

State of New Jersey, New Jersey City University  
Construction Contract: General Conditions

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## ARTICLE 1: CONTRACT DOCUMENTS

### 1.1 DEFINITIONS

- 1.1.1 ADDENDA/BULLETIN: Written supplemental instructions issued after the plans and specifications are issued for bid, and prior to bid opening. These become part of the contract at time of execution, having been acknowledged on the Bid Form.
- 1.1.2 CONTRACT DOCUMENTS: Consist of the Agreement (Contract), Bid Advertisement (Invitation To Bid), Instructions to Bidders, Bid Forms, Special Conditions/Provisions, General Conditions, Supplemental General Conditions, the Drawings, Specifications, Acknowledgment of Owner, Acknowledgment of Contractor, Contractor's Certificate of Resolution, Performance and Payment Bonds, Prevailing Wage Rates, Bulletins, Notice of Award, Notice to Proceed, all Addenda issued prior to the execution of the Agreement and all Modifications thereafter. A Modification is a written amendment to the Agreement signed by the parties, a Change Order, written interpretations issued by the owner, or a written order for minor change in the Work issued by the owner. Whenever the word "Contract" and/or "Contract Documents" are used herein it means all of the above documents or such part of them as is clearly indicated.
- 1.1.3 PARTIES TO THE CONTRACT:
- a. Contractor: As defined herein.
  - b. Owner: New Jersey City University
- 1.1.4 PARTIES NOT TO THE CONTRACT:
- a. Subcontractor: As defined herein.
  - b. Construction/Project Manager: As defined herein.
  - c. Architect/Engineer and/or Consultants: As defined herein.
- 1.1.5 CONTRACT: The Contract includes the entire Agreement as defined in Paragraph 1.1.2 above between the parties hereto and supersedes any prior negotiations, representations or agreements. Nothing contained in the Contract Documents shall create any contractual relationship between the Contracting Officer and any Subcontractor or Material Supplier.
- 1.1.6 WORK: The Work comprises of all construction effort required by the Construction Documents and includes supervision, labor, coordination, material, inspection services, management, plant and equipment necessary to complete the construction.
- 1.1.7 PROJECT: The Project is a general term for identification of the total Contract. It includes the Work and all administrative aspects required to fully satisfy the Contract requirements.
- 1.1.8 UNIVERSITY: The word "University" or "Owner" as used herein means New Jersey City University.
- 1.1.9 CONTRACTING OFFICER: The "Contracting Officer" means the Contracting Officer of New Jersey City University or their duly authorized representative.
- 1.1.10 CONTRACTOR: A person, firm, or corporation with whom the contract is made by the Owner. Whenever the term "General Contractor" or "General Construction Contractor" is used herein, it means the Contractor. The word "Contractor", "Prime Contractor", "Prime", "Separate Contractor" or "Single Contractor", means the Individual, Partnership or Corporation undertaking to perform all or a part of the Work under the Contract, and includes Subcontractors, if any. It does not include suppliers or

material firms, which do not provide "on-site" labor.

- 1.1.11 ARCHITECT/ENGINEER: "Architect" or "Engineer" means the Architect or the Engineer (A/E) engaged by the University to act as the authorized representative of the Contracting Officer to the extent described in Article 3 hereinafter.
- 1.1.12 SUBCONTRACTOR: The term "Subcontractor" means the person or persons, partnership, or corporation having a direct contract with a Contractor for the performance of Work under the Contract, or the subcontractors of any tier of such person, partnership or corporation. It is not one who furnishes materials, supplies or equipment without on-site labor.
- 1.1.13 APPROVAL OF WORK: Whenever the term "acceptable" or "approved" is used herein, it means written approval of the A/E or the Owner.
- 1.1.14 CONTRACT LIMIT LINES: The term "Contract Limit Lines" refers to those lines shown on the Drawings which limit 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 (i.e. utilities).
- 1.1.15 SITE: The term "Site", "Construction Site", or "Project Site" refers to the geographical area of the entire University campus, or a portion thereof, or any other property at which the Work under the Contract is to be performed.
- 1.1.16 NOTICE: "Notice" is 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 fax, courier, registered or certified mail or telegram, to the business address cited in the Contract Documents.
- 1.1.17 SHOWN: Where the words "shown" or "shown on drawings" are used, they shall be construed to mean "noted", "indicated", "scheduled", "detailed", or any other diagrammatic or written reference made on the drawings.
- 1.1.18 EQUAL: Where the words "equal" or "equivalent" are used, each shall be construed to mean being same in value, measure, force, effect, significance, performance, quality, and corresponding in position and function, to that specified, subject to the approval of the A/E and or owner.
- 1.1.19 CONSTRUCTION / PROJECT MANAGER: A person, firm or corporation engaged by the Owner, as a Consultant to monitor work in progress and perform specified duties.
- 1.1.20 DIRECTED: The terms "directed", "required", "permitted", "ordered", "designated", "prescribed" and words of like "importance" shall imply the direction, requirement, permission, order, designation or prescription of the A/E and/or the owner; "approved", "acceptance", "satisfactory", and words of like importance shall mean approved by, or acceptable or satisfactory to the A/E and or the Owner "necessary", "reasonable", "proper", "correct" and words of like importance shall mean necessary, reasonable, proper or correct in the judgment of the A/E and/or the owner.
- 1.1.21 PIPING: "Piping" shall include in addition to pipe, all fittings, valves, hangers, and other accessories related to such piping.
- 1.1.22 CONCEALED: "Concealed" shall mean hidden from sight as in chases, furred spaces, shafts, hung ceiling, or embedded in construction.
- 1.1.23 EXPOSED: "Exposed" shall mean not "concealed", as defined above. Work in trenches, crawl spaces, and tunnels shall be considered "exposed" unless otherwise specifically noted.
- 1.1.24 GOVERNMENTAL: "Governmental" shall mean all municipal, state and federal

governmental agencies having jurisdiction.

1.1.25 GENDER: SINGULAR NUMBERS:

- a. GENERAL: Unless the context otherwise connotes, as used in the Contract, words of one gender include the other genders; the singular includes the plural; the plural includes the singular.
- b. MATERIALS, DEVICES, OR PARTS OF EQUIPMENT: Where referred to in the singular number, such references shall be deemed to mean as many such items as are required to complete the Work.

1.1.26 PROVIDE: Shall mean to furnish, erect, install and connect complete and ready for regular operation, the particular Work referred to, unless specifically indicated or specified otherwise.

1.1.27 FURNISH: Shall mean to supply and deliver to project site ready for unloading and installation (FOB jobsite).

1.1.28 INSTALL: Shall mean to erect, set in place, connect complete and ready for operation, the equipment furnished.

1.2 INTENT OF THE CONTRACT

1.2.1 The Drawings and Specifications of the Contract are intended to require the Contractor to provide for 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 shown in the Specifications shall be performed or furnished by the Contractor as if described in both. Any incidental materials, and/or Work not 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 Contractual 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 Architect/Engineer and seek correction or interpretation thereof prior to commencement of affected Work. The Architect/Engineer shall issue his written Interpretation with reasonable promptness. However, the Contractor shall make no claim against the University for expenses incurred or damages unless, and only to the extent that the Contractor has submitted a written request for interpretation, clarification, or correction to the Architect/Engineer and the Contracting Officer and such written request has been received by the Architect/Engineer and the Contracting Officer 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 University through the issuance of a Bulletin interprets, clarifies, and/or corrects 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 provisions 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 Unless otherwise provided in the Contract Documents, the Contracting Officer will furnish to each Contractor, free of charge, two (2) copies of the Drawings and Specifications; and any additional instructions such as Supplemental Drawings; necessary for the proper execution of the Work. Additional sets will be provided at cost to the Contractor upon written request to the University.
- 1.2.6 The Contractor shall do no Work without proper Drawings 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 by the A/E as the Work progresses, are understood as being included as part of the Contract Specifications to which they relate.
- 1.2.8 The sequence of precedence of the contract documents is as follows:
- a. Agreement
  - b. Instruction to Bidders
  - c. Special Conditions/Provisions
  - d. Supplemental General Conditions
  - e. General Conditions
  - f. Supplemental General Conditions-Mechanical/Electrical
  - g. Technical Specifications
  - h. Details
  - i. Drawings, in following order of precedence.
    - 1. Notes on drawings
    - 2. Large scale details
    - 3. Figure dimensions

Where there may be a conflict in the Specifications or Drawings not resolvable by application of the provisions of this paragraph, then the greater quantity in labor, materials, or equipment shall be assumed to be required and shall be provided by the Contractor at no cost to the Owner.

- 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. All contractors shall include

the cost of all material and labor required to complete the Work based on reasonably observable conditions.

- 1.2.10 The A/E's drawings, constituting integral parts of this contract, serve as the bidding and the Working drawings. They indicate the arrangement of materials and completed physical spaces desired by the owner. These drawings may be augmented by revised detailed or supplementary drawings as specific explanations or modifications prepared by the A/E and issued before normal sequence of construction require their use; the Contractor shall conform to all reasonable minor changes without extra cost to the owner. All drawings of all trades - general construction (referred to as "architectural"), structural, plumbing, HVAC and electrical - complement each other; no drawings are to be considered complete for any trade without all other drawings. The mechanical, electrical and fire protection drawings are diagrammatic only, and are not intended to show the alignment, physical locations or configurations of such Work. The Work shall be installed without additional costs 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.
- 1.2.11 The technical specifications, constituting integral parts of this contract, serve as the bidding, purchasing and installation specifications. They indicate the types and qualities of materials, equipment's, etc., as well as quality of Workmanship.
- 1.2.12 All specifications are of the abbreviated type customary in the building, building materials and equipment supply industries, and as such they include incomplete sentences. Omissions of words and phrases such as "the contractor shall", in conformity herewith, "shall be", as noted on the drawings", according the plans, "a", "an", "the", and "all" are unintentional. Omitted words and phrases shall be supplied in inference in the same manner, as they are when a "note" occurs on the drawing.
- 1.2.13 The drawings and specifications, as a portion of the contract, are intended to provide for and comprise everything necessary for the proper and complete finishing of the Work in every part, notwithstanding that each and every item necessary may not be shown on the drawings or mentioned in the specifications. Drawings are intended to indicate locations, arrangements and assemblies of the parts of the system.
- 1.2.14 Specifications are intended to establish conditions of Work and quality of materials and Workmanship.
- 1.2.15 Where a discrepancy or inconsistency appears to exist between any of the contract documents regarding quantity or quality, or both, of labor and materials to be furnished for the Work, the greater quantity and the higher quality shall govern and will be presumed to be included in the bids.
- 1.2.16 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 Architect's attention. No Work so affected shall proceed until such discrepancy is corrected, and written confirmation of the resolution is provided by the Architect.
- 1.2.17 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.
- 1.2.18 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



Document.

- 1.2.19 Where codes, standards, requirements and publications of public or 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. No provision in any publication including any standard shall change or affect the duties and responsibilities of the University, the architect or the Contractor. Nor shall they create an obligation on the part of the University or the architect to supervise or direct the Contractor's work.
- 1.2.20 Where no explicit quality or standards for materials or Workmanship are established for the 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.
- 1.2.21 All manufactured articles, materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the manufacturer's written or printed directions and instructions unless otherwise indicated in the Contract Documents.
- 1.2.22 Soil borings, test pits or other subsurface or site information regarding the physical site and subsurface conditions on or near the site may have been obtained from independent contractors for the purpose of preparing the design documents for the project rather than for the purpose of contractor estimating or bidding. Such information may be identified or included in the contract documents so that it can be reviewed by bidders during the bidding phase, but because of the limited nature and purpose of the information, it shall not be considered to be part of the contract documents, and the Contractor must assume responsibility for interpreting and relying upon the information.
- 1.2.23 The Contractor represents and warrants that before bidding it carefully studied all reports, surveys and documents included or identified in the bid documents regarding observations, inspections, investigations and tests of the site and subsurface conditions at or near to the site, and all information provided to bidders regarding physical conditions at or near the site, including surface and subsurface composition, water, structures and utilities, and that it determined that no further examinations, investigations, tests, studies or data were necessary for bidding or the performance of the contract work at the contract price. If the Contractor concluded that additional information is required, it must notify the University in writing at least 7 days before the bid due date.
- 1.2.24 The Contractor represents and warrants that before bidding it visited the site and familiarized itself with and was satisfied as to the general, local and site conditions which may affect the cost, progress and performance of the work and the contract, and that its bid and bid price take into account all such conditions.
- 1.2.25 The Contractor will not be responsible for hazardous environmental conditions uncovered or discovered on the site which were not disclosed in the contract documents. If such conditions are discovered, the Contractor shall stop work and notify the University in writing immediately. The University may issue a written directive to the Contractor requiring it to stop work until the hazardous environmental condition is remedied, and the Contractor will be entitled to an extension of the contract times if an extension is warranted under the provisions of the contract and the general conditions regarding extensions. The University may also make changes in the contract in response to the conditions, and the contract will be changed in accordance with the change order provisions in the contract and the general conditions.
- 1.2.26 The Contractor may not assert claims for extra compensation beyond the bid and contract price for constructing the completed project by reason of any errors, omissions, inconsistencies, or defects in the contract documents which are discoverable by a diligent and competent contractor, because of its obligation to review and study the bid documents before submitting its bid, and because of its obligation to notify the University in writing

before submitting its bid of errors, omissions, inconsistencies, and defects in the documents. This limitation on claims may be modified and further restricted in the signed contract when the contract requires the Contractor to participate in any aspect of the design phase.

The Contractor may assert claims for extensions and additional compensation in accordance with the contract and general conditions if information regarding the site which is identified in the bid or contract documents is factually inaccurate, and the inaccuracy is one, which a reasonably competent and diligent contractor would not discover in preparing a bid. The Contractor may not assert a claim for an extension or extra compensation when it claims, not that the information is factually inaccurate, but rather that conclusions, inferences or judgments made in reliance on accurate information prove to be incorrect.

1.3 CONFORMITY OF WORK TO CONTRACT DOCUMENTS.

- 1.3.1 All work performed shall conform to the lines, grades, cross-sections, dimensions, material requirements, tolerances, details and other information in the contract documents. The purpose of tolerances is to accommodate occasional minor variations from the middle portion of the tolerance range, which are unavoidable despite reasonable construction practices. When a maximum or minimum tolerance value is specified, the material and the work shall be controlled so that they shall not be preponderantly of borderline quality or dimension.

END OF ARTICLE 1

## ARTICLE 2: CONTRACTING OFFICER

### 2.1 DEFINITION

- 2.1.1 The Contracting Officer of the University is charged with administering the design, engineering and construction of all University facilities. He and/or his authorized representative, represents the University in all relationships with Contractors Architects and Engineers. Whenever the term Contracting Officer is used within the Contract Documents it shall be understood to mean the Contracting Officer or his authorized representative as he may direct.

### 2.2 THE CONTRACTING OFFICER'S STATUS

- 2.2.1 The Contracting Officer maintains general administration and directs the Work. He shall exercise the duties and responsibilities consistent with the limitations of his statutory authority and as set forth in the Contract Documents. He will not be responsible for, nor will he have control or charge of construction means, methods, techniques or safety of the project or programs associated therewith.
- 2.2.2 The Contracting Officer shall furnish all available surveys defining the physical characteristics, legal limitations and utility locations of the project, as well as description of the site. The University assumes no liability for the accuracy or completeness of these surveys.
- 2.2.3 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.

### 2.3 CONTRACTING OFFICER'S RIGHT TO STOP THE WORK

- 2.3.1 If the Contractor fails to correct defective Work, or persistently fails to carry out the Work in accordance with the Contract Documents, the Contracting Officer 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 of any Contractor, however, shall not render the University liable for claims of any kind, including delays sustained by a Contractor as the result of the stoppage of the Work.

