penalties, abatement dates, etc.

D. The DBC will give full cooperation to all authorized Inspectors, who may periodically inspect the Project without notice.

10.3 **SAFETY OF PERSONS AND PROPERTY**. The DBC shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury, or loss to:

A. All employees involved in the Work and all other persons who may be affected thereby; and

B. All the Work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the DBC or any of its subcontractors of any tier; and

C. Other property within the Contract Limits or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction; and

D. All areas of the Project site where unauthorized entry or presence would present a potential hazard to the health and safety of trespassers shall be adequately posted to prevent access by unauthorized personnel.

10.4 **COMPLIANCE WITH SAFETY LAWS**. The DBC shall comply at all times with all applicable Federal, Commonwealth, and local laws, ordinances, rules, regulations and orders of any public authority having jurisdiction for the safety of persons or property and to protect them from damage, injury or loss. The DBC shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities until the acceptance of all on-site physical work, change order work, and/or demobilization. All areas of the Project shall be hardhat areas. All persons within the Contract Limits are

required to be protected by protective helmets in compliance with Occupational Safety & Health Administration (OSHA) requirements.

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

A. The DBC and its subcontractor(s) of any tier shall follow OSHA requirements regarding the recognition and avoidance of unsafe conditions and the regulations applicable to the work environment.

B. The DBC and each subcontractor shall also provide a company-specific basic site and safety orientation to each individual before they begin Work on the Project. This orientation shall cover general safety rules, potential hazards, site work rules, wearing of protective equipment, etc. The DBC and each subcontractor shall keep a record of all attendees and topics discussed.

C. The DBC and each of its subcontractors shall hold weekly Toolbox Talks Meetings at the Project site.

10.6 **FIRST AID TREATMENT**.

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

10.7 **PROJECT EQUIPMENT**.

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

B. Each DBC shall clearly mark its name on each and every piece of its equipment on-site. The name shall be marked in a place on the equipment that is clearly visible.

C. All tools, saws and mechanical equipment utilized by the DBC shall have protective safety devices in operating order when using the equipment.

10.8 **EMPLOYEE AND VISITOR DRESS REQUIREMENTS**.

A. This Project shall be a hardhat Project and, all supervisors, employees and visitors shall be required to wear a suitable hardhat while on the Project site.

B. Other appropriate personal protective equipment shall be provided and worn as required for personal safety and protection.

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

10.10 **COMPLIANCE WITH SAFETY REGULATIONS**.

A. The DBC's failure to comply with the safety requirements will be considered as non-compliance with the Contract and may result in remedial action as provided by the Contract.

B. Even though the Department has no duty regarding the DBC's compliance with safety regulations, if the Department notifies any DBC of any safety issue, the DBC shall make all reasonable efforts to correct the condition or act.

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

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

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

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

10.12 **REMEDIATION OF DAMAGES**. The DBC shall remedy all damages or loss to any property caused in whole or in part by the DBC, any subcontractor, any sub-subcontractor, or anyone directly or indirectly employed by any of them. If damage or loss is attributable to faulty drawings or specifications or to the acts or omissions of the Department and the damage or loss is not attributable to any fault or negligence of the DBC, then the DBC shall not provide remediation.

10.13 **LOADS**. The DBC shall not load or permit any part of the Work to be loaded so as to endanger the safety of persons or property.

10.14 **DBC'S LIABILITY INSURANCE**. The DBC, during the progress of the Work and until the acceptance of all on-site physical work, change order work, and/or demobilization, shall purchase and maintain such insurance as will protect it from claims set forth below which may arise out of or result from the DBC's operations under the Contract, whether such operations are performed by itself or by any subcontractor:

1. Claims under Worker's Compensation Disability Benefit and other similar employee benefit Acts; and
2. Claims for damages because of bodily injury, occupational sickness or disease, or death of its employees, and claims insured by usual personal injury liability coverage; and
3. Claims for damages because of bodily injury, sickness or disease, or death, of any person other than its employees, and claims insured by usual personal injury liability coverage; and

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

10.15 **INSURANCE LIMITS**. The insurance required by this Article shall be written for not less than any limits of liability specified in this Article or required by Law.

10.16 **CERTIFICATES OF INSURANCE**. Certificates of Insurance complying to this Article and acceptable to the Department shall be filed with the Department prior to the commencement of on-site work. These certificates shall contain a provision that coverages afforded under the policies shall not be canceled or changed until at least thirty (30) calendar day notice has been given to the Department. Renewal certificates must be provided to the Department prior to the expiration of the prior policy as stated on the certificate. The insurance certificate shall also name the Commonwealth of Pennsylvania, the Construction Manager, if there is one on the project, as additional insureds.

10.17 **COMMERCIAL GENERAL LIABILITY AND PROPERTY DAMAGE LIABILITY INSURANCES**. The DBC's commercial general liability insurance shall be in an amount not less than $1,000,000 per occurrence, including accidental death, to any person and subject to the same limit for each occurrence, and in an amount not less than $2,000,000 in the aggregate. This policy must list general aggregate and completed operations aggregate. This policy shall not have any exclusion for explosion, underground, or collapse (XC&U). The DBC's property damage liability insurance shall be in an amount not less than $2,000,000 for each occurrence.

A. For subcontractors, the DBC shall either:

1. Require each of its subcontractors to procure and to maintain subcontractors' commercial general liability, automobile liability, and property damage liability insurance of the type and in the same amounts as specified in this subsection for the life of its subcontract and/or until the acceptance of all of its on-site physical work, change order work, and/or demobilization;

OR

2. Insure the activity of its subcontractors in its own policy.

B. If required by a Special Condition, by law, or the DBC deems necessary, the DBC's and its subcontractors' liability insurance shall include additional riders providing for adequate protection against the indicated special hazards (e.g., blasting, flooding, underpinnings, pollution, etc.).

C. The DBC must submit to the Department, within ten (10) calendar days from the Initial Job Conference, and prior to the beginning of on-site work, the subcontractor's and sub-subcontractor's certificates of insurance which name the Commonwealth of Pennsylvania and Commonwealth Agency as an additional insured.

10.18 **PROPERTY INSURANCE**. The DBC shall, until all physical on-site work is complete, including change order work, punch list work, demobilization or seasonal work, maintain insurance on all insurable work included in the Contract against loss or damage by fire and lightning and those perils covered by the extended coverage endorsement. Insurable work includes work both interior and exterior of any building being constructed. The property insurance must include a Builder's Risk Policy or an installation floater that covers all risks. The DBC and all subcontractors are required to produce certificates of insurance, naming the Commonwealth of Pennsylvania and Commonwealth Agency as an additional insured.

10.19 **COMMERCIAL AUTOMOBILE LIABILITY INSURANCE.** The DBC's Commercial Automobile Liability Insurance shall be in an amount not less than a $1,000,000 Combined Single Limit (CSL) or in the alternative, provided that there is not Commercial Automobile Policy, then a separate limit under the General Liability Policy providing for $1,000,000 Non-Owned and Hired liability.

