

REQUEST FOR PROPOSALS FOR

Installation, Maintenance and Repair Services For Access Control and Video Surveillance Equipment

RFP No. 20-07

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PART I

GENERAL INFORMATION TO OFFERORS

SUMMARY	
When:	Proposals must be submitted no later than 1:00 PM, Wednesday December 2, 2020.
Where:	Philadelphia Parking Authority Attention: Mary Wheeler, Manager Contract Administration 701 Market Street, Suite 5400 Philadelphia, PA 19106
How:	Proposals must be sealed and delivered via certified mail, return receipt requested (to include commercial delivery services) or by hand-delivery. Whether mailed or hand-delivered, all envelopes must display the contractor name and must be boldly and clearly handwritten (<i>not</i> typewritten) "RFP No. 20-07 Installation, Maintenance and Repair Services". All proposals must be presented with one (1) original and seven (7) copies, individually numbered, and an electronic version consisting of one PDF file.
Mandatory Pre-Proposal Meeting	A mandatory Pre-Proposal Meeting will be held in the offices of the Authority, Lot 9 located at 4101 North Delaware Avenue on Monday, November 2, 2020 at 11:00 AM. Prospective Offerors must be in attendance at this meeting to be considered an eligible Offeror. Please complete the Offeror Registration Form the prior to the meeting.

I-1. Introduction.

This Request for Proposals ("RFP") is being issued by the Philadelphia Parking Authority, ("Authority"), a body corporate and politic created under the laws of the Commonwealth of Pennsylvania in accordance with the Act of June 19, 2001, P.L. 287, No. 22, 53 Pd. C.S. § 5501 et seq. as amended, known as the "Parking Authority Law". The Authority seeks to procure installation, maintenance and repair services for access control and video surveillance equipment at several facilities under a one year contract with the option of four one year renewals. As a Request for Proposals, this is not an invitation to bid and although price is important, other pertinent factors will be taken into consideration.

I-2. Mission Statement.

The mission of the Philadelphia Parking Authority is to contribute to the economic vitality of Philadelphia and the surrounding region by effectively managing and providing convenient parking on the street, at the airport, and in garages and lots; effectively operating a system of red-light camera enforcement; regulating taxicabs, limousines and transportation network companies; and other transportation-related activities.

A number of customer-focused actions flow from the PPA mission:

- Improving cooperation and planning with PPA stakeholders, including state and local transportation partners,
- Implementing cutting-edge technology to improve the customer experience and enhance overall management and agency efficiency,

- Emphasizing employee training on industry best practices,
- Maximizing transparency in hiring and procurement,
- Implementing on-street parking management policies that address neighborhood needs throughout the City,
- Encouraging reasonably priced off-street parking through rate setting policies at seven PPA Center City facilities,
- Maintaining and improving neighborhood parking lots to address both residential and commercial demand,
- Providing leadership in partnering with private and public hospitality and tourism entities to enhance the visitor experience,
- Applying the latest technology for a superior customer experience at the parking facilities at Philadelphia International Airport in support of this important regional economic engine,
- Encouraging safe, clean, reliable taxicab, limousine and transportation network company service through sound regulations and consistent enforcement,
- Improving vehicle and pedestrian safety in targeted intersections through automated red light enforcement,
- Applying latest technology and continuing staff development to provide the highest quality public service with maximum efficiency.

I-3. Procurement Questions.

Prospective Offerors are encouraged to submit questions concerning the RFP in writing no later than 2:00 PM on Monday, November 16, 2020. Questions concerning this RFP are to be submitted via email to Mary Wheeler at mwheeler@philapark.org with “RFP No. 20-07 Installation, Maintenance and Repair Services for Access Control and Video Surveillance Equipment” listed in the subject line. Only questions submitted in writing will be addressed. The Authority will answer all questions in writing to all qualified Offerors. Any furnished answers will not be official until they have been verified, in writing, by the Authority. The Authority shall not be bound by any verbal information nor shall it be bound by any written information that is not either contained within the RFP or formally issued as an addendum by the Authority. The Authority does not consider questions to be a protest of the Work Statement or of the solicitation.

I-4. Clarification of Instructions.

Should the prospective Offeror find a discrepancy in or an omission from the Work Statement or any part of this RFP, or should he or she be in doubt as to the meaning of any term contained therein, the Offeror shall notify Mary Wheeler, Manager of Contract Administration via email at mwheeler@philapark.org prior to the question deadline. All questions and clarification requests will be responded to via written addendum that will be emailed to all registered Offerors. Addenda will also be posted to the Authority’s website, www.philapark.org.

I-5. Restrictions of Contact.

From the issue date of this RFP until the Authority’s Board approves the awarding of the contract, **Mary Wheeler is the sole point of contact concerning this RFP.** Any violation of this condition by an Offeror may result in the Authority rejecting the offending Offeror’s proposal. If the Authority later discovers that the Offeror has engaged in any violations of this condition, the Authority may reject the offending Offeror’s proposal or rescind its award. Offerors must agree not to distribute any part of their proposals beyond the Authority. An Offeror who shares information contained in its proposal with other Authority personnel and/or competing Offeror personnel may be disqualified.

I-6. Proposal Conditions.

Sealed proposals must be received in the office of the Philadelphia Parking Authority, addressed to Mary Wheeler, 701 Market Street, Suite 5400, Philadelphia, PA 19106, no later than 1:00 PM, Wednesday, December 2, 2020. Each Offeror shall submit to the Authority the information and forms required, which forms and information shall become the property of the Authority and will not be returned to Offerors, unless a written request to withdraw is received prior to the opening of proposals. Failure to attach documents required for submittal at the time of submittal will result in the offer being rejected.

I-7. Small and Small Diverse Business Requirements.

The Philadelphia Parking Authority strongly encourages the meaningful participation of Small and Small Diverse Business Enterprises. It is the goal of the Authority to clarify opportunities available for growth and advancement among small and diverse businesses through contracts to provide products, services or construction to the Authority. A small or diverse business is one that holds a current and valid certification of that status issued by the Pennsylvania Department of General Services' (PADGS) Small Business Procurement Initiative ("SBPI"), which may be accessed at www.smallbusiness.pa.gov.

The Authority will not certify businesses as small or small diverse, but does retain the right to verify that status through investigation, including consultation with PADGS. A business subject to verification will fully cooperate with the Authority's investigation.

The Philadelphia Parking Authority requests that all prospective bidders actively seek certified small and small diverse businesses to participate in this bidding opportunity and that each bidder submit as a part of its bid either a "Solicitation for Participation and Commitment Form" or a "Request for Waiver / Reduction of Participation Form".

Failure to submit a completed "Solicitation for Participation and Commitment Form" or a "Request for Waiver / Reduction of Participation Form" may result in the rejection of a bid. Copies of the "Solicitation for Participation and Commitment Form" and the "Request for Waiver / Reduction of Participation Form" are included in this Invitation to Bid. Any potential bidder who does not have a SBPI certificate as of the bid due date is ineligible for points or other considerations assignable to that status.

The Philadelphia Parking Authority has established the following participation goals for this Request for Proposals:

<u>Small and Small Diverse Business Designation</u>	<u>Goal</u>
Minority Owned	10%-15%
Women Owned	5%-10%
Disabled Veteran or Veteran Owned	2%-5%

A small or small diverse business must retain the certification throughout the term of any contract with the Authority if this factor was used during evaluation of bids.

Offerors may self-certify at:

<http://www.dgs.pa.gov/Businesses/Small%20Business%20Contracting%20Program/Pages/default.aspx>,

<http://www.dgs.pa.gov/Businesses/Small%20Diverse%20Business%20Program/Small-Diverse-Business-Verification/Pages/default.aspx>.

I-8. Signatures Required.

The proposals *must* be signed in all spaces where signatures are required. In cases of corporation, the signature must be that of a duly authorized officer of the corporation and officer's title must be stated. In cases of partnerships, the signature of a general partner must follow the firm name, using the term "On Behalf of the General Partner." In cases of an individual use the term "dba" (Company Name) or as sole owner.

I-9. Instructions for Affidavit of Non-Collusion.

1. The Non-Collusion Affidavit is material to any contract awarded through a public solicitation.
2. This Non-Collusion Affidavit must be executed by the member, officer or employee of the Offeror who makes the final decision on terms and prices identified in the proposal.
3. Offer rigging or collusion and other efforts to restrain competition, and the making of false sworn

statements in connection with the submission of offers are unlawful and may be subject to criminal prosecution. The person who signs the Affidavit below should examine it carefully before signing and assure himself or herself that each statement is true and accurate, making diligent inquiry, as necessary, of all other persons employed by or associated with the Offeror with responsibilities for the preparation, approval or submission of the proposal.

4. In the case of a proposal submitted by a joint venture, each party to the venture must be identified in the proposal documents, and an Affidavit must be submitted separately on behalf of each party.
5. The term "complementary proposal" as used in the Affidavit has the meaning commonly associated with that term in the request for proposal process, and includes the knowing submission of proposals higher than the proposal of another firm, any intentionally high or noncompetitive proposal, and any other form of proposal submitted for the purpose of giving a false appearance of competition.
6. Failure to file and attach an Affidavit in compliance with these instructions will result in disqualification of the proposal.

I-10. Insurance Requirements.

The successful Offeror will be required to submit Insurance Coverage as outlined in *Appendix C*. Offeror's must submit with their proposal a sample certificate of insurance from a recent project that meets the requirements. If you do not currently carry the level of insurance that is required you must submit a letter from your insurance company indicating that they will provide the required insurances as outlined in this RFP if awarded a contract. **Insurance requirements will not be negotiated after the proposal due date.**

I-11. Executed Contract Required.

By submitting a proposal in response to this RFP the Offeror agrees that the Authority will not be bound to any contract, performance or payment obligation until the Authority's Board votes to award a contract to the successful Offeror and the Authority's Executive Director signs the written contract.

I-12. Contract Negotiation.

If successful, this procurement process will result in the presentation of a completed final-form contract to the Authority's Board for approval at a public meeting. To advance that goal a sample contract is included as *Appendix B*. Please review the sample contract carefully. Any exceptions or requested changes to the contract **must be clearly noted in the proposal (Tab F)** in order to be considered.

Exceptions or requested changes to the sample contract will be considered a **part of the response**. Exceptions or requested changes to the sample contract should be made with great care. The Authority may reject all or some of those changes or exceptions, in its sole discretion.

I-13. Business Licenses:

The proposal should include the Offeror's Philadelphia Commercial Activity License (formerly Business Privilege License) number and the Offeror's Federal Tax ID number if the Offeror is seeking representation of the Authority in Philadelphia. If the Offeror does not currently have a Philadelphia Commercial Activity License, it must obtain one no later than five business days after the Board awards the contract. If the Offeror does not believe that it needs a Philadelphia Activity License, an explanation with references to statute and/or the Philadelphia Code should be included with the proposal.

I-14. Rejection or Acceptance of Proposals.

An Evaluation Committee comprised of Authority employees will review all proposals. Discussions and negotiations may be conducted with responsible Offerors for the purpose of clarification and of obtaining best and final offers. Responsible offers shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing Offerors.

The responsible Offeror whose proposal is determined in writing to be the most advantageous to the Authority, taking into consideration price and all evaluation factors, shall be selected for contract negotiation. In the event the negotiations reveal that the proposal selected for negotiation is not the most advantageous or the Offeror selected for negotiation defaults or withdraws from negotiation, the Evaluation Committee may select another proposal then determined to be the most advantageous to the Authority, taking into consideration price and all evaluation factors, for contract negotiation. The Authority may cancel the RFP and reject all proposals at any time prior to award by the Board.

The Authority reserves the right to waive any irregularities in the completion of the forms and papers enclosed in this schedule; to accept or reject any or all proposals; to re-advertise for proposals if desired, and to accept any proposal which, in the judgment of the Authority, will be in the Authority's best interest.

Any form which is required to be submitted and which is incomplete, conditional, obscure, contains additions not called for and not approved by the Authority, or which contains irregularities of any kind, may be cause for rejection of the proposal, in the sole discretion of the Authority. At any time up to the hour and date set for opening of proposals, an Offeror may withdraw its proposal. Such withdrawal must be in writing and sent to the Authority at the address set forth herein by a nationally recognized overnight courier service, certified mail, return receipt requested, or delivered in person. Such withdrawal shall be effective only upon receipt by the Authority evidenced by written confirmation of such receipt and will preclude the submission of another proposal by such Offeror. After the scheduled time for opening of proposals, no Offeror will be permitted to withdraw their proposal, and each Offeror hereby agrees that their proposal shall remain firm for the contract period. A proposal made and opened may be withdrawn with the written permission of the Authority, if the Authority determines in its sole discretion that the proposal is inconsistent with the best interest of the Authority.

I-15. Unacceptable Proposals.

No proposal will be accepted from or selection made of any person, firm or corporation that is in arrears or in default to the Authority upon any debt or contract, or whose insurer or banking institution is in default as surety or otherwise upon any obligation to the Authority, or has failed in the sole opinion of the Authority to faithfully perform any previous contract with the Authority.

I-16. Subcontracting.

The selected Offeror shall not assign or in any way transfer any interest in this agreement without prior written consent of the Authority, nor shall the Offeror subcontract any services without prior written approval of the Authority.

I-17. Notification of Offeror Selection.

The Authority will study and evaluate all proposals which are received in accordance with the instructions set forth in the proposal package and may select an Offeror or multiple Offerors and notify all other Offerors of the selection within sixty (60) days after the date the proposals are opened. Such notice shall be in writing and mailed to the address furnished by each respective Offeror in the Transmittal Letter. The selected Offeror(s) shall not start the performance of any work prior to the effective date of the Contract and the Authority shall not be liable to pay the selected Offeror for any service or work performed or expenses incurred before the effective date of the Contract. Costs incurred by the Offeror in the preparation of the proposal or during any review or negotiations shall be born exclusively by the Offeror.

I-18. Standard Practices.

All work performed under the contract shall be subject to inspection and final approval by the Authority, through the Executive Director or his designee.

I-19. Document Disclosure.

While documents exchanged by or with the Authority or its agents during this process may be protected from public release by certain terms of Pennsylvania's Right to Know Law (65 P.S. §§67.101–67.3104), Pennsylvania's Procurement Code, or other laws, many documents may not be protected. All Offerors are advised to seek counsel or otherwise educate themselves regarding open records laws and regulations in Pennsylvania.

I-20. Statement of No Proposal.

All Prospective Offerors that do not intend to submit a proposal are asked to complete the Proposal Decline Form enclosed in the proposal documents. This document must be emailed to the attention of Mary Wheeler, Manager of Contract Administration at mwheeler@philapark.org. Specific comments and observations are encouraged.

I-21. Shipping and Delivery.

The Offeror will be responsible for all shipping and delivery costs of the specified items required to support the proposal.

I-22. Performance Bond & Labor and Material Payment Bond.

The successful Offeror, prior to the commencement of work under the contract, will be required to furnish a faithful Performance Bond in an amount equal to one hundred percent (100%) of the Installation Costs and a Labor and Material Payment Bond equal to one hundred percent (100%) of the Installation Costs; said bonds shall be from a surety company satisfactory to the Philadelphia Parking Authority and qualified to do business in Pennsylvania. The Surety executing the bonds must be included in the listing of acceptable sureties contained in Treasury Department Circular 570, as most recently revised, and the amount of the bond must not exceed the underwriting risk of such surety forth in said circular or revision thereof.

The Surety executing the bonds shall have a minimum A.M. Best Rating of A-; Class VII or higher.

Should any surety upon such bonds become unsatisfactory to the Philadelphia Parking Authority, the contractor must promptly furnish such additional security as may be required from time to time to protect the interests of the Philadelphia Parking Authority.

Performance Bond and Labor and Material Bonds shall be executed on Standard AIA Document A312 - 2010 in accordance with the Terms and Conditions of the Contract Documents. Each set of bonds executed must include a Power of Attorney evidencing to the Philadelphia Parking Authority of the Attorney-In-Fact to execute bonds and the latest statement of assets and liabilities with an authorized signature from Surety Company.

I-23. Prevailing Wage Information.

Current prevailing wages and benefits for the industry and trade will be paid at all times for the duration of this project. Upon an award, the Prime Contractor is required to obtain current prevailing wage rate determinations applicable to this project (Serial Number #20-06049) from the PA Department of Labor and Industry Enterprise Portal at:

https://linkprotect.cudasvc.com/url?a=https%3a%2f%2fwww.dlsecureweb.pa.gov%2fPrevWage%2fPages%2fProject.aspx%3fd%3d138984%26PageType%3d&c=E,1,UEmwr_Jd9x_kJEyVDDPgtYBiajHgUOaMYdRO_mK-gWp0IYNP0XLv19CXa5en0-XloXmtlUKygkr-h1Uh0HUH6Ef4tUA0XDn7RWcml1gpglSgw,,&typo=1

I-24. Certified Apprenticeship Program Participation.

All Offerors must meet the qualification standards by certifying that it participates, directly or through its labor for each craft or trade, in an approved Apprenticeship Program which is currently registered with the U.S. Department of Labor or a state apprenticeship agency for each craft or trade that will be engaged in the Work.

The Philadelphia Parking Authority will rely on the U.S. Department of Labor personnel assigned to oversee apprenticeship programs in Pennsylvania and, if necessary, on the appropriate Pennsylvania Department of Labor personnel assigned to the relevant apprenticeship programs.

I-25. Site Inspection.

In addition to thoroughly examining and familiarizing themselves with the Drawings, Technical Specifications, and all other contract documents, Offerors must visit the site or sites, prior to submitting their proposal, to ascertain existing conditions relating to construction and labor and to ensure that their proposal is all-inclusive.

All Offerors must inform themselves as to the facilities involved, the difficulties and restrictions attending the performance of the contract.