### 2.4 CONTRACTING OFFICER'S RIGHT TO TERMINATE FOR CAUSE

- 2.4.1 If the Contractor makes a general assignment for the benefit of their creditors, or if a receiver is appointed on account of their insolvency, or if they persistently or repeatedly refuse or fail, 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 they fail to make prompt payment to Subcontractors or for materials or labor, or persistently disregard laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or if they, or any of their Subcontractors, are guilty of a substantial violation of a provision of the Contract Documents, or otherwise default or neglect to carry out the Work in accordance with the Contract Documents, then the Contracting Officer 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 their 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.

- 2.4.2 Upon such termination the Contracting Officer may 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 payments.
- 2.4.3 If the unpaid balance of the Contract Sum exceeds the cost of finishing the Work, including Liquidated Damages 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. This obligation shall survive the termination of the Contract.
- 2.4.4 If within three (3) Working days following receipt of Notice of Termination by the Contractor's Surety, the issuer of the Performance and Payment Bonds, 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 such case the Work must be performed by a Contractor satisfactory to the Contracting Officer and at the Surety's sole cost and expense. The disposition of unpaid contract balances, if any, then in the possession of the University may be stipulated within said agreement.
  - 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 Payments Bonds and that new Payment and Performance Bonds will be provided to secure the faithful performance of the Substituted Contractor, further:
    - i. That all current obligations for labor and materials incurred and outstanding by the defaulting Contractor on this Project be paid without delay, subject to allowance of a reasonable time within which to verify such claims by the Surety; and,
    - ii. 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.

## 2.5 CONTRACTING OFFICERS RIGHT TO TERMINATE FOR CONVENIENCE

- 2.5.1 The Contracting Officer reserves the right to terminate for the convenience of the University in which case the Contractor shall be entitled to a proportion of the fee which the services were actually and satisfactorily performed shall bear to the total services contemplated under this agreement, less payments previously made, and a reasonable termination fee to be negotiated between the Contractor and the Contracting Officer.

## 2.6 REVIEW OF CONTRACTOR CLAIMS AND DISPUTES

- 2.6.1 Upon presentation by the Contractor, of a request in writing, the Contracting Officer may review any decision or determination of the A/E, University's representative and/or its other

consultants, if any, 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 the Contract, the Contracting Officer may schedule a conference for the purpose of 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 resolve the disputed matter, provided, however, that any such 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.

END OF ARTICLE 2

### ARTICLE 3: ARCHITECT ENGINEER/CONSTRUCTION MANAGER /OWNER'S REPRESENTATIVE

#### 3.1 GENERAL

- 3.1.1 The A/E is the person or persons lawfully licensed within the State of New Jersey to practice architecture or engineering. The A/E is responsible for the design of this project and for certain project administration as identified in the Contract Documents. The term A/E means the A/E or their authorized representatives.
- 3.1.2 When the University provides full supervision and management of a project; the A/E's role is that of consultant to the University.
- 3.1.3 The Construction Manager (CM), when employed by the University, will in collaboration with the A/E, provide general administration of the Contract.

#### 3.2 ADMINISTRATION OF THE CONTRACT

- 3.2.1 The administration of the Contract may be accomplished in any of the following matters:
  - a. The University may assume full supervision and responsibility by in-house personnel.
  - b. The A/E may be assigned the "normal role" of administration with duties and responsibilities basically as described hereafter. In this instance the University will provide its own site/administration and will retain final approval of all matters.
  - c. The University may employ a Construction Manager (CM). The relationship of the University, the A/E and the CM will be fully explained to the bidders prior to the receipt of bids.

#### 3.3 STATUS OF OWNER'S REPRESENTATIVE

- 3.3.1 The Contracting Officer hereby designates the Associate Vice President of Facilities and Construction Management to represent him in technical and administrative negotiations with any and all Contractors. He shall have the authority to stop any Contractor's work whenever such stoppage may reasonably be necessary to insure the proper execution of the Work. The stoppage of the Work shall not render the Owner liable for claims of any kind, including, without limitations, claims for money damages, either by the affected contractor, or by any other contractor.
- 3.3.2 The Owner will assign its own technical representatives to duty at the site to conduct on-site observations of the Work in progress as the basis for determining the progress and performance of the Work, materials and equipment's. These representatives will also receive and maintain custody of samples, guarantees, and manuals furnished by the Contractor; assist in reviewing Contractor's requisitions for payment and in providing liaison between the Contractor and the A/E. The Contractor will assist the Owners representatives in implementing procedures to monitor scheduling, coordination, cost accounting, quality control and safety programs. The presence of and/or observations of these personnel shall not relieve the Contractor or the A/E, of any of their respective responsibilities under the contract.

#### 3.4 ARCHITECT'S STATUS

- 3.4.1. The A/E will: provide general administration, including performance of the functions hereinafter described; issue written interpretations necessary for the proper execution and progress of the Work in the forms of drawings or otherwise. Such interpretations will be consistent with and reasonably inferable from the Contract Documents; and be the interpreter of the requirements of the Contract Documents, and shall within seven (7) days render such interpretations deemed necessary for the proper execution and progress of the

Work; and monitor the progress and quality of the Work and determine if the Work is proceeding in accordance with Contract Documents; and keep the Owner informed of the progress of the Work; and endeavor to guard the Owner against defects and deficiencies in the work of the Contractor; and condemn Work as failing to conform to the Contract Documents; and have authority to order minor changes in the Work not involving an adjustment to the Contract price or an extension of the contract time and not inconsistent with the intent of the Contract documents; and review, edit as appropriate and approve monthly payments to the Contractor; and solicit information from the Contractor, and prepare recommendations and documents for Change Orders; and review Shop Drawings; receive written guarantees and related documents as required by the Contract and assembled by the Contractor and issue to the Owner a recommendation for approval of final certificate of payment.

- 3.4.2. All questions pertaining to the Contract Documents, Work, samples or materials requiring approval, decisions, or interpretations of the specifications and the drawings, shall be made to the A/E sufficiently in advance of fabrication or construction to permit comparison, investigation, reference to drawings and specifications, details or shop drawings, and consultation as necessary and desirable.
- 3.4.3 The A/E and/or the CM will not be responsible for, nor will they have control or charge of construction means, methods, techniques, sequences of procedures, or safety precautions and programs in connection with the Work. They 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 shall have the obligation to immediately inform the Contracting Officer of any inadequate performance on the project.
- 3.4.4 The A/E and/or the CM shall reject Work, which does not conform to the Contract Documents. Whenever, in their opinion, they consider it necessary or advisable, they may request the Contracting Officer to provide special inspection or testing of the Work, whether or not such Work has been fabricated, installed or completed.
- 3.4.5 The A/E and/or the CM will inspect periodically the Contractor's as-built drawings to insure that these are up-to-date and shall review the completed as-built plans at project completion to ensure that they are complete and are provided to the University.
- 3.4.6 The A/E will conduct inspections to determine the dates of substantial and final completion and to determine if the Contractor has properly substantially and finally completed the project. The architect will obtain all written warranties and all other documents, which the Contractor is required to provide at the time of the project completion. The architect will make a recommendation to the University regarding final project and final contract acceptance.
- 3.4.7 All Drawings, Specifications and copies thereof furnished by the A/E are and shall remain the property of the University. They are reserved to this Project only and are not to be used on any other Projects. 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 A/E's copyright or other reserved rights.

### 3.5 ACCESS TO WORK SITE

- 3.5.1 The Owner, the A/E, the CM and their representatives shall at all times have access to the Work Site. The Contractor and subcontractors shall provide all reasonable facilities, labor, materials, equipment and assistance for the safe and convenient conduct of such access.

END OF ARTICLE 3

## ARTICLE 4: THE CONTRACTOR

### 4.1 DEFINITION

- 4.1.1 The Contractor, as the term is used throughout these documents, means the firm or individual responsible for performing the Work under the Contract, whether it be referred to as "Contractor", "General Contractor", "Separate Contractor", or "Single Contractor". It does not include suppliers or material person.

### 4.2 REVIEW OF CONTRACT

- 4.2.1 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 carefully examined the site for access and limitations, if any, and 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. 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 their obligations there under and that he accepts responsibility for, and is prepared to execute and fulfill completely, by their construction Work, the intent of the Contract, without exception and without reservation, at the price specified in the Contract.
- 4.2.2 The Contractor shall carefully study and compare the Contract Documents during the progress of the Work and shall immediately report any error, inconsistency, ambiguity or omission to the University upon discovery and shall do no Work thereafter which may be affected by such error until the University has had the opportunity to respond and clarify the Work it wants 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.
- 4.2.3 Unless otherwise ordered in writing by the Contracting Officer, the Contractor shall perform no portion of the Work without approved Shop Drawings or Samples for such portions of the Work, or other approvals as may be applicable and required by the Contract Documents.
- 4.2.4 Unless otherwise provided in the Contract Documents, 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.
- 4.2.5 The Contractor shall at all times enforce strict discipline and good order among their employees and shall not employ on the Work any unfit person or anyone not skilled in the task assigned him. The Contractor shall provide the University with safety programs to be implemented during the course of this project.
- 4.2.6 The Contractor shall be obligated to pay the prevailing wage rates, abide by the requirements of the State's Affirmative Action Program, and be responsible to insure that all principles of Safety are carried out as further described in Article 12 herein.

### 4.3 NEW JERSEY PREVAILING WAGE ACT

- 4.3.1 The Contractor and each Subcontractor shall comply with the New Jersey Prevailing Wage Act Laws of 1963, Chapter 150, and all amendments thereto and 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:
- a. All Workmen employed in the performances of every Contract in which the Contract Sum is in excess of the amount designated by the State of New Jersey



shall be paid not less than the Prevailing Wage Rate as designated by the Commissioner of Labor and Industry.

- i. The Contractor and Subcontractor performing Work for the University shall post the Prevailing Wage Rates for each craft and classification involved, including the effective date of any changes thereof, in prominent accessible places at the site of the Work or at such place or places as are used by them to pay Workmen their wages.
    - ii. The Contractor's signature on their proposal is their guarantee that neither he nor any Subcontractor is currently listed, nor on record by the Commissioner, as one who has failed to pay Wages according to the Prevailing Wage Act.
  - b. In the event it is found that any Workman, employed by any Contractor or any Subcontractor, has been paid wages less than the Prevailing Wage; the Contracting Officer 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.
- 4.3.2 The Contractor shall submit, to the Owner, certified payrolls for their firm and all subcontractors, within ten (10) days of the payment of wages. (NJAC 12:60-2.1; NJAC 34:11- 56.25)
- 4.4 SUPERVISION AND CONSTRUCTION PROCEDURE
- 4.4.1 The Contractor shall supervise and direct the Work using their best skill and attention. The Contractor shall be solely responsible for all construction means, methods, techniques, sequences, and safety requirements as required by Federal and/or State Agencies and procedures for coordinating all portions of the Work under the Contract.
- 4.4.2 The Contractor shall employ a full-time competent Superintendent, acceptable to the University, who is capable of communicating with the workforce and University officials. The Superintendent shall be in attendance full - time on the Project site during the progress of the Work. Communications given to the Superintendent 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 Superintendent if his/her performance, as judged by the Contracting Officer, is deemed to be inadequate. Upon application, in writing to the Contracting Officer, this requirement for full-time Superintendent may be waived should he determine that such staffing is not required by the University.
- 4.4.3 The Contractor shall employ qualified competent craftsmen in their respective lines of Work.
- 4.4.4 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 him. If it should become apparent that a Subcontractor does not have their portion of the Work under control of a competent Foreman, the Contractor shall have the obligation to take appropriate steps to immediately provide proper supervision.
- 4.4.5 If due to a trade agreement, standby personnel are required to supervise equipment installation, or for any other purpose, the Contractor will provide such standby services. These said services are to be provided at no additional charge.

#### 4.5 RESPONSIBILITY FOR THE WORK

- 4.5.1 The Contractor shall be responsible to the Contracting Officer for the acts and omissions of their employees, subcontractors and their agents and employees, which injure, damage or delay the University's employees, properties, consultants, agents or 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.
- 4.5.2 The Contractor shall be responsible for all damage or destruction caused directly or indirectly by their operations to all parts of the Work, both temporary and permanent, and to all adjoining properties by reason of the neglect in providing proper lights, guards, barriers or any other safeguards to prevent damage to property, life, and limb.
- 4.5.3 The Contractor shall, at their 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 their finished Work shall cease simultaneously with the occupancy of the portion or portions of the structure. Each Contractor is responsible for the protection of structures, utilities, sidewalks, pavements, and other facilities from damage caused by settlement, lateral movement, undermining, washout, and other hazards created by earthwork operations.
- 4.5.4 The Contractor shall defend, protect, indemnify and hold harmless the University, the Architect/Engineer, and CM from all claims, suits, actions, damages and costs of every type and description arising out of, or resulting from, the performance of their Work under this Contract. This responsibility is not limited by the provisions of other indemnification provisions included elsewhere herein.

#### 4.6 CODES, LICENSES, PERMITS AND INSPECTIONS

##### 4.6.1 APPLICABLE CODES

- a. The Plans and Specifications are intended to conform to the 2003 New Jersey Building Code including the following:
  - i. International Building Code 2000, New Jersey edition.
  - ii. The National Standard Plumbing Code
  - iii. The National Electrical Code
  - iv. International Energy Conservation Code 2000
  - v. International Fire Code 2000
  - vi. International Mechanical Code 2000
  - vii. International Plumbing Code
- b. The applicable provisions of the National Fire Codes, as published by the National Fire Protection Association also applies.
- c. The Contractor is responsible to insure the construction is in accordance with the New Jersey Uniform Construction Code as defined above.
- d. If the Contractor ascertains at any time that any requirement of the Contract is at variance with the applicable State or Federal laws, regulations or building code requirements, the Contractor shall promptly notify the Owner, and any necessary adjustments of the Contract shall be made as provided for under "Changes of Work".

##### 4.6.2 INSPECTION, LICENSES AND PERMITS

- a. Local municipalities are not required to inspect the Work, however, the Contractor shall obtain any special type permits and/or inspections required, such as: boilers, incinerators, nuclear facilities or with municipal or public utilities, streets, sidewalks, etc. The obtaining of a Building Permit and the inspections relative to the New Jersey Uniform Construction Code are responsibilities of the Owner. However, the Contractor shall fill out the New Jersey Uniform Construction Code forms, as applicable and submit to the Owner. It is the Contractor's responsibility to contact the Owner's Construction Official, a minimum of seventy-two (72) hours in advance of required inspection. Inspections may be performed by a third party agency hired by the Owner. Should the Contractor schedule an inspection and not be prepared at the time the Inspector arrives, the Contractor will be responsible for any costs of time and travel resulting from having the Inspector return to the job site for re-inspection. This pertains to routine, as well as final certification of occupancy inspections.
- b. Soil conservation measures are to be in accordance with the Soil Conservation District requirements.
- c. All sewage disposal Work shall conform with the regulations of the State Department of Environmental Protection.
- d. The University at contract award, upon Contractor's request, will name inspector/inspection agency responsible for code enforcement. A Certificate of Code Compliance is to be obtained from the appropriate inspector prior to the issuance of the Certificate of Final Acceptance for the Work.
- e. Prior to the start of any crane equipment operations, each Contractor shall make all necessary applications and obtain all required permits from the Federal Aviation Administration (F.A.A.).
- f. Consistent with Subparagraph 4.5.4, each Contractor shall be responsible for and hold harmless the University, Architect/Engineer, and CM 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.
- g. 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 on said project, the University may declare the Contractor to be in default.

