

CONSTRUCTION CONTRACT BETWEEN THE DEPARTMENT AND CONTRACTOR

This CONTRACT, executed this _____ day of _____ 20 ____, by and between the Department of General Services, created by Act No. 45 of July 22, 1975, hereinafter called "DEPARTMENT" and

at this address:

a corporation incorporated under the Laws of the State of _____ its successors and assigns, hereinafter called "CONTRACTOR".

OR

This CONTRACT, executed this _____ day of _____ 20 ____, by and between the Department of General Services, created by Act No. 45 of July 22, 1975, hereinafter called "DEPARTMENT" and

at this address:

his, her or their heirs, executors, administrators and assigns, hereinafter called "CONTRACTOR".

ARTICLE 1 – THE CONTRACT DOCUMENTS

The Contract Documents consist of the Standard Form of Contract, the Notice to Bidders (if procured through competitive sealed bids), the Instructions to Bidders (if procured through competitive sealed bids), the Bid Proposal (if procured through competitive sealed bids), the Notice to Proposers (if procured through competitive sealed proposals), the Request for Proposals (if procured through competitive sealed proposals), the Contractor's entire proposal (if procured through competitive sealed proposals), the Contract Bonds, the Conditions of the Contract (General, Special, Supplementary, and other Conditions), the drawings of all Prime Contracts, the specifications of all Prime Contracts, all bulletins and addenda issued prior to execution of the Standard Form of Contract, all change orders, all schedules, and the Administrative Procedures of the Bureau of Construction. These form the Contract

and are incorporated by reference as if fully set forth herein. To the extent that any of these documents are amended by statute, the statutory language will control.

ARTICLE 2 – THE WORK

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

ARTICLE 3 – PROFESSIONAL

The Professional for this Project is _____

ARTICLE 4 – TIME OF COMMENCEMENT AND COMPLETION

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

ARTICLE 5 – CONTRACT SUM

The Department will pay the Contractor for the performance of the Work, subject to additions and deductions by change order, as provided in the General Conditions of the Construction Contract, the contract sum of _____ dollars (\$_____).

Payment will be made as set forth in the General Conditions of the Construction Contract. Deductions from or additions to this sum will be made as set forth in the General Conditions of the Construction Contract.

ARTICLE 6 – PROGRESS PAYMENTS and RETAINAGE

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

ARTICLE 7 – FINAL PAYMENT

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

ARTICLE 8 – UNIT PRICES

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

- Acceptable and are, therefore, incorporated into the Contract
- Are not acceptable and are not incorporated as part of the Contract
- Not applicable to this Contract

ARTICLE 9 – SMALL DIVERSE BUSINESS PARTICIPATION

The Department has established one Minimum Participation Level (MPL) for utilization of Minority Business Enterprises (MBEs), Women Business Enterprises (WBEs), Veteran Business Enterprises (VBEs), and Service-Disabled Veteran Business Enterprises (SDVBEs) (together referred to hereinafter as Small Diverse Businesses) subcontracts, suppliers, and manufacturers for this project which is set forth in the Notice to Bidders. The Contractor's selected option (options are more fully described in the Instructions to Bidders and the Administrative Procedures) regarding the MPL for Small Diverse Businesses is:

- Opt-in – A Contractor selecting “Opt-in” agrees to meet or exceed the Project’s MPL as of the date of the Close-out Inspection of the project.
- Good Faith Effort - A Contractor selecting “Good Faith Effort” agrees to document its use of reasonable efforts to identify, solicit, and secure commitments with Small Diverse Businesses for all subcontracts and purchase orders greater than \$10,000 throughout the duration of the Project. DGS reserves the right to request submission of this documentation at any time during the project.
- Not applicable – the Awarded amount does not exceed \$50,000.

ARTICLE 10 – MISCELLANEOUS PROVISIONS

- 10.1 Terms used in the Contract that are defined in the General Conditions of the Construction Contract have the meanings designated in those General Conditions.
- 10.2 In addition to any other guarantees or warranties, the Contractor covenants and agrees, after acceptance of the Work performed under this Contract, to remedy without cost to the Department, any such defect, provided said defects in the judgment of the Department, or its successors having jurisdiction in the premises, are caused by defective or inferior materials, equipment or workmanship. If the corrective Work is not completed within thirty (30) days after notification by the

Department to the Contractor, the Department may do the Work and submit those costs to the Surety Company for reimbursement.