10.20 **UNMANNED AIRCRAFT SYSTEMS/UNMANNED AERIAL VEHICLES/DRONES INSURANCE.** The DBC, if it chooses to use such a drone device, shall have, or its Subcontractor shall have, specific UAS/UAV/Drone insurance and shall adhere to all Federal Aviation Administration (FAA) regulations and all Federal, State, and Local laws, ordinances, and regulations regarding their use on the Project site. The DBC shall notify the Department of its intended use of this device and provide the insurance certificate to the Department prior to its use. The DBC shall be responsible for all damages caused by the use of these devices and shall notify the Department of any claims of damage associated with this Paragraph at the time of claim.

10.21 **RISK TO CONSTRUCTION WORK**. The risk of damage to the construction work is that of the DBC and surety. No claims for such loss or damage will be recognized by the Department, nor will such loss or damage excuse the complete and satisfactory performance of the Contract by the DBC.

10.22 **Professional Liability Insurance**. The DBC's Retained Professional and any consultants of the DBC's Retained Professional or the DBC required to provide sealed documents shall secure and maintain Professional Liability Insurance to insure its activities in connection with this Contract and shall obtain, keep in force, and maintain it as required. The insurance shall have a retroactive date of placement prior to or coinciding with the date services are first provided that are governed by the terms of this Design Build Contract and shall include, without limitation coverage for professional services as called for in this Contract. However, if the insurance under this Article is written on a claims-made basis, it shall be maintained continuously for a period no less than three (3) years following termination of this Contract or final Closeout Inspection, whichever occurs later. At the Final Inspection, the DBC's Retained Professional(s) shall provide the Department a Certificate of Insurance indicating that the policy has been prepaid for three (3) years or a certificate evidencing professional liability insurance coverage will be maintained on an on-going annual basis during the required time at least in the amount required. The DBC's Retained Professional and any consultants shall secure and maintain Professional Liability Insurance with a minimum coverage of $1,000,000, or the total of the DBC's Retained Professional's fee under the DBC Contract with the Department as of the date of the DBC's Retained Professional's agreement with the DBC, whichever is greater.

10.23 **UNACCEPTABLE SURETY OR INSURANCE COMPANY**. If the surety on the bonds or the insurance company providing the required coverage becomes unsatisfactory to the Department, the DBC must promptly furnish such additional security or insurance coverage as may be required to protect the interest of the Department. The DBC 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 DBC and/or to declare the DBC in default. The Department will not consider any claim for an Extension of Time, costs, or damages because of time lost due to such instance brought by the noncompliant DBC. The noncompliant DBC shall be responsible for damages incurred by the DBC in accordance with these General Conditions.

10.24 **INDEMNIFICATION**.

A. The Contractor shall hold harmless and indemnify the Commonwealth, Department, and the Professional and their agents and employees against any and all third party claims, demands and actions based upon or arising out of any activities performed by the Contractor and its employees and agents under this Contract, provided the Commonwealth gives Contractor prompt notice of any such claim of which it learns. Pursuant to the Commonwealth Attorneys Act (71 P.S. Section 732-101, et seq.), the Office of Attorney General (OAG) has the sole authority to represent the Commonwealth in actions brought against the Commonwealth. The OAG may, however, in its sole discretion and under such terms as it deems appropriate, delegate its right of defense. If OAG delegates the defense to the Contractor, the Commonwealth will cooperate with all reasonable requests of Contractor made in the defense of such suits.

B. Notwithstanding the above, neither party shall enter into any settlement without the other party's written consent, which shall not be unreasonably withheld. The Commonwealth may, in its sole discretion, allow the Contractor to control the defense and any related settlement negotiations.

10.25 **INDEMNIFICATION NOT LIMITED BY EMPLOYEE BENEFITS ACTS**. In any and all claims against the Commonwealth, Department, or the Construction Manager (if one is retained for the Project) or any of their agents or employees, by any employee of the DBC or any subcontractor, the indemnification obligations under this Article shall not be limited on the amount or type of damages, compensation, or benefits payable by or for the DBC or any subcontractor under Worker's Compensation Acts, Disability Benefit Acts, or other employee benefit Acts.

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

A. The preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications; or

B. The giving of, or the failure to give, directions or instructions by the Construction Manager, its agents or employees, provided such giving, or failure to give, is the primary cause of the injury or damages.

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

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

A. COMPLIANCE PROCEDURE: The Department reserves the right to audit any drug and alcohol policy program required by this specification to verify compliance results within twenty-four (24) hours of the Department's notification of intent to audit. The Department shall have free right of access to all relevant records of the DBC and their subcontractors for this purpose, provided such record disclosures are within the

scope of the Commonwealth of Pennsylvania's Department of Health and Human Services guidelines pertaining to confidentiality of employee records.

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

ARTICLE 11: CHANGES IN THE WORK

11.1 **CHANGES**. The Department, without invalidating the Contract, may direct changes in the Work within the general scope of the Contract, consisting of additions, deletions or other revisions. All such changes in the Work will be authorized by Change Order or Field Order.

A. **The DBC agrees that payment under any method noted within this Article will be the exclusive compensation for such addition, deletion, or other revision to the original Contract, including any and all costs associated with acceleration, stacking and re-sequencing of forces required by the change in order to maintain the Project Schedule**.

B. If it is not possible to complete the Work in accordance with the Project Schedule by acceleration, stacking or re-sequencing, the DBC may request an Extension of Time. Adequate information and proper form submission must be provided to validate this request. The Department reserves the right to deny requests not accompanied by adequate information and proper form submissions.

C. The language in this Article must be construed in conjunction with the detailed language of the Administrative Procedures.

D. The Department reserves the right to require Small Diverse Business or Veteran Business Enterprise participation on change orders for additional work not already subject to an Small Diverse Business or Veteran Business Enterprise commitment.

11.2 **COST OF CHANGE ORDER**. The debit or credit cost to the Department resulting from a change in the Work shall be determined in accordance with the Change Order Administrative Procedure as determined by the Department.

11.3 **DISAGREEMENT AS TO COST OR CREDIT FOR CHANGE ORDER**. If the Department and the DBC cannot agree as to the cost or credit to the Department resulting from a change in the Work, the Department shall determine the cost or credit. The DBC **must** proceed with the Change Order work under this Article if directed to do so by the Department. The DBC may submit any dispute for cost to the Department in accordance with the Dispute Resolution Article of these General Conditions. The Department may, in the Department's sole discretion, monitor any or all disputed cost work on a time and material force account basis. If the Department approves the change as a force account Change Order, the DBC would be required to show proof of incurred cost as stipulated under the provisions of Change Order Administrative Procedure.

11.4 **UNIT PRICES SET OUT IN BID OR PROPOSAL**. This paragraph shall not be invoked without the Department's approval. If unit prices were required in the Contract Documents and

subsequently agreed upon, and, if the quantities originally contemplated increased in excess of 125% or decreased below 75% of the original contract quantity, the applicable unit prices may be equitably adjusted by Change Order to prevent such hardship, at the sole discretion of the Department. The DBC must provide evidence that is acceptable to the Department that a hardship exists before an adjustment will be made.

