

# **GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION**

## **ARTICLE 1**

### **GENERAL PROVISIONS**

**1.1 BASIC DEFINITIONS:** As used in the Contract Documents (as herein defined), the following terms shall have the following meanings:

**1.1.1** "acceptable", "necessary", "proper", "satisfactory", "sufficient" or similar expressions shall mean acceptable, necessary, proper, satisfactory, or sufficient in the sole judgment of the Architect and/or Owner.

**1.1.2** "Agreement" shall mean the Agreement between the Owner and Contractor.

**1.1.3** "approved" or "approval" or words of like import shall mean the written approval of the Owner and/or Architect.

**1.1.4** "Architect" shall mean the person, or the entity consisting of persons, lawfully licensed to practice architecture as identified in the Agreement and referred to throughout the Contract Documents as if singular in number. The term "Architect" shall mean the Architect or the Architect's authorized representative(s).

**1.1.5** "Claim" shall mean a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of the terms in the Contract Documents, payment of money, extension of time or other relief with respect to the terms of the Contract Documents and includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract Documents.

**1.1.6** "Concealed" shall mean hidden from sight as in chases, furred spaces, shafts, hung ceilings or embedded in construction.

**1.1.7** "Contract Documents" are as defined in the Agreement.

**1.1.8** "Contract Limit Lines" shall mean the lines shown on the Drawings surrounding the Work, beyond which no Work is required, or activity permitted (except for necessary movement of material or personnel) unless shown or specified otherwise.

**1.1.9** "Contractor" shall mean the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as singular in number. "Contractor" shall mean the Contractor or the Contractor's authorized representative(s). Whenever the term "Contractor" is modified in any way, such as, without limit, "this Contractor", "plumbing Contractor", "electrical Contractor", the modified term shall be deemed to refer to the trade involved with the Work mentioned, but such meaning does not relieve the Contractor from its responsibility for all Work, whether or not such Work is sublet.

**1.1.10** "Day(s)" shall mean calendar day(s) unless otherwise indicated.

**1.1.11** "Drawings" shall mean and refer collectively to the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams and any amendments or supplemental documents that may be issued by the Architect and accepted by the Owner. The Drawings, constituting integral parts of the Contract Documents, serve as the bidding and working drawings (construction drawings) and indicate the arrangement of materials and completed physical spaces desired by the Owner.

**1.1.12** "equal" or "equivalent" or words of like import shall mean being the same in value, measure, force, effect or significance and corresponding in position or function, subject to the approval of the Architect and/or Owner.

**1.1.13** "Modification" shall mean (1) a written amendment to the Agreement signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect.

**1.1.14** "Owner" shall mean the University Hospital, a public instrumentality and agency of the State of New Jersey, as identified in the Agreement. The term Owner means the Owner or the Owner's authorized representative(s).

**1.1.15** "Project" shall mean the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner or by separate contractors.

**1.1.16** "Project Manual" shall mean the volume that is usually assembled for the Work, which may include the Request for Proposals and the requirements contained therein, the General Conditions, Supplementary General Conditions, Specifications and any addendum or Modifications to such documents.

**1.1.17** "Project Schedule" shall mean the time frame for the total construction of the Work within which the Project shall be completed, beginning with the execution of the Agreement and ending upon final payment to the Contractor. The Project Schedule shall include a Critical Path.

**1.1.18** "Site" shall mean the area on which the Project is to be constructed under the Contract Documents and such other areas as may be designated by Owner for access thereto and for the storage of the Contractor's materials and equipment.

**1.1.19** "Specifications" shall mean the written requirements for materials, equipment, furniture, furnishings, products, execution, construction systems, standards and workmanship for the Work and performance of related service, together with any amendments issued by the Architect and accepted by the Owner. The Specifications, constituting integral parts of the Contract Documents, serve as the bidding, purchasing and installation specifications and indicate the type and quality of materials, equipment, etc., as well as the quality of workmanship.

**1.1.20** "Subcontractor" shall mean a person or entity who has a direct contract with the Contractor to perform a portion of the Work under the Contract Documents or the subcontractors of any tier of such person or entity. The term "Subcontractor" is referred to throughout the Contract

Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

**1.1.21** "Supplemental Conditions" shall mean those contained in the RFP and enumerated in the Agreement.

**1.1.22** "Work" shall mean the construction and services required by the Contract Documents, whether completed or partially completed, and includes all labor, materials, supplies, equipment, tools, management, supervision, overhead, profit and services provided or to be provided by the Contractor to fulfill the Contractor's obligations under the Contract Documents. The Work may constitute the whole or a part of the Project.

**1.1.23** Capitalized terms not otherwise defined herein, shall have the meaning as defined in the Agreement.

## **1.2 EXECUTION, CORRELATION AND INTENT OF CONTRACT DOCUMENTS**

**1.2.1** Execution of the Agreement by the Contractor is a representation that the Contractor has (1) visited and accepted the Site, (2) become familiar with local conditions under which the Work is to be performed, (3) correlated personal investigations with requirements of the Contract Documents and (4) determined that the Contract Documents are sufficient to enable the Contractor to construct the Work and to achieve substantial completion by the date set forth in the Agreement.

**1.2.1.1** The Contractor and each subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation (1) the location, condition, layout and nature of the Site and surrounding areas, (2) generally prevailing climatic conditions, (3) anticipated labor supply and costs, (4) availability and cost of materials, tools and equipment and (5) other similar issues. The Owner assumes no responsibility or liability for the physical condition or safety of the Site or any improvements located on the Site. The Owner shall not be required to make any adjustment in either the Contract Sum or Contract Time in connection with any failure by the Contractor or any subcontractor to comply with the requirements of this paragraph 1.2.1.1.

**1.2.2** Where existing field conditions are visible (e.g. accessible by observation and investigation, including crawl spaces, attics, over ceiling spaces, etc., but excluding excavation) the Contractor and all his Subcontractors shall be held to have verified such conditions and to have accounted for same whether or not they are accurately indicated in the Contract Documents. Where existing field conditions are not visible (i.e. below grade) and existing items are indicated on the Drawings, such items shall be considered as being shown schematically only and shall not relieve the Contractor from making further investigations.

**1.2.3** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. Any omissions from the Contract Documents which are necessary or required to carry out the intent of the Contract Documents, or which are customarily performed with regard to the Work, shall

not relieve the Contractor from performing such omitted details or Work, but shall be deemed to be understood by the Contractor as being implied and required by the Contract Documents and Contractor shall be obligated to perform all such Work or omitted details as if specifically delineated or described in the Contract Documents.

**1.2.3.1** In the event that the Contractor discovers any error, omission or conflict as to the intent of the Contract Documents with regard to the proper execution and completion of the Work, the Contractor shall immediately notify the Owner and the Architect and seek correction or interpretation thereof prior to starting the affected Work. The Architect, in consultation with the Owner, will then make such corrections and interpretations in accordance with, and as may be deemed necessary for fulfilling, the intent of the Contract Documents. Contractor shall make no claim against Owner for expenses incurred or damages sustained as a result of such error, omission or conflict in the Contract Documents.

**1.2.4** The Drawings and Specifications are intended to agree and be mutually explanatory and shall be accepted and used as a whole and not separately. If any item be omitted from the Drawings and be included in the Specifications, or visa-versa, the Contractor shall execute the Work as if the item were shown and contained in both. It is the Contractor's responsibility to examine the Drawings and Specifications to ascertain the full scope of the Work appearing in the Contract Documents including, but not limited to, connections, supports and installation of equipment furnished by other trades or contractors.

**1.2.4.1** Organization of the Specifications into divisions, sections and articles and the arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of the Work to be performed by any trade. Subcontractors shall be familiar with all applicable sections of these Contract Documents. The Specifications are generally divided into trade sections in accordance with the Construction Specifications Institute Uniform System for Construction Specifications for purposes of convenience and easy reference and no attempt has been made in the Specifications to segregate Work to be performed by any trade or subcontract under any one section or part thereof. The manner in which the Specifications are organized or arranged shall not operate to make either the Owner or Architect arbiters establishing limits to contracts or subcontracts between the Contractor or any Subcontractors. The Contractor is responsible for allotting the work of Subcontractors at its own discretion, regardless of the grouping in the Specifications. It shall be the Contractor's responsibility to determine definitively with each Subcontractor the portions of the Work which each will be required to perform.

**1.2.4.2** It is the intent of the Contract Documents that the Work included under each section of the Specifications shall cover manufacture, fabrication, delivery, installation and make operational and/or erections, together with all incidentals thereto, unless otherwise noted or specified. The Contractor understands and agrees that when a "Work Included" paragraph is made a part of the Specifications, it is intended to be general and in no way limits or qualifies the requirements appearing in the other Contract Documents.

**1.2.4.3** For interpretive purposes, Specifications are primarily intended to establish products and conditions of Work and quality of materials and of workmanship and Drawings are primarily intended to indicate locations, arrangements and assemblies of the parts of the systems.

**1.2.4.4** Drawings of all trades, such as general construction (referred to as "architectural"), structural, plumbing, fire protection, furniture, fixtures, and equipment drawings, mechanical, plumbing, site, HVAC and electrical, complement each other and no Drawings are to be considered complete for any trade without reference to all other Drawings.

**1.2.4.5** From time to time as the Work progresses, the Owner reserves the right to direct the Architect to change the design as shown or any specified details, to amplify Drawings, to add explanatory Specifications and to furnish additional Drawings and Specifications without additional cost to Owner and any such supplementary Specification or Drawing shall be deemed as being included as part of the Contract Document to which it relates. If, in the opinion of the Contractor, the Contract Documents as so modified show additional Work or Work of a more expensive character than that shown or implied by the Contract Documents in their form at the time of execution of the Agreement, it shall be the duty of the Contractor to so notify the Architect within ten (10) Days from the date that the supplementary document is issued by the Architect or Contractor shall be forever barred from pursuing such claim.

**1.2.5** Titles of articles, divisions and paragraphs in the Contract Documents are introduced merely for convenience and reference only and in no way define and/or limit the scope and content of the Contract Documents, or in any way affect their provisions. No responsibility, either direct or implied, is assumed by the Owner for omission or duplication by the Contractor or its Subcontractors due to real or alleged error in the arrangement or the material in the Contract Documents.

**1.2.6** Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

**1.2.7** Each and every provision required by law to be inserted in the Contract Documents shall be deemed to have been inserted therein and the Contract Documents shall be enforced as if the provision were included. If any such provision has been omitted or has not been correctly inserted, then upon application of either party, the Contract Documents shall be physically amended to provide for such insertion or correction at no additional cost to the Owner.

**1.2.8** In the event of any inconsistency or conflict in the terms of the Contract Documents, the terms shall govern and be given preference in the following order with the highest first:

- .1** Modifications or supplementary agreements issued after execution of the Agreement
- .2** Addenda to the Agreement
- .3** Agreement
- .4** Request for Bid, except for Specifications and Drawings
- .5** Supplementary and Other Conditions, including Division 1 of the Specifications

- .6** General Conditions
- .7** Specifications, except Division 1
- .8** Drawings, in the following order of precedence:
  - (a) written words or notes on Drawings
  - (b) schedules
  - (c) large scale details
  - (d) small scale details
  - (e) computed or figured dimensions
  - (f) scaled dimensions

**1.2.9** Where there may be a conflict in the Specifications, Drawings or other Contract Documents not resolvable by application of the provisions of paragraph 1.2.8: (1) the more expensive labor, materials or equipment shall be deemed to be required and shall be provided by the Contractor, unless the Owner otherwise agrees in writing or the Contractor shall have asked for and obtained a decision in writing from the Owner, before submission of the Contractor's bid, as to which shall govern; and (2) descriptions of the Work in general terms, but not in complete detail, shall be deemed to mean that the best general construction practice is to prevail and only materials and workmanship of first quality shall be used and provided by the Contractor.

**1.2.10** In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an", but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

**1.2.11** Contractor acknowledges that Owner must comply with the requirements of the State of New Jersey and all local and county agencies having jurisdiction thereof in order to obtain economic benefits essential to the Project. Contractor agrees to use its best efforts to assist Owner in documenting compliance with such requirements, and shall furnish materials, information, and data and execute documents and take other reasonable action requested by Owner to satisfy administrative obligations. In connection with the Work, Contractor shall also cooperate with informational requests of pertinent agencies such as the State Historic Preservation Office, the United States Department of Interior, and the United States Internal Revenue Service.

## **1.3 OWNERSHIP AND USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS**

**1.3.1** The Drawings, Specifications and other documents prepared by the Architect are instruments of the Architect's service through which the Work to be executed by the Contractor is described. The Contractor may retain one contract record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect, and unless otherwise indicated the Architect shall be deemed the author of them and will retain all

common law, statutory and other reserved rights, in addition to the copyright. All copies of them, except the Contractor's record set, shall be returned or suitably accounted for to the Architect, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Architect, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner and Architect. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this license shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's copyright or other reserved rights.

**1.3.2** The Contractor shall perform no Work without first having the Drawings and Specifications approved by the Owner.

## **1.4 CONFIDENTIALITY**

**1.4.1** Contractor hereby warrants and represents that Contractor shall not knowingly or negligently communicate or disclose at any time to any person or entity any information in connection with the Work or the building, except (i) with Owner's prior written consent; (ii) as necessary to perform the Work, provided Owner receives prior notice of such necessity; or (iii) as may be required by law. Any authorized communication or disclosure shall be limited strictly to the extent of such authorization. If any person or entity seeks confidential information from Contractor regarding the Work or the Building, Contractor shall promptly notify Owner. All records and documents in connection with the Work and the Building are hereby considered proprietary materials and are confidential information. Contractor shall cause any Subcontractors, material suppliers, consultants, or any other person or entity performing any portion of the Work to warrant and represent the items set forth in this paragraph. The representations and warranties contained in this Paragraph 1.4.1 shall survive the complete performance of the Work or earlier termination of the Contract.

**1.4.2** The Contractor, at any time upon the request of the Owner, shall immediately return and surrender to the Owner all copies of any materials, records, notices, memoranda, recordings, drawings, specifications and mock-ups and any other documents furnished by the Owner or the Architect to the Contractor.

## **ARTICLE 2**

### **OWNER**

#### **2.1 REPRESENTATION, INFORMATION AND SERVICES**

**2.1.1** The Owner may designate a Project Manager to represent it in contractual, technical and administrative matters with the Contractor. The Project Manager shall have the authority to stop the Contractor's Work whenever such stoppage may reasonably be necessary to insure the proper execution of the Work. The Owner's stoppage of the Work of the Contractor 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 or Subcontractor or material supplier or anyone else performing work for the Contractor.

**2.1.2** The Owner will assign its own technical assistants to conduct on-site observations of the Work as a basis for determining the progress and conformance of Work, materials and equipment with the Contract Documents. These assistants may 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 Architect. The presence of and/or observations of these personnel shall not relieve the Contractor, or the Architect of any of their respective responsibilities under the Contract Documents.

**2.1.3** The Owner or Architect shall furnish, if available, surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. If not available, the Contractor shall perform its own investigations and provide the needed information.

**2.1.4** The Owner will furnish the Contractor with the Owner's tax exempt memorandum. The Owner is a tax exempt organization under applicable Federal and State Laws and Regulations relating to tax exempt organizations.

**2.1.4.1** In view of the foregoing, Contractor shall not include in the Contract Sum, any amount for applicable Federal and/or State sales or use taxes.

**2.1.5** The Contractor will be furnished free of charge one (1) review print and one (1) sepia, or Mylar, copy of Contract Drawings and one (1) printed copy of the Project Manual as defined in the Contract Documents. Additional prints and copies will be furnished at the cost of reproduction, postage and handling.

**2.1.6** The foregoing are in addition to other duties, rights and responsibilities of the Owner enumerated herein and especially those in respect to Article 6 (Construction by Owner or by Separate Contractors), Article 9 (Payments and Completion) and Article 11 (Insurance and Bonds).

#### **2.2 OWNER'S USE OF PREMISES AND EQUIPMENT**

**2.2.1** The Owner reserves the right, upon written notice to the Contractor, to occupy any portion of the Work prior to Substantial Completion in accordance with Paragraph 9.9.



**2.2.2** The Owner shall have the right to operate any and all equipment as soon as, and as long as, it is in operating condition whether or not such equipment has been accepted as complete and satisfactory, except that this shall not be construed to permit operation of any equipment which may be materially damaged by such operation before any required alterations or repairs have been completed. Any such repairs or alterations required of the Contractor shall be made by the Contractor at such times as directed by the Architect or Owner. Further, repairs or alterations shall be made in such a manner and at such time as will cause the minimum interruption in the use of the premises and equipment by the Owner as decided by the Owner.

### **2.2.3 OWNER'S RIGHT TO CARRY OUT THE WORK**

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of any default or neglect with diligence and promptness, the Owner may correct such deficiencies without prejudice to other remedies the Owner may have. In such case an appropriate back-charge Change Order shall be issued deducting from payments then or thereafter due the Contractor the cost of correcting such deficiencies including compensation for the Architect's and Owner's additional services and expenses made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

### **2.2.4 EXTENT OF OWNER RIGHTS**

**2.2.4.1** The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any other rights of the Owner granted in the Contract Documents, at law or in equity.

**2.2.4.2** In no event shall the Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the Owner in the Contract Documents.

## **ARTICLE 3**

### **CONTRACTOR**

#### **3.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR**

**3.1.1** The Contractor has the duty and warrants and represents that prior to submitting its bid and entering into the Agreement, the Contractor: (1) has thoroughly examined and is familiar with all of the Contract Documents, including, but not limited to, the complete set of Drawings and Specifications of the Project and any connections, utilities, underground construction, supports or work, materials or equipment that is to be furnished by the Contractor, other trades or contractors; and (2) has carefully examined and inspected the Site and any existing improvements and has satisfied itself as to the conditions thereof and the nature and location of the Work, the current local equipment, labor and material conditions and all other matters that may affect the Work or its performance. The Contractor is responsible for checking and verifying observable conditions outside the Contract Limit Lines to determine whether any conflict exists with the Work Contractor is required to perform under the Contract Documents, including, without limitation, a check on elevations, utility connections and other Site data. The Contractor warrants and represents that it has verified field conditions and dimensions by taking its own measurements at the Site as well as any other measurements, all as necessary to verify the Contract Documents and the proper lay out of the Work. As a result of such examinations, the Contractor warrants and represents that, except as to any reported errors, inconsistencies or omissions, and to concealed or unknown conditions defined in Paragraph 1.1.6, the Contract Documents are sufficiently complete and detailed for the Contractor to (1) perform the Work required to produce the results intended by the Contract Documents and (2) comply with all requirements of the Contract Documents and it fully understands the intent and purposes of the Contract Documents and its obligations thereunder and that the Contractor accepts responsibility for, and is prepared to execute and completely fulfill, the intent of the Contract Documents, without exception or reservation, at the agreed contract sum and Contractor understands that no increase shall be permitted.

**3.1.2** Errors, inconsistencies and omissions discovered by the Contractor in the Contract Documents or that affect the layout of the Work shall be immediately reported to the Architect and the Owner by the Contractor and Contractor shall halt all affected Work until such discrepancies have been corrected. The Architect, in consultation with the Owner, will then make such corrections and interpretations in accordance with, and as may be deemed necessary for fulfilling, the intent of the Contract Documents. No Work shall be commenced by the Contractor until the error, inconsistency or omission is verified and resolved to the satisfaction of the Owner. Contractor will not be entitled to any compensation, expenses or damages for the correction of errors, inconsistencies or omissions that could have been avoided by its obligation to examine the Contract Documents, Site or by the minor adjusting of size or location of various items for proper fit.

**3.1.2.1** If with the knowledge of such error, inconsistency or omission and prior to correction thereof by the Owner, the Contractor proceeds with any construction affected thereby, the Contractor shall do so at its own risk and the Work so done shall not be considered as Work done under and in accordance with the Contract Documents, unless and until approved and accepted

by the Architect and Owner.

**3.1.3** The Contractor shall perform the Work in accordance with the Contract Documents and submittals approved pursuant to paragraph 3.11 and no deviations therefrom shall be performed without approved Change Orders, Construction Change Directives, approved shop drawings, approved coordination drawings or samples or other approvals as may be applicable and required by the Contract Documents.

**3.1.4** During the progress of the Work, the Contractor may propose modifications to the Contract Documents, which modifications may be accepted in accordance with Article 7 Changes in the Work.