#### 4.7 STORAGE, CLEANING AND FINAL CLEAN UP

- 4.7.1 The Contractor shall confine his apparatus, the storage of his equipment, tools and materials, and 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 Contracting Officer, and shall not unreasonably encumber the site or the premises with his materials, tools and equipment.
- 4.7.2 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 caused by their operations, to the end that at all times the premises and site shall present a neat, orderly and Workmanlike appearance. This is to be accomplished as frequently as is necessary by the removal of such material, debris, etc. from the site and the Owner's premises. Loading, cartage, hauling and dumping will be at the Contractor's expense. "General Construction Contractor shall provide and maintain 'chutes' to contain all rubbish discarded from building openings above the first floor".

- 4.7.3 At the completion of the Work, each Contractor shall remove all their tools, construction equipment, machinery, temporary staging, false-work, form-work, shoring, bracing, protective enclosures, scaffolding, stairs, chutes, ramps, runways, hoisting equipment, elevators, derricks, cranes, etc. from the Project Site.
- 4.7.4 Project cleanliness is of the utmost importance. The University reserves the right to withhold monthly progress payments from the Contractor for failure to properly perform clean-up obligations until such obligations have been satisfied. Should the Contractor not promptly and properly discharge their obligation relating to Cleaning and Final Clean Up, the University shall have the right to employ others and to charge the cost thereof to the Contractor(s) deemed by the Contracting Officer to be responsible therefore, after first having given the Contractor a three (3) Working day written notice of such intent.
- 4.7.5 The Contractor's responsibilities, in final clean up, include the following:
- a. Remove all debris and rubbish resulting from or relating to the Work. (Separate primes, if involved, are required to remove their own debris, etc., in accordance with other provisions with this Contract.
  - b. Remove all stains from glass and mirrors and wash and polish all windows, doors etc., inside and outside.
  - c. Remove marks, stains, fingerprints, other soil, dust or dirt from painted, decorated or stained woodwork, plaster or plasterboard, metal, acoustic tile and equipment surfaces.
  - d. Remove spots, paint and soil from resilient, glaze and unglazed masonry and ceramic flooring and wall Work.
  - e. Remove temporary floor protections, clean, wash or otherwise treat and/or polish, as directed, all finished floors.
  - f. Clean exterior and interior metal surfaces, including doors and window frames and hardware, of oil stains, dust, dirt, paint and the like; polish where applicable and leave without fingerprints or blemishes.
  - g. Restore 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.
- 4.7.6 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 Acceptance, shall become the absolute property of the University. It will be disposed of in any manner the University shall deem reasonable and proper and all costs relating thereto shall be the responsibility of the Contractor.

#### 4.8 CUT-OVERS, INTERRUPTIONS TO EXISTING BUILDINGS

- 4.8.1 Except as otherwise expressly provided in the Contract Documents, the Contractor shall be responsible for submitting to the Owner, for approval, a proposed schedule of all utility shutdowns and Cut-Overs of all types which will be required to complete the Project; said schedule should contain a minimum of two (2) week's advance notice prior to the time of the proposed shutdown and Cut Over. The University campus is in full operation 12 months of the year, and shutdowns and Cut-Overs, depending upon their type, generally must be scheduled on weekends, nights or during holiday periods. The contract is deemed to include all costs, necessary overtime, and all premium time, if any, that is required by the

Contractor to complete the shutdowns or Cut-Overs.

- 4.8.2 Temporary Connections – In the event the Contractor shall disrupt any existing services, the Contractor shall immediately make temporary connection(s), provisions, etc., necessary to restore the disrupted service. The temporary connection(s), provisions, shall remain in operation until the existing service has been permanently restored. All costs for such work shall be at the sole expense of the Contractor.

4.9 NON-REGULAR WORKDAYS

- 4.9.1 Regular working hours shall be in accordance with local trade labor agreements, Monday through Friday. If a conflict exists between the Trades, the Contractor(s) shall resolve the matters at their own expense. The University will not pay for “standby Labor” or any other costs generated by any such conflict. Changes thereto may be granted with written approval of the Contracting Officer. Any Work 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 from the Contracting Officer for performance of Work after regular working hours or on non-regular workdays at least 24 hours prior to commencement, unless such Work is caused by emergency.

4.10 DRAWINGS, SPECIFICATIONS, SHOP DRAWINGS, AS- BUILT DRAWINGS

- 4.10.1 The A/E will furnish response to request for information (RFI), after being made aware of its need by the Contractor and additional Instructions for the proper execution of the Work. All such Drawings and Instructions shall be consistent with the Contract Documents and reasonably inferable there from and the Work shall be executed in conformity therewith. The Contractor shall do no Work without proper Drawings and Instructions. In giving such Instructions, the Contractor will have to make minor changes in the Work, not involving extra cost.
- 4.10.2 Where certain portion of the Work is shown in complete detail, but not repeated in similar detail in other areas on 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.
- 4.10.3 The Contractor shall not make any claims whatsoever based upon insufficient data or their 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 the University or its agents, which may occur during the progress of the Work.
- 4.10.4 Within two (2) weeks of contract award, the Contractor shall submit to the Owner a submission schedule for all required product data, shop drawings, samples, certificates, calculations, etc., indicating the submittal description, submittal type, and date of submission to the A/E for review and approval.
- 4.10.5 This step-by-step procedure shall be followed in the development and submittal of the “Shop Drawings, Samples, Product Data, and Certificates”:
- a. Definitions:
    - i. Definition: Shop Drawings - drawings, diagrams, illustrations, schedules, test data, performance charts, cuts, brochures and other data specifically prepared for the Work, to illustrate some portion of the Work.
    - ii. Product Data - product literature brochures, performance charts, diagrams, and other information to describe a material, product or system for some portion of the Work.

- iii. Samples - physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work is to be completed.
  - iv. Mock-ups - full-scale sections of portions of the Work, which demonstrate materials and workmanship and establish standards by which the Work is to be completed.
  - v. Notarized Certificates are certificates of compliance furnished by the Contractor to verify that the material scheduled conforms to the standard schedule.
- b. Contractor Responsibility:
  - i. The Contractor shall review, approve and submit all Shop Drawings, Product Data, Samples, Certificates or any other submission material in such sequence as not to cause any delay in the Work or any delay to separate contractors. The Contractor shall coordinate each Shop Drawing and Sample with requirements of the Contract and shall determine whether or not such Shop Drawings are in conformity with the provisions of the Contract before submitting the Shop Drawings for Approval.
  - ii. The Contractor shall verify all field measurements. Measurements available prior to submittal of Shop Drawings shall be shown and so noted on the Shop Drawings. Measurements not available prior to submission of Shop Drawings as not available and such measurements shall be obtained prior to fabrication.
  - iii. The Architect's approval of submittals shall not relieve the Contractor of responsibility for any deviation from the requirements of the Contract. The Contractor shall be responsible for the accuracy and conformity of the submittals with the Contract unless the Contractor has notified the Architect in writing, at the time of submission, and has received from the Architect written approval of the specified deviations. The Architect's approval shall not relieve the Contractor of responsibility for errors or omissions in the submittals.
- c. Contractor Review:
  - i. The Contractor shall review all subcontractor submittals prior to submission to the Architect for conformity.
  - ii. By approving subcontractor submittals prior to submission to the Architect, the Contractor represents; that he has determined and verified materials, quantities, dimensions, specified performance criteria, catalog numbers, field measurements, field construction criteria, installation requirements.
  - iii. Data shown on submittals shall be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to permit the Owner's Representative and Architect to review the information.
  - iv. At the time of each submission, the Contractor shall give the A/E specific written notice of each variation that the submittal may have from the Contract Documents.
  - v. The Contractor shall note on resubmissions, revisions other than the revisions or corrections on previous submittals.
  - vi. Submittals which do not conform to the requirements stated in the Contract Documents will be considered unacceptable, unless otherwise determined acceptable under the provisions of this Section.
  - vii. If the Contractor fails to describe such variations, he shall not be relieved of the

responsibility for executing the Work in accordance with the requirements contained in the Contract Documents, even though submittals have been reviewed and approved, or accepted.

- d. Shop Drawings shall show the design, dimensions, connections and other details necessary to ensure that the Shop Drawings accurately interpret the Contract Documents and shall also show adjoining work in each Detail as required to provide proper connections with said adjoining Work. Where adjoining connected Work required Shop Drawings, such Shop Drawings shall be submitted to the Owner or the Owner's Representative for approval at the same time so that connections can be checked. The Contractor shall verify all field measurements.
- e. Submittals shall be checked and signed by the Contractor, prior to submission to indicate that the Contractor has coordinated the Work and that it conforms to the Contract Documents.
- f. Calculations required to be submitted shall be prepared and certified by a Professional Engineer registered in the State of New Jersey and shall convey, or be accompanied by sufficient information to completely explain the structure, machine or system described, and in its intended manner of use.
- g. Each submission shall be labeled with the following information:
  - i. Project title.
  - ii. Contract name.
  - iii. Date of submission, including dates of any revisions.
  - iv. Name of Contractor, name of subcontractor, material supplier and manufacturer, as applicable.
  - v. Name of person or firm preparing submission.
  - vi. Contract drawing numbers and specification section, division and paragraph numbers used as references in preparing submission.
  - vii. Space for review stamp by Architect or Engineer.
  - viii. The Contractor shall prepare and process a submittal, with reasonable promptness and in orderly sequence so as to cause no delay in the Work or in the work of the Owner or any separate contractor, submittals required by the Contract Documents or subsequently by the Owner's Representative, Architect or the Owner, to more fully explain or illustrate some portion of the Work. Sequence submission of shop drawings, product data, samples, etc., such that all information is available for reviewing each submittal when it is received. Partial or piecemeal submittals are not acceptable and will be returned without action.
  - ix. The Contractor shall not make submittals which are incomplete or which do not comply with the Contract Documents.
  - x. The Contractor shall coordinate and effectively sequence different categories of submittals for the same work and for interfacing units of the Work, so that one will not be delayed for lack of coordination with another.
  - xi. Submittals shall indicate compliance with called-for standards and codes, and identify materials. Coordination details shall be clearly noted. Include complete information from making necessary connections with related and adjoining Work.

- h. Shop Drawing Requirements are as follows:
- i. Provide shop drawings with graphic data accurately scaled and dimensioned. List reference Contract Drawing numbers and shop drawing numbers for related work by subcontractors, material men, sub-subcontractors, and fabricators.
  - ii. Symbols and numbers used on the Contract Drawings and in the Schedules shall be used on shop drawings or shall be shown in parenthesis. Items shown on shop drawings shall be clearly identified with their location in the Work, or by sheet or detail number in which they appear.
  - iii. Contract Drawings shall not be reproduced or used for shop drawings or erection purposes without prior written approval.
  - iv. Number shop drawings consecutively. Shop drawings shall be of uniform size, form, and title as the Construction Manager may require.
  - v. Drawings, the original design for which is the responsibility of the Contractor, shall bear the seal of a Professional Engineer registered in the State of New Jersey.
  - vi. Shop drawings shall show design, dimensions, and kinds of materials, connections, and other details necessary to ensure that requirements appearing in the Contract Documents are accurately interpreted. Shop drawings shall show proper connections with adjoining work in detail. Where adjoining work requires shop drawings, such drawings shall be submitted for review at the same time so that connections can be accurately checked.
  - vii. Shop drawings shall: (i) establish the actual detail of manufactured or fabricated items and indicate proper relation to adjoining work; (ii) incorporate minor changes of design or construction details to suit actual conditions; and (iii) supplement the Contract Documents by the correctly reflecting field conditions and incorporating required field measurements. Identify and verify where field dimensions are required and obtain required field dimensions.
  - viii. Where separate Sections are involved, shop drawings shall be coordinated and where required by the Owner's Representative or Architect shall be submitted in composite form clearly designating Section, subcontractor, or trade, and compliance responsibility. The words "work by others" will not be accepted.
  - i. Samples shall be of sufficient size and number to show the quality, type, color, finish and texture of the material required to be furnished by the Contractor pursuant to the Contractor or as noted in the specifications.
  - j. The Contractor shall refer to individual sections of the specifications for requirements concerning field mock-ups of samples. The Contractor shall be responsible to locate mock-ups of samples. The Contractor shall be responsible to locate mock-ups where directed by the Architect, and to protect, maintain, remove and dispose of the mock-ups as directed by the Owner's Representative.
  - k. The Contractor shall keep at the site an up-to-date approved set of shop drawings, product data, samples and certificates for review by the Owner and Architect.

l. REVIEW

Owner's Representative and the Architect will review submittals with reasonable promptness not more than fourteen (14) days after receipt. Review will be only for conformance with the design concept of the Project and with the information given in the



Contract Documents and will not extend to means, methods, techniques, sequences or procedures of construction (except where specific means, methods, techniques, sequences or procedures of construction are required by the Contract Documents). The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. The Contractor shall make corrections required and shall return the required number of corrected copies of shop drawings and submit as required new product data and samples for review and approval.

Following review, the Architect will note one (1) of five (5) actions:

1. Conforms
  2. Conform As Noted
  3. Revise and Resubmit
  4. Rejected
  5. Review Not Required
- m. The Contractor shall be responsible for correctness of dimensions other than principal controlling dimensions and properties described on the Contract Drawings, and shall call the attention of the Owner's Representative and Architect to errors and discrepancies that be may discover therein.
- n. The Contractor shall have no claim for damages that may result from following an error except for an error in principal controlling dimensions and properties shown on the Contract Drawings.
- o. The Contractor is responsible for: (i) confirming and correlating quantities and dimensions; (ii) selecting fabrication processes, manufacturing details and workmanship, and techniques of construction; and, (iii) properly coordinating and synchronizing the work in accordance with requirements expressed in the Contract Documents
- p. Actions which change Contract Price, or Prices, under any Pay Item, or Items, or time for completing performance, shall be brought to the Owner's Representative and Architect's attention before proceeding.
- i. Carrying out of the Work or ordering of materials before such approval may constitute a cause for rejection of the Work or materials.
- q. The Contractor shall be responsible, and bear all cost of damages, which may result from the ordering of any material or from proceeding with any part of the Work prior to review and approval of required submittals.
- r. Shop drawings and other submittals, shall not be issued to the field or used in the Work without the Owner's Representative and Architect's or required consultants' stamp of approval.
- s. A minimum of six (6) copies of approved shop drawing shall be submitted by the Contractor for Owner's use (1 for the A/E and 5 for the Owner). Additional copies as required by the Contractor and its Subcontractor shall be added to the number specified for Owner's use.
- t. COMMENCEMENT OF WORK
- i. No portion of the Work shall be commenced until required submissions are marked "CONFORM" or "CONFORM AS NOTED" by the Architect. If returned copies are stamped "REJECTED", or "REVISE AND RESUBMIT", promptly resubmit submission. Resubmit until transmittals are stamped

“CONFORM” or “CONFORM AS NOTED”.