11.5 **UNCLASSIFIED EXCAVATION**.

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

B. All materials encountered which are identified as described in the previous paragraph as unclassified shall be removed to the required widths and depths to create a finished product as shown and/or noted on the drawings and as written in the specifications. No additional compensation or time shall be given to the DBC for this unclassified excavation.

C. Any unclassified items described in paragraphs B and C above that are discovered during any excavation are not concealed conditions or unknown physical conditions below the surface for purposes of the Concealed Conditions paragraph of these General Conditions.

11.6 **CONCEALED CONDITIONS**.

A. The Department recognizes two types of concealed conditions which might be encountered during the performance of the Work, namely:

1. Concealed conditions which are unascertainable from the plans, Contract Documents, visits to the site, or reasonable investigation, and which are at variance with the conditions indicated by the Contract Documents; or
2. Unknown physical conditions below the surface of the ground of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract.

B. The DBC has twenty-four (24) hours after the first observance of the concealed condition to provide notice to the Department.

C. If the Department decides that either of the two concealed conditions described above in (A) has occurred during construction, then the Contract Sum shall be equitably adjusted by Change Order. No adjustment shall be made to the Contract Sum under this paragraph, however, for concealed conditions encountered during cutting and patching of Work.

D. In the event that concealed or unknown conditions described above in (A) preclude either the DBC or the Department from establishing either a methodology or a quantity of work to be priced into a Change Order before commencement and performance of Work, the Department reserves the right to do any of the following:

1. If only the quantity of Work is unknown, the Department may issue a Change Order to perform work in a quantity established by the Department. The

Department will monitor the actual quantities and, upon completion of the Work, issue a second Change Order to adjust the original quantity.

2. If the Department deems that either the methodology and/or scope of the Change Order are indeterminable, the Department may issue an exploratory Change Order to determine the appropriate methodology and scope before issuing a follow-up Change Order to complete the Work. If the Department determines, after review of the results of the exploratory Change Order, that this Change Order was not successful in establishing the methodology or scope of work, the Department may opt for performing and monitoring the entire Change Order Work on a time and material force account basis. If the Department decides to proceed in this manner, the DBC will be required to show proof of incurred cost as stipulated under the provisions of Change Order Administrative Procedure.

11.7 **NO CLAIMS FOR ADDITIONAL COST OR TIME**. No claims for increased costs, charges, expenses, or damages of any kind, except as provided in the General Conditions, shall be made by the DBC against the Department for any delays or hindrances from any cause whatsoever, including, but not limited to, strikes, walkouts or work stoppages during the progress of any portion of the Work. The Department may, however, address such non-compensable delays by extending the time for completion of the Work, as provided in the Contract, which extensions shall constitute the exclusive remedy between the parties.

11.8 **MINOR CHANGES IN THE WORK**. The Department may direct minor changes in the Work (such as minor relocations or field revisions) that the Department and the DBC mutually agree do not involve an adjustment in the Contract Sum or an extension of the Contract time and which are not inconsistent with the intent of the Contract Documents. Such changes may only be enacted by no cost Change Order, or by other order. Such changes are binding on the Department and the DBC. The DBC shall carry out such no cost Change Orders promptly.

11.9 **DIRECTIVE TO COMMENCE CHANGE ORDER WORK**. The Department may direct the DBC to commence Change Order Work prior to a fully executed Change Order. Such direction will not be given until the Department generates the scope and confirms that funding is available to complete the Change Order Work. The DBC shall proceed immediately upon the Department's notification of the directive to the DBC.

ARTICLE 12: NON-CONFORMING WORK AND CORRECTIONS

12.1 **WORK COVERED CONTRARY TO REQUEST**. If any Work is covered contrary to the request of the Department, the Work must, if required by the Department, be uncovered for observation and replaced, at the DBC's expense with no Extension of Time.

12.2 **UNCOVERING OF WORK**. If any Work has been covered which the Department, its designee, has not specifically requested to observe prior to being covered, the Department, may request to see such Work and the Work shall be promptly uncovered by the DBC.

A. If such Work is found to be in accordance with the Contract Documents, the cost of uncovering and replacement shall be charged to the Department by appropriate Change Order.

B. If such Work is found to be not in accordance with the Contract Documents, the DBC shall pay costs to make the Work conform and the cost of replacement

12.3 **CORRECTION OF WORK REJECTED BY THE DEPARTMENT**. The DBC shall promptly correct all Work rejected by DGS or its designee as defective or as failing to conform to the Contract Documents. The correction must be implemented regardless of when such Work is observed and whether or not the Work was fabricated, installed or completed or whether such Work had been paid for by DGS. The DBC shall bear all costs of correcting such rejected Work, including the cost of the DBC's Retained Professional's additional services and any additional cost incurred by DGS and/or any other agency.

12.4 **CORRECTION OF WORK AFTER ACCEPTANCE**. If, after the date of Final Inspection and acceptance of all Work performed under the Contract and until the expiration of warranty on the Work, any of the Work is found to be defective or nonconforming, the DBC shall correct such Work promptly after receipt of a written notice from DGS, unless DGS has previously given the DBC a written acceptance of this specific condition. DGS should give such notice of rejection promptly after discovery of the condition. Acceptance or payment of an Application for Payment by DGS shall not constitute acceptance.

12.5 **CORRECTION AT NO COST TO THE DEPARTMENT**. All defective or nonconforming Work shall be promptly removed from the site, and the Work shall be corrected to comply with the Contract Documents without cost to the Department.

12.6 **COST OF DAMAGE TO OTHER CONTRACTORS' WORK**. The DBC shall bear the cost of replacing all Work of any other contractor that is destroyed or damaged by the removal and/or correction of the DBC's defective or non-conforming Work.

12.7 **FAILURE TO CORRECT DEFECTIVE OR NON-CONFORMING WORK**. If the DBC does not remove such defective or nonconforming Work within the time set forth by the Department, the Department may have the defective or nonconforming Work removed, implement any corrective work by any means necessary, and issue a credit change order to the DBC for all costs associated with the correction. Failure to correct defective or non-conforming work as directed by the Department may be cause for default and/or breach of contract.

12.8 **INVESTIGATION BY THE DEPARTMENT**. The Department reserves the right, upon investigation of installation of defective and/or nonconforming Work, to note this situation in the Contractor Responsibility Program and may consider suspension of the DBC in accordance with Section 531 of the Commonwealth Procurement Code. The Department may also, in its sole discretion, find the DBC in breach of its Contract and/or declare the

DBC in default of its Contract in accordance with the Termination Article of these General Conditions.

12.9 **ACCEPTANCE OF NONCONFORMING WORK**. If the Department knowingly elects to accept nonconforming work, it may do so instead of requiring its removal and correction. If nonconforming work is accepted, a credit Change Order shall be issued to reflect an appropriate reduction in the Contract Sum, or, if the amount is determined after final payment, it shall be paid by the DBC and/or the DBC's surety.