### **3.2 PRECONSTRUCTION CONFERENCE**

**3.2.1** A conference will be held before starting any Work under the Agreement, at which time the Contractor and its superintendent shall meet with the Architect and the Owner for the purpose of approving the list of Subcontractors, and developing mutual understanding with respect to construction schedules and procedures for prosecution of the Work. At this meeting any detailed requirements of the Drawings and Specifications which are not understood will be clarified. The Owner will establish a mutual time and place of the meeting and notify the Contractor thereof. The Owner may require at its discretion additional meetings with or without the Contractor's major Subcontractors.

### **3.3 SUPERVISION, SUPERINTENDENCE AND CONSTRUCTION PROCEDURES**

**3.3.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work.

**3.3.2** The Contractor shall designate in writing a competent full-time resident Project Superintendent to supervise and direct the Work, a competent Project Manager to provide project and administrative management and a competent Project Engineer who will assist the Project Superintendent. None of these personnel shall be replaced without written notice to and approval by the Owner. The superintendent shall be the Contractor's representative at the site and shall have authority to act on behalf of the Contractor. All communications given to the superintendent shall be as binding as if given to the Contractor. The Contractor shall provide a management chart and a list of personnel comprising the superintending staff and their areas of responsibility. All references herein to the superintendent shall be taken to mean the Contractor's superintendent staff. Should the Owner for any reason feel a different superintendent is beneficial to the work, at the Owner's request, the Contractor shall assign a different superintendent to the Project. The Contractor shall indicate to the Owner which of its staff is the Safety Engineer on the Project.

**3.3.2.1** The Project Superintendent shall, during the performance of the Work, remain on the Project site not less than eight hours per day, five days per week until termination of the Contract, unless the job is suspended or work stopped by the Owner. The Project Superintendent shall not be employed or used on any other project during the course of the Work. The Project Superintendent shall also be on site at all times that work is being performed including overtime

and weekends.

**3.3.2.2** The Contractor shall not remove the Project Superintendent from the site, without concurrence of the Architect or Owner until all of the punch list items have been completed to the satisfaction of the Architect or Owner.

**3.3.3** The Contractor shall submit a job organization chart, for the approval by the Owner, identifying the personnel it intends to assign to the Project to the Owner within seven (7) days after the Contractor has executed the Agreement. The Contractor shall also furnish the Owner in writing the names, addresses and office, home, mobile, pagers, etc. telephone numbers of the members of its organization and subcontractors' organizations who can be contacted in the event of an after-hours emergency at the Project site. The Owner shall do the same for the Contractor.

**3.3.4** The Contractor shall keep a daily log of the progress of the Work and make it accessible to the Architect and the Owner and their representatives at all times.

**3.3.5** The Contractor shall arrange for and attend project meetings with the Owner's representatives, Architect and such other persons the Owner may from time to time wish to have present including subcontractors and material suppliers. Attendance at project meetings shall include key personnel on the job, including the Contractor and Subcontractors, or other persons in charge of or involved in various phases of the Work.

**3.3.6** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor, its employees and agents, Subcontractors, suppliers and their agents and employees, and any entity or other persons performing or involved in portions of the Work.

**3.3.7** Contractor shall notify Owner and Architect if long lead items should be required so as to not impede timely progression of the Work or the Project Schedule.

**3.3.8** The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Owner or Architect in the administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

**3.3.9** The Contractor shall be responsible for inspection of portions of Work already performed under this Contract to determine that such portions are in proper condition to receive subsequent Work.

**3.3.10** The Contractor shall purchase, manage the logistic operations, assemble, produce, supervise and manage all labor, materials, equipment, plant, supplies, appliances, services and processes necessary to fulfill the Work.

**3.3.11** The Contractor has full and sole responsibility for the execution of the Work, including, but not limited to:

- .1** Construction methods, techniques, sequences and procedures and for coordinating all portions of the Work;
- .2** Safety and Safety Programs;

- .3 Compliance with Drawings and Specifications;
- .4 Good order and discipline;
- .5 Adherence to schedule;
- .6 Provision of adequate work force;
- .7 Adequacy of plant, appliance and methods, and for any damage which may result from their failure or their improper construction, maintenance or operation;
- .8 The implementation of a quality control system that will insure that all work meets the requirements and standards of the Specifications;
- .9 The Project Superintendent shall be supplemented by a field force sufficient to supervise, manage, check, control and expedite the Work.

**3.3.11.1** Contractor shall review any specified construction or installation procedure (including those recommended by any product manufacturer). Contractor shall advise the Owner:

- .1 if the specified procedure deviates from acceptable construction practice;
- .2 if following the procedure will affect any warranties; or
- .3 of any objections which Contractor may have to the procedure.

### **3.4 LABOR AND MATERIALS**

**3.4.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for all labor, materials, equipment, supplies, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

**3.4.2** The Contractor shall enforce strict discipline and good order among the Contractor's employees, Subcontractors, and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

**3.4.3** The Contractor shall immediately remove from the Work, whenever requested to do so by the Architect or Owner, any person who is considered by the Architect or Owner to be incompetent or disposed to be disorderly, or who for any reason is not satisfactory to the Architect or Owner, and that person shall not again be employed on the Work without the consent of the Architect or Owner.

**3.4.4** The Contractor shall only employ labor on the Project or in connection with the Work capable of working harmoniously with all trades, crafts and any other individuals associated with the Project. The Contractor shall also take whatever action is necessary to minimize the likelihood of any strike, work stoppage or other labor disturbance.

**3.4.5** If the Work is to be performed by trade unions, the Contractor shall make all necessary arrangements to reconcile, without delay, damage or cost to the Owner and without recourse to the Architect or the Owner, any conflict between the Contract Documents and any agreements or regulations of any kind at any time in force among members or councils which regulate or distinguish what activities shall not be included in the work of any particular trade.

**3.4.6** In case the progress of the Work is affected by any undue delay in furnishing or installing any items or materials or equipment required under the Contract Documents because of such conflict involving any such labor agreement or regulation, the Owner may require that other material or equipment of equal kind and quality be provided pursuant to a Change Order or Construction Change Directive.

**3.4.7** Whenever a product is specified in accordance with a Federal Specification, an ASTM Standard, an American National Standards Institute Specification, or other association standard, the Contractor shall present an affidavit from the manufacturer when requested by the Owner or Architect or required in the Specifications, certifying that the product complies with the particular Standard or Specification. When requested by the Owner, Architect or specified, support test data shall be submitted to substantiate compliance.

**3.4.8** Whenever a product is specified or shown by describing proprietary items, model numbers, catalog numbers, manufacturer, trade names, or similar reference, no substitutions may be made unless accepted by the Owner prior to execution of the Contract or if accepted as a change in the Work in accordance with Paragraphs 3.4.9 and 3.4.10. When two or more products are shown or specified, the Contractor has the option to use either of those products shown or specified.

**3.4.9** If, after execution of the Contract and prior to submittal of applicable shop drawings and/or coordination drawings, the Contractor desires to submit an alternate product or method in lieu of what has been specified or shown in the Contract Documents, the Contractor may do so in writing and setting forth the following:

- .1** Full explanation of the proposed substitution and submittal of all supporting data including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation of the substitution.
- .2** Reasons the substitution is advantageous and necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable.
- .3** The reduction in the Contract Sum, in the event the substitution is acceptable.

- .4 The reduction in the time of completion of the Contract and the construction schedule in the event the substitution is acceptable.
- .5 An affidavit stating that (1) the proposed substitution conforms and meets all the requirements of the pertinent Specifications and the requirements shown on the Drawings and (2) the Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by the Architect. Proposals for substitutions shall be submitted in triplicate to the Owner in sufficient time to avoid any delay of the Project Schedule and to allow the Architect no less than ten (10) working days for review. No substitutions will be considered or allowed without the Contractor's submittal of complete substantiating data and information as stated hereinbefore.

**3.4.10** Substitutions and alternates may be rejected without explanation and will be considered only under one or more of the following conditions as determined by the Owner or Architect:

- .1 Required for compliance with interpretation of code requirements or insurance regulations in existence.
- .2 Unavailability of specified products, through no fault of the Contractor.
- .3 Subsequent information disclosing inability of specified products to perform properly or to fit in designated space.
- .4 Manufacturer/fabricator refuses to certify or guarantee performance of specified product as required.
- .5 When in the judgement of the Owner or the Architect, that a substitution would be substantially to the Owner's best interests, in terms of cost, time, or other consideration.

### **3.5 WARRANTY**

**3.5.1** The Contractor warrants to the Owner and Architect that materials, supplies, furnishings and equipment furnished under the Contract will be of good quality and new, unless otherwise required or permitted by the Contract Documents; that the Work will be free from defects not inherent in the quality required or permitted; that the Work will conform with the requirements of the Contract Documents and that the Project Work complies with all applicable governmental codes, laws and regulations. Work not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by Owner's abuse, modifications not executed by the Contractor, Owner's improper or insufficient maintenance, Owner's improper operation, or normal wear and tear under normal usage. If required by the Owner or Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials, supplies, furnishings and equipment.

**3.5.2** The Contractor agrees to assign to the Owner at the time of final completion of the Work, any and all manufacturer's warranties relating to materials, supplies and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties.

**3.5.3** If Contractor uses any portion of the Work or Owner's other property prior to the date of Substantial Completion of the entire Work, such items shall be restored to their condition existing immediately prior to such use, or as otherwise specified in the Contract Documents. Contractor's warranty and agreement to correct defective Work shall specifically include Contractor's obligations under this paragraph.

### **3.6 TAXES**

**3.6.1** The Contractor shall pay sales, consumer, use and similar taxes for the Work or portions thereof provided by the Contractor which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. The Owner is exempt from certain sales and use taxes and will provide to the Contractor evidence of such exemption for the Contractor's use in purchasing materials and equipment for this Project.

### **3.7 PERMITS, FEES, AND NOTICES**

**3.7.1** The Owner shall secure and pay for the building permit issued by the Department of Community Affairs of the State of New Jersey ("DCA") and any other agency with jurisdiction over this Project. The Contractor shall submit all subcode technical sections to the DCA and shall coordinate with DCA to obtain all required inspections.

**3.7.1.1** The Contractor shall also secure and pay for all other permits, governmental or municipal fees, licenses and inspections necessary for the proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required at the time bids are received. Typical permit and/or fee obligations of the Contractor shall include, but not necessarily be limited to, street openings, curb cuts, utility tie-ins to municipal or county suppliers, fire department tie-in (water and alarms), shade tree/landscape ordinances, and construction sign permits.

**3.7.2** The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders and all other requirements of public authorities bearing on performance of the Work.

**3.7.3** It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations unless such laws, statutes, ordinances, building codes, and rules and regulations bear upon the performance of the Work. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate modification. If the Contractor knowingly performs Work contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Architect and Owner, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs, including but not limited to fines, penalties and costs to repair or replace the non-conforming Work.



**3.7.3.1** The requirements of subparagraph 3.7.3 do not waive the Contractor's responsibility of complying with the requirements of the Contract Documents when such requirements exceed those of any laws, ordinances, rules, regulations and orders of any public authority bearing on the work.

**3.7.4** Prior to application for final payment, the Contractor shall furnish a written certification that the work is completed in conformance with the Contract Documents.

**3.7.5** The Contractor shall cooperate in obtaining from governing authorities a Certificate of Occupancy, or other applicable document, which will permit occupancy and use by the Owner of the completed Work appearing in the Agreement, for the use intended, in strict conformance with applicable jurisdictional and governing rules, regulations and codes.

**3.7.6** Copies of any and all permits, licenses and certificates shall be delivered to the Owner as soon as they are obtained. Along with the request for final payment, the Contractor shall deliver the originals of such permits, licenses and certificates to the Owner.

### **3.8 ALLOWANCES**

**3.8.1** The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities against which the Contractor makes reasonable objection.

**3.8.2** Unless otherwise provided in the Contract Documents:

- .1** Materials and equipment under an allowance shall be selected with reasonable promptness by the Owner;
- .2** Allowances shall cover the cost to the Contractor of materials and equipment delivered at the Site and all required taxes, less applicable trade discounts;
- .3** Contractor's costs for unloading and handling at the Site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum and not in the allowances;
- .4** Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under subparagraph 3.8.2.2 and (2) changes in Contractor's cost under subparagraph 3.8.2.3.

### **3.9 CONTRACTOR'S CONSTRUCTION SCHEDULES**

**3.9.1** The Contractor, promptly after execution of the Agreement, shall prepare and submit for the Owner's and Architect's information the Contractor's construction schedule for the Work. The schedule shall not exceed time limits defined in the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

**3.9.2** The Contractor shall prepare and keep current, for the Architect's and Owner's approval, a schedule of submittals including, but not limited to shop drawings and coordination drawings which is coordinated with the Contractor's construction schedule and allows the Architect and Owner reasonable time to review submittals.

**3.9.3** The Contractor shall conform to the most recently approved schedule.

**3.9.4** The construction schedule shall be in a detailed precedence-style critical path method (CPM) or Primavera-compatible format satisfactory to the Owner which shall also: (1) provide a graphic representation of all activities and events, including ordering of major equipment and materials, that will occur during performance of the Work; (2) identify each phase of construction and occupancy; and (3) set forth milestone dates and all other dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents. Data output provided to the Owner shall include a Detailed Schedule Report sorted by Total Float/Early Start and another sorted by Early Start/Total Float. The Contractor shall also provide an Activity/Predecessor Report sorted by Activity Code. Upon review and acceptance by the Owner of the data submitted, the construction schedule shall be deemed part of the Contract Documents. If not accepted, the construction schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Owner and re-submitted for acceptance before Contractor submits any Applications for Payment. The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner of any delays or potential delays. The accepted construction schedule shall be updated to reflect actual progress (sometimes referred to in these General Conditions as progress reports) as set forth in Paragraph 3.9.1 or at a frequency specified by the Owner. In the event any progress report indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time, any Milestone Date or the Contract Sum (as defined in Article 9) unless any such adjustment is agreed to by the Owner and authorized pursuant to Change Order or Construction Change Directive.

**3.9.5** In the event the Owner determines that the performance of the Work, as of a Milestone Date, has not progressed or reached the level of completion required by the Contract Documents, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitation, (1) working additional shifts or overtime, (2) supplying additional manpower, equipment, and facilities and (3) other similar

measures (hereinafter referred to collectively as Extraordinary Measures). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the construction schedule.

- .1 The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner under or pursuant to this Paragraph 3.9.5.
- .2 The Owner may exercise the rights furnished the Owner under or pursuant to this Paragraph 3.9.5 as frequently as the Owner deems necessary to ensure that the Contractor's performance of the Work will comply with any Milestone Date or completion date set forth in the Contract Documents.

**3.9.6** The Owner shall have the right to direct a postponement or rescheduling of any date or time for the performance of any part of the Work that may interfere with the operation of the Owner's premises or any tenants or invitees thereof. The Contractor shall, upon the Owner's request reschedule any portion of the Work affecting operation of the premises during hours when the premises are not in operation. Any postponement, rescheduling or performance of the Work under this Paragraph 3.9.6 may be grounds for an extension of the Contract Time, if permitted under Paragraph 8.3.1, and an equitable adjustment in the Contract Sum if: (1) the performance of the Work was properly scheduled by the Contractor in compliance with the requirements of the Contract Documents and (2) such rescheduling or postponement is required for the convenience of the Owner.

### **3.10 DOCUMENTS AND SAMPLES AT THE SITE**

**3.10.1** The Contractor shall maintain at the Site for the Owner one record copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record changes and selections made during construction, and in addition approved Shop Drawings, Coordination Drawings, Product Data, Samples and similar required submittals, collectively, the "Record Documents". These shall be available to the Owner and Architect and shall be delivered to the Owner upon completion of the Work.

**3.10.2** Contractor shall maintain at the Site, and shall make available to Owner and Architect, one record copy of the Drawings (the "Record Drawings") in good order. The Record Drawings shall be prepared and updated during the prosecution of the Work by the Contractor. The prints for Record Drawing use will be a set of blackline prints of the revised Construction Documents supplied to the Contractor by the Architect within 15 days after contract award. Production of these prints is the responsibility of the Contractor. Contractor shall maintain said set in good condition and shall use colored pencils to markup said set with "record information" in a legible manner to show: (i) deviations from the Drawings made during construction; (ii) details in the Work not previously shown; (iii) changes to existing conditions or existing conditions found to differ from those shown on any existing drawings; (iv) the actual installed position of equipment, piping, conduits, light switches, electric fixtures, circuiting, ducts, dampers, access panels,

control valves, drains, openings and stub-outs; and (v) such other information as either Owner or Architect may reasonably request. Record Drawings status shall be discussed at each regular project meeting. At the completion of the Work, Contractor shall deliver all Record Drawings to Architect. Final payment and any retainage shall not be due and owing to Contractor until the final Record Drawings marked by Contractor as required above are delivered to Architect.

**3.10.3** Changes, whether resulting from formal Change Orders, Construction Change Directives or other Modifications issued shall be recorded on this set of drawings including changes in sizes, grades, location and dimensions and all other deviations from the original Contract Drawings, whether resulting from job conditions encountered or from any other cause. Locations and principal dimensions of concealed Work shall be recorded.

**3.10.4** Contractor shall comply with the Specifications, Section 01 77 00 Project Closeout for final disposition of these record documents and for alternate methods of submitting record documents to the Owner through the Architect.

**3.10.5** During the course of the Work the Contractor shall permit inspection of Record Documents by the Architect and the Owner.

### **3.11 SHOP DRAWINGS, PRODUCT DATA, SAMPLES AND COORDINATION DRAWINGS**

**3.11.1** “Shop Drawings” are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work in explicit detail.

**3.11.2** “Product Data” are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion the Work.

**3.11.3** “Samples” are physical examples which illustrate material, equipment or workmanship and establish standards by which the Work will be judged.

**3.11.4** “Coordination Drawings” are composite Shop Drawings which illustrate given items or elements in their entire construction context. These drawings define the item's or element's relationship to adjoining work by bringing together all relevant data available, which may include product configuration and clearances, conditions in the existing or as-built environment, and information derived from other trades' Shop Drawings as well as the documents provided by all design disciplines.

**3.11.5** Shop Drawings, Product Data, Samples, Coordination Drawings and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Architect is subject to the limitations of Subparagraph 4.2.7.

**3.11.6** The Contractor shall review, approve and submit to the Architect with copy to the Owner

for review and approval by Architect, Shop Drawings, Coordination Drawings, Product Data Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals made by the Contractor which are not required by the Contract Documents may be returned without action.

**3.11.7** The Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, Coordination Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect or Owner. Such Work shall be in accordance with approved submittals.

**3.11.8** By approving and submitting Shop Drawings, Coordination Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

**3.11.9** The Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's or Owner's approval of Shop Drawings, Project Data, Samples or similar submittals unless the Contractor has specifically informed the Architect and Owner in writing of such deviation at the time of submittal and the Architect and Owner have given written approval to the specific deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Coordination Drawings, Samples or similar submittals by the Architect's or Owner's approval thereof.

**3.11.10** The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Coordination Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect or Owner on previous submittals.

**3.11.11** Informational submittals upon which the Architect or Owner is not expected to take responsive action may be so identified in the Contract Documents.

**3.11.12** When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the Contractor shall provide the person or party providing the certification with full information on the relevant performance requirements and on the materials, systems, or equipment that are expected to operate at the Project site. The certification shall be based on performance under the operating conditions generally prevailing or expected at the Project site. The Architect shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

**3.11.13** All shop drawings for any architectural, structural, mechanical (including HVAC, plumbing and fire protection) or electrical work must be submitted for approval to the Architect with copy to the Owner. The Contractor represents and warrants that all shop drawings shall be prepared by persons and entities possessing expertise and experience in the trade for which the shop drawing is prepared and, if required by the Architect or applicable law, by a licensed engineer.

**3.11.14** Contractor shall mark all submittals with the relevant specification section and drawing number so that the Architect and Owner can identify the submittal.

### **3.12 USE OF SITE**

**3.12.1** The Contractor shall confine operations at the Site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the Site with materials or equipment.

**3.12.2** The Architect has established the Contract Limit Lines shown on the Drawings. The Contractor shall confine his operations within these limits, unless upon written request and reply, a variance is agreed to by the Owner. In all cases of agreed to variances, the Contractor remains under an absolute duty to defend, indemnify, save and hold harmless the Owner from responsibility, liability, damage or trespass on or over property outside the Contract Limit Lines by the Contractor, or by any of his employees, subcontractors or their employees or others for whose actions the Contractors is or may be liable.