The contractor, by the execution of the Contract, shall in no way be relieved of any obligations under it due to his/her failure to thoroughly examine the sites and acquaint himself/herself with the conditions there existing.

The Philadelphia Parking Authority will be justified in rejecting any claim based on fact regarding which he/she should have been on notice as a result thereof.

I-26. Pre-Approval of Material Substitutions

This RFP requires either use of specified material(s) or pre-approval by the Philadelphia Parking Authority of material(s), which have not been expressly specified in the Specifications.

All Offerors, who intend to use material(s) other than specified material(s), must secure pre-approval of the material(s) from the Philadelphia Parking Authority, prior to submitting their proposal.

Requests for any pre-approval of non-specified material(s) shall be received by the Philadelphia Parking Authority no later than 2:00 PM, Monday, November 16, 2020. Every request for such pre-approvals shall be made in writing and e-mailed to Mary Wheeler, Manager of Contract Administration at The Philadelphia Parking Authority, mwheeler@philapark.org.

Any approval or rejection of material(s) other than specified material(s) will be made only by Addendum duly issued and a copy of the Addendum will be e-mailed to each person or organization in attendance at the Pre-Proposal Meeting and posted to the Authority's website, www.philapark.org.

No proposal will be accepted from or contract awarded to any person, firm or corporation, which will have failed either to secure pre-approval for any and all materials other than specified materials or to submit a signed statement that they will use specified materials.

PART II

INFORMATION REQUIRED FROM OFFERORS

II-1. Proposal Format.

All proposals submitted must conform to the following format requirements. A transmittal letter signed by a person authorized to engage the Offeror in a contract must be included in your proposal. Proposals must be submitted on letter size (8 ½" x 11") paper. The point size font for text must be 10 to 12, and 6 to 8 for exhibits. All documents must contain a one-inch margin. For exhibits, 11x17 paper is acceptable. An electronic version of the Proposal Form can be provided to all prospective Offerors upon request. Forms that are altered by the Offeror may be grounds for rejection of the Offerors response.

The tab requirements are as follows:

- Tab A - Transmittal Letter
- Tab B – Qualifications and Experience
- Tab C - References
- Tab D - Proposal Form
- Tab E – Evidence of Insurance
- Tab F - Proposed Amendments to Contract
- Tab G - Financial Statements
- Tab H – Consent of Surety for Performance, Labor & Materials Bond
- Tab I – Proof of Certification

***Use physical tabs that extend beyond the 8 ½" x 11" paper**

II-2. Transmittal Letter (Tab A).

Offerors shall submit a cover letter, signed by an authorized principal or agent of the company, which provides an overview of the Offeror's proposal, as well as the name, title, email address and phone number of the person to whom the Authority may direct questions concerning the proposal. Include a statement by the Offeror accepting all terms and conditions contained in this RFP, signed by an officer or individual with authority to bind the firm.

II-3. Qualifications and Experience (Tab B).

Offerors shall have occupied a bona fide place of business and maintained a representative inventory of products or supplies necessary for fulfillment of the term of this contract. Offerors must provide supporting documentation showing a minimum of five (5) years in business. In addition, Offerors shall have successfully completed comparable contracts for at least three customers within the past three (3) years.

II-4. References (Tab C).

A minimum of three (3) client references, to whom similar services were provided within the last 3 years. The client references must include the name of the organization, address, email address, telephone number, individual contact person, the dates services were performed and a description of the services provided.

II-5. Proposal Form (Tab D).

The proposal form attached as *Appendix A* must be submitted in its entirety (with the exception of the Proposal Decline Form). All signature lines must be executed.

II-6. Evidence of Insurance (Tab E).

The successful Offeror will be required to submit Insurance Coverage as outlined in *Appendix C*. Offeror's must submit with their proposal a sample certificate of insurance from a recent project that meets the requirements. If you do not currently carry the level of insurance that is required you must submit a letter from your insurance company indicating that they will provide the required insurances as outlined in this RFP if awarded a contract. **Insurance requirements will not be negotiated after the proposal due date.**

II-7. Proposed Amendments to Contract (Tab F).

If successful, this procurement process will result in the presentation of a completed final-form contract to the Authority's Board for approval at a public meeting. To advance that goal a sample contract is included for review as *Appendix B*. Please review the sample contract carefully. Any exceptions or requested changes to the contract **must be clearly noted in the proposal** in order to be considered.

Exceptions or requested changes to the sample contract will be considered a **part of the response**. Exceptions or requested changes to the sample contract should be made with great care. The Authority may reject all or some of

II-8. Financial Statements (Tab G).

Offeror must provide complete financial statements for the last three years, which have been audited or reviewed by an independent Certified Public Accountant who is not an employee of the Offeror. Complete financial statements must include, at a minimum, a balance sheet, income statement, reconciliation of equity, and a cash flow statement. Offeror may only submit one copy of their financial statements either with the original proposal or in a separate envelope marked "confidential".

Provide a summary and the status of any current or ongoing legal actions, suits, proceedings, claims or investigations pending with any governmental agency with which the Offeror has had or currently has a contractual relationship. The existence of any such pending actions, suits, proceedings, claims or investigations may be a factor considered by the Authority in determining which Offeror should be awarded that contract but will not automatically disqualify the Offeror from consideration. Should there be no legal actions, suits, proceedings, claims or investigations pending with any governmental agency with which the Offeror has had or currently has a contractual relationship, a statement to that effect will be included.

II-9. Consent of Surety for Performance, Labor & Materials Bond (Tab H).

Offeror must provide Consent of Surety for Performance, Labor and Material Payment Bonds as described in Section I-22.

II-10. Proof of Certification (Tab I).

Offeror must provide proof of certifications described in the Work Statement.

PART III

CRITERIA FOR SELECTION

III-1. Mandatory Responsiveness Requirements. To be eligible for selection, a proposal shall be (a) submitted by an Offeror who was represented at the mandatory pre-proposal meeting; (b) timely received from an Offeror; (c) properly signed by the Offeror.

III-2. Technical Nonconforming Proposals. The three (3) Mandatory Responsiveness Requirements set forth in Section III-1 above are the only RFP requirements that the Authority will consider to be non-waivable. The Authority reserves the right, in its sole discretion, to waive any other technical or immaterial nonconformities in the proposal, allow the Offeror to cure the nonconformity, or consider the nonconformity in the evaluation of the proposal.

III-3. Proposal Evaluation. Proposals will be reviewed, evaluated and rated by an Evaluation Committee consisting of Authority employees. The Authority will select the most highly qualified Offeror or the Offeror whose proposal is determined to be most advantageous to the Authority as determined by the criteria listed below.

During the evaluation process, the Authority may require an Offeror to answer questions with regard to the proposal and/or require certain Offerors to make formal presentation to the Evaluation Committee.

III-4. Evaluation Criteria. The Authority determined that it is not advantageous for it to use a offering process in order to secure the services of detailed in this RFP because it wished to consider criteria other than price in the award process, in particular, the Offeror's qualifications and experience.

Proposals will be evaluated consistent with the requirements of this RFP and determine the most responsive Offerors as follows:

- a. Responsiveness of the proposal to the submission requirements set forth in the RFP. **Weight: 10%**
- b. Qualification and experience of the Offeror with regard to the Work Statement outlined in the RFP. The technical ability and capacity of the Offeror to meet the terms of the contract as evidenced by supporting documentation, reference feedback, financial capacity and past performance. **Weight: 50%**
- c. Proposed fees and costs, although the Authority is not bound to select the Offeror who proposes the lowest fees. **Weight: 30%**
- d. Small and Small Diverse Business participation. **Weight: 10%**

PART IV

WORK STATEMENT

IV-1. Objectives

1. General.

The Authority seeks to procure routine and preventative maintenance and repair services on access control and video surveillance equipment at multiple Authority Facilities.

A. Hours of Work: Work required in performance of the Contract shall be performed during regular working hours on regular work days, as defined below. However, Contractors are required to provide prompt emergency call-back service regardless of the time or day of the week at prices indicated.

1. The Authority shall approve any special maintenance or repair work to be performed on a scheduled holiday prior to the performance of any work.

a. **Regular Time:** Regular time refers to normal hours of operation Monday through Friday, 8:00 A.M. e.s.t. to 5:00 P.M. e.s.t., regular hourly labor rate unit cost shall apply to services during these hours.

b. **Premium Time:** Premium time refers to any hours outside of normal hours of operation Monday through Friday, Saturdays, Sundays and State holidays. Premium time hourly rate unit cost shall apply to services during these hours. Only repair services will be performed during premium time.

B. Locations: Contractor agrees to perform the Services at each of the following Authority locations where the system is operated:

- a. Authority's Headquarters located at 701 Market Street, Suite 5400
- b. Authority's customer service office located at 35 North 8th Street
- c. Authority impoundment lot #1 located at 2501 Weccacoe Avenue
- d. Authority impoundment lot #7 located at 6801 Essington Avenue
- e. Authority's TLD headquarters located 2415 South Swanson Street
- f. Authority's Airport Administration building located at the Philadelphia International Airport
- g. Authority's Parkade located on 8th and Filbert connected with Headquarters.
- h. Authority's lots located at the Ben Franklin Bridge and Third Street
- i. Authority's Lot 9 located at 4101 North Delaware Avenue
- j. AutoPark at Old City located at 125 S. 2nd Street

If the Authority acquires new locations the pricing submitted in Contractor's Proposal will be used to determine the installation, maintenance and repair costs for the new locations.

C. Labor, Tools and Supplies: Contractor shall provide all equipment and parts used on service calls and semiannually maintenance visits. Replacements parts shall be new and genuine parts equal to parts supplied by the Original Equipment Manufacturer (O.E.M.) or its successor, to maintain system integrity.

D. Reports: Following each visit, the contractor shall generate report to turn in to the Authority, the report should contain the following,

1. Contractor will leave completed service ticket reports detailing the purpose of each visit. Such tickets will describe the maintenance performed, repair made, or the reported call and the corrective action taken.
2. Contractor will submit semiannually reports summarizing services performed, current condition of access control and video surveillance equipment, and the report shall outline all scheduled preventive maintenance, as well as repairs and replacement (Service calls) and emergency service, performed semiannually.

E. Contractor Location: Contractor shall have an adequate service organization with local service representatives for the Philadelphia area encompassing the machinery and equipment serviced under the Contract. Such service representatives shall be the Contractors' employees or designated by the Contractor as authorized representatives on a full time basis and not as a subcontractor.

F. Certifications Required:

1. Must be certified to sell, install and service Bosch vVMS Video Management Package.
2. Must be certified in the Keri Access Software with Mercury Firmware.

2. Specific.

A. Semi-Annually Preventive Maintenance Visits: Contractor shall inspect each access control and video surveillance equipment at different facilities at least twice a year (every 6 months), not including service calls. Preventative Maintenance will only be performed during Regular Time. During said maintenance visits, Contractor shall include the following services:

1. **Inspections:** Perform visual inspections and operational tests of covered components of the access control system to insure that all devices are functioning properly. Equipment will be checked for damage and proper electrical connections. These inspections should include but is not limited to the following:
 - Clean all devices per manufacturers recommendations
 - Confirm that all connections are secure
 - Verify that devices are securely mounted
 - Verify ground connections
 - Verify that lock power is correct for locks
 - Test door contacts for proper operation
 - Verify read range for all proximity readers
 - Verify operation of all devices
 - Verify that fiber is not crimped or bent
 - Perform 10 valid card reads
 - Replace batteries as required
 - Lubricate moving parts as required
 - Verify power supply voltages
 - Check all loops for communication errors

- Archive all historic data

2. **Repairs:** Scheduled preventative maintenance will include all parts and labor required to restore machinery and equipment to peak operating condition.

B. Response to Service Calls:

1. The Contractor shall respond to an Authority call for service or repair of any systems by arriving at the premises within 2 hours after receipt of any call for maintenance or repairs, this response time includes nights and weekends.
2. The Contractor will repair or replace failed or worn components to keep equipment in peak operating condition.
3. The Contractor will provide a report based on work done in regards to the service calls.

C. Equipment Modernization/Alteration/Upgrades:

1. The Contractor shall include full comprehensive service and repair coverage under the terms of this contract in the event Authority modifies or upgrades any equipment and/or components of the systems.
2. All non-elective changes or modifications required due to obsolescence, parts unavailability, or the Contractor's inability to maintain the systems in accordance with contract specifications shall be fully covered under this contract for its entire term, regardless of application, method or cost assignment.
3. Modernized or otherwise upgraded systems and their components shall automatically be included under the terms of this contract, regardless of whether such components are specifically identified, without extra cost to Authority.

3. Installation of New Video Surveillance Equipment at Lot 9, 4101 North Delaware Avenue.

The Philadelphia Parking Authority intends to contract with a single Prime Contractor to provide all labor, materials, equipment and supervision for the Work as shown on the drawings and specifications.

The project entails providing and installing a new digital video surveillance system to include, but not limited to, two video IP recording, viewing and management appliances to manage sixty-six indoor and outdoor IP cameras. The system will also include various types of communications equipment, such as, network switches, Ethernet extenders, fiber connectors and other related components.

In addition to the digital video surveillance system, the scope of work will also include site excavations and trenching for new electrical distribution and communications conduits and wiring. The new trenches will also require infill complete with new backfill, aggregate subbase and asphalt paving. The Authority reserves the right to remove portions of Work, such as, Trenching and related Work, if it proves to be beneficial for the timely completion of the Project and in the best interest of the Authority.

The exterior pole mounted cameras specified for the project will be installed on existing light pole standards and three new light pole standards complete with concrete bases and foundations. Coordination is required with the Property Owner for camera installations on existing poles.

No work will be performed by the Owner on the proposed system. However, the Owner will supply and install equipment racks, an uninterrupted power supply and a desktop computer workstation and variable speed CCTV keyboard in the event the Owner elects to perform the work included in Alternate No. 2.

PART V

CONTRACT TERMS AND CONDITIONS

V-1. Sample Contract. A sample contract is attached to this solicitation as *Appendix B*. Please review the sample contract carefully. Any exceptions or requested changes to the contract must be clearly noted in the proposal (Tab F) in order to be considered.

Exceptions or requested changes to the sample contract will be considered a part of the response. Exceptions or requested changes to the sample contract should be made with great care, because the number of changes made or the need for subsequent negotiations will factor into the scoring of the proposal.

The Authority's Contractor Integrity Provisions are attached to the proposed form of contract as Exhibit "A". Those Provisions apply to every Authority contractor and any party seeking to contract with the Authority. By submitting a proposal to this public procurement process the potential contractor agrees to comply with the Contractor Integrity Provisions.

V-2. Contract Term. The term of the contract for installation, maintenance and repair services shall commence upon award of a contract by the Authority's Board at a public meeting and execution of a contract by the Executive Director and shall end three (3) years thereafter, unless it is terminated earlier pursuant to the terms of the contract. The term of the contract may be extended by and at the sole option of the Authority for up to two (2) additional one (1) year renewal options.

Appendix A

Proposal Form

**THE PHILADELPHIA PARKING AUTHORITY
701 MARKET STREET – SUITE 5400
PHILADELPHIA, PA 19106**

**INSTALLATION, MAINTENANCE AND REPAIR SERVICES
FOR ACCESS CONTROL AND VIDEO SURVEILLANCE EQUIPMENT
RFP No. 20-07**

PROPOSAL FORM

1. The undersigned submits this proposal in response to the above referenced RFP No. 20-07 Installation, Maintenance and Repair Services for Access Control and Video Surveillance Equipment, being familiar with and understanding the advertised notice of opportunity, General Information, Work Statement, Proposal Form, Affidavit of Non-Collusion, and Addenda if any (the "Proposal Documents"), as prepared by the Philadelphia Parking Authority and posted on the Authority's Internet website and on file in the office of the Authority at 701 Market Street, Suite 5400, Philadelphia, PA 19106. The party submitting a proposal is the "Offeror".
2. The Authority reserves the right to withdraw and cancel this RFP prior to opening or to reject any and all proposals after proposals are opened if in the best interest of the Authority, in the Authority's sole discretion. If the Authority accepts Offeror's offer, Offeror agrees to execute a contract memorializing the proposal's terms if the contract is delivered to Offeror within 60 days of the proposal opening date. This provision will not be interpreted to preclude the execution of a contract related to this proposal outside of that 60 day period.
3. Offeror acknowledges receipt of the following addenda:

Addendum	Date
_____	_____
_____	_____
_____	_____

4. **Contract Term.** The term of the contract shall commence upon award of a contract by the Authority's Board at a public meeting and execution of a contract by the Executive Director and shall end after three (3) years, unless it is terminated earlier pursuant to the terms of the contract. The term of the contract may be extended by and at the sole option of the Authority with two (2) additional one (1) year terms.

5. Cost Proposal:

- A. Offeror must complete the cost proposal for the hourly rate for preventative maintenance and repair services. Additional, provide pricing premium hourly rates for repair calls outside of normal hours of operation.

	Year 1 – 3	Year 4	Year 5
Hourly Rate: Regular Time Maintenance and Repair Services			
Hourly Rate: Premium Time Repair Services Only			

- B. Provide unit costs for the replacement of existing equipment.

