

STATE SYSTEM OF HIGHER EDUCATION
COMMONWEALTH OF PENNSYLVANIA

STANDARD FORM OF AGREEMENT
FOR FACILITIES PROJECTS
(\$25,000 or less)

BETWEEN THE SYSTEM AND THE CONTRACTOR

Number UP-292

This Agreement is made and entered into this 28th day of September, 2011, at Butler County, by and between Slippery Rock University of the State System of Higher Education, Commonwealth of Pennsylvania, hereinafter called the "System," and **Bronder Technical Services, Inc, 990 West Old Route 422, Prospect PA 16052**, a Corporation, Federal I.D. #25-1691262 hereinafter called the "Contractor".

The Contractor, for and in consideration of the terms of this Agreement, agrees to furnish all qualified personnel, facilities, materials, and/or other services and perform the scope of work described in Rider A, and in accordance with the provisions specified in Riders B, C, D, E, F, and G for the sum Not to Exceed **\$9,800.00**.

The work under this agreement shall be entitled: UP-292 Bailey Library Renovation:
Electrical Construction

The completion date for finishing all work specified in this Agreement is 30 days after the date of the Notice to Proceed.

The parties hereto, intending to be legally bound hereby, do agree that no agreement shall be effective until executed by all necessary Commonwealth officials as provided by law. The terms, requirements, conditions, and considerations of this agreement are specified in Riders A, B, C, D, E, F, G, and all contract documents which are attached herein or incorporated by reference, are made part of the Agreement. The Riders are as follows:

Rider A (Specifications of the Work to be Performed) consisting of 1 page.

Rider B (General Conditions) consisting of 19 pages.

Rider C (Instructions to Bidders) consisting of 2 pages.

Rider D (Additional Contract Commitments/Information) consists of 2 pages.

Rider E (Warranties) consisting of 1 page.

Rider F (Bonds) consisting of 0 pages. **(not applicable)**

Rider G (Contractor Integrity Provisions) consisting of 2 pages.

IN WITNESS WHEREOF, this Agreement has been executed and delivered as of the date set forth in the caption hereof, for University Project # **UP-292 Bailey Library Renovation: Electrical Construction**

FOR THE CONTRACTOR:

[Redacted Signature]

Corporation

[Redacted Signature]

Secretary of Treasurer of Corporation
Catherine M. Bronder, Secretary

FOR THE COMMONWEALTH:

[Redacted Signature]

Slippery Rock University of Pennsylvania
State System of Higher Education

Approved as to Form and Legality:

[Redacted Signature]

State System of Higher Education

[Redacted Signature]

Commonwealth of Pennsylvania

EFFECTIVE DATE
NOV - 1 2011
OF CONTRACT

STATE SYSTEM OF HIGHER EDUCATION
COMMONWEALTH OF PENNSYLVANIA

STANDARD FORM OF AGREEMENT
FOR FACILITIES PROJECTS

RIDER A

SCOPE OF WORK TO BE PERFORMED

1. This project is entitled **Bailey Library Renovation: Electrical Construction – Project Number UP-292.**

2. **SUMMARY OF WORK**

Contractor shall provide all labor, materials and equipment necessary for electrical construction in Bailey Library, Rooms 127 and 129. Work shall include the installation of wiring, receptacles, conduit, raceway, 150 amp circuit breaker, and new electric panel.

3. **GENERAL**

1. The Contractor shall confine his activities as closely as possible to the location where work is to be performed and shall take proper precautions to protect existing structures, utilities, equipment and property.
2. So far as possible all work shall be done during regular working hours and at the convenience of the University.
3. The Contractor shall restore as nearly as possible any damages caused to buildings, utilities, equipment, etc. to the satisfaction of the University.
4. Upon completion of the work all dirt, debris, or miscellaneous materials not used during installation by the Contractor shall be removed and the site left in a neat, clean condition acceptable to the University.

4. The Contract Documents shall be located in the Contracts Office, Slippery Rock University, Old Main Building.

STATE SYSTEM OF HIGHER EDUCATION
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STANDARD FORM OF AGREEMENT
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RIDER B
GENERAL CONDITIONS

ARTICLE 1
GENERAL PROVISIONS

1.1 CONTRACT DOCUMENTS

- 1.1.100 The Contract Documents consist of the agreement, notice to contractors, the bid proposal, the contract bonds (if specified), all riders, drawings and specifications, Special Requirements, General Requirements, and addenda issued to the contract. A modification is (1) a written amendment to the contract signed by both parties or (2) a change order. A modification may be made only after execution of the contract. The work specified in the contract includes all labor, equipment, and materials required and incorporated to complete the work specified in and according to all the Contract Documents.
- 1.1.101 The Contract Documents are complementary, and what is required by any one of the Contract Documents shall be binding as if required by all. The intention of the documents is to include all labor, materials, equipment, and other items necessary for the proper execution and completion of the work. Work not covered under any heading, section, branch, class, or trade of the specifications need not be supplied unless it is required elsewhere in the Contract Documents or is reasonably inferable therefrom as being necessary to produce the intended results. If there is a conflict between the drawings and the specifications, the specifications shall prevail. Words which have well-known technical or trade meaning are used herein in accordance with such recognized meanings.

1.2 JURISDICTION

Any legal action arising from the terms and conditions of this contract shall be litigated exclusively in the Courts of the Commonwealth of Pennsylvania.

1.3 NOTICES

Wherever the term "notice" is used, such notices to be effective shall be in writing and if to the System shall be mailed certified mail, postage and fees prepaid, or delivered to the System, and if to the Professional shall be similarly mailed or delivered to him at this address set forth in the caption of this Agreement, unless and until notice of another address shall be given hereunder, in which case notices shall be so delivered or mailed to the address last so given.

1.4 INTEGRATION

This Agreement contains all the terms and conditions agreed to by the parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement exist.

1.5 NO THIRD PARTY RIGHTS

The Contractor agrees to indemnify and hold harmless the System and the Commonwealth of Pennsylvania against any costs incurred by the System or the Commonwealth of Pennsylvania (including without limitation amounts paid pursuant to judgments or settlements and as counsel fees) in consequence of any claim by a third party against the System or the Commonwealth of Pennsylvania, including without limitation any claim by an employee of the System or the Commonwealth of Pennsylvania, the Contractor or a subcontractor and any claim by a subcontractor or another contractor, whether filed before or after final payment, based on actual or alleged damage to or destruction of property or injury to persons allegedly caused by the Contractor, or any subcontractor, or by their respective employees, in connection with the work.

The System shall promptly notify the other party of the assertion of any claim against which the System or the Commonwealth is held harmless pursuant to this condition, shall give such other party the opportunity to defend any such claim, and shall not settle any such claim without the approval of the indemnifying party.

1.6 HOLD HARMLESS

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

In any and all claims against the System, Construction Manager or the Professional or any of their agents or employees by any employee or the Contractor, any subcontractor, any one directly or indirectly employed by any of them or any one for whose acts any of them may be liable, the indemnification obligations shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under workmen's compensation acts, disability benefit acts or other employee benefit acts.

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

1.7 OFFSET PROVISIONS

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

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

1.8 DEBARMENT OR SUSPENSION

The contracting officer shall recommend debarment or suspension action against the Contractor whenever there is substantial evidence that a cause for debarment or suspension under the provisions of Act 1998-57--The Commonwealth Procurement Code and the provisions of this contract have occurred. The Contractor shall be notified of such action and given reasonable opportunity shall to be heard by the agency head or his designee. The head of the agency shall determine debarment or suspension actions appropriate for the offense in accordance with the provisions of Act 1998-57--The Commonwealth Procurement Code.