**3.12.3** The Contractor shall determine the most advantageous method of gaining access to the Site for Contractor's personnel and for the delivery or disposal of equipment and materials; which method shall be subject to the approval of the Owner. The Contractor shall construct requisite temporary roads including shoring, shall maintain access onto the Site and shall provide offices, scaffolding, parking, overhead protection, material and equipment storage, etc., as and where approved by Owner within the Contract Limit Lines, at Contractor's own cost and expense. Contractor shall not close or obstruct walkways, passageways or stairways unless adequate alternate means are provided and approved by the Owner. Demolition and/or removal products shall not be stored or placed in passageways, stairs or other means of ingress and egress.

**3.12.4** Prior to the commencement of any Work, Contractor shall prepare, and secure from the Architect and Owner their approval of, a program for the performance of the Work, including working methods, staging of the Work, and schedules, which shall (1) provide adequate plant and facilities; (2) promote orderly and expeditious progress of the Work; (3) allow for the safe and continuous operations of the Owner, without interruption of service or change in regular schedules of operation; and (4) insure completion of the Work within the time specified in the Agreement. No extension of time or additional allowance will be made due to limitations on the hours that the Work can be performed as provided in paragraph 3.12.5 herein or as may be limited by law or other operational requirements of the Owner.

**3.12.5** Contractor acknowledges that Owner's facilities are in use and will be in continuous operation during the performance of the Work and Contractor agrees that all Work shall be conducted in the most expeditious manner possible, with minimal interference of access to Owner's property, buildings, operations and adjacent buildings and property. In order to minimize such interference, except in the case of emergencies or as otherwise agreed in writing by the Owner, no Work shall be performed by the Contractor until it has satisfied the following conditions:

- .1 No existing Owner facilities, utilities, equipment, plumbing, steam, service lines, telephones, computer lines, alarm communications, ventilating or air conditioning plant or equipment, service plant or equipment, mechanical piping installations and connections, patient support, therapy, diagnostic or other patient related equipment, etc. shall be interrupted, removed or otherwise disturbed without the specific direction and approval of the Architect after identification and clearance by the Owner. The working around, shutting off and/or turning on of electric current in live circuits or working plumbing and mechanical piping, water, medical gases or vacuum lines, steam service lines, plant, equipment, etc., of Owner shall be done under the supervision of the Owner and the Contractor. Whenever such Work is contemplated, Contractor shall submit to the Architect and Owner a written request for scheduling such Work five (5) working days prior to the date on which the proposed Work is to be performed. The Architect and Owner shall approve such request, unless the Owner determines that its operations or employees are unable to accommodate the proposed date. The Architect will notify the Contractor if a change in the proposed date is required; and
- .2 Except as approved in writing by Owner or in the case of an emergency, no Work shall be performed on Saturdays, Sundays or legal holidays observed by the Owner or at such hours of the day or night to which the Owner may reasonably object; and
- .3 Contractor shall obtain written approval and determine if there are any special requirements of the Owner prior to the handling and removal of materials, placing of lights, use of scaffolding and other structures, performance of Work after normal hours; and
- .4 Contractor shall maintain necessary and clean access for Owner's operations at all times of the day and night and shall exercise the utmost care in locating detours and otherwise providing for vehicular and pedestrian traffic.

**3.12.6** All Work to be performed shall be confined to its immediate area of operations and Contractor shall not utilize any other area which will interfere with the operations of the Owner.

**3.12.7** The Contractor shall provide full and free access for the Architect and the Owner and/or their representatives to inspect any of the manufacturing, preparation, receipt, delivery, installation or construction of the Project. Work done while the Architect or Owner have been denied access may be automatically rejected.

**3.12.8** The Contractor shall not open up Work to the prejudice of Work already started. Contractor shall be liable for any and all damages sustained to existing construction, work in place, facilities, utilities, services and equipment, resulting from its completing the Work in

accordance with the Contract Documents.

**3.12.9** The Contractor shall be solely responsible for the performance of the Work in a manner which shall not create objectionable noise, disruption of the Owner, its business and operation, its fire and security alarm communications, utilities, signals, and services, encumbrance of the Owner, loss of services, operational delays, or any other unnecessary inconvenience or nuisance to the Owner.

### **3.13 CUTTING AND PATCHING**

**3.13.1** The Contractor and each subcontractor shall be responsible for their own cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.

**3.13.2** The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work. The Contractor shall not cut, patch, damage or alter installed Work, or Owner's existing work and improvements, without the consent of the Architect and the Owner. Only trade persons skilled and experienced in their trade and cutting and patching shall perform such Work.

**3.13.3** Any cost to the Owner or Contractor caused by defective or ill-timed Work shall be borne by the Contractor.

**3.13.4** Contractor acknowledges that the Work may involve renovation and alteration of existing improvements and, therefore, cutting and patching of the Work is essential for the Project to be successfully completed. Contractor shall perform any cutting, altering, patching, and fitting of the Work necessary for the Work and the existing improvements to be fully integrated and to present the visual appearance of an entire, completed, and unified project. In performing any Work which requires cutting, fixing, or patching, Contractor shall protect and preserve the visual appearance and aesthetics of the Project to the reasonable satisfaction of both Owner and Architect.

### **3.14 CLEANING UP**

**3.14.1** The Contractor shall keep the Site and surrounding area free from all debris, waste materials or rubbish. At the completion of each work day the Contractor shall containerize and/or dispose of all waste materials and rubbish. At completion of the Work the Contractor shall remove from and about the Project all debris, waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials.

**3.14.2** The Contractor shall remove all debris from the Site on a daily basis or as directed by Owner. No debris shall be buried on the Site.



**3.14.3** If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor and either deducted from any payments due or to be paid to the Contractor or reimbursed to the Owner by Contractor.

### **3.15 ACCESS TO WORK**

**3.15.1** The Contractor shall provide the Owner and Architect and their designated representatives and invitees safe access to the Work in preparation and progress wherever located. To the extent required by law or requested by Owner, representatives of Local, State or Federal agencies shall be permitted access to the Work, wherever it is in preparation or progress, and the Contractor shall provide proper facilities and safety provisions for such access and inspection.

### **3.16 ROYALTIES AND PATENTS**

**3.16.1** The Contractor shall defend, indemnify and hold harmless the Owner and its officers, agents, servants and employees, and the Architect from liability of any nature or kind, including cost and expense for, or on account of, any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the Work, including its use by the Owner, unless otherwise specifically stipulated in the Contract Documents.

**3.16.2** License and/or royalty fees for the use of a process which is authorized by the Owner of the Project must be reasonable, and paid to the holder of the patent, or the authorized licensee, directly by the Owner and not by or through the Contractor.

**3.16.3** If any design, device or material covered by letters, patent or copyright is utilized in the Work, the Contractor shall provide for such use by suitable agreement with the owner of such patented or copyrighted design, device or material. It is mutually agreed and understood that, without exception, the Contract Sum shall include all royalties or costs arising from the use of such design, device or materials, in any way involved in the Work. The Contractor and/or the sureties shall defend, indemnify and save harmless the Owner of the Project and the Architect from any and all claims for infringement by reason of the use of such patented or copyrighted design, device or materials or any trademark or copyright in connection with work agreed to be performed under the Contract Documents, and shall indemnify the Owner for any cost, expense or damage which it may be obligated to pay by reason of such infringement at any time during the prosecution of the Work or after completion of the work on the Site.

### **3.17 INDEMNIFICATION**

**3.17.1** To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Owner, its servants, agents and employees from and against any and all claims, damages, losses and expenses of any kind or nature, including but not limited to attorneys' fees, costs of investigation, hiring of expert witnesses, court costs and any settlement, judgment or award arising out of or resulting from performance of the Work, but only to the extent caused in whole or in part by negligent or willful acts, errors or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they

may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by Owner. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist for Owner.

**3.17.2** In claims against any person or entity indemnified under this Paragraph 3.17 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph 3.17 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under worker' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

**3.17.3** The indemnification provided hereunder shall in no way limit the obligations of the Contractor under the Contract Documents, nor preclude the Owner from taking any other actions available under any other provisions of the Contract Documents or otherwise at law or equity.

### **3.18 REPORTS**

**3.18.1** Contractor shall furnish daily reports to Architect and Owner in such form as Architect and Owner may require, of the location and occupation upon the Work of its crews with the number of men in each, and such other information regarding Work as may be requested by Architect and Owner.

### **3.19 PUBLICITY**

**3.19.1** The Contractor shall not divulge information concerning this Project to anyone without the Owner's prior written consent. The Contractor shall obtain a similar agreement from firms, subcontractors, suppliers and others employed by the Contractor. The Owner reserves the right to release all information as well as to time its release, form and content. This requirement shall survive the expiration of the contract.

## **ARTICLE 4**

### **ADMINISTRATION OF THE CONTRACT**

#### **4.1 ARCHITECT**

**4.1.1** Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written notification by the Owner. The Owner shall notify the Contractor of any such change.

**4.1.2** In case of termination of employment of the Architect, the Owner shall appoint an architect whose status under the Contract Documents shall be that of the former architect.

#### **4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT**

**4.2.1** Unless otherwise directed by the Owner, the Architect will provide administration of the Contract as described in the Contract Documents, and will be the Owner's representative (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from

time to time during the correction period described in Paragraph 12.2. The Architect will advise and consult with the Owner. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified by written instrument in accordance with other provisions of the Contract Documents. Nothing contained in this Agreement shall limit the obligation of the Architect under its separate agreement with the Owner.

**4.2.2** The Architect will visit the Site at intervals appropriate to the stage of construction to become familiar with the progress and quality of the completed Work and to determine if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents. On the basis of on-Site observations as an Architect, the Architect will keep the Owner informed of progress of the Work, and will guard the Owner against defects and deficiencies in the Work.

**4.2.3** The Architect will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility as provided in Paragraph 3.3. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work but the Architect shall have the obligation to immediately inform the Owner of any deficient Work.

**4.2.4** Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate through the Architect. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications with separate contractors shall be as directed by the Owner.

**4.2.4.1** Instructions, orders and/or requests from the Owner to the Contractor relating to interpretations of the Contract Drawings and the Specifications or the quality and quantity of materials will generally be transmitted to the Contractor through the Architect.

**4.2.5** Based on the Architect's observations and evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

**4.2.6** The Architect, in consultation with the Owner, will have authority to reject Work which does not conform to the Contract Documents. Whenever, in its reasonable opinion, the Architect considers it necessary or advisable to ensure the proper implementation of the intent of the Contract Documents, the Architect, in consultation with the Owner, will have authority to require special inspection or testing of the Work in accordance with Subparagraph 13.5.2 whether or not such Work be then fabricated, installed or completed. However, neither the Architect's authority to act in consultation with the Owner, under this Subparagraph 4.2.6, nor any decision made by the Architect in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the Architect or Owner to the Contractor, any subcontractor, any of their agents or employees, or any other person performing any of the Work.

**4.2.7** The Architect will review and approve or take other appropriate action upon the

Contractor's submittals, such as Shop Drawings, Coordination Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design requirements expressed in the Contract Documents. The Architect's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Article 3. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**4.2.8** The Architect will prepare Change Orders and Construction Change Directives for the Owner's approval, will review all change orders prepared by the Contractor, and may authorize minor changes in the Work as provided in Article 7.

**4.2.9** The Architect will conduct inspections, accompanied by the Contractor and Owner, to determine the date or dates of Substantial Completion and the date of Final Completion, will receive and forward to the Owner for the Owner's review and records written warranties and related documents required by the Contract Documents and assembled by the Contractor, and will issue a Final Application for Payment upon compliance with the requirements of the Contract Documents.

**4.2.10** If the Owner and Architect agree, the Architect may provide one or more Project Representatives acceptable to the Owner to assist the Architect in carrying out its responsibilities at the site. The duties, responsibilities and limitations of authority of any such Project Representative shall be as set forth in the Contract Documents.

**4.2.11** The Architect will initially interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made with reasonable promptness and within any time limits agreed upon.

**4.2.12** Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings.

**4.2.12.1** Notwithstanding the foregoing, the Owner may overrule the interpretations or decisions of the Architect.

## **4.3 CLAIMS AND DISPUTES**

### **4.3.1 DECISION OF ARCHITECT**

Claims, including those alleging an error or omission by the Architect, shall be referred initially to the Architect for action as provided in Paragraph 4.4. A decision by the Architect, as provided in Subparagraph 4.4.4, shall be required as a condition precedent to litigation of a Claim between

the Contractor and Owner as to all such matters arising prior to the date final payment is due, regardless of (1) whether such matters relate to execution and progress of the Work or (2) the extent to which the Work has been completed. The decision by the Architect in response to a Claim shall not be a condition precedent to litigation in the event (1) the position of Architect is vacant, (2) the Architect has not taken any preliminary action as required under subparagraph 4.4.1, (3) the Architect has failed to render a final written decision under Subparagraph 4.4.4 within thirty (30) days after the Claim is made, (4) forty-five (45) days have passed after the Claim has been referred to the Architect or (5) the Claim relates to a lien or other encumbrance.

#### **4.3.2 NOTICE OF AND TIME LIMITS ON CLAIMS**

Claims by either party must be made within fourteen (14) Days after occurrence of the event giving rise to such Claim or within fourteen (14) Days after the date on which claimant has knowledge or should reasonably have knowledge of the circumstances giving rise to the Claim, whichever is later. Claims must be made by written notice, which shall be delivered to the Architect and the party against whom the claim is made within the stated fourteen (14) Day time period. An additional Claim related to, but made after the initial Claim has been implemented by Change Order will not be considered unless submitted within the time limits stated herein; provided, however, that the claimant shall use its best efforts to furnish the Owner, as expeditiously as possible, with notice of any Claim including, without limitation, those in connection with concealed or unknown conditions, once such claim is recognized, and shall cooperate with the Owner and/or Architect and the party against whom the Claim is made in any effort to mitigate the alleged or potential damages, delay or other adverse consequences arising out of the condition which is the cause of such a Claim.

**4.3.2.1** Claims may also be reserved in writing within the time limits set forth in this Paragraph 4.3. If a Claim is reserved, the Resolution of Claims and Disputes procedures described in Paragraph 4.4 shall not commence until a written notice from the claimant is received by the Owner. Any notice of Claim or reservation of Claim must clearly identify the alleged cause and the nature of the Claim and include data and information then available to the claimant that will facilitate prompt verification and evaluation of the Claim.

#### **4.3.3 CONTINUING CONTRACT PERFORMANCE**

Pending final resolution of a Claim including litigation, unless otherwise agreed by Owner and Contractor in writing, the Contractor shall proceed diligently with performance of the Work and the Owner shall continue to make payments of undisputed amounts in accordance with the Contract Documents.

#### **4.3.4 CLAIMS FOR CONCEALED OR UNKNOWN CONDITIONS**

If conditions are encountered at the Site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents and which could not have been discovered through diligent Site investigation, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than seven (7) Days after first observance of the conditions. The Architect will promptly investigate such conditions and,

if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend to the Owner an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the Site are not materially different from those indicated in the Contract Documents or were not concealed or unknown, and that no change in the terms of the Contract is justified, the Architect shall so notify the Owner and Contractor in writing, stating the reasons. Claims by the Contractor in opposition to such determination must be made within seven (7) Days after the Architect has given notice of its decision. No adjustment in the Contract Time or Contract Sum shall be permitted, however, in connection with a concealed or unknown condition which does not differ materially from those conditions disclosed or which reasonably should have been disclosed by the Contractor's (1) prior inspections, tests, reviews and preconstruction services for the Project, or (2) inspections, tests, reviews, and preconstruction services which the Contractor had the opportunity to make or should have performed in connection with the Project.

#### **4.3.5 CLAIMS FOR ADDITIONAL COST**

If the Contractor wishes to make Claim for an increase in the Contract Sum, a claim shall be filed as provided in paragraph 4.3.2. In no event shall the Contractor stop executing the Work of the Claim or any other Work of the Project. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Paragraph 10.3. If the Contractor believes that the Contract Sum should be increased for reasons including but not limited to (1) a written interpretation from the Architect or Owner, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, the Claim shall state the reason for which Contractor believes additional compensation is due, the nature of the costs involved and supporting documentation to substantiate Contractor's claim.

#### **4.3.6 CLAIMS FOR ADDITIONAL TIME**

**4.3.6.1** If the Contractor wishes to make Claim for an increase in the Contract Time, written notice shall be given as provided in paragraph 4.3.2. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

**4.3.6.2** The Owner will consider a Claim for additional time due to adverse weather only if the adverse weather conditions that occurred could be classified as Acts of God (e.g. tornados, hurricanes, blizzards, 100 years storms, etc.). Any Claim submitted shall state that the weather conditions could not have reasonably been anticipated and shall provide details concerning the impact on the scheduled construction.

#### **4.3.7 INJURY OR DAMAGE TO PERSON OR PROPERTY**

If Contractor or Owner suffers injury or damage to person or property because of an act or omission of the other party, or any of the other party's employees or agents, or of others for whose acts such party is legally liable, a Claim for such injury or damage, whether or not insured, shall be filed as provided in paragraph 4.3.2. The Claim shall provide sufficient detail to enable the other party to investigate the matter. If the Claim includes an increase in the Contract Sum or Contract Time, the Claim shall further comply with the requirements of paragraphs 4.3.5

or 4.3.6.

#### **4.4 RESOLUTION OF CLAIMS AND DISPUTES**

**4.4.1** The Architect will review Claims and take one or more of the following preliminary actions within ten (10) days of receipt of a Claim: (1) request additional supporting data from the claimant, (2) request information or documentation from the party against whom the claim is asserted, (3) reject the Claim in whole or in part, stating reasons for rejection, (4) recommend approval of the Claim by the other party or (5) suggest a compromise. The Architect may also, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim.

**4.4.2** If a Claim has been resolved, the Architect will prepare or obtain appropriate documentation.

**4.4.3** If a Claim has not been resolved, the party making the Claim shall, within seven (7) Days after the Architect's preliminary response, take one or more of the following actions: (1) modify the initial Claim or (2) notify the Architect that the initial Claim stands or (3) notify the Architect that the suggested compromise is acceptable.

**4.4.4** If a Claim has not been resolved after consideration of the claimant's actions under paragraph 4.4.3, if any, and of further evidence presented by the parties pursuant to paragraph 4.4.1, if any, the Architect will render a final written decision within seven (7) Days. The Architect's final written decision will include any change in the Contract Sum or Contract Time or both. If there is a surety and there appears to be a possibility of a Contractor's default, the Architect may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

**4.4.5** Should the Contractor disagree with the Architect's decision, the Contractor shall have the right to request an Owner's Determination.

**4.4.6** The Owner shall have the right to overrule any decision made by the Architect.

#### **4.5 LEGAL RESOLUTION OF DISPUTES**

**4.5.1** If the parties to a dispute arising out of this Agreement, do not mutually agree as set forth in this Article 4, the parties agree to litigate the matter in the federal or state courts located in Essex County, New Jersey.

**4.5.2** No litigation, arising out of, or relating to such a dispute, shall include, by consolidation, joinder or any other manner, the Owner when the Owner has no direct responsibility in the dispute or for the damages arising therefrom.

**4.5.3** Nothing contained herein shall relieve said Contractor(s) or Architect from any liability or damage resulting to the Owner on account of such dispute or damages.

## **ARTICLE 5**

### **SUBCONTRACTORS**

#### **5.1 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK**

**5.1.1** No later than fourteen (14) calendar days subsequent to the execution of the Agreement, the Contractor shall furnish the Architect and Owner in writing, with (1) the name, trade and subcontract amount for each Subcontractor and (2) the names of all persons or entities proposed as manufacturers of the products identified in the Specifications (including those who are to furnish materials or equipment fabricated to a special design) and, where applicable, the name of the installing Subcontractor. At the request of the Owner or Architect, Contractor shall furnish supplemental information that the Owner or Architect may require with regard to the qualifications, background and ability of such Subcontractor to perform the Work satisfactorily. The Architect or Owner will reply to the Contractor in writing stating whether or not the Owner or the Architect, after due investigation, has reasonable objection to any such proposed Subcontractor.

**5.1.1.1** Contractor shall furnish any supplemental information requested by the Owner and Contractor shall be notified of Owner's objections to such manufacturer or installing Subcontractor, all as provided in subparagraph 5.1.1.

**5.1.2** The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

**5.1.3** If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. Under no circumstances will the Owner be obligated to increase the Contract Sum due to such substitution.

**5.1.4** The Contractor shall make no substitution for any Subcontractor or any other person or entity previously selected and approved by the Owner, without written request to the Owner and receipt of its approval for such substitution.

**5.1.5** Approval of a Subcontractor may be conditioned on (among other things) the furnishing, without expense to the Owner of a surety bond guaranteeing payment by the Subcontractor of claims of materialmen, Sub-subcontractors, workmen and other third persons arising out of the Subcontractor's performance of any part of the Work.

