

## CONTRACT GENERAL CONDITIONS

### INDEX

ARTICLE 1	DEFINITIONS AND INTENT OF THE CONTRACT	Page 4
1.1	Definitions	
1.2	Intent of the Contract	
ARTICLE 2	CONTRACTING OFFICER	Page 11
2.1	Contracting Officer's Right to Stop the Work	
2.2	Contracting Officer's Right to Terminate	
2.3	Review of Contractor Claims and Disputes	
2.4	University Representation	
ARTICLE 3	ARCHITECT/ENGINEER	Page 15
3.1	The Architect/Engineer	
3.2	Administration of the Contract	
3.3	Inspections-Substantial and Final Completion	
3.4	Ownership and Use of Documents	
ARTICLE 4	CONSTRUCTION MANAGER	Page 17
4.1	Responsibility – Staffing	
4.2	Administration of the Contract	
4.3	Construction Job Meetings	
ARTICLE 5	CONTRACTOR	Page 19
5.1	Review of the Contract	
5.2	New Jersey Prevailing Wage Act	
5.3	Supervision and Construction Procedures	
5.4	Responsibility for the Work	
5.5	Permits, Laws and Regulations	
5.6	Storage, Cleaning and Final Clean Up	
5.7	Tie-Ins and Interruptions to Existing Buildings	
5.8	Working Hours and Non Workdays	
5.9	Contract Drawings and Specifications	
5.10	Shop Drawings, Product Data and Samples	
5.11	Substitutions	
5.12	Subcontractor Approvals	
5.13	Miscellaneous Drawings, Charts and Manuals	
5.14	Coordination Drawings	
5.15	As-Built Drawings	

5.16	Operation and Maintenance Manuals
5.17	Openings, Channels, Cutting and Patching
5.18	Tests and Inspections
5.19	Equipment and Material
5.20	Soil Borings
5.21	Excavation
5.22	Inspection of Roadway Subgrades
5.23	Watchman services
5.24	Separate Contracts
5.25	Mutual Responsibility of Separate Contractors
5.26	Protection of Contractor's Property
5.27	Special Responsibilities of the General Contractor – Separate Contracts
5.28	Standby Personnel
5.29	Control Wiring
5.30	Patents
5.31	Guarantee
5.32	University's Right to Audit

#### ARTICLE 6 TEMPORARY FACILITIES, UTILITIES AND SERVICES Page 47

6.1	Field Offices
6.2	Parking Requirements
6.3	Access, Storage and Staging Areas
6.4	Temporary Toilet Facilities
6.5	Temporary Drives and Walks
6.6	Temporary Water
6.7	Temporary Light and Power
6.8	Temporary Heat
6.9	Temporary Enclosures
6.10	Temporary Ramps, Stairs and Ladders
6.11	Temporary Construction Fencing
6.12	Stormwater Protection
6.13	Temporary Fire Extinguishers
6.14	Temporary HVAC Filters

#### ARTICLE 7 SUBCONTRACTORS Page 56

7.1	Contractor-Subcontractor Relationship
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#### ARTICLE 8 RELATIONSHIP BETWEEN THE UNIVERSITY AND CONTRACTORS Page 58

8.1	The University's Right to Perform Work
8.2	Contract Time and Notice to Proceed
8.3	Mutual Responsibility

8.4	Substantial Completion	
8.5	Contractor's Claims for Damages	
8.6	Contracting Officer's Right to Accelerate	
8.7	Time of Completion, Delay, Bonus and Liquidated Damages	
8.8	Suspension of Work	
8.9	Indemnification	
8.10	Contractor further agree as follows	
ARTICLE 9	CONSTRUCTION PROGRESS SCHEDULING	Page 67
9.1	Schedule Preparation	
9.2	Contractors Scheduling Responsibility	
9.3	Contractors' Adherence to Schedule	
9.4	Monthly Schedule/Coordination Meetings	
9.5	Responsibility for Completion	
9.6	Adjustment of Contract Completion Time	
ARTICLE 10	PAYMENTS	Page 74
10.1	Contractor Payments from the University	
10.2	Invoices	
10.3	Interest	
10.4	Payment Disputes	
ARTICLE 11	UNCOVERING AND CORRECTION OF WORK	Page 83
11.1	Uncovering of Work	
11.2	Correction of Work	
11.3	Acceptance of Defective or Nonconforming Work	
ARTICLE 12	PROTECTION OF PERSONS AND PROPERTY	Page 85
12.1	Safety Precautions and Programs	
12.2	Safety of Persons and Property	
12.3	Emergencies	
ARTICLE 13	– NOT USED	
ARTICLE 14	CHANGES IN THE WORK	Page 89
14.1	Changes to Contract	
14.2	Processing of Contractor Requests for Equitable Adjustment	
14.3	Remedies for Disputed Change Order Proposals	
14.4	Change Order Directives	
ARTICLE 15	ASSIGNMENT OF ANTITRUST CLAIMS	Page 94
15.1	Assignment of Antitrust Claim(s)	

## CONTRACT GENERAL CONDITIONS

### ARTICLE 1

#### DEFINITIONS AND INTENT OF THE CONTRACT

##### 1.1 Definitions

1.1.1 Addendum: An Addendum is a document, issued by the University prior to the opening of bids which supplements, revises or modifies the documents furnished for bidding purposes.

1.1.2 Architect/Engineer: The Architect or the Engineer (A/E) engaged by the University to act as the authorized representative of the Contracting Officer.

1.1.3 Where as shown, as indicated, as detailed, or words of similar import are used, it shall be understood that reference is made to the drawings which are part of this contract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provided complete in place," that is "furnished and installed."

1.1.4 Change Order Request: A request for equitable adjustment made by the Contractor in response to written direction by the Contracting Officer or Construction Manager pursuant to Article 14 entitled "Changes in the Work."

1.1.5 Claims: Differences between the University and a Contractor concerning alleged extra work, errors or omissions in the Specifications or Drawings, unreasonable delays, damages to work, informal suspensions or interferences by University Personnel and like matters.

1.1.6 University or Owner: The words, "University" or "Owner" refer to The William Paterson University of New Jersey.

1.1.7 Contract Documents: The written Contract, General Conditions, Supplemental General Conditions, Instructions to Bidders, Supplemental Instructions for Bidding and Completing Proposal Forms, Proposal Form, Summary of Work, Drawings, Specifications, Addenda and other documents issued during the Bidding period and modifications issued after the execution of the written Contract.

1.1.8 Contract Line-Item Number: A specifically described unit of work for which a price is provided in the Contract.

1.1.9 Contract Limit Lines: Those lines shown on the drawings which establish the boundaries of the project and beyond which no construction work or activities shall be performed by the Contractor unless otherwise noted on the Drawings or Specifications.

1.1.10 Contractor: The person or persons, partnership, or corporation who has entered into a Contract directly with the University and who operates as an independent Contractor and not as an agent of the University in the performance of its functions. Whether referred to as "Contractor," "Prime Contractor," "Prime," "Separate Contractor" or "Single Contractor," it shall be understood to mean Contractor. It does not include Subcontractors, suppliers or materialmen.

1.1.11 Contracting Officer: The individual authorized, as an Officer of the University, to administer the design, engineering and construction of all University buildings and facilities. He is the Procuring Officer representing the University personally or through authorized representatives in all relationships with Contractors, Architect/Engineers and Consultants. This includes a duly appointed successor or an authorized Administrative Contracting Officer (ACO) acting within the limits of his authority.

The Contracting Officer is the interpreter of the conditions of the Contract and the judge of its performance. He shall not take arbitrary positions benefiting either the University or the Contractor, but shall use his powers under the Contract to enforce its faithful performance by both.

1.1.12 Construction Manager: The Construction Manager or "CM" is the person or entity who has been engaged by the University to act as the authorized representative of the Contracting Officer to provide contract administration of the project. The term Construction Manager means the Construction Manager or the Construction Manager's authorized representative.

1.1.13 Contractors Progress Schedule: The schedules prepared by each Contractor based on the milestone schedule dates in the Contract Documents. The contractor's progress schedule is submitted to the Construction Manager for preparation of the overall project CPM schedule.

1.1.14 Wherever in the Specifications or upon the Drawings the words "directed," "required," "ordered," "designated," "prescribed," or words of like import are used, it shall be understood that the "direction," "requirement," "order," "designation," or "prescription," of the Contracting Officer or Construction Manager is intended; and similarly the words "approved," "acceptable," "satisfactory" or words of like import shall mean "approved by" or "acceptable to," or "satisfactory to" the Contracting Officer, Construction Manager or Architect/Engineer unless otherwise expressly stated.

1.1.15 The terms “He”, “His” or “Him” are used for simplicity only and shall refer to various parties to the Contract who are identified by male gender, singular number. They are not meant to imply discrimination or bias of any kind.

1.1.16 General Construction Contractor: The Contractor for General Construction when other contractors are involved in the project.

1.1.17 General Contractor: The sole Contractor for the entire Work when no other prime contractors are involved in the project.

1.1.18 Notice: A written directive or communication served on the Contractor to act or perform work or carry out some other contractual obligation. It shall be deemed to have been duly served if delivered to an individual or member of the firm or entity or to an officer of the corporation for whom it was intended. This includes delivery by courier, registered or certified mail, telegram or fax to the Contractor’s business address cited in the contract.

1.1.19 Plans: Any drawings or reproductions thereof pertaining to the Work contemplated by this contract.

1.1.20

1.1.21 Project: A general term for identification of the total Work and all administrative aspects required to fully satisfy the contract requirements.

1.1.22 Project CPM Schedule: The overall project schedule prepared by the General Contractor and approved by the Construction Manager based on the required milestone schedule dates and Contractors progress schedules that identifies the Critical Path of the Work to be performed.

1.1.23 Public Contract: Any contract or agreement entered into by the State of New Jersey or any instrumentality of the State to purchase goods, services, or both.

1.1.24 Site, Construction Site or Project Site: The geographical area at which the Work under the contract is to be performed.

1.1.25 Specifications: All written instructions or other documents in or pursuant to this Contract pertaining to the method of performing the Work and the results to be obtained.

1.1.26 Subcontractor: The person or persons, partnership, or corporation who enters into a contract with a Contractor for the performance of work under this Contract, or the Subcontractors of any tier of such person or persons, partnership or corporation.

1.1.27 Substantial Completion: Substantial Completion shall be determined by the Architect/Engineer, University and Construction Manager upon review of field activities. Substantial Completion shall be evaluated upon completion of all items of Work as described, detailed and shown on both Contract Document Drawings and Specifications. All work must be completed to the satisfaction of the, Architect/Engineer and Construction Manager in addition to the Contractor submitting proper documentation indicating all inspections and required testing requirements have been satisfied, the site is in an orderly, safe and maintained condition, the building or facility is operational or capable of serving its intended use. Warranty and guarantee periods commence on the date established for substantial completion.

1.1.28 Systems Assurance: The totality of all quality control and assurance requirements specified in the Contract Documents.

1.1.29 Unit Schedule Breakdown: A detailed list of the work activities required for project construction, other elements associated with fulfilling the requirements of the Contract (bonds, insurance, as-built drawings, operation and maintenance manuals, etc.), major items of material or equipment and the prices associated therewith, for use with the Contractor's applications for payment.

1.1.30 The "Work": As used herein comprises all construction efforts required by the Contract Documents and all supervision, labor, material and equipment necessary to complete such construction.

## **1.2 Intent of the Contract**

1.2.1 The Drawings and Specifications are intended to require the Contractor to provide everything reasonably necessary to accomplish the proper and complete finishing of the Work. All work and materials included in the Specifications and not shown on the Drawings, or shown on the Drawings and not in the Specifications, shall be performed or furnished by the Contractor as if described in both. Any incidental material, and/or work not shown or specified in the Drawings and/or the Specifications which is, nevertheless, necessary for the true development thereof and reasonably inferable therefrom, the Contractor shall understand the same to be implied and required, and he shall perform all such work and furnish all such materials as if particularly delineated or described therein. Should there be an obvious error or omission in the Drawings or Specifications, it shall be the Contractor's responsibility to

complete the work as reasonably required, consistent with the intent of such Drawings and Specifications as may be interpreted by the Contracting Officer.

1.2.2 The Contractor shall abide by and comply with the true intent and meaning of the Drawings, the Specifications and other Contract Documents taken as a whole, and shall not avail himself of any unintentional error or omission, should any exist. Should any error, omission or discrepancy appear, or should any doubt exist, or any dispute arise as to the true intent and meaning of the Drawings, the Specifications or other Contract Documents, or should any portion thereof be obscure, or capable of more than one interpretation, the Contractor shall immediately notify the Construction Manager and seek correction or interpretation thereof prior to commencement of affected work. The Construction Manager shall issue his written interpretation with reasonable promptness. However, the Contractor shall make no claim against the University for expenses incurred or damages sustained on account of any error, discrepancy, omission or conflict in the Contract Documents unless, and only to the extent that, the Contractor has submitted a written request for interpretation, clarification, or correction to the Construction Manager, and such written request has been received by the Construction Manager, at least five (5) working days prior to the date fixed for the opening of bids, provided further that such claim shall only be recognized by the University if the matter raised by the written request has not been addressed by the University through the issuance of an Addendum interpreting, clarifying, and/or correcting such error, discrepancy, omission, or conflict. In case of dispute, the matter shall be referred to the Contracting Officer for decision.

1.2.3 Each and every provision required by law to be inserted in the Contract Documents shall be deemed to have been inserted therein. If any such provision has been omitted or has not been correctly inserted, then upon application of either party, the Contract shall be physically amended to provide for such insertion or correction.

1.2.4 The organization of the Specifications into divisions, sections and articles, and the arrangement of Drawings shall not be construed by the Contractor as being intended to divide or allocate the Work among Subcontractors in any manner or to establish the extent of the Work to be performed by any trade.

1.2.5 Any copies of Drawings, Specifications, and Addenda necessary for the proper execution of the Work are available at the printer and at the Contractor's expense.

1.2.6 The Contractor shall do no work without proper Drawings, Specifications and instructions unless authorization to proceed from the Contracting Officer is received by the Contractor, in writing. In giving such additional instructions, the Contracting Officer may make minor changes in the Work not involving extra cost.



1.2.7 All Drawings referred to, together with such supplementary details as may be furnished and approved from time to time as the work progresses, are understood as being included as part of the Contract.

1.2.8 The sequence of precedence pertaining to interpretation of Contract Documents is as follows below. Note that not all types of Contract Documents are included in all agreements. The contract documents shall be considered supplementary with each other. This sequence of precedence is to be employed only when language between the documents is conflicting, in which case the document with the highest order of precedence (Executed Contract having the highest precedence) prevails. In cases where there is not a conflict in language, requirements specified in all contract documents are the responsibility of the Contractor.

Executed Contract

Addenda

Supplemental Instructions for Bidding and Completing Proposal Forms

Supplemental General Conditions

General Conditions

Summary of Work

Technical Specifications

Drawings, in following order of precedence:

- (1) Notes on Drawings
- (2) Large scale details
- (3) Figured dimensions
- (4) Scaled dimensions

Proposal Form

Instruction to Bidders

1.2.9 On all work involving alterations, remodeling, repairs or installation within existing buildings, it shall be the responsibility of the Contractor by personal inspection of the existing building, facility, plant or utility system, to satisfy himself as to the accuracy of any information given which may affect the quantity, size and/or quality of materials required for a satisfactorily completed contract, whether or not such information is indicated on the Drawings or included in the Specifications. The Work shall include the cost of all material and labor required to complete the work based on reasonably observable conditions.

1.2.10 Dimensions of the Work shall not be determined by scale or rule, and figured dimensions shall be followed at all times, unless obvious discrepancies exist. The Contractor shall verify all dimensions at the job site, and shall take any and all

measurements necessary to verify the Drawings and to properly lay out the work. Any discrepancies affecting the layout of the work shall be called to the attention of the Architect/Engineer, through the Construction Manager. No work so affected shall proceed until such discrepancy is corrected, and written confirmation of the resolution is provided by the Architect/Engineer through the Construction Manager.

1.2.11 Where on any Drawing a portion of the work is fully drawn and the remainder is indicated in outline, the portions fully drawn shall apply to all other like positions of the work, unless specifically indicated or specified otherwise.

1.2.12 All indications or notations which apply to one of a number of similar situations, materials or processes shall be deemed to apply to all such situations, materials or processes wherever they appear in the work, except where a contrary result is clearly indicated by the Contract Documents.

1.2.13 Where codes, standards, requirements and publications of public and private bodies are referred to in the Specifications, references shall be understood to be to the latest revision prior to the date of receiving bids, except where otherwise indicated.

1.2.14 Where no explicit qualities or standards for materials or workmanship are established for Work, such Work is to be of good quality for the intended use and consistent with the quality of the surrounding work and of the construction of the project generally.

1.2.15 All manufactured articles, materials and equipment shall be applied, installed, connected, erected, employed, cleaned and conditioned in accordance with the manufacturer's written or printed directions and instructions unless otherwise indicated in the Contract Documents.

1.2.16 The Mechanical, Plumbing, Electrical and Fire Protection Drawings are diagrammatic only, and are not intended to show the alignment, physical locations or configurations of such work. Such work shall be installed without additional cost to the Owner to clear all obstructions, permit proper clearances for the work of other trades, satisfy all Code requirements and present an orderly appearance where exposed.

## **END OF ARTICLE ONE**

## ARTICLE 2

### CONTRACTING OFFICER

#### 2.1 Contracting Officer's Right to Stop the Work

2.1 If the Contractor fails to correct defective work in accordance with the Architect/Engineer's recommendation or persistently fails to carry out the Work in accordance with the Contract Documents, the Contracting Officer or the Construction Manager may order the Contractor to stop the work, or any portion thereof, until the cause for such order has been eliminated. Stoppage of the Work, however, shall not render the University liable for claims of any kinds, including delays sustained by the Contractor as the result of the stoppage of the work of another Contractor.

#### 2.2 Contracting Officer's Right to Terminate

##### 2.2.1 The University's Right to Terminate for Convenience

The Contracting Officer reserves the right to terminate the Contract for the convenience of the University, in which case the Contractor shall be entitled to that portion of the fee which the services actually and satisfactorily performed by the Contractor bear to the total services contemplated under this Contract, less payments previously made, together with appropriate reimbursable costs and a reasonable termination fee to be negotiated between the Contractor and the Contracting Officer.

##### 2.2.2 The University's Right to Terminate for Cause

If the Contractor is adjudged a bankrupt, or if he makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of his insolvency, or if he refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials so as to avoid or eliminate delays in the orderly progress of the Work in accordance with the approved schedule, or if he fails to make prompt payment to Subcontractors or for materials or labor, or disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or if he or any of his Subcontractors is guilty of a violation of a provision of the Contract Documents, or otherwise defaults or neglects to carry out the Work in accordance with the Contract Documents, or if it is in the best interest of the University, then the Contracting Officer or Construction Manager may, without prejudice to any right or remedy, and after giving the Contractor and his surety three (3) working days written notice to forthwith commence and continue correction of such default or neglect with diligence and promptness, terminate the employment of the Contractor by the issuance of a written notice to that effect to the Contractor and his surety at any time subsequent to three (3) working days thereafter, should they, or either of them, fail to comply with the demands of the original three (3) day notice, above mentioned.

2.2.3 If the University's termination of the Contract pursuant to 2.2.2 is found by a court to be legally improper, the termination of the Contract will be treated as if it had been a termination for convenience and such termination will be compensated for in accordance with the provisions of 2.2.1 governing terminations for convenience.

2.2.4 Upon such termination for cause, the Contracting Officer reserves the right to take possession of the site and of all the materials, equipment, and tools on the site, and may finish the work by whatever method he may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the work is finished. The person or firm designated to carry out such work will be paid as authorized by the Contracting Officer, without entailing any personal liability upon the Officers of the University issuing certificates or making such payment.