1.9 CONTRACTOR RESPONSIBILITY PROVISIONS

- A. Contractor certifies that it is not currently under suspension or debarment by the Commonwealth, any other state, or the federal government, and if the contractor cannot so certify, then it agrees to submit along with the bid proposal a written explanation of why such certification cannot be made.
- B. If contractor enters into any subcontracts or employs under this contract any subcontractors/individuals who are currently suspended or debarred by the Commonwealth or the

federal government or who become suspended or debarred by the Commonwealth or the federal government during the term of this contract or any extensions or renewals thereof, the Commonwealth shall have the right to require the contractor to terminate such subcontracts or employment.

- C. The contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of Inspector General for investigations of the contractor's compliance with the terms of this or any other agreement between the contractor and the Commonwealth which results in the suspension or debarment of the contractor. Such costs shall include, but not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The contractor shall not be responsible for investigative costs for investigations that do not result in the contractor's suspension or debarment.
- D. The contractor may obtain the current list of suspended and debarred contractors by contacting the:

Department of General Services
Office of General Counsel
North Office Building Room 603
Harrisburg, Pennsylvania 17125
Phone: 717-783-6472
Fax: 717-787-9138

1.10 EXCESS PREPARED FOOD

The donation of Excess Prepared Food Clause has been determined by the University to be not applicable to this contract

1.11 RECYCLED MATERIALS

In accordance with Section 108 Recycled Materials of Act 1998-57 Commonwealth Procurement Code, any products provided to the Commonwealth as part of the contractor's performance of this contract, if this paragraph is applicable to this project, shall meet the minimum percentage levels for the total recycled content and postconsumer recycled content, as found in the Department of General Services List of Products and Procurement Guidelines, Insulation for Construction Projects: Recycled Postconsumer Material and as listed in Special Requirements of the contract documents.

1.12 AMERICANS WITH DISABILITIES ACT

Pursuant to federal regulations promulgated under the authority of The Americans with Disabilities Act, 28 C.F.R. 35.101 et seq., the Contractor understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this contract or from activities provided for under this contract. As a condition of accepting and executing this contract, the Contractor agrees to comply with the "General Prohibitions Against Discrimination", 28 C.F.R. 35.130, and all other regulations promulgated under Title II of the Americans with Disabilities Act which are applicable to the benefits, services, programs, and activities provided by the State System of Higher Education through contracts with outside contractors.

The contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania, the State System of Higher Education, the University and their respective officers and employees from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against any of the foregoing as a result of the contractor's failure to comply with the provisions of the paragraph above.

1.13 ASSIGNMENT

This agreement shall be binding on the parties hereto, their heirs, executors, administrators, successors and assigns, but it may not be assigned by the Contractor without the prior written consent of the System.

1.14 ASSIGNMENT OF ANTITRUST CLAIMS

The contractor and the System recognize that in actual economic practice, overcharges by the contractor's suppliers, resulting from the violations of State or Federal anti-trust laws are, in fact, borne by the System. As part of the consideration for the award of this contract, and intending to be legally bound, contractor

assigns to the Commonwealth all rights, title and interest in and to any claims contractor now has, or may hereafter acquire, under State or Federal anti-trust laws relating to the goods or services which are the subject of this contract.

1.15 LIENS

In accordance with applicable Commonwealth Law 49 P.S. 1303, the parties hereto hereby specifically waive the right to file any mechanics or other lien or claim for work done or material furnished in or about the performance of this Agreement, and it is hereby expressly agreed that no such claim or claims shall be filed by anyone and that the Contractor shall not file nor permit any subcontractor, material man, mechanics or other person under him to file, nor shall any such contractor, subcontractor, material man or other person file any mechanics or other lien or claim for work done or material furnished in or about the performance of this Contract against the System, the Commonwealth of Pennsylvania, and/or the ground upon which the structure or work herein provided for is erected or done, or against any structure thereon erected or to be erected, or against any structure or property whatsoever covered by the Contract.

1.16 NONDISCRIMINATION

The Commonwealth's nondiscrimination clause, 22 Pa. Code, as set forth in the System Contract Compliance Requirements, as found in the Bid Proposal Form, is hereby incorporated by reference.

1.17 THE PROFESSIONAL

If retained and so designated by the System, a Professional architect or engineer may act as the agent for the System in the administration of the contract and may perform any or all of the functions stated herein. The Professional will, as determined by agreement with the System, visit the site to review progress in accordance with the contract drawings and specifications, attend job conferences, approve applications for payments, make progress reports to the System and review and accept/reject the Contractor's Schedule of Values.

The Professional has the authority to interpret the Contract Documents, reject work which does not conform to the Contract Documents, review and approve shop drawings, prepare drawings and specifications for change orders or modifications, participate in completion inspections, prepare as-built drawings, and review and approve all catalog data, manufacturers operating and maintenance instructions, certificates, warranties, written guarantees, and related documents required by the contract. The Professional may perform additional functions as determined by the System necessary to protect the System's interest.

ARTICLE 2
THE SYSTEM'S RIGHTS AND RESPONSIBILITIES

2.1 THE SYSTEM REPRESENTATIVES

Representatives designated by the System will have the authority to inspect the work and to reject all work not performed in accordance with the contract provisions. In addition, only those representatives so designated have authority to change, modify, or alter the work or incur or cause to be incurred additional obligations beyond the contract provisions.

2.2 THE SYSTEM'S RIGHT TO CARRY OUT THE WORK

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

ARTICLE 3 THE CONTRACTOR'S RIGHTS AND RESPONSIBILITIES

3.1 COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee (excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business). For breach or violation of this warranty, the System shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS

The Contractor shall perform the work according to good quality industry standards, practices, and procedures, and in accordance with the Contract Documents and submittals approved.

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

3.3.100 The Contractor shall supervise and direct the work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for the work performed and have control over construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the work, unless the Contract Documents give other instructions.

3.3.101 The Contractor shall be responsible for the acts and omissions of all his employees, all subcontractors and their agents and employees, and all other persons performing portions of the work under a contract with the Contractor.

3.4 LABOR AND MATERIALS

3.4.100 Wages: All provisions and regulations of the Federal and State Wages Acts shall be adhered to in the performance of this work.

3.4.101 Products incorporated into the Work: The System anticipates the Contractor will provide products to be incorporated into the work of the project that are new, undamaged, and unused at the time of the installation, unless otherwise indicated in the Contract Documents. The Contractor shall produce, upon request, evidence supporting the source of materials used in the work. If the System accepts substituted materials of a lesser quality than specified, the System shall be entitled to a credit equal to the difference in cost of the products specified and the products provided.

The Contractor shall comply with the requirements of the Reciprocal Limitations-1998-Act 57 Commonwealth Procurement Code; Act 146 of 1986, the Trade Practices Act of July 23, 1968 P.L. 686 (71 P.S. 773.101 et seq.); and Act 3 of March 3, 1978, P.L. 6, commonly referred to as the "Steel Products Procurement Act", as outlined in the Special Requirements.

3.5 TAXES

It is understood that the System is exempt from all Excise Taxes, and Pennsylvania Sales Taxes. The Contractor remains liable for the payment of Sales and Use Tax on all materials and fixtures which he purchases or uses for the purpose of fulfilling a construction contract, irrespective of the fact that the construction work is being performed for a governmental instrumentality.

However, any Contractor who transfers tangible personal property, or performs services upon tangible personal property belonging to another person, and installs such property so as not to become a permanent part of the real estate, may be exempt from Sales Tax. The System will issue a Sales and Use Tax Exemption Certificate only for those items specifically identified as tangible personal property not becoming a permanent part of the real estate, as listed in the Sales and Use Tax Regulation 150, 61 Pa. Code 31.11-31.16, in its latest Revision.

3.6 PERMITS, FEES, AND NOTICES

3.6.100 The Contractor shall obtain and pay for all permits, licenses and certificates required by Law and/or any public authority for the proper execution and completion of its work.