Item	Description	Unit Amount
1.	Keri Systems Software Package	\$ _____ / EA
2.	Keri Systems Data Gathering Panels (2 Reader)	\$ _____ / EA
3.	Keri Systems Data Gathering Panels (4 Reader)	\$ _____ / EA
4.	Keri Systems Power Supplies	\$ _____ / EA
5.	HID Proximity Card Readers	\$ _____ / EA
6.	GE Ds160 Motion Detectors	\$ _____ / EA
7.	GE Door Contacts	\$ _____ / EA
8.	Locknetics Magnetic Locks	\$ _____ / EA
9.	Adams Rite Electric Strikes	\$ _____ / EA
10.	Dortronics Pneumatic Push Buttons	\$ _____ / EA
11.	Altronix Lock Power Supplies	\$ _____ / EA
12.	Bosch VMS Software	\$ _____ / EA
13.	Bosch Network Storage Devices	\$ _____ / EA
14.	Bosch NVR Server	\$ _____ / EA
15.	Bosc PTZ IP Dome Cameras	\$ _____ / EA
16.	Bosch Fixed IP Tamperproof Dome Cameras	\$ _____ / EA

17. Bosch Universal Keyboard \$ _____ / EA
18. Winstead Triple Bay Rack \$ _____ / EA
19. 24 port PPoE Network Switches \$ _____ / EA
20. ComNet 26 Port PoE Managed Network Switch \$ _____/EA
21. 42inch Monitors with Mounts \$ _____ / EA
22. Bosch Flexidome IP Starlight 6000 VR, Model #NIN-63023-AE \$ _____/EA
23. Bosch Flexidome IP Starlight 6000 VR, Model #NIN-63023-AES \$ _____/EA
24. Bosch Flexidome IP Corner 9000 MP, Model NCN-90022-F1 \$ _____/EA
25. DIVAR IP 3000, 4x2 HDD Model #DIP-3042-4HD \$ _____/EA
26. Bosch 27-inch High Performance HD LED Monitor \$ _____/EA

C. Stipulated Sum for installation of proposed video surveillance system at 4101 North Delaware Avenue, Philadelphia, PA 19137.

Base Bid

The Undersigned hereby proposes and agrees to furnish all the necessary labor, materials, equipment, facilities, tools and services, excluding building permits and fees, necessary to perform and complete the whole of the Electrical Construction work described in the Contract Documents for **the installation of proposed video surveillance system at 4101 North Delaware Avenue, Philadelphia, PA 19137**, and all appurtenant work in accordance with the Drawings, Specifications, General and Supplementary Conditions, Special Contract Requirements, and other Contract Documents, and according to any additional explanations that may be furnished by the Philadelphia Parking Authority for the following stipulated amount:

Grand Total Base Bid..... Dollars (\$_____)

Grand Total Amount of Base Bid Written Out_____

Bid Details

The Contractor shall supply the following bid details for the purpose of evaluating bids and establishing the schedule of values. All values are for labor, materials, equipment, facilities, tools and services, excluding building permits and fees, unless noted otherwise, and must equal total base bid amounts and grand total amount.

Proposed Video Surveillance System at 4101 North Delaware Avenue Bid Detail

<u>Item</u>	<u>Description</u>	<u>Total Amount</u>
1.	General Requirements (excluding building permits and fees)	\$ _____
2.	Demolition: Other than Sitework.	\$ _____
3.	Cast-in-Place Concrete: Pole bases.	\$ _____
4.	General Construction: Work other than itemized items.	\$ _____
5.	Electrical: Light Pole Standards, Conduits, Boxes and Connectors	\$ _____
6.	Electrical: Cables and Conductors	\$ _____
7.	Video Surveillance System (Total for Items A through N below)	\$ _____

<u>Item</u>	<u>Description</u>	<u>Quantity</u>	<u>Total Amount</u>
A.	Camera Type A	36	\$ _____
B.	Camera Type B	30	\$ _____
C.	Camera Mounting Type ISM-1	22	\$ _____
D.	Camera Mounting Type ICM-1	11	\$ _____
E.	Camera Mounting Type IPM-1	3	\$ _____

F. Camera Mounting Type OPPM-1	23	\$ _____
G. Camera Mounting Type OPWM-1	7	\$ _____
H. DIVAR IP 6000 Series Video Management Appliance	1	\$ _____
I. DIVAR IP 7000 Series Video Management Appliance	1	\$ _____
J. 26 Port Network Switch	4	\$ _____
K. Single Channel Network Transmission Extender	8	\$ _____
L. Four Channel Network Transmission Extender	1	\$ _____
M. Eight Channel Network Transmission Extender	1	\$ _____
N. Power Surge Protection Equipment	3	\$ _____
8. Sitework (including Excavations, Trenching, Backfill and Paving)		\$ _____
=====		
Total Base Bid Amount		\$ _____

Alternate #1 Bid Detail

The Contractor shall supply the following bid detail as an alternate to substitute outdoor fixed dome Type B camera and mounting Type OPPM-1 with an outdoor Bullet Type C camera and mounting Type OPM-1, as shown on the Drawings, for the purpose of evaluating bids and establishing the schedule of values. All values are for materials, labor and equipment unless noted otherwise.

<u>Item</u>	<u>Description</u>	<u>Quantity</u>	<u>Total Amount</u>
A.	Camera Type C	30	\$ _____
B.	Camera Mounting Type OPM-1	23	\$ _____
C.	Deduct: Camera Mounting Type OPWM-1	7	\$ _____

Alternate #2 Bid Detail

The Contractor shall supply the following bid detail as an alternate to substitute outdoor fixed dome Type B camera and mounting Type OPPM-1 with an outdoor PTZ dome Type D camera and mounting Type OPPM-2, as shown on the Drawings, for the purpose of evaluating bids and establishing the schedule of values. All values are for materials, labor and equipment unless noted otherwise.

<u>Item</u>	<u>Description</u>	<u>Quantity</u>	<u>Total Amount</u>
A.	Camera Type D	2	\$ _____
B.	Camera Mounting Type OPPM-2	2	\$ _____

D. Unit Prices

Although this is a lump sum bid, the Contractor shall supply unit prices for purpose of potential add/deducts and future work. All unit pricing will be the same cost for both Adds and Deducts. The requested Unit Prices are for preparing proposals for future facilities, to be specified at a later date, and to establish the basis for Change Order Proposals and defect assessment for rejected work.

In the event The Authority plans to install another video surveillance system in one of its existing or future facilities similar to 4101 North Delaware Avenue; the successful Offeror will use the requested unit pricing specified below in preparing their proposal for review and approval by the Authority. The Offeror shall assume that the Authority will provide a suitable enclosed conditioned room, an uninterrupted power supply (UPS) and an equipment rack for the proposed system installation.

The Offerors are encouraged to become familiar with the Authority's current facilities that are in need of a new video surveillance system or an upgrade to an existing video surveillance system. These facilities are, but not limited to:

- 6801 Essington Avenue
- 4601 Bath Street

<u>Item</u>	<u>Description</u>	<u>Unit Amount</u>
1.	Excavate, Backfill and Pave Utility Trenches	\$ _____ / LF
2.	Electrical Conduits: 1 ½ inch	\$ _____ / LF
3.	Electrical Conduits: 2 inch	\$ _____ / LF
4.	Electrical Conduits: 4 inch	\$ _____ / LF
5.	Electrical Cables and Conductors: 12AWG	\$ _____ / LF
6.	Electrical Cables and Conductors: Category 6	\$ _____ / LF
7.	Light Pole Standard with Concrete Base & Foundation	\$ _____ / EA
8.	Camera Type A	\$ _____ / EA
9.	Camera Type B	\$ _____ / EA
10.	Camera Type C	\$ _____ / EA
11.	Camera Type D	\$ _____ / EA
12.	Camera: Bosch Flexidome IP Corner 9000 MP #NCN-90022-F1	\$ _____ / EA
13.	Camera: Bosch Flexidome IP Starlight 6000 VR #NIN-63023-A3	\$ _____ / EA
14.	Camera Mounting Type ISM-1	\$ _____ / EA
15.	Camera Mounting Type ICM-1	\$ _____ / EA
16.	Camera Mounting Type IPM-1	\$ _____ / EA

17. Camera Mounting Type OPM-1 \$ _____ / EA
18. Camera Mounting Type OPPM-1 \$ _____ / EA
19. Camera Mounting Type OPPM-2 \$ _____ / EA
20. Camera Mounting Type OPWM-1 \$ _____ / EA
21. DIVAR IP 3000 Series Video Management Appliance \$ _____ / EA
22. DIVAR IP 6000 Series Video Management Appliance \$ _____ / EA
23. DIVAR IP 7000 Series Video Management Appliance \$ _____ / EA
24. Monitor: Bosch 27" Full HD LED #UML-274-90 \$ _____ / EA
25. 26 Port Network Switch \$ _____ / EA
26. Single Channel Network Transmission Extender \$ _____ / EA
27. Four Channel Network Transmission Extender \$ _____ / EA
28. Eight Channel Network Transmission Extender \$ _____ / EA
29. Sixteen Channel Network Transmission Extender \$ _____ / EA
30. Power Surge Protection Equipment \$ _____ / EA

6. Contract Time

If awarded the Contract, the Undersigned agrees to complete the entire installation at 4101 N. Delaware Avenue, in **Ninety (90) Calendar Days** commencing from the date of Notice to Proceed. If the Contractor fails to complete the project in the required time, the Contractor shall pay to the Philadelphia Parking Authority five-hundred dollars (\$500.00) per calendar day as damages for delay commencing with the 91st day.

Authorized Signature

Print Name of Signer

Title of Signer

Date

7. Requirement Statement and Site Inspection Acknowledgement

The undersigned Offeror agrees to provide installation, maintenance and repair services as specified in the Work Statement, any Addenda, if issued and the response submitted.

The undersigned also has visited and examined the site(s) involved, as required. As a consequence of this inspection, the undersigned Contractor has knowledge of local conditions and is fully cognizant of the circumstances and conditions that may affect and completion of the work and the cost thereof.

Date of Inspection

Authorized Signature

Print Name of Signer

Title of Signer

Date

8. Submission of Plans and Schedules

Within five (5) days after receipt of written Notice to Proceed, based upon the Undersigned's knowledge and review of the documents and the Contract Time (as set forth in Section 7), the Undersigned agree to execute and submit to the Philadelphia Parking Authority the following "Plans and Schedules," which shall thereafter constitute Contract Documents:

A Construction Management Plan which should include all phasing, scheduling and submissions of all required documents to allow for timely execution of the Contract per the Owner's overall project documents and milestone schedule, and include manpower projection and anticipated schedule of payments for the entire project.

A Detailed Project Schedule which should be a complete Critical Path Method schedule indicating all tasks involved in order to complete the project.

A Quality Control Plan which should designate the Undersigned's Quality Control Manager, who will be responsible for communicating with Philadelphia Parking Authority and its agents with respect to all quality control issues throughout the project. The contractor must submit the Contractor's Quality Control Plan. The plan must include reference to all over site associations referred to in the Contract Documents as they pertain to Quality Control and pertinent Quality Control forms (example: Welding Certificate and Reference Specifications) in order to execute all work as intended in the Bid Documents.

Authorized Signature

Print Name of Signer

Title of Signer

Date

9. Certified Apprenticeship Program Participation

Offerors must be currently participating in an approved Apprenticeship Program which is currently registered with the U.S. Department of Labor or a state apprenticeship agency for each craft or trade that will be engaged in the Work. Offerors shall employ apprentices whose training and employment are in full compliance with the Apprenticeship and Training Act, approved July 14, 1961.

- 1) Does Offeror participate in an approved Apprenticeship Program which is currently registered with the U.S. Department of Labor or a state apprenticeship agency for each craft or trade that will be engaged in the Work? (Attach appropriate documents evidencing participation and enrollment in Apprenticeship Program[s])

____ Yes ____ No

- 2) Is Offeror a signatory to a collective bargaining agreement for each craft or trade that will be engaged in the Work? (Attach appropriate documents evidencing the relevant agreement[s])

____ Yes ____ No

If Offeror answered "Yes" to questions 1 or 2, please answer question 3 (including sub-parts) below.

- 3) Does Offeror, or its labor for each craft or trade, have apprentices and trainees currently participating in said Apprenticeship Program[s]?

____ Yes ____ No

(a) If yes, has Offeror, or its labor for each craft or trade, graduated at least one (1) enrollee in each of the past three (3) years?

____ Yes ____ No

(b) If yes, has Offeror (or its labor for each craft or trade) successfully graduated at least 75% of the program enrollees in each of the past three (3) years*? (Graduation rate is calculated by dividing graduates in a calendar year by the number of enrollees in that year.)

____ Yes ____ No

The Undersigned hereby certifies that it participates, directly or through its labor for each craft or trade, in an approved Apprenticeship Program which is currently registered with the U.S. Department of Labor or a state apprenticeship agency for each craft or trade that will be engaged in the Work; that the attached documentation is true and correct proof of its current participation; and will continue to participate in applicable apprenticeship programs for each craft or trade for the full duration of the Work.

Authorized Signature

Print Name of Signer

Title of Signer

Date

10. Offeror Signatures: Complete one section below.

If proposal is by a corporation, form must include the date and be signed here by (a) President or Vice President, and (b) Secretary, Assistant Secretary, Treasurer, Assistant Treasurer, or Officer and (c) a corporate seal must be affixed. If this form is not so signed, a corporate resolution authorizing form of execution must be attached to this proposal.

Signature

Signature

Typed or Printed Name

Typed or Printed Name

Title

Title

Business Name of Offeror

Street Address

City/State/ZIP Code

Telephone Number

Date

If offer is by a business entity other than a corporation form must be dated and signed here:

Authorized Signature

Business Name of Offeror

Typed or Printed Name

Street Address

Title

City/State/ ZIP Code

Date

Telephone Number

Type of Entity

11. Affidavit of Non-Collusion:

State of: _____
County of: _____

RFP No. _____

I state that I am _____ (Title) of _____ (Name of my organization) and that I am authorized to make this affidavit on behalf of my firm, and its owners, directors, and officers. I am the person responsible in my firm for the price(s) and the amount of this proposal and I have placed my signature below.

I state that:

(1) The price(s) and amount of this proposal have been arrived at independently and without consultation, communication or agreement with any other contractor, Offeror or potential Offeror.

(2) Neither the price(s) nor the amount of this proposal, and neither the terms nor the approximate price(s) nor approximate amount of this proposal, have been disclosed to any other firm or person who is a Offeror or potential Offeror, and they will not be disclosed before proposal opening.

(3) No attempt has been made or will be made to induce any firm or person to refrain from submitting a proposal in response to this Proposal, or to submit a proposal higher than this proposal, or to submit any intentionally high or noncompetitive proposal or other form of complementary proposal.

(4) The proposal of my organization is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive proposal. I have read, understand and will abide by the Authority's Contractor Integrity Provisions.

(5) _____ (my organization's name) its affiliates, subsidiaries, officers, directors and employees are not currently under investigation by any governmental agency and have not in the last four years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract, except as follows:

I state that _____ (my organization's name) understands and acknowledges that the above representations are material and important and will be relied on by The Philadelphia Parking Authority when awarding the contract for which this proposal is submitted. I understand and my organization understands that any misstatement in this affidavit is and shall be treated as fraudulent concealment from The Philadelphia Parking Authority of the true facts relating to the submission of proposals / proposals for this contract.

Signature

Printed Name

SWORN TO AND SUBSCRIBED
BEFORE ME THIS _____ DAY
OF 20____

Notary Public
My Commission Expires: _____

12. Qualifications:

- a. **Type of business:** Individually owned ☐
Check one Partnership ☐
Corporation ☐
Other ☐

- b. **Number of employees:** Under 25 ☐
Check one Under 50 ☐
Under 100 ☐
Over 100 ☐

- c. **If you have had previous contracts with the Authority, list date and product or service provided:**

i.....

ii.....

iii.....

- d. **Philadelphia Commercial Activities License Number:** _____

- e. **Federal EIN Number:** _____

LIST OF SUBCONTRACTORS AND MATERIAL SUPPLIERS

(copy page as needed)

Undersigned agrees, if notified of the acceptance of this bid, that he will utilize the following material suppliers, for the following noted types of work. No substitutions shall be made in the employment of material suppliers without written approval from the owner. The undersigned acknowledges that the Philadelphia Parking Authority reserves the right to reject any material suppliers listed below after bids are opened at no additional cost to Owner.

