

GENERAL CONDITIONS OF CONTRACT

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GENERAL CONDITIONS of CONTRACT

ARTICLE I - CONTRACT DOCUMENTS

1.1 Definitions

- 1.1.1 **Architect/Engineer (A/E):** The architectural or the engineering consultant (A/E) engaged by the University, lawfully licensed to practice architecture or engineering, or an entity lawfully practicing architecture or engineering. He/she is responsible for the design of this project and for project administration as identified in the Contract Documents.
- 1.1.2 **Contract Completion Date:** The specific date which is defined in the Contract Documents as either the number of days the Contractor has to complete the Work after the date the University issues a Notice to Proceed, or a specifically stated calendar date.
- 1.1.3 **Contract Administrator (C.A.):** The University employee within the University's Division of Facilities, Design and Construction Department who has responsibility for the day-to-day management of the design, engineering and construction of the Project on behalf of the University. Unless otherwise specifically stated in the Contract Documents, the C.A. has no authority to, and cannot approve, verbally or in writing, any amendments, modifications, or any other changes to the Contract Documents.
- 1.1.4 **Contracting Officer (C.O.):** The University employee within the University's Division of Finance who has responsibility for administering the Contract Documents on behalf of the University. He/she has the legal authority to administer the contract and represents the University in all relationships with contractors and the A/E. The C.O.'s responsibilities are further defined in Article II.
- 1.1.5 **Contracting Officer's Approval Limit:** A modification to the Contract Documents that would not change the Completion Date, but would increase a Contractor's compensation by no more than \$100,000.00 which may be approved by the C.A., and modifications for emergent time and materials that may be authorized by the C.A pursuant to Section 11.2.5.9.3 of the Contract.
- 1.1.6 **Contractor:** Is the firm or individual responsible for performing the Work under the Contract, whether referred to as "Contractor," "Prime Contractor," "Prime," "Separate Contractor" or "Single Contractor." It does not include supplies or materials. Also, see Article IV, Section 4.6a. when separate contracts are awarded to several Prime Contractors.
- 1.1.7 **General Construction Contractor:** The General Construction Contractor means either the Contractor for General Construction whenever separate Prime Contractors are involved in a project or the sole Contractor if there are no other Prime Contractors involved.
- 1.1.8 **Change Order:** A written order to the Contractor, signed by the C.O. and the A/E, issued after the execution of the Contract, authorizing a Change in the Work, or an adjustment in the Contract Sum, or the Contract Completion Date. The contract sum and the Contract Completion Date may be altered only by a Change Order. A Change Order

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signed by the Contractor, A/E and the C.O. indicates an agreement that shall serve to adjust the Contract Sum and/or the Contract Completion Date. A Change Order shall become a part of the Contract Document only after it is fully executed by the Contractor, A/E and the C.O.

- 1.1.9 **Contract Documents:** The Contract, the Instructions to Bidders, the Contractor's Bid Documents, the Conditions of the Contract (General, Supplementary and other Conditions) the Drawings, the Specifications, and all Addenda and Interpretations issued prior to and all modifications issued after execution of the Contract.
- 1.1.10 **Contract Limit Lines:** Lines shown on the drawings, which limit the boundaries of the Project and beyond which no construction work or activities shall be performed by the Contractor unless otherwise noted on the Drawings or in the Specifications.
- 1.1.11 **Final Clean Up:** The clean up and removal of debris and rubbish in preparation for substantial completion inspection by the C.A. or C.O. and the A/E. The duties of the Contractor in connection with Final Clean Up are set forth in Article IV, Section 4.11.
- 1.1.12 **Final Completion:** That point in time when the University issues a Certificate of Final Acceptance and Completion for the Project.
- 1.1.13 **Modification:** (1) A written Amendment to the Contract signed by both parties, (2) A Change Order, (3) A written interpretation issued by the A/E, (4) An Addendum.
- 1.1.14 **Project:** A general term of identification of the total contract. It includes the Work and all administrative aspects required to fully satisfy the contract requirements.
- 1.1.15 **Progress Schedule:** The schedule required by Article 12 of the Contract.
- 1.1.16 **Specifications:** All written agreements, instructions or other documents in or pursuant to the Contract pertaining to the method of performing the work and the results to be obtained.
- 1.1.17 **State:** The State of New Jersey.
- 1.1.18 **Subcontractor:** The individual or firm who has a direct contract with the Prime Contractor to perform any of the work at the Site.
- 1.1.19 **Substantial Completion:** That point in time when a temporary certificate of occupancy is issued when required and where the Work (or a specified part thereof) has progressed to the point where, in the opinion of the C.O. and the A/E, the Work is sufficiently complete in accordance with the Contract Documents so that the Work (or specified part) can be utilized for the purpose for which it is intended.
- 1.1.20 **Unit Schedule Breakdown (a/k/a Schedule of Values):** A detailed list of the work activities required for project construction, other elements associated with fulfilling the requirements of the contract (bonds, insurance, etc.), major items of material or equipment and the prices associated therewith.
- 1.1.21 **University:** Montclair State University.
- 1.1.22 **Work:** Any construction efforts or other performance required by the Contract Documents and includes all supervision, labor, material and equipment necessary to complete such construction.

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- 1.2 **Intent of the Contract:** The Drawings and Specifications of the Contract are intended to require the Contractor to provide for everything reasonably necessary to accomplish the proper and complete finishing of the Work. All work and materials included in the Specifications and not shown on the Drawings, or shown on the Drawings and not in the Specifications, shall be performed by the Contractor as if described in both. Any incidental materials and/or work not specified in the Drawings and/or the Specifications which is, nevertheless, necessary for the complete development thereof and reasonably inferable therefrom, the Contractor shall understand the same to be implied and required, and shall perform all such work and furnish all such materials as if particularly delineated or described therein. Should there be an obvious error or omission in the Drawings or Specifications, it shall be the Contractor's responsibility to complete the work as reasonably required, consistent with the intent of such Drawings and Specifications, as may be interpreted by the A/E, C.A. and C.O.