3.6.101 The Contractor shall give all notices and comply with all applicable Laws, ordinances, regulations, rules and orders of any public authority bearing on the performance of the work. If the Contractor observes that any of the Contract Documents is at variance therewith in any respect, it shall promptly notify the System in writing. If the Contractor performs any work knowing it to be contrary to such applicable laws, ordinances, regulations, rules or orders, and without such written notice to the System, it assumes full responsibility therefor and shall bear all costs attributable thereto

3.7 PROGRESS SCHEDULE

Immediately upon receipt of Notice to Proceed, the Contractor shall furnish a schedule of the proposed prosecution of the work under their contract. The Contractor shall complete portions of the work in such order of time as may be stated in the specifications or as required in the progress charts as approved by the System.

3.8 SHOP DRAWINGS

3.8.100 The Contractor shall prepare and submit the necessary shop drawings, diagrams, illustrations, schedules, performance charts, brochures, catalog information and other data required to support the proposed installation methods and establish standards by which the work will be judged. The Professional's approval of shop drawings or samples shall not relieve the Contractor of responsibility for any deviation from the requirements of the Contract Documents, unless the Contractor has informed the Professional in writing of such deviation at the time of submission, has noted the deviation on the shop drawings, and the Professional has given written approval of the specific deviation. The Professional's approval also does not relieve the Contractor from responsibility for errors or omissions in the shop drawings or samples.

3.8.101 No portion of the work requiring a shop drawing or sample submission shall be commenced until the submission has been approved by the Professional. Any work commenced by the Contractor prior to final approval of the shop drawings and/or samples by the Professional is performed by the Contractor at its own risk.

3.9 JOB CONDITIONS

The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with any materials or equipment, unless otherwise permitted by the System. The Contractor shall at all times keep the work site free from accumulation of waste materials or rubbish carried by his operations.

ARTICLE 4 CLAIMS AND DISPUTES

4.1 CLAIMS FOR CONCEALED OR UNKNOWN CONDITIONS

4.1.100 If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical

conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which 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, then notice by the Contractor shall be given to the System promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions.

- 4.1.101 The System will promptly investigate such conditions and, if 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 an equitable adjustment in the contract sum or contract time, or both. If the conditions at the site are not materially different from those indicated in the Contract Documents, no change in the terms of the Contract is justified. No adjustment shall be made to the contract sum, however, for concealed conditions encountered during cutting and patching of work.

4.2 CLAIMS FOR ADDITIONAL TIME OR COST

- 4.2.100 If the Contractor wishes to make a claim for an increase in the Contract Sum, written notice shall be given to the System before proceeding to execute the work.

- 4.2.101 If the Contractor wishes to make a claim for an increase in Contract Time, written notice shall be given, including a estimate of cost and of probable effect of delay on the progress of the work. If adverse weather conditions are the basis for a claim for additional time, such claim shall be documented by data from a recognized weather authority substantiating that weather conditions were abnormal for the period and could not have been reasonably anticipated. The Contractor shall also substantiate that weather conditions had an adverse effect on the scheduled construction.

- 4.2.102 No claims for increased costs, charges, expenses, or damages of any kind, except as provided in the General Conditions, shall be made by the Contractor against the System for any delays or hindrances from any cause whatsoever, including but not limited to strikes, walkouts or work stoppages during the progress of any portion of the work. The System may, however, compensate the Contractor for any such delays by extending the time for completion of the work, as provided in the Contract, which extensions shall constitute the exclusive remedy between the parties.

4.3 DISPUTES WITH THE SYSTEM

- 4.3.100 The Contractor shall carry on the work and maintain the progress schedule during any claims, disputes questions, other related matters or proceedings unless otherwise agreed to in writing by the Contractor and the System.

- 4.3.101 In the event of any dispute, claim, question or other matter (hereinafter called disputed item) the Contractor shall immediately refer the disputed item in writing to the System Project Manager for a Determination, which said Determination shall be rendered in writing within a reasonable time.

- 4.3.102 Disputed items by the Contractor must be made known by written notice within 21 days after occurrence of the event giving rise to such disputed item, or within 21 days after the Contractor first recognizes the condition giving rise to the disputed item, whichever is later.

- 4.3.103 Claims Procedure: Determinations made by the System Project Manager shall be subject to the claims procedure as described herein. Any disputed item which the Contractor may have against the System under this contract, except those settled under these provisions, shall be subject to the following procedure for the resolution of same:
- A. Dispute Conference. Any disputed item which the Contractor may have against the System under this contract or any breach thereof that has been referred to the System Project Manager, except as has been waived by the failure of the Contractor to present a timely claim in accordance with this section, shall be subject to negotiation at a Dispute Conference. A Dispute Conference shall be scheduled by the System upon the written demand of the Contractor if submitted no later than thirty (30) days after the date of the Determination by the System Project Manager.
 - B. Pre-Claim Hearing Upon written demand by the Contractor, all disputed items which the Contractor may have against the System which have not been resolved at a Dispute Conference shall be heard at a Pre-Claim Hearing chaired by the System Director for Construction Management. No demand for a Pre-Claim Hearing shall be made later than thirty (30) days after the date on which the Contractor has received a decision rendered by the System Project Manager as a result of a Dispute Conference, or from the fortieth (40th) day after the Dispute Conference was held, if the Contractor has not received a decision. Failure to demand a Pre-Claim Hearing within the required time period shall result in the decision of the Dispute Conference becoming final and binding upon the Contractor.
- 4.3.104 All claims against the System arising out of this contract which have not previously been resolved at a Dispute Conference and subsequent Pre-Claim Hearing may be referred to the Board of Claims created by Act No. 193, approved May 20, 1937, P.L. 728, 72 P.S. as amended, in the manner and under the terms and conditions provided therein. The timely submission of any claim to a Dispute Conference and a Pre-Claim Hearing, in accordance with the provisions of Section 63.81 and 63.82 of the Act, respectively, shall be a condition precedent to the referral of such claim to the Board of Claims under the provisions of the section. Also, prior to filing a claim with the Board of Claims, the claim must have been first filed in writing with the contracting officer within six (6) months after it accrues and not thereafter.

ARTICLE 5

SUBCONTRACTORS

- 5.1 A Contractor may not, except with the consent of the System, have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project. Subcontractors employed by the prime contractors are solely responsible to the prime Contractor, and shall have no contractual relationship with the System. Failure to disclose the names of such subcontractors and/or suppliers shall be sufficient grounds for termination of this contract. Such failure may also be grounds for the initiation of civil or criminal proceedings.
- 5.2 The System has the right to direct the Contractor to replace any subcontractor that the System objects to, for reasons that the subcontractor has failed to work in accordance with the contract provisions, rules and regulations regarding Contractor performance, contract compliance, good order and conduct of their employees; that the subcontractor has defaulted or failed to perform on previous System projects; or that the subcontractor has been suspended or debarred from doing business with the Commonwealth. The Contractor shall then submit another subcontractor for approval. Should there be a cost differential to the Contractor, the Contractor shall submit evidence to that fact, and the Contract Sum shall be increased or decreased by the cost difference by an appropriate Change Order.

ARTICLE 6
CHANGES IN THE WORK

6.1 RIGHT TO ORDER CHANGES

6.1.100 The System, without invalidating the agreement, may order changes in the work within the general scope of the agreement consisting of additions, deletions, or other revisions. The contract sum and time shall be adjusted accordingly, as they relate to the cost of the work, and impact on completion of the work. The Contractor agrees that payment under any method shall be the exclusive compensation for such addition, deletion, or other revision to the original agreement.

6.1.101 Minor changes in the work not affecting the contract sum or extension of time, consistent with the intent of the Contract Documents, may be directed by the System without additional compensation or time extension. Work that can reasonably be done concurrently with other contract work, without significant addition of labor or equipment or increasing the contract completion date, will not be subject to time extension.