MATERIAL SUPPLIER

SUBCONTRACTOR OR MATERIAL SUPPLIER		
Name:		
Type of Work:		
Phone:	E-mail:	
Address:		
City:	State:	ZIP Code:
Union Affiliation (if any):		
Signature of Individual, Owner or Partner:		
Name and Title of Signer:		
Name of Firm:		
Date:		
SUBCONTRACTOR OR MATERIAL SUPPLIER		
Name:		
Type of Work:		
Phone:	E-mail:	
Address:		
City:	State:	ZIP Code:
Union Affiliation (if any):		
Signature of Individual, Owner or Partner:		
Name and Title of Signer:		
Name of Firm:		
Date:		

SOLICITATION FOR PARTICIPATION AND COMMITMENT FORM SMALL BUSINESS PROCUREMENT INITIATIVE (SBPI)					THE PHILADELPHIA PARKING AUTHORITY SMALL AND SMALL DIVERSE BUSINESSES				
RFP No. 20-07 Installation, Maintenance and Repair Services			Name of Offeror			No. of Copies Submitted		Page_of	
See Instructions: <i>Photocopy this form as necessary.</i>									
Each Contractor must attach a copy of their SBPI certificate. Information can be found at www.smallbusiness.pa.gov .									
Small and Small Diverse Business Information			Type of Work or Materials	Date Solicited		Commitment Made		Give reason(s) if no commitment made or no quote received:	
Company Name				Phone	Mail	Yes (Date)	No		
Address									
Contact Name				Quote Received		Amt Committed to			
Telephone No. Email Address				Yes	No	\$			
SBPI Certificate Number _____ Copy Attached <input type="checkbox"/> Yes <input type="checkbox"/> No Small Business Designation _____						% of total bid			
Small and Small Diverse Business Information			Type of Work or Materials	Date Solicited		Commitment Made		Give reason(s) if no commitment made or no quote received:	
Company Name				Phone	Mail	Yes (Date)	No		
Address									
Contact Name				Quote Received		Amt Committed to			
Telephone No. Email Address				Yes	No	\$			
SBPI Certificate Number _____ Copy Attached <input type="checkbox"/> Yes <input type="checkbox"/> No Small Business Designation _____						% of total bid			
Small and Small Diverse Business Information			Type of Work or Materials	Date Solicited		Commitment Made		Give reason(s) if no commitment made or no quote received:	
Company Name				Phone	Mail	Yes (Date)	No		
Address									
Contact Name				Quote Received		Amt Committed to			
Telephone No. Email Address				Yes	No	\$			
SBPI Certificate Number _____ Copy Attached <input type="checkbox"/> Yes <input type="checkbox"/> No Small Business Designation _____						% of total bid			

REQUEST FOR WAIVER / REDUCTION OF PARTICIPATION FORM SMALL BUSINESS PROCUREMENT INITIATIVE (SBPI)				THE PHILADELPHIA PARKING AUTHORITY SMALL AND SMALL DIVERSE BUSINESSES	
RFP No. 20-07	Name of Bidder/Offeror			Company Address	
Type of Small Business	Participation Range Recommended	Percentage Achieved	Waiver Requested	1. Small Businesses Unavailable to Participate Of those small and small diverse businesses, identify those which were interested in the contract but were unavailable to work on this contract or were unable to prepare a quote. State the reasons for the unavailability of each disadvantaged business. Confirming letters from the firms unavailable to do the work should be submitted whenever possible. 2. Contractor's Advertisements for Participation Have you advertised in general circulation media, trade association publications and media focused on disadvantaged businesses concerning subcontracting and joint venture opportunities for this contract? If so, attach copies of all such advertisements published by you. If copies are not available, explain why and state the text of the advertisement(s) and the publications where they were printed. 3. Information and Assistance Provided to Small Businesses Of those small and small diverse businesses listed on the solicitation for participation and commitment form, identify those to whom you provided plans, specifications, and requirements of the contract. Detail all assistance you provided to interested disadvantaged businesses and all your efforts at negotiation for specific sub-contracts.	
Minority Owned					
Women Owned					
Veteran Owned					
INSTRUCTIONS To be granted a waiver of small business participation, you must show that you have made a good faith effort to obtain the participation. On separate company letterhead you must address each of the three sets of questions identified on this form. You may also attach supplemental pages and additional documentation. If there is no avenue for the vendor to achieve small business participation please identify that in your letter.					
READ THIS NOTICE BELOW					
Your Request for Waiver will be considered and approved or disapproved solely on the basis of information submitted with the proposal.				In submitting this form and any information pertaining to this request for waiver, vendor certifies that the statements are true and such certification is made subject to the penalties set forth in 18PA. C.S. §4904 relating to unsworn falsification to authorities.	

MANAGER CONTRACT ADMINISTRATION
THE PHILADELPHIA PARKING AUTHORITY
701 MARKET STREET, SUITE 5400
PHILADELPHIA, PA 19106



Proposal Decline Form: RFP No. 20-07 Installation, Maintenance and Repair Services on Access Control and Video Surveillance Equipment

If you did not submit an offer to the Authority for this solicitation, please return this form immediately.

The undersigned contractor declines to submit an offer for this project.

Name: _____

- ☐ Requirements too "tight" (explain below)
- ☐ Unable to meet time period for responding to this Proposal
- ☐ We do not offer this product or service
- ☐ Our schedule would not permit us to perform
- ☐ Unable to complete Work Statement
- ☐ Unable to meet Bond/Insurance Requirements
- ☐ Work Statement unclear (explain below)
- ☐ Unable to meet Insurance Requirements
- ☐ Unable to meet Contract Requirements (explain below)
- ☐ Other (specify below)

Comments:

Upon completion of this form, please email the form to Mary Wheeler, Manager of Contract Administration at mwheeler@philapark.org.

Appendix B

Sample Contract

**AGREEMENT FOR
INSTALLATION, MAINTENANCE AND REPAIR
FOR ACCESS CONTROL AND VIDEO SURVEILLANCE EQUIPMENT
BY AND BETWEEN
THE PHILADELPHIA PARKING AUTHORITY
AND**

Contract No. K-20-0032

THIS AGREEMENT effective as of this ____ day of _____, 2020, by and between **The Philadelphia Parking Authority**, an agency of the Commonwealth of Pennsylvania and a body corporate and politic, with its principal address at 701 Market Street, Suite 5400, Philadelphia, PA 19106 (the "**Authority**") and _____, a _____, with its registered address at _____ ("**Contractor**").

WITNESSETH:

WHEREAS, the Authority is a public body corporate and politic organized and existing under Act of 2001, June 19, P.L. 287, No. 22, as amended;

WHEREAS, the Authority is the owner and operator of an electronic access, security and video surveillance system ("System") located at its office headquarters and its various facilities;

WHEREAS, the Authority requires an experienced electronic security firm to provide professional services in connection with the installation, maintenance and repair of the System;

WHEREAS, the Authority initiated a request for proposal process through RFP No. 20-07 for professional Installation, Maintenance and Repair Services on Access Control and Video Surveillance Equipment in order to foster competition and obtain the best value ("RFP"), attached hereto as Exhibit "B";

WHEREAS, Contractor submitted a confirming Proposal responding to the RFP on _____ ("Proposal"), attached hereto as Exhibit "C";

WHEREAS, after due consideration and deliberation within the Authority, Contractor was selected to provide the professional Installation, Maintenance and Repair Services on Access Control and Video Surveillance Equipment upon the successful negotiation of this Agreement and assent of the Authority's Board; and

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

1. SCOPE OF SERVICES.

The Authority hereby engages and Contractor hereby agrees to perform the following Installation, Maintenance and Repair Services on Access Control and Video Surveillance Equipment ("Services"):

A. To perform high quality Services, as detailed in this Agreement, the RFP, and the Proposal in the most cost effective manner utilizing personnel at the level of competence required relative to the nature of the work, and to follow all applicable federal, state, or local laws;

B. To coordinate the fulfillment of this Agreement with the Authority's Project Manager. The Authority's Project Manager will be Rebecca Minnigh, who may be reached at 215-683-9701 or by e-mail at RMinnigh@philapark.org. However, the parties agree that only the Authority's Chairman or Executive Director may consent to any alteration or amendment to this Agreement, and in each such case in writing;

C. Provide all services to the Authority as directed by its Project Manager;

D. Authority Facilities with Access Control and Video Surveillance Equipment ("Locations"):

- a. Authority's Headquarters located at 701 Market Street, Suite 5400
- b. Authority's customer service office located at 35 North 8th Street
- c. Authority impoundment lot #1 located at 2501 Weccacoe Street
- d. Authority impoundment lot #7 located at 6801 Essington Avenue
- e. Authority's TLD headquarters located 2415 South Swanson Street
- f. Authority's Airport Administration building located at the Philadelphia International Airport
- g. Authority's Parkade located on 8th and Filbert connected with Headquarters.
- h. Authority's lots located at the Ben Franklin Bridge and Third Street
- i. Authority's Lot 9 located at 4101 North Delaware Avenue
- j. AutoPark at Old City located at 125 S. 2nd Street

Company agrees to perform the Services at the Authority's Locations. The Authority reserves the right to modify the Locations in its sole discretion;

E. System Installation. Contractor agrees to install the System, including all materials, labor and equipment at the Authority's Lot 9, located at 4101 North Delaware Ave, in a manner consistent with and pursuant to the terms, specifications and conditions of the AIA Contract. As it relates to the installation of the System at Lot 9 the AIA Contract will be considered separate and apart from this Agreement. The AIA Contract is attached hereto for reference only, marked as Exhibit "D". Any future locations will be installed pursuant to an AIA Contract, similar in form to the above, and will be attached to an amendment to this Agreement; and

F. Provide monthly written reports detailing the Services that were performed.

2. TERM.

The term of this Agreement shall commence on the date first written above and shall end 3 years thereafter, with 2 one-year Options to Renew at the sole discretion of the Authority, subject to the other provisions of this Agreement. The Authority shall provide 30 days written notice of its option to renew for each one-year term permitted by this Agreement. The term of this Agreement may not be extended beyond 5 years.

3. CONSIDERATION AND PAYMENT.

A. For the performance of Services described herein, the Authority will pay the Contractor in accordance with the pricing detailed in its Proposal. At no time may the consideration paid by the Authority to Contractor during the Term of this Agreement exceed _____ (\$ _____), without an amendment to this Agreement and approval by the Authority's Board.

B. The Contractor will invoice the Authority monthly and in arrears for payment for Services as provided in this Agreement in a form acceptable to the Authority. All invoices must be forwarded to the Project Manager at the Authority's address provided above.

C. At no time will Contractor be reimbursed for any administrative or overhead costs incurred by Contractor in fulfilling the terms of this agreement, including, but not limited to, any time, fees or expenses associated with Contractor's travel, fuel, lodging, food, or photocopying in connection with Contractor's Services without the advanced written approval of the Project Manager.

D. No late fees, penalties, or interest may be assessed against the Authority for late payments.

The Authority reserves the right to amend this section based upon review of the submitted Proposals.

4. NO SOLICITATION/CONFLICTS OF INTEREST.

A. Contractor does hereby warrant and represent that the laws of the Commonwealth of Pennsylvania have not been violated as they relate to the procurement or performance of this Agreement by any conduct, including payment or giving of any fee, commission, compensation, gift, gratuity or consideration of any kind, directly or indirectly to any Authority employee, officer or Contractor.

B. To the best of Contractor's knowledge, no Authority member or officer, and no employee of the Authority has any interest (whether contractual, non-contractual, financial or otherwise) in this transaction or in the business of Contractor. If such transaction comes to the

knowledge of the Contractor at any time, a full and complete disclosure of such information must be made to the Authority.

C. Contractor hereby acknowledges receipt and acceptance of the Authority's Contractor Integrity Provisions attached hereto as Exhibit "A".

5. INABILITY OF CONTRACTOR TO PERFORM.

The inability of Contractor to perform or provide the Services under this Agreement, for any reason, may automatically terminate this Agreement, whereupon all liabilities or obligations for payment hereunder will terminate as of the date of such termination.

6. TERMINATION FOR CONVENIENCE OF AUTHORITY.

The Authority and Contractor agree that this Agreement may be terminated by the Authority with or without cause upon five (5) days' notice in writing by the Authority to Contractor. If the Agreement is terminated by the Authority, as provided herein, Contractor will be paid any compensation outstanding for the Services satisfactorily performed for the period prior to the date of termination. In such event, all memoranda, records, data, information and other documents prepared by Contractor will become the property of the Authority and must be forthwith delivered to the Authority. The payments to be made to Contractor hereunder are the Contractor's sole remedy and right with respect to termination under this paragraph.

7. GENERAL TERMS AND CONDITIONS

A. Right to Know Law Provisions.

1. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, ("RTKL") applies to this Agreement.

2. If the Authority requires the assistance of the Contractor as to any request or other issue related to the RTKL in regard to this Agreement ("Requested Information"), it will notify the Contractor using the contact information provided in this Agreement. Upon written notification from the Authority that it requires the Contractor's assistance in responding to such a request under the RTKL the Contractor must:

i. Provide the Authority, within 5 days after receipt of written notification, with copies of any document or information in the Contractor's possession arising out of this Agreement that the Authority reasonably believes is Requested Information and may be a public record under the RTKL; and

ii. Provide such other assistance as the Authority may reasonably request, in order to comply with the RTKL with respect to this Agreement.

3. If the Contractor considers the Requested Information to be exempt from production under the RTKL, the Contractor must notify the Authority and provide, within 5 days of receiving the written notification, a written statement signed by a representative of the Contractor explaining

why the requested material is exempt from public disclosure under the RTKL and identifying the specific provision of the RTKL that renders some or all of the Requested Information exempt from disclosure.

4. The Authority will rely upon the written statement from the Contractor in denying a RTKL request for the Requested Information unless the Authority determines that the Requested Information is clearly not protected from disclosures under the RTKL. In the event the Authority determines that the Requested Information is clearly not exempt from disclosure, the Contractor must provide the Requested Information to the Authority within 5 days of receipt of written notification of the Authority's determination.

5. The Authority will reimburse the Contractor for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.

6. If the Contractor fails to provide the Requested Information as provided in paragraph No. 4. ("Contractor's Refusal") the party requesting the information may have the right to challenge that failure to disclose before the Pennsylvania Office of Open Records ("OOR") and potentially the courts. Contractor hereby understands and agrees that the Authority will not argue in favor of the Contractor's non-disclosure of the Requested Information and will inform the tribunal that it directed Contractor to produce such information.

7. In the event of administrative or legal proceedings, or both, related to Contractor's Refusal, the following will apply:

i. Contractor will defend the Authority, at its sole cost, before an agency or court as to any matter or claim related to Contractor's Refusal. Contractor will provide that defense through independent legal counsel agreed to in advance by the Authority, in its sole discretion.

ii. Contractor further agrees that it will indemnify and hold the Authority harmless for any damages, penalties, costs, detriment or harm that the Authority may incur as a result of the Contractor's failure to release Requested Information, including any statutory damages or order to pay any party's attorney's fees.

8. As between the parties, the Contractor agrees to waive all rights or remedies that may be available to it as a result of the Authority's disclosure of Requested Information pursuant to the RTKL.

9. The Contractor's duties relating to the RTKL are continuing duties that survive the expiration or termination of this Agreement and will continue as long as the Contractor has Requested Information in its possession.

B. Force Majeure. Neither contracting party will be liable for inadequate performance to the extent caused by a condition (for example, natural disaster, act of war or terrorism, riot, labor condition and governmental action) that was beyond the party's reasonable control.

C. No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement.

D. Maintenance of Records. Regardless of the impact of the Right-to-Know Law, Contractor must maintain all data, records, memoranda, statements of services rendered, correspondence and copies thereof, in adequate form, detail and arrangement, for the Authority's benefit for a minimum of three (3) years following the termination or expiration of this Agreement. Such information must be maintained in a secure and professionally reasonable manner. Thereafter, Contractor must contact the Authority before disposing of any such materials and the Authority may direct that some or all of such materials be delivered to the Authority.

E. Assignment. This Agreement may not be transferred or assigned by Contractor without the prior written consent of the Authority which consent may be withheld in the sole discretion of the Authority, any transfer or assignment made without the prior written consent of the Authority will be void.

F. Non-Discrimination. Contractor agrees to abide by all legal provisions regarding non-discrimination in hiring and contracting made applicable by federal, state and local laws.

G. Notices. Any legal notice or demand given by one party to the other under this Agreement must be in writing and served by a delivery service, against written receipt or signed proof of delivery addressed to the other party at the address set forth above, unless a party will have provided written notice to the other identifying a new address for notice. Notice to the Authority must be labeled "c/o/ General Counsel". All notices will be deemed given on the day after the notice was given to the courier or Postal service.

H. Captions. The captions in this Agreement are for convenience only and are not a part of this Agreement and do not in any way define, limit, describe or amplify the terms and provisions of this Agreement or the scope or intent thereof.

I. General Indemnity. Contractor will be responsible for, and will indemnify, defend, and hold harmless the Authority and its Members, officers, employees, attorneys and agents (the "Indemnified Parties") from all claims, liabilities, damages, and costs including reasonable attorneys' fees, for bodily injury (including death and workers compensation claims) and damage to real or tangible personal property arising from or related to the negligence or other tortious acts, errors, and omissions of Contractor, its employees, or its subcontractors while engaged in performing the work of this Agreement or while present on the Authority's premises, and for breach of this Agreement regarding the use or nondisclosure of proprietary and confidential information where it is determined that Contractor is responsible for any use of such information not permitted by this Agreement. This indemnification obligation will not be reduced in any way by any limitation on the amount or type of damages, compensation, or benefits payable by Contractor or its subcontractors under any employee benefit act including but not limited to Workers' Compensation Acts, Disability Benefits Acts, or other Employee Benefit Act.

J. Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the matter covered by this Agreement. No other agreement, statement, representation, understanding or promise made by any party or by any employee, officer, or agent or any party, that is contained in this Agreement, will be binding or valid. Any revisions, additions, and/or modifications of this Agreement must be set forth in writing and signed by all parties.

K. Exhibits and Interpretation. All Exhibits to this Agreement are hereby incorporated by reference as though set forth fully herein. The contracting parties acknowledge and agree that (i) each party reviewed and negotiated the terms and provisions of this Agreement and has contributed to it; and (ii) the rule of construction to the effect that any ambiguities are resolved against the drafting party will not be employed in the interpretation of the Agreement, regardless of which party was generally responsible for the preparation of this Agreement.

L. Order of Precedence. In the event of an inconsistency between provisions of this Agreement, it will be resolved by giving precedence in the following order: (1) the main body of this Agreement (not including Exhibits); (2) the RFP (Exhibit “B”), (3) the Proposal (Exhibit “C”) and (4) all other exhibits. It is Contractor’s responsibility to study this Agreement and to report at once in writing to the Authority any errors, inconsistencies, discrepancies, omissions or conflicts discovered between any provisions of the Agreement. Any work performed by the Contractor prior to receiving a written response from the Authority with respect to any alleged error, inconsistency, discrepancy, omission or conflict will be at the Contractor’s own risk and expense.

M. Specific Bids. It is understood that the Authority will have the absolute discretion to accept, reject or modify any Bid or offer which Contractor may bring to the Authority’s attention during the term of this Agreement. The Authority may direct that Contractor suspend or modify any of its Services related to this Agreement at any time.

N. Independent Contractor. Contractor agrees that it, as well its employees, are independent contractors as to any Services provided and this Agreement is not intended to create any form of employment relationship.

O. Applicable Law and Venue. This Agreement will be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of laws provisions) and the decisions of the Pennsylvania courts. The parties hereto irrevocably consent to the exclusive jurisdiction of the First Judicial District of Pennsylvania, being the Philadelphia Court of Common Pleas and waiving any claim or defense that such forum is not convenient or proper. Contractor agrees that the Philadelphia Court of Common Pleas will have *in personam* jurisdiction over it, and consents to service of process in any manner authorized by Pennsylvania law.