2.2.5 If the unpaid balance of the contract sum exceeds the cost of finishing the work, including Liquidated Damages or penalties for delays and all consequential damages sustained by the University flowing from such breach of contract, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor and/or his surety shall pay the difference to the University, and this obligation shall survive the termination of the contract.

2.2.6 If, within three (3) working days following receipt of notice of termination for cause by the Contractor's Surety, the said surety exercises its right to take over the work and expeditiously commences to prosecute the same to completion, the Contracting Officer shall permit him to do so under the following terms and conditions:

- a. Evidence of the surety's intention to take over and complete the contract shall be in writing over the signature of an authorized representative and served upon the Contracting Officer within three (3) days after receipt by the surety of notice of termination.
- b. The execution of a written agreement between the University, by the Contracting Officer, and the Surety whereby the latter undertakes and assumes the obligation to complete the balance of the work of its defaulting Contractor in accordance with the terms and conditions of the University contractor agreement, to be performed by a substituted Contractor satisfactory to the Contracting Officer, at the surety's sole cost and expense, and providing for normal progress payments to the surety or to the substituted Contractor of unpaid contract balances, if any, then in hands of the University.

- c. The said agreement shall also expressly provide that the surety shall not be relieved thereby from any of its obligations under the Performance and Payment Bonds and that it furnish the University with an additional Performance and Payment Bond to secure the faithful performance of the substituted Contractor.
- d. That all current obligations for labor and materials incurred and outstanding by the defaulting Contractor on this project shall be paid without delay, subject to allowance of a reasonable time within which to verify such claims by the surety;
- e. That the parties expressly understand and agree that this agreement is without prejudice and is subject to such rights and remedies as either party (including the Contractor) may elect to assert after final completion and acceptance of the Work.

## **2.3 Review of Contractor Claims and Disputes**

2.3.1 Upon presentation by the Contractor of a request in writing, the Contracting Officer may review any decision or determination by the University, the Construction Manager or the Architect/Engineer as to any claim, dispute or any other matter or question relating to the execution or progress of the work or the interpretation of the Contract Documents. Consistent with the intent of this Contract, the Contracting Officer may schedule a conference for the purpose of settling or resolving such claims, disputes or other matters. Where such a conference is conducted, the Contractor shall be afforded the opportunity to be heard on the matter in question. Following review of the Contractor's request, the University and the Contractor may settle or resolve the disputed matter, provided however that any such settlement or resolution shall be subject to all requirements imposed by law, including where applicable, the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq.

In the event that no settlement or resolution is achieved, the Contracting Officer shall issue a written decision disposing of the dispute.

## **2.4 University Representation**

2.4.1 The University will be represented on the site by a Construction Manager and its staff or other designated representatives. The Construction Manager or other designated representative(s) will conduct on-site inspections, maintain logs of construction progress and problems encountered, establish a procedure for the review, processing and payment of, and approve Contractor's requisitions for payments subject to final approval by the Contracting Officer, attend job meetings, carry out liaison with

the Architect/Engineer and Contractor, prepare and submit reports on special problems associated with the job, review request for changes, submit recommendations, negotiate change orders, and generally remain fully cognizant and be kept informed by the Contractor of every aspect of ongoing construction. The University's representatives, including the Construction Manager and its staff, shall have only those duties which are required of the University. Responsibility for completion of the project, pursuant to the Contract Documents remains with the Contractor. No right of the University exercised hereunder shall be considered a waiver of the Contractor's obligation or any obligations created by this agreement, which may be modified or excused only in accordance with the terms of the contract.

## **END OF ARTICLE TWO**

## ARTICLE 3

### ARCHITECT/ENGINEER

#### 3.1 The Architect/Engineer

3.1.1 Whether or not the University provides full administration of a project utilizing a Construction Manager, the Architect/Engineer's role is that of design consultant to the University, and as indicated hereinafter.

#### 3.2 Administration of the Contract

3.2.1 The Architect/Engineer will provide a certain portion of the administration of the Contract, as hereinafter described.

3.2.2 The Architect/Engineer will monitor the execution and progress of the work and will immediately notify the Construction Manager, or the Contracting Officer if there is no CM, of any related problems. The Architect/Engineer will at all times be provided access to the work. All Contractors shall provide facilities for such access so as to enable the Architect/Engineer to perform his functions under the Contract Documents.

3.2.3 The Architect/Engineer will not be responsible for, nor will he have control or charge of, construction means, methods, techniques, sequences of procedures, or safety precautions and programs in connection with the work. The Architect/Engineer will not be responsible for, nor have control or charge over, the acts or omissions of the Contractor, Subcontractors, or any of their agents or employees, or any other person performing any of the work, but will have the obligation to immediately inform the Construction Manager of any inadequate performance on the project.

3.2.4 The Architect/Engineer will recommend the rejection of work which he believes does not conform to the Contract Documents. Whenever, in his opinion, he considers it necessary or advisable, he may request the Construction Manager, or the Contracting Officer if there is no CM, to provide special inspection or testing of the Work, whether or not such Work has been fabricated, installed or completed.

3.2.5 The Architect/Engineer will review, approve or take other appropriate action relating to the Contractor's submittals, such as shop drawings, product data and samples, to ascertain whether Contractor's submittals conform to the design requirements and the Drawings and Specifications of the Work. Such actions will be

taken with reasonable promptness. Approval of a specific item shall not indicate approval of an assembly of which the item is a component.

3.2.6 The Architect/Engineer will periodically review the Contractor's as-built drawings to determine that they are up to date.

### **3.3 Inspections-Substantial and Final Completion**

3.3.1 Upon notification by the Contractor to the Construction Manager or to the University, the Architect/Engineer will conduct inspections, accompanied by the Construction Manager, or the Contracting Officer if there is no CM, Contractor and the University's authorized representatives, to determine the dates of Substantial and Final Completion. The Construction Manager will receive and forward to the Contracting Officer for his review, written warranties and related documents required by the Contract Documents and assembled by the Contractor, and the Architect/Engineer will approve the issuance of Certificates of Substantial and Final Completion. The Architect/Engineer will make up to two (2) site visits at the Contractor's request to inspect the work for substantial and final completion. Additional visits will be at the expense of the Contractor.

### **3.4 Ownership and Use of Documents**

3.4.1 All Drawings, Specifications and copies thereof furnished by the Architect/Engineer are and shall remain the property of the University. They are reserved to this project only and shall not be used on any other project. Submission or distribution of documents to meet official regulatory requirements, or for any other purposes in connection with the project shall not be construed as derogation of the Architect/Engineer's copyright or other reserved rights.

## **END OF ARTICLE THREE**



## **ARTICLE 4**

### **CONSTRUCTION MANAGER**

The Construction Manager or “CM” has been engaged by the Contracting Officer to provide administration of the project. He will serve as the University’s representative and will act on behalf of the Contracting Officer in connection with matters as generally described herein.

#### **4.1 Responsibility - Staffing**

4.1.1 The Construction Manager has the responsibility for being the overseer of all the Contractors and of the construction in accordance with the Contract Documents. In pursuance of these duties, the Construction Manager will have the right to recommend the denial or reduction of payment of the Contractor’s monthly requisitions, should the Construction Manager have cause to be dissatisfied with the performance of the Contractor. The Contracting Officer has the authority to modify or reject the Construction Manager’s recommendation.

#### **4.2 Administration of the Contract**

4.2.1 In addition to the duties specified elsewhere in the Contract Documents, the Construction Manager will provide administration of the Contract as hereinafter described.

4.2.2 The Construction Manager will be the University’s representative during construction and until final payment to the Contractor is due. The Construction Manager will advise and consult with the University. All Contractor communications, both verbal and written, shall be made through the Construction Manager.

4.2.3 The Construction Manager will not be responsible for or have control or charge of construction means, methods, techniques, sequences or procedures, or safety precautions and programs in connection with the work, and will not be responsible for the Contractor’s failure to carry out the Work in accordance with the Contract Documents. The Construction Manager shall not be responsible for or have control or charge over the acts or omissions of the Contractor, Subcontractors, or any of their agents or employees, or any other persons performing any of the work.

4.2.4 The Construction Manager shall at all times have access to the work wherever it is in preparation and progress. The Contractor shall provide facilities for such access so that the University, Architect/Engineer and Construction Manager may perform their functions under the requirements of the Contract Documents.

4.2.5 The Construction Manager shall review all applications for payment by the Contractors including final payment. The Construction Manager will then make recommendations to the University for payment.

4.2.6 The Construction Manager concurrently with the Architect/Engineer will receive from the Contractor and review all submittals (shop drawings, product data and samples).

4.2.7 The Contractor shall permit the Construction Manager to inspect off-site materials being requisitioned by the Contractor and make all proper provisions, at the Contractor's expense, for the Construction Manager's inspections.

4.2.8 The Contractor shall maintain at the project site one record copy of all Contracts, Drawings, Specifications, Addenda, Change Orders approved shop drawings, product data, samples, and other documents pertaining to the project, in good order. These will be available to the Architect/Engineer, subcontractors and the Construction Manager, and shall be delivered to the Architect/Engineer upon completion of the project.

At the end of the project or each phase, the Architect/Engineer will provide the latest Contract drawings in PDF format to the Construction Manager. These will be forwarded to the Contractor to markup and note the as-built conditions then submitted back to the Construction Manager who will forward to the Architect/Engineer for incorporation into the final as-built set.

4.2.9 The Construction Manager will assist the Architect/Engineer with conducting inspections to determine the dates of Substantial Completion and Final Completion, and will receive and forward to the University for review, written warranties and related documents required by the Contract and assembled by the Contractor.

### **4.3 Construction Job Meetings**

4.3.1 Biweekly Progress Meetings, as determined by the Construction Manager, will be held on site. The meetings will be conducted, and tape recorded, by the Construction Manager and attended by the Architect/Engineer, and each Contractor's project manager and superintendent (and Subcontractors' project managers/superintendents when requested). Contractor attendance is mandatory by an authorized agent capable of making decision on behalf of the company.

## **END OF ARTICLE FOUR**

## ARTICLE 5

### CONTRACTOR

#### 5.1 Review of the Contract

5.1.1 The Contractor has the duty and warrants and represents that he has thoroughly examined and is familiar with all the Contract Documents, including but not limited to, the complete set of Drawings and Specifications of the entire project; that he has noted cases where it is specified that certain work or materials, or both, are to be omitted by one Contractor and to be furnished or installed by another; that he has carefully examined the site and the contract documents; that from his own investigations he has satisfied himself as to the nature and location of the Work, the current local equipment, labor and material conditions, and all matters which may in any way affect the Work or its performance. The Contractor is responsible to check and verify reasonably observable conditions inside and outside the Contract Limit Lines to determine whether any conflict exists with the work he is required to perform under the Contract. It is understood and agreed that the Contractor has considered in his bid all of the permanent and temporary utility facilities in their present and/or relocated positions as shown on the plans and as revealed by his site investigation, is cognizant of the limited ability of the University to control the actions of the utilities and in his bid has made allowance for the fact that additional compensation will not be allowed for any delays, inconvenience or damage sustained by him due to any interference from the said utility facilities or the operation of moving them. This includes a check on elevations, utility connections and other site data. As a result of such examination and investigation, the Contractor warrants and represents that he fully understands the intent and purposes of the Contract Documents and his obligations thereunder and that he accepts responsibility for and is prepared to execute and fulfill completely, by his construction work, the intent of the Contract, without exception and without reservation, at the price specified in the Contract.

5.1.2 The Contractor shall carefully study and compare the Contract Documents during the progress of the Work and shall immediately report any error, inconsistency or omission to the Contracting Officer, through the Construction Manager, upon discovery and shall do no work thereafter which may be affected by such error until the Contracting Officer or Construction Manager has had the opportunity to respond and clarify the work to be performed in view of this information. Wherever any error, inconsistency or omission appears, it shall be disposed of pursuant to appropriate procedures set forth elsewhere herein.

5.1.3 Unless otherwise ordered in writing by the Contracting Officer or Construction Manager, the Contractor shall perform no portion of the Work without

approved Change Orders, approved shop drawings or samples for such portions of the work, or other approvals as may be applicable and required by the Contract Documents.

5.1.4 The Contractor shall provide and pay for all labor, equipment, material, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for the proper execution and completion of the Work whether or not incorporated or to be incorporated in the Work.

5.1.5 The Contractor shall at all times enforce strict discipline and good order among his employees and shall not employ on the work any unfit person or anyone not skilled in the task assigned to him.

5.1.6 The Contractor shall be obligated to pay the prevailing wage rates established by the State of New Jersey. He shall abide by the requirements of the State's Affirmative Action program. He also shall be responsible to insure that all principles of safety are carried out as further described in Article 12 herein. The Contractor shall prepare certified payrolls and shall submit such records to the University as required by New Jersey statute and applicable regulations. The Contractor shall abide by the requirements of the State Department of Labor for a Certificate of Registration.

## **5.2 New Jersey Prevailing Wage Act**

5.2.1 The Contractor and all Subcontractors shall comply with the New Jersey Prevailing Wage Act N.J.S.A. 34:11-56.25 et seq., and all amendments thereto as this Act is hereby made a part of every Contract entered into on behalf of the University except those contracts which are not within the contemplation of the Act. Provisions of the Act include:

All workmen employed in the performances of every contract in which the contract sum is in excess of \$2,000 and work to which the University is a party, shall be paid not less than the Prevailing Wage Rate as designated by the Commissioner of Labor and Industry or his duly authorized representative.

- (1) Each Contractor and Subcontractor performing public work for the University shall post the prevailing wage rates for each craft and classification involved as determined by the Commissioner, including the effective date of any changes thereof, in prominent and easily accessible places at the site of the work or at such place or places as are used by them to pay workmen their wages.

The Contractor's signature on the proposal is his guarantee that neither he nor any Subcontractor is currently listed nor on record by the Commissioner as one who has failed to pay the prevailing wages according to the Prevailing Wage Act.

- b. In the event it is found that any workman, employed by any Contractor or any Subcontractor covered by any contract in excess of \$2,000 for any public work to which the University is a party, has been paid a rate of wages less than the prevailing wage required to be paid by such contract, the Contracting Officer of the University may terminate the Contractor's or Subcontractor's right to proceed with the Work, or such part of the Work as to which there has been a failure to pay required wages and may otherwise prosecute the work to completion.
- c. Nothing contained in the Prevailing Wage Act shall prohibit the payment of more than the prevailing wage rate to any workman employed on a public work.
- d. The Contractor shall submit a certified payroll record to the University each payroll period, within ten (10) days of the payment of wages.

### **5.3 Supervision and Construction Procedures**

5.3.1 The Contractor shall supervise and direct the Work using his best skill and attention. He shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the work under the Contract.

5.3.2 The Contractor shall employ, at a minimum a competent, full time, on site Superintendent and a Foreman, who shall be in attendance on the Project site during the progress of the Work, as well as a competent Project Manager who need not be on site full time but will be informed of progress of the Work, and who together with the Superintendent will represent the Contractor at all Progress, Scheduling and Coordination Meetings. The Project Manager, Superintendent and Foreman shall be approved by the University and Construction Manager prior to the start of construction. Resumes of the prospective candidates shall be presented at the Contract Award Meeting. The Project Manager and Superintendent shall represent the Contractor and all communications given to them shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. The University reserves the right to require a change in a Project Manager, Superintendent, Foreman or Assistant(s) if their performance, as judged by the Contracting Officer or Construction Manager, is

deemed to be inadequate. The Contractor shall not make any change to the project team without written approval from the Construction Manager. Upon application, in writing to the Construction Manager, the requirement for full time Superintendent may be waived or modified by the Construction Manager should he determine that such staffing is not required.

5.3.3 Each Contractor shall employ qualified competent craftsmen in their respective lines of work.

5.3.4 The various Subcontractors shall likewise have competent Superintendents and/or Foremen in charge of their respective portions of the work at all times. They shall not employ a person unfit or unskilled in the work assigned to them. If it should become apparent that a Subcontractor does not have his portion of the work under the control of a competent Superintendent or Foreman, the Contractor shall have the obligation to take appropriate steps to immediately provide proper supervision.

5.3.5 If, due to a trade agreement, standby personnel are required to supervise equipment installation or for any other purpose, during normal working hours of other trades, the Contractor required to provide such standby services shall evaluate and include the costs thereof in his bid and shall provide said services without additional charge.

5.3.6 Where the Work is performed under a single Contract, the Project Manager or Superintendent for the General Contractor shall be onsite during all off hour work. Where the work is performed under more than one Contract, the Project Manager or Superintendent for the General Construction Contractor, in addition to the Project Manager or Superintendent for the Contractor(s) or Subcontractor(s) performing the Work of other Contracts, shall be onsite during all off hour work.

## **5.4 Responsibility for the Work**

5.4.1 The Contractor shall be responsible to the University, its Consultants and to separate Contractors having a Contract with the University, for the acts and/or omissions of his employees, Subcontractors and their agents and employees who injure, damage or delay such other contractors in the performance of their work. This responsibility is not limited by the applicable provisions stated elsewhere herein, but is in conjunction with, and related thereto.

5.4.2 The Contractor shall be responsible for all damage or destruction caused directly or indirectly by his operations, to all parts of the Work, both temporary and permanent, and to all adjoining and remote property.

5.4.3 The Contractor shall, at his own expense, protect all finished work liable to damage and keep the same protected until the project is completed and accepted. In the case of Substantial Completion accompanied by Beneficial Occupancy by the University the Contractor's obligation to protect his finished work shall cease simultaneously with the occupancy of the portion or portions of the structure.

5.4.4 In order to protect the lives and health of his employees, the Contractor shall comply with all applicable statutes and pertinent provisions of the "Manual of Accident Prevention in Construction" issued by the Associated General Contractors of America, Inc., and shall maintain an accurate record of all cases of death, occupational disease, and injury requiring medical attention or causing loss of time from work, arising out of and in the course of employment on work under the contract. Each Contractor alone shall be responsible for the safety, efficiency, and adequacy of his plant, appliances and methods, and for any damage or injury which may result from his failure or his improper construction, maintenance or operation.

## **5.5 Permits, Laws and Regulations**

5.5.1 The University will pay for all New Jersey Department of Community Affairs (DCA) building permits and fees, Passaic County Soil Conservation District permits and fees, licenses and governmental inspections necessary for the proper execution and completion of the work. The University will secure, provide and pay for the Water Allocation Permit.

The University will provide and pay for construction inspections required by code or the University with an independent testing agency possessing the necessary qualifications. The Contractor shall coordinate all required inspections with the Construction Manager and is responsible for the costs of inspections not required by the plans and specifications or applicable codes.

5.5.2 All work shall be done in accordance with the current New Jersey Uniform Construction Code. No work requiring inspections and approval of Construction Code Officials shall be covered or enclosed prior to inspection and approval by the appropriate code enforcement officials.

5.5.3 The Work under this Contract is exempt from local ordinances, codes and regulations as related to the building and the site on which it is located, except where construction could adversely affect adjacent property, utilities, public sidewalks

and/or streets. The Contractor shall coordinate his activities with municipal and/or highway authorities having appropriate jurisdiction.

5.5.4 Soil conservation measures are to be in accordance with Passaic County Soil Conservation District requirements.

5.5.5 All sewage disposal work shall conform to the regulations of the State Department of Environmental Protection and the Wayne Township Sewerage Authority.

5.5.6 It is each Contractor's responsibility to request and coordinate code required field inspections with the appropriate agency for the work they are providing. All inspection reports from authorities having jurisdiction must be provided to the the Construction Manager in a timely manner. If there is not a construction manager assigned to the project, the contractor is responsible to request the inspections directly from the DCA. The construction manager or University are to receive copies of all DCA and public agency inspection reports. The University and Construction Manager are not responsible for delays in obtaining public agency inspections.