6.2 CHANGE ORDERS

6.2.100 The cost or credit of the changed work will be determined by one of the methods described herein:

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

The Contractor may include a maximum of ten- percent (10%) total markup to any subcontractor costs for overhead and profit. Subcontractors cannot exceed the markups stated herein for labor, material, or equipment costs.

- B. By unit prices stated in the bid proposal.
- C. From unit prices as agreed upon in the Schedule of Values.

6.2.101 The Contractor shall not be entitled to profit which is lost as a result of deleted work, but shall be entitled to the overhead attributed to the items of work deleted from the Schedule of Values only when the contract completion date is not reduced.

6.3 UNILATERAL CHANGE ORDER

6.3.100 In the event that agreement cannot be reached as to the cost or credit of the changed work, the System shall prepare a cost estimate, and the Contractor will be issued a unilateral change order to proceed with the changed work at a cost not-to-exceed the System's estimate. The Contractor shall proceed with the work and maintain accurate records of the actual cost of labor and material to perform the work.

6.3.101 Upon completion of the work, if the Contractor's actual cost including profit and overhead for the work does not exceed the System's not-to-exceed cost estimate, a new change order will be issued in the amount of the Contractor's actual cost.

6.3.102 If the work is not completed, and if the Contractor's actual cost has equaled or exceeded the not-to-exceed limit of the unilateral change order, the System will audit the Contractor's actual cost and subsequently attempt to negotiate a cost for the remaining work. If agreement cannot be reached for the remaining work, another unilateral change order will be issued at the System's revised cost estimate to complete the work. In this case, the Contractor retains the right to claim for equitable adjustment under the dispute clause of this agreement.

ARTICLE 7

TIME

- 7.1 The time specified for the contract completion is the number of calendar days from the date of the Notice to Proceed. The date for commencement of the work is the date of the Notice to Proceed. On site, work shall commence no later than ten (10) days after the date of the Notice to Proceed. Time extensions may be granted for events impacting the work beyond the control of the Contractor if the changed condition impacts a work item on the critical path of the project schedule, and the scheduled substantial completion date is extended.

ARTICLE 8.

PAYMENTS AND COMPLETION

- 8.1 The Contractor warrants and guarantees that title to all work, materials, and equipment covered by an application for payment, whether incorporated in the project or not, will pass to the System upon the receipt of such payment, free and clear of all terms, claims, security interests, or encumbrances.

8.2 PAYMENTS

- 8.2.100 Performance by the contractor in accordance with the provisions of the contract shall entitle the contractor to payment by the System. The System shall pay the contractor according to the provisions of this section for all items that appear on the application for payment and have been satisfactorily completed. Applications for payment will not be considered to be acceptable unless they meet all the requirements specified in Section 01027-Application for Payment and as outlined elsewhere in the contract documents.

8.2.101 Schedule of Values:

The contract sum is stated in the agreement and is the total amount payable for the performance of the work in compliance with the Contract Documents. Before any application for payment can be submitted, the Contractor shall submit to the System for its approval a detailed breakdown of the costs indicating a schedule of quantities and values for the items of work included in the contract, as required in Section 01027-Application for Payment. Each item in the Schedule of Values shall include its proper share of overhead and profit.

The Schedule of Values, when approved by the System shall be used as a basis for the Contractor's application for payments. This Schedule of Values may also be used to determine the cost or credit to the System resulting from the changes in the work.

- 8.2.102 The System may decline to approve any Application for Payment, or portion thereof, because of subsequently discovered evidence or subsequent inspections, which may nullify the whole or part of any Application for Payment previously issued, to such extent as may be necessary to protect the System from loss because of:
- A. Defective work not remedied.
 - B. Failure of the Contractor to make payments properly to subcontractors or for labor, materials, and equipment.
 - C. Reasonable evidence that the work cannot be completed for the unpaid balance of the Contract Sum.
 - D. 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.
 - E. Unsatisfactory prosecution of the work by the Contractor.

8.2.103 Retainage:

Normally, payment of the total amount will be made upon substantial completion, final inspection, and acceptance of the work. However, when a contract exceeds \$10,000 and upon written request, partial payments may be made after completion of portions of the work. To ensure proper performance of the contract, the System shall retain from all partial payments an amount not to exceed ten percent (10%) of the amount due the contractor until fifty percent (50%) of the contract is completed. The sum to be withheld from the contractor after the contract is fifty percent (50%) completed shall not exceed five percent (5%) of the value of the completed work based on monthly progress payment requests.

When the contract is fifty percent (50%) completed, one half of the amount retained by the System shall be returned to the contractor. However, the architect, engineer, or System project representative must approve the application for payment for reduction in retainage. The contractor must be making satisfactory progress, and there must be no specific cause for greater withholding.

All money retained by the System may be withheld from the contractor until substantial completion of the contractor. However, in the event a dispute arises between the System and any prime contractor, which dispute is based upon increased costs claimed by one prime contractor occasioned by delays or other actions of another prime contractor, additional retainage in the sum of one and one-half times the amount of any possible liability may be withheld until such time as a final resolution is agreed to by all parties directly or indirectly involved, unless the contractor causing the additional claim furnishes a bond satisfactory to the System to indemnify the System against the claim.

In absence of sufficient reason, within 20 days of receipt of payment of retainage, the contractor shall pay all subcontractors with which it has contracted their earned share of the retainage payment the contractor received.

8.2.104 Withholding of Payments for Good Faith Claims

The System may withhold payment for deficiency items according to the terms of the contract. If the System withholds payment from a contractor for a deficiency item, the System shall notify the contractor of the deficiency item within the timeframe specified in the contract or 15 calendar days of the date that the application for payment is received.

The Contractor may withhold payment from any subcontractor who is responsible for any deficiency item for good faith claims. If a contractor withholds payment from a subcontractor for a deficiency item, it must notify the subcontractor or supplier and the System of the reason within 15 calendar days of the date after receipt of the notice of the deficiency item from the System.

8.2.105 Payments to Subcontractors

For the purposes of this section, the contract between the contractor and the subcontractor is presumed to incorporate the terms of the contract between the contractor and the System. When a subcontractor has performed in accordance with the provisions of the contract, a contractor shall pay to the subcontractor, and each subcontractor shall in turn pay to its subcontractors, the full or proportioned amount received for each such subcontractor's work and material, 14 days after receipt of a progress payment. Neither the System or any Professional shall have any obligation to pay or to see the payment of any monies to any subcontractor except as may be otherwise required by law.

8.2.106 Substantial Completion and Final Payment:

For all contracts containing a provision for retainage, the design professional shall make a final inspection within 30 days receipt of a request by the contractor for final inspection and application for final payment. If the work is substantially complete, the design professional shall issue a certificate of substantial completion and a final certificate for payment.

The System shall make payment in full within 45 days except as provided for in Article 8.2.103 Retainage, less only one and one-half times the amount required to complete any then-remaining uncompleted minor items, which amount shall be certified by the design professional and, upon receipt by the System of any guarantee bonds which may be required, in accordance with the contract, to ensure proper workmanship for a designated period of time. The certificate of substantial completion given by the design professional shall list in detail each uncompleted item and a reasonable cost of completion. Final payment of any amount withheld for the completion of the minor items shall be paid upon completion of the uncompleted items listed in the certificate of substantial completion of the design professional.

Payment under this section will be made upon satisfactory completion of the work specified in the Contract Documents and completion of all requirements for substantial completion and final payment listed in Section 01027 - Application for Payment.

8.3 ACCEPTANCE OF WORK

8.3.100 An application for progress payment, a progress payment, or any partial or entire use or occupancy of the project by the System shall not constitute an acceptance of any work not in accordance with the Contract Documents.

8.3.101 Partial Occupancy or Use:

The System may occupy or use any completed or partially completed portion of the work at any stage when such portion is so 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 work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the System and the Contractor have accepted in writing the responsibilities assigned to each of them for payments, security, maintenance, heat, etc.

