

PO #4500662908

BETWEEN THE DEPARTMENT AND CONTRACTOR

CONTRACT NO. D.G.S. 411-65.2, PHASE 1

COLLECTIVE NO.: CN00035287

This CONTRACT, executed this 23rd day of April 2012, by and between the Department of General Services, created by Act No. 45 of July 22, 1975, hereinafter called "DEPARTMENT" and MBR CONSTRUCTION SERVICES, INC. at this address: P. O. BOX 14775, READING, PA 19612 a corporation incorporated under the Laws of the State of Pennsylvania its successors 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.

Official Copy

ARTICLE 2 – THE WORK

The Contractor shall perform all the Work required by the Contract Documents for the construction of Contract No. D.G.S. 411-65.2, Phase 1, PA Academy of Music Property, Acquisition and Building Modifications, Millersville University, Millersville, Lancaster County, Pennsylvania

ARTICLE 3 – PROFESSIONAL

The Professional for this Project is USA Architects, Planners & Interior Designers P.A., 1 South 3rd Street, 7th Floor, Easton, PA 18042

ARTICLE 4 – TIME OF COMMENCEMENT AND COMPLETION

The Work to be performed under this Contract shall be commenced upon the effective date of the Contract. 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 Master 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 Eighty and -----00/100 Dollars (\$80.00) 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 completion date of the Contract for causes set forth in the General Conditions of the 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 Contract, the contract sum of Ninety-Four Thousand, Seven Hundred and -----00/100 Dollars (\$94,700.00) Base Bid No. 4. Payment will be made as set forth in the General Conditions of the Contract. Deductions from or additions to this sum will be made as set forth in the General Conditions of the Contract.

ARTICLE 6 – PROGRESS PAYMENTS

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 Act, 62 Pa. C.S. §3931 *et seq.*, as amended, which Act is incorporated herein by reference and made a part hereof as if those 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.

ARTICLE 7 – FINAL PAYMENT

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 Prompt Payment Act, 62 Pa. C.S. § 3941 *et seq.*, as amended, which Act is incorporated herein by reference and made a part hereof as if those 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.

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 – MISCELLANEOUS PROVISIONS

9.1 Terms used in the Contract that are defined in the General Conditions of the Contract have the meanings designated in those General Conditions.

- 9.2 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.
- 9.3 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.
- 9.4 No third party acquires any rights against the Department under this Contract.
- 9.5 The Contractor agrees to abide by and be bound by the Laws of Pennsylvania relating to and regulating the hours and conditions of employment.
- 9.6 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 62 Pa. C. S. §903(d), also known as the Commonwealth Procurement Code. 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 10 – CONTRACT COMPLIANCE REGULATIONS

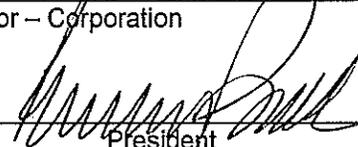
Refer to the appropriate paragraph of the 2010 General Conditions of Contract (which are made a part of this Contract by incorporation by reference as if fully set forth herein), which prohibits discrimination in hiring or employment opportunities. Also made a part of this Contract by incorporation by 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.

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



Secretary or Treasurer
LYNN A. FIELD
(Corporate Seal)

MBR CONSTRUCTION SERVICES, INC.
Contractor – Corporation

By: 

President
BRENDON R. FIELD 4-17-12
Date

COMMONWEALTH OF PENNSYLVANIA
ACTING THROUGH THE DEPARTMENT
OF GENERAL SERVICES

APPROVED ELECTONICALLY
Secretary of General Services

Witness

APPROVED AS TO LEGALITY AND FORM:

APPROVED ELECTONICALLY
Office of General Counsel

APPROVED ELECTONICALLY
Office of Attorney General

I hereby certify that funds in the amount of \$ 94,700.00
are available under Appropriation Symbol _____

APPROVED ELECTONICALLY
Comptroller Date

**APPROVED ELECTRONICALLY
VIA SAP**

CONTRACT BOND

Bond No: SU 1115600

KNOW ALL PERSONS BY THESE PRESENTS, That we the undersigned

MBR CONSTRUCTION SERVICES, INC.

P.O. BOX 14775, READING, PA 19612

as Principal

and

Arch Insurance Company

Three Parkway, Suite 1500

Philadelphia, PA 19102

a
Corporation organized and existing under the Laws of the State of
Missouri 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) Ninety-Four Thousand, Seven Hundred and-----00/100 Dollars (\$94,700.00)
Base Bid No. 4, for faithful performance of the Contract as designated in Paragraph "A"
herein; and

(B) Ninety-Four Thousand, Seven Hundred and-----00/100 Dollars (\$94,700.00)
Base Bid No. 4, for payment for labor, material equipment rental and public utility
services as designated in Paragraph "B".

Sealed with our respective seals and date this 17th day of April, 2012.