ARTICLE II - CONTRACTING OFFICER

- 2.1 The Contracting Officer (C.O.) maintains general administration and direction of the Work. He/she shall exercise the duties and responsibilities consistent with the limitations of his/her authority as set forth in the Contract Documents. He/she is the interpreter of the Conditions of the Contract and the judge of its performance. He/she shall not take arbitrary positions benefiting either the University or the Contractor, but shall use his/her powers under the Contract to enforce the faithful performance by both. The C.O. may delegate certain aspects of this general administration and direction of the Work by notifying the Contractor, A/E, and C.A. in writing of the name, title and contact information for the CO's assigned designee.
- 2.2 **Contracting Officer's Right to Stop the Work.** If the Contractor fails to correct defective work or persistently fails to carry out the work in accordance with the Contract Documents, the C.O. may order the Contractor to stop the work, or any portion thereof, until the cause for such order has been eliminated. All Stop Orders will be rendered in writing by the C.O. Stoppage of the work of the Contractor, however, shall not render the University liable for claims of any kind, including delays sustained by one Contractor as the result of the stoppage of the work of another contractor.
- 2.3 **Contracting Officer's Right to Terminate for Cause.** If the Contractor makes a general assignment for the benefit of Creditors, if a receiver is appointed on account of insolvency, or if the Contractor persistently or repeatedly refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workers or proper materials so as to avoid or eliminate delays in the orderly progress of the work in accordance with the approved schedule, or if the Contractor fails to make prompt payments to Subcontractors or for materials or labor, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or if the contractor or any of the Subcontractors is guilty of a substantial violation of a provision of the Contract Documents or otherwise defaults or neglects to carry out the work in accordance with the Contract Documents, then the C.O. may, without prejudice to any other right or remedy, and after giving the Contractor and its Surety three (3) working days written notice to forthwith commence and continue correction of such default or neglect with diligence and promptness, terminate the employment of the Contractor by issuance of a written notice to that effect to the Contractor and its Surety if both, or either of them, fail to comply with the demands of the above-mentioned three (3) day notice.
- 2.3.1 Upon such termination for cause, the C.O. may take possession of the site and of all the materials, equipment, and the tools on site, and may finish the work by any method which he/she may deem to be expedient. In such case the Contractor shall not be entitled to receive any further payment until the Work is finished. The firm or person designated to carry out such work will be paid as authorized by the C.O. without incurring any personal liability upon the representatives of the University making such payment.
- 2.4 **Right to Terminate for Convenience.** The C.O. reserves the right to terminate for the convenience of the University in which case the Contractor shall be entitled to a proportion of the fee which the services actually and satisfactorily performed by the Contractor shall bear to the total services contemplated under this agreement, less payments previously made, together with appropriate

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reimbursable costs and a reasonable termination fee to be negotiated between the Contractor and the C.O. In no cases shall the overall fee and termination fee together be greater than 5% of the work completed.

- 2.4.1 If the unpaid balance of the Contract Sum exceeds the cost of finishing the Work (including liquidated damages for delays) such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor and/or its Surety shall pay the difference to the University promptly upon demand, and this obligation shall survive the termination of the Contract.
- 2.4.2 If, within three (3) working days following receipt of Notice of Termination by the Contractor's Surety (the issuer of the performance and payment bonds) the said Surety exercises its right to take over the Work and expeditiously commences to prosecute the same to completion, the C.O. shall permit the Surety to do so under the following terms and conditions:
 - 2.4.3 Evidence of the Surety's intention to take over and complete the Contract shall be in writing over the signature of an authorized representative and served upon the C.O. within three (3) working days after receipt by the Surety of Notice of Termination.
 - 2.4.4 The execution of a written agreement between the University and the Surety, whereby the surety undertakes and fully assumes the obligation to complete the balance of the Work of its defaulting Contractor in accordance with the terms and conditions of the University-Contractor Agreement, to be performed by a substituted Contractor satisfactory to the University, at the Surety's sole cost and expense.
 - 2.4.5 The said Agreement shall also expressly provide that the substituted Surety shall not be relieved thereby from any of its obligations under the performance and payment bonds, and that it furnish the University with an additional performance and payment bond to secure the faithful performance of the substituted contractor.
 - 2.4.6 All current obligations for labor and materials incurred and outstanding by the defaulting Contractor on the Project must be paid without delay, subject to allowance of a reasonable time within which to verify such claims by the Surety; and
 - 2.4.7 The University and Surety expressly understand and agree that the Agreement is without prejudice and is subject to such rights and remedies as either party (including the Contractor) may elect to assert after Final Completion and acceptance of the Work.
- 2.5 **Review of Contractor Claims and Disputes.** Upon presentation by the Contractor of a request in writing to the C.A. and C.O., the C.O. may review any decision or determination of the A/E as to any claim, dispute or any other matter in question relating to the execution or progress of the Work or the interpretation of the Contract Documents. Consistent with the intent of the contract, the C.O. may schedule a conference for the purpose of settling or resolving such claims, disputes or other matters. Where such a conference is conducted, the Contractor shall be afforded the opportunity to be heard on the matter in question. Following review of the Contractor's request, the University and the Contractor may settle or resolve the disputed matter, provided however that any such settlement or resolution shall be subject to all requirements imposed by law, including where applicable, the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et. seq. In the event no settlement or resolution is achieved, the C.O. shall issue a written decision disposing of the dispute.
- 2.6 **University Representation** The University will be represented on the site by the A/E, CO and CA. The CA and A/E will conduct on-site inspections, maintain logs of construction progress and problems encountered, review and approve Contractor's requisition for payments subject to final approval by the C.O., attend job meetings, serve as liaison between the C.O. and Contractor, prepare and submit reports on special problems associated with the job to the C.A. and C.O., evaluate and

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process Change Orders and generally remain fully cognizant and informed by the Contractor of every aspect of ongoing construction. The University's representatives, including the A/E and its staff, or other designated representatives, have only those duties which are required of an Owner. Responsibility for completion of the project, in accordance with the Contract Documents, remains with the Contractor. No right of the University exercised hereunder shall be considered a waiver of the Contractor's obligation or any obligations created by this agreement, which may be modified or excused only in accordance with the terms of the Contract.

ARTICLE III - ARCHITECT / ENGINEER

- 3.1 When the University provides full supervision and management of a project, the A/E's role is that of consultant to the University.
- 3.2 The A/E will provide a certain portion of the administration of the Contract, as hereinafter described.
- 3.3 The A/E will monitor the execution and progress of the Work and will immediately notify the C.A. and C.O. in writing of any related problems. The A/E will at all times be provided access to the Work. The Contractor shall provide facilities for such access so as to enable the A/E to perform its functions under the Contract Documents.
- 3.4 The A/E will not be responsible for, nor will they have control or charge of, construction means, methods, techniques, sequences of procedures, or safety precautions and programs in connection with the Work. The A/E will not be responsible for, nor have control or charge of, the acts or omissions of the Contractor, Subcontractors, or any of their agents or employees, or any other person performing any of the Work, but shall have the obligation to immediately inform the C.O. of any inadequate performance on the project.
- 3.5 The A/E will recommend rejection of Work that it believes does not conform to the Contract Documents. Whenever the A/E considers it necessary or advisable, it may request the C.O. to provide special inspection or testing of the Work, whether or not such Work has been fabricated, installed or completed.
- 3.6 The A/E will receive all submittals from the Contractor and will then review, approve or take other appropriate action relating to Contractor's submittals, such as shop drawings, product data and samples, to assure conformance with the design requirements and the Contract Documents. Such actions shall be taken with reasonable promptness. Approval of a specific item shall not indicate approval of an assembly of which the item is a component.
- 3.7 The A/E will periodically review the Contractor's as-built drawings to ensure that they are up-to-date.
- 3.8 The A/E will conduct inspections accompanied by the Contractor, the C.A. and the C.O. or the C.O.'s expressly authorized representatives to determine the dates of Substantial and Final Completion, will receive and forward to the C.A. for his review, written warranties and related documents required by the Contract Documents and assembled by the Contractor and will approve the issuance of a Certificate of Final Completion.
- 3.9 All Drawings, Specifications and copies thereof furnished by the A/E are and shall remain the property of the University. They are reserved to the Project only and are not to be used on any other project. Submission or distribution of documents to meet official regulatory requirements, or for any other purposes in connection with the Project shall not be construed as derogation of the A/E's copyright or other reserved right.