P. Ownership of Authority Materials. As between the parties, the Authority will own and retain all right, title and interest in and to all Authority data, records, policies, statements, advertisements, programs, procedures, files, any and all Authority Provided Resources, such as, documents, or data provided by the Authority, including but not limited to the RFP, and all written summaries, findings and reports, and proposed policies and procedures produced by Contractor pursuant to this Agreement.

Q. Ownership of the System. The Authority is the sole and exclusive owner of the System. The Authority's ownership of the System includes any and all wiring, conduit, connectors and new equipment installed to the System's components.

R. Insurance. Contractor agrees to provide the Authority the appropriate certificates of insurance in accordance with the Insurance Requirements of the RFP.

S. Waiver. No term or provision hereof will be deemed waived by the parties unless such waiver or consent be in writing, signed by both parties. No breach will be excused unless it is in writing signed by the non-breaching party.

T. Taxes.

1. Contractor hereby certifies that neither it, nor any of its parent or subsidiary entities, is delinquent or overdue in the payment of any tax or fee to the City or County of Philadelphia or the Commonwealth of Pennsylvania. Contractor also certifies that its Philadelphia Activity License No. is: _____. Contractor further certifies that its Federal Tax ID. No. is: _____.

2. As an agency of the Commonwealth of Pennsylvania, and a local government agency, the Authority is exempt from the payment of state and local sales and use and other taxes on material, equipment or other personal property. Contractor agrees that the fees, prices or rates stated in this Agreement (1) do not include any state or local taxes, surcharges or fees on the Authority in connection with this transaction, and (2) do include all other applicable taxes for which Contractor is liable. In the event Contractor's performance under this Agreement creates a tax liability, such taxes, including but not limited to, real estate taxes, school taxes, use & occupancy taxes, and sales taxes will be the sole obligation of Contractor, and Contractor must maintain current accounts as to the payment of such taxes and be liable over to the Authority for any taxes assessed against the Authority as a result of Contractor's performance under this Agreement.

U. Prior Agreement. This Agreement supersedes and replaces any and all previous agreements between the parties.

V. Recitals. The Recitals set forth at the beginning of this Agreement are deemed incorporated herein, and the parties hereto represent they are true, accurate and correct.

W. Separation Clause. If any provision of this Agreement, or the application of any provision to any person or circumstances, is held invalid or unenforceable, the remainder of this Agreement and the application of such provision(s) to other persons or circumstances will remain valid and enforceable.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, and intending to be legally bound pursuant to the Uniform Written Obligations Act, 33 P.S. § 6, the parties have set their hands and seals on the date first above written.

The Philadelphia Parking Authority

Attest: _____

Print Name: _____

Print Title: _____

By: _____

Scott A. Petri
Executive Director

**APPROVED AS TO FORM
APPROVED AS TO FORM**

By: _____
General Counsel's Office

Contractor

Witness: _____

Print Name: _____

Print Title: _____

By: _____

Print Name: _____

Print Title: _____

EXHIBIT “A”

**Philadelphia Parking Authority
CONTRACTOR INTEGRITY PROVISIONS**

1. Definitions.

a. **Confidential Information** means information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to contract with the Authority.

b. **Consent** means written permission signed by a duly authorized officer or employee of the Authority, provided that where the material facts have been disclosed, in writing, by prequalification, bid proposal, or contractual terms, the Authority will be deemed to have consented by virtue of execution of this Contract.

c. **Contractor** means the individual or entity that has entered into this Contract with the Authority, including directors, officers, partners, managers, key employees, and owners of more than a 5% interest.

d. **Contractor Related Parties** means any affiliates of the Contractor and the Contractor's officers and directors.

e. **Financial interest** mean any financial interest in a legal entity engaged in business for profit which comprises more than 5% of the equity of the business or more than 5% of the assets of the economic interest in indebtedness

f. **Gift** means any conveyance of anything of value, including cash, a gratuity (tip), favor, entertainment (including tickets to sporting events), travel, food, drink, a loan, employment or services.

2. The Contractor must maintain the highest standards of integrity in the performance of this Contract and will take no action in violation of state or federal laws, regulations, or other requirements that govern contracting with the Authority, including these Contractor Integrity Provisions.

3. The Contractor must not disclose to others any confidential information gained by virtue of this Contract.

4. Contractor, its affiliates, agents, employees and anyone in privity with Contractor will not, in connection with this or any other agreement with the Authority, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit or gift on anyone, for any reason, including as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of the Authority.

5. Contractor confirms that no Authority officer or employee holds a financial interest in Contractor.

6. Contractor must have no financial interest with or in any other contractor, subcontractor, or supplier providing services, labor, or material under this contract, unless the financial interest is disclosed to the Authority in writing and the Authority consents to Contractor's

financial interest prior to the Authority's execution of the contract. Contractor must disclose the financial interest to the Authority at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than Contractor's submission of the contract signed by Contractor.

7. When Contractor has reason to believe that any breach of ethical standards as set forth in law or these Contractor Integrity Provisions has occurred or may occur, including but not limited to contact by an Authority officer or employee which, if acted upon, would violate such ethical standards, Contractor must immediately notify the Authority contracting officer or the Authority's Office General Counsel in writing.

8. Contractor, by submission of its bid or proposal and/or execution of this contract and by the submission of any bills, invoices or requests for payment pursuant to the contract, certifies and represents that it has not violated any of these Contractor Integrity Provisions in connection with the submission of the bid or proposal, during any contract negotiations or during the term of the contract, to include any extensions thereof.

9. Contractor agrees to reimburse the Authority for the reasonable costs of investigation incurred by the Authority's Office of General Counsel, or its designee, for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Authority that results in the suspension or debarment of the Contractor. Contractor will not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.

10. Contractor must cooperate with the Authority's Office of General Counsel, or its designee, in its investigation of any alleged officer or employee breach of ethical standards and any alleged Contractor non-compliance with these Contractor Integrity Provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of an investigator, must provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Authority's designated investigator to Contractor's integrity and compliance with these provisions. Such information may include, but will not be limited to, Contractor's business or financial records, documents or files of any type or form that refer to or concern this contract. Contractor must incorporate this paragraph in any agreement, contract or subcontract it enters into in the course of the performance of this contract/agreement solely for the purpose of obtaining subcontractor compliance with this provision. The incorporation of this provision in a subcontract will not create privity of contract between the Authority and any such subcontractor, and no third party beneficiaries will be created thereby.

11. For violation of any of these Contractor Integrity Provisions the Authority may terminate this and any other contract with Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these Provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this contract, and debar and suspend Contractor from doing business with the Authority. These rights and remedies are cumulative, and the use or non-use of any one will 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.

12. Contractor certifies to the best of its knowledge and belief that within the last five (5) years Contractor or Contractor Related Parties have not:

- a) been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;
- b) been suspended, debarred or otherwise disqualified from entering into any contract with any governmental agency;
- c) had any business license or professional license suspended or revoked;
- d) had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust; and
- e) been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.

If Contractor cannot so certify to the above, then it must submit along with its bid, proposal or contract a written explanation of why such certification cannot be made and the Authority will determine whether a contract may be entered into with the Contractor. The Contractor's obligation pursuant to this certification is ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor has an obligation to immediately notify the Authority in writing if at any time during the term of the contract if becomes aware of any event which would cause the Contractor's certification or explanation to change. Contractor acknowledges that the Authority may, in its sole discretion, terminate the contract for cause if it learns that any of the certifications made herein are currently false due to intervening factual circumstances or were false or should have been known to be false when entering into the contract.

EXHIBIT “B”

RFP

EXHIBIT “C”

PROPOSAL

EXHIBIT “D”

AIA Contract

DRAFT AIA® Document A101™ – 2017

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the « » day of « » in the year
Two Thousand and Twenty,
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

Philadelphia Parking Authority
701 Market Street, Suite 5400
Philadelphia, PA 19106

and the Contractor:
(Name, legal status, address and other information)

To be determined « »
« »
« »

for the following Project:
(Name, location and detailed description)

RFP No. 20-07
Proposed Video Surveillance System at 4101 North Delaware Avenue
Philadelphia, PA 19137

The Architect:
(Name, legal status, address and other information)

Carlos Raul Rodríguez Architect
1961 Browning Road
Pennsauken, NJ 08110-2941
crrarch@verizon.net

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

The parties should complete A101™-2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201™-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

ELECTRONIC COPYING of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

TABLE OF ARTICLES

1	THE CONTRACT DOCUMENTS
2	THE WORK OF THIS CONTRACT
3	DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
4	CONTRACT SUM
5	PAYMENTS
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9	ENUMERATION OF CONTRACT DOCUMENTS

EXHIBIT A INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), as modified by Section 00 73 00 - Supplementary Conditions to the Construction Contract in RFP No. 20-07 Proposed Video Surveillance System at 4101 North Delaware Avenue, Philadelphia, PA 19137, Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:

☐ [« »] The date of this Agreement.

☒ [X] A date set forth in a notice to proceed issued by the Owner.

☐ [« »] Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

« »

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

§ 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

(Check one of the following boxes and complete the necessary information.)

[X] Not later than Ninety (90) calendar days from the date of commencement of the Work.

[« »] By the following date: « »

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date
<u>None</u>	

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be « » (\$ « »), subject to additions and deductions as provided in the Contract Documents, except as provided in Article 7.1.4 of AIA Document A201-2017.

§ 4.2 Alternates

§ 4.2.1 Alternates, if any, included in the Contract Sum:

Item	Price
<u>As Stipulated on Bid Form.</u>	

§ 4.2.2 Subject to the conditions noted below, the following alternates will be accepted by the Owner upon execution of this Agreement.

(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance
<u>None</u>		

§ 4.3 Allowances, if any, included in the Contract Sum:

(Identify each allowance.)

Item	Price
<u>None</u>	

§ 4.4 Unit prices, if any:

(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
<u>As Stipulated on Bid Form.</u>		

§ 4.5 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

If Contractor fails to complete any Work that it is required to complete hereunder within the time period set forth in Section 3.3 above or on a Milestone Date, as applicable, Contractor shall pay to Owner, as liquidated damages, Five Hundred Dollars (\$500.00) per calendar day for each day after that date required for completion (the date set forth in Section 3.3 or a missed Milestone Date, as applicable) that any portion of the Work is not completed to the Owner's satisfaction.

§ 4.6 Other:

(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)

« »

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

§ 5.1.3 Contractor shall provide Owner a pencil copy of each Application for Payment by the twenty-fifth (25th) calendar day of each month. Provided that an Application for Payment is received by the Architect not later than the fifteenth (15th) day of a month, the Owner shall make payment to the Contractor not later than the thirty (30) calendar days after receipt by the Owner of the Certificate for Payment (unless in dispute). If a Certificate for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than sixty (60) days after the Owner receives the Application for Payment from the Architect. Contractor shall submit to Owner four (4) copies of current certified payrolls and Post-Award Minority Compliance Review forms and all other documents stipulated in Section 01 20 00 - Price and Payment Procedures in RFP No. 20-07 Proposed Video Surveillance System at 4101 North Delaware Avenue, Philadelphia, PA 19137 with each Application for Payment.

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 In accordance with AIA Document A201™-2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.6.1 The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

§ 5.1.6.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201-2017;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201-2017; and
- .5 Retainage withheld pursuant to Section 5.1.7.

§ 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

Ten Percent (10 %)

§ 5.1.7.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

N/A

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:

(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)

Upon fifty percent (50%) completion of the Contract; a retainage of five percent (5%) shall be applied to all subsequent Applications for Payment approved and certified by the Architect.

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7.

§ 5.1.8 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 Final Payment

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, as modified by Section 00 73 00 - RFP No. 20-07 Proposed Video Surveillance System at 4101 North Delaware Avenue, Philadelphia, PA 19137, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect and agreed to by the Owner, and Contractor has provided a Release of Liens duly executed by the Contractor, each of its subcontractors and suppliers all are properly acknowledged.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, unless reasonably in dispute by the Owner.

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Paragraph 32 of Section 00 73 00 – Supplementary Conditions to the Construction Contract in RFP No. 20-07 Proposed Video Surveillance System at 4101 North Delaware Avenue, Philadelphia, PA 19137, unless the parties mutually agree to appoint another individual, not a party to this Agreement, to serve as the Initial Decision Maker.

§ 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, methods pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

[« »] Arbitration pursuant to Section 15.4 of AIA Document A201–2017

[« »] Litigation in a court of competent jurisdiction

- [X] Other. As set forth in Paragraph 32 of Section 00 73 00 – Supplementary Conditions to the Construction Contract in RFP No. 20-07 Proposed Video Surveillance System at 4101 North Delaware Avenue, Philadelphia, PA 19137.

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017, as modified by Section 00 73 00 - RFP No. 20-07 Proposed Video Surveillance System at 4101 North Delaware Avenue, Philadelphia, PA 19137.

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017, as modified by Section 00 73 00 - RFP No. 20-07 Proposed Video Surveillance System at 4101 North Delaware Avenue, Philadelphia, PA 19137.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner's representative:

Mr. Richard D. Dickson, Jr.
Philadelphia Parking Authority
701 Market Street, Suite 5400
Philadelphia, PA 19106« »

§ 8.3 The Contractor's representative:

To be determined.

« »
« »
« »
« »
« »

§ 8.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

§ 8.5 Insurance and Bonds

§ 8.5.1 The Contractor shall purchase and maintain insurance as set forth in AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and Paragraph 15 of Section 00 73 00 - Supplementary Conditions to the Construction Contract in RFP No. 20-07 Proposed Video Surveillance System at 4101 North Delaware Avenue, Philadelphia, PA 19137.

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™–2017 Exhibit A, and elsewhere in the Contract Documents.

§ 8.6 Intentionally deleted.

(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

« »

§ 8.7 Other provisions:

N/A

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor, as modified by Section 00 73 00 - Supplementary Conditions to the Construction Contract in RFP No. 20-07 Proposed Video Surveillance System at 4101 North Delaware Avenue, Philadelphia, PA 19137
- .2 AIA Document A101™-2017, Exhibit A, Insurance and Bonds
- .3 AIA Document A201™-2017, General Conditions of the Contract for Construction, as modified by Section 00 73 00 - Supplementary Conditions to the Construction Contract in RFP No. 20-07 Proposed Video Surveillance System at 4101 North Delaware Avenue, Philadelphia, PA 19137

.4 Drawings:

See Section 00 01 15 - List of Drawings in Project Manual for RFP No. 20-07 Proposed Video Surveillance System at 4101 North Delaware Avenue, Philadelphia, PA 19137

.5 Specifications:

Project Manual for RFP No. 20-07 Proposed Video Surveillance System at 4101 North Delaware Avenue, Philadelphia, PA 19137

.7 Addenda, if any:

Number	Date	Pages
--------	------	-------

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

.8 Other Exhibits:

(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

[☐] AIA Document E204™-2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this Agreement.)

☐ ☐

[☐] The Sustainability Plan:

Title	Date	Pages
-------	------	-------

[☒] Supplementary and other Conditions of the Contract:

Section 00 73 00 - Supplementary Conditions to the Construction Contract in RFP No. 20-07 Proposed Video Surveillance System at 4101 North Delaware Avenue, Philadelphia, PA 19137. See § 9.1.5.

.9 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™-2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

None.

This Agreement entered into as of the day and year first written above.

OWNER (Signature)

Mr. Scott A. Petri, Executive Director
Philadelphia Parking Authority
(Printed name and title)

CONTRACTOR (Signature)

To be determined.
(Printed name and title)

DRAFT AIA® Document A101™ – 2017

Exhibit A

Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the « » day of « » in the year Two Thousand and Twenty.
(In words, indicate day, month and year.)

for the following **PROJECT**:
(Name and location or address)

RFP No. 20-07
Proposed Video Surveillance System at 4101 North Delaware Avenue
Philadelphia, PA 19137

THE OWNER:
(Name, legal status and address)

Philadelphia Parking Authority
701 Market Street, Suite 5400
Philadelphia, PA 19106

THE CONTRACTOR:
(Name, legal status and address)

To be determined.

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- A.1 GENERAL
- A.2 OWNER'S INSURANCE
- A.3 CONTRACTOR'S INSURANCE AND BONDS
- A.4 SPECIAL TERMS AND CONDITIONS

ARTICLE A.1 GENERAL

The Owner and Contractor shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit, the General Conditions and Supplementary Conditions. As used in this Exhibit, the term General Conditions refers to the amended AIA Document A201™-2017, General Conditions of the Contract for Construction and the term Supplementary Conditions refers to Section 00 73 00 - Supplementary Conditions to the Construction Contract; both, part of RFP No. 20-07 Proposed Video Surveillance System at 4101 North Delaware Avenue, Philadelphia, PA 19137.

ARTICLE A.2 OWNER'S INSURANCE

§ A.2.1 General

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article A.2 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by Section

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Document A201™-2017, General Conditions of the Contract for Construction. Article 11 of A201™-2017 contains additional insurance provisions.

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A.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

§ A.2.2 Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual general liability insurance.

§ A.2.3 Required Property Insurance

§ A.2.3.1 Unless this obligation is placed on the Contractor pursuant to Section A.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section A.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

§ A.2.3.1.1 **Causes of Loss.** The insurance required by this Section A.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:

(Indicate below the cause of loss and any applicable sub-limit.)

Causes of Loss	Sub-Limit

§ A.2.3.1.2 **Specific Required Coverages.** The insurance required by this Section A.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's and Contractor's services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:

(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)

Coverage	Sub-Limit

§ A.2.3.1.3 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section A.2.3.1 or, if necessary, replace the insurance policy required under Section A.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

§ A.2.3.1.4 **Deductibles and Self-Insured Retentions.** If the insurance required by this Section A.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

§ A.2.3.2 **Occupancy or Use Prior to Substantial Completion.** The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section A.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Contractor shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

§ A.2.3.3 Insurance for Existing Structures

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of

the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section A.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

§ A.2.4 Optional Extended Property Insurance.