- ii. The Contractor shall be responsible for, and bear all cost of damages, which may result from the ordering of any material or from proceeding with any part of the Work prior to approval, or acceptance of the necessary submittals.

u. COMPOSITE DRAWINGS

- i. In the interest of coordination and expediting the Work in all areas, the Contractor shall prepare and submit to the Owner’s Representative composite drawings embodying the Work of the various trades and/or subcontractors involved.
- ii. After review, the Owner’s Representative shall distribute prints of reviewed composite drawings to affected trades and/or subcontractors. Require that involved trades and/or subcontractors cooperate in preparation of the composite drawings to assure proper coordination between trades and/or subcontractors. Participating trades shall indicate their approval on these composite drawings.
- iii. Prepare composite drawings and installation layouts when required to solve field conditions. Such drawings shall include dimensioned plans, sections and elevations, shall indicate layout and dimensions of ductwork with relationship to plumbing, heating, and chilled water piping, and shall give complete information, particularly size and location of sleeves, inserts, attachments, openings, and structural interference.
- iv. Prepare composite drawings at a scale of not less than 3/8 in. = 1 ft. 0 in. Show components at verified field locations. Ensure allocation of adequate space for clearance, connection, maintenance, and accessibility.
- v. On composite drawings, include the following:
  - a) Building structure; finishes and access doors.
  - b) Piping systems, including valves and hangers.
  - c) Ductwork, including dampers and hangers.
  - d) Electrical distribution, including pull boxes.
  - e) Mechanical and electrical equipment.
  - f) Note the sequence of installation when necessary.
- vi. Composite drawings and field installation layouts shall be coordinated in the field by designated Contractor and subcontractors for consistency and proper installation relationships based on field conditions. They shall be checked for accuracy and approved by affected subcontractors, trades, etc., before submission.

v. CERTIFICATION OF COMPLIANCE

- i. When required, the Contractor shall furnish authoritative evidence in the form of manufacturer’s certificates of compliance that materials to be used in the Work have been manufactured and tested in conformity with the requirements appearing in the Contract Documents and are certified acceptable.
- ii. Certificates shall include copies of the results of physical tests and chemicals analyses, where necessary, that have been made directly on the product, or on similar products, being fabricated by the manufacturer.

- iii. Certificates shall be delivered to the Construction Manager prior to installation of material or equipment to which they refer.
  - iv. Certificates of compliance shall contain the following information:
    - a) Name of Project to which material is consigned and Contractor to whom material is supplied.
    - b) Kind of quality of material represented by the certificates.
    - c) Shipment identification, label or seal marking.
    - d) Date and method of shipment and means of identifying the consignment.
    - e) Statement that the material has been tested and found in conformity with the pertinent contractual requirements stated in the certificate.
    - f) Signature of a person having legal authority to bind the supplier.
    - g) Signature attested to by a Notary Public or other properly authorized person.
    - h) Notarized certificates of specific manufactured products shall be accompanied with appropriate manufacturer's literature and shall state required information relating to the material being supplied.
    - i) Certifications shall simply state that the items offered meet contractual requirements.
    - j) A specimen of a notarized certificate is attached as "Exhibit A" to this Section. To be acceptable, the certificate shall, unless otherwise approved, be prepared in the form indicated by this specimen on the official letterhead of the supplier, material man, subcontractor, or manufacturer. No portions of the certificate may be omitted.
    - k) Submit certificates in triplicate. Individually sign and notarize each copy.
    - l) Certificates shall not be binding or conclusive on the Owner and may be rejected at any time by the Architect if incorrect, improper or otherwise unsatisfactory in his opinion.
    - m) All required submittals are to be 100% submitted and approved within (90) ninety calendar days of contract award date.
- 4.10.6 The Contractor shall not use the Contract Drawings for submission of shop drawings. All shop drawings sizes shall be in multiples of 9" X 12", or as otherwise approved by the Architect/Engineer.
- 4.10.7 If the Contractor desires to make any deviations or changes from the requirements of the Contract Documents, he shall obtain the consent of the Contracting Officer to such changes, in writing, before submitting Drawings showing such proposed changes. All 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 Drawings to the Contractor without any action being taken.
- 4.10.8 This step-by-step procedure shall be followed in the development and submittal of the "as-built drawings."
- a. The Contractor shall use a set of Plans previously discussed in 1.2.5 for use in recording any changes to the Contract Documents. These plans shall be kept at the job site and continually annotated, (marked up) indicating any and all deviations from the original

plans and adding information relative to the precise location of utilities, etc. All below grade utilities shall be located as to depth and horizontally to an existing permanent feature.

- b. The Contractor shall prepare a shop drawing “master sheet”, the same size as the original drawings, for use as a record and cross reference between shop and original drawings, i.e., if a shop or an erection drawing is to be used as an “as-built”, information identifying the precise drawing shall be listed on the master sheet clearly referring to a sheet in the contract drawings.
- c. These “marked-up” drawings and a copy of the “master sheet” shall be dated and sent to the A/E for review. The Contractor shall certify as to their accuracy by signature thereon.
- d. After the A/E is satisfied with the accuracy of the information submitted, the Contractor will then transpose such information from the Contractor’s marked up drawings to the original drawings and transmit same to the University. These drawings and two copies of the shop and/or erection drawings submitted by the Contractor to the University shall constitute the “as-builts”. “As -builts” shall also be submitted in CAD form (Version to be determined by Owner).
- e. Any shop or erection drawings used as “as-builts” shall be dated and shall have the name of the Contractor imprinted there-on, if she/he is not the originator.

#### 4.11 SAMPLES

- 4.11.1 The Contractor shall furnish on a timely basis, for approval, all Samples as directed. The Work shall be in accordance with approved Samples. Such Samples shall be submitted promptly to the Contracting Officer, through the Architect/Engineer, at the beginning of the Work, so as to give the Contracting Officer time to examine them. Any list of Samples prepared by the Architect/Engineer is for the Contracting Officer's convenience only, and shall not be construed as limiting the number of Samples which the Contractor shall furnish.
- 4.11.2 The Contractor shall proceed with the Work in accordance with the approved sample. Samples shall show true character, quality and the standard proposed. If rejected, the Contractor shall promptly prepare new or altered samples until acceptance. Approval of material samples is for quality, color and finish characteristics generally, and does not act to modify contract requirements except by written reference to deviations. Attach labels indicating the name and type of materials represented, place of origin, and names of the producer, the Contractor, the building or Work for which the material is intended and when applicable for the location where it will be installed. Identify samples by project name. Approved samples in good condition, marked for identification, may be used in the Work.

#### 4.12 MISCELLANEOUS DRAWINGS, CHARTS AND OPERATING MANUALS

- 4.12.1 Shop drawings for Plumbing, HVAC, Electrical and other machinery and mechanical equipment items requiring utility service connections, shall be accompanied by manufacturer's certified Shop Drawings, indicating accurate locations and sizes of all service utility connections.
- 4.12.2 Prior to installing service utilities or other piping, etc. through structural elements of the building, the Contractor shall prepare and submit, for approval of the Architect and Structural Engineer, accurate dimensioned Drawings indicating the positions and sizes of all sleeves and openings required to accommodate their Work and installation of their 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.

- 4.12.3 The Contractor shall provide a complete set of inked or typewritten control valve, circuit diagrams, one line diagrams and color coding charts of piping and wiring. These shall be framed under glass and installed where directed.
- 4.12.4 Four (4) copies of all Operating and Maintenance Manuals, as identified and described in the Contract Specifications, are to be furnished by the appropriate contractors. Operating 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 equipment. These manuals must 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. As a pre-condition to the acceptance of a facility for beneficial use, Contractors 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 required by the Contract.

#### 4.13 OPENINGS-CHANNELS-CUTTING AND PATCHING

- 4.13.1 The Contractor shall be responsible for furnishing and setting of sleeves, built-in items, anchors, inserts etc. for their Work and for all cutting, fitting, patching, finishing or adjusting of their Work in a new and/or existing construction, as required for the completed installation.
- 4.13.2 The Contractor shall close, build in and finish around or over all openings, chases, channels, pockets, etc., after installation has been completed.
- 4.13.3 Approval in writing must first be obtained by the Contractor from the Architect/Engineer before cutting or boring through any floor beams, roof beams, floor construction, roof construction or supporting members.

#### 4.14 TESTS AND INSPECTIONS

- 4.14.1 The Contractor shall notify the University, in writing, of all Work required to be inspected, tested or approved. The notice shall be provided no later than five (5) Working days prior to the scheduled inspection, test or request for approval. The Contractor shall bear all costs of such inspections and tests.
- 4.14.2 When mechanical, electrical or other equipment is installed, it shall be the responsibility of the Contractor to maintain, warrant and operate it for such period of time as required by the contract documents or 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 in addition to instructing University personnel shall be borne by the Contractor.
- 4.14.3 When the University requires special or additional inspections, testing or approvals, it 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 4.14.1. 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 the costs thereof, including all costs incurred by the University made necessary by such failures; otherwise the University shall bear all costs of such special or additional testing and an appropriate change order will be issued.
- 4.14.4 The Contractor shall acquire inspection or testing services using only those firms pre-qualified by the DPMC. Failure to use such a firm shall be grounds for rejection of the inspection or test as nonconformance.

- 4.14.5 All submittals of inspections and test reports or requests for approval, shall be accompanied by a certification signed by the Contractor attesting to their knowledge of the submittal, acceptance of its findings and acknowledgment that material tested meets the required standards and certify the report's representation of the facts. Failure to provide the written certification shall be grounds for rejection of the submittal.
- 4.14.6 In addition to the above the Contractor agrees to insert in all contracts/purchase orders for inspection and testing 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 University. 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. Failure to provide reports within the required time shall be addressed pursuant to Article 10 of the General Conditions.
- 4.14.7 Testing requirements for real property installed equipment (RPIE) to be furnished by the Contractor, when such testing is required by code, Contract or the manufacturer shall be performed by a pre-qualified testing laboratory or in the absence of such by the manufacturer or its authorized representative. The Contractor shall provide the five-day notice to the University and the University shall witness all tests.
- 4.15 CONCRETE/BITUMINOUS PAVING/SOILS COMPACTION AND OTHER STRUCTURAL TESTING
- 4.15.1 All such testing shall be accomplished in accordance with the provisions of paragraph 4.14.
- 4.16 EQUIPMENT-MATERIAL
- 4.16.1 The Contractor warrants to the Contracting Officer 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 Contracting Officer or the Architect/Engineer. If required, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by the provisions of the other paragraphs contained herein.
- 4.16.2 The original and six (6) copies of request for approval of materials prepared on the appropriate form shall be forwarded to the Architect/Engineer for approval. Each item of material listed shall be marked "As Specified" or "Unspecified" as the case may be.
- 4.16.3 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 Work.
- 4.16.4 The University will not sign for, nor will it be responsible for any material, hardware or other item(s) shipped to or delivered directly to the University. The University will not be responsible for the loss of any material, hardware or any other items(s) prior to its final incorporation into the project and acceptance as specified within the Contract Documents. The Contractor must replace lost material, hardware or other items(s) immediately and at their expense.
- 4.16.5 The Contractor shall furnish and pay for all necessary transportation, storage, scaffolding, centering, forms, water, labor, tools, light and power mechanical appliances and all other means, materials and supplies for properly prosecuting the Work under this Contract, unless expressly specified otherwise. The Contractor shall make arrangements to have representatives of their firm at the site to accept delivered materials.

- 4.16.6 Manufactured products of the United States, whenever practicable, shall be used in this Work. Wherever practicable, preference shall be given at all times to material and equipment manufactured or produced in the State of New Jersey, where such preference is reasonable and will best serve the interest of the University.
- 4.16.7 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 their 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.
- 4.16.8 Any product, material, or equipment specified by reference to the number, symbol, or title or a specific standard such as commercial standard, federal specifications, trade association standard, or other similar or related construction industry standards, shall comply with requirements in the latest revision thereof and any amendment or supplement thereto in effect on the date of the Bid Advertisement for this project. The standards referred to, except as modified in the specifications, shall have full force and effect as though printed herein. These standards are not furnished to the contract bidders for the reason that they are assumed either to be familiar with the requirements or will secure copies of the referenced standards prior to the bidding. For any product, materials or equipment specified by reference to standards, the Contractor shall furnish satisfactory evidence of compliance with the particular standard specifications.
- 4.16.9 The policy regarding restrictive specifications shall operate on the basis of what is in the best interest of the University and shall function as follows:
- a. In some cases, it will be in the best interest of the University to restrict the product, material, or equipment to only a certain manufacturer or manufacturers whose names(s) will be listed and the phrase "or approved equal" will not appear. In such cases, no substitution of products, materials, or equipment shall be permitted, except when two or more manufacturers are named; the Contractor shall elect which one of those named shall be furnished.
  - b. When the "or approved equal" phrase is appended to a material, equipment or product designation, no approval for a substitute item shall be given prior to the awarding of a contract. After the contract has been awarded, the Contractor may submit a request to use materials, equipment, or products other than those specified only for those items which have the phrase "or approved equal" appended to it. The material, equipment or product shall only be considered if it is in no way inferior in quality or style to those specified and it shall be the burden and obligation of the Contractor to demonstrate the lack of substantial difference in quality and style between the proposed substitute item and that specified.
  - c. The term "or approved equal" is not necessarily limited to the physical or technical properties of the product or material, but is construed to encompass the finish, color, texture and other pertinent qualities in like regard. Failure to satisfy in any one respect may be sufficient cause for rejection of substitute materials.
- 4.16.10 Fiber, wood, and plastic plugs are prohibited for use as fastening devices.

#### 4.17 SUBSTITUTIONS

- 4.17.1 In the event a Contractor should propose a substitution for the specified equipment or materials, it shall be their responsibility within ten (10) days to submit proof of equality, and to provide and pay for any tests which may be required by the Contracting Officer at no cost to the University in order to evaluate and A/E to approve such proposed substitution.
- 4.17.2 Where any particular brand or manufactured article is specified, it shall be regarded as a

standard.

- 4.17.3 The application for approval of substitution by the Contractor shall include the following information:
- a. Complete specific information.
  - b. Identify the Specification paragraph and section.
  - c. Attach data indicating, in detail, how the substitution differs from the article specified.
  - d. A detailed itemization of the amount of credit must be shown.
  - e. When the proposed substitution involves a change in the scope of the Work of this or any other Contractor, include a statement that the Contractor undertakes and agrees to be responsible for any and all added costs involved by reason of the change in the Work, the Work of other Contractors and trades, including redesign, if any.
  - f. A statement that the Contractor will submit proof of equality and will have such test performed at their own expense as may be required for approval.
  - g. The Contractor shall not base their bid on proposed or previous substitutions, which may have been approved on previous projects. Bids shall be based solely on Plans and Specifications for this subject project.

#### 4.18 SOIL BORINGS

- 4.18.1 Soil borings, test pits or other subsurface information may be secured by the University prior to design and construction of a project and may be included in the Contract Documents for the Contractors use. The Contractor assumes full responsibility for interpretation of said borings and the University shall have no responsibility or liability should the data provided prove to be incorrect or unrepresentative.

#### 4.19 PROTECTION OF CONTRACTOR'S PROPERTY

- 4.19.1 The Contractor shall adequately secure and protect their own tools, equipment, materials and supplies and require their subs to do likewise. The Owner assumes no liability for any damage, theft or injury to the Contractor's property.

#### 4.20 PATENTS

- 4.20.1 The Contractor shall hold and save the University, Architect/Engineer, and CM and its officers, agents, servants, and employees 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.
- 4.20.2 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 their authorized license, direct by the University and not by or through the Contractor.
- 4.20.3 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 cost arising from the use of such design, device or materials, in any way involved in the Work. The Contractor and/or their Sureties shall indemnify and save harmless the Owner, Architect/Engineer, and CM of the project 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 the 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 or after



the completion of the Work.