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- 4.0 In addition to the duties specified elsewhere in the Contract Documents, the A/E and the Contractor shall perform as follows in relation to one another:
- 4.0.1 Contractor will permit the A/E to inspect delivery of any off-site materials that are being requisitioned by the Contractor. Contractor shall bear all costs and expenses for transportation, lodging, and meals of the A/E necessary for proper inspection of off-site material.
- 4.0.2 Upon request by the A/E, Contractor will schedule visits to fabrication plants to inspect status of various fabricated materials with regard to quality and scheduled delivery. Contractor will allow the A/E access to such facilities.
- 4.0.3 Contractor will attend pre-construction conference and biweekly project meetings, or more often, if necessary, at times and locations specified by the A/E.
- 4.0.4 Contractor shall submit to the C.O. directly or through the C.A. and A/E all information or requests concerning scheduling, contract or Change Order claims.
- 4.0.5 The A/E will receive, log, evaluate and transmit to the C.A. any requests from the Contractor for interpretations of the meaning and intent of the Contract Documents. A summary of all such requests shall be provided to the C.O. at least monthly.

ARTICLE IV - THE CONTRACTOR

4.1 Review of Contract

- 4.1.1 The Contractor has the duty and warrants and represents that it has thoroughly examined and is familiar with all the Contract Documents, that it has noted cases where it is specified that certain work or materials, or both, are to be omitted by one Contractor and to be furnished or installed by another; that it has carefully examined the site and the Contractor from its own investigations has satisfied itself as to the nature and location of the work, the current local equipment, labor, material conditions, and all matters which may in any way affect the Work or its performance. As a result of such examination and investigation, the Contractor warrants and represents that it fully understands the intent and purposes of the Contract Documents and its obligations thereunder and accepts responsibility for, and is prepared to execute and fulfill completely, regardless of trade jurisdiction, the intent of the Contract, without exception and without reservation, at the price and within the time specified in the Contract.
- 4.1.2 Contractors must check and verify reasonably observable conditions outside the Contract Limit Lines to determine whether any discrepancies or conflicts exist with the Work they are required to perform under the Contract. This includes a check of elevations, utility connections, and other site data. The Contractor shall notify the A/E, C.A. and C.O. in writing of any discrepancies or conflicts in the work required outside the Contract limits. All discrepancies or conflicts shall be brought to the attention of the A/E, C.A. and C.O. prior to the execution of the Contract. In the absence of such notice, all required Work, as shown in the Specifications and on the Drawings, shall be performed at the Contract cost.
- 4.1.3 Each Contractor shall abide by and comply with the true intent and meaning of the Drawings, the Specifications and other Contract Documents taken as a whole, and shall not avail itself of any unintentional error or omission, should any exist. Should any error, omission or discrepancy appear, or should any doubt exist, or any dispute arise as to the true intent and meaning of the Drawings, the Specifications or other Contract Documents,

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or should any portion thereof be obscure, or capable of more than one interpretation, the Contractor shall immediately notify the A/E and seek correction or interpretation thereof. If the error, discrepancy, omission or conflict is discovered prior to the final date for opening of the bids, the Contractor forfeits its right to make a claim against the University unless it has requested in writing a clarification, interpretation or correction from the A/E or the University prior to the bid opening. Questions pertaining to the contract documents must be presented in writing no less than ten (10) days prior to the established bid opening unless otherwise stated in the bid documents.

- 4.1.4 The Contractor shall carefully study and compare the Contract Document during the progress of the Work. The Contractor shall immediately but not later than ten (10) calendar days report in writing any error, inconsistency or ambiguity detected during the course of the project to the A/E, C.A. and C.O. and shall do no work thereafter which may be affected by such error until the A/E and C.O. has had the opportunity to respond to and clarify the work to be performed in response to this information. Wherever any error, inconsistency or omission appears, it shall be disposed of pursuant to appropriate procedures set forth elsewhere herein.
- 4.2 Unless otherwise ordered in writing by the C.O., or for the C.O. Approval Limit, the Contractor shall not perform any portion of the Work without a Change Order fully approved and executed by the CO, approved Shop Drawings or samples for such portions of the Work, or other approvals or direction as may be applicable or required by the Contract Documents.
- 4.3 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for all labor, equipment, material, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for the proper execution and completion of the Work, whether or not incorporated or to be incorporated in the Work.
- 4.4 The Contractor shall at all times enforce strict discipline and good order among its employees and shall not employ at the site any unfit person or anyone not skilled in the assigned task on the Project.
- 4.5 The Contractor shall be obligated to pay the prevailing wage rates set forth in the specifications and shall abide by the requirements of the State's Affirmative Action Program. The Contractor also shall be responsible to insure that all principles of safety are carried out as further described in Article IX herein.
- 4.6 **Separate Contracts.** The University may execute this Project by awarding separate contracts to a number of Prime Contractors whose work shall proceed simultaneously. The following procedures shall prevail.
- a. Each Contractor shall coordinate its operations with those of other Contractors under the general supervision and control of the General Contractor.
 - b. Cooperation will be required of all Contractors in arranging for the storage of materials and in the detailed execution of the Work.
 - c. The Contractor, including its Subcontractors, shall keep informed of the progress and the details of the work of other Contractors and shall notify the A/E immediately of a lack of progress or defective workmanship on the part of other Contractors as such may affect its work.
 - d. Failure of the Contractor to keep informed of the work progressing on the site, and failure to give notice of lack of progress or defective workmanship by others, shall be construed as acceptance by the Contractor of the work as satisfactory for proper coordination of its own work.

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- e. It is agreed that no Contractor shall be entitled to any damages or extra compensation from the University on account of any work performed by other Contractors or any lack of coordination or supervision of the work of the Contractors that in any way affects the work under its Contract.
- f. Contractors shall cooperate with each other and secure the effective cooperation of the various craftsmen employed on the work, so that no portion of the work is delayed or not properly performed as a result of any worker's proper and efficient performance of the tasks assigned to them. Should it appear at any time that the progress of the work is being delayed or adversely impacted by such failure, upon notice by the C.O., the responsible Contractor shall immediately discharge the delinquent worker(s) and employ others for the tasks.
- g. The Contractors shall rely upon the organization, management skill, cooperation and efficiency of the General Contractor to supervise, direct, and manage the conduct of construction and the effort of all Prime Contractors so as to complete the Project on schedule and as required under the Contract.