**5.1.6** Owner's approval of any Subcontractor, shall under no circumstance operate to relieve the Contractor from its full obligations under the Contract Documents, or relieve the surety of its obligations under the Bonds, or imply approval of any equipment, materials or supplies. No subcontract, no approval of any Subcontractor and no act or omission of the Owner or the Architect shall create any rights in favor of such Subcontractor and against the Owner.

**5.1.7** The Owner may reject any subcontract if the proposed Subcontractor fails to furnish a statement to the effect that said Subcontractor is acquainted with all of the provisions of Contract



Documents and agrees thereto. Where appropriate, the Contractor shall require each Subcontractor to obtain similar statements from sub-subcontractors.

**5.1.8** Contractor shall be fully responsible to the Owner for the acts and omissions of its Subcontractors and all persons or entities directly or indirectly employed by such Subcontractors, equally to the extent that Contractor is responsible for the acts and omissions of persons and entities employed directly or indirectly by Contractor. No approval of any Subcontractor, shall under any circumstances operate to relieve the Contractor from its full obligations under the Contract Documents, nor the surety of its obligations under the Bonds; no subcontract, no approval of any Subcontractor and no act or omission of the Owner or the Architect shall create any rights in favor of such Subcontractor and against the Owner.

## **5.2 SUBCONTRACTUAL RELATIONS**

**5.2.1** By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by the Contract Documents, assumes toward the Owner and Architect and other separate contractors. Each Subcontractor agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontractor agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Each Subcontractor agreement shall further provide that the agreement shall be assigned to the Owner at the same price as the agreement with the Contractor, at the option of the Owner, in the event that the right of the Contractor to proceed with the Work under its agreement with the Owner is terminated in whole or in part. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed sub-subcontractors.

**5.2.2** Contractors shall require each Subcontractor to (1) inspect surfaces and job conditions before beginning work at Site, and (2) accept or cite necessary corrections in surfaces or job conditions at Site.

**5.2.3** All subcontracts shall be in written form and shall specifically provide that the Owner is an intended third party beneficiary of such subcontract. At the Owner's request, copies of any and all executed subcontracts shall be given to the Owner by the Contractor.

**5.2.4** Contractor shall be fully responsible to the Owner for the acts and omissions of its Subcontractors and all persons or entities directly or indirectly employed by such Subcontractors, equally to the extent that Contractor is responsible for the acts and omissions of persons and entities employed directly or indirectly by Contractor.

## **5.3 CONTINGENT ASSIGNMENT OF SUBCONTRACTS**

**5.3.1** Each subcontract agreement for a portion of the Work shall state that it may be assigned by the Contractor to the Owner provided that:

- .1** assignment is effective only after termination of the Contract by the Owner for cause or convenience pursuant to Paragraphs 14.2 and 14.4 and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor in writing; and
- .2** assignment is subject to the prior rights of the surety, if any, obligated under the bonds relating to the Contract.

**5.3.2** Each subcontract shall specifically provide that the Owner shall only be responsible to the Subcontractor for those obligations of the Contractor that accrue subsequent to the Owner's exercise of any rights under this conditional assignment.

## **ARTICLE 6**

### **CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

#### **6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS**

**6.1.1** The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the Site under conditions of the contract identical or substantially similar to these, including those portions related to insurance and waiver of subrogation. The Contractor cannot claim that delay or additional cost is involved because of such action by the Owner.

**6.1.2** When separate contracts are awarded for different portions of the Project or other construction or operations on the Site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

**6.1.3** The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall not make any revisions to the construction schedule and Contract Sum after Owner exercises its right. The construction schedules then in force shall constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

**6.1.4** The Contractor accepts assignment of, and liability for, all purchase orders and other agreements for procurement of materials and equipment that are identified as part of the Contract Documents. The Contractor shall be responsible for such pre-purchased items, if any, as if the Contractor were the original purchaser. The Contract Sum includes, without limitation, all costs and expenses in connection with delivery, storage, insurance, installation and testing of items covered in any assigned purchase orders or agreements. All warranty and correction of the Work obligations under the Contract Documents shall also apply to any pre-purchased items, unless the Contract Documents specifically provide otherwise.

## **6.2 MUTUAL RESPONSIBILITY**

**6.2.1** The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their work and shall connect and coordinate its work with adjacent work and with other trades, include Contractor's construction and operations with theirs as required by the Contract Documents so that no portion of the Work is delayed or not properly performed.

**6.2.2** If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect and Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractors' completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

**6.2.3** Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor. Owner shall not be liable for any damages suffered by any contractor by reason of another Contractor's default, delinquency or timing of performance; it being understood that Owner has no liability for the acts, omissions or errors of any Contractor.

**6.2.4** The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the Owner or separate contractors as provided in Subparagraph 10.2.5.

**6.2.5** Claims and other disputes and matters in question between the Contractor and a separate contractor shall be subject to the provisions of Paragraph 4.3 provided the separate contractor has reciprocal obligations.

**6.2.6** The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Paragraph 3.13.

## **6.3 OWNER'S RIGHT TO CLEAN UP**

**6.3.1** If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the Site and surrounding area free from waste materials, debris and rubbish as described in Paragraph 3.14, the Owner may clean up and allocate the cost among those responsible as the Owner determines to be just.

## **ARTICLE 7**

### **CHANGES IN THE WORK**

#### **7.1 CHANGES**

**7.1.1** Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

**7.1.2** A Change Order shall be based upon agreement between the Owner and Contractor; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor.

**7.1.3** Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order or Construction Change Directive. Except as permitted in Paragraph 7.3 and Paragraph 9.7.2, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that the Owner has been unjustly enriched by any alteration or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents.

**7.1.4** If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order or Construction Change Directive that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

#### **7.2 CHANGE ORDERS**

**7.2.1** A Change Order is a written instrument submitted by the Contractor, prepared by the Architect and approved by the Owner, stating agreement upon all of the following:

- .1** a change in the Work;
- .2** the amount of the adjustment in the Contract Sum, if any; and
- .3** the extent of the adjustment in the Contract Time, if any.

**7.2.2** Methods used in determining adjustments to the Contract Sum shall be as set forth in Subparagraph 7.3.3.

**7.2.2.1** Neither the Owner nor the Contractor shall be obligated to inform, or obtain consent of, any surety for the Contractor's performance (or for payments to be made by the Contractor) as to

any Change Order, and no Change Order shall relieve any such surety of its obligations. It is the Contractor's obligation to ensure that the surety waives any and all objections to any change in the Work. Notwithstanding the foregoing, in the event that the Change Order exceeds fifteen (15%) percent of the Contract Sum, Owner reserves its right to require Contractor to obtain the Consent of Surety, and an increase in the bond.

**7.2.2.2** The terms and conditions relating to proposed Change Orders may be negotiated with the Contractor. If the Contractor signifies its acceptance of such terms and conditions by executing a supplementary agreement, and if such supplementary agreement is approved and executed by the Owner, payment in accordance with the provisions as to compensation and adjustments in the Contract Time therein set forth constitute full compensation and a mutually acceptable time adjustment for all Work included therein or required thereby. The Contractor agrees that a proposed supplementary agreement which is not approved by the Owner or which is rejected by the Contractor shall have no effect and that neither will attempt to use it in any litigation which may result from the Agreement. An executed Change Order is a final Contract Document and the Contractor cannot make additional Claim for any Work in that Change Order.

**7.2.2.3** No Claim for additional compensation shall be made by the Contractor because of any such alteration, deviation, addition to, or omission from the Work required by the Contract Documents, by reason of any variation between approximate quantities appearing in the Contract Documents and the quantities of Work as done, by reason of extra work, by reason of the elimination of any alternate items, or by reason of changes in the character or extent of Work except as allowed in this Article.

**7.2.2.4** No Claim by the Contractor for additional compensation or extension of time within the scope of this Article will be allowed if asserted after final acceptance of the Work appearing in the Contract Documents.

**7.2.2.5** Agreement on any Change Order shall constitute a final settlement of all items covered therein, subject to performance thereof and payment therefor pursuant to the terms of the Contract Documents. In the event a Change Order increases the Contract Sum, Contractor shall include the Work covered by such Change Order in Applications for Payment as if such Work was originally part of the Contract Documents.

**7.2.2.6** It is understood and agreed that minor changes and refinement detailing will be accomplished from time to time with respect to the Contract Drawings and Specifications. No adjustment in the Contractor's Contract Sum, or time required for performance of any part of the Work, will be made unless such minor changes, refinement or detailing results in changes in scope, quality, function, and/or intent of the Contract Documents not reasonably inferable or anticipatable by a contractor of the Contractor's experience and expertise.

**7.2.2.7** The Work shall be performed in accordance with the true intent and meaning of the Contract Documents without any further expense or additional time of any nature whatsoever to the Owner other than the consideration named in this Article 7.

**7.2.2.8** The Owner reserves the right, at any time during the progress of the Work, to alter the Contract Drawings or Specifications or omit any portion of the Work as it may deem reasonably necessary for the Owner's interest; making allowances for additions and deductions, with

compensation made in accordance with the Contract Documents, for this work without constituting grounds for any Claim by the Contractor for allowance for damages or for loss of anticipated profits, or for any variations between the approximate quantities and the actual quantities of the Work as done.

### **7.3 CONSTRUCTION CHANGE DIRECTIVES**

**7.3.1** A “Construction Change Directive” is a written order prepared by the Architect and approved by the Owner, directing a change in the Work or any other change within the scope of the Contract Documents and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, 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 being adjusted accordingly.

**7.3.2** A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order to keep the Work and the Project moving forward to completion.

**7.3.3** If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods at Owner's discretion:

- .1** mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2** unit prices stated in the Contract Documents or subsequently agreed upon;
- .3** cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4** as provided in Subparagraph 7.3.6.

**7.3.4** Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with and prosecute diligently the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time. The Work of a Construction Change Directive signed by the Owner is a directive to the Contractor to immediately proceed with the Work.

**7.3.5** A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

**7.3.6** If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be initially determined by the Architect or Owner on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, and also under subparagraph 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized

accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Subparagraph 7.3.6 shall be limited to the following:

- .1** costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom and workers' or workmen's compensation insurance;
- .2** costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3** rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others; Unless otherwise established in the Contract, (1) the rental value of the Contractor's own equipment shall be not more than 80 percent of the rates in the current edition of "Compilation of Rental Rates for Construction Equipment" prepared by Associated Equipment Distributors, Oak Brook.
- .4** costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work, if applicable;
- .5** additional costs of supervision and field office personnel directly attributable to the change; and
- .6** a reasonable sum for overhead and profit, no greater than a total of ten percent (10%) of the cost of items .1 to .5 above.

**7.3.7** Pending final determination of cost to the Owner, amounts not in dispute may be included in Applications for Payment. The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

**7.3.8** Overtime, when specifically authorized by the Owner and not as an Extraordinary Measure, shall be paid for by the Owner on the basis of premium payment only, plus the cost of insurance and taxes based on the premium payment period. Overhead and profit will not be paid by the Owner for overtime.



## **ARTICLE 8**

### **TIME**

#### **8.1 DEFINITIONS**

**8.1.1** Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

**8.1.2** The date of commencement of the Work is the date of the Agreement. The date of commencement shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.

**8.1.3** The date of Substantial Completion of the Work or designated portion thereof is the date certified by both the Architect and Owner, in accordance with paragraph 9.8 herein, when construction is sufficiently complete, in accordance with the Contract Documents, so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use.

#### **8.2 PROGRESS AND COMPLETION**

**8.2.1** Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work. Whenever additional time is allowed under the Contract Documents for completion of the Work, the new time limit fixed by such extension shall be of the essence of this Agreement.

**8.2.2** The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required herein by Article 11 to be furnished by the Contractor. The date of commencement of the Work shall not be changed by the effective date of such insurance. The Contractor shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

**8.2.3** The Contractor shall begin the Work on the date of commencement as defined in subparagraph 8.1.2. The Contractor shall carry the Work forward expeditiously with competent management and adequate forces and shall achieve Substantial Completion and Final Completion within the Contract Time.

**8.2.4** If the Owner in writing directs the Contractor to work overtime to expedite the final completion of the work, at a time when Contractor is not in default in any of the provisions of the Contract Documents, Contractor agrees to work said overtime and Owner shall pay the Contractor only the Contractor's extra labor cost over the amount for regular time during the period of such overtime, including additional insurance and taxes incurred by the Contractor with respect thereto. Time slips covering said overtime must be submitted to Owner's designated representative for review and approval. No commission or fee is to be charged by or allowed to Contractor on account of overtime.

**8.2.5** If Contractor shall, at any time, be behind in the Work, or if in the opinion of the Architect or Owner, Contractor is not prosecuting the Work diligently or maintaining the progress of the Work in accordance with the Project schedule or is otherwise delaying the progress of the Work necessary to complete the Project within the Contract Time and such delays are not justified as set forth in subparagraph 8.3.1, then, if directed in writing by the Owner or Architect, Contractor shall develop a corrective action plan to address the Project Schedule to meet the substantial completion date, and shall take such action as shall be necessary (including increasing the size of the work force, expediting material shipments, working overtime, or other actions) to bring the general progress of the Work on the Project into line with the Progress Schedule, the cost and expense of overtime or additional measures shall be borne entirely by Contractor.

### **8.3 DELAYS AND EXTENSIONS OF TIME**

**8.3.1** If the Contractor is delayed at any time in progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner, or by substantial changes ordered in the Work, or by fire, unavoidable casualties or other causes beyond the Contractor's control, or by delay authorized by the Owner, or by other causes which the Architect determines may justify delay and which were unforeseeable at the time the execution of this Agreement, then the Contract Time shall be extended by Change Order to the extent such delay will prevent the Contractor from achieving Substantial Completion within the Contract Time and if the performance of the Work is not, was not or would not have been delayed by any other cause for which the Contractor is not entitled to an extension in the Contract Time under the Contract Documents. The Contractor further acknowledges and agrees that adjustments in the Contract Time will be permitted for a delay only to the extent such delay (1) is not caused, or could not have been anticipated by the Contractor, (2) could not be limited or avoided by the Contractor's timely notice to the Owner of the delay and (3) is of a duration not less than one (1) day.

**8.3.2** Claims relating to time shall be made in accordance with applicable provisions of Paragraph 4.3; provided, however, that Contractor shall not be entitled to an extension of time hereunder unless it makes its claim within seventy-two (72) hours of the beginning of the delay and demonstrates to the satisfaction of the Architect and Owner that the delay could not have been foreseen or avoided and Contractor has used all available means to minimize the consequences of such delay.

**8.3.3** Notwithstanding anything to the contrary contained anywhere else in the Contract Documents, including Section 6.2.3, 8.3.1 and 8.3.2, in no event shall the Contractor be entitled to additional payment or allowance of any kind as compensation for damages due to delays in the completion of the Work, regardless of the cause for such delay, including without limitation, any act, neglect or default of the Owner, Architect, Subcontractor or any other party involved in carrying out the Work, any changes in the Work, any labor dispute, fire, unusual delay in deliveries, unavoidable casualties or by causes beyond the Owner's and/or the Contractor's control or any suspension or other delay authorized by the Owner. The Contractor's sole claim for delay shall be for additional time. Any delay claim for time shall be determined from the Contract Time as stated in the Agreement, regardless of any accelerated schedule by the

Contractor.

## **ARTICLE 9**

### **PAYMENTS AND COMPLETION**

#### **9.1 CONTRACT SUM**

**9.1.1** The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

**9.1.2** Each Application for Payment shall include such instruments, evidence, and materials as Owner and Architect shall require including, without limitation, such requisition forms, disbursement requests, indemnities (including evidence of All Risk physical damage insurance coverage on materials and equipment stored off-site), and undertakings as they may specify and an estimate of the total labor done and materials stored at the site (or other location approved in writing by Owner) or installed in the building, less costs for which payment has been made, and also less retainage. All Applications for Payment shall be made on and in compliance with a form acceptable to Owner.

#### **9.2 SCHEDULE OF VALUES**

**9.2.1** Thirty (30) Days before the first Application for Payment is submitted, the Contractor shall submit to the Architect and Owner a Schedule Of Values which allocates the Contract Sum to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Architect and Owner may require. This Schedule, as approved by the Architect and Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment and such approval shall not constitute acceptance of the allocability of costs to a specific portion of the Work. No Application for Payment shall be approved until a Schedule Of Values has been approved by the Owner and Architect in writing.

**9.2.2** The Contractor shall prepare a trade payment breakdown for the Work for which the Contractor and each of its Subcontractors is responsible, such breakdown being submitted on a uniform standardized form approved by the Owner. The form shall include detailed information sufficient to exhibit areas, floors and/or sections of the Work, and/or by convenient units and shall be updated as required by the Owner as necessary to reflect (1) description of Work (listing labor and material separately), (2) total value, (3) percent of the Work completed to date, (4) value of Work completed to date, (5) percent of previous amount billed, (6) previous amount billed, (7) current percent completed and (8) value of Work completed to date. Any trade breakdown which fails to include sufficient detail; is unbalanced or exhibits "front-end loading" of the value of the Work shall be rejected. If trade breakdown had been initially approved and subsequently used, but later found improper for any reason, sufficient funds shall be withheld from future Applications for Payment to ensure an adequate reserve (exclusive of normal retainage) to complete the Work.

#### **9.3 APPLICATIONS FOR PAYMENT**

**9.3.1** At least forty five (45) Days before the date established for each progress payment or such

other time period as may be determined by the Owner, the Contractor shall submit to the Architect an itemized Application for Payment for Work completed in accordance with the Contract Documents and for operations completed in accordance with the Schedule Of Values. Such application shall be notarized, if required, and shall be accompanied by such supporting details and documentation to substantiate the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage if provided for elsewhere in the Contract Documents.

**9.3.1.1** Such Applications for Payment may include requests for payment on undisputed amounts that relate to changes in the Work which have been properly authorized by Change Orders.

**9.3.1.2** Such Applications for Payment shall not include requests for payment of amounts the Contractor does not intend to pay to a Subcontractor or material supplier because of a dispute or other reason.

**9.3.1.3** Each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Architect and Owner:

- .1** A current Contractor's lien waiver and duly executed and acknowledged sworn statement showing all Subcontractors and material suppliers with whom the Contractor has entered into subcontracts, the amount of each such subcontract, the amount requested for any Subcontractor and material suppliers in the requested Application for Payment and the amount to be paid to the Contractor from such Application for Payment, together with similar sworn statements from all such Subcontractors and material suppliers;
- .2** duly executed waivers of mechanics' and material suppliers' liens from all Subcontractors and, when establishing payment or satisfaction of payment of all amounts requested by the Contractor on behalf of such entities or persons in any previous Application for Payment; and
- .3** all information and materials required to comply with the requirements of the Contract Documents or reasonably requested by the Owner.

**9.3.1.4** Until the date of Substantial Completion, the Owner shall pay ninety percent (90%) of the amount due the Contractor on account of Application for Payment provided that when the Contractor's Work is fifty percent (50%) complete and thereafter, if the manner of completion and progress of such Work is and remains satisfactory to the Owner, the Owner shall, at its sole discretion, upon request by the Contractor, pay in full that portion of subsequent Application for Payment relating to the Contractor's Work. The full contract retainage may be reinstated in respect to the Contractor's Work if the manner of completion of such Work or its progress does not remain satisfactory to the Owner for any reason. Any release or reinstatement of a portion of the Contractor's retention prior to final acceptance of the Work and payment therefore, shall be at the sole discretion of the Owner.

**9.3.1.5** Application for Payment shall not be made more than once a month and at a time to be agreed upon by the Contractor and Owner.

**9.3.1.6** As the Work progresses in accordance with the Contract Documents and in a manner that is satisfactory to the Owner, the Owner hereby agrees to make payments to the Contractor therefor, based upon the Contract Sum and approved Schedule of Values, as follows. The Architect will once in each month and on such day as the Owner may fix, make an estimate of the quantity of Work done and of material which has actually been put in place or incorporated into the construction or stored on or off the site in accordance with the terms and conditions of the Contract Documents during the preceding month, and compute the value thereof and recommend to the Owner the amount to be paid to the Contractor. No monthly estimate will be rendered unless the value of the Work done equals five percent (5%) percent of the Contract Sum or One Thousand Dollars (\$1,000), whichever is less.