Immediately prior to such partial occupancy or use, the System, Contractor, and Design Professional shall jointly inspect the area in order to determine and record the condition of the work, and agree to the period for correction of this work and as to the commencement of warranties.

8.4 Any person, co-partnership, association, or corporation furnishing labor, material, equipment or renting equipment or rendering public utility services in connection with performance of this contract shall have a right of action to recover the cost thereof from the Contractor and the Surety on the bond given to secure the payment for such labor, material, equipment or equipment rental and services rendered by public utility as though such person or corporation had been named as obligee in such bond; subject to the provisions of the act 1998 Act 57 Commonwealth Procurement Code.

8.5 NO ESTOPPEL OR WAIVER OF LEGAL RIGHTS

8.5.100 Neither the System nor the Professional shall be precluded or estopped by the measurements or approved applications for payment made or given by any of them or by any of their agents or employees, at any time, either before or after the completion and acceptance of the work and payment thereof, from showing the true and correct amount and character of the work performed and materials and equipment furnished by the Contractor. The System and/or the Professional may show at any time, that any such measurements or approved applications for payment are untrue or incorrectly made in any particular; or that the work or materials, equipment or any parts thereof do not conform to the Contract Documents.

8.5.101 The System shall have the right to reject the whole or any part of the aforesaid work or materials and equipment should the said measurements or approved applications for payment be found or be known to be inconsistent with the terms of the contract, or otherwise improperly given. The System shall not be precluded or estopped, notwithstanding any such measurements or approved applications for payment in accordance therewith, from demanding and recovering from the Contractor or his Surety, or both, such damages as it may sustain by reason of the Contractor's failure to comply with the terms of the Contract Documents, or on account of any over-payments made on any approved applications for payment.

8.5.102 Neither the acceptance by the System or the Professional or any of their agents or employees, nor any certificate approved for payment of money; nor any payments for, nor acceptance of the whole or any part of the work by the System, nor any extension of time, nor any position taken by the System or its employees, shall operate as a waiver of any portion of the contract or any power herein reserved by the System or any right to damages. A waiver of any breach of the contract will not be held to be a waiver of any other or subsequent breach.

ARTICLE 9
PROTECTION OF PERSONS AND PROPERTY

9.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs required under his portion of the work and maintained during the term of the contract.

9.2 SAFETY OF PERSONS AND PROPERTY

9.2.100 The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

- A. All employees on the work, and all other persons who may be affected thereby;
- B. All the work materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Contractor or any of his subcontractors; and
- C. Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

9.2.101 The Contractor shall comply with all applicable, laws, ordinances, rules, regulations and orders of any public authority having jurisdiction of the safety of persons or property or to protect them from damage, injury or loss. He shall erect and maintain as required by existing conditions and progress of the work, until the acceptance of the completion of his portion of the project, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities.

9.2.102 The Contractor shall designate a responsible member of his organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated in writing by the Contractor to the System and the Professional.

9.2.103 Explosives shall not be used in the work without specific written approval by the System of the Contractor's plan for storage and use of them for accomplishing the work, and the Contractor providing the local Blasting Permit if required, the license for the person doing the blasting, and the Certificate for Insurance indicating blasting is included in the coverage.

9.3 EMERGENCIES

In any emergency affecting the safety of persons or property, the Contractor shall act, at his discretion, to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Contractor because emergency work shall be determined as provided in Changes in the Work.

ARTICLE 10
INSURANCE

10.1 GENERAL

- 10.1.100 All policies shall be issued by insurance companies known to be financially sound and authorized to conduct such business under the laws of the Commonwealth of Pennsylvania.
- 10.1.101 Coverage shall be maintained without interruption from the date of commencement of the work until the date of final payment and termination of any coverage required to be maintained after final payment.
- 10.1.102 Insurance required herein shall also name the System of the Commonwealth of Pennsylvania as an additional insured, as its interest may appear, and Additional Insured Endorsements shall be provided along with the Certificates of Insurance.
- 10.1.103 Certificates of Insurance: A Certificate of Insurance acceptable to the System shall be filed with the System prior to the System issuing a Notice to Proceed. In no case shall any commencement of work on site be permitted until the required Certificates of Insurance have been provided and accepted by the System.
- A. The Certificates of Insurance shall contain a provision that "coverage afforded under the policies will not be canceled, allowed to expire, or in any way changed, including alterations to the conditions of the policy, until at least thirty (30) days written notice has been given, by registered mail, to the System".

The Contractor will be responsible to ensure these notifications occur. Furthermore, should there be no notifications of policy expirations, terminations, or alterations of the insurance coverage, it will be the understanding of the System that the insurance coverage will be as required in the Contract, or as has been indicated in the latest issued Certificate of Insurance accepted by the System.

- B. All exclusions to the insurance policies shall be either provided on the Certificate of Insurance, or attached to it as a List of Exclusions. Such exclusions must be acceptable to and agreed upon by the System. If no such listing is provided, it will be understood by the System that there are no exclusions to the policies.
- C. The deductible amounts for the coverage provided shall be indicated by the insurance company or companies providing the policies. This information shall be sent along with the Certificates of Insurance.
- 10.1.104 Copies of all insurance policies shall be made available upon request of the System.
- 10.1.105 If there is ever a time when the insurance provisions of the agreement, as described herein, are not being maintained, the work of the Contractor may be terminated or suspended, according to the provisions of Article 12-Suspension of the Work and Article 13-Termination of the Work.

10.2 CONTRACTOR'S LIABILITY INSURANCE

- 10.2.100 The Contractor shall purchase and maintain such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations under the Contract, whether such operations be by the Contractor or by a subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:
- A. Claims under Workers Compensation Disability Benefit and other similar employee benefit Acts. Employees Liability Insurance, with a minimum of \$1,000,000 aggregate coverage, is to be provided on the same operations.
- B. Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees.
- C. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees.

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

10.2.101 The Contractor's commercial general liability insurance and automobile liability insurance shall be written for not less than \$500,000 for injuries including accidental death to any one person, and subject to the same limit for each person, in an amount not less than \$1,000,000 for each occurrence. The Contractor's property damage liability insurance shall be in an amount not less than \$1,000,000 for each occurrence.

10.2.102 The commercial general liability insurance shall:

- A. include completed operations and products liability coverage.
- B. shall include contractual liability coverage as necessary to meet the Contractor's obligations under Third Party Indemnification and System Indemnification and Hold Harmless.
- C. shall include the special property damage liability coverage commonly referred to as XCU (explosion, collapse, and underground damage), unless the System approves a Contractor's request to exclude this coverage.
- D. shall include adequate protection against special hazards, i.e.: blasting, etc.

10.2.103 Subcontractors Insurance:

- A. The Contractor shall either require each of its subcontractors to procure and to maintain during the life of its subcontractor's commercial general liability, automobile liability, and property damage liability insurance of the type and in the same amounts as specified in this Article, or insure the activity of its subcontractors in its own insurance policies.
- B. The Contractor shall require each subcontractor to provide Worker's Compensation and Employer's Liability insurance covering all persons employed by such subcontractors on work to be performed on this contract.
- C. The Contractor must submit to the System, prior to any subcontractors or sub-subcontractors commencing of any on site work, evidence that the subcontractors or sub-subcontractors are covered by insurance as required herein.

10.3 PROPERTY INSURANCE

10.3.100 The Contractor shall purchase and maintain property insurance for all insurable work included in the Contract, in the amount of the original Contract Sum as well as subsequent modifications thereto, in the names of the System and the Contractor as their respective interests may appear, in full 100% of the insurable value thereof, including:

- A. items of labor and materials connected therewith whether in or adjacent to the structure insured;
- B. materials in place or to be used as part of the permanent construction, including surplus materials, protective fences, bridges, temporary structures, miscellaneous materials and supplies incident to the work;

10.3.101 The property insurance will include and fully protect the interest of the System, the Commonwealth of Pennsylvania, the Contractor, subcontractors, and sub-subcontractors. The Contractor shall submit to the System for its approval all items deemed to be uninsurable.