4.7 General Contractor Responsibilities

- 4.7.1 Whenever the term General Contractor is used herein, it is intended to mean either the contractor for General construction or the sole contractor if there are no other Prime Contractors of the Prime Contractor having the largest construction contract on a multi-prime project having no contractor for general construction.
- 4.7.2 The General Contractor, as defined above, has the responsibility for being the supervisor, manager, overseer, coordinator and expediter of all of the contractors and of the total construction process and all of its parts, in accordance with the Contract Documents. In furtherance of these duties, the General Contractor will have the right to request the denial or reduction of payment of any other Contractor's monthly requisition, should the General Contractor have cause to be dissatisfied with the performance of the Contractor. The C.O. has the power to modify or reject the General Contractor's recommendation. The General Contractor shall not claim any damages resulting from the C.O.'s exercise or failure to exercise his/her discretionary powers. The General Contractor shall provide sufficient executive and supervisory staff in the field to accomplish efficient and expeditious handling of its responsibilities. The General Contractor shall include in its Bid an amount sufficient to cover its costs for carrying out these responsibilities.
- 4.7.3 Final Cleanup is the responsibility of the Contractor. See Article 14.12.3.

4.8 New Jersey Prevailing Wage Act. Each Contractor and Subcontractor shall comply with the New Jersey Prevailing Wage Act, Laws of 1963, Chapter 150, and all amendments thereto, and this Act is hereby made a part of every Contract entered into on behalf of the State.

- 4.8.1 In the event it is found that any worker employed by any Contractor or any Subcontractor covered by any public work Contract in excess of \$2000 has been paid a rate of wages less than the prevailing wage required to be paid by such Contract, the C.O. may terminate the Contractor's or Subcontractor's right to proceed with the work, or any such part of the work in which there has been a failure to pay required wages, and may otherwise prosecute the work to completion.
- 4.8.2 Nothing contained herein in the Prevailing Wage Act shall prohibit the payment of more than the prevailing wage rate to any worker employed on a public work.

4.9 Supervision and Construction Procedures

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- 4.9.1 The Contractor shall supervise and direct the Work using its best skill and attention. The Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract.
- 4.9.2 Each Contractor shall employ qualified competent craftsmen in its respective lines of work.
- 4.10 Responsibility for the Work**
- 4.10.1 The Contractor shall be responsible to the C.O. and to any separate Contractors having a Contract with the University on this Project, for the acts and omissions of its employees, Subcontractors and their agents and employees which injure, damage or delay such other Contractors in the performance of their work. This responsibility is not limited by the applicable provisions stated elsewhere herein, but is in conjunction with, and related thereto.
- 4.10.2 Each Contractor shall be responsible for any damage or destruction to any part of the work caused directly or indirectly by its operations to any part of the work, or to any adjoining property.
- 4.10.3 Each Contractor shall, at its own expense, protect all finished work liable from damage and shall keep the same protected until the Project is completed and accepted. In the case of substantial completion, accompanied by beneficial occupancy by the University, the Contractor's obligation to protect its finished work shall cease simultaneously with the occupancy of that portion or portions of the structure.
- 4.10.4 Each Contractor shall defend, protect, indemnify and save harmless the University from all claims, fines, penalties, suits, actions, damages and costs of every name and description arising out of, or resulting from, the performance of its work under this Contract. This responsibility is not limited by the provisions of other indemnification provisions included elsewhere herein.
- 4.11 Permits, Laws, Regulations**
- 4.11.1 Unless otherwise provided in the Contract Documents, the Contractor shall apply for and secure all permits (at the expense of the University), licenses and inspections necessary for the proper execution and completion of the work, and which are legally required at the time of receipt of bids.
- 4.11.2 All general construction, plumbing and electrical work must be done in accordance with the New Jersey Uniform Construction Code. No work requiring inspections and approval of construction code officials is to be covered or enclosed prior to inspection and approval by appropriate code enforcement officials.
- 4.11.3 Work under this Contract is exempt from local ordinances, codes and regulations related to the building and the site on which it is located, except where construction could adversely affect adjacent property, public sidewalks and/or streets. The Contractor shall coordinate its activities with municipal and/or highway authorities having appropriate jurisdiction.
- 4.11.4 The appropriate State entity will conduct all code inspection. However, it is each Contractor's responsibility to request inspections from the authority having jurisdiction as defined in the New Jersey Uniform Construction Code in a timely manner.
- 4.12 Storage, Cleaning and Final Clean Up**

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- 4.12.1 Each Contractor shall confine its apparatus, equipment, tools and materials, operations and workmen to areas permitted by law, ordinances, permits, contract limit lines, as established in the Contract documents, the rules and regulations of the University or as ordered by the C.A. The Contractor shall not unreasonably encumber the site or the University premises with materials, tools and equipment.
- 4.12.2 Each Contractor shall, at all times during the progress of the Work, keep the premises and the job site free from the accumulation of refuse, rubbish, scrap materials and debris caused by its operations, to the end that at all times the premises and site shall present a neat, orderly and workmanlike appearance. This is to be accomplished as frequently as is necessary by the removal of such material, debris, etc. from the site and the University's premises. Loading, cartage, hauling and dumping will be at the Contractor's expense.
- 4.12.3 Final Clean Up shall be the responsibility of the Contractor and shall include but not be limited to:
- a. Removal of all debris and rubbish resulting from or relating to its Work. Rubbish shall not be thrown from building openings above the ground floor unless contained within chutes.
 - b. Removal of all putty stains from glass and mirrors, which shall be washed and polished inside and outside.
 - c. Removal of marks, undesirable stains, other soil, dust and dirt from painted, decorated or stained woodwork, plaster, plasterboard, metal acoustical tile and equipment surfaces.
 - d. Removal of spots, paint, and soil from resilient, glazed and unglazed masonry and ceramic flooring and walls.
 - e. Removal of temporary floor protections; clean, wash or otherwise treat and/or polish, as directed, all finished floors.
 - f. Clean exterior and interior metal surfaces, including doors and window frames and hardware, of oil stains, dust, dirt, paint, and the like.
 - g. Undertake restoration at the Contractor's expense, of all landscaping, roadways and walkways to pre-existing conditions. Damage to trees and plantings shall be repaired in the next planting season, and such shall be guaranteed for one year from the date of repair or replanting.
- 4.12.4 Should any Contractor not promptly or properly discharge its obligation relating to storage, cleaning and final cleanup, the University shall have the right to employ others and to charge the cost thereof to the Contractor(s) deemed by the C.O. to be responsible therefore, after first having given the Contractor a three (3) working day written notice of such intent.
- 4.13 **Drawings, Specifications, Shop Drawings, As-Built Drawings**
- 4.13.1 The C.O. or CA will cause to be furnished, after becoming aware of such need, additional instructions for the proper execution of the Work. All drawings and instructions issued by the C.O. or C.A. shall be consistent with the Contract Documents or reasonably inferable therefrom. The Work shall be executed in conformity with the Contract Documents. The Contractor shall do no Work without proper drawings and instructions.