12.10 **DEPARTMENT'S RIGHT TO CARRY OUT THE WORK**. If the DBC fails to carry out the Work in accordance with the Contract Documents or fails to perform any provision of the Contract, the Department may, after **three (3) days** written notice to the DBC, and without prejudice to any other remedy the Department may have, correct such failures. In such case, an appropriate Change Order shall be issued deducting from the payments then or thereafter due the DBC the cost of correcting such failures, including the cost of DGS's designee's additional services made necessary by such failure. If the payments then or thereafter due the DBC are not sufficient to cover such amount, the DBC and/or the DBC's Surety shall pay the difference to the Department.

12.11 **OBLIGATIONS OF DBC NOT LIMITED BY THIS ARTICLE**. The obligations of the DBC under this Article are in addition to, and not in limitation of, any obligations imposed upon the DBC by the Contract Documents or otherwise prescribed by Law.

ARTICLE 13: PAYMENTS AND COMPLETION

13.1 **SCHEDULE OF VALUES**.

A. The language in this Article must be construed in conjunction with the detailed language of the applicable Administrative Procedure.

B. Within thirty (30) days of the Letter of Intent or Effective Date of the Contract, whichever occurs first, and prior to the first Invoice, the DBC shall submit for the Department's approval, a detailed Design Schedule of Values, indicating values for line-items of the Work. The Schedule of Values must provide the aggregate total Contract sum, divided to facilitate payments to the DBC's Retained Professional. The Schedule of Values shall be prepared in e-Builder and supported by such data required by the Department to substantiate its correctness.

C. Within thirty (30) days of the Initial Job Conference, the DBC shall submit for the Department's approval, a detailed Construction Schedule of Values, indicating values for line-items of the Work. The Schedule of Values must provide the aggregate total Contract sum, divided to facilitate payments to subcontractors. The Schedule of Values shall be prepared in e-Builder and supported by such data required by the Department to substantiate its correctness in accordance with the following:

1. Each item in the Schedule of Values shall include its proper share of overhead and profit.

2. When more than one building or structure is included in the Contract, the DBC shall submit a Schedule of Values, indicating Unit Prices for all items of Work within the separate buildings, separate floor levels, site work and/or structures, or as deemed acceptable by the Department.

D. These Schedule of Values, when accepted by the Department, will be used as a basis for the DBC's invoices. This breakdown may also be used by the Department to determine the cost or credit to the Department resulting from the changes in the Work.

13.2 **INVOICE FOR PROGRESS PAYMENTS**.

A. During the progress of the Work, the DBC shall submit invoices of the value of the Work performed to the Department within the e-Builder Invoice Approval-Pay Application process. All invoices shall be supported by data, as required by the Department, substantiating the DBC's right to payment. The Department will review and accept the invoice for validity.

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

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

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

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

13.5 **PAYMENTS WITHHELD**.

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

1. Defective work not remedied; or
2. Reasonable doubt that the Work can be completed for the unpaid balance of the Contract Sum; or
3. Reasonable indication that the Work will not be completed within the contract time; or
4. Unsatisfactory prosecution of the Work by the DBC; or
5. Failure of the DBC to maintain insurance; or
6. Failure of the DBC to properly submit the required submittals and forms, as required in the Administrative Procedures.

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

The DBC may withhold payment from the DBC’s Retained Professional, a subcontractor, supplier, or manufacturer responsible for the defective/non-conforming item. If payment is withheld from the DBC’s Retained Professional, subcontractor, supplier, or manufacturer for such defective/non-conforming item, the DBC must notify the DBC’s Retained Professional, subcontractor, supplier, or manufacturer and the Department (including the Construction Manager if applicable) of the reason for the withholding within fifteen (15) days of the date after the DBC receives the notice of defective/non-conforming item from the Department.

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

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

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

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

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

13.8 **DEPARTMENT DOES NOT MAKE PAYMENT**. If the Department fails to make payment to the DBC within forty-five (45) days after receipt of an acceptable Invoice, the DBC may file a claim for interest. No interest penalty payment shall be paid, however, if payment is made on or before the fifteenth (15th) calendar day after the payment due date. The DBC is not entitled to stop work in any event, unless the Department exercises its right to suspend the work, as provided in these General Conditions. According to 62 Pa. C.S. §3938, as amended, this failure to pay provision shall not apply if:

A. The General Assembly failed to enact a budget for the fiscal year of payment; or

B. The General Assembly failed to enact an operating budget for the fiscal year of payment or a capital budget for the capital project; or

C. The Federal or State Government failed to pay funds due and payable to the local government unit; or

D. The Federal, State, or local government failed to pay funds designated or to be designated for the specific project.

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

A. Unseasonable considerations, such as bituminous paving, landscaping, etc.; or

B. The Department agrees that particular items need not be completed until a subsequent date; or

C. The Department delays the approval of the Final Invoice for any unreasonable length of time, (reasonableness shall be determined by the Department)

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

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

A. An affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the work for which the Department might in any way be responsible, have been paid or otherwise satisfied by the DBC; and

B. Statements from the DBC's Surety Company and the DBC's certificate on forms satisfactory to the Department as to DBC's payment of all claims for labor, materials, equipment rentals and public utility services; and

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

If any subcontractor refuses to furnish a release or waiver, as required by the Department, the DBC 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 DBC shall refund to the Department all moneys that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorney's fees.

13.12 **RELEASE OF FUNDS IF DELAY IN FINAL INSPECTION NOT DUE TO THE DBC'S FAULT**. If Final Inspection is materially delayed through no fault of the DBC, the Department shall, upon certification by the DBC's Retained Professional, make payment of the balance due for that portion of the Work fully completed and accepted by the Department. Such payment will not terminate the contract. If the remaining balance of Work not fully completed or corrected is less than the retainage, and, if performance and payment bonds have been furnished as required, the DBC must submit to the Department, prior to certification of the payment, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted by the Department. Such payment shall be made under the terms and conditions governing final payment, except that it does not constitute a waiver of any of the Department's claims against the DBC.

13.13 **FINAL PAYMENT AS WAIVER OF CLAIMS**. The making of final payment constitutes a waiver of all claims by the Department, **except** those arising from:

A. Unsettled claims;

B. Faulty, nonconforming or defective work or material;

C. Failure of the work or material to comply with the requirements of the Contract Documents; or

D. Terms of any special warranties and/or special guarantees required by the Contract Documents.

13.14 **ACCEPTANCE OF FINAL PAYMENT AS WAIVER OF CLAIMS**. The acceptance of final payment by the DBC constitutes a waiver of all claims by the DBC against the Department.

ARTICLE 14: PROJECT CLOSEOUT

14.1. **CLOSEOUT GENERALLY**. Project closeout consists of a Final Inspection which is deemed to be a significant activity considered to be a Project Milestone. During the Final Inspection, a Punch List of incomplete Work will be generated as discussed below. The DBC must complete all Punch List items within 30 calendar days after Final Inspection**.** It is the DBC's responsibility to request Final Inspection and the Department's responsibility to determine if the Work is substantially complete for Final Inspection to occur.

14.2. **FINAL INSPECTION**.

