

STANDARD CONSTRUCTION CONTRACT
BETWEEN THE DEPARTMENT AND CONTRACTOR

CONTRACT NO. DGS
«ProjectNumber» «ProjectCustom_Phase» «ProcessFields_WhichContractPoint»

This CONSTRUCTION CONTRACT ("Contract"), executed this ____ day of _____, 20__, by and between the Department of General Services, hereinafter called "Department" and «AwardeeName», a corporation incorporated under the Laws of the State of _____, having its principle place of business located at «Awardee Address» «AwardeeCity», «AwardeeState» «AwardeeZipCode», hereinafter called "Contractor".

NOW THEREFORE, the parties, hereto, in consideration of mutual promises herein contained, and intending to be legally bound hereby, covenant and agree as follows:

ARTICLE 1 – THE CONTRACT DOCUMENTS

THIS Contract consists of this Standard Construction Contract; the Notice to Bidders (if procured through competitive sealed bids; the Instructions to Bidders (if procured through competitive sealed bids); the Contractor's electronic Bid Submission (if procured through competitive sealed bids); the Notice to Proposers (if procured through competitive sealed proposals); the Request for Proposals (if procured through competitive sealed proposals); the Contractor's SDB Participation Submittal and VBE Participation Submittal and their associated required documents; the Contractor's entire proposal (if procured through competitive sealed proposals); the Contract Bond; the General, Special and other Conditions of the Contract; the drawings of all Prime Contracts; the specifications of all Prime Contracts; all addenda issued prior to execution of the Standard Construction Contract; all change orders; all schedules; and the Administrative Procedures of the Department's Bureau of Construction, collectively referred to hereinafter as the "Contract Documents." The Contract Documents are incorporated by reference as if fully set forth herein. To the extent that any of these documents are amended by statute, the statutory language will control.

ARTICLE 2 – THE WORK

The Contractor shall perform all the Work required by the Contract Documents for the construction of Contract No. D.G. S. «ProjectNumber» «ProjectCustom_Phase» «ProcessFields_WhichContractPoint», «Project_Name», «ProjectCustom_Facility», «City», «Countys» County, Pennsylvania, hereinafter referred to as the “Work.”

ARTICLE 3 – PROFESSIONAL

The Professional for this Project is:

«ProjectCustom_ProfessionalFirm»
«ProjectCustom_ProfessionalAddress»
«ProjectCustom_ProfessionalCity», «ProjectCustom_ProfessionalState»,
«ProjectCustom_ProfessionalZip»

ARTICLE 4 – TIME OF COMMENCEMENT AND COMPLETION

The Contract duration of this Contract shall be «ProjectCustom_CalendarDays» calendar days and the term of the Contract shall commence upon the date that the Initial Job Conference is held for the Project or by the date established by the Letter of Intent (if issued). The Contractor shall commence operations on site by no later than ten (10) days after the Initial Job Conference or by the date stated in the Letter of Intent (if issued) and shall complete all Work to the satisfaction and approval of the Department on or before the milestones established in the Project Schedule. The Contractor acknowledges and agrees that time is of the essence for this Contract, and that, if the Contractor fails to complete the Work within the time specified above, the Contractor will pay the Department, as Liquidated Damages, and not as a penalty for such failure, the sum of «**ProcessFields_LiquidatedDamages**» per day for each and every calendar day after the selected interim milestone dates and the Contract completion date until the Work is completed and accepted. The Department may extend the selected interim milestone dates or the completion date of the Contract for causes set forth in the General Conditions of the Construction Contract and, which, in fact, delay the completion of said Work. In such case, the Contractor is liable for said Liquidated Damages only after the expiration of the extended period.

ARTICLE 5 – CONTRACT SUM

The Department will pay the Contractor for the performance of the Work, subject to additions and deductions by change order, as provided in the General Conditions of the

Construction Contract, the sum of «**ContractAmount**», hereinafter called the “Contract Sum.” Payment will be made as set forth in the General Conditions of the Construction Contract. Deductions from or additions to this sum will be made as set forth in the General Conditions of the Construction Contract.