The Owner shall purchase and maintain the insurance selected and described below.

(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)

- [☐] **§ A.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.
- « »
- [☐] **§ A.2.4.2 Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.
- « »
- [☐] **§ A.2.4.3 Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.
- « »
- [☐] **§ A.2.4.4 Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.
- « »
- [☐] **§ A.2.4.5 Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.
- « »
- [☐] **§ A.2.4.6 Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.
- « »
- [☐] **§ A.2.4.7 Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.
- « »

§ A.2.5 Other Optional Insurance.

The Owner shall purchase and maintain the insurance selected below.

(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)

- [☐] **§ A.2.5.1 Cyber Security Insurance** for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information.
(Indicate applicable limits of coverage or other conditions in the fill point below.)

« »

- [☐] **§ A.2.5.2 Other Insurance**
(List below any other insurance coverage to be provided by the Owner and any applicable limits.)

Coverage	Limits

ARTICLE A.3 CONTRACTOR'S INSURANCE AND BONDS

§ A.3.1 General

§ A.3.1.1 Certificates of Insurance. The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article A.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section A.3.2.1 and Section A.3.3.1. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy or policies.

§ A.3.1.2 Deductibles and Self-Insured Retentions. The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor.

(Refer to Paragraph 15.9 of Section 00 73 00 - Supplementary Conditions to the Construction Contract for additional insureds to be included below.)

§ A.3.1.3 Additional Insured Obligations. To the fullest extent permitted by law, the Contractor shall cause the commercial general liability coverage to include (1) the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04.

§ A.3.2 Contractor's Required Insurance Coverage

§ A.3.2.1 The Contractor shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

(If the Contractor is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)

« »

§ A.3.2.2 Commercial General Liability

§ A.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than « » (\$ « ») each occurrence, « » (\$ « ») general aggregate, and « » (\$ « ») aggregate for products-completed operations hazard, providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Contractor's indemnity obligations under Section 3.18 of the General Conditions.

§ A.3.2.2.2 The Contractor's Commercial General Liability policy under this Section A.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

§ A.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits of not less than « » (\$ « ») per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

§ A.3.2.4 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ A.3.2.5 Workers' Compensation at statutory limits.

§ A.3.2.6 Employers' Liability with policy limits not less than « » (\$ « ») each accident, « » (\$ « ») each employee, and « » (\$ « ») policy limit.

§ A.3.2.7 Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks

§ A.3.2.8 If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than « » (\$ « ») per claim and « » (\$ « ») in the aggregate.

§ A.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than « » (\$ « ») per claim and « » (\$ « ») in the aggregate.

§ A.3.2.10 Coverage under Sections A.3.2.8 and A.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than « » (\$ « ») per claim and « » (\$ « ») in the aggregate.

§ A.3.2.11 Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than « » (\$ « ») per claim and « » (\$ « ») in the aggregate.

§ A.3.2.12 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than « » (\$ « ») per claim and « » (\$ « ») in the aggregate.

§ A.3.3 Contractor's Other Insurance Coverage

§ A.3.3.1 Insurance selected and described in this Section A.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

(If the Contractor is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)

« »

§ A.3.3.2 The Contractor shall purchase and maintain the following types and limits of insurance in accordance with Section A.3.3.1.

(Select the types of insurance the Contractor is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)

- [« »] § A.3.3.2.1 Property insurance of the same type and scope satisfying the requirements identified in Section A.2.3, which, if selected in this section A.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section A.2.3.1.3 and Section A.2.3.3. The Contractor shall comply with all obligations of the Owner under Section A.2.3 except to the extent provided below. The Contractor shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Contractor shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:
(Where the Contractor's obligation to provide property insurance differs from the Owner's obligations as described under Section A.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)

« »

- [« »] § A.3.3.2.2 Railroad Protective Liability Insurance, with policy limits of not less than « » (\$ « ») per claim and « » (\$ « ») in the aggregate, for Work within fifty (50) feet of railroad property.

- [« »] § A.3.3.2.3 Asbestos Abatement Liability Insurance, with policy limits of not less than « » (\$ « ») per claim and « » (\$ « ») in the aggregate, for liability arising from the encapsulation, removal,

handling, storage, transportation, and disposal of asbestos-containing materials.

[« »] **§ A.3.3.2.4 Insurance for physical damage to property while it is in storage and in transit to the construction site on an “all-risks” completed value form.**

[« »] **§ A.3.3.2.5 Property insurance on an “all-risks” completed value form, covering property owned by the Contractor and used on the Project, including scaffolding and other equipment.**

[« »] **§ A.3.3.2.6 Other Insurance**
(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)

Coverage	Limits

§ A.3.4 Performance Bond and Payment Bond

The Contractor shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:

(Specify type and penal sum of bonds.)

Type	Penal Sum (\$0.00)
Payment Bond	
Performance Bond	

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

ARTICLE A.4 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

« »

DRAFT AIA® Document A201™ - 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Public Bid No. 20-07

Proposed Video Surveillance System at 4101 North Delaware Avenue
Philadelphia, PA 19137

THE OWNER:

(Name, legal status and address)

Philadelphia Parking Authority
701 Market Street, Suite 5400
Philadelphia, PA 19106-1558

THE ARCHITECT:

(Name, legal status and address)

Carlos Raul Rodríguez Architect
1961 Browning Road
Pennsauken, NJ 08110-2941
crrarch@verizon.net

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ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, *Guide for Supplementary Conditions*.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements. To the extent of any inconsistency between or among any of the terms, conditions or provisions in any of the aforesaid Contract Documents, it shall be presumed that (1) the terms of the Supplementary Conditions shall prevail over any inconsistent terms, and (2) generally, those terms, conditions or provisions having the more comprehensive, stricter, or demanding requirement for the benefit of Owner shall, and (3) if there is any ambiguity or conflict among or between any provision of the Contract Documents, the provisions of the Agreement, the Supplementary Conditions, the Bid Form, the Drawings and Specifications and the General Conditions shall be controlling in the foregoing order of reference thereto.

§ 1.1.1.1 The Agreement between the Owner and the Contractor, AIA Document A101 (2017 Ed.) "Standard Form of Agreement between Owner and Contractor, where the basis of payment is a Stipulated Sum," as modified, to which these General Conditions are attached.

§ 1.1.1.2 The Contract Documents, and the Work, are to be governed at all times, and shall comply with all laws, ordinances, rules and regulations applicable to the Work. The provisions of the federal laws include but are not limited to the latest editions and amendments of the Occupational Safety and Health Act (OSHA).

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.3.1 All Work shall comply with manufacturer's specifications and instructions, and with requirements of utility companies, insurance underwriters, and the like, in addition to the specific requirements of the Contract Documents. In event of conflict, the more stringent requirements shall govern, as determined by the Owner.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.5.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.2.4 If Work is required in a manner to make it impossible to produce Work of the quality required by the Contract Documents, or should discrepancies appear among the Contract Documents, the Contractor shall request in writing an interpretation from the Architect before commencing the Work. Requests made at the job meetings which are reflected in the minutes of the meeting shall be deemed "requests in writing" in satisfaction of the requirements set forth herein. If the Contractor fails to make such request, no excuse will thereafter be entertained for failure to carry out Work in the required manner or to provide required guarantees, warranties, or bonds, and the Contractor shall not be entitled to any change in the Contract Sum or the Contract Time on account of such failure.

§ 1.2.5 During the course of the Work, should any ambiguities or discrepancies be found in, or between the Drawings and the Specifications, the Architect will interpret the intent thereof. It is expressly stipulated that neither the Drawings nor the Specifications shall take precedence over the other. The Architect will interpret or construe the Drawings and Specifications so as to secure the most substantial and complete performance of the Work, as is most consistent with the needs and requirements of the Work. In the event that there are conflicts or discrepancies in the Drawings, Specifications or any of the other Contract Documents, for the purposes of determining increases in the Contract Time or Contract Sum, the provision that would be the most expensive or onerous shall govern.

§ 1.2.6 The intent of the Specifications is to indicate as clearly as possible the scope, character, quality and extent of the Work involved in order to arrive at the desired function, quality, appearance, performance and durability of the project and its various parts. Where the Specifications include detailed descriptions of Methods of Work or Sequences of Operations, they are to be interpreted in light of the above and not as necessarily excluding other methods or sequences, which can produce equal or better results. Where the Contractor feels it would be in the interest of the Owner to use other methods or sequences, it shall suggest them to the Architect, for his approval, stating the reasons why he prefers them.

§ 1.2.7 Contractor acknowledges that this Contract may be one of several contracts for the Project and that work under this Contract must be coordinated with the work under the other several contracts. Contractor specifically agrees to provide full and uninterrupted access to the other contractors providing construction services on the site for the duration of the Project. Contractor shall comply with the directions of the Owner. Contractor agrees to be responsible for the coordination among its Subcontractors and for their adherence to the coordination directions of the Owner. Contractor further agrees to coordinate its work with the work of other contractors in and around the

Project site undertaken by Owner or others. Contractor shall keep such full and detailed accounts as may be necessary for proper financial management under this Agreement. Owner shall be afforded access to all the Contractor's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to this Agreement and its performance hereof. Contractor shall preserve all such records for a period of three (3) years after final payment or longer if required by law.

§ 1.2.8 The Work shall consist not only of all items specifically included in the Contract Documents but also all additional items of work which are reasonably inferable from that which is specified in the Contract Documents in order to complete the Work in accordance with the Contract Documents, including, without limitation, any additional items necessary to coordinate the Work with work of other Prime Contractors in connection with Section 1.2.7. To the extent that any additional work is reasonably inferable from the Contract Documents, Contractor shall perform the same as part of the Work at no additional costs or time to Owner.

§ 1.2.9 Contractor acknowledges that the Contract Documents, including the Drawings and Specifications, are adequate and sufficient to provide for the completion of the Project in accordance with all applicable laws, codes, and professional standards, including all work and services, whether or not fully shown or described, which reasonably may be inferred for such completion, and so as to: (a) enable Contractor to complete construction of the Work described therein for the Contract Sum on or before the dates of Substantial Completion established in the Agreement; and (b) qualify the Project upon Substantial Completion for a Certificate of Occupancy and all other permits and approvals for lawful use and occupancy. Contractor represents that it is familiar with the Project site and has received all information it may need relating to the physical characteristics and conditions thereof. No adjustment to the Contract Sum shall be made for any concealed conditions encountered in the performance of the Work. Contractor shall carefully study and compare the Contract Documents (as the same shall be supplemented, or modified from time to time) with each other and with any information furnished by Owner. If Contractor shall discover, or reasonably should have discovered, any error, fault, incompleteness or inaccuracy in any of the Drawings, Specifications or other Contract Documents, or in any Owner-furnished information, Contractor shall notify or shall be responsible for notifying Owner thereof in writing within five (5) business days after such discovery; no claim by Contractor on account of such matters shall be valid unless so made, and Contractor shall assume the risk of performing Work with the knowledge of (or if Contractor should reasonably have known of) such error, fault, incompleteness or inaccuracy and shall be required to correct such error, fault, incompleteness or inaccuracy at no additional cost to Owner.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 All Drawings, Specifications and other documents prepared by the Architect with respect to the Project are and shall remain the property of the Owner, and Owner shall retain all common law, statutory and other reserved rights with respect thereto, including all copyrights and other intellectual property rights. Contractor and its Subcontractors, suppliers and others performing work on the Project are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect which are appropriate for execution of their respective work. Submittals or distributions necessary to meet official regulatory requirements or for other purposes relating to completion of the Project are not to be construed as a publication in derogation of the Owner's copyright or other reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

§ 1.6.1 Where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.2 Mechanic's Lien

§2.2.1 Any and all issues relating to, arising from, or resulting from a right to a lien and waiver of lien rights under the Agreement and the General Conditions shall be governed by the Pennsylvania Mechanics' Lien Law of 1963, 49 P.S. § 1101 *et. seq.*

§2.2.2 Contractor shall provide a lien waiver to the Owner in consideration for payment for the work, services, materials or equipment provided and only to the extent that such payment is actually received.

§2.2.3 Subcontractor(s) shall provide a lien waiver to the Contractor in consideration for payment for the work, services, materials or equipment provided and only to the extent that such payment is actually received, or unless the Contractor has posted a bond guaranteeing payment for labor and materials provided by Subcontractors.

§2.2.4 To the extent that lien rights may be validly waived by Contractor or Subcontractor(s) or where the Contractor has posted a bond, a written contract between the Owner and a Contractor, or a separate written instrument signed by the Contractor, which provides that no claim shall be filed by anyone, shall be binding: but the only admissible evidence thereof, as against Subcontractor, shall be proof of actual notice thereof to him before any labor or materials were furnished by him; or proof that such contract or separate written instrument was filed in the office of the prothonotary prior to the commencement of the Work upon the ground or within ten (10) days after the execution of the principal contract or not less than ten (10) days prior to the contract with the claimant Subcontractor, indexed in the name of the Contractor as defendant and the Owner as plaintiff and also in the name of the Contractor as plaintiff and the Owner as defendant. The only admissible evidence that such a provision has, notwithstanding its filing, been waived in favor of Subcontractor, shall be a written agreement to that effect signed by all those who, under the contract, have an adverse interest to the Subcontractor's allegation.

§ 2.3 Evidence of the Owner's Financial Arrangements

§ 2.3.1 Intentionally deleted.

§ 2.3.2 Intentionally deleted.

§ 2.3.3 Intentionally deleted.

§ 2.3.4 Intentionally deleted.

§ 2.4 Information and Services Required of the Owner

§ 2.4.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1 and 3.7.1.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.4.2 The Owner shall retain an Architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.4.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 2.4.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.4.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.5 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, the right granted Owner in this Section 2.5 shall be in addition to, and not in restriction of, all other rights that the Owner has under the Contract Documents.

§ 2.6 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. The right of the Owner to stop the Work pursuant to this Section 2.6 shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity. This right shall be in addition to and not in restriction of all other rights that the Owner has under the Contract Documents. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

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

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents. Contractor represents and warrants that its investigation of the site was performed in detail and was sufficient to disclose the condition of the Project site and all improvements thereon, and the conditions under which the Work was to be performed, including, without limitation (1) the location, condition, layout, and nature of the Project site and surrounding areas, (2) continued use and occupancy of the Building, (3) anticipated labor supply and costs, (4) availability and cost of materials, tools and equipment, (5) expected loads and demands on the structural and mechanical systems of the building during performance of the Work due to Contractor's means and methods, (6) any and all subsurface conditions and soil conditions as identified in Geotechnical Reports provided to Contractor or the Contract Documents and (7) other similar issues pertinent to the performance of the Work.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require. Notwithstanding, the immediate preceding sentence, if the Contractor performs any construction activity and if it knows or should have known, based on the terms and conditions set forth in Section 3.2 that any portion of the Contract Documents relating to such construction activity contain an error, inconsistency, or omission, the Contractor shall be responsible for such performance and shall bear the cost for correction thereof.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.3.4 The Contractor shall inspect all materials delivered to the premises and shall reject any materials that will not conform with the Contract Documents when properly installed.

§ 3.3.5 Contractor acknowledges that timely completion of the Work in accordance with the terms of the Contract Documents is of crucial importance to the Owner. Contractor shall provide the best skill and judgment of its officers and employees and shall cooperate with the Owner and Architect to further the interests of Owner and to bring about timely completion of the Work. Contractor shall furnish sufficient business administration and superintendence and provide at all times and adequate supply of labor and materials to secure execution of the Work

in the best and soundest way and in the most expeditious and economical manner consistent with the interests of the Owner. In the event of delays and/or unforeseen events, whether or not the same should entitle Contractor to an adjustment in the Contract Sum and/or Contract Time pursuant to Articles 7 and 8 hereof, Contractor shall use diligent efforts to maintain scheduled completion dates. Such efforts shall include rephrasing events, decreasing overly conservative durations on subsequent events, increasing activity overlap, and using float on non-critical events. Any float available in the Progress Schedule shall be used by Owner and Contractor whenever possible to offset the impact of delays. Contractor shall be responsible for coordinating its Work with the Work of any other contractors and/or activities at the job site(s).

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. The Contractor shall not deviate, except with the Owner's written approval, from any specified kind, quality, size, design, performance, brand, or manufacturer.

§ 3.4.2 The Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. Contractor shall also be responsible for labor peace on the Project and shall at all times use its best efforts and judgment as an experienced contractor to adopt and implement policies and practices designed to avoid work stoppages, slowdown, disputes or strikes, where reasonably possible and practical under the circumstances and shall at all times maintain Project-wide labor harmony. Except as specifically provided in this Agreement, Contractor shall not be entitled to any adjustment on the Contract Sum or the Contract Time and shall be liable to Owner for all damages suffered by Owner for damages occurring as a result of work stoppages, slowdowns, or strikes by the work force of or provided by Contractor or its Subcontractors.

§ 3.4.4 The Owner shall not make payments on account of alternate materials which origin and quality have not been approved in writing by the Owner prior to bid opening.

§ 3.4.5 Owner shall not make payments on account of materials and equipment which are not incorporated into the Work unless such costs have been specifically approved in writing by Owner. Owner shall have full discretion in granting such approval and shall consider, among other things, whether the items in question are properly stored, insured and protected on the Project site or on an approved off-site storage facility, and whether such items in question are reasonably required to be stored at the time in question by reason of the construction schedule.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or if issued in another name, shall be transferred to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.5.3 All warranties shall include labor and materials and shall be signed by the manufacturer or Subcontractor as the case may be and countersigned by Contractor.

§ 3.5.4 All warranties shall be addressed to Owner and delivered to Architect upon completion of the Work and before or with the submission of request for Final Payment.