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- 4.13.2 No Contractor shall, at any time after the execution of its contract, make any claims whatsoever based upon insufficient data or incorrectly assumed conditions, nor shall it claim any misunderstandings with regard to the nature, conditions or character of the Work to be done under the Contract. The Contractor shall assume all risks resulting from any changes in conditions not under the control of the University that may occur during the progress of the Work.
- 4.13.3 The Contractors shall keep on the project site at all times one set of drawings to be marked "As Built." The Contractors shall, during the course of the project, mark these drawings with colored pencils to reflect any changes in dimensions and the location of all pipe runs, conduits, traps, footing depths or any other information not already shown on the drawings or differing therefrom. All buried utilities outside the building shall be located by a metes and bounds survey performed by a licensed surveyor who shall certify as to its accuracy. These marked-up drawings and surveys shall be made available to the C.A. or C.O. upon request at any time during the progress of the Work, and shall include the drawings of all Subcontractors.
- 4.13.4 Each Contractor shall submit "As-Built" documents to the A/E whether altered or not, with a certification as to the accuracy of the information thereon at the time of contract completion and before final payment will be made to the Contractor. After acceptance by the A/E, the Contractor shall furnish two (2) sets of all shop and/or erection drawings used for "As-Built" documentation.
- 4.14. **Samples**
- 4.14.1 Each Contractor shall furnish, for approval, all samples as directed. The Work shall be in accordance with approved samples. Such samples shall be submitted promptly to the C.O., through the A/E at the beginning of the Work, so as to give the C.A. and C.O. time to examine them. Any list of samples prepared by the A/E is for the C.A.'s and C.O.'s convenience only, and shall not be construed as limiting the number of samples which the Contractor shall furnish upon request of the A/E.
- 4.15 **Equipment and Materials**
- 4.15.1 The Contractor warrants to the University and the A/E that all materials and equipment furnished under the Contract will be new, unless otherwise specified, and that all Work will be of good quality, free from faults, defects, and in conformance with Contract Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective and rejected by the C.A., C.O. or the A/E. If required by the A/E or the C.O., the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by, but is in conjunction with and related to the provisions of other paragraphs contained herein.
- 4.15.2 Manufactured products of the United States, whenever available, shall be used in this Work. Wherever practicable, preference shall be given at all times to material and equipment manufactured or produced in the State of New Jersey.
- 4.15.3 No materials, equipment or supplies for the Work shall be purchased by the Contractor or any Subcontractor subject to any lien or encumbrance or other agreement by which an interest is retained by the Seller. The Contractor warrants, by signing its requisition for payment, that it has good and sufficient title to all such material, equipment and supplies used by it in the Work, free from all liens, claims or encumbrances.
- 4.16 **Substitutions**

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- 4.16.1 In some cases, it is in the best interest of the University to restrict the product, material or equipment to a certain manufacturer(s) whose name will be cited in the Specifications and the phrase "or approved equal" does not appear. In such cases, no substitution will be accepted in lieu of the stipulated product.
 - 4.16.2 In the event that a Contractor proposes a substitution for the specified equipment or materials, it shall be its responsibility to submit proof of equality and to provide and pay for any tests which may be required by the C.O. to evaluate the proposed substitution.
 - 4.16.3 Where any particular brand or manufactured article is specified, it shall be regarded as a standard. Similar products of other manufacturers, capable of equal performance and quality, in the opinion of the A/E and C.O. may be accepted, if approved.
 - 4.16.4 In addition to compliance with substitution requirements within the Contract Documents (if any), the Contractor shall, on the forms furnished by the University, apply for approval of a substitution and provide the following:
 - a. Identify where within the Specifications the item is stipulated.
 - b. Provide information in detail as to how and why the proposed substitution is equal or better than the specified item. Include how the substitution differs, if at all, from the product required under the Contract. Submit certification that the substituted item is equal to or better than the specified item, that the proposed item will not prejudice contractor's achievement of substantial completion on time.
 - c. That Contractor will pay for all excess fees and costs that the substituted item may have on the work of other contractors.
 - d. In requesting approval of an out of State manufacturer or supplier, the Contractor shall furnish a statement to the effect that every reasonable effort was made to find and utilize New Jersey materials and/or equipment at comparable costs, terms and performance capabilities.
 - 4.16.5 When an item is offered as a substitution and the A/E finds it to be unacceptable as an equal, it will be rejected. It is the responsibility of the Contractor, prior to the submission of its bid, to request the A/E to rule on the acceptability of the item. If the item is accepted, all bidders shall be notified.
 - 4.16.6 If the proposed substitution involves a change in the scope of the Work of this or any other Contractor or trade under the Contract Documents, then the Contractor requesting approval undertakes and agrees to be responsible for any and all resulting added costs in its Work and/or the Work of other Contractors or trades, including redesign costs.
 - 4.16.7 Any test performed to prove that the proposed substitution is equal to or better than the specified item shall be at the Contractor's own expenses.
 - 4.16.8 No Contractor shall base its bid on substitutions, which may have been approved on previous projects. Bids shall be based solely on the Plans and Specifications as set forth in these Contract Documents.
- 4.17 **Subcontractor Approvals**
- 4.17.1 Approval of a Subcontractor or material supplier by the C.O. and A/E shall not relieve the Contractor of the responsibility of complying with all provisions of the Contract Documents. The approval of a Subcontractor does not imply approval of any material, equipment or supplies.

ARTICLE V - SUBCONTRACTORS

- 5.1 The Contractor shall, within ten (10) calendar days after award of the Contract, notify the C.O. through the C.A. and A/E, in writing, of the names of and executed pre-qualification form of Subcontractors, other than those required to be listed in the Bid, proposed to perform the principal parts of the Work and of such others as the C.O. may direct. The Contractor shall not employ any Subcontractor without prior written approval of the C.O., or employ any Subcontractor that the C.O. rejects within a reasonable period of time. Failure of C.O. to reply within fifteen (15) calendar days of receipt of such names shall constitute notice of approval.
- 5.2 If the C.O. has reasonable objections to any such proposed Subcontractor, the Contractor shall substitute another Subcontractor to which the C.O. has no reasonable objection. Under no circumstances shall the University be obligated for additional cost due to such substitution.
- 5.3 The Contractor shall make no substitution for any Subcontractor, person or firm previously selected and approved, without written notification to the C.A. and C.O. and receipt of written approval of such substitution.
- 5.4 The Contractor acknowledges its full responsibility to the University for all acts and omissions of its Subcontractors, and of persons and firms either directly or indirectly employed by them, to the extent that the Contractor is responsible for the acts and omissions of persons and firms directly or indirectly employed by it. The Contractor acknowledges that it remains fully responsible for the proper performance of its Contract whether or not the Work is performed by its own forces or Subcontractors engaged by the Contractor.
- 5.5 Nothing contained in the Contract Documents shall create any contractual relationship between any Subcontractor and the University.
- 5.6 By an appropriate agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume in relation to the Contractor, all the obligations and responsibilities which the Contractor, by these documents, assumes in relation to the University, the C.O. and the A/E. When directed by the C.O. or A/E, the Contractor shall require each Subcontractor to enter into similar agreement with its Sub-Subcontractors.
- 5.7 The Contractor and all Subcontractors agree that in the employment of both skilled and unskilled labor, preference shall be given to residents of the State of New Jersey, if such labor force is available.
- 5.8 Approval by the C.O. or A/E of a Subcontractor or material supplier shall not relieve the Contractor or the Subcontractor or material supplier of the responsibility of complying with all provisions of the Contract Documents. The approval of a Subcontractor does not imply approval of any material, equipment or supplies.