4.21 RIGHT TO AUDIT

- 4.21.1 The University reserves the right to audit the records of the Contractor in connection with all matters related to this contract. The Contractor agrees to maintain their records in accordance with generally accepted accounting principles, for a period of not less than three (3) years after receipt of final payment. "Generally Accepted Accounting Principles" is 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.
- 4.21.2 The Contractor shall develop, maintain and make available to the Contracting Officer upon request such schedule of quantities and costs, progress schedules, payrolls, reports, estimates, change orders, all original estimates, takeoffs, and other bidding documents, all Subcontractors and Supplier Contracts and changes, records showing all costs and liabilities incurred or to be incurred in connection with the project including all Subcontractor and Supplier costs, payment records and records showing all costs incurred in labor and personnel of any kind, records and other data as the University may request concerning the Work performed, or to be performed, under this Contract.
- 4.21.3 The Contractor acknowledges and agrees that no claim for payment which is premised to any degree upon actual costs of the Contractor shall 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.
- 4.21.4 The Contractor shall require each Subcontractor, to be bound to the Contractor and to assume towards the Contractor all the obligations and responsibilities which the Contractor assumes by the Documents to the University and its contractual parties.
- 4.21.5 The Contractor shall not grant to any Subcontractor terms more favorable than those extended to the Contractor by the University.
- 4.21.6 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 the Work required under the contract or any supplemental agreement thereto. The Contractor shall require, in all subcontracts, which the Subcontractor 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 a Sub-Subcontractor.

4.22 CONTROL WIRING

- 4.22.1 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 their 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.

4.23 STANDBY PERSONNEL

- 4.23.1 The 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 their bid proposal. No Contractor shall, at any time, make a claim to the University for costs relating to standby maintenance, or standby supervision, for electric motor-driven or other equipment. 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.

4.24 GUARANTEE

- 4.24.1 Neither the Final Certificate 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.
- 4.24.2 The Contractor and each individual Subcontractor shall guarantee and warrant, in writing, the Work to be performed and all materials to be furnished under this Contract against defects in materials or Workmanship and to pay for the value of repair of any damage to other Work resulting there from for a period of one (1) year from date of project acceptance, in addition to guarantees otherwise specified. 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 and Materialmen'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.
- 4.24.3 The Contractor shall, at their 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 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 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.
- 4.24.4 It is anticipated that certain permanent equipment will have to be activated during construction of the project to support construction operations. This would particularly be the case with respect to lighting and those portions of the permanent heating system 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 occupancy or final acceptance (whichever is the earliest). All Contractors shall include in their base bids all costs necessary to provide extended warranties as necessary for any equipment which may be activated prior to final building acceptance by the University.

END OF ARTICLE 4

## ARTICLE 5: SPECIAL RESPONSIBILITIES

### 5.1 SUPERVISION

- 5.1.1 The Contractor has the responsibility for being the supervisor, manager, overseer, coordinator and expeditor of the total construction process and all of its parts, in accordance with the Contract Documents. In executing the duties assumed by these responsibilities the Contractor shall provide sufficient executive and supervisory staff in the field to accomplish efficient and expeditious handling of these matters. There shall be at least one (1) full-time Project Manager assigned by the Contractor, as well as the field staff referred to above. The Project Manager shall attend all Progress Meetings. The Contractor shall include in their bid an amount sufficient to cover their cost of furnishing necessary administrative and supervisory forces to coordinate their own Work and that of their Subcontractors
- 5.1.2 The Contractor shall be responsible for providing and maintaining unobstructed traffic lanes for the designated Construction Access Routes. They shall provide and maintain grading, compaction, removal of snow and debris etc., as required to maintain the serviceability condition of the access roadbed, as well as pedestrian ways.
- 5.1.3 The Contractor shall construct, erect and maintain one (1) sign at the Project Site, as shown on the Drawings and located as directed. 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 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 their expense.
- 5.1.4 The Contractor, at their expense, shall provide and maintain necessary temporary dustproof partitions around areas of the Work in any existing building or in new building areas as directed.
- 5.1.5 The Contractor accepts sole responsibility for repair of uncontrolled dislodgment, 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 limits of the specified guarantee periods, regardless of the cause.
- 5.1.6 The Contractor shall be responsible for replacement of all broken glass installed regardless of cause and shall replace all broken, scratched or otherwise damaged glass before the completion and acceptance of the Work. They shall wash all glass on both sides at completion, or when directed, removing all paint spots, stains, plaster, etc.

### 5.2 LAYOUT, DIMENSIONAL CONTROL AND VERIFICATION, SURVEYOR'S CERTIFICATION

- 5.2.1 The Contractor shall be responsible for locating and laying out the building and all of its parts on the site, in strict accordance with the Drawings, and shall accurately establish and maintain dimensional control. They shall employ and pay for the services of a competent and licensed New Jersey Engineer or Land Surveyor (who shall be approved by the Owner) to perform all layout work, and to test the levels of excavations footing base plates, columns, walls and floor and roof lines, and furnish to the Architect/Engineer, as the Work progress, certificates that each of such levels is as required by the Drawings. The plumb lines of walls, etc., shall be tested and certified by the Surveyor as the Work progress.
- 5.2.2 The Engineer or Surveyor, in their layout work, both on the site and within the building, shall establish all points, lines, elevations, grades and benchmarks 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. They shall verify all Owner-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 Architect/Engineer of such discrepancy, and shall not proceed with any Work affected until receipt of written instructions from the Architect/Engineer.

5.3 PHOTOGRAPHS

5.3.1 The Contractor shall submit with each monthly application for payment, until the work is completed, progress photographs of the construction in duplicate to the Contracting Officer, giving up to ten (10) views as selected by the Architect/Engineer.

5.3.2 The photographs shall be 8" x 10", mounted on muslin, and the negative shall bear the date of the exposure, and the name of the project, the Contractor and the Architect/Engineer.

5.3.3 Digital photographs, in an approved format, maybe substituted for the above if approved by the Architect/Engineer.

5.4 INSPECTION OF ROADWAY SUBGRADES

5.4.1 The Contractor shall notify the Architect/Engineer forty-eight (48) hours prior to the anticipated completion of all roadway sub grade Work. The University may request an inspection by an appropriate agency to insure that the sub grade meets the compaction standards. All subgrades shall be proof-rolled for such inspection. If compaction soils tests are required, these tests will be done by soils testing laboratories through the University, unless contrary provisions are made elsewhere in the specifications. The Contractor shall not proceed with base course until the results of the compaction tests are determined and sub grade approved by the University.

5.5 SITE SECURITY

5.5.1 The Contractor shall provide, maintain and oversee security at the site. The project site shall be fenced as specified below (6.9) and the Contractor shall control access when gates are unlocked or open.

5.6 SITE USE

5.6.1 The Contractors is responsible to check and verify reasonably observable conditions outside the Contract Limit Lines to determine whether any conflict exists with the Work they are required to perform under the Contract. This includes a check on elevations, utility connections, and other site data. The Contractor shall notify the Contracting Officer in writing of any conflict. All discrepancies or conflicts relating thereto shall be brought to the attention of the Contracting Officer prior to the execution of the Contract. In the absence of such notice, all required Work, as shown on the Drawings and in the Specifications, shall be performed within the Contract cost. The Contractor shall confine construction equipment, storage and work to the project site absent written approval from the University. Any request by the Contractor to use areas outside the project site must be described in written form and included with the Contractor's bid.

END OF ARTICLE 5

## ARTICLE 6: TEMPORARY FACILITIES, UTILITIES AND SERVICES

### 6.1 FIELD OFFICES

- 6.1.1 The Contractor will provide, on Site, and maintain during the Project Construction, a suitable weather-tight Field Office conveniently located and shall maintain therein a complete set of Contract Documents including plans, specifications, CPM network diagrams, change orders, logs, other details and correspondence. The Field Office shall contain approved and safe heating facilities and lighting, convenience outlets, fire extinguisher, minimum of two (2) operating windows of 15 sq. feet each, outside door, handle, hasp and padlock. The Field Office may be removed upon enclosure of a Building at which time if directed by the A/E contents and operations will be transferred to the Interior of the Building.
- 6.1.2 The Contractor will provide, on site, suitable, separate, weather-tight, insulated (floor, walls, ceilings) field office facilities (12'x 50' minimum), with "meeting room", toilet, for the use of the A/E, CM, and University Personnel. Furnish approved and safe means of lighting, heating, (available beyond regular Working hours), and fire extinguishers, operating windows of 15 sq. ft. each, two (2) 12,000 BTU air-conditioning units, 3' X 5' plan-tables, conference table, fifteen (15) folding chairs, desk, chair, four (4) drawer file cabinet, outside door handle, hasp and padlock. The Contractor shall remove Field Office upon enclosure of the Project Building and relocate contents and operations of Field Office to interior of the Project Building when directed by the Contracting Officer. The Contractor shall be responsible for the maintenance of both offices and the Meeting Room, janitor's service and other incidentals. Project related calls made by the University and the A/E or their Consultants shall be made at the General Contractor's expense.
- 6.1.3 The Contractor's Site Superintendent shall have access to a cellular phone at all times.

### 6.2 STORAGE SHEDS, TOOL SHEDS, SHOPS, EMPLOYEES SHEDS

- 6.2.1 The Contractor will provide and maintain, for its own use, suitable and safe temporary storage, tool shops, and employee's sheds. The Contractor shall properly maintain them, and remove them at completion of the Work. Locations shall be directed by the Owner. Rooms in the building may be used as shops and storerooms, with the approval of the Owner. 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 STORAGE AREAS, EMPLOYEES' VEHICULAR PARKING, EQUIPMENT MARSHALING AREAS, EXCAVATION BORROW/SPOILS DESIGNATED AREAS

- 6.3.1 The Contractor shall be responsible for providing for their own requirements. The Contractor shall locate these areas, to suit project requirements, with the University's concurrence.
- 6.3.2 THERE IS NO CONTRACTOR PARKING PERMITTED ON CAMPUS, INCLUDING WITHIN THE CONTRACT LIMIT LINES, LOT 1, NOR THE PARKING GARAGE. The Contractor will be responsible to provide own parking. The Contractor employees may park, at its own expense, in Lot 3 located on West Side Avenue.

### 6.4 TEMPORARY TOILET FACILITIES

- 6.4.1 The Contractor shall provide and pay for suitable temporary toilets, at approved locations on the site, prior to the start of any field Work. They shall comply with State and Local laws. The Contractor will be responsible for maintenance, removal and relocation as described hereinafter.

- 6.4.2 Toilets shall be serviced by a qualified firm.
- 6.4.3 Toilets shall be of portable chemical type, one (1) for each twenty (20) on-site employees and mounted on skids, with doors, and each having a urinal and a water closet.
- 6.4.4 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. When toilets are connected to water and sewer lines, take precautions to prevent freezing. Remove units from Site at completion of Work or when so directed.
- 6.4.5 Toilet facilities in a multiple-story building shall be located on no less than every other floor, unless otherwise directed.
- 6.4.6 Relocate facilities inside building and connect to water and sewer as soon as the Work will allow as approved by the A/E.
- 6.4.7 Workmen are not to use the finished bathroom and toilet facilities in the project buildings (reasonable steps must be taken by the Contractor to enforce this rule).

#### 6.5 DRIVES AND WALKS

- 6.5.1 The 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 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 cleaning of vehicle wheels etc., prior to their leaving the construction site. The 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 Contractor elect to commence construction of permanent driveways, parking areas or walks, other than general grading of temporary shop and trailer, etc. areas, they shall not do so without the approval of the Contracting Officer. He shall not do so without having prepared the sub grade, nor will he be relieved from any responsibility for providing additional materials or of reworking the sub grade prior to completion, if so required to make the improvements conform fully with the Specifications.
- 6.5.3 The Contractor shall obtain permission, in writing from the University, 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 LIGHT AND POWER

- 6.6.1 The Contractor shall extend temporary electrical service to the construction site and building or buildings at locations approved by the Contracting Officer; temporary electrical service shall be independent of the permanent service. The location of the temporary power meter(s) must be approved by the University. The type of power required shall be provided by the Contractor. Temporary light and power installations, wiring, and miscellaneous electrical hardware must meet the Electrical Code. Electrical characteristics shall be provided to meet all temporary light and power reasonably required as herein and hereinafter specified, or as included under Supplementary General Conditions. The Contractor shall provide the necessary distribution facilities and meter, and shall pay the cost of running temporary services from the nearest utility company power pole. All costs shall be included in their bid.
- 6.6.2 Power outlets shall be fed independently of the temporary lighting system. The incoming

service and main distribution switches and panels shall be sized by NEC requirements.

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

#### 6.7 TEMPORARY HEAT

- 6.7.1 Heating of field office, storage spaces, concrete and masonry materials and Working area heating, as required, shall be provided by the Contractors. Field offices shall be heated to a minimum 68 degrees F and shall be air conditioned in the summer.
- 6.7.2 All temporary heating equipment shall be NFPA approved and connected to approved flues to the atmosphere. Gas cylinders within the building shall not exceed 100lb. 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 six (6') feet apart and be connected with two (2) braid neoprene hoses that will withstand 250 psi test pressure. Cylinders shall be secured in place to prevent them from being dislodged or otherwise upset.
- 6.7.3 Storage of cylinders within the building will not be permitted at any time. Fire extinguishers shall be provided by the contractor on each floor where heaters are used, and the area must be adequately ventilated.
- 6.7.4 The Contractor shall train at least two (2) dependable persons to oversee temporary heat operations.
- 6.7.5 If by the sixtieth (60th) calendar day after the building, buildings or major unit thereof, is (are) permanently enclosed and the Contracting Officer has determined that heat is required for the proper execution of the construction Work, the Contractor shall provide the heat. A building, or major unit thereof, shall be considered "permanently enclosed" when; (a) the exterior and enclosure Work including walls, windows, glazing, louvers, doors have been permanently installed; (b) a permanent building roof has been completed and satisfactorily tested; (c) the permanent building roof drain system has been completed and made operational; (d) all building openings have been closed such that the building is weather tight.
- 6.7.6 When the building or a major unit, including the boiler room area, is PERMANENTLY enclosed as herein defined and appropriate notice has been given, it shall be the obligation of the Contracting Officer to so acknowledge at a job conference. The minutes of said meeting shall contain such acknowledgment, that the building or a major unit is proper PERMANENTLY enclosed
- 6.7.7 The University reserves the right to permit the substitution of limited temporary enclosures in lieu of permanent construction for the attainment of a permanently tight building if such action is deemed by the University to be in the best interest of the project. This action will not be such as to create a future jeopardy to the environmental integrity of the building as construction proceeds.
- 6.7.8 Contractor shall provide such heat to a minimum temperature of 45 degrees F, or to such higher temperature, not to exceed 75 degrees F, as may be directed by the Contracting Officer for the proper conduct and protection of the Work. They shall do so until such time as all the Work is complete and accepted and he is relieved of this requirements by the Contacting Officer, in writing.
- 6.7.9 Seven (7) days prior to acceptance by the University of the heating system as substantially complete, the Contractor shall replace disposable filters with clean filters of the type specified or turn over spare sets of filters to the University as directed by the Contracting

Officer.

6.8 TEMPORARY ENCLOSURES

- 6.8.1 Whenever necessary, in order to maintain proper temperatures for the prosecution of the Work, or for the protection thereof, the Contractor shall furnish and maintain temporary enclosures for all openings in exterior walls that are not enclosed with finishing materials. Temporary wood doors shall be provided at door openings.

6.9 TEMPORARY CONSTRUCTION FENCE & SIGNAGE

- 6.9.1 The Contractor shall provide and maintain a temporary construction fence, as indicated, to enclose the area at the job site and to guard and close effectively the designated area. The General Contractor shall be responsible for posting appropriate signage restricting access, and shall further be responsible for controlling access to the job site. The Contractor shall provide gates at locations where required for access to the enclosed area. Gates shall be of chain link material, cross-braces, hung on heavy strap hinges, and shall have suitable hasps and padlocks.
- 6.9.2 The Contractor shall remove the fence upon completion of the Work or at such time before final completion as directed by the Owner. They will repair any lawn, concrete or paving surfaces which may have been damaged.