§ 3.5.5 Contractor shall issue in writing to Owner as a condition precedent to Final Payment: a "General Warranty" reflecting the terms and conditions of the General Conditions and this Section 3.5.

§ 3.5.6 Except when a longer warranty time is specifically called for in any of the other Contract Documents or is otherwise provided by law, the General Warranty shall be for two (2) years and shall be in form and content otherwise satisfactory to Owner.

§ 3.5.7 Warranties shall become effective on the date of Substantial Completion unless otherwise provided in any Certificate of Partial Completion approved by the parties in writing.

§ 3.5.8 In addition to the foregoing stipulations, Contractor shall comply with all other warranties referred to in any portions of the Contract Documents or otherwise provided by law or in equity, and where warranties overlap, the more stringent requirement shall govern.

§ 3.6 Taxes

§ 3.6.1 The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§3.6.2 The Contractor's fees include, and the Contractor shall be solely responsible for paying any and all taxes, excises, duties, and assessments ("taxes") arising out of Contractor's performance of the Work in any manner levied, assessed, or imposed by any government or agency having jurisdiction, including, without limitation, any contributions or taxes measured by wages, salaries or other remuneration paid to persons employed by Contractor or for materials or equipment used in the performance of the Work.

§3.6.3 The Contractor shall pay all federal, local and state sales taxes and all other taxes related to the Work. Failure on the part of the Contractor to plan for and/or pay any such taxes will not entitle Contractor to extra charges under this Contract.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. Original certificates of inspection and occupancy shall be delivered to the Owner upon completion of the Work in sufficient time for occupancy of the Project in accordance with the approved schedule for the Work.

§ 3.7.1.1 Contractor shall obtain and keep in force during its performance of any Work or services hereunder, at no cost to Owner, and without affecting the Cost of the Work, all licenses and permits required by the Commonwealth of Pennsylvania or any other governmental authority for the lawful conduct of Contractor's business. Contractor shall obtain all permits, approvals and licenses required for the execution of the Work.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. If the Contractor fails to comply with or give any such notices, the Contractor shall be liable for and shall indemnify and hold harmless the Owner and the Architect, and their respective employees, officers and agent, against any resulting fines, penalties, judgment or damages, including attorney's fees, imposed on or incurred by the parties indemnified hereunder.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in

construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than ten (10) days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 When authorized by the Agreement, the Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for amounts as the Owner may direct.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.9.4 The Contractor shall not change the superintendent without the prior written consent of the Owner, which consent shall not be unreasonably withheld. The superintendent shall be present at the Project until Substantial Completion. At the Owner's request, the Contractor shall assign a different superintendent to the Project.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed and before final payment.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law, provided, however, that the Contractor shall promptly notify the Architect and Owner in writing of any such violation before executing the Agreement. Contractor's execution of the Agreement shall be deemed as acknowledgement by Contractor that Contractor has reviewed the Contract Documents and no such violation exists.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall be responsible for the adequacy, accuracy and completeness of the services, certifications and approvals performed by any design professional retained by the Contractor or a party for whom the Contractor is responsible.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 3.13 Use of Site

§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.13.2 The Contractor shall bring and store on the Project site only materials and equipment which are to be used directly in the Work. After such equipment is no longer required for the Work, it shall promptly be removed from the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, damage and all other similar occurrence are solely the responsibility of the Contractor. The Contractor shall not erect or permit the erection of any sign on the Project site without the prior written consent of the Owner, which consent may be withheld or revoked in the Owner's sole discretion.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project. The Contractor shall maintain streets and sidewalks around the Project site in a clean condition and shall comply with all erosion control and storm water runoff ordinances and regulations. The Contractor shall remove all spillage and tracking arising from the performances of the Work from such areas and shall establish a maintenance program to minimize accumulation of dirt and dust upon such areas.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, Contractor, for itself, its successors, assigns, agents and Subcontractors hereby agrees to indemnify, hold harmless and defend the Owner, the Commonwealth of Pennsylvania, the City of Philadelphia and any trustee under a trust indenture with respect to the Project, Architect and their agents, employees, representatives, officers and directors (the "Indemnified Parties") from and against any liabilities for losses (including those related to business interruption), damages (including special, consequential and incidental), costs, claims, demands, causes of action, liabilities, or expenses (including attorney's fees and expenses) for which the Indemnified Parties may have suffered or be held liable by reason of injury (including death or workers compensation) to any person (including Contractor's employees) or damage to any property of whatsoever kind or nature arising out of or in any manner connected with the Work to be for the Indemnified Parties (including, but not limited to, work performed under this Contract, Work performed under Change Order, or any such other work performed for or on the behalf of the Indemnified Parties, whether performed at the site or not), whether known or unknown to Owner or Contractor. It is expressly understood and agreed that the indemnity contained in this Section covers claims by Contractor's employees, and that, with respect to its obligations to indemnify, defend and hold harmless, the Contractor waives any immunity it might have under any workmen's compensation laws. It is further expressly agreed that the Contractor assumes that the fullest extent of all obligations to indemnify and defend all parties whom the Owner is obligated to indemnify and defend in the Owner's Contract with others (whether or not such obligations may extend to items beyond those addressed in this Contract).

§ 3.18.2 If there are any damages or claims of any kind or nature unsettled when the Contract Work is finished, the final payment by the Owner shall be deferred until all such claims shall have been adjusted or suitable coverage or

indemnity acceptable to the Owner is provided by Contractor or Contractor's insurance carrier. The terms and conditions of this Article (Article 15) shall survive termination of this contract.

§3.18.3 Contractor and the Owner further agree that to the fullest extent possible by law, the laws of the state to which the Work is being performed and/or services provided shall apply to the Work performed and/or services provided and the application of the Indemnification and Hold Harmless Agreements set forth herein.

§3.18.4 Contractor shall promptly advise Owner in writing of any action, administrative or legal proceeding or investigation as to this indemnification may apply, and Contractor, at Contractor's expense, shall assume on behalf of the Indemnified Party in question and conduct with due diligence and in good faith the defense thereof with counsel satisfactory to the Indemnified Party; provided that the Indemnified Party shall have the right to be represented therein by advisory counsel of its own selection and its own expense; and provided further, that if the defendants in and such action include both Contractor and the Indemnified Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or in addition to, or inconsistent with, those available to Contractor, the Indemnified Party shall have the right to select separate counsel to participate in the defense of such action on its own behalf at Contractor's expense. In the event of failure by Contractor to fully perform in accordance with these indemnification provisions, the Indemnified Party, at its option, and without relieving Contractor of its obligations hereunder, may so perform, but all costs and expenses so incurred by the Indemnified Party in that event shall be immediately reimbursed by Contractor to be Indemnified Party. The obligations of Contractor under this Section shall survive the expiration of this Contract.

§3.18.5 Contractor agrees that, in the event Owner prevails in any legal action or proceedings to enforce its rights to be indemnified, defended and held harmless, Contractor shall be liable for Owner's reasonable attorney's fees and expenses incurred in connection with any such action or proceedings.

§3.18.6 The Contractor shall cause its Subcontractors, or anyone employed directly or indirectly by any of them, to agree to defend, indemnify and hold harmless the Owner to the same terms as those set forth in Section 3.18 of these General Conditions.

§ 3.18.7 Any and all liabilities of the Owner and the Indemnified Parties, their successors, heirs and assigns, to the Contractor, its shareholders, partners, agents, employees, successors, heirs and assigns, under or by reason of the Agreement, shall be limited to the Owner's interest in the Project.

§ 3.19 Certain Reimbursable Costs. If the Contract Documents provide for any reimbursement of costs to Contractor, in no event shall such reimbursement include any costs relating to or arising out of any fault or neglect of Contractor or any subcontractors, sub subcontractors, suppliers, engineers or any other party (including the employees and agents of any of the foregoing) furnishing work, services or materials as part of the Project pursuant to the Contract Documents, or attributable to the failure of the foregoing parties to fulfill a responsibility to Owner under or pursuant to this Contract, including, without limitation, any costs of correcting nonconforming, defective or damaged work or materials or other costs attributable to the fault or negligence of any of said parties.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.4.2 and identified as such in the Agreement.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld. Although reference is made herein to various functions and duties of Architect, as forth in the Agreement all references to "Architect" shall be construed to mean "Owner or any representative of Owner, as Owner may designate." In addition to the inspections made by Architect, Owner shall have the right to designate its own construction representative for the purpose of making inspections and verifying compliance with the terms of this Contract, and Contractor shall furnish its full cooperation to such representative.

§ 4.1.3 Nothing in this Article 4 shall be interpreted to limit the written and unwritten responsibilities of the Architect to the Owner under the arrangements between the Architect and the Owner, or to excuse negligence on the part of the Architect.

§ 4.1.4 Although reference is made herein to various functions and duties of Architect, Owner reserves the right, upon notice to Contractor, to eliminate the role of the Architect as to any one or more of such functions or duties, and/or designate its own construction representatives for the purpose of performing such functions or duties.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the two-year period for correction of Work described in Section 12.2. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

§ 4.2.2 The Architect, as a representative of the Owner, will visit the site at intervals appropriate to the stage of the Contractor's operations (1) to become familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts. Certification shall be defined as a statement signed and sealed by the Architect or its consultants representing the services or Work, as the case may be, has been provided and performed by the Contractor as required under the Contract Documents.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as

required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Section 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until 15 days after written request is made for them.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Section 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until 15 days after written request is made for them.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor. A "Supplier" is those who are to furnish materials or equipment for the Project. For the purposes of this Article, whenever "Subcontractor" is used, it is meant to include "Supplier".

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 Subcontractual Relations

§ 5.3.1 By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§5.3.2 The contractor shall not enter into any subcontract, contract, agreement, purchase order or other arrangement ("Arrangement") for the furnishing of any portion of the materials, services, equipment or Work with any party or entity if such party or entity is an Affiliated Entity (as defined below) unless such Arrangement has been approved in writing by the Owner after full disclosure in writing by the Contractor to the Owner of such affiliation or relationship and all details relating to the proposed Arrangement. The term "Affiliated Entity" means any entity related to or affiliated with the Contractor or with respect to which the Contractor has direct or indirect ownership or control, including, without limitation, and any entity owned in whole or part by the Contractor, any holder of more than 10% of the issued and outstanding shares of or the holder of any interest in the Contractor, any entity in which any officer, director, employee, partner or shareholder (or member of the family of any of the foregoing persons) of the Contractor or any entity owned by the Contractor has a direct or indirect interest which interests includes, but is not limited to that of a partner, employee, agent or shareholder. In no event will the Contractor be permitted to charge any overhead profit or other form of mark-up or fee as a General Contractor for any portion of the Work performed with its own forces or an Affiliated Entity including, but not limited to the Contractor's Fee under Section 4.1 of the Agreement if the Contractor's Fee is based on the Cost of the Work.

§5.3.3 Notwithstanding anything to the contrary contained herein, all work performed by Contractor, subcontractors and suppliers for the Project shall only be done pursuant to a written agreement which agreement shall specifically provide that, in event that Contractor defaults, the subcontract and supplier agreements shall be assignable to Owner.

Contractor shall, upon Owner's request, promptly forward Owner and Owner's designed representative a copy of any requested Subcontract or Supplier Agreement related to the Project.

§5.3.4 Without limitation to the generality of the forgoing, each Subcontract agreement and each Sub-subcontract agreement shall include and shall be deemed to include, the following provisions:

- .1 A requirement that the Subcontractor (or Sub-subcontractor) promptly disclose to the Contractor (or Subcontractor) any defect, omission, error, or deficiency in the Contract Documents or in the Work of which it has knowledge.
- .2 A provision that the Owner and its authorized representatives shall have the right to conduct audits or other examinations of the Subcontractor's (or Sub-subcontractor's) books and records relating to the Claims and any Change Orders in which the price is determined on the basis of actual costs incurred.
- .3 A provision requiring the Subcontractor (or Sub-subcontractor) to submit certificates and waivers of liens for work completed by it and its Sub-subcontractors as a condition to the disbursement of the progress payment next due and owing.
- .4 A provision requiring the submission to the Contractor (or Subcontractor, as the case may be) of Applications of Payment in a form approved by Owner, together with clearly defined invoices and billings supporting all such applications.
- .5 A provision requiring, if applicable to the Project, that each Subcontractor acknowledge that its agreement is subject to a Project Labor Agreement, and further requiring that upon execution of its Subcontract, the Subcontractor shall execute the Letter of Assent attached to the Project Labor Agreement.

§5.3.5 The Contractor shall be responsible for any and all Subcontractors working under it and shall ensure that all Subcontractors are carrying insurance so as to relieve the Owner, Architect and Architect's Consultants from any and all liability.

§5.3.6 The Owner or Architect assumes no responsibility for the overlapping or omissions of parts of the Work by various Subcontractors in their Contracts with the Contractor, because this is solely the Contractor's responsibility.

§5.3.7 Contractor shall, upon request, provide Owner with copies of all subcontracts, which shall be in writing and shall contain mechanics' lien waiver provisions as set forth in Section 2.2, and indemnification provisions as required in Section 3.18. All subcontracts shall provide that if for any reason this Contract is terminated, each subcontractor will, at the option and request of Owner (as hereinafter defined), continue to perform in accordance with the terms of its subcontract for the benefit of Owner. At Owner's option, payments otherwise owed to Contractor under this Contract for the benefit of its subcontractors and suppliers may be made directly to such suppliers and subcontractors. Contractor shall require all subcontractors to execute and submit, to Contractor and the Owner, a Quality Control Plan (which must designate the subcontractor's Quality Control Manager), for such subcontractor's work. Contractor's failure to comply with any of the provisions of this Section shall be deemed a material breach and default by Contractor.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 If the Work in connection with a subcontract is suspended for more than 30 days after termination of the Contract by Owner pursuant to Section 14.2 and the Owner accepts assignment of such subcontract, the subcontractor's compensation shall be equitably adjusted for any increase in direct costs incurred by such subcontractor as a result of the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall not remain legally responsible for all of the successor contractor's obligations under the subcontract.

§5.5 Owner Payments to Subcontractors

§5.5.1 In the event of any default hereunder by the Contractor, or in the event the Contractor fails to render payment to a Subcontractor that is not the fault of a Subcontractor, the Owner may make direct payment to Subcontractor, less appropriate retainage. In that event, the amount so paid the Subcontractor shall be deducted from the payment to the Contractor.

§5.5.2 Nothing contained herein shall create any obligation on the part of the Owner to make any payments to any Subcontractor, and no payment by the Owner to any Subcontractor shall create any contractual or common law obligation to make any further payments to any Subcontractor.

§5.5.3 Contractor shall pay its subcontractors, vendors and suppliers in accordance with any applicable state or local requirements, such as a Prompt Payment Act, if any.

§5.5.4 In the event that the Contractor fails to pay Contractor's subcontractors, vendors and suppliers within ten (10) days of receipt of its Progress Payment from Owner, Contractor shall promptly notify Owner and Project Manager, in writing, of the (1) name of the subcontractor, supplier or vendor that has not received payment, (2) the amount of any payments withheld or delayed, and (3) the legal and factual basis for failing to make such payments.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Intentionally deleted.

§ 6.2 Mutual Responsibility

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

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect in writing of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective work, to the extent any of the foregoing are caused by the Owner or a separate Contractor.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.2.6 If a separate Contractor initiates legal or any other proceedings against the Owner on account of any damage alleged to have been caused by the Contractor, the Owner shall notify the Contractor and the Contractor shall pay or satisfy it and shall reimburse the Owner for all attorney's fees and court or other costs, which the Owner incurs over and above these paid for directly by the Contractor.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.1.4 A Change Order that will individually or in conjunction with any prior Changes to Work authorized by this Article result in an increase of \$25,000 or more to the Contract Sum stated in the Agreement shall be void and unenforceable if not approved by the Owner's governing board at a public meeting and so certified by the Owner's Chief Operating Officer.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order. Unless addressing an emergency, all Construction Change Directives shall be in compliance with Article 7.1.4.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

The Architect, with the Owner's approval, may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time. The Contractor shall carry out such written orders promptly.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 Progress and Completion

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

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Contract Documents or a Notice to Proceed given by the Owner, the Contractor shall notify the Owner in writing not less than five (5) days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

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

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work pursuant to Change Orders that provide for an extension of Contract Time; (3) by labor disputes, industry-wide strikes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control and which could not have been anticipated by it; (4) by delay authorized by the Owner pending dispute resolution as defined in Section 15.5; or (5) by other causes that the Contractor asserts, and the Architect and Owner determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect and Owner may determine. Contractor will manage onsite and/or site related labor disputes. No such Change Order extending the Contract Time shall result in any increased payments to the Contractor for overhead or any other amounts of any nature unless agreed to in writing.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

§ 8.3.4 If Contractor wishes to make any claim for delay, Contractor shall notify Owner in writing of the nature and expected duration of the delay not later than three (3) business days after Contractor becomes aware of the events or circumstances giving rise to the delay, including in such notice all feasible recommendations of Contractor for minimizing the effects of such delay. Such written notice, given within said three (3) business day period, shall be a

condition precedent to any claim by Contractor for an extension of the time for Substantial Completion. Furthermore, and notwithstanding anything else in this Contract to the contrary, Contractor's sole rights respecting a delay shall be to obtain, by Change Order, an extension of the date of Substantial Completion, and all other rights to additional compensation or damages are irrevocably waived. The Contractor agrees to make no claim for damages for delay in the performance of this Contract occasioned by any act or failure to act of the Owner or any of its officers, directors, employees, architects, or other representatives, or because of any injunctions which may be brought against the Owner or its representatives.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.1.3 Contractor agrees and understands that Owner will not be obligated to pay any amount in excess of the Contract Sum stated in the Agreement unless such Contract Sum has been amended consistent with the Change Order process provided in Article 7.