ARTICLE VI - RELATIONSHIP BETWEEN UNIVERSITY AND PRIME CONTRACTORS

6.1 University's Right to Perform Work

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

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- 6.1.2 The Contractor shall examine all Work or materials installed by other contractors and/or Subcontractors, the installation of which may affect the Work in its Contract, and should the same be imperfect, incorrect or insecure, the Contractor shall notify the C.O. immediately in order that the same be rectified. The C.O. shall be responsible for instructing Contractor as to what corrective action is required of the Contractor.

6.2 Mutual Responsibility

- 6.2.1 The Contractor shall afford the C.O., the A/E and all Subcontractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their Work. The Contractor shall coordinate the Work with adjacent Work and with other trades, so that no portion of the Work is delayed or not properly undertaken due to such lack or failure of cooperation.
- 6.2.2 The Contractor shall lay out and install its Work at such time or times and in such manner as to be in compliance with the critical path and to facilitate the general progress of the Project.
- 6.2.3 Before completion of the Work contemplated herein, should it be deemed necessary by the University to do any Work whatsoever, in or about the building or structure, other than as provided for in the Contract Documents, the Contractor shall fully cooperate with such other individual or firm as the University may employ to do such Work, so that such additional Work may be performed without unreasonable interference. The Contractor shall afford said other individual or firm all reasonable facilities for doing such Work. Other than for an extension of time, the Contractor shall make no claim to the University, as a result of such Work, as contemplated herein.
- 6.2.4 The C.O., C.A. and A/E shall at all times have access to the Work, whether it is in preparation or in progress, and the Contractor shall provide proper facilities for such access and inspection. The C.O. reserves the right to employ the services of a professional consultant to evaluate any phase of the deemed to be in the best interest of the University provided that no evaluation performed shall in any way relieve the Contractor of its responsibilities under the Contract.
- 6.2.5 The consultant's work product shall be confidential and shall not be disclosed to the Contractor unless the C.O. determines it is in the best interest of the Project to do so. The Contractor shall cooperate with the consultants and provide access to the Work and facilities for inspection. Should any portion of the Work or material be found deficient or defective, the Contractor shall pay the applicable fees of such consultant and shall be responsible for replacing the deficient or defective Work as required by provisions stated elsewhere herein.
- 6.2.6 Any costs caused by defective or ill-timed Work shall be borne by the responsible party.
- 6.2.7 If the Contractor destroys, damages, or disturbs the Work of any other Contractor in or about the building or premises, the Contractor shall immediately either replace the destroyed Work and make good the damaged or disturbed Work to the satisfaction of the A/E, the C.A. and C.O., or shall reimburse the Contractor whose Work has been destroyed, damaged, or disturbed for the expense of replacing such Work.
- 6.2.8 Should a Contractor sustain any damage through any act or omission of any other Contractor having a contract with the University, or through any act or omission of a Subcontractor of any such Contractor, or through any act or omission of the A/E, the Contractor shall have no claims against the University for such damage, but shall have a right of action to recover such damages from the causing party or parties, in accordance with 6.5.2, which is included in the Contract with all other such Contractors and the A/E.

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6.3 Substantial Completion

- 6.3.1 At the request of the University, the A/E, Contractor, C.A. and C.O. shall make a joint inspection of the Work, and if all determine that the Work is substantially completed, the University shall give Notice of Substantial Completion for Beneficial Use. Such certification in no way relieves the Contractor of any contractual obligation or in any way relieves the Contractor from responsibility to promptly complete punch list work.
- 6.3.2 Standard Guarantee period for equipment, workmanship and materials shall commence on the date of acknowledgment of substantial completion of the project or portions thereof so certified or from the time of completion and acceptance of equipment, Work or materials in question, whichever is later, unless specified to the contrary as a condition of partial acceptance.

6.4 Beneficial Occupancy

- 6.4.1 The University reserves the right to take possession of and occupy any and all portions of the premises prior to the completion of the Work without waiving any provisions or requirements of the Contract. Prior to such occupancy, however, the C.O., the C.A., and the Contractor shall fully inspect portions of the building to be occupied, preparing a complete list of incomplete or faulty Work to be completed/corrected by the Contractor. The University will assume responsibility for maintenance and operating costs of the premises once occupied.

6.5 Contractor's Claims for Damages

- 6.5.1 Any claims made by a Contractor against the University for damages or extra costs are governed by and subject to the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq. as well as all the provisions in this Contract.
- 6.5.2 Any Contractor or A/E having, or who shall hereafter have, a Contract with the University, by its own acts, errors or omissions, damages or unnecessarily delays the work of the University, any other Contractor(s) or the A/E by not properly cooperating with them, or by not affording them reasonably sufficient opportunity or facility to perform work as may be specified, by reason of which act, error or omission of the said Contractor, the A/E or any other Contractor shall sustain damages including delay damages, during the progress of the Work hereunder, then and in that event, the culpable party agrees to pay all costs and expenses incurred by the damaged Contractor(s) or A/E due to any such delays and/or damages whether by settlement, compromise or arbitration and the injured Contractor or A/E shall have a right to seek enforcement in the court of competent jurisdiction directly against the responsible party. In addition, the responsible party further agrees to defend, indemnify and save harmless the University from all such claims and damages. Nothing contained in the above paragraph shall be construed to relieve the responsible Contractor or A/E from any liability or damage sustained on account of such acts, errors or omissions.
- 6.5.3 The University shall not be liable to any contractor for any damages or extra costs caused by any acts or omissions as specified in this section and the Contractor's exclusive remedy shall be against the culpable party.

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6.6 Differing Site Conditions

- 6.6.1 The Contractor shall promptly, and before the conditions of the site are disturbed, give written notice to the C.O. of subsurface or latent physical conditions at the site which materially differ from those indicated in the Contract Documents or unknown physical conditions at the site of an unusual nature which materially differ from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.
- 6.6.2 The C.O. shall investigate the site conditions promptly after receiving written notice to proceed. If the conditions do materially differ and cause an increase or decrease in the Contractor's costs, or the time required for, performing any part of the Work under this Contract, the Contract may be modified in writing accordingly by the C.O.
- 6.6.3 A request by the Contractor will not be considered unless the Contractor has given the required written notice to the C.O., unless the Contractor requests and receives a time extension from the C.O.
- 6.6.4 A Contract Modification because of differing site conditions will not be allowed if made after final payment under this Contract.

6.7 Right to Accelerate

- 6.7.1 The C.O. may order and direct a Contractor responsible for delay, as may be apparent from observation of the Work, to accelerate that Contractor's Work at any particular place or places by increasing its forces, working overtime and/or on Saturdays, Sundays and or other holidays, as may be required to enable others to carry on with their work in accordance with the Project Progress Schedule. The Cost of such acceleration efforts shall be borne entirely by the responsible Contractor and shall not be billed to the University.