A. A determination of substantial completion will occur within five (5) days from the request by the DBC to the Department for a Final Inspection and an application for final payment. If the work is determined to be at substantial completion, the Final Inspection shall be conducted within ten (10) days by the DBC's Retained Professional with the observation by the Department. The DBC or its authorized representative must be present throughout the duration of the Final Inspection.

1. The Department has the sole authority, in light of the Project's Scope of Work, to determine whether parts or the whole of the Project are ready for a Final Inspection.

B. At the conclusion of the Final Inspection, the attendees shall review all of the remaining responsibilities of the DBC, the remaining responsibilities of the DBC's Retained Professional, the status of all pending change orders, the status of all pending Requests for Extension of Time Change Orders, the status of any pending claims against the Department and any other obligations of any party necessary to fulfill the requirements of the Contract Documents. Upon completion of this review the DBC, the DBC's Retained Professional and the Construction Regional Director or designee shall approve the punch list containing these items to indicate their concurrence with the remaining responsibilities of each party.

1. The Punch List shall indicate, in detail, all items requiring completion or correction and a reasonable cost of completion plus one and one-half times the aggregate value of the items.

2. The DBC shall complete all Punch List items within thirty (30) calendar days of Final Inspection or show just cause to the satisfaction of the DBC's Retained Professional and the Department why they cannot be completed**.** If satisfactory just cause is not shown, the Department may proceed under Article 12.10 Department's Right To Carry Out The Work.

3. The Department will make payment in full within 45 days of the submission of the accepted final application except as set out in this Article, less one and one-half times the amount required to complete any then-remaining uncompleted minor items, which amount shall be certified by the DBC's Retained Professional. Payment of any amount withheld for the completion of the Punch List shall be paid upon completion of the items.

ARTICLE 15: SUSPENSION

15.1. **SUSPENSION OF WORK DUE TO UNFAVORABLE CONDITIONS OR WEATHER**. If, in the judgment of the Department, the DBC takes undue risk of damage to any part of a the Project, including, but not limited to, soil compaction, foundation excavation, concrete placement or any exterior building construction by proceeding with the Work during unfavorable weather or other conditions (not relating to the fault of the DBC or the convenience of the Department), the Department may issue a notice of a temporary suspension of the Work for either the whole Contract or any part of the Contract, for such temporary period as the Department deems necessary. If the temporary suspension is due to unfavorable weather, the suspension may span the time period (days, weeks or months) encompassed by the unfavorable weather. In case of such suspension under this paragraph, a proper Extension of Time will be allowed for this excusable, non-compensatory delay, and the DBC may not submit any claim for any expense or damages resulting from the suspension. The failure of the Department to suspend the Work does not relieve the DBC of its responsibility to perform the Work in accordance with the Contract Documents.

15.2. **SUSPENSION OF WORK DUE TO FAULT OF DBC**. If the DBC fails to comply with the orders of the Department or the Construction Manager relative to any particular parts of the Work, the Department may issue a notice of a temporary suspension of the Work for either the whole Contract or any part of the Contract until the orders respecting the particular parts are complied with by the DBC. In case of this type of suspension, which shall be considered due to the fault of the DBC, no Extension of Time shall be given and the DBC may not submit any claim for any expenses incurred by the DBC during the suspension period. Further, the DBC may be liable for any and all damages incurred by the Department due to the DBC's actions.

15.3. **SUSPENSION OF WORK FOR THE CONVENIENCE OF THE DEPARTMENT**. The Department, may issue a notice of a temporary suspension of the Work for the convenience of the Department for either the whole Contract or any part of the Contract for such period of time as the Department may determine to be appropriate. This Paragraph does not apply to suspensions due to unfavorable weather or to suspensions due to DBC's fault.

A. If the performance of all or any part of the Work is suspended by the Department, for an excessive period of time under this paragraph, an adjustment shall be made for any increase in the cost of performance of this Contract (excluding profit) necessarily caused by such excessive suspension. The Contract Sum shall be modified accordingly. The Department will not pay any costs under this paragraph to the extent:

   1. Performance would have been concurrently suspended by any other cause, including weather, or the fault or negligence of the DBC; or

   2. An equitable adjustment for the time period encompassed within the suspension has been provided for or excluded under any other provision of this Contract.

B. Any claim for damages allegedly incurred under this paragraph shall be submitted under the Dispute Resolution Article, in an amount stated, at the next Field Dispute Resolution meeting, after the date of the Department's letter terminating the suspension.

15.4. **RESUMPTION OF WORK**. When the Department directs resumption of the Work under this Article, the DBC shall resume full operations within ten (10) days after the date of the Department's letter terminating the suspension. The Department is not liable for any

damages or anticipated profits on account of the Work being suspended, except as described in the Paragraph entitled Suspension of Work for Convenience of the Department. Suspensions of Work as outlined in this Article shall not automatically extend the Contract Completion Date. A request for an Extension of Time may be submitted by the DBC, setting forth its reasons for the extension, which the Department will review in accordance with the Administrative Procedures governing Extensions of Time.

ARTICLE 16: TERMINATION OF CONTRACT

16.1. **TERMINATION FOR THE CONVENIENCE OF THE DEPARTMENT**. The Department, may, at any time and for any reason, terminate this Contract. In such case, the DBC shall be paid (and shall accept payment) for that portion of the entire Contract actually performed satisfactorily as of the date of termination. Termination costs shall not include any loss of anticipated profits. Disputes as to the sum payable to the DBC shall be settled in accordance with the provisions of the Dispute Article of these General Conditions of the Contract.

16.2. **EFFECT OF TERMINATION FOR THE CONVENIENCE OF THE DEPARTMENT**. A termination for the convenience of the Department, shall be effective in the manner and at the time specified in such notice and shall be without prejudice to any claims which the Department may have against the DBC. Upon receipt of such notice from the Department, the DBC 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 DBC shall promptly cancel all existing orders and terminate Work under all subcontracts so far as such orders and Work are chargeable to this Contract. The DBC 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 DBC arising out of this Contract as determined by an audit conducted by or for the Department, as soon as practicable after such termination shall be made as follows:

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

B. The Department shall also reimburse the DBC for all costs to which the DBC has been subjected or is legally liable due to the termination of this Contract, including reasonable costs related to cancellation of orders, termination of subcontracts, etc.

C. The Department shall also reimburse the DBC for the reasonable cost of providing protection of the property of the Department as directed by the termination letter.

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

E. Title to all property accruing to the Department, by reason of the termination of this Contract shall immediately vest in the Department and the DBC will execute and deliver all papers necessary to transfer title to the Department.

F. Coincident with making final payment, the DBC shall furnish the Department, with a final release as provided in the Contract.

G. The Department shall be afforded full access to all books, correspondence, data and papers of the DBC relating to this Contract in order to determine the amount due.