ARTICLE 6 – PROGRESS PAYMENTS and RETAINAGE

The Contractor shall submit Applications for Payment to the Department. The Department will make progress payments from the Contract Sum to the Contractor, in accordance with the provisions of the Prompt Payment Schedules found in the Commonwealth Procurement Code, 62 Pa. C.S. §3931-§3939, and the Administrative Procedures, both of which are incorporated herein by reference and made a part hereof as if those provisions were fully and at length herein recited, except that, where those provisions refer to the government agency, it is deemed to refer to the Department of General Services. The Department will retain a portion of the amount due to the Contractor to insure the proper performance of the Work by the Contractor in each Application for Payment, in accordance with the provisions of Retainage found in the Commonwealth Procurement Code, 62 Pa. C.S. §3921 and the General Conditions of the Construction Contract, both of which are incorporated herein by reference and made a part hereof as if those provisions were fully and at length herein recited, except that, where those provisions refer to the government agency, it is deemed to refer to the Department.

ARTICLE 7 – FINAL PAYMENT

The Final Payment, constituting the entire unpaid balance of the Contract Sum, will be paid by the Department to the Contractor, in accordance with the provisions of the subchapter Substantial/Final Payment found in the Commonwealth Procurement Code, 62 Pa. C.S. §3941-§3942, the Administrative Procedures, and the General Conditions of the Construction Contract, all of which are incorporated herein by reference and made a part hereof as if those provisions were fully and at length herein recited, except that, where those provisions refer to the government agency, it is deemed to refer to the Department.

ARTICLE 8 – UNIT PRICES

Unit Prices contained in the bid for additions to or deductions from estimated quantities and or price are:

_____ acceptable and are, therefore, incorporated into the Contract

_____ are not acceptable and are not incorporated as part of the Contract
are not applicable to this Contract

ARTICLE 9 – SMALL DIVERSE BUSINESS (SDB) and VETERAN BUSINESS ENTERPRISE (VBE) PARTICIPATION

The Contractor agrees to meet and maintain its _____% commitment to utilize SDB and its _____% commitment to utilize VBE made in its SDB Participation Submittal and associated required documents and its VBE Participation Submittal and the associated required documents. The Contractor agrees to complete the SDB and VBE payment information in the Department’s Compliance Management Software, or as otherwise directed by the Department, in accordance with the Contract Documents.

ARTICLE 10 – MISCELLANEOUS PROVISIONS

- 10.1 TERMS DEFINED. The Contract terms are defined in the General Conditions of the Construction Contract.
- 10.2 CORRECTIVE WORK. In addition to any other guarantees or warranties, the Contractor shall, after acceptance of the Work performed under this Contract, remedy without cost to the Department, any such defect, provided said defects in the judgment of the Department, or its successors having jurisdiction in the premises, are caused by defective or inferior materials, equipment or workmanship. If the corrective work is not completed within thirty (30) days after notification by the Department to the Contractor, the Department may do the corrective work and submit those costs to the Surety Company for reimbursement.
- 10.3 BONDS. The Contract Bond(s) given by the Contractor, conditioned upon the faithful performance of the Contract and for the payment of labor, material, equipment rental and public utility service claims, are attached hereto and are made a part hereof.
- 10.4 SOVEREIGN IMMUNITY. Nothing in this Contract shall be deemed to waive or otherwise affect the sovereign immunity of the Commonwealth and its agencies, officers, and employees, or to subject any Commonwealth party to any liability not expressly authorized by law.
- 10.5 NO THIRD PARTY BENEFICIARY. No third party acquires any rights against the Department under this Contract.

- 10.6 PRIVACY OF CONTRACT. There is no privity of contract between any other entity under contract with the Department and the Contractor, and the Contractor is not an intended third party beneficiary of any other Department contract/agreement.
- 10.7 CHOICE OF LAW. The Contractor agrees to abide by and be bound by the Laws of Pennsylvania relating to and regulating the hours and conditions of employment.
- 10.8 BOND RIGHTS NOTIFICATION. Any claimant who has performed labor or furnished material in the prosecution of the Work has a right of action to recover the cost thereof from the Contractor and/or the surety on the Bond given to secure the payment as set forth in Section §903(d) of the Commonwealth Procurement Code, 62 Pa. C. S. §903(d). For those who do not have a contract directly with the Contractor, this right of action may not be exercised unless the Contractor receives written notification of the claim within ninety (90) days after the day on which the claimant performed the last of the labor or furnished the last of the materials for which it claims payment. The Contractor shall include in all of its subcontracts AND supply contracts a provision requiring that its subcontractors and suppliers notify, in writing, their subcontractors and suppliers of this requirement. No third party rights arise against the Department for any reason under this Section and the Contractor shall inform all of its subcontractors and suppliers in writing.