5.5.7 The New Jersey Department of Community Affairs (DCA) is the inspection agency responsible for code enforcement.

5.5.8 Consistent with subparagraph 5.4.4, the Contractor shall be responsible for and save harmless the University and its Consultants from all fines, penalties or loss incurred for, or by reason of, the violation of any municipal ordinance or regulation or law of the State while the said work is in process of construction.

5.5.9 As a result of a finding, by an appropriate Finder of Fact, that a Contractor caused a substantial violation of a State, local or federal statute or regulation, the University may declare the Contractor to be in violation or default of his Contract.

5.5.10 The Contractor shall comply with the Federal Occupational Safety and Health Act of 1970 and all of the rules and regulations promulgated thereunder and NJ Worker and Community Right to Know Act (PL1983 c. 315 N.J.S.A. 34:5A-1, et seq).

5.5.11 Prior to the start of any crane equipment operations, the Contractor shall make all necessary applications and obtain and pay for all required permits from the Federal Aviation Administration (F.A.A.). The sequence of operations, timing and methods of conducting the work shall be approved by the F.A.A. to the extent that it relates to their jurisdiction.



5.5.12 The Contractor shall comply with all applicable federal, state and local laws and regulations, and all conditions of permits controlling pollution of the environment. Necessary precautions shall be taken to prevent pollution of streams, lakes, ponds, wetlands, ground water and reservoirs with fuels, oils, bitumen's, chemicals or harmful materials and to prevent pollution of the atmosphere from particulate and gaseous matter. All sewage disposal work shall conform to the regulations of the State Department of Environmental Protection.

5.5.13 The contractor shall comply with the University's regulation regarding a Safe Work Permit when performing work in a confine space, hot work, line breaking and lockout/tagout work. The permit, Appendix A, is to be completed by the contractor and approved by the University's Capital Planning, Design and Construction department prior to the start of work.

5.5.14 The contractor shall protect and preserve the operation of existing utilities identified in the contract drawings and encountered during the course of work. Prior to excavating or drilling, the contractor is required to request markout services from public utilities. Additionally, 48 hour notice must be provided to the University to mark out University-owned utilities that may be encountered during excavation.

## **5.6 Storage, Cleaning and Final Clean Up**

5.6.1 The Contractor shall confine his apparatus, the storage of his equipment, tools and materials, and his operations and workmen to areas permitted by law, ordinances, permits, Contract Limit Lines as established in the Contract Documents, the rules and regulations of the University, or as ordered by the Construction Manager, and shall not unreasonably encumber the site or the premises with his materials, tools and equipment.

5.6.2 The Contractor shall at all times during the progress of the Work keep the premises and the job site free from the accumulation of all refuse, rubbish, scrap materials and debris to the end that at all times the premises and site shall present a neat, orderly and workmanlike appearance. This shall be accomplished daily by the removal of such material, debris, etc. from the site and the University's premises. All loading, cartage, hauling, dumping and dumpsters shall be at the General Construction Contractor's expense. Rubbish and debris shall not be thrown from building openings above the ground floor, but shall be contained within chutes.

5.6.3 At the completion of the Work, the Contractor shall remove all his tools, construction equipment, machinery, temporary staging, falsework, formwork, shoring,

bracing, protective enclosures, scaffolding, stairs, chutes, ramps, runways, hoisting equipment, elevators, derricks, cranes, etc. from the project site.

5.6.4 Should the Contractor not promptly and properly discharge his obligation relating to cleaning and/or final cleanup, the University shall have the right to employ others and to charge the cost thereof to such Contractor, after first having given him a three (3) working day written notice of such intent.

5.6.5 Should the Construction Manager determine that the Contractor's lack of cleanup creates a safety violation or dangerous condition, the Construction Manager will authorize cleanup on an emergency basis to be accomplished immediately and the Contractor shall be responsible for all associated costs.

5.6.6 The Contractor's responsibilities in final clean up include:

- a. Removal of all debris and rubbish.
- b. Removal of marks, stains, fingerprints, other soil, dust or dirt from painted, decorated or stained woodwork, plaster or plasterboard, metal, acoustic tile and equipment surfaces.
- c. Removal of spots, paint and soil from resilient, glazed and unglazed masonry and ceramic flooring and wall work.
- d. Removal of temporary floor protections. Clean, wash, shampoo or otherwise treat and/or polish all finished floors as directed.
- f. Complete "Sanitary" cleaning of all interior surfaces, including but not limited to, doors, frames and hardware, window frames, glazing and hardware, bathrooms and fixtures, furniture, floor and wall surfaces ready for occupancy.
- g. Cleaning of all exterior surfaces including, but not limited to, door and window frames, glass and glazing.
- h. Restoration of all landscaping, roadway and walkways to pre-existing condition. Damage to trees and plantings shall be repaired in the next planting season, and such shall be guaranteed for one year from date of repair and/or replanting.

- i. Removal of all pollutants of any kind or nature deposited or remaining on the site or upon the University's property as a result of the work on this project.
- j. Construction filters at all air handling units will be replaced in accordance with the manufacturers' recommendations to maintain the equipment in good working order while it is being used during construction. These filters will be changed during balancing and again at substantial completion.

5.6.7 All construction equipment, materials or supplies of any kind, character or description of value belonging to the Contractor which remain on the job site for more than thirty (30) days from the date of the Certificate of Final Completion issued by the University to the Contractor, shall become the absolute property of the University. It will be disposed of in any manner the University deems reasonable and proper. Disposal costs will be the responsibility of the Contractor.

5.6.8 Hazardous materials shall be disposed of in a manner consistent with State and Federal law governing each specific material, and shall not be placed in dumpsters.

## **5.7 Tie-Ins and Interruptions to Existing Buildings**

5.7.1 All tie-ins of mechanical and electrical services to existing buildings shall be scheduled and coordinated in advance with the Construction Manager and done at a time convenient to the University so as not to unreasonably interfere with its operations. All tie-ins shall be performed during off hours unless otherwise approved by the University.

## **5.8 Working Hours and Non Workdays**

5.8.1 Regular working hours shall be 7:00 AM to 3:30 PM, Monday through Friday. Changes thereto may be granted with written approval of the University. Any work required to be performed after regular working hours or on Saturdays, Sundays, or legal holidays as may be reasonably required consistent with contractual obligations, shall be performed without additional expense to the University. The Contractor shall obtain approval of the Construction Manager for performance of work after regular working hours or on non regular work days at least 24 hours prior to the commencement of overtime, unless such overtime work is caused by an emergency.

- 5.8.2 There may be certain academic or student activities that require the temporary suspension of construction activity that disrupts the campus environment by noise or other activity. This time will be identified by the University at least two weeks in advance and will not exceed 1 hour for every month of construction. The contractor is not entitled to additional compensation for these interruptions.

## **5.9 Contract Drawings and Specifications**

5.9.1 The Architect/Engineer will furnish, as approved by the Contracting Officer, additional instructions for the proper execution of the Work. All Drawings and instructions issued by the Architect/Engineer shall be consistent with the Contract Documents and reasonably inferable therefrom. The Work shall be executed in conformity therewith. The Contractor shall do no work without proper Drawings and instructions. In issuing such additional instructions, the Contracting Officer will have the authority to make minor changes in the work, not involving extra cost. Drawings and instructions with such supplementary details as may be furnished or approved, are understood to be included and a part of the Contract.

5.9.2 Where certain aspects or components of the work are shown in complete detail, but not repeated in similar detail in other areas of the Drawings, or there is an indication of continuation, the remainder being only shown in outline, the Work shown in detail shall be understood to be required in other like portions of the project.

5.9.3 The Contractor shall not, at any time after the execution of his contract, make any claims whatsoever based upon insufficient data or incorrectly assumed conditions, nor shall he claim any misunderstandings with regard to the nature, conditions or character of the Work to be done under the contract and he shall assume all risks resulting from any changes in conditions not caused by or under the control of the University, or its representative(s), which may occur during the progress of the Work.

5.9.4 The Contractor shall prepare a schedule of the proposed progress of the work, in accordance with Article 9.

## **5.10 Shop Drawings, Product Data and Samples**

5.10 Submittals, Shop Drawings, Product Data and Samples

5.10.1 Within two (2) weeks after the Contract Award Meeting, the Contractor shall submit to the Construction Manager a submission schedule which shall outline each required submittal by Specification Section, and its submission date so as to comply with the overall project schedule and so as to cause no delay in his own work or that of any other Contractor. Payment requisitions will not be processed by the University until the shop drawing submission schedule has been submitted and approved by the Construction Manager.

5.10.2 If the Contractor desires to make any deviations or changes from the requirements of the Contract Documents, he shall obtain the consent of the Construction Manager to such changes, in writing, before submitting shop drawings showing such proposed changes. All shop drawings submitted by the Contractor shall have been checked and approved by him before submission. The Drawings and Specification references shall be noted on all submissions. Failure to comply with these instructions will be sufficient reason to return such shop drawings to the Contractor without any action being taken.

5.10.3 The Contractor shall not use the contract drawings for preparation or submittal of shop drawings. All shop drawings sizes shall be in multiples of 9" x 12" (e.g. 18" x 24"; 24 x 27"; 24" x 36" etc). as approved by the Architect/Engineer.

5.10.4 In instances where sepias, shop drawings and/or erection drawings, of a scale larger than the contract drawings, are prepared by the Contractor, such drawings and sepias will be accepted.

5.10.5 Shop drawings, product data, samples, requests shall be submitted for review and action by the Architect/Engineer. These submittals will be reviewed and returned with one of the following Architect/Engineer action markings:

- Approved, no exceptions taken.
- Approved As Noted.
- Approved As Noted, resubmission required.
- Rejected.

The technical specifications for construction provide by the Architect or Engineer may provide for additional action markings.

5.10.6 The Contractor's submittals shall follow the following distribution procedure:

1. Product Data

- Eight (8) copies to the Architect/Engineer
- One (1) copy to the Construction Manager.

Following review, the Architect/Engineer will return four (4) copies to the Contractor, and two (2) copies to the Construction Manager.

## 2. Shop Drawings

- One(1)original and seven (7) prints to the Architect/Engineer
- One (1) copy to the Construction Manager

Following review, the Architect/Engineer will return four (4) copies to the Contractor and two (2) copies to the Construction Manager.

## 3. Samples

- Three (3) samples to the Architect/Engineer
- One (1) sample to the Construction Manager

Following review, the Architect/Engineer will return one (1) sample to the Contractor, and one (1) copies to the Construction Manager.

5.10.7 The Architect/Engineer will review all submittals with reasonable promptness (generally two (2) weeks). The Contractor shall make all corrections required by the Architect/Engineer and resubmit, in a timely manner, for final approval where so instructed by the Architect/Engineer's notations. The Architect/Engineer will only review two (2) submissions of any given submittal. Additional reviews will be at the expense of the Contractor. All submittals requiring resubmission will be provided within two (2) weeks.

5.10.8 The Architect/Engineer reviews shop drawings and submittals for design intent and general compliance with the information given in the contract documents. Deviations from contract documents shall be clearly identified in the submittal and are not reviewed nor accepted unless identified. Contractor is responsible for dimensions, quantities, fabrication, processes, and techniques of construction, coordination of its work with that of all other trades and satisfactory performance of its work.

## 5.11 Substitutions

5.11.1 The Contract Documents are intended to produce a building of consistent character and design. All components of the building including visible items of mechanical and electrical equipment have been selected to form a coordinated design in relation to the overall appearance of the building. The Architect/Engineer will judge the

design and appearance of the proposed substitutes on the basis of their suitability in relation to the overall design of the project, as well as for their intrinsic merits. The Architect/Engineer will not approve as equal to materials specified proposed substitutes which, in the Architect/Engineer's sole opinion, would be out of character, obtrusive or otherwise inconsistent with the character or quality of design of the Project. In order to permit coordinated design of color and finishes the Contractor shall, if required by the Architect/Engineer, furnish the substituted material in any color, finish, texture or pattern which would have been available from the manufacturer originally specified, at no additional cost to the Owner.

5.11.2 In the event the Contractor should propose a substitution for the specified equipment or materials, it shall be his responsibility to submit proof of equality, and to provide and pay for any tests which may be required by the Construction Manager in order to evaluate such proposed substitution, as well as the cost of the substitution evaluation and any redesign required of the Architect/Engineer caused by such substitution. Substitutions will be considered only within 30 calendar days after contract award. Subsequent requests will be considered only when, through no fault of the Contractor, the specified products are not available.

5.11.3 Where manufacturers or a specific manufacturer's products are specified in the technical specifications, other manufacturers or similar products by other manufacturers, capable of equivalent appearance, performance and quality as defined by the contract documents and design intent will be accepted, unless in the documented opinion of the Architect/Engineer or University the substituted products are not deemed "equivalent"..

## **5.12 Subcontractor Approvals**

5.12.1 The Contractor shall submit a list of Subcontractors and material suppliers for approval by the Construction Manager and Architect/Engineer. Approval by the Construction Manager and Architect/Engineer of a Subcontractor or material supplier shall not relieve the Contractor of the responsibility of complying with all provisions of the Contract Documents. The approval of a Subcontractor does not imply approval of any material, equipment or supplies.

5.12.2 The Contractor shall coordinate and supervise the work performed by his Subcontractors so that the work is carried out without conflict between trades and so that no delay to the general progress of the Work occurs. The Contractor and all Subcontractors shall at all times offer each trade, any separate Contractor, or the Owner, every reasonable opportunity for the installation of Work and the storage of materials.

### **5.13 Miscellaneous Drawings, Charts and Manuals**

5.13.1 Rough-in Drawings: Plumbing, HVAC, Electrical, Fire Protection and Automatic Temperature Controls (ATC), and other equipment items requiring utility service connections, shall have their respective shop drawings accompanied by manufacturer's certified rough-in drawings, indicating accurate locations and sizes of all service utility connections.

5.13.2 Sleeve and Opening Drawings: Prior to installing service utilities or other piping, etc. through structural elements of the building, the Contractor shall prepare and submit to the Construction Manager, for approval by the Architect/Engineer, accurate dimensioned drawings indicating the positions and sizes of all sleeves and openings required to accommodate his work and installation of his piping, equipment, etc. and all with reference to the established dimensional grid of the building. Such drawings must be submitted in sufficient time to allow proper coordination with reinforcing steel shop drawings and proper placing in the field.

5.13.3 Upon substantial completion the Contractor shall provide valve charts for plumbing, HVAC, and fire protection systems. Contractor shall also provide, Electrical and HVAC control panelboard directories and Diagrams: The complete set of typewritten valve charts, panelboard directories, diagrams and lists shall be protected and fastened to the inside of the panel or under framed glass, installed in appropriate designated equipment rooms, as directed. The Contractors shall also furnish one line diagrams identifying changes as specified or required, as well as such color coding of piping and wiring as per as-built conditions.

5.13.4 Access Doors: Each Contractor requiring access for mechanical, plumbing, fire protection or electrical components that are concealed behind permanent walls or inaccessible ceilings, shall furnish shop drawings indicating items requiring access for Architect/Engineer approval and shall be responsible for providing access doors to such areas.

### **5.14 Coordination Drawings**

5.14.1 The Contractor, or the HVAC Contractor, if the project employees multiple Prime Contractors, shall have the responsibility to take the lead in the development and submission of coordinated drawings whenever two or more trades are occupying common space. Coordinated drawings shall include all structural, equipment, piping, electrical, ductwork, ceilings and other elements and their dimensions both in plan and elevation, and shall be completed within sixty (60) days of Contract Award.



5.14.2 The General Construction, Structural, Plumbing and Fire Protection, and Electrical Contractors shall participate in the coordination process with the HVAC Contractor consistent with the Project Schedule.

5.14.3 Coordination drawings shall highlight for Architect/Engineer resolution conflict areas not resolvable by the Contractors. The Architect/Engineer shall review these drawings with reasonable promptness and return to each Contractor, through the Construction Manager.

5.14.4 Construction conflicts that result from the lack of coordinated shop drawings shall be remedied at no additional cost to the University.

## **5.15 As-Built Drawings**

5.15.1 The Contractor shall keep one set of reproductions on the project site at all times, marked "AS-BUILT". He shall, during the course of the project, mark these drawings with colored pencils to reflect any changes, as well as dimension the location of all pipe runs, conduits, traps, footing depths or any other information not already shown on the Drawings or differing therefrom. All buried utilities outside the building shall be located by a metes and bounds survey performed by a licensed surveyor who shall certify as to its accuracy. The marked-up drawings and surveys shall be made available to the Construction Manager and Architect/Engineer at all times during the progress of the Work, upon request. The "AS-BUILT" drawings shall include the work of principal Subcontractors as well.

5.15.2 The Contractor shall submit the "AS-BUILT" documents to the Architect/Engineer, whether altered or not, with a certification as to the accuracy of the information thereon at the time of contract completion and before final payment is made to the Contractor. After acceptance by the Architect/Engineer the Contractor shall furnish two (2) sets of all shop drawings used for "AS-BUILT" documentation.

All as-built drawings shall be labeled "AS-BUILT" above the title block and dated.

"AS-BUILT" documents shall include 'marked up' drawings and AutoCAD disks.

## **5.16 Operation and Maintenance Manuals**

5.16.1 One (1) hard bound copies and four (4) electronic copies of all operation and maintenance manuals, as identified and described in the Contract Specifications, shall

be furnished by the appropriate Contractors. Operation and maintenance manuals shall include a complete description of all systems and equipment, diagrams indicating connectors, oiling requirements, types of lubricants to be used, and method of operating and maintaining equipment. A list of spare parts for maintenance shall be included. This information will be given to the Construction Manager who will transmit to the Owner and the Architect/Engineer.

5.16.2 The manuals shall be submitted to the Architect/Engineer for review and approval at the earliest date possible but in all cases prior to final acceptance. Included within the manuals shall be a list of names, addresses and telephone numbers of Subcontractors involved in the installation and firms capable of performing services for each mechanical item.

5.16.3 As a pre-condition to the acceptance of the facility for beneficial use, the Contractor shall provide a "throw-away" copy of operations and maintenance manuals to allow the University to operate the equipment prior to receiving the hard bound copies.

## **5.17 Openings, Channels, Cutting and Patching**

5.17.1 The Contractor shall be responsible for furnishing and setting sleeves, built-in items, anchors, inserts, etc. for his work and for all cutting, fitting, closing in and adjusting his work in new and/or existing construction, as required for the completed installation.

5.17.2 The General Construction Contractor shall build recesses, channels, chases, openings and flues, and shall leave or create holes where indicated on drawings, or where required for piping, electrical conduits, switchboxes, panel boards, flues and ducts, or any other feature of the HVAC work. Other required recesses, channels, chases, openings, etc., shall be furnished to the Architect/Engineer with complete detailed drawings for all chases and openings required in connection with such work in ample time to allow the construction work to proceed without interruption or delay.

5.17.3 The General Construction Contractor shall close, build in and finish around or over all openings, chases, channels, pockets, etc., after installation has been completed.

## **5.18 Tests and Inspections**

5.18.1 The Contractor shall notify the Construction Manager, in writing, of all work required to be inspected, tested or approved. The notice shall be provided no later than

72 hours prior to the scheduled inspection, test or request for approval. The Contractor shall bear all costs of such inspections, tests or approvals, except for inspections as stated in Article 5.5.

5.18.2 When mechanical, electrical or other equipment is installed, it shall be the responsibility of the installing Contractor to maintain, warrant and operate it for such period of time as required by the Contract Documents, as necessary for the proper inspecting and testing of the equipment and for adequately instructing the University's operating personnel. All costs associated with the maintenance, warranty, operations, inspection and testing of equipment, and instruction of University personnel shall be borne by the Contractor installing the equipment. All tests shall be conducted in the presence of, and upon timely notice to, the Construction Manager prior to acceptance of the equipment.