**9.3.2** If approved in advance by the Owner, payments may be made for materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment and otherwise protect the Owner's interest, and shall include applicable insurance, storage and transportation to the site for such materials and equipment stored off the site. Contractor shall also comply with the following specific requirements:

- .1** The aggregate cost of materials stored off site shall not exceed Five Thousand Dollars (\$5,000) at any time without written approval of the Owner.  
Title to such materials shall be vested in the Owner, as evidenced by documentation satisfactory in form and substance to the Owner, including, without limitation, recorded financing statements, UCC filings and UCC searches.
- .2** With each Application for Payment, the Contractor shall submit to the Owner a written list identifying each location where materials are stored off the Project site and the value of materials at each location. The Contractor shall procure insurance satisfactory to the Owner for materials stored off the Project site in an amount not less than the total value thereof. The Contractor shall be responsible for theft or pilferage of any materials or equipment stored by the Contractor at an off-site location.
- .3** The consent of any surety shall be obtained to the extent required prior to payment for any materials stored off the Project site.
- .4** Representatives of the Owner shall have the right to make inspections of the storage areas at any time.
- .5** Such materials shall be (1) protected from diversion, destruction, theft and damage to the satisfaction of the Owner, (2) specifically marked for use on the Project, and (3) segregated from other materials at the storage facility.

**9.3.3** The Contractor warrants that title to all Work covered by an Application for Payment will

pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, materials suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

**9.3.3.1** The Contractor further expressly undertakes to defend the Owner and any other Indemnitees, at the Contractor's sole expense, against any actions, lawsuits or proceedings brought against Owner and any Indemnitees as a result of liens filed against the Work, the improvements or any portion of the property of the Owner or Indemnitees for payments due by the Contractor (referred to collectively as liens in this Paragraph 9.3.3). The Contractor hereby agrees to indemnify and hold the Owner and Indemnitees harmless against any such liens or claims of lien and agrees to pay any judgement or lien resulting from any such actions, lawsuits or proceedings.

**9.3.3.2** The Owner at its sole discretion may release any payments withheld due to a lien or claim of lien if the Contractor obtains security acceptable to the Owner of a lien bond which is: (1) issued by a surety acceptable to the Owner, (2) in form and substance satisfactory to the Owner, and (3) in an amount not less than One Hundred Fifty percent (150%) of such lien claim. By posting a lien bond or other acceptable security, however, the Contractor shall not be relieved of any responsibilities or obligations under this Paragraph 9.3, including, without limitation, the duty to defend and indemnify the Owner and Indemnitees. The cost of any premiums incurred in connection with such bonds and security shall be the responsibility of the Contractor and shall not be part of, or cause any adjustment to, the Contract Sum.

**9.3.3.3** The Contractor agrees to waive any right which it may have to assert a mechanic's or other lien against the Project site and any improvements thereon, including, without limit, the Work itself. Furthermore, the Contractor will cause a similar provision, waiving any right to a mechanic's or other lien against the property, to be included in all contracts with its Subcontractors, any sub-subcontractors and all contracts with material suppliers.

**9.3.3.4** Notwithstanding the foregoing, the Owner reserves the right to settle any disputed mechanic's or materialmen's lien claim by payments to the lien claimant or by such other means as the Owner, in the Owner's sole discretion, determines is the most economical or advantageous method of settling the dispute. The Contractor shall promptly reimburse the Owner, upon demand, for any payments so made.

**9.3.4** Concurrent with the first Application for Payment, the Contractor shall submit a quarterly Cash Flow Projection for the Project which delineates the expected monthly Application for Payment amounts for the duration of the Project. This projection shall be updated and resubmitted with each subsequent Application for Payment.

**9.3.5** Any Application for Payment which is based on a pending claim for additional compensation may be certified by the Architect, but subject to the Owner's approval, to the extent the Architect determines that the payments yet to be made under the Contract together with any retainage are sufficient to protect the Owner.

## **9.4 CERTIFICATES FOR PAYMENT**

**9.4.1** If the Contractor has made Application for Payment as above, the Architect will, within ten (10) Days after such Application is received, either issue to the Owner, with a copy to the Contractor, a Certificate for Payment for ninety percent (90%) of the amount of the Application for Payment, less any other amounts permitted to be withheld under the Contract Documents, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification, whether in whole or in part, as provided herein in subparagraph 9.5.1.

**9.4.2** Nothing herein shall be construed as requiring the Architect to certify such Applications or to reduce the retainage. Certifications and payments, including those pursuant to a pending claim, shall be tentative and conditional and it shall not be necessary for the Architect to make any statement to this effect.

**9.4.3** The provisions for payment, withholding, retainage and Certificates for Payment are solely for the benefit of the Owner and no other party (including sureties of the Contractor) shall have any claim for negligence or other action against the Owner, the Architect or anyone acting on behalf of either of them for waiving or misapplying these provisions.

**9.4.4** The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based upon the Architect's inspections at the site and data contained in the Application for Payment, that the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents and the Contractor is entitled to payment in the amount certified. By issuing a Certificate for Payment, however, the Architect shall not be deemed to represent that it has reviewed the construction means, methods, techniques, sequences or procedures or that it has made any examination to ascertain how and for what purpose the Contractor has used the monies previously paid on account of the Contract Sum. By issuing a Certificate for Payment, the Architect shall not thereby be deemed to represent that it has made exhaustive or continuous on-site inspections to check the quality or quantity of the Work or that it has made any examination to ascertain how or for what purpose the Contractor has used the monies previously paid on account of the Contract Sum.

**9.4.2.2** No payment will be made on any materials or equipment without documented evidence of the acceptability of such materials or equipment filed with the Architect. Such payment shall not be deemed to be an acceptance of such materials or equipment, and the Contractor shall be responsible for and shall deliver to the site and properly incorporate in the Work only those materials or equipment that comply with the Contract Documents.

**9.4.2.3** All payments including the final, will be made for actual quantities of Work performed and the materials actually incorporated in the Work in accordance with the requirements contained in the Contract Documents.

**9.4.2.4** Partial payments as determined by the Architect, and the resulting quantities involved shall be accepted as final, conclusive and binding upon the Contractor.

**9.4.2.5** It is agreed that so long as the Contractor fails to comply with any lawful or proper direction concerning the Work or material given by the Owner, Architect or either of their representatives, the Contractor shall not be entitled to have any payment made, nor shall any

payment be rendered on account of Work done or material furnished until such lawful or proper direction aforesaid has been fully and satisfactorily complied with by the Contractor. The Contractor in this event shall not stop prompt and diligent prosecution of the Work in accordance with the Project Schedule.

## **9.5 DECISIONS TO WITHHOLD CERTIFICATION**

**9.5.1** The Architect or Owner may decide not to certify payment and may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's or Owner's opinion the representations required by Subparagraph 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application for Payment, the Architect will notify the Contractor and Owner as provided in Subparagraph 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also decide not to certify payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss because of:

- .1** defective Work not remedied; third party claims filed or reasonable evidence indicating probable filing of such claims;
- .2** failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .3** reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .4** damage to the Owner or another contractor;
- .5** reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .6** failure to carry out the Work in accordance with the Contract Documents or any other default by the Contractor under the Contract Documents.

**9.5.2** When the above reason(s) for withholding certification are removed, certification will be made for amounts previously withheld. The Owner shall not be deemed to be in default of the Contract by reason of withholding payment while any of the above grounds remain uncured, but the Contractor shall be deemed to be in default if it stops or slows down the Work.

**9.5.3** Notwithstanding that a Certificate of Payment may have been issued by the Architect, the Owner shall have the right to withhold from payment the funds necessary to offset claims described in paragraph 9.5.1 and Owner may, at its option, act as agent for the Contractor in disbursing said funds directly to those parties and for those reasons described in Paragraph 9.5.1.1. The Owner shall render to the Contractor a proper accounting of all such disbursements, and the value of such disbursed funds shall be entered as payment under the Contract.



**9.5.4** If the Contractor disputes any determination of the Owner with respect to any Application for Payment, the Contractor shall nevertheless continue to diligently prosecute the Work or be deemed to be in default.

**9.5.5** Notwithstanding that a Certificate of Payment may have been issued by the Architect, Owner reserves the right to withhold payment of any monies due to the Contractor, under this Contract, if there shall be a default in any of the terms, covenants, and conditions to be performed on the part of the Contractor under any other contracts between the Owner and the Contractor; and to apply any monies that may become due to the Contractor hereunder against the Contractor under any other contract between Owner and Contractor. Owner may, at its option, in the event of such default in other such contract, declare a default to exist hereunder entitling Owner to all remedies provided herein or at law or in equity.

## **9.6 PROGRESS PAYMENTS**

**9.6.1** After the Architect has issued a Certificate for Payment and if the Owner approves such Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

**9.6.1.1** The Owner will make payments no later than thirty five (35) Days after the receipt of the approved Certificate for Payment from the Architect.

**9.6.2** The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in similar manner.

**9.6.3** The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

**9.6.4** Except as may otherwise be required by law, neither the Owner nor Architect shall have an obligation to pay or to see to the proper disposition of the monies paid by the Owner to the Contractor including the payment of money to a Subcontractor.

**9.6.5** Payment to material suppliers shall be treated in a manner similar to that provided in Subparagraphs 9.6.2, 9.6.3 and 9.6.4.

**9.6.6** No Certificate for Payment, nor any payment by the Owner, nor any partial or entire use or occupancy of the Project by the Owner, shall constitute an acceptance of the Work or materials or should be construed or relied upon as any indication that the Work or materials are in accordance with the Contract Documents, or that the amounts paid or certified therefor represent the correct cost or value of the Work or materials or that such amounts are in fact due the Contractor.

**9.6.7** The Owner may at its sole discretion at any time after fifty percent (50%) of the Work has

been completed and the Owner deems that satisfactory progress is being made, release any portion of the retained percentage to the Contractor upon submission by the Contractor, with respect to the portion of the Work completed, of such of the items as the Owner may request.

## **9.7 FAILURE OF PAYMENT**

**9.7.1** If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within twenty (20) Days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within ten (10) Days after the date established in the Contract Documents for the payment of the amount certified by the Architect for a reason other than which Owner is entitled to withhold payment under the Contract Documents, then the Contractor may, upon seven (7) additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable actual costs of shut-down and start-up, which shall be accomplished as provided in Article 7.

**9.7.2** If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due the Owner, or the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to: (1) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner, or (2) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

## **9.8 SUBSTANTIAL COMPLETION**

**9.8.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use; provided, however that as a condition precedent to Substantial Completion, the Owner has received all Certificates Of Occupancy and any other permits, approvals, licenses and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Project.

**9.8.2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected ("Punch List"). The Contractor shall proceed promptly to complete and correct items on the Punch List. Failure to include an item on such Punch List does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of the Contractor's Punch List, the Architect and Owner will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's and Owner's inspection discloses any item, whether or not included on the Contractor's Punch List, which is not in accordance with the requirements of the Contract Documents, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon

notification by the Architect or Owner. The Contractor shall then submit a request for another inspection by the Architect and Owner to determine Substantial Completion. When the Work or designated portion thereof is determined to be substantially complete, the Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the Punch List accompanying the Certificate of Substantial Completion. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof, unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate which shall identify all non-conforming, defective and incomplete Work and shall establish a schedule of completion for all items listed therein.

**9.8.3** Upon Substantial Completion of the Work or designated portion thereof and upon application by the Contractor and certification by the Architect and Owner, the Owner shall make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof as provided in the Contract Documents. The payment shall be sufficient to increase the total payments to ninety five percent (95%) of the amount due, less twice the value of incomplete work and unsettled Claims.

## **9.9 PARTIAL OCCUPANCY OR USE**

**9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under paragraph 11.3 and authorized by public authorities having jurisdiction over the Work. In the event that the Owner desires to exercise such right of occupancy, the Contractor shall cooperate in making available for the Owner's use, building services, including, but not limited to, heating, ventilating, cooling, water, lighting and telephone and shall complete as soon as practicable any equipment required to furnish such services which is not ready for operation and use. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them, including, but not limited to payments, retainage if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Subparagraph 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The state of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Owner.

**9.9.2** In the event that the Owner desires to exercise the right to occupy, the Contractor shall cooperate in making available for the Owner's use, building services, including but not limited to, heating, ventilating, cooling, water, lighting and telephone and shall complete as soon as practicable any equipment required to furnish such services which is not ready for operation and use.

**9.9.3** Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect

shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

**9.9.4** Unless otherwise agreed in writing, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

## **9.10 FINAL COMPLETION AND FINAL PAYMENT**

**9.10.1** Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect and Owner will promptly make such inspection and, when the Architect and Owner find the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that on the basis of the Architect's observations and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate of Payment is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Subparagraph 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. All warranties and guarantees required under or pursuant to the Contract Documents shall be assembled and delivered by the Contractor to the Owner as part of the final Application for Payment. The final Certificate for Payment will not be issued by the Owner until all warranties and guarantees have been received and accepted.

**9.10.2** Neither final payment nor any remaining retained percentage shall become due and no final Certificate of Payment shall be issued by the Architect until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied and that all Work has been performed in accordance with the Contract Documents, (2) a certificate evidencing that insurance required by the Contract Documents is to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner, (3) a certified statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) a Certificate of Occupancy for the Work, if appropriate and (6), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees. The Contractor shall also be required to forward to the Owner copies of appropriate Operation and Maintenance Manuals, keys, Record Drawings, attic storage, replacement parts and warranties, etc., as appropriate, before final payment is made.

**9.10.3** If, after Substantial Completion of the Work, Final Completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting Final

Completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

**9.10.4** Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

**9.10.5** Where the term "Final Completion" or "complete" is used, it shall mean that all Project areas are finished, all materials and equipment are in place, all adjustments and balancing have been done, all corrections and adjustments noted on pre-final and final inspections have been made, all Punch List items under subparagraph 9.5.2 are complete, all tests are made, the Contractor has vacated the Site taking all its tools, equipment, materials, debris, trash, etc., and all certificates, permits, reports and similar information have been filed or provided.

## **9.11 WAIVER OF LIENS**

**9.11.1** To the fullest extent permitted by applicable law, the Contractor hereby waives and releases any and all rights of mechanic's lien and similar rights of lien for payment for services, labor, equipment or materials furnished by the Contractor in performance of the Work and granted by law to persons supplying materials, equipment, services and other things of value to improve or modify land or structures thereon, which the Contractor may have against the Owner's premises or property belonging to the Owner or the Project site. The Contractor shall require each of his Subcontractors and materialmen, and any person or entity with whom they contract, to agree in writing to the waiver of any such lien rights as a condition to the granting of a contract, subcontract, or purchase order.

**9.11.2** The Contractor shall at all times promptly pay for all services, materials, equipment, and labor used or furnished by the Contractor in the performance of the Work and shall at its expense keep the Owner's premises and all property belonging to the Owner and the Project site, free and clear of any and all of the above-mentioned liens and rights of lien arising out of services, labor, equipment or materials furnished by the Contractor or its employees, materialmen or Subcontractors in the performance of the Work. Such lien or claim, until it is removed, shall preclude any payment by Owner under this Agreement unless other security satisfactory to the Owner is provided by the Contractor in lieu of monies so withheld. If the Contractor fails to release and discharge any such claim or lien against the Owner's premises or property or the Project site after receipt of written notice from the Owner to remove such claim or lien, the Owner may take any further action it determines to be necessary to protect Owner's interests and the Contractor shall pay the Owner any and all costs and expense of the Owner in so doing, including reasonable attorney's fees incurred by the Owner.

## **ARTICLE 10**

### **PROTECTION OF PERSONS AND PROPERTY**

#### **10.1 SAFETY PRECAUTIONS AND PROGRAMS**

**10.1.1** The Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract and for safe working conditions at the site. The Contractor shall be solely responsible for any safety violation or unsafe condition, and shall defend, indemnify and hold the Owner and Architect harmless from any penalty, fine or liability in connection therewith.

**10.1.1.1** The Contractor shall develop and have in effect during the Work, a Health and Safety Program ("Program") for its employees and Subcontractors performing the Work, or any part thereof and the Contractor shall provide a copy of the Program to the Owner prior to commencement of the Work which Program shall describe, but not be limited to :

- .1** Personnel responsible for project safety including all subcontract personnel, including at least one on-site person;
- .2** Provision of first aid facilities;
- .3** Provision of safety for all personnel;
- .4** Use of protective clothing and equipment;
- .5** Conducting weekly "toolbox" safety talks and demonstrations and forwarding a copy of weekly minutes to the Architect;
- .6** Distributing and posting of safety posters, warning and instructional material;
- .7** Regular periodic meetings of assigned safety personnel from all trades;
- .8** Provision of suitable and easily accessible fire-fighting equipment;
- .9** Conducting a program of regular job safety inspections, which includes notation of hazards found and corrective measures taken;
- .10** Description of enforcement of Project housekeeping;
- .11** Program for equipment maintenance and safety inspection; and
- .12** Provision of Project Safety Log for recording all project safety activities.

**10.1.1.2** The Contractor shall review and revise said Program periodically. The Contractor shall be solely responsible for the compliance of its employees or Subcontractors with the Program. The Owner is not required to evaluate, audit or in any way implement the Program. The Contractor alone shall be responsible for the safety, efficiency, and adequacy of its plant,

appliances, and methods, and for any damage which may result from improper construction, maintenance, or operation.

**10.1.1.3** The Owner will have the right to require the Contractor to incorporate as part of the Contractor's Health and Safety Program, health and safety rules and regulations which the Owner may issue from time to time.

**10.1.1.4** The Owner and Architect may report observed Program violations to the Contractor. The Contractor shall, after receipt of notice of any violation, immediately take corrective action. If the Contractor fails or refuses to take immediate corrective action, the Owner may issue an order stopping all or part of the Work until the Owner determines that satisfactory corrective action has been taken. No part of the time lost due to any such stop orders shall be made the subject of a claim against the Owner for extension of time or for excess costs or damages by the Contractor.

**10.1.1.5** The treatment of injuries and/or illness sustained by the Contractor's employees and those of its Subcontractors shall be the responsibility of the Contractor and the Contractor shall give the Owner notice of any such injuries within forty-eight (48) hours of such occurrence. The Contractor waives its rights to subrogation for any payments made to its employees or those of its Subcontractors.

**10.1.1.7** The Contractor shall maintain an accurate record of all causes of death, occupational disease, and injury requiring medical attention or causing loss of time from work, arising out of the Work, which records shall be made available to the Owner upon request.

**10.1.1.8** The Contractor shall not require any employee to work in surroundings or under conditions which are unsanitary, hazardous, or dangerous to his/her health or safety.

## **10.2 SAFETY OF PERSONS AND PROPERTY**

**10.2.1** Contractor shall use its best efforts to provide for the safety and protection of the Building, all persons who may come in contact with the Work, and all real and personal property located in the Building and at or adjacent to the Project Site. Without limitation to the foregoing, Contractor shall, at Contractor's sole cost and expense, take precautions for the safety of, and shall provide protection to prevent damage, injury, or loss to:

- .1** employees on the Work and other persons who may be affected thereby;
- .2** the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3** other property at the Site or adjacent thereto, including, but not limited to trees, shrubs, lawns, walks, pavements, roadways, structures, Owner's real and personal property, equipment, fixtures, utilities, etc. not designated for removal, relocation or replacement in the Performance of the Work.

**10.2.2** The Contractor shall give all notices and comply with all applicable provisions of Federal, State and local safety and health laws, building codes and safety and health regulations in effect during the performance of the Work to prevent accidents or injuries to persons or property on or adjacent to the Site or related or adjoining areas where the Work is being performed.

- .1** The Contractor agrees to conform to the provisions of the "Manual of Accident Prevention in Construction" published by Associated General Contractors of America, Inc., most recent edition.
- .2** The Contractor agrees to conform to the requirements of the Occupational Safety and Health Act of 1970 (OSHA) and the Construction Safety Act of 1969, as amended, including standards and regulations that have been or will be promulgated by the governmental authorities which administer such acts.
- .3** The Contractor agrees to defend, indemnify and hold harmless the Owner, the Architect, and their employees, consultants and representatives as a result of non-compliance of any Federal, State or local safety and health Laws or building codes.
- .4** Should charges of violation of any of the above be issued to the Contractor in the course of the Work, a copy of each charge shall immediately be forwarded to the Owner and the Architect.
- .5** The Contractor shall allow the Owner, at the Owner's option, to correct OSHA or State or local violations and to irrevocably decide whether any contractor should, in case of a particular violation, abate, correct or contest the same, if the particular violation endangers the progress of the Work on or at the Site.

**10.2.3** The Contractor shall erect and maintain, as required by existing conditions and performance of the Work, proper safeguards for safety and protection, including rails, toe guards, night lights, posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities. The Contractor shall also be responsible, at the Contractor's sole expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor and any consequential damages shall be promptly paid by the Contractor.