16.3. **DBC'S DEFAULT**. If the DBC:

A. Persistently or repeatedly refuses or fails to supply sufficient properly skilled workmen or proper materials; or

B. Persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction over the Project; or

C. Fails to proceed as directed by the Department; or

D. Performs the Work unsuitably; or

E. Refuses or fails to remove materials or replace rejected or non-conforming Work; or

F. Discontinues the prosecution of the Work without approval of the Department; or

G. Otherwise breaches any material provision of this Contract,

then the Department, may, without prejudice to any of its other rights or remedies, give the DBC and its Surety notice that the DBC has seven (7) days from the date of the Department's letter to cure the default. If the DBC fails to cure the default within the specified time, the Department may terminate the Contract between the Department and the DBC and may take possession of the site and of all materials and equipment, which has been paid for by the Department as of the date of termination. The Department may finish the Work by whatever method the Department may deem expedient. Upon termination, the DBC is not entitled to receive any further payment until the Work is finished, at which time the DBC shall be paid any excess remaining, in accordance with the Unpaid Contract Balance Paragraph below. The discretion to declare the DBC in default rests solely with the Department. No party, whether bound by Contract to the Department or attempting to raise a third party relationship, which this Contract specifically precludes, may state a cause of action against the Department alleging the failure of the Department to exercise its discretion to terminate the DBC.

16.4. **UNPAID CONTRACT BALANCE**. If after the Department defaults/terminates the DBC, the unpaid balance of the Contract sum exceeds the cost of finishing the Work, including compensation for any Construction Manager's Additional Services and any other damages that the Department has incurred in accordance with the Contract, such excess shall be paid to the Surety. If such costs exceed the unpaid balance, the DBC or the surety or both shall pay the difference to the Department.

16.5. **SURETY REPLACEMENT OF DBC**. If the Department defaults/terminates the DBC, the surety will have thirty (30) days from the date of the termination letter to replace the terminated DBC with a Completion DBC that is acceptable to the Department.

16.6. **SURETY'S FAILURE TO PROVIDE REPLACEMENT DBC**. If the surety fails to provide an acceptable DBC within thirty (30) days from the date of the termination letter, the Department may contract with a DBC to complete the Work in accordance with the Contract Documents.

16.7. **DEPARTMENT'S RIGHT OF RECOVERY**. The Department will hold the Surety responsible for any additional cost incurred by the Department as a result of the DBC's termination, including but not limited to, delay cost, acceleration cost, direct cost and consequential and incidental cost incurred by the Department or any other contractor.

ARTICLE 17: DISPUTES

17.1. **DBC MUST CARRY ON WORK DURING THE DISPUTE PROCESS**. The DBC may note that they are performing the Work under protest and may keep records of costs during the dispute resolution process but the DBC shall not refuse to perform as directed by the Department. The DBC must maintain the Project Schedule unless otherwise agreed to by the Department. If the DBC fails or refuses to perform as directed, this action will constitute a breach of contract and the Department may default the DBC and/or proceed to suspend and/or debar the DBC.

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

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

A. PROJECT INTERVALS: A Field Dispute Review Meeting ("FDR Meeting") will be scheduled by the Department to discuss issues arising as of the following intervals of the Project:

1. 50% of the Contract Duration has elapsed; and
2. 75% of the Contract Duration has elapsed; and
3. 100% of the Contract Duration has elapsed; or
4. At any time deemed necessary by the Department.

B. LOCATION: The Department will schedule a mutually convenient date and time for each FDR Meeting. If possible, the FDR Meeting should be convened at the Project site.

C. ATTENDEES: The DBC shall attend each Field Dispute Review Meeting. The DBC's Retained Professional shall attend each Field Dispute Review Meeting. the Department shall also attend the Field Dispute Review Meeting. The Department's Designated Representative will chair the Meeting.

D. PROCEDURE: As the Project progresses and the time for a FDR Meeting approaches, the Department should establish the date for the meeting during the discussion at a bi-weekly Job Conference.

1. The DBC must start the Field Dispute Review Process in e-Builder. This information submitted will be available to the Department. The information should provide sufficient information to allow attendees to research potential disputes, review the Contract Documents, review the Project Schedule and examine site conditions prior to the Meeting. In all cases of misunderstanding and disputes, allegations that verbal instruction was given will not be considered. The DBC must produce documentation in support of its contentions and shall advance no claim in the absence of such documentation, or use or attempt to use any conversation with any parties against the Department, or in prosecuting any claim against the Department.

2. The Department shall convene the Field Dispute Review Meeting and, if necessary, ensure that attendees are introduced to each other.
    a. The FDR Meeting shall not be subject to 2 Pa. C.S. (relating to administrative law and procedure).
    b. Neither audio recording nor videotaping will be allowed during the FDR Meeting.
    c. No transcripts will be taken but attendees are free to take their own notes.
    d. The Meeting may be moved out to the field for visual inspection of the condition if necessary to understand and resolve the issue.
    e. The Department will allow all parties a reasonable time to present and discuss the disputes raised in the DBCs' FDR Meeting Forms.
3. The DBC's representative (an employee in the field familiar with the day-to-day work on this Contract) shall present a description of:
    a. The Work performed since the last Field Dispute Review Meeting; and
    b. The Work to be performed in the near future; and
    c. The status of disputes raised at the previous FDR Meeting; and
    d. New disputes that have arisen since the previous FDR Meeting. For each new dispute:
        i. Set forth the schedule impacts, which may only be presented using the current Project Schedule; and
        ii. Set forth a proposed solution to the dispute, including:
            1. Days needed in any Extension of Time; and/or
            2. Damages attributed to the dispute; and
            3. Identify the party the DBC believes is responsible for creating the dispute.
4. The Department's representative shall present a description of:
    a. their understanding of the Work performed since the last FDR Meetings; and
    b. the Work to be performed in the near future; and
    c. status of disputes raised at the previous FDR Meeting; and
    d. a response to the new dispute(s) raised by the DBC, including:
        i. the Department's and/or the DBC's view of the schedule impact, which may only be presented using the current Project Schedule; and
        ii. the Department's and/or the DBC's response to the original DBC's proposed solution; and
        iii. the identity of the party the Department and or the DBC believes is responsible for creating the dispute.
5. Within two weeks of the FDR Meeting, the Department will render a decision on the issues raised during the FDR Meeting. The decision will be uploaded to e-builder and available to all attendees. The decision is not binding upon any party.

6. If any party is dissatisfied with the decision reached at the FDR Meeting, they may appeal the decision to the second step in the dispute process.

7. **Any issue or dispute arising on the Project must be presented at the first FDR Meeting after the dispute arose. If the DBC fails to raise an issue at the appropriate FDR Meeting then the DBC is deemed to have waived the issue (e.g., an issue arising during the first 50% of contract duration must be presented at the 50% FDR Meeting and may not be presented at any subsequent FDR Meeting).**

8. **Only claims raised during an FDR Meeting may be appealed to the Claim Settlement Conference stage**.

17.4. **STEP 2: CLAIM SETTLEMENT CONFERENCE**. The second step in the dispute resolution process is a Claim Settlement Conference, which is a more formal step in the process and is described in general in §1712.1 of the Commonwealth Procurement Code. To the extent that this language conflicts with §1712.1, the statutory language controls.