5.18.3 When the Contracting Officer, Construction Manager or Architect/Engineer requires special or additional inspections, testing or approvals the Construction Manager will, in writing, direct the Contractor to secure the service for such special or additional inspections, testing or approvals and the Contractor shall give notice as provided for in 5.18.1. In the event such special or additional inspections or testing reveal a failure of the work to comply with the terms and conditions of the Contract, the Contractor shall bear all costs thereof, including all costs incurred by the University made necessary by such failures; otherwise the University will bear all costs and an appropriate Change Order will be issued. The University reserves the right to independently inspect with its own agency.

5.18.4 The Contractor shall acquire inspection or testing services using only those firms licensed and qualified to provide such services in the State of New Jersey, and approved by the University. Failure to use a firm that meets these requirements shall be grounds for rejection of the inspection or test as nonconforming.

5.18.5 All submittals of inspection and test reports or requests for approval shall be accompanied by a certification signed by the Contractor attesting to his knowledge of the submittal, acceptance of its findings and acknowledging that the material tested meets the required standards and certifying the report's representation of the facts. Failure to provide the written certification shall be grounds for rejection of the submittal.

5.18.6 In addition to the above, the Contractor agrees to insert in all contracts for inspection and testing services the requirement for the inspection or testing firm to submit, in conjunction with the report to the Contractor, a copy of the report directly to the Construction Manager. The copy shall be held pending receipt of the Contractor's

certification of the report. Further, the Contractor agrees to require all reports to be submitted within fourteen (14) calendar days of the test or inspection.

5.18.7 Testing requirements for Contractor furnished and installed equipment, when such testing is required by code, Contract or the manufacturer shall be performed by a prequalified testing laboratory acceptable to the University at the Contractor's expense. The Construction Manager and University shall witness all tests.

## **5.19 Equipment and Material**

5.19.1 The Contractor warrants to the University and the Architect/Engineer that all materials and equipment furnished under the Contract will be new, unless otherwise specified, and that all work will be of good quality, free from faults, defects, and in conformance with contract documents. All work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective and rejected by the Construction Manager or the Architect/Engineer. If required by the Construction Manager or Architect/Engineer, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty shall not be limited by the provisions of other paragraphs herein.

5.19.2 Equipment and material submittals shall be transmitted to the Architect/Engineer through the Construction Manager for approval using the standard transmittal form provided. All material and equipment shall be installed in accordance with manufacturer's recommendations and requirements unless specifically noted otherwise by the architect or engineer.

5.19.3 The Contractor shall furnish and deliver the necessary equipment and materials in ample quantities and as frequently as required to avoid delay in progress of the Work and shall store them so as not to cause interference with the orderly progress of the project.

5.19.4 The Contractor shall furnish and pay for all necessary transportation, storage, scaffolding, rigging, water, labor, tools, light, power and all other means, materials and supplies for properly prosecuting the Work, unless expressly specified otherwise. The Contractor shall make arrangements to have representatives of his firm at the site to accept delivered materials. Neither the Construction Manager nor the University will be held responsible for damage, theft, or disappearance of Contractor's property.

5.19.5 The Contractor shall be responsible for OSHA requirements for the entire project, including OSHA requirements for temporary access to all floors. The

Contractor shall also be responsible for providing all hoists and lifts needed to get materials to all parts of the building.

5.19.6 All temporary access points and enclosures necessary for the loading of materials into or onto the building shall be constructed by the General Construction Contractor, removed by him, and the finishes restored, at an appropriate time designated by the Construction Manager. Locations of such access points shall be coordinated with and approved by, the Construction Manager.

5.19.7 Materials and supplies purchased by the contractor shall comply with the "Buy American Act," N.J.S.A. 52:33-1, which requires that domestic materials be acquired or used unless the Contracting Officer finds it is impracticable to make such requirement or that it would unreasonably increase the cost

5.19.8 No materials, equipment or supplies for the work shall be purchased by the Contractor or any Subcontractor subject to any lien or encumbrance or other agreement by which an interest is retained by the seller. The Contractor warrants, by signing his requisition for payment, that he has good and sufficient title to all such material, equipment and supplies used by him in the work, free from all liens, claims or encumbrances.

5.19.9 Wherever any material is specified in accordance with Federal Specifications, ASTM Specifications, American National Standards Institute Inc. Specifications, manufacturer's association specification standards, or other standards, the Contractor shall present, at the request of the Construction Manager, an affidavit from the manufacturer certifying that the material complies with the particular standard specification. Where necessary and requested or specified, supporting test data shall be submitted to substantiate compliance. All tests required in support of the affidavit shall be at the cost of the Contractor.

## **5.20 Soil Borings**

Soil borings, test pits or other subsurface information may be secured by an independent Contractor for the University prior to design and construction of a project and included in the Contract Documents for the Contractors use. The Contractor assumes full responsibility for interpretation of the information provided.

## 5.21 Excavation

5.21.1 All excavations required under the Contract shall be considered unclassified down to the depths and elevations indicated in the Contract Documents and include the excavation and removal of all soil, shale, rock, boulders, unstable soil, root mass, organic materials, existing foundations, footings, slabs, fill etc.

5.21.2 The University shall engage the services of a Soils Engineer at the Contractors cost, who will test for required bearing values of all excavations and sub-grades, and monitor compaction of backfill operations. Reports of his findings shall be filed with the Construction Manager, in duplicate, within 24 hours of each test. The Soils Engineer shall have a current license in the State of New Jersey and be approved by the Construction Manager.

5.21.3 Should the required bearing value at the indicated bottom elevation be disapproved by the Soils Engineer engaged by the Contractor, the Contractor shall perform additional excavation below the levels required to reach approved bearing. Additional compensation may be requested by the Contractor consistent with Article 14.

5.21.4 Removal of materials beyond the indicated subgrade elevations or dimensions without specific direction of the Contractor's Soils Engineer and approval of the Construction Manager shall be deemed unauthorized. Unauthorized excavation as well as remedial work directed by the Construction Manager shall be at the Contractors expense, at no additional cost to the University.

5.21.5 Under footings, foundation bases or retaining walls, extend bottom elevation of footing or base to bottom of unauthorized excavation, without altering required top elevation. Lean concrete or compacted crushed stone may be used to bring elevations to proper position, when acceptable to the Contractor's Soils Engineer and the Construction Manager.

5.21.6 When excavation has reached subgrade elevations, the Contractor shall notify the Construction Manager, who with the Soils Engineer, will make an inspection of the conditions.

- a. If unsuitable bearing materials are encountered at required subgrade elevations, based upon compaction tests provided by the Contractor's Soils Engineer, excavation shall be carried deeper and replaced with approved material.

- b. Removal of unsuitable material and its replacement as directed, will be paid as indicated in Article 14, Changes In The Work.

5.21.7 Contractors shall comply with NJSA 14:2 in order to identify and safely excavate around underground utilities. This includes requesting Public Utility and University markouts. This includes compliance with the requirement that the contractor not operate any mechanized equipment within 24" of the wall of a marked underground utility unless the location has been previously verified by hand digging. Additionally, at all times throughout the course of the excavation, adequate physical support of all underground utilities shall be provided. Contractor shall immediately notify the Construction Manager once any unmarked utilities are encountered.

## **5.22 Inspection of Roadway Subgrades.**

5.22.1 The Contractor shall notify the Construction Manager forty-eight (48) hours prior to anticipated completion of all roadway subgrade work. The Construction Manager will request an inspection and report by the Contractor's Soils Engineer consistent with 5.21.2, to insure that the subgrade meets the compaction standards. All subgrades shall be proof-rolled for such inspection. The Contractor shall not proceed with the base course until the results of the compaction tests are approved by the Soils Engineer and the Construction Manager.

## **5.23 Watchman services.**

5.23.1 The Contractor shall provide watchman services during all non-working hours, including weekdays, weekends and holidays throughout the period of construction to adequately protect the Work, stored materials and temporary structures located on the premises, and prevent unauthorized persons from entering the construction site. If the Construction Manager determines that adequate protection is not being provided, he will direct the Contractor to increase the service at no additional cost to the University.

## **5.24 Separate Contracts**

5.24.1 The University may execute this project by awarding separate contracts, as per the Instructions to Bidders IB 1.2, the Work of which shall proceed simultaneously.

5.24.2 Each Contractor shall coordinate his operations with those of other Contractors.

5.24.3 Cooperation will be required of all Contractors, in the arrangements for the storage of materials and in the detailed execution of the Work.

5.24.4 Each Contractor, including his Subcontractors, shall keep informed of the progress and the details of the Work of other Contractors and shall notify the Construction Manager immediately in writing of the lack of progress or defective workmanship on the part of other Contractors as such may affect his work.

5.24.5 Failure of a Contractor to keep informed of the Work progressing on the site and failure to give notice of lack of progress or defective workmanship by others shall be construed as acceptance by him of the status of the Work as being satisfactory for proper coordination with and execution of his own Work.

5.24.6 The Contractor shall provide Critical Path Method scheduling services. Each Contractor (when more than a single Prime Contractor) shall incorporate and enforce the combined schedule as his own, and agrees to cooperate and coordinate his own operations in order to meet effectively all scheduled task deadlines as further described in Article 9.

## **5.25 Mutual Responsibility of Separate Contractors**

5.25.1 The Contractors shall cooperate with each other and secure the effective cooperation of the various craftsmen employed on the Work, so that no portion of the Work is delayed or improperly performed as a result of the failure of any workmen to properly and efficiently perform the tasks assigned them. Should it at any time appear that the progress of the Work is being delayed or adversely impacted by such failure, upon notice from the Construction Manager, the responsible Contractor shall immediately discharge the delinquent workers and employ others for the tasks.

## **5.26 Protection of Contractor's Property**

5.26.1 Each Contractor shall adequately secure and protect his own tools, equipment, materials, and supplies for which he is responsible, stored at the site for incorporation or which has been incorporated into the work. The contractor shall replace all material and equipment, which may be lost, misplaced or stolen at this contractors expense.

The University and Construction Manager assume no liability for any damage, theft or negligent injury to the Contractor's property.



## **5.27 Special Responsibilities of the General Construction Contractor-Separate Contracts**

Wherever the term General Construction Contractor is used herein, it is intended to mean either the Contractor for General Construction whenever separate prime contracts are awarded or the Sole Contractor if there are no other prime contracts engaged on the Project.

5.27.1 The Contractor for General Construction shall have the responsibility for being the supervisor, manager, overseer, coordinator and expeditor of all his Subcontractors and of the total construction process and of its parts, in accordance with the Contract Documents. As used in this Article, the term "Contractor" shall be deemed to mean "Contractor for General Construction".

5.27.2 The Contracting Officer relies upon the organization, management, skills, cooperation and efficiency of the Contractor to supervise, direct, control and manage the Work so as to deliver the completed project in conformance with the Contract Documents and within the scheduled time.

5.27.3 The Contractor shall include in his bid an amount sufficient to cover the cost of furnishing necessary administrative and supervisory forces to coordinate his own work and that of his Subcontractors and with other Contractors.

5.27.4 The Contractor shall be responsible for locating and laying out the Building and all of its parts at the site, in strict accordance with the Drawings, and shall accurately establish and maintain dimensional control. He shall employ and pay for the services of a competent and licensed New Jersey Engineer or Land Surveyor (who shall be approved by the University), to perform all layout work, and to confirm the elevations of excavations, footing base plates, columns, walls and floor and roof lines, and furnish to the Construction Manager, as the Work progresses, certificates that each of such levels is as required by the Drawings. The plumb lines of walls, etc., shall be confirmed and certified by the Surveyor as the Work progresses. The footprint of the Project on the property shall be accurately delineated by the Surveyor upon completion of the Work.

5.27.5 The Engineer or Surveyor, in his layout work, both on the Site and within the Building, shall establish all points, lines, elevations, grades and bench marks for proper control and execution of the Work. He shall establish a single permanent Bench Mark as directed to which all three (3) coordinates of dimensional control shall be referred. He shall verify all University-Furnished topographical and utility survey data and all points, lines, elevations, grades and bench marks; should any discrepancies be found between information given on Drawings and the actual Site or field conditions, the

Contractor shall notify the Construction Manager of such discrepancy, and shall not proceed with any Work affected until receipt of written instructions from the Construction Manager.

5.27.6 The Contractor shall be responsible for providing and maintaining unobstructed traffic lanes on the designated Construction Access Routes either shown on the Contract Drawings or reasonably required so as to perform the Work and shall provide and maintain all reasonably required safety devices. He shall provide additional materials, their grading and compaction, the removal of ice, snow, mud and debris so as to provide and maintain the safe and general serviceable condition of the access road/roadbed, as well as pedestrian walkways.

5.27.7 The Contractor shall erect and maintain one (1) sign at the Project Site, approximately 8'-0"x4'-0" as shown on the Drawings and located as directed by the Architect/Engineer. Painting shall be done by a professional sign painter, with two (2) coats of exterior paint, colors, letter face and layout as shown. No other signs will be permitted at the Site. Upon completion of the Project, and when directed by the Construction Manager, the Contractor shall remove the sign. Should there be a change in the listed officials; the Contractor shall make appropriate changes to the sign at his expense.

5.27.8 The Contractor, at his expense, shall provide and maintain necessary temporary dust proof partitions around areas of work in any existing building or in new building areas as directed by the Construction Manager.

5.27.9 The Contractor shall supply all necessary dumpsters for trash and debris, trash chutes and staging for same, as well as supply and maintain temporary enclosures, scaffolding for access points, and all temporary fire protection per OSHA requirements.

5.27.10 The Contractor shall comply with all clean-up and final clean-up requirements put forth in Article 5.6 and shall accept the responsibility for performance of same.

5.27.11 The Contractor accepts sole responsibility for repair of uncontrolled dislodgement, cracking, delamination and peeling of finished surfaces such as concrete, precast concrete, cast and natural stone, masonry, millwork, plaster, glass and applied finishes such as paint, and special coatings, within the Contract scope and the limits of specified guarantee periods, regardless of the cause.

5.27.12 The Contractor shall be responsible for replacement of all broken glass installed by him or his Subcontractors, after same has been installed, no matter by whom or what caused, and shall replace all broken, scratched or otherwise damaged glass before the

completion and acceptance of the Work. He shall wash all glass on both sides at completion, or when directed, removing all paint spots, stains, plaster, etc.

5.27.13 Nothing herein is intended to limit the right of the Contractor to seek payment from the party who is responsible for the damages.

5.27.14 The Contractor shall be responsible to the University for the Watchman services set forth in Article 5.23.

5.27.15 The Contractor shall be responsible for the removal of snow, ice, and/or standing water from metal decking and concrete slabs or any elevated surfaces within the boundary of the job site.

## **5.28 Standby Personnel**

5.28.1 Each Contractor who is obligated to employ standby personnel by trade agreement to which he is a party shall determine and include all such costs thereof in his bid proposal. No Contractor shall, at any time, make a claim to the University for costs relating to standby maintenance or standby supervision. The University, under no condition, will entertain or consider a claim in this regard unless such claim is made as a result of the University's unreasonable refusal to accept Beneficial Occupancy of the completed project.

## **5.29 Control Wiring**

5.29.1 The Contractor who furnishes and installs mechanical equipment, including but not limited to heating, ventilating and air conditioning systems, ATC systems, boilers, remote monitoring systems, and so forth, which systems require electrical control wiring, shall include the cost of all such control wiring and its installation in his proposal. The Contractor shall employ a Subcontractor approved by the State for all such control wiring. The Subcontractor shall provide a Final Certificate of Electrical Inspection of the control wiring.

## **5.30 Patents**

5.30.1 The Contractor shall hold and save the University and its officers, agents, servants, employees and Construction Manager harmless from liability of any nature of kind, including cost and expenses for, or on account of, any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the contract, including its use by the University, unless otherwise specifically stipulated in the contract documents.

5.30.2 License and/or royalty fees for the use of a process which is authorized by the University must be reasonable, and paid to the holder of the patent, or his authorized licensee, direct by the University and not by or through the Contractor.

5.30.3 If the Contractor uses any design, device or materials covered by letters, patent or copyright, he shall provide for such use by suitable agreement with the University of such Patented Or Copyrighted design, device or material. It is mutually agreed and understood that, without exception, the contract prices shall include all royalties or costs arising from the use of such design, device or materials, in any way involved in the work. The Contractor and/or his sureties shall indemnify and save harmless the University from any and all claims for infringement by reason of the use of such patented or copyrighted design, device or materials or any trademark or copyright in connection with work agreed to be performed under this contract, and shall indemnify the University for any cost, expense or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the work or after the completion of the work.

### **5.31 Guarantee.**

5.31.1 Neither the Final Certification of Payment, nor any provision in the Contract Documents, nor partial or entire occupancy of the premises by the University shall constitute an acceptance of work not done in accordance with the Contract Documents. Nor shall it relieve the Contractor of liability with respect to any expressed or implied warranties or responsibility for faulty materials or workmanship. The University will give notice of observed defects with reasonable promptness. The surety's obligation shall continue beyond final acceptance to the extent that the Contractor would have had such obligation.

5.31.2 All guarantees, bonds, etc. required by the Specifications shall be in writing in requisite legal form, and delivered to the Contracting Officer at the time of submission of requisition for final payment. All Subcontractor's guarantees, bonds, etc., shall be underwritten by the Contractor, who shall obtain and deliver same to the Contracting Officer before the Work shall be deemed finished and accepted. Contractor Warranty period for all furnished labor & material of not less than one year will commence at substantial completion, regardless of when material or equipment is put in service.

5.31.3 The Contractor shall, at his own expense and without cost to the University, within a reasonable time after receipt of written notice thereof, make good any defects in material or workmanship which may develop during stipulated guarantee periods, as well as any damage to other work caused by such defects or by their repairs. Any other defects in material or workmanship, not reasonably observable or discovered during the guarantee period, shall be repaired and/or replaced at the Contractor's

expense and such shall be completed within a reasonable time after written notice is given to the Contractor.

5.31.4 It is anticipated that certain permanent equipment will have to be activated during construction of the project to support construction operations. This might particularly be the case with respect to service elevators and those portions of the permanent heating system which might be required to provide temporary heat for interior finish operations. Regardless of when equipment is activated for use during construction, all equipment warranties must extend for the time periods required in these Specifications starting as of the date of Beneficial Occupancy or final acceptance (whichever is the earliest) of the Project by the University. The Contractor shall include in his bid, all costs necessary to provide extended warranties as necessary for any equipment which may be activated prior to final building acceptance of the University.

### **5.32 University's Right to Audit**

5.32.1 The University reserves the right to audit the records of the Contractor in connection with all matters related to this Contract. The Contractor shall maintain all documentation related to products, transactions or services under this contract for a period of five years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller or University upon request.

"Generally Accepted Accounting Principles" are defined as follows: Accounting records must identify all labor and material costs and expenses, whether they be direct or indirect. The identity must include at least the project number for direct expenses and/or account number for indirect expenses. All charges must be supported by appropriate documentation, including, but not limited to canceled checks.

5.32.2 The Contractor shall develop, maintain and make available to the University or Construction Manager on request such schedule of quantities and costs, progress schedules, payrolls, reports, daily logs, time sheets, estimates, change orders, all original estimates, takeoffs, and other bidding documents, all Subcontractors and supplier contracts and changes, all records showing all costs and liabilities incurred or to be incurred in connection with the project including all Subcontractor and supplier costs, all payment records and all records showing all costs incurred in labor and personnel of any kind, records and other data as the University or Construction Manager may request concerning work performed or to be performed under this Contract.

5.32.3 The Contractor acknowledges and agrees that no claim for payment which is premised to any degree upon actual costs of the Contractor will be recognized by the University except and to the extent that such actual costs are substantiated by records required to be maintained under these provisions.

5.32.4 The Contractor shall require each Subcontractor, to the extent of the work to be performed by the Subcontractor, to be bound to the Contractor to the terms of the University Contract Documents and to assume toward the Contractor all the obligations and responsibilities which the Contractor assumes by the documents to the University and its contractual parties.