6.8 Time of Completion—Delay—Liquidated Damages

- 6.8.1 In the event of the failure of the Contractor to complete the Work by the Completion Date as stated in the Contract Documents, the Contractor shall be liable to the University for the sum of \$1,500.00 per day, for each and every day that the said Work remains incomplete. This sum shall be treated as liquidated damages and not a penalty, for the loss to the University of the use of premises in a completed state of construction, alteration or repair, as the case may be, and for added administrative and inspection costs to the University on account of the delay. Any such sums for which the Contractor is liable may be deducted by the University from any monies due or to become due to the Contractor.
- 6.8.2 It is hereby understood and mutually agreed by and between the Contractor and the University that the date of the beginning, the dates of required intermediate milestones, the Completion Date and the time for completion, as specified in the Contract are ESSENTIAL CONDITIONS of this Contract.
- 6.8.3 The Contractor agrees that all Work shall be prosecuted regularly, diligently, and uninterruptedly at such rate of progress as will insure full completion thereof within the time specified and by the Completion Date. It is expressly understood and agreed, by and between the Contractor and the University, that the time for the completion of the Work herein is a reasonable time for the completion of the same, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality. If the Contractor neglects, fails, or refuses to complete the Work within the time herein specified, or any proper extension thereof granted by the C.O., then the Contractor does

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hereby agree, as a part of the consideration for the awarding of this Contract, to pay the University the amount specified in paragraph 6.8.1 above, not as a penalty but as liquidated damages for such breach of contract as hereinafter set forth, for each and every calendar day that the Contractor may be held in default after the Completion Date.

- 6.8.4 The liquidated damages amount is fixed and agreed upon by and between the Contractor and the University because of the impracticability and the extreme difficulty of fixing and ascertaining the actual damages the University would in such event sustain, and this amount is agreed to be the amount of damages which the University would sustain and shall be retained by the University as necessary to cover projected untimely completion of the Work due to Contractor-caused delays.
- 6.8.5 The Contractor shall not be charged with liquidated damages, or any excess cost when the University determines that the Contractor is without fault and the Contractor's reasons for a time extension are acceptable to the University; provided further, that the Contractor shall not be charged with liquidated damages or any excess cost when the delay in the completion of the Work is due to:
- 6.8.5.1 Any preference, priority, or allocation order duly issued by the government.
- 6.8.5.2 Unforeseeable cause(s) beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, or of a public enemy, acts of the University, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and abnormally severe weather; and
- 6.8.5.3 Any delays of Subcontractors or supplies occasioned by any of the causes specified in subsections 6.8.5.1. and 6.8.5.2. above.
- 6.8.6 The Contractor shall, within five (5) calendar days from the beginning of such delay, unless Contractor requests and receives an extension of time beyond the five (5) day period from the C.O., the Contractor shall notify the C.O, C.A. and A/E in writing of the causes of the delay. The C.O., with the assistance of the C.A. and A/E, shall first ascertain the facts and the extent of the delay and shall notify the Contractor within a reasonable time whether good cause has been shown to warrant the granting of such extension.
- 6.8.7 It is further agreed that time is of the essence of each and every portion of this Contract and of the Specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the Contract, an additional time is allowed for the completion of any Work, the new time limit fixed by such extension shall be an Essential Condition of this Contract.
- 6.9 **No Damages for Delay**
- 6.9.1 The University shall have the right to defer the beginning or to suspend the whole or any part of the Work to be done whenever, in the opinion of the C.O., it may be necessary or expedient for the University so to do. If the Contractor is delayed in the completion of the Work by an act, neglect, or default of the University, of the A/E or of any other Contractor directly employed by the University upon the Work; or by changes in the Work authorized by the University by a properly approved Change Order; or by strikes, lockouts, fire, unusual delay by common carriers, unavoidable casualties, or any case beyond the Contractor's control; or by any cause which the C.O. shall determine justifies the delay, then for all such delays and suspensions the Contractor shall be allowed a one calendar day addition to the time herein stated for each and every calendar day of such delay so caused in the completion of the Work as specified in Section 6.8, the same to be determined by the C.O., and a similar allowance of extra time will be made for such other

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delays as the C.O. may find to have been caused by the University. No such extension shall be made for any one or more of such delays unless within ten (10) calendar days after the beginning of such delay a written request for additional time is made by the Contractor to the C.O., with copies of such request also being sent to the C.A. and A/E.

- 6.9.2 The Contractor shall not be entitled to any damages or extra compensation from the University on account of any Work performed by the University or any other Contractor or the A/E or any other party, or by reason of any delays whatsoever, whether caused by the University or any other party including, but not limited to, the delays specified in this Contract.

6.10 Indemnification

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

- 6.10.2 In any and all claims against the University or the A/E or any of their agents or employees by any employees of the Contractor, any Subcontractor or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this section shall not be limited in any way as to the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under Worker's or Workman's Compensation Acts, Disability Benefit Acts, or other Employee Benefit Acts.

6.11 Assignments

- 6.11.1 The Contractor shall not assign the whole or any part any of this Contract without prior written consent of the University. Money due or to become due the Contractor hereunder shall not be assigned for any purposes whatsoever.

6.12 Contract Time

- 6.12.1 Unless otherwise provided, the Contract Time is the period of time allotted in the Contract Documents for Substantial Completion of the Work as defined in Subparagraph 1.1.15 including authorized adjustments thereto.

- 6.12.2 The Contract Time shall commence on date of the Contractor's receipt of a written Notice to Proceed. If there is no Notice to Proceed, it shall be the date of the University-Contractor Agreement or such other date as may be established therein. Notice to Proceed shall be issued by the University, only after receipt and acceptance by the C.O., of properly executed Contract Documents including performance and payment bonds.

- 6.12.3 Provided the contract is not terminated by the C.O. if the Contractor's delay in furnishing financial responsibility, insurance and performance or payment bonds causes a delay in

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the issuance of the Notice to Proceed, the time to complete the Work as specified in the contract may be reduced to reflect such delay.

- 6.12.4 The Contractor shall perform no Work under this contract until the required evidence of financial responsibility, insurance, and bonds has been furnished. Thereafter, Work at other than the contract site may be undertaken. The Contractor shall perform no Work at the contract site except pursuant to a written Notice to Proceed issued by the University.
- 6.12.5 Notice to Proceed may be issued by the University at its convenience. Any right of the Contractor to an adjustment because of a delay in issuing a Notice to Proceed shall be determined in accordance with the Article II, Section 2.2 entitled "Contracting Officer's Right to Stop Work."