**10.2.4** When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

**10.2.5** The Contractor shall promptly remedy at its own expense damage or loss to any property referred to in paragraphs 10.2 caused in whole or in part by the Contractor, any Subcontractor,



any Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, except damage or loss caused by the sole negligence of the Owner. The foregoing obligations of the Contractor are in addition to its obligations stated elsewhere in the Contract Documents.

**10.2.6** The Contractor shall designate a responsible member of the Contractor's 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 Architect.

**10.2.7** The Contractor shall not load or permit any part of the Work or Site to be loaded so as to endanger its safety.

**10.2.8** The Contractor shall take all necessary precautions to ensure against fire during construction including the following:

- .1** The Contractor shall have the duty to keep the area within the Contract Limit Lines orderly and clean and to promptly remove combustible rubbish from the Site;
- .2** The Contractor shall provide and maintain adequate fire protection in all areas of the Project. Contractor shall comply with all Federal, State and local laws, codes, regulations and ordinances relating to fire protection and safety;
- .3** the burning of trash and excess materials on the Site is prohibited and no fires for any purpose, including roofer's kettles or open flame devices or tools, shall be permitted on the Site without prior approval of the Architect and Owner.
- .4** When use or storage of explosives, combustible materials or other hazardous materials or equipment are necessary for the proper execution of the Work, Contractor shall exercise the utmost care and carry on such activities under the supervision of properly qualified personnel. Such materials or equipment shall be safely stored on the Site for a no longer period of time than is necessary for the execution of the Work and in such manner and in such location as approved by the Owner.
- .5** The Contractor shall provide initial and active fire lines and permanent (or temporary) fire hose cabinets and provide adequate fire extinguishers at all levels of the structure prior to beginning work of trades other than masonry and concrete trades. The Contractor shall maintain such equipment in working order throughout construction. The type, quality and location of this equipment shall be reasonable and adequate to suit the conditions and to comply with all Federal, State and local laws, codes and ordinances.

- .6** Contractor will institute the Factory Mutual Hot Work Permit Program on this Project. A Hot Work Permit is required for any operation involving flames or producing heat and/or sparks, including, but not limited to brazing, cutting, grinding, soldering, thawing pipes, torch applied roofing and welding. The Owner's Project Manager designates the Contractor's Superintendent to serve as Fire Safety Supervisor and administer the permit system. No hot work is permitted without authorization from the Fire Safety Supervisor, in the form of a signed Hot Work Permit. Permits shall be valid for a period not to exceed one day, beyond that a new permit must be obtained before hot work can continue.

**10.2.9** The Contractor shall remove snow and ice as may be required for the protection of the Work against weather (including, but not limited to rain, winds, storms, snow, sleet, frost, cold or heat) so as to maintain all Work, materials, equipment, apparatus and fixtures free from injury or damage.

**10.2.10** When required by law or for the safety of the Work, the Contractor shall shore up, brace, underpin, reshore and protect as necessary, foundations and other portions of new Work and existing structures which are in any way affected by the Work.

**10.2.11** From the date of commencement to the completion and acceptance of the Work, the Contractor shall keep at his own expense, all parts of the Site free from accumulation of water, and to this end, shall supply, keep on Site, maintain and operate pumping and bailing equipment, such as pumps, containers, hose, piping, strainers, fuel, power, mops, brooms, buckets and appurtenances necessary therefor or incidental thereto.

**10.2.12** No requirements of, or omission to require any precautions under the Contract Documents shall be deemed to limit or impair any responsibilities or obligations of the Contractor under or in connection with the Contract. The Contractor shall at all times maintain all necessary protection to safeguard the public and all persons engaged in the performance of the Contract and shall take such precautions as will accomplish such end without undue interference with the public, or the operations of other contractors, or the Owner.

**10.2.13** The Contractor shall continuously maintain adequate protection of all work from damage, vandalism and theft, and shall protect the Owner's property and adjacent property from damage arising in connection with the Work.

**10.2.14** Whenever it is necessary to provide temporary paths of ingress or egress through the areas of the Work, such paths shall be provided by the Contractor with adequate artificial light, directional signs, overhead protection, clearances, fire protection, etc., and shall be constructed and maintained safe from fire, smoke and other physical dangers. The Contractor shall submit all proposed details of such paths to Architect for approval.

**10.2.15** The Contractor shall provide all necessary barricades, lights, and other appropriate warning devices at all ditches, open excavation, and other areas of potential danger to personnel

or public. All items shall comply with all local, State and Federal law, regulations codes and ordinances.

**10.2.16** The Contractor shall provide temporary stairs to all levels of construction and maintain same until permanent stairs are set in use. All stairs shall be maintained open and clear at all times. The stair construction shall comply with all local, State and Federal laws, regulations codes and ordinances.

**10.2.17** The Contractor shall provide and maintain in a safe condition all those items required for supporting or containing or transporting all persons involved in the Work, or incidental to its prosecution including inspectors, supervisors, Architect's and Owner's representatives, field testing personnel, etc. Such items shall include ladders, catwalks, safety railings, cages, suspension scaffolds, etc. All items and their proper use and implementation shall be in accordance with the requirements of local, State and Federal laws, regulations, codes and ordinances.

**10.2.18** The Contractor shall protect all existing and new utility lines on or adjacent to the site and notify the Owner and all utility companies in advance when work is to be carried out near their lines.

**10.2.19** When all or a portion of the Work is suspended for any reason, the Contractor shall securely fasten down all coverings and protect the Work, as necessary, from weather, theft or injury by any cause.

**10.2.20** The Contractor, at its own expense, shall keep the Site free from accumulation of dirt debris, trash and rubbish and shall provide all equipment, material and labor necessary therefor.

**10.2.21** The Contractor shall promptly report in writing to the Owner all accidents arising out of or in connection with the Work which cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner.

### **10.3 EMERGENCIES**

**10.3.1** In an emergency affecting safety of persons or property, the Contractor shall act with diligence, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Paragraph 4.3 and Article 7.

### **10.4 PROJECT SAFETY PLAN**

**10.4.1** The Contractor shall submit to the Owner within thirty (30) Days of the date of Contract execution, a Project Safety Plan, which shall describe, but not be limited to, the following:

- .1 Personnel responsible for project safety including all subcontract

personnel.

- .2 Provision of first aid facilities.
- .3 Provision of safety for all personnel.
- .4 Use of protective clothing and equipment.
- .5 Conducting weekly "toolbox" safety talks and demonstrations and forwarding a copy of weekly minutes to the Architect.
- .6 Distributing and posting of safety posters, warning and instructional material.
- .7 Regular periodic meetings of assigned safety personnel from all trades.
- .8 Provision of suitable and easily accessible fire-fighting equipment.
- .9 Conducting a program of regular job safety inspections. Notation of hazards found and corrective measures taken.
- .10 Description of enforcement of Project housekeeping.
- .11 Program for equipment maintenance and safety inspection.
- .12 Provision of Project Safety Log for recording all project safety activities.
- .13 Home, beeper, office, mobile telephone numbers of all Contractor's personnel involved in the Project.

## **10.5 SECURITY**

**10.5.1** Contractor hereby acknowledges that the nature of Owner's operations require strict security measures. Contractor, Subcontractors, and all Sub-Subcontractors, and anyone and any party for whom any of them may be liable shall cooperate with Owner's security personnel and shall comply with all security requirements of Owner's security personnel. Such requirements shall include, without limitation, delivering to Owner's security personnel, prior to the commencement of the Work on each day, a list of all Contractor's, Subcontractors' and Sub-subcontractors' personnel who will be permitted access to the Project. The foregoing, however, shall not relieve Contractor of any obligation to provide a safe and secure work place for all parties entering the Project Site.

**10.5.2** Owner reserves the right to bar access to any individual for reasonable security reasons. Furthermore, Owner reserves the right to limit the location of entries to the Project which may be used by Contractor, Subcontractors' Sub-subcontractors, or any party for whom any of them may be responsible.

**10.5.3** The Contractor shall inform and ensure that all its employees and the employees of all subcontractors park their vehicles in areas designated by the Owner when vehicles are on Owner's property and remove vehicles from areas which are restricted. The Owner shall have no obligation to provide parking for Contractor's employees. Contractor's temporary on-site facilities and areas for trailers, storage mobilization, staging, sanitary facilities, etc. shall also be located only in areas approved by the Owner.

## **ARTICLE 11**

### **INSURANCE AND BONDS**

#### **11.1 CONTRACTOR'S LIABILITY INSURANCE**

**11.1.1** At Contractor's sole expense, it shall purchase and maintain at least the insurance required so as to protect the Owner and Contractor from claims which may arise out of or result from the Contractor's operations under the Contract, whether such operations be by the Contractor or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

**11.1.2** The insurance required hereunder shall be written for not less than limits of liability specified in the Contract Documents including Paragraph 11.1.2.1 or required by law, whichever coverage is greater. Coverage, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment unless coverage is specifically required to be maintained after final payment.

**11.1.2.1** The Contractor is responsible for seeing that insurance coverage amount, and limits reflect not less than the higher of applicable Federal or State requirements pertaining to insurance for liability for damage imposed by law. The types and limits of insurance which Contractor is required to carry are as follows:

- .1** Workers Compensation Insurance as required by applicable Federal, State, or other laws including Employer's Liability.  
**Statutory Requirements:** The Owner shall have the right to terminate the Agreement for cause, if the Contractor shall fail to secure compensation and disability benefits coverage for the benefit of and keep insured during the life of the Work appearing in the Contract Documents, such employees in accordance with the provisions of the Worker's Compensation Law(s).
- .2** Commercial General Liability (CGL), written as broad as the standard coverage form currently in use in the State of New Jersey which shall not be circumscribed by any endorsements limiting the breath of coverage, including Contractor's Liability; Independent Contractor's Liability; Contractual Liability including Defense; Completed Operations and Products Liability all on the occurrence basis with Personal Injury Coverage and Broad Form Property Damage. XCU is included under CGL relating to Explosion, Collapse and Underground Property Damage. Completed Operations Liability shall be kept in force for at least six (6) years after the date of final completion. Limits of liability shall not be less than combined single limits of \$10,000,000, or higher limits if required by Owner.
- .3** Contractor shall provide for Builders Risk Insurance covering the interests of Contractor and Owner for all operations and services and materials provided pursuant to the Agreement excepting coverage of the building structure.

- .4 Comprehensive Automobile Liability on an occurrence basis covering owned, non-ownership and hired car coverage as well as owned vehicles not less than combined single limits of \$1,000,000.
- .5 Umbrella Policy shall be kept in force for at least six (6) years after the date of final payment.

**11.1.3** If any of the foregoing insurance coverage is required to remain in force after final payment, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by paragraph 9.10. Information concerning reduction of coverage shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

**11.1.4** The Contractor shall require subcontractors to provide Comprehensive General Liability, Comprehensive Automobile Liability, and Workers' Compensation Insurance with the same minimum limits.

**11.1.5** Except for Workers' Compensation Insurance, the Contractor's Insurance policies required under this Article shall name the Owner, and its designated representative and their designated representatives as additional insureds. The "University Hospital, its officers and employees" shall be named as additional insureds.

**11.1.6** The insurance required of the Contractor shall be written by a company, or companies, licensed to do business as insurance companies in the State of New Jersey at the time the policy is issued and with qualifications as to management and financial strength such that it is rated "A" as to management, and no less than "AAA" as to strength, by the latest edition of Best's Insurance Guide, published by Alfred M. Best Company, Inc., Oldwick, New Jersey 08858.

**11.1.7** The Contractor shall not commence the Work until it has obtained and provided a confirming certificate of insurance to the Owner naming Owner as certificate holder.

**11.1.7.1** The Contractor shall not allow any Subcontractor to commence work on its subcontract until the insurance required has been obtained and confirmed to Owner.

#### **11.1.8 CONTRACTOR'S OBLIGATIONS**

**11.1.8.1** The Contractor shall not violate or knowingly permit to be violated any conditions of the policies of insurance required to be carried under the terms of this Article, and shall at all times satisfy the requirements of the insurance companies issuing them. The provisions of insurance and other requirements set forth above shall in no way release the Contractor from its liability and obligations for safety imposed upon it under this Agreement and to this end, the Contractor shall provide all necessary personnel and employee approved methods.

#### **11.1.9 NOTICES, COSTS, LOSSES**

**11.1.9.1** Certificates of Insurance in form acceptable to the Owner shall be filed with the Owner prior to the commencement of the Work by Contractor. Policies of insurance that the Contractor is required to secure and maintain under the terms of this Agreement shall provide that the Owner is an additional insured and that the insurance company will notify the Owner at

least sixty (60) days prior to the effective date of any cancellation, modification or non-renewal of such policies. Copies of policies, if any, and Certificates of Insurance submitted to the Owner shall be in form and content acceptable to the Owner.

**11.1.10** Certificates from insurers shall state the name of the Project, Project or Contract Number, Owner and Contractor, and shall contain a separate express statement of compliance with each of the requirements set forth in this numbered Article. Upon request, the Contractor shall furnish the Owner with a certified copy of the provisions of each policy which establish premiums. The Contractor shall furnish to the Owner copies of any endorsements that are subsequently issued coverage or limits.

**11.1.11** Certificates of insurance submitted to the Owner shall clearly set forth exclusions and deductible clauses. The Owner may allow certain deductible clauses which the Owner, in its sole discretion, does not consider excessive, overly broad, or harmful to the interests of the Owner. Standard exclusions may be allowed, provided they are not inconsistent with the requirements of this Article. Regardless of the allowance of exclusions or deductions by the Owner, the Contractor shall be responsible for the deductible limit of the policy and all exclusions consistent with the risks the Contractor assumes under this Agreement and as imposed by law.

**11.1.12** In the event that the Contractor provides evidence of insurance in the form of Certificates of Insurance, valid for a period of time less than the period during which the Contractor is required by the terms of the Contract Documents to maintain insurance, said Certificates will be acceptable, but the Contractor shall be obligated to renew its insurance policies as necessary and to provide new Certificates of Insurance from time to time so that the Owner is continuously in possession of evidence of the Contractor's insurance in accordance with the provisions of this Article.

**11.1.13** In the event the Contractor fails or refuses to renew its insurance policy, or the policy is canceled or otherwise terminated, or modified so that the insurance does not meet the requirements of this Article, the Owner may refuse to make payment of any further monies due under the Contract. The Owner in its sole discretion may use its own monies, or monies retained under this Paragraph, to renew the Contractor's insurance for the periods and amounts referred to above. If the Owner uses its own money to obtain said insurance, the cost thereof shall be considered a charge against the Contractor and shall be paid by the Contractor immediately upon receipt of the invoice and if Contractor refuses to make such payment, the Owner may deduct such costs from any monies due or that may become due to the Contractor under this Agreement. Alternately, the Owner may declare the Contractor to be in default and direct the surety to complete the Project.

**11.1.14** Insurance required under this Article shall not cover: tools owned by mechanics or workmen; tools, equipment, scaffoldings, staging, owned or rented by the Contractor, subcontractor, or any employees thereof; or, shanties or trailers to house employees, or lockers, or stored equipment, or tools. The Owner will not be liable for any loss, no matter how caused, to tools, machinery, equipment and materials, and other property of the Contractor or Subcontractors or leased or hired by them.

**11.1.15** Any policy of insurance secured covering the Contractor or Subcontractors against physical loss or damage to property shall include an endorsement waiving the right of subrogation against the Owner for any loss or damage occurring to such property.



**11.1.16** In the event that any of the required insurance policies lapse, are revoked, suspended or otherwise terminated, for whatever cause, the Contractor shall immediately stop all Work at the Site, and shall not again work at the Site until authorized to do so by the Owner in writing. Upon quitting the site, the Contractor shall leave plant, materials, equipment, tools and supplies on the site. Contract Time will continue to run during any such periods and no extensions of time or additional compensation will be granted.

**11.1.17** If the Work stated in the Agreement is not suspended (whether or not because of omission of the Owner to order suspension), then the Owner may, at its option, obtain insurance affording coverage equal to the above required. The cost of such insurance shall be considered a charge against the Contractor and shall be paid for by the Contractor to the Owner, or upon failure or refusal to pay such charge within a reasonable time after the Owner submits the bill to him, the amount thereof may be deducted from any monies due or that may become due to the Contractor under the Agreement.

**11.1.18** The Contractor expressly understands and agrees that any insurance protection required by the Contract Documents, or otherwise provided by the Contractor, shall in no way limit the Contractor's responsibility to defend, indemnify and save harmless the Owner as provided in the Contract Documents.

**11.1.19** Insurance requirements are specified to provide assurance to the Owner that the Contractor will be financially able to discharge its obligations under this Article and as to the risks assumed elsewhere in the Contract Documents and shall not in any way be construed as a limitation on the nature and extent of such obligations or liability of the Contractor including its obligation to defend and indemnify the Owner as provided in this Agreement. Neither the procurement of the above insurance or any substitute insurance nor the extent of coverage or the limits of liability thereunder shall be construed to be a limitation in the nature or extent of the Contractor's obligations, or to relieve the Contractor of any such obligations.

**11.1.20** No requisitions for payment will be honored unless proper Certificates of Insurance required under the Contract Documents are submitted in accordance with this Article.

**11.1.21** Violation of any of the terms of any policy issued by the insurance company to the Contractor shall not invalidate policies or insurance, issued in connection with the Contract.

**11.1.22** The Contractor shall furnish to the Owner two copies of Certificates herein required specifically setting forth evidence of all coverage required by the Contract Documents including paragraph 11.1 hereof.

**11.1.22.1** The form of the Certificate shall be AIA Document G705 or any form as requested by the Owner.

**11.1.22.2** The Contractor shall furnish to the Owner copies of any endorsements that are subsequently issued amending coverage or limits.

## **11.2 PERFORMANCE BOND AND PAYMENT BOND**

**11.2.1** The Contractor shall procure and deliver to the Owner for its approval security covering the faithful performance of the Contract and payment of all persons and firms performing labor and furnishing materials in connection with the Contract Documents (collectively, the “Payment and Performance Bonds” or “Bonds”), with an obligation for the payment by the Contractor, and by all Subcontractors, of all indebtedness which may accrue to any person, firm or corporation, in an amount not exceeding the amount specified in the Payment and Performance Bonds, on account of any labor performed or materials, provisions, provender or other supplies, or teams, fuels, oils, implements or machinery used or consumed in, upon, for or about the construction of the Project. Unless otherwise specified by the Owner and permitted by law, the amount of each Bond shall be equal to one hundred percent (100%) of the Contract Sum, shall be substantially in the form required by law pursuant to N.J.S.A. 2A:44-147 and the cost thereof shall be included in the Contract Sum. No payments shall be due under the Contract and no Work shall be performed by Contractor unless Owner is in possession of Bonds that comply with the provisions of this Article and that are otherwise acceptable to Owner.

**11.2.2** The surety issuing any Payment and Performance Bonds shall meet the following standards:

- .1** the surety shall have the minimum surplus and capital stock or net cash assets required by N.J.S.A. 17:17-6 or N.J.S.A. 17:17-7, whichever is appropriate, at the time that the Request for Proposal or Request for Quotation was issued; and
- .2** with respect to all Payment and Performance Bonds in the amount of \$850,000 or more, (i) if the amount of the Bond is at least \$850,000, but not more than \$3.5 million, the surety shall hold a current certificate of authority, issued by the United States Secretary of the Treasury pursuant to 31 U.S.C. § 9305, that is valid in the State of New Jersey as listed annually in the United States Department of the Treasury Circular 570, except that if the surety has been operational for a period in excess of five years, the surety shall be deemed to meet the requirements of this subparagraph if it is rated in one of the three highest categories by an independent, nationally recognized United States rating company that determines the financial stability of insurance companies, which rating company or companies shall be determined pursuant to standards promulgated by the Commissioner of Insurance by regulation, and (ii) if the amount of the Bond is more than \$3.5 million, the surety shall hold a current certificate of authority, issued by the United States Secretary of the Treasury pursuant to 31 U.S.C. § 9305, that is valid in the State of New Jersey as listed annually in the United States Department of the Treasury Circular 570 and, if the surety has been operational for a period in excess of five years, the surety shall be rated in one of the three highest categories by an independent, nationally recognized United States rating company that determines the financial stability of insurance companies, which rating company or companies shall be determined pursuant to standards promulgated by the Commissioner of Insurance by regulation; provided, however, that a surety which does not hold a certificate of authority issued by the United States Secretary of the Treasury shall be exempt from such requirement if, pursuant to N.J.S.A. 2A:44-143(a)(1)(b), the surety meets an equivalent set of standards developed by the

Commissioner of Insurance by regulation.