WHEREAS, the above Principal has entered into a Contract with the Department of General Services dated the 23rd day of April, 2012 for Contract No. D.G.S. 411-65.2, Phase 1, for the HVAC Construction, PA Academy of Music Property, Acquisition and Building Modifications, Millersville University, Millersville, Lancaster County, Pennsylvania

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 Obligees 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]

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



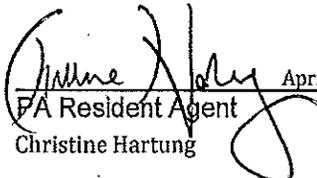
Secretary or Treasurer Date
Lynn A. Field

(Corporate Seal)

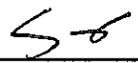
MBR CONSTRUCTION SERVICES, INC.
Corporation

By: 

President Date
Brendon R. Field



FA Resident Agent Date
Christine Hartung

Arch Insurance Company
Surety Date


Attorney-in-Fact Date
Scott C. Mahorsky

APPROVED AS TO LEGALITY AND FORM:

APPROVED ELECTRONICALLY
Office of Chief Counsel

APPROVED ELECTRONICALLY
Office of Attorney General

APPROVED ELECTRONICALLY
VIA SAP



COMMONWEALTH OF PENNSYLVANIA
INSURANCE DEPARTMENT

CERTIFICATE OF AUTHORITY

Casualty

Effective Date: April 1, 2012

ARCH INSURANCE COMPANY

NAIC NO. 11150

HAS COMPLIED WITH THE REQUIREMENTS OF THE LAWS OF THE COMMONWEALTH OF PENNSYLVANIA RELATING TO ADMISSION IN SAID COMMONWEALTH FOR THE PURPOSE OF TRANSACTING INSURANCE BUSINESS IN PENNSYLVANIA AND THAT THE ABOVE NAMED COMPANY IS HEREBY AUTHORIZED TO TRANSACT THE BUSINESS OF:

Accident and Health 40 P.S. s 382(c)(2)

Auto Liability 40 P.S. s 382(c)(11)

Boiler and Machinery 40 P.S. s 382(c)(5)

Burglary and Theft 40 P.S. s 382(c)(6)

Credit 40 P.S. s 382(c)(7)

Elevator 40 P.S. s 382(c)(9)

Fidelity and Surety 40 P.S. s 382(c)(1)

Glass 40 P.S. s 382(c)(3)

Inland Marine and Physical Damage 40 P.S. s 382(b)(2)

Livestock 40 P.S. s 382(c)(10)

Mine and Machinery 40 P.S. s 382(c)(12)

Ocean Marine 40 P.S. s 382(b)(3)

Other Liability 40 P.S. s 382(c)(4)

Personal Property Floater 40 P.S. s 382(c)(13)

Property and Allied Lines 40 P.S. s 382(b)(1)

Water Damage 40 P.S. s 382(c)(8)

Workers Compensation 40 P.S. s 382(c)(14)

FOR THE YEAR ENDING MARCH 31, 2013, IN ACCORDANCE WITH ITS CHARTER AND IN CONFORMITY WITH THE LAWS OF SAID COMMONWEALTH OF PENNSYLVANIA.



IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY
HAND AND AFFIXED MY OFFICIAL SEAL, THE
DATE AND YEAR FIRST ABOVE WRITTEN.

MICHAEL CONSEDINE
INSURANCE COMMISSIONER

THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON BLUE BACKGROUND.

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated. Not valid for Mortgage, Note, Loan, Letter of Credit, Bank Deposit, Currency Rate, Interest Rate or Residential Value Guarantees.

POWER OF ATTORNEY

Know All Persons By These Presents:

That the Arch Insurance Company, a corporation organized and existing under the laws of the State of Missouri, having its principal administrative office in Jersey City, New Jersey (hereinafter referred to as the "Company") does hereby appoint:

Christine Hartung, Jason Cooper and Scott C. Mahorsky of Quakertown, PA (EACH)

its true and lawful Attorney(s)-in-Fact, to make, execute, seal, and deliver from the date of issuance of this power for and on its behalf as surety, and as its act and deed:

Any and all bonds, undertakings, recognizances and other surety obligations, in the penal sum not exceeding Ninety Million Dollars (\$90,000,000.00)

This authority does not permit the same obligation to be split into two or more bonds in order to bring each such bond within the dollar limit of authority as set forth herein.

The execution of such bonds, undertakings, recognizances and other surety obligations in pursuance of these presents shall be as binding upon the said Company as fully and amply to all intents and purposes, as if the same had been duly executed and acknowledged by its regularly elected officers at its principal administrative office in Jersey City, New Jersey.

This Power of Attorney is executed by authority of resolutions adopted by unanimous consent of the Board of Directors of the Company on September 15, 2011, true and accurate copies of which are hereinafter set forth and are hereby certified to by the undersigned Secretary as being in full force and effect:

"VOTED, That the Chairman of the Board, the President, or the Executive Vice President, or any Senior Vice President, of the Surety Business Division, or their appointees designated in writing and filed with the Secretary, or the Secretary shall have the power and authority to appoint agents and attorneys-in-fact, and to authorize them subject to the limitations set forth in their respective powers of attorney, to execute on behalf of the Company, and attach the seal of the Company thereto, bonds, undertakings, recognizances and other surety obligations obligatory in the nature thereof, and any such officers of the Company may appoint agents for acceptance of process."