A. TIME TO FILE A CLAIM: Under this second step of the process, the DBC may appeal the FDR Meeting decision by submitting a written claim to the Deputy Secretary for Public Works, 18th & Herr Streets, Harrisburg, PA 17125.

1. **Any issue or dispute arising on the Project that is not mutually resolved at the FDR Meeting stage may only be appealed to the Claim Settlement Conference stage. If the DBC fails to pursue any unresolved FDR Meeting issue to a Claim Settlement Conference within the 6-month time frame set forth below, then the DBC is deemed to have waived the issue.**

2. **A claim accrues upon the date of the Department's written decision in Step 1. If the DBC decides to appeal the decision reached at the FDR Meeting, the DBC must file an appeal of the decision to the Deputy Secretary within six months of the date of the Department's written decision. If the DBC fails to file a written request within this time period, the DBC is deemed to have waived its right to assert the claim in any forum. The Deputy Secretary will disregard untimely claims.**

B. CONTENTS OF THE CLAIM: The claim filed by the DBC with the Deputy Secretary shall state **all grounds** upon which the DBC asserts a controversy exists. The claim must contain, at a minimum:

1. The documentation submitted by the DBC to the Department during the FDR Meeting to substantiate the DBC's view of the issue; and

2. The Department's decision.

C. DATE OF THE CLAIM SETTLEMENT CONFERENCE: The Deputy Secretary or a designee may schedule a mutually convenient date and time for the Claim Settlement Conference.

D. ATTENDEES: All parties identified in the Claim Packet or deemed necessary by the Department shall attend the Claim Settlement Conference. At a minimum, the DBC, the DBC's Retained Professional, and a representative from the Department's Bureau of Construction, designated by the Director of Construction, shall attend the Claim Settlement Conference.

E. PROCEDURE: If he Deputy Secretary deems the Claim Settlement Conference is necessary, the Deputy Secretary or a designee will convene the Claim Settlement Conference.

1. The Claim Settlement Conference shall not be subject to 2 Pa. C.S. (relating to administrative law and procedure).
2. Neither audio recording nor videotaping will be allowed during the Claim Settlement Conference.
3. No transcripts will be taken but attendees are free to take their own notes.
4. The Deputy Secretary or a designee will allow all parties a reasonable time to present and discuss the issues.
5. The DBC's representative shall present a description of the issue, including:
    a. the factual background of the issue;
    b. the schedule impacts, which may only be presented using the current Project Schedule; and
    c. the proposed solution to the dispute, including:
        i. days needed in any Extension of Time; and/or
        ii. damages attributed to the dispute; and
        iii. identify the party the DBC believes is responsible for creating the dispute.
6. The Department's representative (if so identified in 5c(iii) above) shall present a description of:
    a. a response to the dispute(s) raised by the DBC, including:
        i. the Department's and/or the Department's representative view of the schedule impact, which may only be presented using the current Project Schedule; and
        ii. the Department's and/or the Department's representative's response to the DBC's proposed solution; and
        iii. the identity of the party the Department and/or the Department's representative believes is responsible for creating the dispute.
7. The Deputy Secretary may render a final determination on the contents of the Claim within 120 days of the receipt of the claim by the Deputy Secretary. The parties may, during the 120 day period, mutually agree to extend the 120-day deadline. The Department will confirm all agreements to extend the 120-day deadline in writing. If no decision is rendered within the 120 days of the receipt of the claim by the Deputy Secretary, and the Department has not confirmed in writing the parties agreement to extend the 120-day deadline, the claim is deemed to be denied on the 120th day. The determination of the Deputy Secretary shall be the final order of the Department with regard to the contents of the Claim.

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

A. TIME TO FILE A STATEMENT OF CLAIM. The DBC may proceed to the third stage of the dispute resolution process by filing a claim with the Board of Claims either:

1. Within fifteen (15) days of the mailing date of the Deputy Secretary's final determination denying a claim; or
2. Within 135 days of the date the DBC files a claim with the Deputy Secretary if no final determination has been rendered and no agreement to extend the 120-day deadline has been confirmed in writing by the Department;

whichever occurs first.

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

ARTICLE 18: COMMISSIONING

18.1. **SCOPE OF WORK.** If deemed necessary by the Department during design, commissioning shall consist of the coordination of activities to verify that all building systems (mechanical, electrical, security, fire alarm, etc.) have been installed and are operating in accordance with the requirements specified in the Contract Documents. This scope shall also include approved installation, start-up training, testing and performance of all building equipment and systems.

18.2. **PROCEDURE**.

A. The specifications contain the commissioning specifications for each Contract.

B. Within 30 days after the Initial Job Conference, the Department's Commissioning Agent will provide the Commissioning Plan to the DBC. This plan shall clarify in detail the schedule and responsibilities for Work to be completed during commissioning of the Project.

C. The schedule set forth in the Commissioning Plan shall then be integrated into the Project Schedule by the first monthly update,

D. Final commissioning will begin upon notice from the DBC to the Commissioning Agent (with a copy sent to the Department) that the system to be commissioned has been completed and is operational.

18.3. **PAYMENT FOR COMMISSIONING**.

A. The DBC shall have a lump sum of 2% of the awarded contract value (or other percentage set forth by the Department in the specifications or during the bidding stage) retained as a distinct line item on the Schedule of Values for Final Commissioning

B. Progress payments can be submitted for systems that have been commissioned and approved by the Commissioning Agent. The total of these progress payments shall not exceed ½ of the total percentage retained for Final Commissioning.

C. Progress payments for commissioning shall be apportioned *pro rata* based on the scheduled values of the systems or equipment to be commissioned. All Applications for Payment that request release of any amount of the total percentage retainage for Final Commissioning must be submitted for review by the Commissioning Agent.

D. The remaining ½ of the total percentage for the Final Commissioning retainage is payable upon completion of seasonal testing results approved by the Commissioning Agent. Seasonal testing will span two seasons, to assure that commissioning addresses peak heating and cooling operation.

ARTICLE 19: MISCELLANEOUS CONDITIONS

19.1. **PROJECT SIGN**. On or before the date of the first regularly scheduled Job Conference (after the Initial Job Conference), the DBC shall erect, at a prominent location (selected by the Department) a six-foot high by eight-foot wide (6'X 8') sign, well braced, and supported by 4"X 4" posts, identifying the Project under construction. The sign board may be constructed from weatherproof plywood, hardboard, or other smooth face material that will weather and remain intact throughout the Project. A three-inch (3") wood border shall frame the sign. The sign shall be placed with the eight-foot (8') dimension horizontal. The base color of the sign shall be white weatherproof flat paint with red border. Lettering shall be in fast blue block letters and shall conform to the following:

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

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

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

[name]...DBC'S RETAINED PROFESSIONAL (3" LETTERS MIN.)

[name]... DESIGN-BUILD CONTRACTOR (3" LETTERS MIN.)

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

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

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

19.2. **FOUNDATIONS FOR MECHANICAL EQUIPMENT**. The DBC 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. The DBC 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.