**11.2.3** Unless otherwise specified by Owner, the Payment and Performance Bonds must at least comply with the following requirements:

- .1** there is attached thereto a duly executed Surety Disclosure Statement and Certification in substantially the form set forth in N.J.S.A. 2A:44-143;
- .2** the Bonds are executed by the Contractor exactly as its name appears in the Contract Documents and are accompanied by a certification as to the authorization of the attorney-in-fact to commit the surety company;
- .3** the Bonds provide that the obligations of the surety will not be affected in the event of any modification, omission or addition in the terms of the Contract Documents; and
- .4** the Bonds are legally effective from the effective date of the Contract until as long as permitted by the applicable statute of limitation.

The Contractor agrees to replace any surety in the event the surety becomes insolvent, unauthorized to do business in the State of New Jersey or if the Owner has a reasonable objection against the surety. The Contractor shall bear the cost of obtaining the required replacement Bonds.

## **ARTICLE 12**

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

#### **12.1 UNCOVERING OF WORK**

**12.1.1** If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Architect or Owner, be uncovered for the Architect's or Owner's observation and be replaced at the Contractor's expense without change in the Contract Time. If prior to the date of Substantial Completion, the Contractor, a Subcontractor or anyone for whom either is responsible uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing and other building systems, machinery, equipment or other mechanical device, the Contractor shall cause such item to be restored to "like New" condition at no expense to the Owner.

**12.1.2** If a portion of the Work has been covered which the Architect or Owner has not specifically requested to observe prior to its being covered, the Architect or Owner may request to see such Work and it shall be uncovered by the Contractor. If such Work is found to be in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work is not in accordance with the Contract Documents, the Contractor shall pay such costs unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

#### **12.2 CORRECTION OF WORK**

**12.2.1** The Contractor shall promptly correct Work rejected by the Architect or Owner as defective or failing to conform to the requirements of the Contract Documents, whether observed before or after Final Payment and whether or not fabricated, installed or completed. The Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect's services and expenses made necessary thereby.

**12.2.2** If, within one year after the Date of Final Payment or within one year after acceptance by the Owner of designated equipment or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, the Work or any portion thereof is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct it promptly after receipt of a written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. This obligation shall survive termination of the Contract. The Owner shall give such notice promptly after discovery of the condition.

- .1 The Contractor further agrees, that within ten (10) calendar days after being notified in writing by the Owner of any Work not in accordance with the requirements of the Contract Documents or any defects in the Work, the Contractor will commence and prosecute with due diligence all Work necessary to fulfill the terms of this guarantee, and to complete the Work within a reasonable period of time, but in no event later than seventy two (72) hours after start of Work. In the event the Contractor fails to so comply, the Contractor hereby authorizes the Owner to proceed and have such Work done at the Contractor's expense and the Contractor will pay the cost thereof upon demand and authorizes the Owner to remove the nonconforming or defective Work and store the salvable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten days after written notice, the Owner may sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.
- .2 The Owner will be entitled to all costs, including reasonable attorney's fees, necessarily incurred upon the Contractor's refusal to pay the above costs.
- .3 Correction of nonconforming or defective Work shall include correction of other work damaged as a result of such non-conformance or defect.
- .4 In the case of any work performed in correcting defects pursuant to the guarantees provided by this Article 12, the guarantee periods specified by this Article 12 shall begin anew from the date of completion of such work.

**12.2.3** The Contractor shall remove from the Site all portions of the Work which are defective or nonconforming and which are neither corrected by the Contractor nor accepted by the Owner.

**12.2.4** In the case of the work performed in correcting defects pursuant to the guarantees provided by this Article 12, the guarantee periods specified by this Article 12 shall begin anew from the date of completion of such work.

**12.2.5** The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

**12.2.6** Nothing contained in this Paragraph 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the time period of one year as described in Subparagraph 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship

to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

### **12.3 ACCEPTANCE OF NONCONFORMING WORK**

**12.3.1** If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## **ARTICLE 13**

### **MISCELLANEOUS PROVISIONS**

#### **13.1 GOVERNING LAW**

**13.1.1** The Contract Documents shall be construed in accordance with and governed by the laws of the State of New Jersey, including the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq. Any litigation brought under this Agreement shall be venued only in the courts of the State of New Jersey, in and for the County of Essex.

**13.1.2** Consent to Jurisdiction and Waiver of Trial by Jury. The Contractor irrevocably consents and submits to the exclusive jurisdiction of the Courts of New Jersey over any action at law, suit in equity or other proceeding that may arise out of this Contract, and the Contractor agrees, during the period of performance and of warranty, to maintain within the State of New Jersey an agent to accept service of legal process on his behalf. Contractor expressly waives trial by jury on any and all disputes and claims arising out of this Contract whether brought by or against Contractor, Owner or any other person or entity.

#### **13.2 ASSIGNMENTS OF ANTITRUST CLAIM(S)**

**13.2.1** 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 hereby conveys, sells, assigns, and transfers to the Owner, 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 Owner pursuant to this Contract.

**13.2.2** In connection with this assignment of antitrust claims, the following are the express obligations of the Contractor:

1. Contractor will take no action which will in any way diminish the value of the rights conveyed or assigned hereunder.
2. Contractor will advise Owner:
  - (a) in advance, of its intention to commence any action on its own behalf regarding any such claim or cause(s) of action;
  - (b) immediately upon becoming aware of the fact that an action has been commenced on its behalf by some other person(s) or entity of the pendency of such action.
3. Contractor 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 own behalf or after Contractor becomes aware that such an action has been filed on its behalf by another person or entity. A copy of such notice will be sent by the Contractor to Owner.
4. 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 Owner the allotted share thereof, if

any, assigned to the Owner hereunder.

### **13.3 COMPLIANCE WITH LAWS AND CODES**

**13.3.1** All general construction, plumbing and electrical work is to be done in accordance with the New Jersey Uniform Construction Code. No work requiring inspections and approvals of construction code officials is to be covered or enclosed prior to inspection and approval by appropriate code enforcement officials.

**13.3.2** All sewage disposal work shall conform to the regulations of the New Jersey Department of Environmental Protection and Energy.

**13.3.3** A Certificate of Electrical Code Compliance is to be obtained from the electrical inspector prior to the issuance of the Certificate of Final Acceptance for electrical work.

**13.3.4** The Contractor and all subcontractors shall comply with the Federal Occupational Safety and Health Act of 1970 and all of the rules and regulations promulgated thereunder.

**13.3.5** The Contractor shall keep fully informed of all Federal, State and local laws, regulations, rules, ordinances, orders, codes and decrees of any authority having jurisdiction over the Project which in any way affect those engaged or employed on the Work or which in any way affect the conduct of the Work. The Contractor shall at all times observe and comply with, and shall cause its employees and agents and its Subcontractors, suppliers, materialmen and any of their employees or agents to observe and comply with all such laws, regulations, rules, ordinances, orders, codes and decrees. Contractor shall indemnify and defend Owner and its employees and agents against any claim, fine, penalty or other loss arising from or based upon the violation of any such law, regulation, rule, ordinance, order, code or decree, whether by Contractor, its employees or agents or its Subcontractors, suppliers, materialmen or their employees or agents. If any discrepancy or inconsistency is discovered between the Contract Documents and such law, regulation, rule, ordinance, order, code and decree, the Contractor shall immediately report same to the Owner and Architect in writing.

### **13.4 SUCCESSORS, ASSIGNS AND ASSIGNMENT**

**13.4.1** The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents.

**13.4.2** The Contractor agrees not to assign, in whole or in part, this Contract or agree to the assignment of any subcontracts or any amounts payable hereunder or thereunder, or claims of any nature it may have against the Owner or to delegate any of Contractor's responsibilities under the Contract Documents without the prior written consent of Owner. The Owner, in its sole discretion, considering primarily the interests of the Owner, may grant or deny such consent. No consent to any assignment of this Contract or any subcontract shall under any circumstances operate to relieve the Contractor or its surety of any of their responsibilities under the Contract Documents.

**13.4.3** The Contractor agrees that the Owner may assign this Contract or any rights arising



hereunder, including any guarantees or warranties of workmanship or material, in whole or in part, without the consent of the Contractor.

### **13.5 WRITTEN NOTICE**

**13.5.1** All notices, demands, requests, instructions, approvals, claims and orders between the Owner, Architect and Contractor must be in writing. Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified U.S. mail return receipt requested, to the address set forth in the Agreement or at such other address as may be specified in writing pursuant to paragraph 13.5.3 below.

**13.5.2** The Agreement shall designate by name and address the person to whom notices affecting the Contract are to be given or delivered.

**13.5.3** The Owner, the Contractor or the Architect may change the person or address to which notices are to be sent at any time by written notice to the other parties.

### **13.6 RIGHTS AND REMEDIES**

**13.6.1** Except as expressly provided in the Contract Documents, duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available at law or equity.

**13.6.2** No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

### **13.7 TESTS AND INSPECTIONS**

**13.7.1** Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be scheduled by the Contractor in a timely manner as to avoid any delay in the completion of the Work. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall notify the Architect and Owner at least five (5) days prior to the scheduled inspection, test or request for approval of when and where tests and inspections or approvals are to be made so the Architect and Owner may observe such procedures. The Owner shall bear costs of tests, inspections or approvals which do not become requirements until after execution of the Agreement.

**13.7.2** If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require special or additional testing, inspection or approval not included under Subparagraph 13.7.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such special or additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall notify the Architect and Owner at

least five (5) days prior to when and where tests and inspections or approvals are to be made so the Architect or Owner may observe such procedures. Any such special or additional testing, inspections or approvals shall be promptly scheduled by the Contractor so as not to delay the completion of the Work. The Owner shall bear such costs except as provided in Subparagraph 13.7.3.

**13.7.3** If such procedures for testing, inspection or approval under Subparagraphs 13.7.1 and 13.7.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, the Contractor shall bear all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's and/or Owner's services and expenses, as well as the cost of the testing or inspection.

**13.7.4** All submittals of inspection and test reports or requests for approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and within five days of its receipt by Contractor, delivered to the Architect or Owner, together with a certification signed by the Contractor attesting to his knowledge of the submittal, acceptance of its findings and acknowledgment that any material or equipment tested meets the required standards and certifying to the reports representation of the facts. Failure to provide the certification shall be grounds for rejection of the submittal.

**13.7.5** In addition to subparagraph 13.7.4, the Contractor agrees to insert in all contracts or purchase orders for inspection and testing the requirement that the testing or inspection person or entity submit, in conjunction with the report to the Contractor, a copy of the report directly to the Owner and that such report be submitted within seven (7) calendar days of the test or inspection. The copy of the report shall be held by Owner pending receipt of the Contractor's certification of the report as provided in subparagraph 13.7.4.

**13.7.6** If the Architect or Owner is to observe tests, inspections or approvals required by the Contract Documents, the Architect or Owner will do so promptly and, where practicable, at the normal place of testing.

**13.7.7** When non-complying Work is found, the entire area of Work involved shall be corrected at no additional time and at no cost to the Owner, to the Architect's and Owner's satisfaction. Additional testing, sampling or inspection needed to determine non-complying Work shall be at the Contractor's expense, which will not be reimbursed by the Owner. The Contractor may employ the Owner's or any other competent independent testing laboratory approved by the Owner. All corrected Work shall be re-tested at the Contractor's expense, which will not be reimbursed by the Owner and at no extension of Contract Time.

## **13.8 INTEREST**

**13.8.1** Contractor agrees that no interest shall be due and payable from the Owner on any sums retained, deducted or withheld from the progress payments or final payment, or for failure to make any progress payments or the final payment on the date when such payment may be due; nor shall the Contractor be entitled to keep any interest on monies overpaid or erroneously retained by it.

## **13.9 ASBESTOS**

**13.9.1** The discovery, use or handling of products containing asbestos will be strictly governed by Federal, State, and local regulations.

**13.9.2** No material or product containing more than one percent (1%) asbestos in any form may be used on this Project without the specific written consent of the Owner. The naming of any material or product in the specifications does not constitute a warranty that such products are deemed not to contain more than one percent (1%) asbestos. It shall be the sole responsibility of the Contractor and the suppliers of all material and products to advise the Owner and Architect if any material intended for use on the Project contains any percentage of asbestos. The Owner reserves the right to conduct laboratory tests of any product or material at any time to determine the chemical content of any material. Such tests will be carried out at the Owner's expense. If any product or material which has been installed in the job is found to have any asbestos content and such product and material has been installed without advising the Owner of same or without the specific written consent of the Owner, the Contractor shall be solely responsible for the complete removal of such product and material and its replacement with an alternative approved material. In the event of the requirement by the Owner of such removal and the replacement, all costs shall be borne by the Contractor and no costs for delay of construction and no extension in construction time shall be allowed by the Owner.

## **13.10 PREVAILING WAGE ACT**

**13.10.1** The Contractor and all Subcontractors shall comply with all provisions of the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq., governing wages for workers who are employed on this Project. All provisions of said Act and amendments thereto are hereby made a part of this Contract and every related subcontract in which the Contract Price is in excess of two thousand dollars (\$2,000.00). Provisions of the Act include:

**13.10.1.1** All workers engaged in the performance of service directly under this Contract shall be paid not less than the prevailing rate of wage as specified by the Commissioner of Labor and Workforce Development.

**13.10.1.2** Each Contractor and Subcontractor shall keep an accurate record showing the name, craft or trade, and actual hourly rate of wages paid to each worker employed by it in connection with said Project. Records shall be preserved for two years from date of payment and shall be open at all reasonable hours for inspection by Owner and Commissioner of Labor and Workforce Development.

**13.10.1.3** The Contractor and Subcontractor shall post the prevailing wage rate for each craft and classification involved, as determined by the Commissioner of Labor and Workforce Development, including the effective date of any changes thereof, in prominent and easily accessible places at the site of the Work, and at such place or places as are used by them to pay workers their wages.

**13.10.1.4** In the event that it is found that any worker employed by the Contractor or any Subcontractor covered by this Contract is paid less than the required wage rates, the Owner 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 to prosecute the Work to completion or otherwise. The Contractor and its Surety shall be liable to the Owner for any excess costs occasioned thereby.

**13.10.1.5** The Contractor and Subcontractors shall file written statements certifying to the amounts then due and owing to any and all workers for wages due on account of said Work. Said statements shall be filed prior to final payment and also prior to the final payment of any retained percentage funds by the Owner. The statements shall set forth names of the persons whose wages are unpaid and the amount due to each. The statements should be verified by the oath of the Contractor or Subcontractor as the case may be, that he/she read such statement subscribed by him/her, knows the contents thereof and that the same is true to his/her own knowledge.

## **13.11 EQUAL OPPORTUNITY**

**13.11.1** The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, nationality, creed, ancestry, age, disability, marital status, familial status, affectional or sexual orientation, atypical hereditary cellular or blood trait, liability for service in the Armed Forces of the United States and as set forth in the New Jersey Law Against Discrimination, Title VII and all federal laws guaranteeing equal employment. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to the characteristics listed above. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

**13.11.2** The Contractor shall comply with all applicable state and federal laws regarding equal opportunity and affirmative action in all solicitations or advertisements for employees placed by or on behalf of the Contractor.

**13.11.3** The Contractor will send to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, 30 C.F.R. 12319 (1965), as amended (hereinafter "Executive Order 11246"), and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

**13.11.4** The Contractor will comply with all provisions of Executive Order 11246 and of the rules, regulations, and relevant orders of the Secretary of Labor.

**13.11.5** The Contractor will furnish all information and reports required by Executive Order 11246 and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

**13.11.6** In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any such rules, regulations or orders, this Contract may be canceled, terminated or suspended, in whole or in part, and the Contractor or subcontractor, as applicable, may be declared ineligible for further government contracts in accordance with procedures

authorized in Executive Order No. 11246 and other sanctions may be imposed and remedies invoked as provided in said Executive Order No. 11246 or by any related rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

**13.11.7** The Contractor will include the provisions of subparagraphs 13.11.1 through 13.11.3 in every subcontract or purchase order, so that such provisions will be binding upon each Subcontractor or vendor. The Contractor will further include the provisions of 13.11.4 through 13.11.7 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 so that such provisions will be binding upon each subcontractor or vendor and the Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event that the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

**13.11.8** It is expected that the Contractor will carry out the obligations in this Paragraph 13.11, 13.12 and 13.13 pertaining to equal employment, minority employment and affirmative action with the same effort and action as the Contractor will any other part of the Contract Documents.

### **13.13 MINORITY AND FEMALE PARTICIPATION**

**13.12.1** In accordance with Executive Order No. 84 (Florio) (1993) (hereinafter, "E.O. 84"), N.J.S.A. 52:32-17 et seq., which establish a set-aside program, the Owner is committed to making contract opportunities available to as many qualified Minority Business Enterprises (MBE's) and Women Owned Enterprises (WBE's) as possible and has taken affirmative action to encourage MBE's and WBE's to seek participation in the Owner's contract opportunities. To ensure meaningful participation of qualified MBE's and WBE's in this Project, the Contractor agrees to use reasonable efforts and to take affirmative action, to recruit, employ and subcontract with qualified MBE's and WBE's so as to meet the following targets of participation:

Twenty Five Percent (25%) MBE / WBE / SBE combined participation.

**13.12.2** The Contractor warrants and represents to Owner that there will be MBE and WBE participation at the above target levels, thereby demonstrating non-discrimination on the basis of race or sex in awarding subcontracts, including the award of contracts for supplies, materials, equipment, consulting and other goods or services.

**13.12.3** The Contractor will submit a participation plan in compliance with the above targets before commencing the Work. The Owner will review the Contractor's efforts to determine if it has attained the target participation levels. If the Contractor fails to attain the target participation levels, the Contractor must establish by documentary evidence that it has engaged in reasonable outreach efforts. The Owner's decision regarding what constitutes reasonable outreach efforts shall be final and binding on all parties and the Owner may declare any resulting contracts void and unenforceable if the Contractor fails to demonstrate a reasonable effort to comply with target participation levels. Compliance with the target participation levels is a material term of the Contract and failure to attain, or to make a reasonable effort to attain, the target participation levels may result in Contractor's default.

**13.12.4** As used herein, the following terms shall be defined as follows:

1. "Minority Business Enterprise" shall mean a business which has its principal place of business in New Jersey, is independently owned and operated and at least fifty-one percent (51%) of which is owned and controlled by persons who are African Americans, Latinos or Asian Americans, defined as follows:
  - (a) African American - a person having origins in any of the black racial groups of Africa.
  - (b) Latino - a person of Mexican, Puerto Rican, Cuban, Central or South American, Caribbean Island or other Spanish culture or origin, regardless of race.
  - (c) Asian American - a person having origins in any of the original people of the Far East, southeast Asia, and Indian subcontinent, Hawaii or the Pacific Islands.
2. "Women-Owned Business Enterprise" shall mean a business that has its principal place of business in New Jersey, is independently owned and operated and at least fifty-one percent (51%) of which is owned and controlled by women.

**13.12.5** The Contractor shall fully cooperate in any studies, surveys or other reports which may be conducted by the Owner or the State of New Jersey to determine the Contractor's compliance with E.O. 84 and N.J.S.A. 52:32-17 et seq.

### **13.13 AFFIRMATIVE ACTION FOR CONSTRUCTION CONTRACTS**

**13.13.1** During the performance of this Contract, the Contractor agrees as follows:

**13.13.1.1** The Contractor or Subcontractor, where applicable, will not discriminate against any employees or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. Except with respect to sexual or affectional orientation, the Contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment without regard to their age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by Owner or Owner's designated compliance officer setting forth provisions of this nondiscrimination clause.

**13.13.1.2** The Contractor or Subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation.

**13.13.1.3** The Contractor or Subcontractor, where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of the Contractor's commitments under the New Jersey Law against Discrimination, N.J.S.A. 10:5-31 et seq. and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

**13.13.1.4** The Contractor or Subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time.

**13.13.2** When hiring workers in each construction trade, the Contractor or Subcontractor agrees to attempt in good faith to employ minority and female workers in each construction trade consistent with the applicable employment goal prescribed by N.J.A.C. 17:27-7.3; provided, however, that Owner may, in its discretion, exempt a contractor or subcontractor for compliance with the good faith procedures prescribed below, as long as Owner is satisfied that the Contractor is employing workers provided by a union which provides evidence, in accordance with standards prescribed by Owner, that its percentage of active "card carrying" members who are minority and female workers is equal to or greater than the applicable employment goal prescribed by N.J.A.C. 17:27-7.3, as amended and supplemented from time to time. The Contractor or Subcontractor agrees that a good faith effort shall include compliance with the following procedures.

