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## COVID CONSTRUCTION ALERT: RE-STARTING THE PROJECT

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First the Good News! Governor Wolf has announced that all Pennsylvania public and private construction sites can re-open on May 1. While not announcing a date, Governor Murphy in New Jersey is also outlining plans to work on re-opening closed portions of business, that may include the closed construction projects, in the next few weeks. The prospect of re-starting the suspended projects has owners, developers, contractors, subcontractors, suppliers and workers, among others, excited.

But...a word of warning: Conditions surrounding those projects have dramatically changed! A project that has been dormant for 30-60 days will require re-mobilization of forces and it may require cleaning and re-doing certain work that was not fully protected for such a delay. Labor forces and materials will need to be located and ready for the resumption of work. New supply lines may be required. Costs of materials may increase, even under fixed price contracts, due to scarcity. A loss of 30-60 days from an already tight construction schedule cannot be made up without a cost. Significantly, work conditions that were anticipated when the contracts were signed and when work commenced may be dramatically different, including disinfection, testing, social/work-space distancing, added PPE and the like.

These are not issues that can be resolved by taking an attitude that the problem is the other side's. Many of these issues are and will be economically painful. There must be a recognition of the need to address these issues – and preferably work on a “pain-sharing” amendment to the initial contract documents – up front before the resumption of work.

**For Further Information** If you have any questions on the above or wish to discuss, please contact [James Landgraf](#) or [Mark Schiavo](#).

Primary terms to discuss and address by way of a contract amendment include:

- Negotiating re-mobilization costs and performing a site inspection to determine what if any installed or stored materials may require restoration or replacement
- Scheduling the start-up to allow the marshalling of needed labor, equipment and materials
- Developing a site safety program consistent with what may be required by state and local officials, but minimally to include:
  - increased monitoring of the site and employees
  - posting of site safety notices
  - establishing social/work distancing, crew size and PPE requirements

- enforcement processes for site safety
- developing protocols to address a potential outbreak or an infected worker
- addressing reasonable allocation of the costs of monitoring and PPE
- Adjusting the project schedule to allow for the time of suspension and potential lower productivity due to the new site safety requirements and materials shortage issues
- If acceleration will be required, including overtime, and additional crews and adjusting work hours, development of a fair plan of compensation for the unexpected costs and making required adjustments consistent with the site safety plan
- Consideration of materials' substitutions, with cost adjustments (up or down) to address shortages of specified materials
- This should also include an expedited process to review and act on proposed substitutions
- For issues that cannot be resolved before re-starting the project, such as disputed delay costs, COVID demobilization costs or similar matters that cannot be immediately resolved, a statement of reservation of itemized claims, issues and defenses, or setting a mechanism to resolve them

Each of these considerations are crucial for the orderly re-start of the suspended construction project. It is equally important to make sure that these changes are written down and made an amendment - or a change order – to the contract to assure that all parties are fully aware of the new terms and that they are enforceable. All of the parties to the project have been economically damaged, for the most part without fault of the others. To engage on re-starting the project without (1) understanding that the project has to be considered an essentially new project given the suspension and the new restrictions, (2) a willingness to share the pain, and (3) recognizing that these issues cannot be ignored and left to fix themselves, will result in a disastrous relationship and the real potential of expensive and time consuming litigation or arbitration in the very near future.