19.3. **SANITARY FACILITIES**. The DBC 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 DBC shall dismantle and remove these facilities and disinfect as required. Portable chemical toilets approved by the Pennsylvania Department of Health are acceptable. Under temporary field conditions, provisions shall be made to assure not less than one toilet facility is available.

19.4. **SANITARY FACILITIES AFTER LINES INSTALLED**. As soon as soil lines and water lines have been installed inside the building and tested successfully, the DBC shall, at its cost, install two (2) lavatories and sufficient number of toilets according to the following table:

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

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

19.5. **HOISTING FACILITIES**. The DBC shall erect, maintain and operate at its cost, hoisting facilities. In the event the hoisting facilities provided by the DBC are not available or are unable to accommodate the needs of the Department, the DBC must provide hoisting facilities for its own work. All hoisting facilities must comply with the safety regulations of the Department of Labor and Industry.

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

19.7. **WORK BEYOND LIMIT OF CONTRACT**. For purposes of performing the Work, the site is defined by the Limit of Contract lines shown on the drawings. The DBC is responsible for any work performed beyond the limit of Contract.

19.8. **ADVERTISING**. No advertising is permitted within the Work area or adjacent area. This does not apply to corporate vehicles or attire.

19.9. **FEDERAL AND A.S.T.M. AND OTHER SPECIFICATIONS**. Reference to Federal, A.S.T.M. and other standard specifications, references and designations means those in effect at the date of bid. Basic codes and regulations incorporated by reference, standard regulations and codes refer to editions in effect at the date of proposals, including current addenda or errata. The most stringent section of each code applies.

19.10. **STORAGE AND STOCKPILING ON ROOFS**. No materials of any type may be stored or stockpiled overnight on roofs.

19.11. **AUDIT OF RECORDS**. The Department may, at reasonable times and places, audit the books and records of the DBC. The DBC shall maintain books and records related to the Contract for a period of three (3) years from the date of final payment. The DBC shall include a requirement in contracts with subcontractors or suppliers that requires the subcontractor or supplier to maintain its records for the same length of time.

19.12. **TEMPORARY TRAFFIC CONTROL**. The Project site may have active pedestrian, bike or automobile traffic adjacent to site for the entire duration of the Project. If applicable, the DBCs shall incorporate, furnish and implement the following work as part of this Project.

A. TRAFFIC CONTROL – TEMPORARY TRAFFIC CONTROL GUIDELINES (PENNDOT PUBLICATION 213): The needs and control of all road users (motorists, bicyclists, and pedestrians within the highway, including persons with disabilities in accordance with the Americans with Disabilities Act of 1990 (ADA), Title II, Paragraph 35.130 and Temporary Traffic Control Guidelines (PennDOT Publication 213) through a Temporary Traffic Control (TTC) zone shall be an essential part of highway construction, utility work, maintenance operations, and the management of traffic incidents.

Publication 213 applies to the DBC; utilities; Federal, State, County, township and municipal governments; and others performing applicable construction, maintenance, emergency or utility/permit work on highways or so closely adjacent to a highway that workers, equipment or materials encroach on the highway or interfere with the normal movement of traffic.

19.13. **REDUCTION OF NOISE**. The DBC must take reasonable steps to minimize noise and shall perform work in accordance with local noise ordinances. The DBC shall perform noise-producing work in less sensitive hours of the day or week as directed by the Department. The DBC shall maintain noise-producing work at or below the decibel levels and within the time periods specified and shall perform construction activities involving repetitive, high-level impact noise only between 8:00 a.m. and 6:00 p.m. unless otherwise permitted by the Department and permissible by local ordinance.

19.14. **VISIBLE DUST EMISSIONS**. No person shall perform any construction, demolition, excavation, extraction, or other earthmoving activities unless appropriate measures are sufficiently implemented to limit Visible Dust Emissions (VDE) to 20% opacity and comply with the conditions for a stabilized surface area when applicable. The DBC shall apply sufficient water to building exterior surfaces, and/or unpaved surface areas where equipment will operate to limit VDE to 20% opacity throughout the duration of razing and demolition activities or handling, storage, and transport of bulk materials on-site or off-site. The DBC shall apply sufficient dust suppressants to unpaved surface areas within 100 feet where materials from razing or demolition activities will fall in order to limit VDE to 20% opacity. The DBC shall also apply sufficient dust suppressants to unpaved surface areas where wrecking or hauling equipment will be operated in order to limit VDE to 20% opacity.

ARTICLE 20: ADDITIONAL LEGAL MATTERS

20.1 **NO ESTOPPEL OR WAIVER OF LEGAL RIGHTS**. Neither the Department, its designee is precluded or estopped by the measurements or approved Applications for Payment made or given by the Department from showing the true and correct amount and character of the Work performed and materials and equipment furnished by the DBC. The Department may show, at any time, that any such measurements or approved Applications for Payment are untrue or incorrectly made in any particular, or that the Work or materials, equipment or any parts thereof do not conform to the specifications and the Contract. The Department may reject the whole or any part of the aforesaid Work or materials and equipment if the measurements or approved Applications for Payment are found or become known to be inconsistent with the terms of the Contract, or otherwise improperly given. The Department may, notwithstanding any such measurements or approved Applications for Payment, demand and recover from the DBC, its surety, or both, such damages as the Department may sustain by reason of the DBC'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 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 nor any Extension of Time, nor any position taken by the Department, operates as a waiver of any portion of the Contract or any power herein reserved by the Department or any right to damages. A waiver of any breach of the Contract will not be held to be a waiver of any other or subsequent breach.

20.2 **SUCCESSORS AND ASSIGNS**. This Contract shall be binding on the parties hereto, their heirs, executors, administrators, successors and assigns. **No part of this Contract may be assigned by the DBC without the prior consent of the Department.**

20.3 **CLAIMS FOR DAMAGES: LEGAL RELATIONS AND RESPONSIBILITIES**. Contracts covered by these General Conditions are not to be construed as being made for the benefit of any person or political subdivision not a party to this Contract, nor shall this Contract be construed to authorize any person or political subdivision, not a party to this Contract, to maintain any lawsuit hereunder, nor shall this Contract be construed to constitute the basis for the maintenance of any lawsuit by any person, or political subdivision not a party hereto.

20.4 **ROYALTIES AND PATENTS**. The DBC shall pay all royalties and license fees. The DBC shall defend all suits or claims for infringement of any patent rights and shall hold the Department harmless from loss on account thereof.

20.5 **PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT**. Pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Act 58 of 1997, as amended), all employers are required to report information on newly-hired employees to a designated state agency. The Commonwealth of Pennsylvania has designated the Department of Labor and Industry as that agency. For information concerning this requirement call 1-888-PAHIRES.

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

20.7 **NON-Appropriation Clause.** The Commonwealth's obligation to make payments during any Commonwealth fiscal year succeeding the current fiscal year shall be subject to availability and appropriation of funds. When funds (state and/or federal) are not

appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year period, the Commonwealth shall have the right to terminate the Contract or a Purchase Order. The DBC shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under the Contract. Such reimbursement shall not include loss of profit, loss of use of money, or administrative or overhead costs. The reimbursement amount may be paid for any appropriations available for that purpose.