5.32.5 The Contractor shall not grant to any Subcontractor terms more favorable than those extended to the Contractor by the University.

5.32.6 The Contractor shall not permit any Subcontractor to subcontract work without the express written approval of the Construction Manager.

5.32.7 The Contractor acknowledges and agrees that the Contractor's obligation to establish, maintain and make available records and the University's right to audit as delineated herein, shall extend to actual costs incurred by Subcontractors in performing work required under the Contract or any supplemental modification thereto. The Contractor shall require in all subcontracts that all Subcontractors establish, maintain and make available to the University all records as defined and delineated herein relating to all work performed by the Subcontractors including work performed by Sub-Subcontractors.

#### **END OF ARTICLE FIVE**

## ARTICLE 6

### TEMPORARY FACILITIES, UTILITIES AND SERVICES

#### 6.1 Field Offices

6.1.1 Each Contractor shall provide, on site, and maintain during the Construction, a suitable weather-tight insulated field office conveniently located for his continuous use and shall maintain therein a complete set of Contract Documents including Drawings, Specifications, shop drawings, as-built drawings, CPM schedules, Change Orders, logs and other details and correspondence. The field office shall contain approved and safe heating facilities and lighting, convenience outlets, fire extinguisher, telephone, answering and fax machine.

6.1.2 Each Contractor shall provide and pay for his own telephones and service.

6.1.3 The Contractor shall also provide, on site, suitable, separate, weather-tight, insulated field office facilities for the use of University/Construction Management staff and for regular job meetings for the entire duration of the Contract, including closeout up to ninety (90) days beyond substantial completion. The contractor will provide three (3) line telephone service, electrical hook-up and high speed data connection, DLS at a minimum which may share one of the telephone lines.

The field office shall be a construction trailer with a box size 60' long and 12' wide. Interior shall have paneled walls, vinyl floors, tiled ceilings, fluorescent lighting capable of maintaining average illumination of 20 fc at desk height, convenience receptacles, heating and central air conditioning to maintain a uniform indoor temperature of 68 to 72 degrees Fahrenheit, and operating windows. Layout shall include two (2) offices at both ends of the trailer with a conference room in the center and plan table. Toilet facilities within the office are not required. Include fire extinguishers, two (2) office desks with desk chairs and two (2) drawer file cabinets/drawers, four (4) five (5) drawer lateral file cabinets, conference table with twenty (20) folding chairs, conference room 8' marker board, fax machine, hot and cold water cooler (provide monthly service), microwave, single serve style coffee machine and supplies, digital networkable black and white copy machine with fax, scanning and printing capabilities with not less than twenty-five (25) copies per minute copying capability, four (4) each 20" tall trash receptacles, all furniture and equipment will be in new or near new condition. Provide daily emptying of trash receptacles and weekly cleaning of the floors. Outside doors shall have hasps with padlocks.

The field office shall include field fabricated wood stairs, railings and handicap ramp. The General Construction Contractor shall remove the field office at a time directed by the Construction Manager and restore or complete any site paving, finishes or landscaping.

The University will provide telephones, data lines and equipment.

## **6.2 Parking Requirements**

6.2.1 Contractor parking areas will be assigned and provided to each Contractor. Specific parking requirements are detailed in the Supplemental General Conditions section and/or site logistics plan.

## **6.3 Access, Storage and Staging Areas**

6.3.1 The Construction Manager will provide for Contractor access, storage, trailer and staging and laydown areas within the Contract Limit Lines. The site layout is indicated on the site plan of the Contract Documents.

6.3.2 Each Contractor shall provide and maintain, for his own use, and as he deems necessary, suitable and safe temporary storage and tool shops. They shall be maintained properly and removed at the completion of the Work. Locations shall be approved by the Construction Manager. The building may be used for shops and store rooms, with the approval of the Construction Manager. The Contractor making use of these areas shall be responsible for correcting defects and damage caused by such use and for keeping these areas clear and clean.

6.3.3 Each Contractor shall maintain these areas daily to be clean and safe.

## **6.4 Temporary Toilet Facilities**

6.4.1 The General Construction Contractor shall provide suitable temporary toilets, at an approved location on the site, prior to the start of any field work. They shall comply with State and Local laws. The General Construction Contractor shall be responsible for maintenance, removal and relocation as described hereinafter.

6.4.2 Toilets shall be serviced by a firm qualified and experienced in such function.

6.4.3 Toilets shall be of the portable chemical type, mounted on skids, with screened enclosures with doors, each having a urinal and a water closet.



6.4.4 One (1) toilet unit shall be provided for each fifteen (15) employees.

6.4.5 Each unit shall be serviced at least twice a week, including removal of waste matter, sterilizing, recharging tank, refilling tissue holders, and thorough cleaning and scrubbing of entire interior, which shall be maintained in a neat and clean condition.

6.4.6 Contractors shall not use the bathroom and toilet facilities in the University's buildings.

## **6.5 Temporary Drives and Walks**

6.5.1 The General Construction Contractor shall be responsible for keeping all roadways, drives and parking areas within or proximate to the site free and clear of debris, gravel, mud, snow or any other site materials by insuring that all measures reasonably necessary are taken to prevent such materials from being deposited on such surfaces including, as may be appropriate, the hosing or cleaning of vehicle wheels, etc. prior to their leaving the construction site. Should such surfaces require cleaning, the General Construction Contractor shall clean these surfaces without additional cost to the University. The General Construction Contractor will be held accountable for any citations, fines, or penalties imposed on the University for failing to comply with local rules and regulations.

6.5.2 Should the General Construction Contractor elect to construct the permanent driveways, parking areas or walks, other than general grading for temporary shop areas, he shall not do so without the approval of the Construction Manager. He shall not do so without having prepared the subgrade, as elsewhere required by the Specifications, nor will he be relieved from any responsibility for providing additional materials or from reworking the subgrade prior to completion, if so required to make the improvements conform fully with the Specifications.

6.5.3 Each Contractor shall obtain permission, in writing, from the Construction Manager before using any existing driveways or parking areas not specifically designated for such use in the Contract Documents for construction purposes. He shall maintain such driveways and areas in good condition during the construction period, and, at completion of the project, shall leave them in the same condition as at the start of the Work. Conditions before use should be carefully photographed or documented by the Contractor.

## **6.6 Temporary Water**

6.6.1 The Contractor, shall provide, protect and maintain an adequate valved water supply in a convenient location for the use of all contractors on the project during the period of construction, either by means of the permanent water supply line, or by the installation of a temporary water supply line. This water supply line shall be made available within fifteen (15) days after the written request has been made to the Contractor through the Construction Manager by any contractor requiring this service. If necessary, the water shall be chlorinated and filtered. All costs in providing water other than the cost of the water itself shall be borne by the Contractor. Associated electrical service and hookups shall be provided by the Contractor, and all costs for this electrical work will be borne by him. Should pumps be installed in connection with this water supply, electrical connections shall be provided and paid for by the Contractor.

6.6.2 Temporary water will be provided by the University at no charge to the Contractor, provided and to the extent it may be existing and available at the site immediately prior to commencement of and during construction. It is the obligation of any Contractor requiring temporary facilities to investigate and make specific arrangements with the Construction Manager for such facilities and to include in his proposal the cost of any additional facilities he may require for proper conduct of his work.

6.6.3 The Plumbing Contractor shall install his temporary and/or permanent water lines to the heating equipment in sufficient time to be available for supplying water for testing and operation of the heating system when needed.

6.6.4 The Plumbing Contractor shall be responsible to protect all water lines from damage or freezing, be they permanent or temporary. Should water connections be made to an existing line, the Plumbing Contractor shall furnish and install a positive shutoff valve.

## **6.7 Temporary Light and Power**

6.7.1 The Contractor shall extend electrical service to the project at locations approved by the Construction Manager. Temporary electrical service shall be independent of the existing permanent service. Initial temporary service shall be three (3) phase or single phase depending upon closest availability to the project. Temporary light and power installations, wiring, and miscellaneous electrical hardware shall meet the National Electric Code. This service shall be installed within fifteen (15) days after written request has been made to the Electrical Contractor by the Construction Manager or any Contractor requiring such service. When the Contract calls for three-phase permanent service, the Electrical Contractor shall install same

within a reasonable time to permit use by other Contractors. Electrical characteristics shall be provided to meet all temporary light and power reasonably required as herein and hereinafter specified or as included under Supplemental General Conditions. The Electrical Contractor shall provide the necessary distributing facilities and meter, and shall pay the cost of temporary services with the exception of the cost of energy.

6.7.2 The Electrical Contractor shall extend the temporary service into the building and shall provide receptacles and lighting as described hereinafter. Power outlets shall be fed independently of the temporary lighting system. Where service of a type other than herein mentioned is required, the Contractor requiring same shall install and pay all costs of such special service. The size and incoming service and main distribution switch and panel shall be sized according to NEC requirements.

6.7.3 The Electrical Contractor shall provide GFI protected outlets to be located on each floor for use by the Contractors. A minimum of 10 outlets shall be located on each floor, these shall be placed as directed by the Construction Manager. Location of outlets shall be provided to keep Contractor's extension cords to a 50' maximum length.

6.7.4 The Electrical Contractor shall provide temporary light fixtures at a maximum of 30 feet on centers in large areas. Each temporary light fixture shall contain a 150 watt lamp. The Electrical Contractor shall provide temporary light fixtures in all individual rooms, one (1) lamp for each 500 square feet or fraction thereof of room area (for example: a room 30' by 30' is equal to 900 square feet and would require two (2) light fixtures).

6.7.5 The Electrical Contractor shall provide all electrical service for operation of elevator equipment during construction, as well as for permanent installation.

6.7.6 The Electrical Contractor shall provide and pay for all maintenance, servicing and supervision of the service and distribution facilities, but not the energy, which will be paid for by the University. He shall also connect, maintain and service any electrical equipment installed by the HVAC Contractor which may be necessary for maintaining heat whenever heat is required in the building whether from the temporary or permanent system.

6.7.7 There shall be no additional cost to the University because of standby requirements due to conflict in the normal working hours of such trades. Where overtime work by any Contractor necessitates standby electricians or other trades, such Contractor shall be responsible for making appropriate arrangements, financial and otherwise, for such service at no cost to the University.

6.7.8 The Electrical Contractor shall observe the requirements of the Federal Occupational Safety and Health Act of 1970 with regard to temporary light and power.

6.7.9 The Electrical Contractor shall be responsible to provide temporary electrical service for Contractors, Construction Manager and University construction field office trailers, as called for.

6.7.10 Temporary electric heaters shall not be used for construction operations.

6.7.11 Should any Contractor desire additional outlets or service of a greater capacity or of different characteristics or for any other power equipment, he shall arrange with the Electrical Contractor for the installation and pay all costs involved.

6.7.12 Any conflict arising among any of the Contractors with regard to financial obligations for standby personnel or standby supervisor employees, should they be required by trade agreement, shall be resolved between the parties involved.

6.7.13 All temporary power and lighting shall be operable 24 hours a day and 7 days a week for the entire project duration.

## **6.8 Temporary Heat**

6.8.1 The building, or major unit thereof, shall be considered "GENERALLY ENCLOSED" when (a) the exterior walls have been erected; (b) a temporary roof or permanent roof is installed and in water-tight condition; and (c) temporary or permanent doors have been hung and window openings closed with either permanent or temporary weather-tight enclosures (cardboard or woven materials shall not be used; however, any impervious transparent material reasonably intended for such purpose is acceptable). A major unit of the building as referred to herein shall be: (1) an entire separate structure; or (2) a fully enclosed wing which shall have a floor area equal to at least fifty percent (50%) of the total floor area of the project, by walls and roof.

6.8.2 Before the building is "GENERALLY ENCLOSED", if the outside temperatures shall fall below 40 degrees F at any time during the day or night, and heat is required for work in progress, as determined by the Construction Manager, or for its protection, the respective Contractors responsible for such phase of the Work shall furnish, at their expense, acceptable means to provide sufficient temporary heat to maintain a temperature of not less than 45 degrees F for that portion of the work for which they are directly responsible.

6.8.3 As soon as the Construction Manager determines that the building, or a major unit thereof, is "GENERALLY ENCLOSED", the responsibility for supplying

working area heat shall rest with the General Construction Contractor. The General Construction Contractor shall furnish and pay the cost of use and maintenance of LP gas heater(s) and fuel (electric heaters are not permitted) or other means acceptable to the Construction Manager to produce sufficient heat to maintain a temperature of not less than 45 degrees F within the enclosed area of the building at all times, and shall remove the temporary heating system when no longer required, as directed by the Construction Manager. The General Construction Contractor shall be held responsible for providing temporary heat and for damages as a result of freeze-ups. He shall remove soot, smudges, and other deposits from walls, ceilings, and all exposed surfaces, which are the result of the use of heating equipment during the period of its use for supplying temporary heat. He shall not do any finish work until the areas are properly cleaned. The General Construction Contractor will provide or arrange, at his expense, supervision of the heating equipment at all times.

6.8.4 The General Construction Contractor shall not assume that the permanent building heating system or any part thereof will be available for furnishing temporary heat. However, should the permanent heating system become available and the General Construction Contractor requests its use to provide temporary heat, he shall make such request to the Construction Manager in writing. If the request is approved, the General Construction Contractor shall be responsible for the maintenance, extended warranties, cost of fuel and all costs associated with the use of the system and the preparation required to turn the system over to the Owner in "new" condition at the completion of the project

6.8.5 All temporary heating equipment shall be NFPA approved and connected to approved flues to the atmosphere. Gas cylinders within the building shall not exceed 100 lb. capacity, shall have Interstate Commerce Commission approval and shall be fitted with a permanent cap to protect the valve when not in use. Heaters shall be approved by a recognized testing laboratory and must be equipped with a positive shut-off safety valve. Cylinders and heaters shall stand at least 6 feet apart and be connected with two (2) braided neoprene hoses that will withstand 250 psi test pressure. The use of electric heaters for temporary heat is not permitted.

6.8.6 Storage of cylinders within the building will not be permitted at any time. Fire extinguishers shall be provided by the General Construction Contractor on each floor where heaters are used, and the area shall be adequately ventilated.

6.8.7 Contractors responsible for providing temporary heat shall train at least two (2) dependable persons to oversee temporary heat operations.

6.8.8 When the building or major unit thereof, including the mechanical equipment room area, is "GENERALLY ENCLOSED" as hereinabove defined and

appropriate notice has been given, it will be the obligation of the Construction Manager to so acknowledge at a job conference, at the site. The minutes of the meeting will contain such acknowledgment. If the Construction Manager and Architect/Engineer at the site concur that the building or major unit is properly "GENERALLY ENCLOSED", then as of the date of the job conference at which notice was given, the supply of heat, the cost of fuel and the payment for repair of damage created by freeze-ups shall become the responsibility and obligation of the General Construction Contractor. Confirmation of the time that such responsibility and obligation becomes effective will be incorporated in the minutes of the job conference. Copies of the minutes will be sent to all Contractors engaged in the project, who shall give due attention to their obligations in this connection.

6.8.9 Should any trade be required to supervise and maintain the heating equipment or any components thereof, the payment for the services of the supervisors and/or maintenance personnel shall be the responsibility of the General Construction Contractor. Should the proper type of electric service not be available to supply electrical energy for the operation of the temporary heating system in supplying temporary heat, it shall be the responsibility of the Electrical Contractor to provide a motor-driven generator unit of sufficient capacity, voltage, and phasing to provide uninterrupted service for the operation of the heating system. The General Construction Contractor shall pay the cost of all fuel consumed in the operation of the generating unit for supplying temporary heat. The Electrical Contractor shall provide uninterrupted electrical service to the heating, water and pumping equipment.

6.8.10 If additional heat is required beyond that specified herein, the Contractor requiring such additional heat shall arrange and pay the additional costs thereof including fuel, at no expense to the University.

## **6.9 Temporary Enclosures**

6.9.1 Whenever necessary, in order to maintain proper temperatures, protection against the weather or for the prosecution of the Work or for the protection thereof, the General Construction Contractor shall furnish and maintain temporary enclosures for all openings in exterior walls, roof and chimneys, that are not enclosed with permanent materials. Temporary wood doors shall be provided at door openings. Temporary enclosures shall be removed by the General Construction Contractor when directed by the Construction Manager.

## **6.10 Temporary Ramps, Stairs and Ladders**

6.10.1 The General Construction Contractor shall furnish, install and maintain temporary ladders and stairs between floors immediately following deck installation, as

required for access by all on site Contractors. The General Construction Contractor shall provide and maintain ramps for construction egress, to provide safety and access at areas of dissimilar elevation. The General Construction Contractor shall remove temporary facilities prior to completion of finished work, when directed by the Construction Manager.

#### **6.11 Temporary Construction Fencing**

6.11.1 The General Construction Contractor shall install and maintain site fencing as specified and detailed in the construction site plans. Fencing shall be removed by the General Construction Contractor when directed by the Construction Manager.

#### **6.12 Stormwater Protection**

6.12.1 The General Construction Contractor shall protect the building from stormwater infiltration until permanent stormwater systems are in place and operational. The use of temporary pumps, and tie-ins shall be utilized if necessary.

#### **6.13 Temporary Fire Extinguishers**

6.13.1 Each Contractor shall furnish and place temporary fire extinguishers, #20 dry chemical type, throughout the construction site in areas where cutting, burning, grinding, welding or soldering are performed.

#### **6.14 Temporary HVAC Filters**

6.14.1 In the instance that the permanent HVAC system is operable and activated during construction at the request of the Construction Manager, the Mechanical Contractor shall, at the cost to the General Construction Contractor unless otherwise designated, furnish and install construction filters on all return ducts and in all air handling units until Substantial Completion.

### **END OF ARTICLE SIX**

## ARTICLE 7

### SUBCONTRACTORS

#### 7.1 Contractor-Subcontractor Relationship

7.1.1 The Contractor shall, within thirty (30) days after award of the contract, notify the Construction Manager in writing, of the names of Subcontractors, other than those required to be listed in the bid, proposed to perform the principal parts of the work.

7.1.2 If the University has reasonable objection to any proposed person or firm, the Contractor shall substitute another Subcontractor to which the University has no reasonable objection. Under no circumstances shall the University be obligated for additional cost due to such substitution.

7.1.3 The Contractor shall make no substitution for any Subcontractor, person or firm previously selected and approved, without written notification to the Construction Manager and receipt of the University's written approval for such substitution.

7.1.4 The Contractor accepts full responsibility to the University for the acts and omissions of its Subcontractors, and of persons and firms either directly or indirectly employed by the it, equally to the extent that it is responsible for the acts and omissions of persons and firms directly or indirectly employed by it, and the Contractor accepts full responsible for the proper performance of its Contract irrespective of whether the Work is performed by its own forces or Subcontractors engaged by it.

7.1.5 Nothing contained in the Contract Documents shall create any contractual relationship between any Subcontractor and the University.

7.1.6 By an appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor assumes toward the University, the Construction Manager, the Architect/Engineer and the other Contractors. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreement with his Sub-Subcontractors.



7.1.7 The Contractor, and all Subcontractors, agree that, in the employment of both skilled and unskilled labor, preference shall be given to residents of the State of New Jersey, if such labor force is available.

7.1.8 Approval by the Architect/Engineer of a Subcontractor or material supplier shall not relieve the Contractor or the Subcontractor or material supplier of the responsibility of complying with all provisions of the Contract Documents. The approval of a Subcontractor does not imply approval of any material, equipment or supplies.

#### **END OF ARTICLE SEVEN**

## ARTICLE 8

### RELATIONSHIP BETWEEN THE UNIVERSITY AND CONTRACTORS

#### 8.1 The University's Right to Perform Work

8.1.1 The University may, and reserves the right to, enter upon the premises at any and all times during the progress of the Work, or cause others to do so for the purpose of installing any apparatus or carrying on any construction not included in this Contract or for any other reasonable purpose.