ARTICLE 11 – CONTRACT COMPLIANCE REGULATIONS

All State and Federal Laws prohibiting discrimination in hiring or employment opportunities are made a part hereof. The Contract Documents list applicable statutory provisions which are incorporated by reference into this Contract as if set forth fully herein.

ARTICLE 12 – MERGER CLAUSE

This Contract, when executed, approved and delivered, together with all the Contract Documents, shall constitute the entire agreement between the parties, and there are no other representations or agreements, oral or written, except as expressly set forth in this Contract. This Contract may not be amended or modified by the parties except as provided in the Contract Documents.

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

«AwardeeName»

Witness

Contractor - Corporation

Contractor's Signature

COMMONWEALTH OF PENNSYLVANIA
ACTING THROUGH THE DEPARTMENT
OF GENERAL SERVICES

Secretary of General Services

APPROVED AS TO LEGALITY AND FORM:

Office of Chief Counsel, DGS

8-FA-2.5

Office of Attorney General

8-FA-2.5

Office of General Counsel

I hereby certify that funds in the amount of «ContractAmount»
are available under Appropriation Symbol.

Comptroller Operations Date

CONTRACT BOND

KNOW ALL PERSONS BY THESE PRESENTS, That we the undersigned

«PROCESSFIELDS_COMPANYNAME»

«AwardeeAddress», «AwardeeCity», «AwardeeState», «AwardeeZip»

as Principal (the Construction Contractor)

and

_____ a
Corporation organized and existing under the Laws of the State of
_____ and authorized to transact business in Pennsylvania,

as Surety

jointly and severally hold and firmly bind ourselves, our heirs, executors, administrators, successors and assigns to the Commonwealth of Pennsylvania, Department of General Services ("Department"); as hereinafter set forth, in the full and just several sums of

(A) «ContractAmount» for faithful performance of the Construction Contract as designated in Paragraph "A" herein; and

(B) «ContractAmount» for payment of labor, material, equipment rental and public utility services as designated in Paragraph "B".

Sealed with our respective seals and dated this _____ day of _____, 20 ____

WHEREAS, the above Principal has entered into a Construction Contract (“Contract”) with the Department, and both the Contract and the Contract Bond are effective on the ____ day of _____, 20____, for the Work associated with Contract No. D.G. S. «ProjectNumber» «ProcessFields WhichContractPoint», for the «Project Name», «ProjectCustom Facility», «City», «Countys» County, Pennsylvania. upon certain terms and conditions in said Contract more particularly mentioned; and

WHEREAS the execution of this Contract Bond is one of the Department’s conditions of award and contract execution by the Commonwealth.

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

A. That, if the above Principal, as Contractor, shall well and faithfully do and perform the things agreed by it to be done and performed according to the terms of said Contract and General Conditions, including the plans and specifications therein referred to and made part thereof, and such alterations as may be made in said plans and specifications as therein provided and which are hereby made part of this Bond the same as though they were fully set forth herein, and shall indemnify and save harmless the Department of General Services and all of its officers, agents and employees from any expense incurred through the failure of said Contractor to complete the Work as specified and for any damages growing out of the manner of performance of said Contract by said Contractor or its subcontractors, or its (or their) agents or servants, including, but not limited to, patent trademark and copyright infringements, then this part of this obligation shall be void; otherwise, it shall be and remain in full force and effect.

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

C. It is further agreed that any alterations, which may be made in the terms of the Contract or in the Work to be done, or materials to be furnished, or labor to be supplied or performed, or equipment to be rented, or public utility services to be rendered, or the giving by the Department of General Services of any Extension of Time for the performance of the Contract, or the reduction of the retained percentage as permitted by the Contract, or any other forbearance on the part of either the Department of General Services or the Principal to the other, shall not in any

way release the Principal and the surety or sureties or either or any of them, their heirs, executors, administrators, successors or assigns, from their liability hereunder, notice to the surety or sureties of any such alterations, extension or forbearance being hereby waived.

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

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

[Signature Page Immediately Follows]

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

Witness

«AwardeeName»

Principal – Limited Liability Company

Contractor's Signature

Surety

Attorney-in-Fact

APPROVED AS TO LEGALITY AND FORM:

Office of Chief Counsel, DGS

8-FA-2.5 _____
Office of Attorney General

8-FA-2.5 _____
Office of General Counsel