This Power of Attorney is signed, sealed and certified by facsimile under and by authority of the following resolution adopted by the unanimous consent of the Board of Directors of the Company on September 15, 2011:

VOTED, That the signature of the Chairman of the Board, the President, or the Executive Vice President, or any Senior Vice President, of the Surety Business Division, or their appointees designated in writing and filed with the Secretary, and the signature of the Secretary, the seal of the Company, and certifications by the Secretary, may be affixed by facsimile on any power of attorney or bond executed pursuant to the resolution adopted by the Board of Directors on September 15, 2011, and any such power so executed, sealed and certified with respect to any bond or undertaking to which it is attached, shall continue to be valid and binding upon the Company.

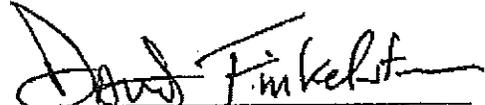
In Testimony Whereof, the Company has caused this instrument to be signed and its corporate seal to be affixed by their authorized officers, this 28th day of February, 2012.

Attested and Certified

Arch Insurance Company


Martin J. Nilsen, Secretary

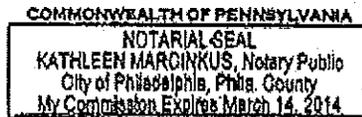


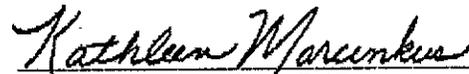

David M. Finkelstein, Executive Vice President

STATE OF PENNSYLVANIA SS

COUNTY OF PHILADELPHIA SS

I, Kathleen Marcinkus, a Notary Public, do hereby certify that Martin J. Nilsen and David M. Finkelstein personally known to me to be the same persons whose names are respectively as Secretary and Executive Vice President of the Arch Insurance Company, a Corporation organized and existing under the laws of the State of Missouri, subscribed to the foregoing Instrument, appeared before me this day in person and severally acknowledged that they being thereunto duly authorized signed, sealed with the corporate seal and delivered the said instrument as the free and voluntary act of said corporation and as their own free and voluntary acts for the uses and purposes therein set forth.




Kathleen Marcinkus, Notary Public
My commission expires 03/14/2014

CERTIFICATION

I, Martin J. Nilsen, Secretary of the Arch Insurance Company, do hereby certify that the attached Power of Attorney dated February 28, 2012 on behalf of the person(s) as listed above is a true and correct copy and that the same has been in full force and effect since the date thereof and is in full force and effect on the date of this certificate; and I do further certify that the said David M. Finkelstein, who executed the Power of Attorney as Executive Vice President, was on the date of execution of the attached Power of Attorney the duly elected Executive Vice President of the Arch Insurance Company.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the Arch Insurance Company on this 17th day of April, 2012.


Martin J. Nilsen, Secretary

This Power of Attorney limits the acts of those named therein to the bonds and undertakings specifically named therein and they have no authority to bind the Company except in the manner and to the extent herein stated.

PLEASE SEND ALL CLAIM INQUIRIES RELATING TO THIS BOND TO THE FOLLOWING ADDRESS:

Arch Insurance – Surety Division
3 Parkway, Suite 1500
Philadelphia, PA 19102



ARCH INSURANCE COMPANY
STATEMENT OF FINANCIAL CONDITION
December 31, 2011

Assets

Cash in Banks	\$ 117,690,832
Bonds owned	1,258,246,334
Stocks	366,270,043
Premiums in course of collection	149,107,088
Accrued interest and other assets	<u>321,772,587</u>
 Total Assets	 <u><u>\$ 2,213,086,884</u></u>

Liabilities

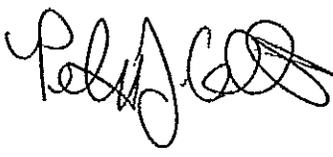
Reserve for losses and adjustment expenses	\$ 856,214,624
Reserve for unearned premiums	282,067,655
Ceded reinsurance premiums payable	76,916,745
Amounts withheld or retained by company for account of others	143,263,809
Reserve for taxes, expenses and other liabilities	<u>284,887,844</u>
 Total Liabilities	 1,643,350,677
 Surplus as regards policyholders	 <u>569,736,207</u>
 Total Surplus and Liabilities	 <u><u>\$ 2,213,086,884</u></u>

By:  Senior Vice President, Chief Financial Officer and Treasurer	Attest:	 Senior Vice President, and General Counsel
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State of New York)
) SS
 County of Nassau)

Thomas James Ahern, Senior Vice President and Chief Financial Officer and Treasurer and Patrick K. Nalls, Senior Vice President and General Counsel being duly sworn, of ARCH INSURANCE COMPANY, Missouri; and that the foregoing is a true and correct statement of financial condition of said company, as of December 31, 2011.

Subscribed and sworn to before me, this 14th day of March, 2012.

Notary Public  **PETER J. CALLEO**
 Notary Public, State of New York
 No. 02CA6109336
 Qualified in Nassau County
 Commission Expires 5/16/2012