8.1.2 The Contractor shall examine all work or materials installed by other Contractors or Subcontractors, the installation of which may affect the Work of its contract, and should the same be imperfect, incorrect or insecure, it shall notify the Construction Manager immediately in order that the same be rectified.

#### 8.2 Contract Time and Notice to Proceed

8.2.1 Contract time shall commence on the date of receipt, by the Contractor of a written Notice to Proceed, issued by the Contracting Officer. The Contractor agrees that contract work shall commence no later than ten (10) calendar days after receipt of the Notice to Proceed.

8.2.2 The Contractor shall perform no work under this Contract until the required evidence of financial responsibility, insurance certificates and bonds have been furnished and the Notice to Proceed issued by the Contracting Officer.

8.2.3 The Notice to Proceed may be issued by the University at its convenience. Any right of the Contractor to an adjustment because of a delay in issuing the Notice to Proceed shall be determined in accordance with Article 2.

#### 8.3 Mutual Responsibility

8.3.1 The Contractor shall afford the University and the other Contractors/Subcontractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work. The Contractor shall coordinate his work with adjacent work and with other trades, so that no portion of the work is delayed or not properly undertaken due to such lack or failure of cooperation.

8.3.2 The Contractor shall lay out and install its work at such time or times and in such manner as to comply with the schedule requirements of Article 9 and so as to facilitate the general progress of the Work.

8.3.3 Before completion of the work, should it be deemed necessary by the University to have any work whatsoever done, in or about the building or structure, other than as provided for in the Contract Documents, the Contractor shall fully cooperate with such other individual or firm as the University may employ to do such Work, so that such additional Work may be performed without unreasonable interference. The Contractor shall afford said other individual or firm all reasonable facilities for doing such Work. The Contractor shall make no claim to the University, as a result of such Work.

8.3.4 The University shall at all times have access to the work whether it is in preparation or in progress, and the Contractor shall provide proper facilities for such access and for inspection. The University reserves the right, at its option, to employ the services of a professional consultant to evaluate any phase of the Work deemed to be in the best interest of the University. No such evaluation shall in any way relieve the Contractor of its responsibilities under the Contract. The Contractor shall cooperate with the consultants and provide access to the Work and facilities for inspection. Should any portion of the Work or material be found deficient or defective, or not produced within the Contract Schedule, the Contractor shall pay the applicable fees of such consultants and be responsible for replacing the deficient or defective work or as required by the provisions stated elsewhere herein.

8.3.5 Any costs caused by defective or ill timed work shall be borne by the Contractor deemed responsible by the University.

8.3.6 If the Contractor should destroy, damage or disturb the Work of any other Contractor in or about the building or premises, the Contractor shall immediately either replace the destroyed work and make good the damaged and disturbed work to the satisfaction of the Construction Manager and Architect/Engineer, or shall reimburse the Contractor whose Work he has destroyed, damaged or disturbed for the expense of replacing such Work.

8.3.7 Should a Contractor sustain any damage through any act or omission of any other Contractor having a Contract with the University, or through any act or omission of a Subcontractor of any such Contractor, or through any act or omission of the Architect/Engineer, the Contractor shall have no claims against the University for such damage, but shall have a right of action to recover such damages from the causing party or parties, in accordance with 8.5, which is included in the Contract with all other such Contractors and the Architect/Engineer.

## **8.4 Substantial Completion**

8.4.1 At the request of the University, the Construction Manager, the Architect/Engineer, the Contractor and the University representative shall make a joint inspection of the Work, and if all determine that the Work is substantially completed, the Construction Manager shall give Notice of Substantial Completion for Beneficial Use. Such Notice shall in no way relieve the Contractor of any contractual obligation or in any way relieve the Contractor from responsibility to promptly complete the Work including punch list items as described hereinafter.

8.4.2 The Guarantee period for equipment, workmanship and materials shall commence on the date of written acknowledgment of the Notice of Substantial Completion for Beneficial Use of the project or portions thereof so certified or from the time of completion and acceptance of equipment, work or materials in question, whichever is later, unless specified to the contrary as a condition of partial acceptance.

8.4.3 The University shall have the right to take possession of or use any completed or partially completed part of the work. Prior to such possession or use, the University and/or Construction Manager will furnish the Contractor an itemized "Punch List" of work remaining to be performed or corrected on such portions of the project as are to be possessed or used by the University, provided that failure to list any item of Work shall not be deemed an acceptance of any Work under the Contract. While the University has such possession or use, the Contractor, notwithstanding the provisions of the Article 5.5 "Permits, Laws and Regulations," shall be relieved of the responsibility for the loss or damage to the work resulting from University possession or use. If such prior possession or use by the University delays the progress of the Work or causes additional expense to the Contractor, an equitable adjustment in the contract time of completion will be made by the Construction Manager and the Contract shall be modified in writing accordingly.

## **8.5 Contractor's Claims for Damages**

8.5.1 Any claims made by the Contractor against the University for damages or extra costs are governed by and subject to the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq. as well as all the provisions in this Contract.

8.5.2 Should the Contractor who by his own acts, error or omissions, damage or unnecessarily delay the Work of the University or other Contractors by not properly cooperating with them, or by not affording them reasonably sufficient opportunity or facility to perform work as may be specified, by reason of which act, error or omission of the said Contractor, the Construction Manager, the Architect/Engineer or any other Contractor shall sustain damages, including delay damages, during the progress of the work hereunder, then and in that event, the Contractor agrees to pay all costs and expenses incurred by the damaged Contractor(s), Construction Manager or

Architect/Engineer due to any such delays and/or damages whether by settlement, compromise or arbitration and the injured Contractor, Construction Manager or Architect/Engineer shall have a right of redress enforcement in court directly against the culpable party. In addition the Contractor further agrees to defend, indemnify and save harmless the University from all such claims and damages. Nothing contained in this paragraph shall be construed to relieve the Contractor, Construction Manager, or Architect/Engineer from any liability or damage sustained on account of such acts, errors or omissions.

8.5.3 The University will not be liable to the Contractor for any damages or extra costs caused by any acts or omissions as specified in this Article.

## **8.6 Contracting Officer's Right to Accelerate**

8.6.1 If, based on his observation, or a written report by the Construction Manager or Architect/Engineer regarding the Contractor or a written report of the Contractor regarding another Contractor, the Construction Manager is of the opinion that the Contractor on this project is failing to coordinate its work with the work of others or is delaying the project, the Contracting Officer may issue a directive to the delinquent Contractor as the situation may require including an order to accelerate as provided in paragraph 8.6.2 herein. The University, however, shall not be liable for any damages suffered by the Contractor by reason of another Contractor's default, delinquency, or timing of performance.

8.6.2 The Contracting Officer through the Construction Manager may order and direct the Contractor responsible for delay as described in 8.6.1 or as may be apparent as a result of his observation of the Work, to accelerate that Contractor's Work at any particular place or places by increasing his forces, working overtime and/or on Saturdays, Sundays and holidays as may be required to enable others to carry on with their Work in accordance with the Project Progress Schedule. The cost of such acceleration efforts shall be borne entirely by the Contractor.

8.6.3 Should the Contractor not advance the project consistent with the directives or acceleration notices issued, the University may contract portions of the work with another contractor and backcharge the delaying Contractor.

## **8.7 Time of Completion, Delay, Bonus and Liquidated Damages**

8.7.1 In the event of the failure of the Contractor to complete the said work within the time(s) stated in the contract documents, the Contractor shall be liable to the University for Liquidated Damages in the amount shown in the *Supplemental Instructions for Completing Proposal Forms*, per calendar day until Substantial Completion and Beneficial

Occupancy for the entire project and/or defined project milestones is obtained by the University. The said Liquidated Damages shall be a consequence to the Contractor for the loss to the University of the beneficial use of the premises in a completed state of construction, alteration or repair, as the case may be, and for, but not limited to, added administrative costs, temporary lodging, transportation, telephone / data service, and security service to the University on account of the delay. Any such costs, for which the Contractor is liable, may be deducted by the University from any monies due or to become due to the Contractor. Additionally, if the work is not completed by the date(s) fixed for completion or in the days allowed for completion, there shall be a deduction from the contract price for any moneys paid by the University to other contractors for completion of the project.

8.7.2 It is hereby understood and mutually agreed by and between the Contractor and the University that the date of the beginning, the dates of required intermediate milestones, and the time for completion, as specified in the Contract Documents are ESSENTIAL CONDITIONS of this Contract.

8.7.3 The Contractor agrees that the Work shall be prosecuted regularly, diligently, and uninterruptedly at such rate of progress as will insure full completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and the University that the time for the completion of the Work herein is a reasonable time for the completion of the same, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality. If the Contractor shall neglect, fail or refuse to complete the Work within the time herein specified, or any proper extension thereof granted by the University, then the Contractor does hereby agree, as a part consideration for the awarding of this Contract, to pay the University the amount specified in paragraph 8.7.1 above, as a consequence for such delay, for each and every calendar day that the Contractor may be held in default after the stipulated date in the Contract for completing the work, or for failing to accomplish work in accordance with the milestone schedule, if such causes other related work to be accomplished out of logical sequence.

8.7.4 The said amount is fixed and agreed upon by and between the Contractor and the University because of the impracticality and the extreme difficulty of fixing and ascertaining the actual damages the University would in such event sustain, and said amount is agreed to be the amount of damages which the University would sustain and said amounts shall be retained from time to time by the University from current periodic estimates.

8.7.5 It is further agreed that 'Time is of the Essence' of each and every portion of this Contract and of the length of time fixed for the performance of any act

whatsoever; and where under the Contract additional time is allowed for the completion of any Work the new time limit fixed by such extension be the essence of this Contract.

8.7.6 The Contractor shall not be charged with Liquidated Damages when the University determines that the Contractor is without fault and the Contractor's reasons for a requested time extension are acceptable to the University; provided further, that the Contractor shall not be charged with Liquidated Damages when the delay in the completion of the Work is due:

- a. To any preference, priority or allocation order duly issued by the University.
- b. To unforeseeable cause beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God, or of the public enemy, acts of the University, acts of another Contractor in the performance of the Contract with the University which acts are contrary to the terms of such contract, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and severe weather, or extension of time approved by the University;
- c. To any delays of Subcontractors or suppliers occasioned by any of the causes specified in subsections a. and b. of this article

8.7.7 The Contractor shall, within five (5) days from the beginning of such delay as identified in 8.7.6 unless the Contracting Officer shall grant a further period of time prior to the date of final settlement of the Contract, notify the University in writing of the causes of the delay. The Contracting Officer with the assistance of the Construction Manager shall first ascertain the facts and the extent of the delay and shall notify the Contractor within a reasonable time that good cause has or has not been shown to warrant the granting of such extension.

## **8.8 Suspension of Work**

8.8.1 The University shall have the right to defer the beginning or to suspend the whole or any part of the work herein contracted to be done, whenever, in the opinion of the Contracting Officer, it may be necessary or expedient for the University to do so. If the Contractor is delayed in the completion of the work by act, neglect, default of the University, Architect, or of any other party employed by the University upon the work, by changes ordered in the work, by strikes, lockouts, fire, unusual delay by common carriers, unavoidable casualties, by any cause beyond the Contractor's control or by any other cause which the Contracting Officer shall decide to justify the delay, then for all

such delays and suspensions the Contractor shall be allowed one day additional to the time herein stated for each and every day of such delays so caused in the completion of the work. The same is to be determined by the Contracting Officer for similar allowances of extra time to be made for such other delays the Contracting Officer may determine to have been caused by the University. No such extension shall be made for any one or more of such delays unless within three (3) working days after the beginning of such delay a written request for additional time shall be filed with the Contracting Officer.

8.8.2 For those delays caused by the acts, neglect or default of the University, the Contractor shall be entitled to an upward adjustment in the contract price to compensate the Contractor for in accordance with Article 14 of the General Conditions. For all other delays, the Contractor shall not be entitled to extra compensation or damage from the University other than an extension of time. The Contractor shall not be entitled to any damages or extra compensation from the University on account of any act, neglect or default by the Architect or any other party retained by the University. The Contractor shall not be entitled to any additional damages or extra compensation from the University on account of any work performed by the University or any other Contractor or the Architect/Engineer or any other party, or by reason of any delays whatsoever, whether caused by the University or any other party.

## **8.9 Indemnification**

8.9.1 The Contractor shall assume all risk of and responsibility for, and agrees to indemnify, defend and save harmless the University, the Construction Manager and its employees from and against, any and all claims, demands, suits, actions, recoveries, judgments and costs and expenses in connection therewith on account of the loss of life, property or injury or damage to the person, body or property of any person or persons whatsoever, resulting from the performance of the project or through the negligence of the Contractor or through any improper or defective machinery, implements or appliances used by the Contractor in the project, or through any act or omission on the part of the Contractor or his agents, employees or servants, which shall arise from or result directly or indirectly from the work and/or materials supplied under this Contract. This indemnification obligation is not limited by, but is in addition to, the insurance obligations contained in this Contract.

8.9.2 In any and all claims against the University, the Construction Manager or the Architect/Engineer or any of their agents or employees by any employees of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Article 8.9 shall not be limited in any way as to the amount or type of



damages, compensation or benefits payable by or for the Contractor or any Subcontractor under Worker's or Workman's Compensations Acts, Disability Benefit Acts, or other Employee Benefit Acts.

8.9.3 The contractor shall be responsible for, and shall at its own expense, defend itself against any and all suits, claims, losses, demands or damages of whatsoever kind or nature, arising out of or in connection with any act or omission of its employees, agents or contractors, in the performance of its obligations under this Agreement.

8.9.4 The University is an institution of higher education of the State of New Jersey. This agreement entered into by the University shall be subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq. and the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq.

8.10 Contractor further agree as follows:

The Contractor acknowledges and agrees (i) that the role of Construction Manager is to function solely on behalf of, and for the benefit of the Owner, (ii) that the Contractor waives all claims, whether in contract, tort or otherwise, that it may now or hereafter have against the Construction Manager, (iii) that the Construction Manager shall be an additional insured on the insurance policies of the Contractor, and that all such policies shall contain a waiver of subrogation in favor of the Construction Manager and, (iv) that the Trade Contractor shall defend, indemnify and hold harmless Owner and Construction Manager from any and all claims, demands, and suits (including, but not limited to suits for bodily injury and property damage) in any way arising out of or related to their respective Contracts or alleged failure of Contractor to perform its responsibilities or obligations.

The Contractor further acknowledges that it must, at its own expense work cooperatively with all other contractors on site to coordinate its Work with the Work of contractors, including modifying its schedule and activities. To further such coordination it must, when requested by the Construction Manager, submit to the Construction Manager, a current updated copy of its detailed schedule to demonstrate the status of such coordination and, if the Construction Manager deems it necessary, to modify its schedules and operations as, and in the manner required by the Construction Manager, and to execute its Work in the manner shown on the revised schedule. It is agreed that any such modifications required by the Construction Manager or any resulting Work shall not result in any claims against the Construction Manager or the Owner, and all such claims are waived. While the Construction Manager may have the right to take such action, in no respect shall the Owner or the Construction Manager be obligated to do so.

**END OF ARTICLE EIGHT**

## ARTICLE 9

### CONSTRUCTION PROGRESS SCHEDULING

#### 9.1 Schedule Preparation

9.1.1 The Contractor shall provide all scheduling services as detailed in these General Conditions.

9.1.2 The Contractor's work shall be progressed consistent with the contract dates included in the Contract, the milestone schedule included in the Contract Documents and the approved Construction CPM Schedule.

#### 9.2 Contractors Scheduling Responsibility

9.2.1 The Contractor shall prepare a Critical Path Method (CPM) schedule utilizing Primavera Project Planner software or approved equivalent Applications for Payment will not be processed by the University until the Contractor's CPM schedule has been submitted to and reviewed and accepted by the Construction Manager. Alterations, replacements or repairs to site cannot be made until the Contractor's schedule is approved, unless otherwise agreed to by the University. This submission shall be no later than fifteen (15) days after the award of the Contract.

9.2.2 The Contractor's CPM schedule based upon the Contractor's logic and time estimates shall indicate all activities with a maximum duration of 14 calendar days, all significant features of the work, including the placing of orders and anticipated delivery dates for equipment and material items, submissions and approvals of shop drawings and all work activities to be performed including start dates, completion dates and overall duration of each activity.

9.2.3 Seasonal weather conditions shall be considered in the planning and scheduling of work which is influenced by high or low ambient temperatures, so that contract work is completed within the allotted contract time.

In addition, appropriate allowances shall be made for anticipated time losses due to normal rain and snow conditions by statistically expanding the estimated time duration for weather sensitive activities.

#### 9.3 Contractors' Adherence to Schedule

9.3.1 The Contractor shall furnish sufficient labor, construction plant and equipment to insure the prosecution of the work in accordance with the project CPM

schedule. If the completion time for any significant job does not come within the time allowed by the project CPM schedule, the sequence schedule of jobs and/or the time for performance of jobs shall be revised and resubmitted for approval, by the Contractor showing accomplishment through concurrent operations, additional manpower, additional shifts, overtime, etc., until he has assured that the Contract completion date will be met. No additional charges to the University will be allowed for overtime, additional manpower, equipment, additional shifts, etc., (except as may be provided elsewhere in the Contract) if such expediting procedures or measures are necessary to meet the Contract milestones, CPM schedule and/or completion date.

9.3.2 The Contractor agrees that he will make no claim for, and have no right to, additional payment or extension of time for completion of the work, or any other concession because of any misinterpretation or misunderstanding on his part of the project CPM schedule, his failure to attend the pre-bid conference, or because of any failure on his part to fully acquaint himself with all conditions relating to the project CPM schedule and the manner in which it will be used on the project or because of any other Contractor's failure to participate properly in the development of the schedule or to perform his contract work in accordance with the schedule.

#### **9.4 Monthly Schedule/Coordination Meetings:**

9.4.1 Each month the Contractor shall conduct a scheduling and coordination meeting on the job site with all sub-contractors, the Construction Manager, the Architect and Engineer, and members of the University's Capital Planning, Design and Construction Department. The purpose of this meeting is to review the Contractors construction progress as compared to the approved project CPM schedule. The Contractor will be required to update the project CPM schedule based on current job status more frequently if deemed necessary by the Construction Manager.

9.4.2 The Contractor shall bring updated CPM schedule information for discussion at the schedule/coordination meeting. This information shall include:

- a. Actual activity start and completion dates.
- b. Status of outstanding shop drawing submittals or re-submittals for approval.
- c. Status of equipment and material purchase orders.
- d. Status of equipment and material delivery dates.
- e. Review of sequencing changes or changes in duration.

9.4.3 The Contractor shall report the progress actually achieved for each activity that was scheduled to be performed during the previous one (1) month, including the actual dates on which the work was performed. The Contractor agrees that this information constitutes the official historical record of project progress.

9.4.4 At each scheduling meeting, the Contractor shall document any current delays to work operations. In addition, the Contractor shall provide all available information regarding any potential delays which they anticipate (i.e., procurement delays, expected strikes, etc.). The Contractor shall be represented at the monthly scheduling meeting by his project manager who shall have complete authority to provide the information required for the development of the schedule update, documentation of past progress, and documentation of delays. Contractor and subcontractor representatives shall also be authorized to discuss at these meetings corrective action planned to overcome delaying conditions.

9.4.5 The Contractor shall update the project CPM schedule every month for submittal to the Construction Manager with the monthly Application for Payment. Payment requisitions will not be processed by the University until the Project CPM Schedule updates have been submitted to the Construction Manager, and reviewed and accepted by the University.

## 9.5 **Responsibility for Completion**

9.5.1 The Contractor agrees that whenever it becomes apparent that any scheduled activities fall behind schedule by ten (10) days or more, or the Contract completion date will not be met, he will take some or all of the following actions, dependent on the Construction Manager's approval, at no additional cost to the University:

- a. Increase construction manpower in such trades and numbers as will substantially eliminate, in the judgment of the Construction Manager, the backlog of work;
- b. Increase the number of working hours per shift, shifts per working days, working days per week, or the amount of construction equipment, or any combination of the foregoing sufficient to substantially eliminate, in the judgment of the Construction Manager, the backlog of work; and/or
- c. Reschedule activities to achieve maximum practical concurrence of accomplishment of activities.