END OF ARTICLE 6



## ARTICLE 7: SUBCONTRACTORS

### 7.1 DEFINITION

- 7.1.1 A Subcontractor is an individual or firm who has a direct contract with the Prime Contractor, or another subcontractor, to perform any of the Work at the Site.

### 7.2 CONTRACTOR-SUBCONTRACTOR RELATIONSHIP

- 7.2.1 The Contractor shall, within thirty (30) days after award of the Contract, notify the Contracting Officer in writing, of the names of Subcontractors, other than those requiring to be listed in the Bid, proposed to perform the principal parts of the Work and of such others as the Contracting Officer may direct. They shall not employ any Subcontractor without prior written approval of the Contracting Officer, or any that the Contracting Officer may, within a reasonable period, reject. Failure of the Contracting Officer to reply within fifteen (15) days of receipt of such names shall constitute notice of approval.
- 7.2.2 If the Contracting Officer has reasonable objection to any such proposed person or firm, the Contractor shall substitute another Subcontractor to which the Contracting Officer has no reasonable objection. Under no circumstances shall the University be obligated for additional cost due to such substitution.
- 7.2.3 The Contractor shall make no substitution for any Subcontractor, person or firm previously selected and approved, without written notification to the Contracting Officer and receipt of their written approval for such substitution.
- 7.2.4 The Contractor acknowledges their full responsibility to the University for the acts and omissions of their Subcontractors, and of persons and firms either directly or indirectly employed by them, equally to the extent that he is responsible for the acts and omissions of persons and firms directly or indirectly employed by him and each Contractor acknowledges they remain fully responsible for the proper performance of the Contract irrespective of whether Work is performed by their own forces or Subcontractors engaged by them.
- 7.2.5 Nothing contained in the Contract Documents shall create any contractual relationship between any Subcontractor and the University.
- 7.2.6 By an appropriate agreement, written where legally required for validity, the Contractor shall require each 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, by these Documents, assumes toward the University, the Architect/Engineer and any party contracted by the University. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreement with their Subcontractors.
- 7.2.7 The Contractor agrees that in the employment of both skilled and unskilled labor, by the Contractor or their Subcontractors, preference shall be given to residents of the State of New Jersey.
- 7.2.8 Approval by the Contracting Officer 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.

END OF ARTICLE 7

## ARTICLE 8: RELATIONSHIP BETWEEN OWNER AND CONTRACTOR

### 8.1 OWNER'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 these Specifications or for any other reasonable purpose.

### 8.2 MUTUAL RESPONSIBILITY

- 8.2.1 Before completion of the Work, should it be deemed necessary by the University to do any Work whatsoever, 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 Owner may employ to do such Work. The Contractor shall afford said other individual or firm all reasonable facilities for doing such Work. Other than an Extension of Time, the Contractor shall make no claim to the University, as a result of such Work.
- 8.2.2 The Contracting Officer 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. The Contracting Officer reserves the right to employ the services of a professional consultant to evaluate any phase of the Work, but no such evaluation shall in any way relieve the Contractor of their 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, the Contractor will pay the applicable fees of such consultant and be responsible for replacing the deficient or defective Work as required.
- 8.2.3 Any costs caused by defective or ill-timed Work shall be borne by the Contractor.
- 8.2.4 If the Contractor should destroy, damage or disturb the Work of the University and 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 A/E and the Contracting Officer, or shall reimburse the Contractor whose Work he has destroyed, damaged or disturbed for the expense of replacing such Work.
- 8.2.5 Should a Contractor sustain any damage through any act or omission of any other Contractor having a Contract with the Owner, or through any act or omission of a Sub-contractor of any Contractor, or through any act or omission of the A/E, 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 8.4.2, which is included in the Contract with all other such Contractors and the A/E.

### 8.3 CONTRACTOR'S CLAIM FOR DAMAGES

- 8.3.1 Any claims made by a 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.
- 8.3.2 The University shall not be liable to the Contractor for any damages or extra costs caused, by any acts or omissions, by others. The Contractor's exclusive remedy shall be against the culpable party.

### 8.4 TIME OF COMPLETION-DELAY-LIQUIDATED DAMAGES

- 8.4.1 If the Contractor fails to complete the work included in a milestone by a milestone completion date specified in the contract, or it fails to substantially complete the project by the substantial completion date specified in the contract, or if it fails to finally complete the construction work by the final completion date specified in the contract, or any extensions

of those dates issued in accordance with the contract and the general conditions, the Contractor shall be liable to the University in the sum of one thousand (\$1,000.00) dollars per day, or the sum equal to 1/20th of one percent of the total consideration provided for under this contract, per calendar day, whichever is greater, for each and every day that the said Work shall be and remain uncompleted, which said sum shall be treated as liquidated damages and not a penalty, for the loss to the University of the use of premises in a completed state of construction, alteration or repair, as the case may be, and for added administrative and inspection costs to the University on account of the delay; provided, however, that the said liquidated damages provided for herein shall be in addition to other consequential losses or damages that the University may incur by reason of such delay, such as, but not limited to, added costs of the project and the cost of furnishing temporary services, if any. Any such items for which the Contractor is liable may be deducted by the University from any monies due or to become due to the Contractor.

- 8.4.2 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 of the Work to be done hereunder are ESSENTIAL CONDITIONS of this Contract; and it is further mutually understood and agreed that the Work embraced in this Contract shall commence on a date no later than that specified in the Notice to Proceed.
- 8.4.3 The Contractor agrees that said 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 said Contractor shall neglect, fail or refuse to complete the Work within the time herein specified, or any proper extension thereof granted by the Contracting Officer, then the Contractor does hereby agree, as a part of the consideration in the awarding of this Contract, to pay the University the amount specified in paragraph 8.6.1 above, not as a penalty but as liquidated damages for such breach of contract as hereinafter set forth, 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.
- 8.4.4 The said amount is fixed and agreed upon by and between the Contractor and the University due to the impracticality and 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 periodical estimates.
- 8.4.5 It is further agreed that Time is Of the Essence of each and every portion of this contract and of the specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the Contract an additional time is allowed for the completion of any Work. The new time limit fixed by such extension shall be of the essence of this Contract.
- 8.4.6 If job progress has been adversely affected by the non-attendance of the Contractor, or subcontractor at a scheduled job meeting of which he has been duly notified, such adverse effect shall be considered as job delay and the Contractor shall be subject to payment of damages to the University in an amount not to exceed \$100 for each occurrence.
- 8.4.7 The Contractor shall not be charged with liquidated damages, or any excess cost when the Owner determines that the Contractor is without fault and the Contractor's reasons for the time extension are acceptable to the Owner; provided further, that the Contractor's delay in the completion of the Work is due:

- a. To any preference, priority or allocation order duly issued by the Government.
- 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; and
- c. To any delays of Subcontractors or suppliers occasioned by any of the causes specified in subsections (a) and (b) of this article.
- d. The Contractor shall, within five (5) days from the beginning of such delay, 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 shall first ascertain the facts and the extent of the delay and shall notify the Contractor within a reasonable time that good cause has been shown to warrant the granting of such extension.

#### 8.5 NO DAMAGE FOR DELAY

- 8.5.1 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 or default of the University, of the A/E, or of any other Contractors employed by the University upon the Work, or by change orders, strikes, lockouts, fire, unusual delay by common carriers, unavoidable casualties, or any cause beyond the Contractor's control, or by any 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 delay so caused in the completion of the Work, as specified in Article 8.6, the same to be determined by the Contracting Officer and a similar allowance of extra time will be made for such other delays as the Contracting Officer may find to have been caused by the University. No such extension shall be made for any one or more of such delays unless within ten (10) days after the beginning of such delay a written request for additional time shall be filed with the Contracting Officer. Apart from extension of time, no payment or allowance of any kind shall be made to the Contractor as compensation for damages on account of hindrance or delay from any cause in the progress of the Work, whether such delay be avoidable or unavoidable.
- 8.5.2 The Contractor shall not be entitled to any damages or extra compensation from the University on account of any Work performed by the University or any other Contractor or the A/E or any other party, or by reason of any delays whatsoever, whether caused by the University or any other party, including but not limited to the delays mentioned in this Contract.

#### 8.6 INDEMNIFICATION

- 8.6.1 The Contractor shall assume all risk of and any responsibility for, and agrees to indemnify, defend and save harmless the University and its employees, the Construction Manager and its employees, the Architect/Engineer and its employees from and against, any and all claims, demands, suits, actions, recoveries, judgment 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 or 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 their 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 agreement.

- 8.6.2 In any and all claims against the University, the A/E, any of their agents or employees, by any Contractor, sub-contractors, their employees, anyone indirectly employed by them, or anyone for whose acts any of them may be liable, the indemnification obligation under this Section 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 Benefits Acts, or other Employee Benefit Acts.

8.7 CONTRACT TIME - NOTICE TO PROCEED

- 8.7.1 Contract time shall commence on the date as stipulated in the written Notice to Proceed, issued by the University. Notice to proceed shall be promptly issued after receipt and acceptance of properly executed contract documents including Performance and Payment Bonds and approved project schedule as described in 9.2. The Contractor agrees that contract site work shall commence no later than ten (10) calendar days after receipt of the Notice to Proceed.
- 8.7.2 If in the opinion of the University, the Contractor's delay in furnishing financial responsibility and Performance or Payment Bonds cause a delay in the issuance of Notice to Proceed, the time to complete the Work as specified in the Contract may be reduced to reflect such delay.
- 8.7.3 The Contractor shall perform no Work under this contract until the required evidence of financial responsibility and bonds have been furnished. Thereafter, Work at other than the contract site may be undertaken. The Contractor shall perform no Work at the contract site except pursuant to a Notice to Proceed.

END OF ARTICLE 8

## ARTICLE 9: CONSTRUCTION PROGRESS

### 9.1 PROGRESS MEETINGS

- 9.1.1 Progress meetings will be held every two weeks, at the job site and at a time mutually agreed upon. The Contractor and Subcontractors concerned with scheduling of future progress, and the A/E, shall each be represented by persons familiar with the detail of the Work and authorized to conclude matters relative to Work progress, schedules, etc. The Contractor and Subcontractors attending these meetings shall present complete and definitive status reports of their respective Work. They will also provide data relative to the availability of products, equipment's, labor, shipping data, time of completion and sequences of the Work and other information bearing upon the execution of the Work.
- 9.1.2 The Owner, CM and the A/E will attend the meetings. The CM will chair and prepare accurate minutes, and will reproduce and promptly distribute same.

### 9.2 GENERAL SCHEDULE REQUIREMENTS

The Contractor shall schedule the construction work and determine the most feasible means and order for the work to complete the project within the times required by the contract. The Contractor shall prepare a project schedule and monthly schedule updates which must be approved by the University and the architect, and it shall perform the contract and the work in accordance with the schedule. The project schedule must be submitted before the contract is signed, and must be approved before any work on the project can begin under the notice to proceed. When the Contractor's schedule is approved by the University, it shall become an additional contract document and the Contractor shall be required by the contract to comply with it. The project schedule and updates shall be used in determining the amount of the monthly progress payments to the Contractor. The University may also use the schedule and updates to determine if the Contractor is adequately planning and performing the work in accordance with the contract.

#### 9.2.1 FORM AND CONTENT OF SCHEDULE

The Contractor shall prepare the project schedule using Critical Path Method (CPM) scheduling techniques. The Contractor shall utilize the latest revision of Primavera P3 Scheduling software. The Contractor shall prepare a detailed schedule, which shows how it will plan, organize, execute and complete the work. The schedule shall be in the form of an activity oriented network diagram (CPM). The principles and definitions used in this section shall be as set forth in the Associated General Contractors of America (AGC) publication "Construction Planning and Scheduling", copyright 1994.

The detailed network diagram shall provide sufficient detail and clarity of form and technique so that the Contractor can plan, schedule and control its work properly, and the University and the architect can readily monitor and follow the progress of all portions of the work. The network diagram shall comply with the limitations imposed by the scope of the work and contractually specified milestone dates and completion dates. The CPM schedule shall include the arrow or network diagram and the computer produced schedule with dates.

The schedule shall include and reflect the following factors:

- a. Project phasing, and contract milestones and completion dates.
- b. The structural breakdown of the project.
- c. The types of work to be performed and the labor trades involved.
- d. Reasonable logic and activity durations.
- e. Reasonable coordination of all activities.

- f. Purchase, manufacture and delivery activities for all major materials and equipment.
- g. Deliveries of University furnished equipment.
- h. Allowances for work by separate contractors identified in writing by the University at the time of contract award.
- i. Submittals and approvals of shop drawings, material samples, and other required submittals.
- j. Subcontract work.
- k. Crew flows and sizes (manpower).
- l. Assignment of responsibility for performing all activities.
- m. Access and availability to work areas.
- n. Identification of interfaces and dependencies with preceding, concurrent and follow-on contractors, and sequences and interdependence of activities.
- o. Testing.
- p. Phased or total inspection, acceptance, and takeover by the University.
- q. Utilization of schedule to determine amounts of monthly progress payments.
- r. Activities required of the University and the project architect such as approvals, including reasonable durations for the activities.

Activities should be set forth in working days and have a maximum duration of 10 days, except for non-construction activities such as the procurement and delivery of materials and equipment. All durations shall be the result of definitive manpower and resource planning by the Contractor. The level of detail in the schedule shall be subject to the approval of the University. The schedule shall include a reasonable approach to achieve milestones and completion dates in the contract. Any failure of the Contractor to include any element of the work in the schedule shall not excuse the Contractor from completing that work and all of the work needed to complete the project by the completion dates in the contract.

The network diagram can either be hand drawn or prepared by a computer plotter. The logic diagram will be pure logic and shall not be drawn to time scale. The logic diagram shall be drawn on 30" x 42" size sheets and prepared on a tracing/Mylar or similar material suitable for reproducing high quality prints.

#### 9.2.2 COMPUTERIZATION OF SCHEDULE

The mathematical analysis of the detailed network diagram shall be made by computer, and the tabulation for each activity shall include the following:

- a. Activity numbers.
- b. Activity descriptions.
- c. Durations in workdays for each activity.
- d. Earliest start date (by calendar date).
- e. Earliest finish date (by calendar date).
- f. Latest start date (by calendar date).
- g. Latest finish date (by calendar date).
- h. Slack or total float in workdays.

The following computer documents shall be prepared as part of the initial schedule submission and each update:

- a. Activity file sort, including sorts listing activities required of the University and the project architect, such as approvals.
- b. Eight week "Look ahead" detailed bar chart.
- c. Eight week summary bar chart.
- d. Additional computer sorts requested by the University.
- e. High-density floppy disks or CDs of all computer files.

#### 9.2.3 WEATHER INCLUSION IN SCHEDULE

Seasonal weather conditions shall be included in the schedule, including average precipitation, temperature and other weather conditions typical in the geographic area over a 5-year period by quarterly period (spring, summer, fall, winter).

#### 9.2.4 SCHEDULE UPDATES

The Contractor shall prepare schedule updates monthly until its contract and the project are completed. The first update shall be issued 30 calendar days after the construction start date specified in the notice to proceed. Updates shall include the following information:

1. Actual start and completion dates for activities.
2. Activity percent completion.
3. Remaining durations for activities in progress.

Each schedule update shall also include a narrative report, which includes the following information:

- a. Summary of work completed during update period.
- b. Comparison of actual progress and status to activities and dates in original schedule.
- c. Analysis of critical path including effect of activity progress on critical path.
- d. Analysis of secondary critical paths, meaning float within 10 days of the project critical path.
- e. Analysis of time lost or gained during the update period.
- f. Identification of problem areas.
- g. Identification of change orders and delays impacting or delaying the project under the project schedule.
- h. Solutions or proposed solutions to current problems and delays.
- i. Extensions requested by the Contractor, including activities affected and the amounts, and the reasons for the requests.
- j. Extensions granted by the University for delays and changes, including the activities affected and the amounts, and any effect on the critical path and contract completion dates.
- k. Delays in activities required of the University and the project architect, and activities which they are required to complete in the update period following the issuance of the update.