- 10.3.102 Property insurance shall be on an all-risk policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse due to ice and snow, temporary structures, and debris removal as associated thereto.
- 10.3.103 The risk of damage to the construction work due to the perils covered by the said property insurance with extended coverage, is that of the Contractor, and no claims for such loss or damage will be recognized by the System, nor will such loss or damage excuse the complete and satisfactory performance of the Contract by the Contractor.
- 10.3.104 Partial occupancy or use in accordance with Article 8.2.105 Partial Occupancy or Use shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise.

ARTICLE 11

UNCOVERING AND CORRECTION OF WORK

11.1 UNCOVERING OF WORK

- 11.1.100 Work performed under the contract is subject to inspection by the System. If a portion of the work is covered contrary to the request of the System or Professional, it must, if required by the System or Professional, be uncovered for its observation, and replaced at the Contractor's expense without change in Contract Time.
- 11.1.101 If a portion of the work has been covered which the System or Professional has not specifically requested to observe prior to being covered, the System or Professional may request to see such work, and it shall be uncovered by the Contractor. If such work is found to be in accordance with the Contract Documents, the cost of uncovering and replacement shall be charged to the System. If the work is not in accordance with the Contract Documents, the work will be removed and replaced by the Contractor, within the period specified by the System by written notice, at no additional cost to the System. The System may, upon failure by the Contractor to replace the nonconforming work, have the work removed and replaced at the Contractor's expense.

11.2 CORRECTION OF DEFECTIVE OR NON-CONFORMING WORK

- 11.2.100 The Contractor shall promptly correct all work rejected by the System or Professional as defective or as failing to conform to the Contract Documents, whether observed before or after substantial completion and whether or not fabricated, installed or completed. All defective or non-conforming work shall be promptly removed from the site. The Contractor shall bear all costs of correcting such rejected work, including the cost of the Professional's additional services and any additional cost incurred by the System. Should the Contractor fail to respond in an expedient manner, the System may correct the work under Article 2.2 the Systems right to Carry Out the Work.
- 11.2.101 If, within one year after the date of substantial completion and acceptance of all work performed under the Contract or within such longer period of time as may be prescribed by Law or by the terms of any applicable special guarantee required by the Contract Documents, any of the work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct it promptly after receipt of a written notice from the System to do so, unless the System has previously given the Contractor a written acceptance of such specific condition. The System shall give such notice promptly after discovery of the condition.

If required, the Maintenance Bond hereto attached and made a part hereof shall provide a guarantee in the sum of ten percent (10%) of the total Contract sum of the work done for the correction and remedy of such defect. If the corrective work is not completed within thirty (30) days after notification by the System to the Contractor, the System may do the work and submit those costs to the Contractor's Surety for reimbursement.

11.2.102 The obligations of the Contractor under this section are in addition to and not in limitation of any obligations imposed upon the Contractor by special guarantees required by the Contract Documents or otherwise prescribed by law. Correction of defective work in no way reduces or eliminates the Contractor's responsibilities under the warranty provisions of the contract.

11.3 ACCEPTANCE OF NON-CONFORMING WORK

If the System elects to accept non-conforming work, it may do so instead of requiring its correction or removal and replacement. If nonconforming work is accepted, a change order shall be issued to reflect an appropriate reduction in the Contract Sum to reflect the actual cost reduction of the change in the work, or, if the amount is determined after final payment, it shall be paid by the Contractor and/or its Surety. In this case, all the costs of uncovering and recovering the work shall be at the expense of the Contractor, and which costs shall not be included as part of any deduct change order.

**ARTICLE 12
SUSPENSION OF THE WORK**

12.1 SUSPENSION OF WORK FOR CONVENIENCE

12.1.100 The System may order the Contractor in writing to suspend all or any part of the work for such period of time as it may determine to be appropriate for the convenience of the System. This paragraph does not apply under conditions enumerated in Paragraph 12.2--Suspension of Work due to Unfavorable Conditions.

12.1.101 If the performance of all or any part of the work is, for an unreasonable period of time, suspended by the System, an adjustment shall be made for any increase in the cost of performance of this Contract (excluding profit) necessarily caused by such unreasonable suspension. The Contract shall be modified in writing accordingly. No adjustment shall be made under this clause for any suspension to the extent that performance would have been so suspended by any other cause, including the fault or negligence of the Contractor; or for which an equitable adjustment is provided for or excluded under any other provision of this Contract.

12.1.102 No claim under this clause shall be allowed unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension. The claim may not be asserted later than the date of Final Completion under the Agreement.

12.2 SUSPENSION OF WORK DUE TO UNFAVORABLE CONDITIONS

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

12.2.101 The System may require a suspension of the work if, in its opinion, unforeseen conditions warrant such stoppage. When the System directs resumption of the work, the Contractor shall resume full operations within a period of ten (10) days after the date of written notice to do so. The System is not liable for any damage or anticipated profits on account of the work being suspended.

12.2.102 Any work done by the Contractor during the period of suspension is its responsibility. The contractor shall receive no payment for the work unless the construction is subsequently resume and the work done during the intervals of suspension can be utilized in the resumed work.

12.2.103 Suspensions of work as outlined above shall not in themselves operate to extend the Contract date of completion. Requests for extensions of time shall be submitted in writing by the Contractor, setting forth its reasons for the extension.

12.3 SUSPENSION OF WORK FOR FAULT OF THE CONTRACTOR

Should the Contractor fail to comply with the orders of the System relative to any particular parts of the work, the System may suspend the work on any or all parts until its orders respecting the particular parts

are complied with. In case of such suspension, which shall be considered due to the fault of the Contractor, no extension of time shall be given and no allowance will be made for the expenses incurred by the Contractor during the suspension period.

ARTICLE 13 **TERMINATION OF THE AGREEMENT**

13.1 TERMINATION FOR CONVENIENCE

13.1.100 The System may, at any time and for any reason, terminate this Agreement for the convenience of the System. In such case, the Contractor shall be paid (and shall accept payment) for that portion of the entire Contract actually performed to the date of termination, excluding, however, any loss of anticipated profits. Disputes as to the sum payable to the Contractor shall be settled in accordance with the Disputes Article of the Agreement.

13.1.101 Such termination shall be effective in the manner and at the time specified in such notice and shall be without prejudice to any claims that the System may have against the Contractor. Upon receipt of such notice from the System, the Contractor shall immediately discontinue all work and the placing of all orders for materials and equipment, facilities and supplies in connection with the performance of this Contract. The Contractor shall cancel promptly all existing orders and terminate work under all subcontracts so far as such orders and work are chargeable to this Contract. The Contractor shall take such measures for the protection of the property of the System as may be directed by the System.

13.2 TERMINATION FOR DEFAULT OF THE CONTRACTOR

13.2.100 If the Contractor persistently or repeatedly refuses or fails to supply enough properly skilled workmen or proper materials, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or fails to proceed as directed by the System, or performs the work unsuitably, or neglects or refuses to remove materials or replace rejected work, or discontinues the prosecution of the work without approval of the System, or otherwise is guilty of a substantial violation of a provision of the Contract Documents, then the System may, without prejudice to any of its other rights or remedies, give the Contractor and its Surety written notice that the Contractor has seven (7) days from the date of the System's notice to cure the default set forth in the notice.

The discretion to declare the Contractor in default is solely the Systems, and, no party, whether bound by Agreement to the System or attempting to raise a third party relationship, which this Contract specifically precludes, has standing to raise the failure of the System to exercise its discretion, if default is the basis of a claim against the System.