## 9.6 **Adjustment of Contract Completion Time**

9.6.1 The contract completion time or times will be adjusted only for causes specified in this Contract. In the event the Contractor requests an extension of the Contract Completion Date, he shall furnish such justification and supporting evidence

as the Construction Manager requires to evaluate the Contractor's request. The Contracting Officer shall then make his finding of fact and advise the Contractor in writing thereof. If the Contracting Officer finds that the Contractor is entitled to any extension of the contract completion date under the provisions of this Contract, the determination as to the total number of days extended shall be based upon the currently approved calendar-dated project schedule and on all data relevant to the extension. Such data will be included in the next updating of the schedule.

9.6.2 Two (2) types of time extensions may be approved for this project as follows:

- (1) A total project time extension if delays which are determined to be beyond the control of the Contractor affect the main project critical path shown on the project CPM schedule thereby directly extending the final project completion date.
- (2) A concurrent project time extension in those instances where it is found that specific delays beyond the control of the Contractor would have affected the final project completion date were it not for overriding delays due to other causes. If a concurrent project time extension is approved, it will be for additional time beyond that which, according to the Construction Manager's analysis, would be attributable to the Contractor. A concurrent project time extension will also excuse the Contractor from responsibility for any penalty for the period of time extension.

9.6.3 The Contractor acknowledges and agrees that the evaluation of project delays and determinations regarding project time extension will be based upon the project CPM schedule and the following criteria:

- (1) Float time shown on the project CPM schedule is not for the exclusive use of either the Contractor or the University. It is agreed that float time is available for use by all parties to facilitate the effective use of available resources and to minimize the impact of problems or Change Orders which may arise during construction. The Contractor specifically agrees that float time may be used by the University or its Representatives or Consultants in conjunction with their review of activities or to resolve project problems. The Contractor agrees that there will be no basis for a project time extension as a result of any project problem, Change Order or delay which only results in the loss of available positive float time on the project CPM schedule. The Contractor further agrees that there will be no basis for a claim for cost escalation for any activity which is

completed on or before its initially required late end date as shown on the initially approved project CPM schedule, regardless of the justifiability of any delaying factors which might have resulted in elimination of float time which was originally available for the activity. Float time shown on the project CPM schedule shall not be used arbitrarily by the Contractor in a manner which, in the opinion of the Construction Manager, unnecessarily delays any activity from proceeding in a way which is detrimental to the interests of the University. If the Contractor refuses to perform work which is available to him, the Contracting Officer may, regardless of the float time shown to be available for the work, consider the Contractor to be in violation of the Contract requirements. In such instances, the Construction Manager may, without prejudice to any right or remedy, and after giving the Contractor and his surety three (3) working days written notice to forthwith commence and continue with the work with diligence and promptness, terminate the employment of the Contractor by the issuance of a written notice to that effect to the Contractor and his surety at any time subsequent to three (3) working days thereafter, should they, or either of them, fail to comply with the directive of the original three (3) day notice mentioned above.

- (2) The Contractor agrees that no time extension will be granted for time lost due to normal seasonal weather conditions. In order to qualify for consideration for a time extension due to adverse weather conditions, it must be shown that the weather conditions during a given quarterly period (summer, fall, winter, spring) were more severe than the previous five year average for the project geographical area and, in addition, that these weather conditions critically impacted the final project completion date by delaying the performance of work on the main project critical path. If abnormal weather losses can be shown to have affected the project critical path, a non-compensable time extension will be considered for that portion of the proven weather related delays which exceeded the normal weather losses which should have been anticipated for the quarterly period in question.

No time extensions will be considered for any weather impacts which do not affect work on the main project critical path. The Contractor agrees that there will be no basis for a claim for any compensation resulting from any time extension issued for weather related delays.

- (3) In order for a given issue (i.e., delay, change order, etc.) to be considered as a basis for a total project time extension, it must meet both of the following criteria:
  - (a) It must be totally beyond the control of the Contractor and due to no direct or indirect fault of the Contractor; and
  - (b) It must result in a direct delay to work on the main project critical path.
- (4) The Contractor acknowledges and agrees that actual delays to activities which, according to project CPM schedule, do not directly affect the main project critical path do not have any effect on the contract completion date or dates and will not be the basis for a change thereto.
- (5) Concurrent delays are defined as two (2) or more delays or areas of work slippage which are totally independent of one another and which, if considered individually, would each affect the final project completion date according to the project CPM schedule. Where the Construction Manager determines that concurrent delays exist the Contractor acknowledges and agrees that the following criteria will be used to evaluate time extension:
  - (a) If the current project CPM schedule shows two (2) or more concurrent delays, with one (1) analyzed to be the responsibility of the University and the other analyzed to be the responsibility of the Contractor, a non-compensable time extension will only be considered if the excusable delay affects the main project critical path and if this delay is shown by a greater amount than the other concurrent delays when their impacts are independently considered. In this event, a compensable time extension will only be considered for that portion of time by which the excusable delay exceeds all concurrent non University-caused delays. For example, if an excusable impact delays the project by 100 days and concurrent contract caused slippage independently delays the final completion date by 90 days, a time extension will only be considered for a maximum of ten (10) days, provided the excusable delay is on the project critical path.
  - (b) If the project CPM schedule shows concurrent delays with some delays excusable and some the fault of the Contractor, and if the Contractor-caused delays are analyzed to be the main



determining impact to the project critical path, then there will be no basis for a total project time extension regardless of the nature of the concurrent excusable delays. A concurrent time extension, however, may be considered for that portion of the total project slippage which is shown on the project CPM schedule to be totally attributable to excusable delays.

(c) If a time extension request is made for concurrent delays which did not affect the project critical path, this must be clearly stated in the Contractor's time extension request, and all CPM activities which are claimed to have been affected by the cited delay shall be specifically identified with all applicable impact dates.

#### **END OF ARTICLE NINE**

## ARTICLE 10

### PAYMENTS

#### 10.1 Contractor Payments from the University

10.1.1 The University will make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on progress billings approved by the Construction Manager and Architect/Engineer. Within two (2) weeks after the Notice to Proceed, the Contractor shall furnish to the Construction Manager, for approval by the Contracting Officer, a Schedule of Amounts for Contract Payments, (Unit Schedule breakdown) of the total Contract Price showing the amount included therein for each principal category of the work, in such detail as requested, to provide a basis for determining progress payments. The schedule, as approved, shall be used only as a basis for the Contractor's estimates for progress payments and approval by the Contracting Officer does not constitute acceptance of the allocability and allow ability of costs to a specific element of work. The Contractor is cautioned that no payment requests will be approved until the unit schedule breakdown has been approved in writing, by the Contracting Officer. In the review of the Schedule of Values, the University, Construction Manager or Architect may request information from the contractor to substantiate the assigned value(s).

10.1.2 In his review of the Contractor's progress billings, the Contracting officer, at his discretion, may take into consideration material delivered on the site and preparatory work done. Materials delivered to the Contractor at locations other than the site may also be taken into consideration if the Contractor furnishes forms entitled "Contractors Summary of Stored Materials", and "Agreement and Bill of Sale Certification for Stored Materials", respectively and tags such materials as reserved for the University.

10.1.3 For projects less than \$100,000, the University will retain 10% of the approved application for payment until final completion and acceptance by the University of the Contract Work. After fifty percent (50%) of the work has been completed, upon application by the Contractor and provided the Contracting Officer determines that the Contractor's performance and progress have been in accordance with the milestone schedule and satisfactory, the University may make partial payments thereafter in full. If however, progress is not in accordance with the approved schedule, the Contracting Officer may elect to maintain retainage of 10% of approved invoices until final completion and acceptance of all Work covered by the Contract. Upon acceptance and completion of a clearly definable severable portion of the contract work for which the price is stated separately within the Contract, payment may be made in full at the discretion of the Contracting Officer, including retained percentages thereon, less authorized deductions.

For projects greater than \$100,000 the contractor has the choice of either agreeing to a retainage deduction from each monthly progress payment, or depositing bonds in the amount necessary to satisfy the amount that otherwise would be withheld under the contract. If a contractor chooses a retainage deduction from each monthly payment, then the retainage would be limited to 2% of the amount due on each partial payment.

Upon acceptance of the work performed pursuant to the contract for which the contractor has agreed to a retainage deduction, all amounts being withheld by the University must be paid in full to the contractor within 45 days of the final acceptance date agreed upon by the contractor and the University. If the University requires maintenance after acceptance of the work performed under the contract, the security must be obtained in the form of a maintenance bond.

All materials and Work covered by progress payments shall thereupon become the sole property of the University, but this provision shall not be construed as relieving the Contractor of sole responsibility for the care and protection of all materials and Work upon which payments have been made or the restoration of any damaged Work, or as waiving the right of the University to require the fulfillment of all of the terms and conditions of the Contract.

10.1.4 The University shall pay to the Contractor the total premiums paid by the Contractor to obtain the Performance and Payment Bonds. This payment shall be made at one time to the Contractor together with the first progress payment after the Contractor has (1) furnished the bonds (including coinsurance and reinsurance agreements, when applicable), (2) furnished evidence of full payment to the surety company, and (3) submitted a request for such payment. The payment by the University of the bond premiums to the Contractor shall not be in addition to the Contract Price.

10.1.5 The final amount due the Contractor under this Contract shall be paid only upon satisfactory completion, by the Contractor, of all contract close-out requirements, completion of a University audit of all contract values and payments, and after the Contractor shall have furnished the University with a release of claims against the University, arising by virtue of this Contract, other than claims in stated amounts as may be specifically excepted by the Contractor from the release.

10.1.6 Upon satisfying the above conditions the Contractor shall submit a properly executed invoice for final payment to the Contracting Officer who shall date stamp the invoice. This action shall constitute receipt of a properly executed invoice.

10.1.7 If, for any reason, the Contractor refuses to accept final payment, the project shall be closed out by the University unilaterally processing a final acceptance certificate. All residual funds will be held in escrow by the University until all claims of the University and all Contractors are satisfied.

10.1.8 In addition to other warranties required by provisions of the Contract and Specifications, the Contractor warrants that title to all work, materials and equipment covered by an Application for Payment will pass to the University, either upon incorporation into the construction or upon receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, claims, security interests and/or encumbrances. This provision shall not be construed as relieving the Contractor from sole responsibility for the care and protection of materials and Work upon which payments have been made, or the restoration of any damaged Work, or as a waiver by the University of its rights to require fulfillment of all terms of the Contract.

10.1.9 Recommendation for Approval of an Application for Payment will constitute a representation by the Construction Manager and Architect/Engineer to the Contracting Officer, based on their inspections at the site and data contained in the Application for Payment, that the Work has progressed to the point indicated; that, to the best of their knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents; and that the Contractor is entitled to payment in the amount certified. By recommending approval of application for payment, however, the Construction Manager and Architect/Engineer shall not thereby be deemed to represent that they have made exhaustive or continuous on-site inspections to check the quality or quantity of the work, or that they have reviewed the construction means, methods, techniques, sequences or procedures, or that they have made any examination to ascertain how and for what purpose the Contractor has used the moneys previously paid on account of the Contract Sum.

**10.1.10 NOTICE TO ALL CONTRACTORS SET-OFF FOR STATE TAX NOTICE -**

Pursuant to N.J.S.A. 54:49-19, and notwithstanding any provision of law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of State government, is entitled to payment for those goods or services at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set off that taxpayer's or shareholder's share of the payment due the taxpayer, partnership, or S corporation. The amount set off shall not allow for the deduction of any expenses or other deductions which might be attributable to the taxpayer, partner or shareholder subject to set-off under this act.

The Director of the Division of Taxation shall give notice to the set-off to the taxpayer and provide an opportunity for a hearing within thirty (30) days of such notice under the procedures for protests established under R.S. 54:49-18. No requests for conference, protest, or subsequent appeal to the Tax Court from any protest under this section shall stay the collection of the indebtedness. Interest that may be payable by the State, pursuant to P.L. 1987, c.184 (c.52:32-32 et seq.), to the taxpayer shall be stayed.

## **10.2 Invoices**

10.2.1 An invoice, or Application for Payment, is a Contractor's written request for payment under the Contract for supplies delivered or for service rendered. In order to be proper, the invoice must be submitted to the Construction Manager for approval as follows:

- a. Applications for payment are to be submitted using the AIA Documents G702 and G703 CM Edition (or computer generated equivalent).
- b. The application for payment continuation sheet shall include the unit schedule breakdown of all contract activities broken down into material and labor components, and approved by the Contracting Officer.

10.2.2 The application for payment documents shall provide the following information:

- 6 Owner: William Paterson University
- 7 Contractor Name and Address
- 8 Project Name
- 9 Application Number and Date
- 10 WPU Project #
- 11 Notarized signature of Contractor and Date
- 12 Contract and Calculated Invoice Amounts
  - h. Period of time covered by application
  - i. Amount retained
  - j. Previous payment requests

10.2.3 The invoice shall include the following attachments:

- a. Subcontractor Waiver of Lien (required for final payment only)
- b. Affirmative Action Monthly Manning Reports
- c. Certified Wage Payroll Reports corresponding to the requisition time period
- d. Certification of Subcontractor/Supplier Payment

f. Two copies each of twelve (12) to twenty four(24) 35mm color photographs, 4"x6" with negatives. Photographs shall be of work completed since the start of the project or the last Application for Payment, whichever is later, and shall each be dated, labeled with the project name and WPU project number, location and identification of the photo topic, and submitted in clear plastic, photo sleeves three hole punched for standard three ring binder.

10.2.4 If payment for stored material is requested, then the following additional documentation is required (see Article 10.1.2):

Agreement and Bill of Sale Certifications  
Summary of Stored Materials  
Certificate of Insurance

10.2.5 A draft or pencil copy of each invoice shall be submitted for approval to the Construction Manager by the end of the month for work completed during that month. After Construction Manager approval, invoices shall be prepared by the Contractor and submitted to the Construction Manager with the back-up documentation noted above. Receipt by the Contracting Officer of an invoice approved by the Construction Manager shall start the prompt payment clock, as described in Item 10.3.2 unless returned to the Contractor for correction within the thirty (30) calendar days after receipt.

10.2.6 All other information or documentation required by other provisions of the Contract shall be provided by the Contractor.

10.2.7 Invoices shall be prepared and submitted in the original plus two (2) copies.

10.2.8 For purposes of determining if interest begins to accrue under the State's Prompt Payment Act N.J.S.A. 2A:30A-1 et seq :

- (a) A proper invoice will be deemed to have been received when it is received by the Contracting Officer after Construction Manager prior approval, and acceptance of the supplies delivered or services rendered has occurred;
- (b) Payment shall be considered made on the date on which a check for such payment is dated;
- (c) Payment terms (e.g. "net 20") offered by the Contractor will not be deemed a "required payment date"; and
- (d) The following periods of time will not be included;

- (1) After receipt of an improper invoice and prior to notice of any defect or impropriety, but not to exceed thirty (30) calendar days; and
- (2) Between the date of a notice of any defect or impropriety and the date a proper invoice is received. When the notice is in writing, it shall be considered made on the date shown on the notice.

### **10.3 Interest**

10.3.1 Interest shall be paid on the amount due the Contractor pursuant to a properly executed application for payment (see Article 10.2.8) if the required payment is not made on or before the required payment date in accordance with the New Jersey Prompt Payment Act, N.J.S.A. 2A:30A-1 et seq.

10.3.2 The required payment date shall be thirty (30) calendar days from the receipt of a properly executed Contractor's Application for Payment by the University from the Construction Manager or as otherwise provided by the Prompt Payment Act, N.J.S.A. 2A:30A-1 et seq. .

10.3.3 Interest on amounts due shall be paid to the Contractor for the period beginning on the day after the required payment date and ending on the date on which the check for payment is drawn or as otherwise provided by the Prompt Payment Act, N.J.S.A. 2A:30A-1 et seq.

10.3.4 The interest shall be paid at the prime rate plus 1%. Interest may be paid by separate payment to the Contractor, but shall be paid within thirty (30) calendar days of payment of the original invoice, or as otherwise provided by the Prompt Payment Act, N.J.S.A. 2A:30A-1 et seq.

10.3.5 Nothing in this provision nor the New Jersey Prompt Payment Act shall be construed as permitting the accrual of prejudgment interest in the case of a disputed contract for which a notice of claim has been filed pursuant to N.J.S.A. 59:13-1 et reg., as provided in N.J.S.A. 59:13-8.

10.3.6 Withholding Payment for Non-Delivery of Data:

- (a) The following items shall be listed in the Contract schedule of values with the corresponding percentage value. The submittal and as-built drawing line items can be billed for during the progress of the project.

	Percentage when total contract price is		
	Less than \$250,000	\$250,000-\$1,000,000	More than \$1,000,000
Submittals	5% of contract	2.5% of contract	2% of contract
Close Out Documents (Instruction and O&M manuals, spare parts list, valve charts, etc.)	5% of contract	2.5% of contract	1% of contract
As-Built Drawings	5% of contract	2.5% of contract	1% of contract
Punch List	5% of contract Or value of work	2.5% of contract Or value of work	1% of contract Or value of work

- (b) The withholding of any sums pursuant to this Article shall not be construed as, or constitute in any manner, a waiver by the University of the Contractor's obligation to furnish the data required under this Contract. In the event the Contractor fails to furnish these items, the University shall have those rights and remedies provided by law and pursuant to this Contract in addition to, and not in lieu of, the sums withheld in accordance with this Article.

#### 10.4 Payment Disputes

Any dispute regarding whether the University has failed to make payments to the Contractor pursuant to the New Jersey Prompt Payment Act may be submitted to a process of alternative dispute resolution, except that alternative dispute resolution shall not apply to disputes concerning the bid solicitation or award process, or to the formation of the Contracts or subcontracts. In any civil action brought to collect payments pursuant to this section, the action shall be conducted inside of this State and the prevailing party shall be awarded reasonable costs and attorney fees.



10.4.1 If a prime contractor has performed in accordance with the provisions of a contract with the owner and the billing for the work has been approved and certified by the owner or the owner's authorized approving agent, the owner shall pay the amount due to the prime contractor for each periodic payment, final payment or retainage monies not more than 30 calendar days after the billing date, which for a periodic billing, shall be the periodic billing date specified in the contract. The billing shall be deemed approved and certified 20 days after the owner receives it unless the owner provides, before the end of the 20-day period, a written statement of the amount withheld and the reason for withholding payment.

10.4.2 If a subcontractor or subsubcontractor has performed in accordance with the provisions of its contract with the prime contractor or subcontractor and the work has been accepted by the owner, the owner's authorized approving agent, or the prime contractor, as applicable, and the parties have not otherwise agreed in writing, the prime contractor shall pay to its subcontractor and the subcontractor shall pay to its subsubcontractor within 10 calendar days of the receipt of each periodic payment, final payment or receipt of retainage monies, the full amount received for the work of the subcontractor or subsubcontractor based on the work completed or the services rendered under the applicable contract. In the case of ongoing work on the same project for which partial payments are made, the amount of money owed for work already completed shall only be payable if the subcontractor or subsubcontractor is performing to the satisfaction of the prime contractor or subcontractor, as applicable.

10.4.3 If a payment due pursuant to the provisions of this section is not made in a timely manner, the delinquent party shall be liable for the amount of money owed under the contract, plus interest at a rate equal to the prime rate plus 1%. Interest on amounts due pursuant to this section shall be paid to the prime contractor, subcontractor or subsubcontractor for the period beginning on the day after the required payment date and ending on the day on which the check for payment has been drawn. The provisions of this subsection c. shall not apply to any transportation project as defined in section 3 of P.L.1984, c.73 (C.27:1B-3), if that project receives federal funding and the awarding agency has been notified by the federal government that it will be classified as a high risk grantee pursuant to 49 C.F.R. 18.12.