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect and/or Owner, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten (10) days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.1.3 With each Application for Payment, the Contractor shall (1) certify that the Application for Payment represents a just estimate of Work performed and materials supplied during the period covered by the Application for Payment; (2) certify that there are no known construction liens outstanding at the date of the Application for Payment, except for such bills not paid but so included there is no known basis for the filing of any construction liens on the Work and that waivers from all Subcontractors and all material suppliers have been obtained in such form as to constitute an effective waiver of liens under applicable state laws; (3) provide Contractor's waiver of lien for all amounts requested in such Application for Payment; (4) provide waivers of lien from each Subcontractor, material supplier, and all other parties that provided labor or material for which payment was requested under previous Applications for Payment; and (5) provide any other information reasonably requested by Owner's title insurance company as a prerequisite for such title insurance company to insure over mechanic's liens, construction liens and all other similar liens attributable to the Work covered by the applicable Application for Payment.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Notwithstanding the forgoing, Contractor hereby acknowledges that Owner has no obligation to make payments for materials and equipment stored off site. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site. Partial or complete payment for materials and equipment stored either on or off site shall not be construed as relieving the Contractor of its responsibility for the care and protection of such materials and equipment used. Contractor shall be responsible for any and all damage to such materials and equipment occurring prior to the incorporation of such materials and equipment into the Work on the Project site and Owner shall have the right in addition to all other remedies available to Owner under the Contract to reject any such materials and equipment damaged prior to the incorporation thereof in to the Work on the Project site. Materials and equipment stored either on or off site requiring protection from weather, heat, cold or moisture shall be suitably protected by Contractor as required by the material manufacturer. The materials and equipment shall be labeled as the property of the Owner and shall be accessible to the Owner for inspection at all times and shall be segregated from other materials and equipment at the storage facility. If the Contractor requests payment for material stored either on or off site, Owner shall be entitled to receive, at the minimum, the following prior to making payment:

- .1 receipt of a Bill of Sale;
- .2 proof of suitable and convenient storage; and,
- .3 receipt of a certificate of insurance naming the Owner as loss payee which insurance should cover the stored materials and equipment in an amount equal to the full replacement value of such materials and equipment.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect.

§ 9.4.3 The Architect's Certificate for Payment shall also constitute a representation to the Owner that all lien releases and certificates required under the Contract Documents have been furnished to Architect in proper form and are based on the Architect's observations at the site and all other information available to Architect. In addition, Owner may require certificates from Architect, Engineer or Construction Manager, whichever Owner considers appropriate, which will confirm that the certifying party has reviewed construction means, method, techniques, sequences and procedures, and reviewed copies of requisitions received from subcontractors and material suppliers and other data requested by Owner to substantiate Contractor's right to payment. In addition to the matters enumerated in Section 9.5.1 of the General Conditions, the Architect may also withhold a Certificate of Payment in

whole or in part for the following additional reasons:

- .1 failure to meet the requirements for application for payment or for supporting data;
- .2 failure to proceed with any requested changes in the Work as required by the Contract Documents; or
- .3 any claims which Owner may have against Contractor under the Contract Documents, to the extent of the amount in dispute under such claim.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld. The Owner shall not be deemed in default of the Agreement by reason of withholding payment while any of the above grounds remain uncured.

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect. If Owner does not agree with such Certificate for Payment, Architect shall provide Owner with all of the items reasonably requested by Owner and shall work with Owner, whether making recommendations or revising the Certificate for Payment, until Owner and Architect are in agreement with the Certificate for Payment, at which point, Owner shall make payment in the manner and within the time provided in the Contract Documents (subject to reasonable extension to resolve any dispute described herein), and shall so notify Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

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

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner.

§ 9.6.8 In the event the Owner or the Owner's Representative determines that the Contractor is not reasonably performing the Work, either by failing to reasonably follow the schedule, or by failing to adequately perform the Work (all to be determined by the reasonable judgment of the Owner or the Owner's Representative), the Owner shall have the right to make progress payments at a rate of eighty-five percent (85%) of the amount due the Contractor for each payment until such time as the Owner or the Owner's Representative certifies that the Contractor is in full compliance with the schedule and all other conditions of the Contract for Construction. The Contractor shall have no claim against the Owner or the Owner's Representative, at law or in equity or otherwise, that arises out of the Owner's or the Owner's Representative's actions pursuant to this provision.

§ 9.6.9 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

§ 9.7.1 If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven (7) additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents. Notwithstanding the forgoing, the Contractor shall not stop the work during the pendency of a bona fide dispute between the Owner and the Contractor provided any sums in dispute are placed in escrow pursuant to written instructions that require said disputed sum to be released in accordance with the resolution of the dispute.

§ 9.7.2 If the owner is entitled to reimbursement or payment from the Contractor pursuant to the Contract Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due the Owner or if the Owner incurs any costs and expenses to cure any default of the Contractor or the correct defective Work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to (1) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from Owner, or (2) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents, and as further defined in Section 1.1.9, so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage, as provided in the Contract Documents, applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance

with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner, (7) all warranties and guarantees required under or pursuant to the Contract Documents assembled as part of the final Application for Payments and (8) evidence satisfactory to the Owner that Contractor has met all requirements set forth in subsection 5.2 of AIA Document A102-2017 as amended herein.. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4 Notwithstanding any provision in the Contract to the contrary, Final Payment shall not be due to Contractor unless and until, in addition to all other conditions set forth in this Contract, the Project shall have been completed to Owner's satisfaction. The Project shall be deemed completed for purposes of this Contract only when (1) the Project has been completed in accordance with the Drawings and Specifications (as they may have been amended and supplemented with the written approval of the Owner), and in accordance with all applicable statutes, laws and ordinances, and with the rules, regulations and requirements of all regulatory authorities having jurisdiction; (2) the Project is ready for use, occupancy and operation without any further work necessary for the completion of the same (except for minor "punch list" items which do not interfere with the legal, safe, and functional and comfortable use and occupancy of the Project or any part of the Project and for which a reserve is established in an amount acceptable to Owner in Owner's sole discretion); (3) the Architect shall have certified to the Owner in writing its Certificate of Completion in accordance with these provisions and the Contract Documents; (4) certificates of occupancy and such other certificates, permits, and approvals, required for lawful occupancy of the Project shall have been issued; (5) the Contractor shall have provided and installed all fixtures, equipment and supplies necessary for the operation of the Project to the extent required by the Drawings and Specifications; and (6) the Contractor shall have delivered to the Owner all as built Drawings and Specifications, operating manuals, warranties and guarantees applicable to the Project. Not later than at completion of the Project and the delivery of the Final Payment due hereunder to the Contractor, the Contractor shall furnish to the Owner a release of liens satisfactory to the Owner from Contractor and all subcontractors and materialmen as the Owner may require indicating that the Project has been constructed and completed free and clear of all liens, encumbrances, and security interests. The making of final payment shall not constitute a waiver of any claims by the Owner arising out of faulty or defective Work appearing after final completion. In the event the Contractor does not achieve final completion within sixty days after the date of Substantial Completion, allowing for approved extensions of the Contract Time, the Contractor shall not be entitled to any further payment, and the Contractor hereby agrees that such failure to complete the Work within the time set forth above shall constitute a waiver of all claims by the Contractor to any money that may be

due. This provision shall not operate as a waiver by the Owner of any claims of any nature against the Contractor arising out of the Contract. The Contractor shall deliver to the Owner a certificate stating that all Quality Control standards have been followed in the completion of the Work.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

§ 10.1.1 The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.1.2 The Contractor shall create and enforce appropriate safety programs and procedures and shall review the safety programs of each of the subcontractors and shall make appropriate recommendations. The Contractor shall perform such inspections as are necessary for adequate review and recommendations. The Contractor shall implement additional safety programs or procedures as may be recommended by Owner or Architect for the purpose of reducing injuries or risks associated with the Work. Compliance with such recommended safety programs or procedures shall not be considered as an addition to the Contract Sum.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss. If the Contractor fails to give such notices, or fails to comply with such laws, ordinances, rules, regulations, conditions of Owner's land use approvals, and lawful orders, the Contractor shall indemnify, defend and hold the Owner, Architect and their respective employees, officers and agents harmless from and against any all claims, fines, penalties, judgments or damages, including but not limited to, attorney's fees, imposed on or incurred by the parties so indemnified as a result thereof.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Intentionally deleted.

§ 10.2.9 When all or any portion of the Work is suspended, the Contractor shall securely fasten down all coverings to protect the Work, as reasonably necessary, from damage by any cause whatsoever, including the weather, and take reasonable steps to secure the site from authorized access. If the suspension is caused by a Contractor default hereunder, then the costs incurred by the Contractor's sole responsibility and shall not be added to the Contract Sum. If the Work is suspended for any reason other than default by Contractor hereunder, then all costs incurred by the Contractor under this Section shall be added to the Contract Sum.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 Intentionally deleted.

§ 10.3.2 Intentionally deleted.

§ 10.3.3 Intentionally deleted.

§ 10.3.4 Intentionally deleted

§ 10.3.5 Intentionally deleted.

§ 10.3.6 Intentionally deleted.

§ 10.3.7 The Contractor shall not cause or permit any "Hazardous Materials" (as defined herein) to be brought upon, kept, or used in or about the Project site except to the extent such Hazardous Materials: (1) are necessary for the prosecution of the Work; (2) are required pursuant to the Contract Documents; and (3) have been approved in writing by Owner. Any Hazardous Materials allowed to be used on the Project site shall be used, stored, and disposed of in compliance with all applicable laws relating to such Hazardous Materials. Any unused or surplus Hazardous Materials, as well as any other Hazardous Materials that have been placed, released, or discharged on the Project site by the Contractor or any of its employees, agents, suppliers, or subcontractors, shall be removed from the Project site at the earlier of: (1) the completion of the Work requiring the use of such Hazardous Materials; (2) the completion of the Work as a whole; or (3) within twenty-four (24) hours following the Owner's demand for such removal. Such removal shall be undertaken by the Contractor at its sole cost and expense and shall be performed in accordance with all applicable laws. Any damage to the Work, the Project site, or any adjacent property resulting from the improper use of or any discharge or release of Hazardous Materials shall be remedied by the Contractor at its sole cost and expense and in compliance with all applicable laws and so as to restore the Project site and any other affected properties to their original condition. The Contractor shall immediately notify the Owner of any release or discharge of any Hazardous Materials on the Project site. The Contractor shall provide the Owner with copies of all warning labels on products which the Contractor or any of its subcontractors will be using in connection with the Work, and the Contractor shall be responsible for making any and all disclosures required under applicable "Community Right-to-Know" or similar laws. The Contractor shall immediately notify the Owner of any citations, orders, or warnings issued to or received by the Contractor, or of which the Contractor otherwise becomes aware, which relate to any Hazardous Materials on the Project site. Without limiting any other indemnification provisions pursuant to law or specified in this Contract, the Contractor shall indemnify, defend (at the Contractor's sole cost, and with legal counsel approved by Owner), and hold the Indemnified Parties harmless from and against any and all claims, demands, losses, damages, disbursements, liabilities, obligations, fines, penalties, costs, and expenses for removing or remedying the effect of any Hazardous Materials on, under, from or about the Project site, arising out of or relating to, directly or indirectly, the Contractor's failure to comply with any of the requirements herein. As used herein, the term "Hazardous Materials" means any hazardous or toxic substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table, or listed by the Environmental Protection Agency as hazardous substances, and any substances, materials, or wastes that are or become regulated under federal, state or local law. The Owner shall not be responsible for Hazardous Materials and substances brought to the site by the Contractor unless such materials or substances were required by the Contract Documents and Contractor has complied with its obligations with respect to Hazardous Materials.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

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

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the

insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

§ 11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect, any governmental authority or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within two (2) years after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition based upon complete and accurate disclosure by the Contractor of all material information relating to such portion of the Work. Notwithstanding the immediately preceding sentence, such two-year period with respect to any portion of the Work relating to any particular building within the Project shall commence upon Final Completion of such building and occupancy of such building by Owner. The Owner shall give such notice promptly after discovery of the condition. The Contractor further agrees to replace, repair or restore any parts of the Work, the Owner's work or materials, or other items or property located in the project that are injured or damaged as a consequence of defective or nonconforming Work or corrective action taken pursuant thereto. During the two-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor under Section 12.2.2. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.6.

§ 12.2.2.2 The two-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The two-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2 for an additional one-year period for such corrective Work commencing from the date the Contractor completes such corrective Work.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

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

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the two-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.2.6 Corrective work shall be warranted to be free from defects for a period of two years after the date of final acceptance of the Work as provided in the Contract Documents (subject to extension as hereinafter described) or such longer period of time as may be prescribed by law or in equity, or expiration of the term of any applicable

special warranty required by the Contract Documents. Any defect in such Work shall be corrected again by Contractor promptly upon notice of the defect from the Owner. This obligation shall survive final acceptance of the Work under this Contract and termination of this Contract. The Owner does not waive its right to require correction to the Work or to make a claim for breach of Contractor's obligations under the Contract Documents by reason of any failure to notify the Contractor of the need for such correction within the two year period, and Contractor acknowledges that the two year period will commence at the time any corrective Work is completed.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed pursuant to Subparagraph 32.4 of Section 00 73 00 - Supplementary Conditions to the Construction Contract.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.3 Rights and Remedies

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

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

§ 13.3.3 The invalidity of any part or provision of the Contract Documents shall not impair or affect in any manner the validity, enforceability or effect of the remaining parts and provisions of the Contract Documents.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.4.7 Contractor agrees that Owner has no obligation to test, inspect or insure the quality of Contractor's Work during the progress of the Work, and that under no circumstances will Owner (or its representatives) be deemed to have waived Contractor's responsibility to complete construction in accordance with the Contract Documents and this Agreement.

§ 13.5 Interest

Intentionally deleted.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of thirty (30) consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents.
- .4 Intentionally deleted.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.1.5 Contractor shall not exercise any right to terminate this Contract or to stop or suspend its Work under this Contract, by reason of an asserted default of Owner, unless such default is material and (if the default is by its nature curable) unless the Owner has been afforded a period of not less than fifteen (15) days to cure the default following written notice. Furthermore, no failure of Owner to make payment to Contractor shall be deemed cause for

termination or Work stoppage or suspension by Contractor, if the payment in question is disputed by Owner and if Owner pays to Contractor the amount which is not in dispute.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .4 is guilty of substantial breach of a provision of the Contract Documents.
- .5 Contractor is adjudged bankrupt or insolvent, subject to the provisions of the Bankruptcy Laws and Specifically 11 U.S.C., Section 365;
- .6 Contractor makes a general assignment for the benefit of creditors;
- .7 a trustee or receiver is appointed for the Contractor or for any of Contractor's property;
- .8 Contractor files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws; or
- .9 Contractor disregards the authority of the Architect.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.3.3 In addition to Owner's right to suspend, delay, or interrupt Contractor from any part of Work pursuant to the Contract Documents, Owner may, at any time, at will and without cause, suspend, delay, or interrupt any part of Work or any Subcontract or all Work for any reason whatsoever for such period of time as the Owner may determine by giving seven days' prior written notice to Contractor specifying the part of Work or Subcontract to be suspended, delayed, or interrupted and the effective date of such suspension, delay, or interruption, as the case may be. Contractor shall continue to prosecute the part of Work not suspended, delayed, or interrupted and shall properly protect and secure the part of Work so suspended, delayed, or interrupted, so far as is necessary in Owner's reasonable opinion. If any part of the Work or a Subcontract is so suspended, delayed, or interrupted, Contractor

shall be entitled to payment of reasonable standby fees (or at Owner's option, payment for demobilization and subsequent remobilization) and of costs directly associated with protecting and securing the affected Work, provided said costs are authorized in advance by Architect and Owner. No payment shall be made by Owner, however, to the extent that such Work or Subcontract is, was, or could have been suspended, delayed, or interrupted under the Contract Documents or an equitable adjustment is made or denied under another provision of the Contract Documents. In case of such suspension, delay, or interruption, Owner will issue a Construction Change Directive or authorize a Change Order making any required adjustment to the Date of Substantial Completion and/or the Contract Sum. For the remainder of the Work, the Contract Documents shall remain in full force and effect.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed and costs incurred by reason of the termination.

§ 14.4.4 If Owner terminates the Contract for cause pursuant to Section 14.2 and it is subsequently determined that the Owner was not authorized to terminate the Contract as provided in Section 14.2, the Owner's termination shall be treated as a termination for convenience under Section 14.4 and the rights and obligations of the parties shall be the same as if the Owner has issued a notice of termination to the Contractor as provided in Section 14.4.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the dispute resolution method set forth in Section 15.5 and within the period specified by Pennsylvania law. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 No applicable statute of limitations shall be deemed to have commenced with respect to any portion of the Work which is not in accordance with the requirements of the Contract Documents, which would not be visible or apparent upon conducting a reasonable investigation, and which is not discovered by the Owner until after the date which, but for this Section 15.1.3, would be the date of commencement of the applicable statute of limitations; the applicable statute of limitations instead shall be deemed to have commenced on the date of such discovery by Owner.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party with a copy sent to the Architect. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to

the Architect and the other party and must include the amount of time and/or exact cost being claimed. Any additional claims made after the initial claim has been implemented by Change Order will not be considered.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim or other dispute, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor shall waive Claims for consequential damages arising out of or relating to this Contract. This waiver includes damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work. This waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

Intentionally deleted.

§ 15.3 Mediation

Intentionally deleted.

§ 15.4 Arbitration

Intentionally deleted.

§ 15.4.4 Consolidation or Joinder

Intentionally deleted.

§ 15.5 Dispute Resolution

§ 15.5.1 The method of binding dispute resolution shall be as provided in Paragraph 32 of Section 00 73 00 – Supplementary Conditions to the Construction Contract.