All schedule updates must be submitted to the University and the architect for approval.



Schedule updates including the reports which are approved by the University shall be deemed to be official records of the progress and status of the project under the schedule and the contract, and may be utilized by the University in determining if the Contractor is adequately planning and performing the work under contract.

#### 9.2.5 MONTHLY PROGRESS AND SCHEDULING MEETINGS/EIGHT WEEK BAR CHARTS

The Contractor's project manager and scheduler shall arrange for and attend monthly progress and scheduling meetings with the University and the project architect. Monthly progress meetings shall be scheduled 3 to 7 days after monthly schedule updates and reports are issued and provided to the University and the project architect. The purpose of these meetings will be to review past progress, current status, problem areas, delays, measures to reduce delays, future progress, and the Contractor's most recent schedule update and report. At the monthly progress meetings, the Contractor shall provide look ahead summary and detailed bar charts showing the work and activities to be performed and/or completed during the eight-week period following the schedule update.

#### 9.2.6 SCHEDULE DOCUMENTATION FOR CONTRACT PAYMENTS

The Contractor will not be entitled to payments under the contract until a project schedule has been submitted to and approved by the University. No payment will be made under the contract if when the payment is due, a schedule update and narrative report is due under this paragraph but has not been submitted to and approved by the University. The original CPM project schedule shall include a breakdown allocating the total contract price among the network activities in the schedule, which must be approved by the University.

#### 9.2.7 PROGRESS, AND RECOVERY SCHEDULES

The Contractor shall perform its work in accordance with the schedule. If the Contractor's work falls behind the requirements of the schedule, it shall at its own cost institute measures to improve its progress and bring its work in compliance with the schedule, including but not limited to increasing manpower, increasing work hours per shift, increasing shifts, increasing working days per week, and re-scheduling work activities to perform them concurrently where feasible.

If monthly schedule updates show that the Contractor's progress has fallen behind the project schedule so as to jeopardize the achievement of milestone or completion dates in the contract by more than 10 work days, the Contractor shall, if requested by the University in writing, prepare a recovery schedule with acceleration measures to regain the lost time, and shall proceed in accordance with the recovery schedule in addition to the project schedule at its own cost.

#### 9.2.8 CONTRACTOR FAILURE TO PROVIDE SCHEDULE UPDATES

If the Contractor fails to provide monthly schedule updates and reports when required, the University can elect in its' sole discretion to employ any of the following remedies: 1) not make progress payments; 2) on 5 days written notice to the Contractor, retain its own consultant to provide schedule updates and reports and deduct the cost from the contract price; 3) terminate the contract for default in accordance with the termination provision in these general conditions.

#### 9.2.9 SCHEDULER QUALIFICATIONS

The Contractor must utilize a scheduler, which satisfies the qualification requirements in the University's Bidder Qualification Statement for the project. If at any time during the project it appears that the Contractor's scheduler is not competent to provide the scheduling services required in this article, the Contractor shall within 5 days after a written notice and

demand from the University, retain a replacement scheduler, which is competent to provide the services required. The University may also utilize any of the remedies in this article and the contract and general conditions for the Contractor's failure to provide proper schedule updates and reports.

### 9.3 EXTENSIONS, COMPENSATION FOR CERTAIN EXTENSIONS

#### 9.3.1 DELAYS WARRANTING EXTENSIONS OF CONTRACT DATES

If the Contractor is unavoidably prevented from completing any part of the work within the milestone, substantial completion or final completion dates in the contract by causes beyond the control and without the fault of the Contractor or its subcontractors, those contract dates will be extended by amounts equal to the time lost due to such delays, provided the Contractor requests extensions in accordance with this article. Delays warranting extensions of the contract dates include unforeseeable and unavoidable delays caused by the University, the project architect, other contractors employed by the University, utility owners or other third parties, acts of God, acts of governmental authorities, wars, abnormal weather conditions, fires, floods, earthquakes, epidemics, plagues, and other unavoidable casualties.

#### 9.3.2 WEATHER DELAYS

No time extensions will be granted for time lost due to normal seasonal weather conditions. To qualify for a time extension due to unusually severe or abnormal weather conditions, the Contractor must demonstrate that the weather conditions during a given quarterly period (summer, fall, winter, spring) were more severe at the project site than the previous five year average for the geographic area by quarter, and that the weather conditions critically impacted contract milestone, substantial completion or final completion dates by delaying the performance of work on the project's critical path. No time extensions will be considered for any weather conditions that do not affect work on the critical path or contract dates.

#### 9.3.3 FLOAT TIME USE

Float time in the schedule is not for the exclusive use of either the Contractor or the University. Float time is available for use by both parties to facilitate the effective use of available resources and to minimize the impact of problems and delays, which may arise during construction. No time extension will be granted as a result of any problem, change order or delay which only results in the loss of available positive float on the project schedule. Float time shown on the project schedule shall not be used by the Contractor in a manner, which is detrimental to the interests of the University or the project.

#### 9.3.4 CALCULATION OF EXTENSIONS

Extensions will be calculated based on the effect of delays on the project schedule and the activities in the schedule. If the Contractor is entitled to an extension for a delay based on the nature of the delay under this article, the activities in the schedule affected by the delay will be extended by the amount they are affected. If extensions of activities in the project schedule affect the critical path and delay the contract milestone and completion dates, they too will be extended to the extent affected. The critical path and contract dates will only be extended to the extent that they are actually affected under the schedule by a delay for which the Contractor is entitled to an extension.

If for any scheduled activity or period there are concurrent delays which include delays for which the Contractor is entitled to an extension and delays for which the Contractor is not entitled to an extension, the Contractor will be given an extension for the delays for which it is entitled to extension so that it will not be liable to pay liquidated damages for delay, unless the University eliminates or reduces that delay.

#### 9.3.5 ELIMINATION OF DELAYS AND EXTENSIONS (ACCELERATION)

The Contracting Officer may order and direct the Contractor to accelerate the Work at any particular place or places by increasing their forces, Working overtime and/or on Saturday, Sundays and holidays as may be required to carry on with the Work in accordance with the Progress Schedule. If a delay for which the Contractor is entitled to an extension can be reduced or eliminated by changes in the schedule or other measures which have no material adverse impact on the Contractor in terms of cost or otherwise, the Contractor shall employ those measures so that no extension is required or so that a shorter extension is required. If the Contractor is entitled to extensions for delays, and if the University (in its sole discretion) notifies the Contractor in writing that it prefers to eliminate the lost time to avoid or reduce the extension required, by changes or additional efforts such as acceleration efforts, the Contractor shall perform those measures as a change to the contract to be compensated under the change order provisions of the contract and the general conditions.

#### 9.3.6 REQUESTS FOR EXTENSIONS REQUIRED

The Contractor must provide the University with a written notice of delay and request for an extension within 5 days of the beginning of a delay, or it will not be entitled to an extension. The written notices of delay and requests for extensions must include the nature and cause of the delay, the known extent of the delay, the work activities on the project schedule affected by the delay and the extent of the affect to each, and suggestions or proposals to reduce or eliminate the delay.

#### 9.3.7 COMPENSATION FOR CERTAIN EXTENSIONS AND LIMITATIONS

Under the contract and general conditions, the University does not assume responsibility for many types of delays, including additional costs resulting from extensions granted because of those delays. Where the University is responsible for a delay under the express terms of the contract and general conditions, it will pay extra compensation for any extension granted because of the delay.

Compensation by the University for delays (and extensions) for which it is responsible under the contract and general conditions shall only include additional costs actually incurred at the site, and shall not include home office expense, home office overhead, lost profit or consequential losses. Any additional compensation under this paragraph shall be subject to the provisions in the contract and general conditions regarding claims, and the provisions in the contract and general conditions regarding the maintenance and availability of cost records.

No compensation will be paid if an extension for a delay for which University is responsible is concurrent with another delay for which the Contractor is not entitled to an extension, or is concurrent with another delay, which the Contractor is entitled to an extension but the University is not responsible for the other delay.

If the University requests a change in the contract work, potential delays and extensions which result from the change and any resulting extra compensation for the change shall be addressed under the change order provisions in the contract and the general conditions in addition to this article.

END OF ARTICLE 9

## ARTICLE 10: PAYMENTS

### 10.1 PAYMENTS TO CONTRACTOR (NO CPM)

- 10.1.1 The University shall pay the Contractor the contract price as approved. Contractor to submit monthly requisitions (five complete sets) using University approved form.
- 10.1.2 The University may make progress payments monthly as the Work proceeds. Unless otherwise directed, the Contractor shall furnish monthly updated Progress Schedule, Schedule of Amounts for Payments showing the amount for each category of the Work in sufficient detail to provide a basis for determining progress payments. The progress schedule, as approved, shall be used only as a basis for the Contractor's estimates for progress payments and approval by the University does not constitute acceptance of the allocatability and allow ability of costs to a specific element of Work. The Contractor is cautioned that no payment requests shall be approved until the Unit Schedule Breakdown has been approved in writing.
- 10.1.3 The University at its discretion, may authorize material delivered on the site and preparatory Work done to be included in the payment requests. Material delivered to the Contractor at locations, other than the site, may also be taken into consideration, if the Contractor furnishes forms entitled "Prime Contractors Summary of Stored Materials", and "Agreement and Bill of Sale Certification for Stored Materials", respectively.
- 10.1.4 Making such progress payments for Work the University will retain 10% of the approved Requisition for Payment until final acceptance and completion of all Work covered by the Contract, except; after fifty percent (50%) of the Work has been completed and upon application by the Contractor, provided the University determines that the performance and progress have been satisfactory, the partial payments thereafter may be made in full. If, however, progress is not maintained in accordance with the approved schedule, the University may elect to re-institute the 10% retainage. Upon acceptance and completion of each building or other 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 University, including retained percentages thereon, less authorized deductions. All material and Work covered by progress payments made shall thereupon become the sole property of the University but their provision shall not be construed as relieving the Contractor from the sole responsibility for all material 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.
- 10.1.5 When Performance or Payment Bonds are required, the University shall pay to the Contractor the total premiums paid by the Contractor to obtain the bonds. Their payment shall be paid at one time to the Contractor together with the first progress payment otherwise due 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 of the bond premiums to the Contractor shall not be made as increments of the individual progress payments and shall not be in addition to the contract price.
- 10.1.6 Upon completion and acceptance of all Work, the amount due the Contractor under their contract shall be paid upon satisfactory completion, of all contract closeout requirements, completion of an audit on all contract values and payments, and after the Contractor shall have provided a release of claims against the University, arising by virtue of their contract, other than claims in stated amounts as may be specifically excepted by the Contractor from the release.
- 10.1.7 Upon satisfying the above conditions the Contractor shall submit a properly executed invoice for final payment.

- 10.1.8 If, for any reason, the Contractor refuses final payment, the project shall be closed out by processing a Final Acceptance Certificate. All residual funds will be held in escrow until all claims and all Contractors are satisfied.
- 10.1.9 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 or encumbrances. Their 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.
- 10.1.10 Recommendation for Approval of a Requisition for Payment will constitute a representation by the A/E and the CM, based on their inspections at the site and data contained in the Requisition 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 requisition for payment, however, the A/E shall not thereby be deemed to represent that he has made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, or that he has reviewed the construction means, methods, techniques, sequences or procedures, or that he has made any examinations to ascertain how and for what purpose the Contractor has used the monies previously paid on account of the Contract Sum.
- 10.1.11 If any contractor doing business in New Jersey shall be or become delinquent, in the payment of taxes due the State, unless under an active appeal process, the University may withhold monies due the said contractor for the purpose of assuring the payment to the State of such taxes.

## 10.2 INVOICES

- 10.2.1 An invoice is a written request for payment under the Contract for supplies delivered, or for service rendered. The invoice must be submitted on the form provided by the University and in accordance with the instructions pertaining thereto.
- 10.2.2 All information or documentation required by the provisions of the Contract shall be provided.
- 10.2.3 Invoices shall be prepared and submitted in original plus four copies, unless otherwise specified.
- 10.2.4 Technical data such as "AS-BUILT" Drawings, reports, spare parts lists, repair parts lists, or the like, or instructions books (including operational and maintenance manuals), or any part thereof which are not delivered within the time specified by their contract or are deficient upon delivery, the University shall at its discretion, withhold from each invoice a percentage (in addition to any other retainage required by the Contract) of the contract price in accordance with the following table:

When total contract price is:	Percentage to be withheld is:
Less than \$250,000	10%
\$250,000 to \$1,000,000	5%
Over \$1,000,000	2%

The withholding or any sums pursuant to their Article shall not be construed as, or

constitute in any manner, a waiver of the Contractor's obligation to furnish the data required. In the event the Contractor fails to furnish these items, the University shall have those rights and remedies provided by law and pursuant to their contract in addition to, and not in lieu of, the sums withheld in accordance with their Article.

- 10.2.5 Those projects for which a CPM scheduling and cost control system is being used, the payment procedures stipulated in Article 9 will take precedence. Where no conflict exists between Articles 9 and 10, the two articles are intended to apply in concert with one another.

END OF ARTICLE 10

## 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 by the Contracting Officer, State of New Jersey Code Inspectors having jurisdiction or the A/E, 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 is obligated to advise the Contracting Officer or the A/E of all Work scheduled to be covered which is reasonably subject to inspection before actual covering.
- 11.1.2 If any other portion of the Work (not specifically required to be inspected) has been covered, which the Contracting Officer, or the A/E, did not make 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 not 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 Contracting Officer shall be responsible for the payment of such costs. If such Work is found to be in accordance with the Contract Documents, the cost of uncovering such Work shall be paid by the Contracting Officer through appropriate change orders.

### 11.2 CORRECTION OF WORK

- 11.2.1 The Contractor shall promptly correct all Work rejected 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 A/E'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 Contracting Officer.
- 11.2.3 If the Contractor fails to correct defective or non-conforming Work, in a timely manner, the Contracting Officer may make arrangements for such correction by others and charge the cost of so doing to the responsible Contractor and/or their 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, or the A/E, the Contracting Officer may remove and 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 may upon ten (10) days additional written notice sell such materials 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 A/E'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 their 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 to establish a period of limitation with respect to any other obligation, which the Contractor might have under the Contract Document.

### 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 instances credit Change Orders 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 their Surety shall be responsible for promptly providing any funds due the University as a result thereof.

END OF ARTICLE 11



## ARTICLE 12: PROTECTION OF PERSONS AND PROPERTY

### 12.1 SAFETY PRECAUTIONS AND PROGRAMS

- 12.1.1 Each Contractor shall be responsible, in cooperation with and under the leadership of the General Contractor, for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. They shall designate a responsible member of their 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 Owner and the A/E.
- 12.1.2 In order to protect the lives and health of their 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 employ on the Work under the Contract. The Contractor alone shall be responsible for the safety, efficiency, and adequacy of the plant, appliances and methods, and for any damage or injury, which may result from their failure, or their improper condition.

### 12.2 SAFETY OF PERSONS AND PROPERTY

- 12.2.1 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. 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 their Subcontractors or Sub-subcontractors.
  - 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.
- 12.2.2 Each Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss.
- 12.2.3 Each 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, 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.
- 12.2.4 When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the Work, the Contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel. The storage of explosives or hazardous material must be authorized by the University prior to its being brought to the job site or any University property.
- 12.2.5 No Contractor shall load or permit any part of the Work to be loaded so as to endanger its safety.
- 12.2.6 Each Contractor shall promptly remedy all damage or loss to any property caused in whole or in part by him, any of their 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 Owner or A/E, 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 their obligations stated elsewhere herein.