10.4.4 A prime contractor, subcontractor or subsubcontractor may, after providing seven calendar days' written notice to the party failing to make the required payments, suspend performance of a construction contract, without penalty for breach of contract, until the payment required pursuant to this section is made, if the contractor, subcontractor or subsubcontractor: is not paid as required by this section; is not provided a written statement of the amount withheld and the reason for the withholding; and the payor is not engaged in a good faith effort to resolve the reason for the withholding

10.4.5 The rights, remedies or protections provided by this section for prime contractors, subcontractors and subsubcontractors shall be in addition to other remedies provided pursuant to any other provision of State law. To the extent that the provisions of this section provide greater rights, remedies or protections for prime contractors, subcontractors and subsubcontractors than other provisions of State law, the provisions of this section shall supersede those other provisions.

10.4.6 All contracts for the improvement of structures entered into after the effective date [Sept. 1, 2006] of P.L.2006, c.96 between owners, prime contractors, subcontractors or subsubcontractors shall provide that disputes regarding whether a party has failed to make payments required pursuant to this section may be submitted to a process of alternative dispute resolution. Alternative dispute resolution permitted by this section shall not apply to disputes concerning the bid solicitation or award process, or to the formation of contracts or subcontracts. In any civil action brought to collect payments pursuant to this section, the action shall be conducted inside of this State and the prevailing party shall be awarded reasonable costs and attorney fees.

#### **END OF ARTICLE TEN**

## **ARTICLE 11**

### **UNCOVERING AND CORRECTION OF WORK**

#### **11.1 Uncovering of Work**

11.1.1 If any portion of the Work is covered prior to inspection conducted by Construction Manager, Architect/Engineer and/or Inspecting Agency especially work specifically required by the Contract Documents to be inspected, it shall be uncovered for observation. Uncovering and replacement of covering shall be at the Contractor's expense. The Contractor shall advise the Construction Manager of all work scheduled to be covered which is reasonably subject to prior inspection before actual covering. The Contractor shall provide a minimum 48 hour notice prior to all inspections.

11.1.2 If any other portion of the Work (not specifically required to be inspected) has been covered, and the Construction Manager or the Architect/Engineer has not made a request to observe prior to being covered, a request may subsequently be made to inspect 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, by appropriate Change Order, be reimbursed by the University. If the work is found not to be in accordance with the Contract Documents, the Contractor shall pay all associated costs, unless it is found that this condition was caused by the University, in which event the University shall be responsible for the payment of such costs.

#### **11.2 Correction of Work**

11.2.1 The Contractor shall promptly correct all work rejected by the Construction Manager or the Architect/Engineer as defective or as failing to conform to the Contract Documents, whether observed before or after final acceptance and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected work, including the Construction Manager's and Architect/Engineer's additional services, if any.

11.2.2 The Contractor shall remove from the Site all portions of the Work which are defective or nonconforming and which have not been corrected, unless removal is waived by the University.

11.2.3 If the Contractor fails to correct defective or nonconforming work in accordance with the Architect/Engineer's recommendation and in a time frame established by the Construction Manager so as not to affect the required progress of the project or the work of other Prime Contractors, the University may make arrangements for such

correction by others and charge the cost of so doing to the responsible Contractor and/or his sureties.

11.2.4 If the Contractor does not proceed with the correction of such defective or nonconforming work within a reasonable time, fixed by written notice from the Contracting Officer through the Construction Manager, the University may remove it and may store the materials or equipment at the expense of the Contractor. If the Contractor does not pay for the cost of such removal and storage within ten (10) days thereafter, the Contracting Officer through the Construction Manager may upon ten (10) days additional written notice sell such material and equipment at auction or at private sale and shall account for the net proceeds thereof, after deducting all of the costs which are the responsibility of the Contractor, including compensation for the Construction Manager's and Architect/Engineer's additional services, if any. If such proceeds of sale do not cover all costs which the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate Credit Change Order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor and/or his surety shall pay the difference to the University.

11.2.5 The Contractor shall also be responsible for the cost of making good all Work destroyed or damaged by such correction or removal.

11.2.6 Nothing contained herein shall be construed as establishing a period of limitation with respect to any other obligation which the Contractor might have under the contract documents.

### **11.3 Acceptance of Defective or Nonconforming Work**

11.3.1 If the Contracting Officer determines that the best interests of the University will be served by accepting defective or nonconforming work, he may do so instead of requiring its removal and correction. In such instance, a Credit Change Order will be issued to reflect an appropriate and equitable reduction in the Contract Sum. Such adjustment shall be effected regardless of Final Payment having been previously made, and the Contractor and/or his surety shall be responsible for promptly providing any funds due the University as a result thereof.

## **END OF ARTICLE ELEVEN**

## ARTICLE 12

### PROTECTION OF PERSONS AND PROPERTY

#### 12.1 Safety Precautions and Programs

12.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. He 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 by the Contractor in writing to the University and the Construction Manager.

#### 12.2 Safety of Persons and Property

12.2.1 The University wishes to help ensure a safe, healthy and productive work environment for all on-site contractors and employees. The University prohibits the use, possession or distribution of any prohibited articles, defined below, on the University facilities.

Prohibited articles include illegal and unauthorized drugs, alcoholic beverages, drug paraphernalia, firearms or other weapons, and stolen property. Illegal drugs include marijuana, narcotics and all other drugs not prescribed by a licensed physician for use by persons possessing them. Unauthorized drugs include prescribed drugs which may adversely influence performance or behavior.

If any of the above items are found, the person possessing such items will be subject to immediate removal from the University facilities without appeal.

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

- a. Every employee on the work and all other persons who may be affected thereby;
- b. All the Work and all 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 or Sub-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.

12.2.3 The Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of all public authorities, including the University, bearing on the safety of persons or property or their protection from damage, injury or loss. The contractor shall immediately notify the University and/or Construction Manager of any injuries at the worksite and shall provide a formal written report identifying the names of personnel, location, and cause of the injury.

12.2.4 The Contractor shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards for safety and protection, including rails, night lights, fall protection, safing of penetrations, the posting of danger signs and other warnings against hazards, promulgating safety regulations, notifying owners and users of adjacent utilities, and other means of protection against accidental injury, or damage to persons and property.

12.2.5 The General Construction Contractor shall install and maintain OSHA approved fall protection at all roof edges and over all floor openings including duct shafts, pipe chases, stairwells, elevator shafts, etc. The General Construction Contractor shall anticipate that normal maintenance may include reinstallation etc. of temporary protection measures when removed by another Contractor for implementation of his work scope.

12.2.6 When the use or storage of explosive, flammable or other hazardous materials or equipment is necessary for the execution of the Work, the Contractor shall exercise the utmost care, shall carry on such activities under the supervision of properly qualified personnel and shall comply with all governing requirements.

12.2.7 The Contractor shall provide and maintain in good operating condition suitable and adequate fire protection equipment and services, and shall comply with all reasonable recommendations regarding fire protection made by the representatives of the fire insurance company carrying insurance on the Work or by the local fire chief and State Fire Marshal. The area within the site limits and surrounding areas shall be kept orderly and clean, and all combustible and other rubbish shall be promptly removed from the site.

12.2.8 The Contractor shall at all times protect excavations, trenches, buildings and materials from rain water, back-up or leakage of sewers, drains and other piping, and from water of any other origin and shall remove promptly any accumulation of water. The Contractor shall provide and operate all pumps, piping and other equipment necessary to this end.

12.2.9 The Contractor shall remove snow and ice which might result in damage or delay.

12.2.10 The Contractor shall not load or permit any part of the Work to be loaded so as to endanger the safety of personnel or property on site.

12.2.11 The Contractor shall promptly remedy all damage or loss to any property caused in whole or in part by the Contractor, any of his Subcontractors, Sub-Subcontractors, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable and for which the Contractor is responsible, except damage or loss attributable to the acts or omissions of the University or Architect/Engineer, or anyone directly or indirectly employed by either of them or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to his obligations stated elsewhere herein.

12.2.12 A representative for the Contractor and each subcontract shall be designated to attend weekly safety meetings conducted by the Construction Manager. The Contractor and subcontractors are required by OSHA to administer safety programs which may include weekly safety meetings with their Subcontractors.

12.2.13 The Contractor is required to have the "Material Safety Data Sheets" (MSDS) on site for all material to be used during construction prior to its arrival to the job site. MSDS must be made accessible to the University and Construction Manager upon request.

12.2.14 When on the construction site, every worker shall wear a hard hat at all times. The Contractor will be notified by the Construction Manager when a worker is not wearing a hard hat. If the same worker is observed not wearing a hard hat for a second time, the University, through the Construction Manager, has the right to have the worker removed from the site.

12.2.15 The General Construction Contractor shall be responsible to furnish and install all necessary safety signage as required by the Construction Manager.

### **12.3            Emergencies**

12.3.1 In any emergency affecting the safety of persons or property, each Contractor shall act with diligence, at his discretion, to prevent threatening injury, damage or loss. In such case, he shall immediately notify the University, through the Construction Manager, of the action taken and shall forthwith prepare and submit a detailed and

documented request to the Construction Manager for any additional compensation or extension of time claimed by the Contractor on account of emergency work.

12.3.2 Wherever the Contractor has taken no action, but has notified the Construction Manager, or wherever the Contracting Officer has otherwise been made aware of any emergency threatening injury to persons or loss or damage to the Work or to adjacent property, the Contractor shall act only as instructed or authorized by the Construction Manager.

## **END OF ARTICLE 12**

## **ARTICLE 13**

### **NOT USED**



## ARTICLE 14

### CHANGES IN THE WORK

#### 14.1 Changes to Contract

14.1.1 The Contracting Officer may, at any time, by written order designated or indicated to be a change order, make any change in the work within the general scope of the contract, including but not limited to, changes:

- (1) In the Contract Documents;
- (2) In the method or manner of performance of the work;
- (3) In the University furnished facilities, equipment, materials, services, or site; or
- (4) Directing acceleration in the performance of the work.

#### 14.2 Processing of Contractor Requests for Equitable Adjustment

14.2.1 Notwithstanding any other Article of this Contract, any time extensions for changes in the work depend upon the extent, if any, by which the changes cause delay in the completion of the various elements of construction. The Contract modification making such time extension shall provide for an extension of contract completion date only for those specific elements so delayed and shall not alter the contract completion dates for other portions of the work. This contract modification may further provide for an equitable readjustment of liquidated damages pursuant to the new completion schedule. The Contractor shall not be permitted to submit a change order proposal with any language reserving the Contractor's right to submit additional costs or time impacts related to a change. Such language will void the change order proposal and will be returned to the Contractor without review.

14.2.2 The Contractor, in connection with any request for an equitable adjustment, shall furnish a price breakdown, itemized as required by the University. Unless otherwise directed, the breakdown shall cover all work involved in the change whether such work was deleted, added or changed. The breakdown shall be in sufficient detail to permit an analysis of all material, labor, equipment, indirect, and subcontractor costs. Any amount proposed for subcontracts shall be supported by a similar price breakdown. In addition, if the request includes a time extension, a justification shall also be furnished. The request, together with the price breakdown and time extension justification, shall be furnished by the date specified in the Contract Documents. It is the Contractor's responsibility to include all direct and indirect work related to a change in the request. If the Contractor fails to identify work in the request that is later discovered as a result of the change, the work will be completed at no additional cost to the University.

14.2.3 If a change order proposal is submitted without a schedule extension request and documentation justifying the request, the University will consider the change in work to not have a schedule impact. The Contractor shall not have a right to request adjustment of the Contract time after a change order has been executed by the University for the work.

14.2.4 If a change is submitted for work performed without prior notification to the University, the University is not responsible for the cost of the change since the avoidance of such costs was not afforded to the University.

14.2.5 Contractor change order requests are to be submitted on the provided form for approval by the University and shall include the following components:

1. Direct Materials – Direct material costs shall consist of actual cost of materials purchased by the Contractor. Contractors are to list all materials with quantities and unit prices along with bill of sale from the applicable vendor.
2. Direct Equipment – Rental and operating costs for equipment only, either rented or owned, by the Contractor. The equipment shall be listed with quantity of hours and hourly rate. For verification of the rate charged, the Contractor shall furnish a comparable rental rate from a vendor should the equipment be owned by the Contractor. Costs for operation will only be approved for actual operation for the approved change in work regardless on the time the equipment is onsite.
3. Direct Labor – The term direct labor shall include working foremen (non-working foremen are considered overhead), journeymen, apprentices, equipment operators, and/or laborers directly assigned to the approved change in work by the Contractor. The total hourly rate shall be calculated and include only the following:
  - a. Base hourly rate consistent with the requirements of the New Jersey Prevailing Wage Act law or local union hourly rates if the Contractor is union. If union, the Contractor must provide the local union bi-laws for confirmation of the hourly rate.
  - b. Labor burden shall only include social security and Medicare taxes, federal unemployment taxes, state unemployment taxes, and workman's compensation.
  - c. Fringe costs consistent with the requirements of the New Jersey Prevailing Wage Act law or local union. Fringe costs shall only include, if applicable, welfare, pension, annuity, and education/training benefits. Costs such as travel, small tools, vacation, etc. are considered overhead costs. If union, the Contractor must provide the local union bi-laws for confirmation of fringe costs.

4. Indirect Costs – Included are costs which are neither direct construction material, equipment, and labor costs. Allowable indirect costs are for document reproduction of drawings only, engineering if applicable, premium freight charges if approved by the University, and permits. No other indirect costs will be considered. Copies of invoices are to be provided for billing verification.
5. Contractor Markup - A markup of 10% shall be applied to the subtotal of items 1 through 4. This markup shall cover profit and overhead/general condition costs such as dumpsters, office personnel, project managers, field superintendents, mailing, misc. reproduction, safety, temporary utilities, company vehicles and mileage, etc. related to self-performed work. Costs not defined in items 1 through 5 are considered overhead. The 10% markup shall apply to deleted work as well.
6. Subcontracted Work – All subcontracted work shall be itemized similar to items 1 through 4 above. A markup of 10% shall be applied to the work performed by the Subcontractor. This markup shall cover profit, insurances, bonding, and overhead costs such as dumpsters, office personnel, project managers, field superintendents, mailing, misc. reproduction, safety, temporary utilities, company vehicles and mileage, etc. related to self-performed work. Costs not defined in items 1 through 4 are considered overhead. The 10% markup shall apply to deleted work as well. The Contractor agrees to incorporate this provision in each of its subcontracts.
7. Contractor Markup on Subcontracted Work – A markup of 5% shall be applied to the subtotal of subcontracted work only. This markup shall cover profit, and overhead/general condition costs related to subcontracted work such as dumpsters, office personnel, project managers, field superintendents, mailing, misc. reproduction, safety, temporary utilities, and company vehicles and mileage, etc. In addition to the 5% markup, the contractor is also entitled to seek reimbursement for the actual cost of bonds and insurance, not to exceed 1% and 3% respectively. The 5% markup and costs for bonds and insurance shall apply to deleted work as well.

When more than one tier of subcontracts exists, for the purpose of markups, they shall be treated as one subcontract.

14.2.6 Where material and/or equipment is made obsolete and was not made part of the construction as a result of a change, the University can either take possession of the excess material and/or equipment or direct the Contractor to take possession. If the University elects to take possession of the excess material and/or equipment, the

University will pay for the material and/or equipment costs related to the change. If the University refuses to take possession of the excess material and/or equipment, the University will be entitled to a credit for the excess material and/or equipment returned to the Contractor and will not be responsible for any restocking charges.

14.2.7 The Contractor must review submitted subcontractor change order proposals prior to submission to the University and make any corrections necessary. When the Contractor fails to review change order proposals and submits the proposals to the University with obvious accounting errors or if the work is clearly defined in the Contract Documents, the Contractor will be responsible for all costs incurred by the University for review time by its professionals. Submission of a change order proposal that contains falsified information, altered documents, or identifies costs in excess of the actual cost shall constitute a breach of this Contract.

14.2.8 In the instance of a change resulting in a deduction in the contract amount, the amount shall be based on actual cost of such Work and not the amount represented in the Contractor's schedule of values.

### **14.3 Remedies for Disputed Change Order Proposals**

14.3.1 When the Contractor and the University cannot reach an agreement on the cost of a change, the University has the right to direct the Contractor to proceed with the change in work on a "Time and Material" basis not to exceed the Contractor's proposed cost. The Contractor agrees that all work related to the change will be completed on this basis and the Contractor is not entitled to any costs above and beyond the proposed amount.

14.3.2 When the Contractor and Construction Manager disagree on a Contractor claimed contract document error and/or omission, or an unforeseen condition, the Contractor can request a hearing with the Contracting Officer. However, the Work must proceed as directed by the University without any impact to the project schedule. Upon such request, the Contracting Officer has thirty (30) calendar days to schedule the hearing. At this hearing, the Contractor shall provide sufficient documentation to support the Contractor's position in order for the Contracting Officer to render a decision. The Contracting Officer has fourteen (14) calendar days to render a decision. The Contracting Officer's decision is final.

### **14.4 Change Order Directives**

14.4.1 The Contracting Officer, in order to avoid delays in the progress of the Work or when in the best interest of the University, at his discretion, may direct the Contractor, in writing, to proceed with a change without a prior agreement on costs. Even in the absence of a formal Change Order, such direction shall be in the form of a written letter of direction from the Construction Manager. The Contractor shall immediately comply with the directive, and if the Contractor intends to assert a request for an equitable adjustment under this Article, he shall do so to the Construction Manager in sufficient detail within twenty (20) calendar days.

14.4.2 Should the Contractor fail to immediately comply with a written letter of direction from the Construction Manager, the Contractor will be held responsible for any lost time or additional expenses resulting from the Contractor's failure to comply.

14.4.3 Where the cost of property made obsolete or excess as a result of a change is included in the Contractor's Request for Change Order, the University shall have the right to prescribe the manner of disposition of such property.

14.4.4 Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the Article 2.3 "Review of Contractor Claims and Disputes". However, nothing in this Article shall excuse the Contractor from proceeding with the Contract as changed.

#### **END OF ARTICLE FOURTEEN**

## ARTICLE 15

### ASSIGNMENT OF ANTITRUST CLAIMS

#### 15.1 Assignment of Antitrust Claim(s)

15.1.1 The Contractor recognizes that in actual economic practice, overcharges resulting from antitrust violations are, in fact, usually borne by the ultimate purchaser. Therefore, and as consideration for executing this Contract, the Contractor, acting herein by and through its duly authorized agent, hereby conveys, sells, assigns, and transfers to the University, all right, title and interest to all claims and causes of action it may now or hereafter acquire under the antitrust laws of the United States or the State of New Jersey, relating to the particular goods or services purchased or acquired by the University pursuant to this Contract.

In connection with this agreement, the following are the express obligations of the Contractor:

- a. He shall take no action which will in any way diminish the value of the rights conveyed or assigned hereunder.
- b. He shall advise the Attorney General of New Jersey;
  - (1) In advance of his intention to commence any action on his own behalf regarding such claim or cause(s) of action;
  - (2) Immediately, upon becoming aware of the fact that an action has been commenced on his behalf by some other person(s), of the pendency of such action; and
- c. He shall notify the defendants in any antitrust suit of the fact of the within assignment at the earliest practicable opportunity after the Contractor has initiated an action on his behalf or becomes aware that such an action has been filed on his behalf by any other person. A copy of such notice will be sent to the Attorney General of New Jersey.

Furthermore, it is understood and agreed that in the event any payment under any such claim or cause of action is made to the Contractor, it shall promptly pay over to the University the aliquot share thereof, if any, assigned to the University hereunder.

### END OF ARTICLE FIFTEEN