Should the Contractor fail to cure said default within the specified time, the System may terminate the Agreement between the System and the Contractor and may take possession of the site and of all materials, equipment, tools, construction equipment and machinery, which is owned by the Contractor, located on the property and may finish the work by whatever method it may deem expedient.

13.2.101 In such case, the Contractor is not entitled to receive any further payment until the work is finished, at which time the Contractor shall be paid any excess remaining. If the unpaid balance of the Contract sum exceeds the cost of finishing the work, including compensation for the Professional's additional services and any other damages which the System has incurred in accordance with the Agreement, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor or the Surety or both shall pay the difference to the System.

13.2.102 In the event the System wrongfully terminates the contract, as determined by disputes resolution procedures in the disputes section of the General Conditions, such termination shall be considered termination for convenience. The Contractor shall be paid only for the work completed to the termination date and for the materials delivered to the site that is peculiar to the project, and for other costs incidental to termination to the date of termination.

ARTICLE 14 **DEFINITIONS**

14.1 As used in these General Conditions, and in the Agreement, the following definitions shall be described herein, unless the context clearly dictates otherwise.

- A. Agreement means the Agreement or Contract, for construction services of which these general conditions are made a part. The term "Agreement" shall be interchangeable with the term "Contract" throughout this document.
- B. Change Order is a written order to the Contractor, signed by the System, and issued after the execution of the Contract, authorizing a change in the work or an adjustment in the Contract sum or the Contract time. The Contract sum and the Contract time may be changed only by change order.
- C. Claim or Disputed Item means a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract.
- D. Contract Sum is the sum stated in the Agreement, and, including authorized adjustments, is the total amount payable by the System to the Contractor for performance of the work under the Contract Documents.
- E. Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for substantial completion of the work.
- F. Contractor, or Prime Contractor shall be the entity with whom the System shall enter into an agreement to provide the means and methods to construct the Project in accordance with the Contract Documents.
- G. Deficiency Item is work performed but which the design professional, the contractor, or the inspector will not certify as being completed according to the contract.
- H. Final Completion is when the project is completed, in accordance with the Contract Documents.
- I. Inspector is the person authorized or engaged by the System to inspect the work performed and materials furnished pursuant to a contract to determine whether the work completed is in compliance with the contract.
- J. Subcontractor is a person or entity who has contracted to furnish labor or materials to or has performed labor for a contractor or another subcontractor in connection with a contract.
- K. 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 so the System can occupy or utilize the work for its intended use. . In no event shall a project be certified as substantially complete until at least 90% of the work on the project is completed.
- L. System shall mean the System or Universities of the State System of Higher Education or the Office of the Chancellor authorizing the contract or any authorized representative thereof.
- M. Work includes all services and labor necessary to produce the construction required by the Contract Documents. It also includes all material and equipment incorporated or to be incorporated into such construction.

STATE SYSTEM OF HIGHER EDUCATION
COMMONWEALTH OF PENNSYLVANIA

STANDARD FORM OF AGREEMENT
FOR FACILITIES PROJECTS

RIDER C
INSTRUCTION TO BIDDERS

It is the responsibility of the bidder by careful personal examination of the contract documents to satisfy himself as to the nature and location of the work, as well as all environmental conditions that may effect performance of the work. All bidders should visit the site to thoroughly familiarize themselves with the existing conditions. If any discrepancies should be found between existing conditions and the Contract Documents, prospective bidders shall report these discrepancies to the System for clarification prior to submitting a bid. Requests for interpretation of the work to be performed shall be submitted in writing to the System or the System's designated representative. Failure of the bidder to visit the site, recognize and take into account in their bid site conditions that affect the work, shall not be considered sufficient cause for any increase in the agreed upon contracted amount.

If a bid guaranty is required, each proposal must be accompanied by a certified check, bank cashier's check, or Bid Bond. Failure to submit a bid guaranty, if required, will result in the rejection of the Bid Proposal as unresponsive. If a Bid Bond is used as the guaranty, it must be submitted on the System-furnished Bid Bond form, complete with all signatures, seals, and certificate of power of attorney.

Each proposal shall be submitted in sealed envelopes marked plainly on the outside with the contract number, bid opening date and time, delivered within the time specified for the bid opening to be considered as responsive to the bid requirements. The proposal shall remain sealed until publicly opened, read, and tabulated. Bids may be withdrawn up to the time of bid opening provided a written request is received prior to the time specified for bid opening. Bids may be withdrawn after the bid opening in accordance with Act 1998-57 Commonwealth Procurement Code, within 2 working days after the time designated as the date of the bid opening. All bids shall be unconditionally accepted without alteration or modification except as authorized in the bidding documents. The System reserves the right to reject any or all bids for any reason.

The proposals of any bidder or bidders who engage in collusive bidding shall be rejected. Any bidder who submits more than one proposal in such manner as to make it appear that the proposals submitted are on a competitive basis from different parties shall be considered a collusive bidder. The System may reject the bid proposals of any collusive bidder upon bid openings of future projects. Nothing in this section shall prevent a bidder from superseding a bid proposal by a subsequent proposal delivered prior to bid opening which expressly revokes the previous bid.

An actual or prospective bidder who is aggrieved concerning the solicitation or award of a contract may protest, in writing, to the University contracting officer. All protests must be made within seven (7) days after the bidder knows or should have known of the facts giving rise to the protest. If a protest is submitted by a protestant who did not submit a bid, the protest must be received by the university contracting officer prior to the bid opening time or the bid proposal receipt date or it shall be considered untimely and will be disregarded.

Upon request, or if specifically required by the terms of the bid form, the apparent low bidder may be requested to submit a contractor's qualification and/or financial statement within ten (10) calendar days of bid date, with financial information current within twelve (12) months prior to the bid date, of which statements shall be certified to be true and correct by an affidavit sworn to or affirmed before a notary public, or other officer empowered to administer oaths or affirmations. Failure to submit the required information, when requested, may result in rejection of the Bid Proposal.

To be deemed a responsible bidder, the bidder shall be capable of proving ownership of current assets over and above the current liabilities in amount equal to at least 20% of the bid price if the bid price is under \$2,000,000; \$400,000 plus 15% of all in excess of \$2,000,000 if the bid price is over \$2,000,000 and not exceeding \$3,500,000; \$625,000 plus 10% of all in excess of \$3,500,000 if the bid price is over \$3,500,000 and not exceeding \$6,000,000; \$875,000 plus 5% of all in excess of \$6,000,000 if the bid price is over \$6,000,000. No asset will be considered current unless there is reasonable expectation that it will be realized within a period of one year; nor will any liability be considered current that will not be liquidated within one year. Additional information may be requested by the System whenever, in its judgment, such information is necessary to determine the responsibility of the bidder.

The System may, solely at its own discretion, award the contract to the lowest responsive responsible bidder within sixty (60) days from the date of bid opening, and shall have the right to waive technical defects if in the best interest of the System. A time extension may be made by written consent of the lowest responsive responsible bidder. Award will be made by letter mailed to the Contractor and shall be effective the date of the mailing.

Should Contract Bonds be required, the Contractor must, within ten (10) days after the receipt of the documents, sign, have the Surety execute, and return them to the System. The Contractor's surety company shall be authorized to do business in the Commonwealth of Pennsylvania and must successfully demonstrate in writing prior to award that the amount of bond or reinsurance or other security has been obtained in conformance with Section 661 of the Pennsylvania Insurance Company law of 1921, 40 P.S. 832. Failure of the Bidder to execute the required Contract Bond within the time specified will result in payment to the System, not as a penalty, but as liquidated damages, their proposal guaranty, in the amount of the difference between their bid proposal and the next lowest responsive responsible bid proposal, or the proposal guaranty amount, whichever is less. The System shall have the right to award the contract to the next lowest responsive responsible bidder.