- 12.2.7 Each Contractor is responsible for establishing and maintaining the OSHA job-site hazardous material log.
- 12.2.8 Each 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 representative of the fire insurance company carrying insurance on the Work, or by the fire chief, or fire marshal having jurisdiction. 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.
- 12.2.9 Each Contractor shall, at all times, protect excavations, trenches, buildings and materials, from rain water, ground 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. Each Contractor shall provide and operate all pumps, piping and other equipment necessary to this end.
- 12.2.10 The Contractor shall remove snow and ice, which might result in damage or delay.
- 12.2.11 All Contractors shall comply with the Federal Occupational Safety and Health Act of 1970 and all the rules and regulations promulgated hereunder and NJ Work and Community Right to Know Act. (PL1983 c NJSC 34.5 a-1, ET SEQ.)

### 12.3 EMERGENCIES

- 12.3.1 When emergencies affecting the safety of persons or property occur, each Contractor shall act with diligence, at their discretion, to prevent threatening injury, damage or loss. They shall immediately notify the Contracting Officer, through the A/E, of the action taken and shall forthwith prepare and submit a detailed and documented request for any additional compensation or extension of time claimed on account of emergency Work.
- 12.3.2 Wherever the Contractor has taken no action, but has notified the Contracting Officer, or the A/E, 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 Contracting Officer.

END OF ARTICLE 12

## ARTICLE 13: INSURANCE AND INDEMNITY

### 13.1 CONTRACTOR INSURANCE REQUIREMENTS

- 13.1.1 The Contractor shall secure and maintain in force for the term of the Contract, insurance coverage provided herein. All insurance coverage is subject to the approval of the University and shall be issued by an insurance company authorized to do business in the State of New Jersey and which maintains an A.M. Best rating of A- (VII) or better.

The Contractor shall provide the University with current Certificates of Insurance for all coverage and renewals thereof which must contain the provision that the insurance provided in the certificate shall not be canceled for any reason except after thirty (30) days written notice to the University. All insurance required herein shall contain a waiver of subrogation in favor of the University. All insurance required herein, except Workers' Compensation and Owners and Contractors Protective, shall name New Jersey City University, the State of New Jersey, the New Jersey Educational Facilities Authority, the Architect/Engineer and Construction Manager as additional insureds.

- 13.1.2 Commercial General Liability insurance written on an occurrence form including independent contractor liability, products/completed operations liability, contractual liability, covering but not limited to the liability assumed under the indemnification provisions of this contract. Coverage for bodily injury and property damage claims arising out of the professional acts of the general contractor and subcontractors shall also be included. The policy shall not include any endorsement that restricts or reduces coverage as provided by the ISO CG0001 form without the approval of the University. The minimum limits of liability shall not be less than a combined single limit of one million dollars (\$1,000,000) per occurrence, three million dollars (\$3,000,000) general aggregate, three million dollars (\$3,000,000) product/completed operations aggregate. A "per project endorsement" shall be included, so that the general aggregate limit applies separately to the project that is the subject of this contract.
- 13.1.3 Comprehensive Automobile Liability covering owned, non-owned, and hired vehicles. The limits of liability shall not be less than a combined single limit of one million dollars (\$1,000,000) per occurrence.
- 13.1.4 Worker's Compensation Insurance applicable to the laws of the State of New Jersey and other State or Federal jurisdiction required to protect the employees of the Contractor and any Subcontractor who will be engaged in the performance of this Contract. This insurance shall include Employers' Liability Protection with a limit of liability not less than one million dollars (\$1,000,000) bodily injury, each occurrence, one million dollars (\$1,000,000) disease, each employer, and one million dollars (\$1,000,000) disease, aggregate limit. Including the employer's liability insurance under the umbrella insurance can satisfy the limit requirements.
- 13.1.5 The Contractor shall obtain and maintain a separate Owners and Contractor's Protective Liability Insurance Policy for the same limits of liability as specified for the Commercial General Liability Insurance in the name of the University, the State of New Jersey and the New Jersey Educational Facilities Authority. The Architect/Engineer, and the Construction Manager are to be the named as additional insured. The policy shall be maintained in force for the term of the Project or one year, whichever is longer.
- 13.1.6 Excess Liability, umbrella insurance form, applying excess of primary to the commercial general liability, commercial automobile liability and employer's liability insurance shall be provided with minimum limits of twenty million dollars (\$20,000,000) per occurrence, twenty million dollars (\$20,000,000) general aggregate, and twenty million dollars (\$20,000,000) products/completed operations.

- 13.1.7 The contractor shall require all subcontractors to comply with all of the insurance requirements described above, excepting excess liability. The contractor shall be responsible for obtaining certificates of insurance for all coverage and renewals thereof for each subcontractor prior to the subcontractor's beginning work on the project. The contractor shall provide copies of all subcontractor certificates of insurance to the University upon request.
- 13.2 INSURANCE TO BE CARRIED BY NEW JERSEY CITY UNIVERSITY
- 13.2.1 The University shall provide insurance protection in the form of a Builders Risk Insurance Policy upon the structure for which the Work on this Contract is to be done. The structure will be insured for 100% of the insurable replacement value thereof including materials, owned by the University, in place or to be used as part of the permanent construction including surplus materials.
- 13.2.2 This insurance shall not protect against damage or loss to any of the Contractor's or Subcontractor's tools, equipment, scaffolding, staging towers or forms, Contractor's materials and sheds or other temporary structures erected for used by the Contractor or Subcontractors. It is understood that the Contractor will at their own expense, carry all insurance which may be required to provide the necessary protection against such loss or damage herein described which insurance shall contain a waiver of any right of subrogation against the University.
- 13.2.3 The Contractor shall assume the responsibility for the first five thousand dollars (\$5,000.00) of any builder's risk loss, regardless of fault.
- 13.2.4 The Contractor shall immediately notify the University, in writing and take any other appropriate steps as may be required under the standard Builder's Risk Insurance Policy in effect in the event of any loss. Prior to the acceptance of the building by the University, the Contractor shall, at the University's option, replace and repair the damaged Work as originally provided in the drawings and specifications at no additional compensation to that provided in the original contract.
- 13.2.5 All losses will be adjusted with, and payable to, the University.
- 13.2.6 The Contractor shall not include any cost for Builders Risk insurance premiums as described herein. However, this provision shall not relieve the Contractor from their obligation to complete, according to plans and specifications, the project covered by the contract, and the Contractor and their Surety shall be obligated to full performance of the Contractor's undertaking.

END OF ARTICLE 13

## ARTICLE 14: CHANGES IN THE WORK

### 14.1 CHANGE ORDER DEFINITION

- 14.1.1 A Change Order is a written order to the Contractor, signed by the Contracting Officer and the A/E, issued after execution of the Contract, authorizing a Change in the Work, or an adjustment in the Contract Sum, or the Contract time. The Contract Sum and the Contract Time may be altered only by a Change Order. A Change Order signed by the Contractor and the Contracting Officer indicates an agreement, which shall serve to adjust the Contract Sum and/or the Contract Time. A Change Order shall become a part of the Contract Documents only after it is fully executed by the Contractor and the Contracting Officer.

### 14.2 CHANGE ORDER PROCEDURES

- 14.2.1 Contractors are required to initiate six (6) copies of each Change Order which shall be distributed as follows: Five (5) copies directly to the A/E (labor and material breakdown and all pertinent backup must be attached), and one (1) information copy shall be directed to the University.
- 14.2.2 The University without invalidating the Contract may order Changes in the Work within the general scope of the Contract, consisting of additions, deletions or other revisions. The Contract Sum and Contract Time will be adjusted accordingly. All such Changes in the Work shall be validated by Change Order and shall be performed under the applicable conditions of the Contract Documents.
- 14.2.3 The cost or credit to the University resulting from a Change in the Work shall be determined for each separate Change in the manner determined by the Contracting Officer and may, but need not be, determined in one or more of the following ways:
- a. Unit prices as stated in the Contract Documents or subsequently agreed upon. The unit price only, is used to determine the cost of Work and shall not be subject to further Contractor's markup for overhead profit.
  - b. Mutual acceptance of a lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation such as; cost of materials and cost of delivery; cost of labor including Social Security; Old Age and Unemployment Insurance, and Fringe Benefits required by agreement or custom; Worker's or Workman's Compensation Insurance; rental value of machinery and equipment, additional profit; and applicable additional Bond Premiums.
  - c. All change requests more than \$5,000.00 will require unit breakdown prior to approval.
  - d. Payments on a Time and Material Basis for Work so authorized and when performed by the Contractor shall include the cost for labor and materials as detailed in (b) above plus ten percent (10%) for overhead, five percent (5%) for profit and if applicable, actual cost of additional Bond Premium, not to exceed one percent (1%). Where such Work is to be performed by a Subcontractor, the Contractor may not mark up the price in excess of ten percent (10%) of the Subcontractor's price, plus actual cost of additional Bond Premium, not to exceed one percent (1%). Total payment hereunder shall not exceed the maximum (upset) price established at the time Work is authorized.
  - e. Payment for Standby Time or Overtime shall include a markup of not more than a total of ten percent (10%) of the net labor cost to cover the Contractor's overhead, profit, plus Bond Premium and this limit shall apply whether or not a Subcontractor is involved. Any and all claims for standby time or overtime will be rejected unless previously authorized in writing and documented time sheets are verified and

signed by the University's Contracting Officers. Should the Contracting Officer authorize premium time for Work which would otherwise be performed within the Contractor's Scope of Work and not required as a result of the Contractor's fault, additional payment will be made only for the premium portion of the labor cost, plus a total of ten percent (10%) for both overhead and profit, plus actual cost of bond premium, not to exceed one percent (1%).

- 14.2.4 "No Cost" Change Orders also may be processed to validate extensions of time or to record changes in materials or procedures.
- 14.2.5 Failure to agree with any of the methods set forth above, the Contractor, provided he receives a written order from the Contracting Officer, shall promptly proceed with the Work involved in order to avoid delays to the progress of the Work. The Contractor may then proceed with their request for a Contracting Officer's Hearing.
- 14.2.6 The Contracting Officer, at his discretion, may order a Contractor Notice to Proceed, even in the absence of a formal Change Order. Contractors shall submit a follow-up Change Order within twenty (20) days from the date of authorization to proceed with the Work. The cost of such Work shall then be evaluated by the Contracting Officer on the basis of the reasonable expenditures and savings for those performing the Work, including, in the cases of an Increase in the Contract Sum, ten percent (10%) for overhead and ten percent (10%) for profit, plus actual cost of additional bond premium, not to exceed one percent (1%). In such case, the Contractor shall keep and present, in such form as the Contracting Officer may prescribe, an itemized accounting together with appropriate supporting data for inclusion in a Change Order. Unless otherwise provided in the Contract Documents costs shall be limited to the following: Pending such final determination of cost to the Owner, payments on account may be made on the A/E's Certificate for Payment, without prejudice to the rights to the parties.
- a. Net cost of materials, including cost of delivery.
  - b. Cost of labor, including Social Security, Old Age and Unemployment Insurance and Fringe Benefits required by agreement or custom.
  - c. Worker's or Workman's Compensation Insurance.
  - d. Rental value of machinery and equipment.
  - e. Ten percent (10%) for overhead, plus five percent (5%) for profit.
  - f. Actual cost to the Contractor of any Work performed by a Subcontractor plus ten percent (10%) (no additional overhead and profit to be added for the Contractor).
  - g. Actual cost of bond premium, not to exceed one percent (1%).
- 14.2.7 The amount of credit to be allowed by the Contractor to the University for any deletion or change which results in a net decrease in the Contract Sum will be the amount of actual net cost substantiated by a bill-of-material and a breakdown of labor costs to which will be added one percent (1%) for Bond Premium, if applicable. Documented cancellation and/or restocking changes, if any, may be included in the calculation of credit.
- 14.2.8 When both additions and credits covering related Work or substitutions are involved in any one change, the allowance of ten percent (10%) for overhead, five percent (5%) for profit and actual cost of additional bond, not to exceed one percent (1%) shall be on the basis of the net increase, if any, with respect to that change.
- 14.2.9 When similar materials are to be added and deleted on the same Change Order, the net difference in material quantities shall be determined before pricing and the addition of overhead and profit. Labor costs involved in the same trade shall be treated in the same

manner, i.e., the difference in labor hours shall be determined before pricing and the addition of overhead and profit.

- 14.2.10 When a Change Order submitted by a Contractor involves added Work performed by a Subcontractor, the latter shall submit an estimate to the Contractor on their own stationery, properly itemized for labor and materials and supported by sufficient substantiating data to permit evaluation to which may be added ten percent (10%) for profit and five percent (5%) for overhead. The Contractor will then be allowed to add ten percent (10%) and applicable Bond Premium not to exceed one percent (1%). Only one (1) Subcontractor's markup per trade will be permitted.
- 14.2.11 When a Change Order submitted by a Contractor involves deleted Work of a Subcontractor, the later shall submit an estimate to the Contractor on their own stationery, properly itemized for labor and materials and supported by sufficient substantiating data to permit evaluation, including documented cancellation and/or restocking charges, if any, to which the Contractor will add applicable Bond Premium to the credit Change Order.
- 14.2.12 If unit prices are stated in the Contract Documents or subsequently agreed upon and if the quantities originally contemplated are changed in a proposed Change Order that application of the agreed unit prices to the quantities of Work proposed will cause substantial inequity to the Owner or the Contractor, the applicable unit prices shall be equitably adjusted. Nothing herein shall, in any way, limit the Contracting Officer's ability to order certain of this Work to be performed on a Time and Material basis even if applicable unit prices have previously been included elsewhere in the Contract Documents.

END OF ARTICLE 14

## ARTICLE 15: ASSIGNMENT OF ANTI-TRUST CLAIM(S)

### 15.1 ASSIGNMENT OF ANTI-TRUST 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, for itself, 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. The following are the express obligations of the Contractor:

- a. They will take no action, which will in any way diminish the value of the rights conveyed or assigned hereunder.
- b. They will advise the Attorney General of the State of New Jersey:
  - (1) Their intention to commence any action on their behalf regarding such claim or cause(s) of action.
  - (2) Immediately, upon becoming aware of the fact that an action has been commenced on their behalf by some other person(s), or the tendency of such action.
- c. They will 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 its behalf or becomes aware that such an action has been filed on their behalf by any other person. A copy of such notice will be sent to the Attorney General of the State 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 15



## ARTICLE 16: AFFIRMATIVE ACTION REQUIREMENTS

### 16.1 POLICY STATEMENT

- 16.1.1 It has long been the policy of the University to promote equal employment opportunity by prohibiting discrimination in employment and requiring affirmative action in performance of contracts funded by the University. This policy has been reinforced and expanded by an act of the Legislature, i.e., New Jersey Public Law 1975, Chapter 127, provides that no public Works Contractor can be awarded, nor any monies paid, until the prospective Contractor has agreed to contract performance which complies with the approved Affirmative Action Plan. The law applies to each political subdivision and agency of the State and includes procurement and service contracts as well as construction contracts. This section was prepared to explain the affirmative action requirements and procedures for public agencies awarding contracts and for Contractors bidding on contracts. These regulations are designed to minimize administrative paperwork and delays.

### 16.2 MANDATORY LANGUAGE

- 16.2.1 During the performance of this contract, the Contractor agrees to comply with the provisions of the mandatory language as attached to the Contract (Form of Agreement).

END OF ARTICLE 16