- 10.3 The Contract Bonds given by the Contractor conditioned upon the faithful performance of the Contract and for the payment of labor, material, equipment rental and public utility service claims are attached to this contract and are made a part of it.
- 10.4 Nothing in this Contract shall be deemed to waive or otherwise affect the sovereign immunity of the Commonwealth, and its agencies, officers, and employees, or to subject any Commonwealth party to any liability not expressly authorized by law.
- 10.5 No third party acquires any rights against the Department under this Contract.
- 10.6 The Contractor agrees that there is no privity of contract between any other entity under contract with the Department and the Contractor, and also the Contractor is not an intended third party beneficiary of any other Department contract/agreement.
- 10.7 The Contractor agrees to abide by and be bound by the Laws of Pennsylvania relating to and regulating the hours and conditions of employment.
- 10.8 Any claimant who has performed labor or furnished material in the prosecution of the Work has a right of action to recover the cost thereof from the Contractor and/or the surety on the Bond given to secure the payment as set forth in Section §903(d) of the of the Commonwealth Procurement Code, 62 Pa. C. S. §903(d). For those who do not have a contract directly with the Contractor, this right of action may not be exercised unless the Contractor receives written notification of the claim within ninety (90) days after the day on which the claimant performed the last of the labor or furnished the last of the materials for which it claims payment. The Contractor shall include in all of its subcontracts or supply contracts a provision requiring that its subcontractors and suppliers notify, in writing, their subcontractors and suppliers of this requirement. It is hereby agreed that no third party rights arise against the Department for any reason under this Section, and Contractor hereby agrees to so inform all subcontractors in writing.

ARTICLE 11 – CONTRACT COMPLIANCE REGULATIONS

Refer to the appropriate paragraph of the General Conditions of the Construction Contract (which are made a part of this Contract by incorporation by reference as if fully set forth herein), which prohibits discrimination in hiring or employment opportunities. Also made a part of this Contract by incorporation by reference are all State and Federal Laws prohibiting discrimination in hiring or employment opportunities. The contract documents also list applicable statutory provisions which are incorporated by reference into this contract as if set forth fully herein.

**SIGNATURE PAGE IMMEDIATELY FOLLOWS
REMAINDER OF PAGE INTENTIONALL LEFT BLANK**

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

Witness

Contractor – Individual

Witness

Contractor – Partnership

Witness

Contractor – Limited Liability Company

Secretary or Treasurer

Contractor – Corporation

(Corporate Seal)

COMMONWEALTH OF PENNSYLVANIA
ACTING THROUGH THE DEPARTMENT
OF GENERAL SERVICES

Secretary of General Services

APPROVED AS TO LEGALITY AND FORM:

Office of Chief Counsel, DGS

Office of Attorney General

Office of General Counsel

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

Comptroller Operations Date

CONTRACT BOND

KNOW ALL PERSONS BY THESE PRESENTS, That we the undersigned _____

_____ of

as Principal
and

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

as Surety

are held and firmly bound unto the Department of General Services as hereinafter set forth, in the full and just several sums of

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

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

Sealed with our respective seals and date this ____ day of 20 ____ .

WHEREAS, the above Principal has entered into a Contract with the Department of General Services dated the ____ day of _____, 20 ____ for _____ upon certain terms and conditions in said Contract more particularly mentioned; and

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

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

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

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

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

D. The Principal and Surety hereby jointly and severally agree with the Department of General Services herein that every person, co-partnership, association or corporation which, whether as subcontractor or as a person otherwise entitled to the benefits of this Bond, has furnished material or supplied or performed labor or rented equipment used in the prosecution of the Work as above provided

and any public utility, which has rendered services, in, or in connection with, the prosecution of such Work, and, which has not been paid in full therefore, may sue in assumpsit on this Bond in his, their, or its name and prosecute the same to final judgment for such sum or sums as may be justly due him, them, or its, and have execution thereon; provided, however, that the Department of General Services shall not be liable for the payment of any costs or expenses of such suit to a third party under any theory of law or equity.

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

[Signature Page Immediately Follows]

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

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

Witness

Principal – Individual

Witness

Principal – Partnership

Witness

Principal – Limited Liability Company

Secretary or Treasurer

Principal – Corporation

(Corporate Seal)

Surety

Attorney-in-Fact

APPROVED AS TO LEGALITY AND FORM:

Office of Chief Counsel, DGS

Office of Attorney General

Office of General Counsel