In the event a bidder fails, refuses, or neglects to provide any requested information or documents within the time stated in the Bid Documents or in the request, the System will have the right to reject their bid proposal as unresponsive.

The Notice to Proceed will be made by letter mailed to the Contractor and shall be effective the date of the mailing. The System will endeavor to issue the Notice to Proceed within 120 days of the Bid Opening. Any delays caused by the Contractor's failure to provide any required documents within the specified time will cause an equivalent number of days to be added to this time frame. The Contractor will commence work on the project site within 10 days of the Notice to Proceed. The Contractor should not order any materials or equipment or make any financial commitments concerning this contract until receiving the System's Notice to Proceed. Contractor's that do work prior to receiving the System's Notice to Proceed are proceeding at his own risk.

STATE SYSTEM OF HIGHER EDUCATION
COMMONWEALTH OF PENNSYLVANIA

STANDARD FORM OF AGREEMENT
FOR FACILITIES PROJECTS

RIDER D

ADDITIONAL CONTRACT COMMITMENTS/INFORMATION

1. CONTRACTOR RESPONSIBILITY PROVISIONS

- A. Contractor certifies that it is not currently under suspension or debarment by the Commonwealth, any other state, or the federal government, and if the contractor cannot so certify, then it agrees to submit along with the bid proposal a written explanation of why such certification cannot be made.
- B. If contractor enters into any subcontracts or employs under the contract any subcontractors/individuals who are currently suspended or debarred by the Commonwealth or the federal government during the term of this contract or any extensions or renewals thereof, the Commonwealth shall have the right to require the contractor to terminate such subcontracts or employment.
- C. The contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of Inspector General for investigations of the contractor's compliance with the terms of this or any other agreement between the contractor and the Commonwealth which results in the suspension or debarment of the contractor. Such costs shall include, but not be limited to salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The contractor shall not be responsible for investigative costs for investigations which do not result in the contractor's suspension or debarment.
- D. The contractor may obtain the current list of suspended and debarred contractors by contacting the:

Department of General Services
Office of General Counsel
North Office Building
Harrisburg, Pennsylvania 17125
Phone: 717-783-6472
Fax: 717-787-9138

2. RECYCLED CONTENTS PRODUCTS

- A. This paragraph is required by the Commonwealth Management Directive 215.14 dated August 31, 1994, and as amended. Any products provided to the Commonwealth as part of the contractor's performance of this contract shall meet the minimum percentage levels for the total recycled content and postconsumer recycled content, as found in the Department of General Services List of Products and Procurement Guidelines, Insulation for Construction Projects: Recycled Postconsumer Material as specified below, if this paragraph is applicable to this project.

1. Requirement:

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

<u>MATERIAL TYPE</u>	<u>PERCENT BY WEIGHT</u>
Cellulose loose-fill spray on	75% postconsumer recovered paper
Perlite composite board	23% postconsumer recovered paper
Plastic rigid foam, polyisocyanurate/polyurethane:	
* rigid foam	9% recovered material
* foam in-place	5% recovered material
* glass ridge foam	6% recovered material
Phenolic ridge foam	5% recovered material
Rock wool	50% recovered material

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

c. **“Recovered materials”** is defined as “waste material and byproducts which have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process”

3. THE AMERICANS WITH DISABILITIES ACT

Pursuant to federal regulations promulgated under the authority of The American’s with Disabilities Act, 28 C.F.R. 35101 *et seq.*, the Contractor understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this contract or from activities provided for under this contract. As a condition of accepting and executing this contract, the contractor agrees to comply with the “General Prohibitions Against Discrimination,” 28 C.F.R. 35.130, and all other regulations promulgated under Title II of the Americans with Disabilities Act which are applicable to the benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside contractors.

The Contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth of Pennsylvania as a result of the Contractor’s failure to comply with the provisions of paragraph 1 above.

4. EXCESS PREPARED FOOD

The donation of Excess Prepared Food Clause has been determined by the University to be not applicable to this contract.

5. The Contractor’s Proposal dated September 14, 2011 shall be incorporated by reference and become part thereof of Rider D.

STATE SYSTEM OF HIGHER EDUCATION
COMMONWEALTH OF PENNSYLVANIA

STANDARD FORM OF AGREEMENT
FOR FACILITIES PROJECTS

RIDER E

WARRANTIES

GENERAL PROJECT WARRANTY

The Contractor shall warrant to the System and the professional that all materials and equipment furnished under this contract shall be new, unless otherwise specified, and that all work shall be of good quality, free from faults and defects and in conformance with the contract documents. All work not so conforming to these standards may be considered defective or nonconforming. If required by the professional, construction manager, or the System, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The Contractor explicitly warrants the merchantability, and the fitness for use and quality of all approved substituted items provided for or by him. The Contractor warrants that such installation, construction, materials or equipment of all approved substituted items will perform to the standard of the item originally specified.

The Contractor shall assign, deliver, and transfer to the professional all warranties for review, who then will transfer same to the System. The warranty provided in this section shall be in addition to and not in limitation of any other warranty or remedy provided by law or by the contract documents.

LATENT DEFECTS

The Contractor shall correct at his expense all items of work which are found to be defected subsequent to installation or after completion of the work which can or could not reasonable be determined to be in compliance with the plans and specification at the time of installation. Inspection of the work at the time of installation by the Systems does not relieve the Contractor from the responsibility to correct such deficiencies or defects.

STANDARD FORM OF AGREEMENT
FOR FACILITIES PROJECTS

RIDER G

CONTRACTOR INTEGRITY PROVISIONS

1. Definitions
 - a. Confidential information means information that is not public knowledge, or available to the public or request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to contract with the State System of Higher Education.
 - b. Consent means written permission signed by a duly authorized officer or employee of the State System of Higher Education, provided that where the material facts have been disclosed, in writing, by pre-qualification, bid, proposal, or contractual terms, the State System of Higher Education shall be deemed to have consented by virtue of execution of this agreement.
 - c. Contractor means the individual or entity that has entered into this agreement with the State System of Higher Education, including directors, officers, partners, managers, key employees, and owners of more than a 5% interest.
 - d. Financial Interest means:
 - (1) ownership of more than a 5% interest in any business; or
 - (2) holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.
 - e. Gratuity means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.
2. The Contractor shall maintain the highest standards of integrity in the performance of this agreement and shall take no action in violation of state or federal laws, regulations, or other requirements that govern contracting with the State System of Higher Education.
3. The contract shall not disclose to others any confidential information gained by virtue of this agreement.
4. The Contractor shall not, in connection with this or any other agreement with the State System of Higher Education, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendations, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of the State System of Higher Education.
5. The Contractor shall not, in connection with this or any other agreement with the State System of Higher Education directly or indirectly, offer, give, or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of the State System of Higher Education.
6. Except with the consent of the State System of Higher Education, neither the Contractor nor anyone in privity with him shall accept or agree to accept from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of work under this agreement except as provided therein.

7. Except with the consent of the State System of Higher Education, the Contractor shall not have a financial interest in any other Contractor, subcontractor, or supplier providing services, labor, or material on this project.
8. The Contractor, upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify the State System of Higher Education in writing.
9. The Contractor, by execution of this agreement and by the submission of any bills or invoices for payment pursuant thereto, certifies and represents that he has not violated any of these provisions.
10. The Contractor shall, upon request of the Office of the Chancellor of the State System of Higher Education, reasonably and promptly make available to that office and its representatives, for inspection and copying, all business and financial records of the Contractor of, concerning, and referring to this agreement with the State System of Higher Education or which are otherwise relevant to the enforcement of these provisions.
11. For violation of any of the above provisions, the State System of Higher Education may terminate this and any other agreement with the Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all expenses incurred in obtaining another Contractor to complete performance hereunder, and debar and suspend the Contractor from doing business with the State System of Higher Education. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the State System of Higher Education may have under law, statute, regulation, or otherwise.