**13.13.2.1** If the Contractor or Subcontractor has a referral agreement or arrangements with a union for a construction trade, the Contractor or Subcontractor shall, within three days of the contract award, seek assurances from the union that it will cooperate with the Contractor or Subcontractor as it fulfills its affirmative action obligations under this Contract and in accordance with the rules promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as supplemented and amended from time to time. If the Contractor or Subcontractor is unable to obtain said assurances for the construction trade union at least five (5) days prior to the commencement of construction work, the Contractor or Subcontractor agrees to attempt to hire minority and female workers directly, consistent with the applicable employment goal. If the Contractor's or Subcontractor's prior experience with a construction trade union, regardless of whether the union has provided said assurances, indicates a significant possibility that the trade union will not refer sufficient minority and female workers consistent with the applicable employment goal, the Contractor or Subcontractor agrees to be prepared to hire minority and female workers directly, consistent with the applicable employment goal, by complying with the hiring procedures prescribed under subparagraph 13.13.3 below; and the Contractor or Subcontractor further agrees to take said action immediately if it determines or is so notified by Owner that the union is not referring minority and female workers consistent with the applicable employment goal.

**13.13.3** If the hiring of a workforce consistent with the employment goal has not or cannot be achieved for each construction trade by adhering to the procedures of subparagraphs 13.13.2 and 13.13.2.1 above, or if the Contractor does not have a referral agreement or arrangement with a union for a construction trade, the Contractor or Subcontractor agrees to take the following actions consistent with the applicable employment goals:

**13.13.3.1** To notify (1) Owner or Owner's designated compliance officer and (2) at least one approved minority referral organization of its manpower needs, and request referral of minority and female workers.

**13.13.3.2** To notify any minority and female workers who have been listed with it as awaiting available vacancies.

**13.13.3.3** Prior to commencement of Work, to request the local construction trade union, if the Contractor or Subcontractor has a referral agreement or arrangement with a union for the construction trade, to refer minority and female workers to fill job openings.

**13.13.3.4** To leave standing requests for additional referrals to minority and female workers with the local construction trade union, if the Contractor or Subcontractor has a referral agreement or arrangement with a union for the construction trade, the State training and employment service and other approved referral sources in the area until such time as the workforce is consistent with the employment goal.

**13.13.3.5** If it is necessary to lay off some of the workers in a given trade on the construction site, to assure, consistent with the applicable State and Federal statutes and court decisions, that sufficient minority and female employees remain on the site consistent with the employment goal; and to employ any minority and female workers so laid off by the contractor of any other construction site in the area on which its workforce composition is not inconsistent with an employment goal established pursuant to regulations implementing N.J.S.A. 10:5-31 et seq.

**13.13.3.6** To adhere to the following procedure when minority and female workers apply or are referred to the Contractor or Subcontractor:

**13.13.3.6.1** If said individuals have never previously received any document or certification signifying a level of qualification lower than that required, the Contractor or Subcontractor shall determine the qualifications of such individuals and if the Contractor's or Subcontractor's workforce in each construction trade is not consistent with the applicable employment goal, it shall employ such persons which satisfy appropriate qualification standards; provided however, that a contractor or subcontractor shall determine that the individual at least possesses the skills and experience classification determination which may have been made by a Public Agency Compliance Officer, union, apprentice program or a referral agency, provided the referral agency is acceptable to Owner and provided further, that, if necessary, the Contractor or Subcontractor shall hire minority and female workers who qualify as trainees pursuant to these regulations implementing N.J.S.A. 10:5-31 et seq. All of these requirements, however, are limited by the provisions of subparagraph 13.13.4 below.

**13.13.3.6.2** If the Contractor's or Subcontractor's workforce is consistent with the applicable employment goal, the name of said female or minority group individual shall be maintained on a waiting list for the first consideration, in the event the Contractor's or Subcontractor's workforce is no longer with the applicable employment goal.

**13.13.3.6.3** If, for any reason, said Contractor or Subcontractor determines that a minority



individual or a female is not qualified or if the individual qualifies as an advanced trainee or apprentice, the Contractor or Subcontractor shall inform the individual in writing with the reasons for the determination, maintain a copy in its files, and send a copy to Owner's designated compliance officer.

**13.13.3.7** To keep a complete and accurate record of all requests made for the referral of workers in any trade covered by the contract, on forms made available by Owner and submitted promptly to Owner upon request.

**13.13.4** The Contractor or Subcontractor agrees that nothing contained in subparagraph 13.13.3 above shall preclude the Contractor or Subcontractor from complying with the hiring hall or apprenticeship provisions in any applicable collective bargaining agreement or hiring hall arrangement, and, where required by custom or agreement, it shall send journeymen and trainees to the union for referral or to the apprenticeship program for admission, pursuant to such agreement or arrangement: provided, however, that where the practices of a union or apprenticeship program will result in the exclusion of minorities and females or the failure to refer minorities and females consistent with the county employment goal, the Contractor or Subcontractor shall consider for employment persons referred pursuant to subparagraph 13.13.3 above without regard to such agreement or arrangement; provided further, however, that the Contractor or Subcontractor shall not be required to employ female and minority advanced trainees and trainees in numbers which result in the employment of advanced trainees and trainees as a percentage of the total workforce for the construction trade, which percentage significantly exceeds the apprentice to journey worker ratio specified in the applicable collective bargaining agreement, or in the absence of a collective bargaining agreement, exceeds the ratio established by practice in the area for said construction trade. Also, the Contractor or Subcontractor agrees that, in implementing the procedures of subparagraph 13.13.3 above, it shall, where applicable, employ minority and female workers residing within the geographical jurisdiction of the union.

**13.13.5** The Contractor agrees to complete an Initial Project Manning Report on Form AA-201, available on the New Jersey Department of Treasury (Department) website, and submit a copy of said form no later than three (3) days after signing the Contract to the Owner and the Department; provided, however, that the public agency may extend in a particular case the allowable time for submitting the form to no more than 14 days; and to submit a copy of the Monthly Project Manning Report on Form AA-202, once each month thereafter for the duration of this Contract, no later than the seventh business day of each month, to Owner and the Department. The Contractor agrees to cooperate with the public agency in the payment of budgeted funds, as is necessary, for on-the-job and off-the-job programs for outreach and training of minority and female trainees employed on the construction projects.

**13.13.6** The Contractor and its Subcontractors shall furnish such reports or other documents to Owner as may be requested from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested for conducting a compliance investigation pursuant to N.J.A.C. 17:27 et seq.

**13.13.7** Provisions of subparagraphs 13.13.1.4, 13.13.2, 13.13.3, 13.13.4 and 13.13.5 are not required for subcontractors with four (4) or fewer employees or for a Contractor or subcontractor who has presented evidence of a federally approved or sanctioned Affirmative Action Program.

#### **13.14 PARTIAL INVALIDITY**

**13.14.1** If any provision of the Contract (or the application thereof to any part or circumstances) shall be held to be illegal, invalid or otherwise unenforceable, the remainder of the Contract and the application or statutory effectiveness of such provision of the Contract to other parts or circumstances shall not be affected thereby and each provision, term, covenant or condition of the Contract shall be enforced to the fullest extent permitted by law.

**13.14.2** If any provision of the Contract shall be such as to destroy its mutuality or to render it invalid or illegal, then, if it shall not appear to have been so material that without it the Contract would not have been made by the parties, it shall not be deemed to form part thereof but the balance of the Contract shall remain in full force and effect.

#### **13.15 PROVISIONS OF LAW DEEMED INSERTED**

**13.15.1** Each and every provision of law and clause required by law to be inserted in the Contract shall be deemed to be inserted therein and the Contract shall be read and enforced as though it were included therein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Contract shall forthwith be physically amended to make such insertion.

#### **13.16 AUDITING**

**13.16.1** Omnibus Reconciliation Act - Examination of Records. In accordance with the Omnibus Reconciliation Act of 1980, P.L. 96-499 (Section 952), the Secretary of the Department of Health and Human Services, the U.S. Comptroller General, or their representatives shall be permitted to examine the Contract and the Contractor's books and records with regard to the Project, and such records shall be retained by Contractor for a period of four (4) years following completion of the Project, or for such longer period as may be required by law. Each agreement between the Contractor and any Subcontractor shall contain a similar provision.

**13.16.2** The Contractor shall afford the Owner and the Owner's accountants full and free access to the Contractor's records, books, ledgers, registers, payrolls, correspondence, instructions, drawings, receipts, subcontracts, invoices, purchase orders, vouchers, memoranda, change orders, progress schedules and any other documents relating to the Work to be performed under the Contract (collectively, referred to as the "records"), including the right to make photostatic copies of, or transcripts from, such records.

**13.16.3** The Contractor shall establish and maintain such records in accordance with generally accepted accounting principles, which specifically identify the Project and all labor and material, costs and expenses, whether direct or indirect. All costs and expenses must be supported by appropriate documentation, including, but not limited to, canceled checks. All records shall be

preserved by the Contractor for a period of ten (10) years after final payment, or for such longer period of time as may be required by law.

**13.16.4** The Contractor acknowledges and agrees that the Contractor's obligation to establish, maintain, preserve and grant access to, and the Owner's right to audit, such records extends to actual costs incurred by Subcontractors and Sub-subcontractors in the performance of any Work under the Contract. Accordingly, Contractor shall require in all subcontracts that the Subcontractor establish, maintain, preserve and grant access to Owner all records relating to any Work performed under the subcontracts, including Work performed by a Sub-subcontractor.

**13.16.5** The Contractor agrees that Owner shall have no obligation to pay Contractor for any claim for payment which is in any way premised upon the actual costs of the Contractor, unless the claim is substantiated by records required to be maintained under this subparagraph 13.16.2.

**13.16.6** If any unsubstantiated or over payments are discovered as a result of any audit conducted by Owner or Owner's accountants, Contractor shall be notified by Owner in writing. Contractor agrees to repay Owner for any unsubstantiated or over payments within thirty (30) Days of such notice or, if the Work is not yet complete, Contractor hereby authorizes Owner to reduce Contractor's next Application for Payment by the amount of such unsubstantiated or over payment.

### **13.17 BUY AMERICAN**

**13.17.1** Contractor agrees to comply with N.J.S.A. 52:32-1 and/or N.J.S.A. 52:33-1 et seq., as applicable, and agrees that manufactured products of the United States, whenever available, shall be used by Contractor in its performance of the Work and Contractor shall cause its Subcontractors to use such domestic products in their performance of the Work, unless the Owner determines that such preference is impracticable, unreasonable, uneconomical or otherwise contrary to the public interest or interests of the Owner.

### **13.18 CONFLICTS OF INTEREST**

**13.18.1** Contractor shall not pay, offer to pay, or agree to pay, either directly or indirectly, any fees commission, compensation, gift, gratuity, or other thing of value of any kind to any University Hospital director, officer or employee as defined by N.J.S.A. 52:13D-13b. with which such contractor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13013i., of any such University Hospital director, officer or employee, or any partnership, firm, or corporation with which they are employed or associated, or in which such director, officer or employee has an interest within the meaning of N.J.S.A. 52:130-13g.

**13.18.2** Contractor shall not, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such Contractor to, any University Hospital director, officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to University Hospital or any instrumentality thereof, or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52:130-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical

Standards, which may grant a waiver of this restriction upon application of University Hospital director, officer or employee or upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.

**13.18.3** Contractor shall not influence, or attempt to influence or cause to be influenced, any University Hospital director, officer or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of said director, officer or employee.

**13.18.4** Contractor shall not cause or influence, or attempt to cause or influence, any University Hospital director, officer or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the Contractor or any other person, bidder, contractor or corporation.

**13.18.5** The provisions cited above shall not be construed to prohibit a University Hospital director, officer or employee from receiving gifts from or contracting with a Contractor under the same terms and conditions as are offered or made available to members of the general public, subject to any guidelines promulgated by the New Jersey Executive Commission on Ethical Standards. University Hospital reserves the right to take any or all of the following actions upon Contractor's violation of any of the foregoing provisions:

- .1 Immediate termination of this or any contract between University Hospital, the bidder or contractor;
- .2 Disqualification of bidder or contractor from any future contracts, bids or requests for bid; and,
- .3 Any other action, at law or in equity.

## **13.19 WORKER AND COMMUNITY RIGHT TO KNOW ACT**

**13.19.1** The provisions of the Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq., which require the labeling of all containers of hazardous substances are applicable to this Contract and all "containers", as defined in the Act, shall be labeled by the Contractor in compliance with the provisions of the Act and Contractor shall notify Owner of the presence and location of such containers.

## **13.20 GENERAL PROVISIONS**

**13.20.1** All personal pronouns used in this Contract, whether used in the masculine, feminine, or neuter gender, shall include all other genders; and the singular shall include the plural and vice versa. Titles of articles, paragraphs, and subparagraphs are for convenience only, and neither limit nor amplify the provisions of this Contract in itself. The use herein of the word "including," when following any general statement, term, or matter, shall not be construed to limit such statement, term, or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such words as "without limitation," or "but not limited to, or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter.

**13.20.2** Any specific requirement in this Contract that the responsibilities or obligations of the Contractor also apply to a Subcontractor is added for emphasis and are also hereby deemed to include a Subcontractor of any tier. The omission of a reference to a Subcontractor in connection with any of the Contractor's responsibilities or obligations shall not be construed to diminish, abrogate or limit any responsibilities or obligations of a Subcontractor of any tier under the Contractor Documents or the applicable subcontract.

### **13.21 NOTICE TO ALL STATE VENDORS OF SET-OFF FOR STATE TAX**

Please be advised that pursuant to N.J.S.A. 54:49-19, effective January 1, 1996, and notwithstanding any provision of the law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction project to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of State government, is entitled to payment for those goods or services at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set-off so much of that payment as shall be necessary to satisfy the indebtedness. The amount of the set-off shall not allow for the deduction of any expense or other deduction which might be attributable to the taxpayer, partner, or shareholder subject to set-off under this Act.

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

## **ARTICLE 14**

### **TERMINATION OR SUSPENSION OF THE CONTRACT**

#### **14.1 TERMINATION BY THE CONTRACTOR**

**14.1.1** The Contractor may terminate the Contract if the Work is stopped for a period of Sixty (60) continuous days through no act or fault of the Contractor, Subcontractor or Sub-subcontractor their agents or employees or any other persons performing portions of the Work under contract with the Contractor, for any of the following reasons:

- .1** issuance of an order of a court or other public authority having jurisdiction;
- .2** an act of government, such as a declaration of national emergency, making material unavailable;
- .3** if repeated suspensions, delays or interruptions by the Owner as described in Paragraph 14.3 constitute in the aggregate the lesser of an amount equal to the Contract Time, or one hundred and twenty (120) days in any three hundred and sixty-five (365) day period.

**14.1.2** If one of the above reasons exists, the Contractor may, upon fifteen (15) days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable demobilization and cancellation charges. Other than such payment, no damages of any nature shall be claimed against Owner in the event that Contractor exercises this right of termination.

**14.1.3** If the Work is stopped for a period of sixty (60) days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon fifteen (15) days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Subparagraph 14.1.2.

**14.1.4** Contractor may not terminate the Contract if, during the fifteen (15) day notice period, Owner cures or proceeds to cure the default under the termination notice.

#### **14.2 TERMINATION BY THE OWNER FOR CAUSE**

**14.2.1** The Owner may terminate the Contract if the Contractor:

- .1** refuses or fails to supply enough properly skilled workers or proper materials;
- .2** fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3** disregards any state, federal or local laws, ordinances, rules, regulations decrees

- or orders or the laws, ordinances, rules, regulations, decrees or orders of a public authority having jurisdiction over the Project; or
- .4 otherwise breaches a provision of the Contract Documents.
  - .5 breached any warranty made by the Contractor under or pursuant to the Contract Documents.
  - .6 fails to furnish the Owner with assurances satisfactory to the Owner evidencing the Contractor's ability to complete the Work in compliance with all the requirements of the Contract Documents.
  - .7 fails after commencement of the Work to proceed continuously with the construction and completion of the Work for more than five (5) days, except as permitted under the Contract Documents.
  - .8 fails to comply with the insurance requirements of the Contract Documents;
  - .9 files, records or allows anyone claiming under Contractor to file or record a lien, encumbrance or other claim against the Owner, Owner's property or the Project; or
  - .10 makes a general assignment for the benefit of its creditors or permits a receiver, trustee or custodian to be appointed on account of its insolvency or files a petition for relief under the Federal Bankruptcy Code ("Code") or if a petition for relief is filed against the Contractor by its creditors under the Code and such petition is not vacated within thirty (30) days thereafter or if any Subcontractor having a contract in excess of ten thousand dollars (\$10,000.00) makes a general assignment for the benefit of its creditors, permits a receiver, trustee or custodian to be appointed on account of its insolvency, files a petition for relief under the Code, or if a petition for relief is filed against the Subcontractor by its creditors under the Code and such petition is not vacated within thirty (30) days thereafter.

**14.2.2** When any of the above reasons exist, the Owner, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven (7) days' written prior notice, terminate Contract and may, subject to any prior rights of the surety:

- .1 take possession of the site and all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 accept assignment of subcontracts pursuant to Paragraph 5.3; and
- .3 finish the Work by whatever reasonable method the Owner may deem expedient.

**14.2.3** When the Owner terminates the Contract for one of the reasons stated in Subparagraph 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

**14.2.4** If the unpaid balance of the Contract Sum exceeds the cost of finishing the Work,

including compensation for the Architect's services and expenses made necessary by Contractor's default, the Contractor shall be paid only for the Work performed to the date of termination less an amount determined by the Owner to be compensation for damages it suffers by reason of Contractor's default, including liquidated and consequential damages. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner immediately upon demand. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.

### **14.3 TERMINATION OR SUSPENSION BY THE OWNER FOR CONVENIENCE**

**14.3.1** The Owner may, at any time, terminate the Contract in whole or in part for the Owner's convenience and without cause and without prejudice to any other right or remedy, or the Owner may order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine. The Owner may for any reason without cause and without prejudice to any other right or remedy, terminate the Agreement, in whole or in part, upon written notice to the Contractor. Termination by the Owner under this Paragraph shall be by a notice of termination delivered to the Contractor specifying the extent of termination and the effective date.

**14.3.2** Upon receipt of a notice of termination for convenience, the Contractor shall immediately, in accordance with instructions from the Owner, proceed with performance of the following duties regardless of delay in determining or adjusting amounts due under this Paragraph:

- .1** cease operation as specified in the notice;
- .2** place no further orders and enter into no further; subcontracts for materials, labor, services or facilities except as necessary to complete continued portions of the Contract;
- .3** terminate all subcontracts, and orders to the extent they relate to the Work terminated;
- .4** proceed to complete the performance of Work not terminated; and
- .5** take actions that may be necessary, or that the Owner may direct, for the protection and preservation of the terminated Work.

**14.3.3** Upon such termination, the Contractor shall recover, as its sole remedy, payment for Work properly performed in connection with the terminated portion of the work prior to the effective date of termination and for items properly and timely fabricated off the Project site, delivered and stored in accordance with the Owner's instructions. The Contractor hereby waives and forfeits all other claims for payment and damages, including, without limitation, anticipated profits.

**14.3.4** The Owner shall be credited for (1) payments previously made to the Contractor for the terminated portion of the Work, (2) claims which the Owner has against the Contractor under the Contract and (3) the value of the materials, supplies, equipment or other items that are to be



disposed of by the Contractor that are part of the Contract Sum.

#### **14.4 OWNER'S RIGHT TO STOP THE WORK**

**14.4.1** If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Paragraph 12.2 or fails to carry out Work in accordance with the Contract Documents, or fails to prosecute the Work with due diligence, the Owner, by written order signed personally or by an agent specifically so empowered by the Owner in writing, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Subparagraph 6.1.3. The Owner's 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 Contractor, its subcontractors or by any of other contractor. Any order issued hereunder by the Owner which is determined to be unreasonable shall not be deemed a breach of the Agreement by Owner, but shall be deemed to be a suspension for the convenience of Owner as provided in paragraph 14.3.

#### **14.5 OWNER'S RIGHT TO CARRY OUT THE WORK**

**14.5.1** If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and falls within a seven (7) day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may without prejudice to other remedies the Owner may have correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the cost of correcting such deficiencies including amounts determined by Owner to be appropriate compensation for damages it suffers including liquidated and consequential damages, and compensation for the Architect's additional services and expense made necessary by such defaults, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall immediately pay the difference to the Owner.

#### **14.6 EXTENT OF OWNER RIGHTS**

**14.6.1** The rights stated in this Agreement and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner (1) granted in the Contract Documents, (2) at law or (3) in equity.

**14.6.2** In no event shall the Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the Owner in the Contract Documents.