6.13 Warranties

- 6.13.1 Neither the Final Certification of Payment, nor any provision in the Contract Documents, nor partial or entire occupancy of the premises by the University shall constitute an acceptance of Work not done in accordance with the Contract Documents, nor shall it relieve the Contractor of liability with respect to any expressed or implied warranties or responsibility for faulty materials or workmanship. The University will give notice of observed defects with reasonable promptness.
- 6.13.2 In addition to guarantees otherwise specified in other sections of the Specifications, each Prime Contractor and each individual Subcontractor shall guarantee and warrant, in writing, the Work to be performed, and all materials to be furnished under this Contract against defects in material or workmanship and to pay for the value of repair of any damage to other Work resulting therefrom for a period of one (1) year from date of project acceptance. All guarantees, bonds, etc., required by the Specifications shall be in writing in requisite legal form, and delivered to the C.O. at the time of submission of the requisition for final payment. All Subcontractors' guarantees, bonds, etc., shall be underwritten by the Prime Contractor, who shall obtain and deliver same to the C.O. before the Work shall be deemed finished and accepted.
- 6.13.3 The Contractor shall, at its own expense and without cost to the University, within a reasonable time after receipt of written notice thereof, make good any defects in material or workmanship which may develop during stipulated guarantee periods, as well as any damage to other work caused by such defects or by their repairs. Any other defects in material or workmanship, not reasonably observable or discovered during the guarantee period, shall be repaired and/or replaced at the Contractor's expense and such shall be completed within a reasonable time after written notice is given to the Contractor by the C.O., C.A. or A/E.
- 6.13.4 It is anticipated that certain permanent equipment will have to be activated during construction of the project to support construction operations. This would particularly be the case with respect to service elevators and those portions of the permanent heating system which might be required to provide temporary heat for interior finish operations. Regardless of when equipment is activated for use during construction, all equipment warranties must extend for the time periods required in these Specifications starting as of the date of occupancy or final acceptance (whichever is earliest) of the Project by the University. The Contractor shall include in the base bids all costs necessary to provide extended warranties as necessary for any equipment which may be activated prior to final building acceptance by the University.

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6.14 Right to Audit

- 6.14.1 The University reserves the right to audit the records of the Contractor in connection with all matters related to this Contract. The Contractor agrees to maintain his records in accordance with generally accepted accounting principles, for a period of not less than three (3) years after receipt of final payment.
- 6.14.2 “Generally Accepted Accounting Principles” is defined as follows: Accounting records must identify all labor and material, costs and expenses, whether they are direct or indirect. The identification must include at least the project number for direct expenses and/or account number for indirect expenses. All charges must be supported by appropriate documentation, including, but not limited to canceled checks.
- 6.14.3 The Contractor shall develop, maintain and make available to the C.O. and C.A. on request such schedule of quantities and costs, progress schedules, payrolls, reports, estimates, change orders, all original estimates, takeoffs, Contract Documents and Change Orders, all records showing all costs and liabilities incurred or to be incurred in connection with the Project including all Subcontractor and supplier costs, all payment records and all records showing all costs incurred in labor and personnel of any kind, records and other data concerning work performed or to be performed under this Contract.
- 6.14.4 The Contractor acknowledges and agrees that no claim for payment which is premised to any degree upon actual costs of the Contractor shall be recognized by the University except and only to the extent that such actual costs are substantiated by records required to be maintained under these provisions.
- 6.14.5 The Contractor acknowledges and agrees that the Contractor’s obligation to establish, maintain and make available records and the University’s right to audit as delineated herein, shall extend to actual costs incurred by each Subcontractor in performing work required under the contract or any supplemental agreement thereto. The Contractor shall require in all subcontracts that the Subcontractor establish, maintain and make available to the University all records as defined and delineated herein relating to all work performed under the subcontract including work performed by all Sub-Subcontractor.

ARTICLE VII - PAYMENTS

7.1 Payments to the Contractor

- 7.1.1 The University shall pay the Contractor the contract price as hereinafter provided, as such amount may be adjusted from time to time by written Change Orders that are approved and fully executed by the C.O.

7.2 Unit Schedule Breakdown/Schedule of Values

- 7.2.1 The University will make progress payments monthly as the Work proceeds or at more frequent intervals as determined by the C.O. based on estimates approved by the C.O. Unless otherwise directed, the Contractor shall furnish to the A/E within two (2) weeks after a Notice to Proceed is issued, a schedule of amounts for payment (Unit Schedule Breakdown) of the total contract price, showing the amount included therein for each principal category of Work in place, in such detail in order or as to provide a basis for determining progress payments. The schedule as approved by the C.O. shall be used only as a basis for the Contractor’s estimates for progress payments. Approval by the C.O. does not constitute acceptance of the allocability and allowability of costs to a specific element of Work. The Contractor agrees that no payment requests shall be approved

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until the Unit Schedule Breakdown has been approved in writing by the C.O. and C.A.. The Contractor shall use the form provided by the University for the receipt of payments.

7.2.2 The basis for computing Monthly Progress Payments shall be the Unit Schedule Breakdown.

7.3 Requisition for Payment

7.3.1 The Contractor will submit the Requisition for Payment form to the C/A. and C.O.. The C.A. and the C.O. will indicate their approval or make appropriate changes and forward the requisition to the A/E. The A/E will review the Requisition and make its recommendation to the C.O. for payment. If the A/E does not recommend approval of the invoice as submitted, he/she will immediately advise the Contractor. If agreement cannot be reached within five (5) calendar days, the Requisition, together with the A/E's recommendation, will be sent to the C.O. for decision and appropriate action. The University will make all reasonable efforts to make payment pursuant to the Prompt Payment Act after final determination of amount due, provided all required releases, waivers, bill of sale, or other documentation has been received and approved.

7.3.2 Recommendation for approval of a Requisition for Payment will constitute a representation by the A/E to the C.O. based on its inspections at the site and data contained in the Requisition for Payment, that the Work has progressed to the point indicated; that, to the best of A/E's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents; and that the Contractor is entitled to payment in the amount certified. By recommending approval of a Requisition for Payment, however, the A/E 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 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 moneys previously paid on account of the contract sum.

7.4 **Retainage.** In making such progress payments for Work, the University will retain up to ten percent (10%) of the approved Requisition for Payment until final acceptance and completion of all Work covered by the Contract. Upon acceptance and completion of the Project and upon submission of "As-Built" drawing and O&M Manuals, or other clearly definable portion of the Contract Work for which the price is stated separately within the Contract, payment may be made in full at the discretion of the C.O., including retained percentages thereon, less authorized deductions.

7.5 **Final Payment, Certificate of Final Completion.** Upon completion and final satisfactory inspection(s) by regulatory agencies and acceptance by the University of all the Work required by the Contract Documents, the balance of the unpaid contract sum, as adjusted, shall be paid to the Contractor within sixty (60) days after the issuance of a Certificate of Final Acceptance, certified by the A/E and approved by the University. Such payment is subject, however, to the execution and delivery by the Contractor to the University of a release, in a satisfactory form, of any and all claims against the University arising under and by virtue of this Contract.

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- 7.6 The acceptance by the Contractor of Final Payment shall be and operate as a release to the University of all claims and liability to the Contractor for all things done or furnished in connection with this Work, and for every act, omission or error of the University relating to or arising out of the Work. No payment, however, final or otherwise, shall operate to release the Contractor or its Sureties from any obligations under the Contract Documents or the Performance and Payment Bonds.
- 7.7 If, for any reason, the Contractor refuses final payment, the Project will be closed out by the University by the processing of a Final Contract Acceptance Certificate. All residual funds will be held in escrow by the University until all claims of the University and all Contractors are satisfied.

ARTICLE VIII - UNCOVERING AND CORRECTION OF WORK

8.1 Uncovering of Work

- 8.1.1 If any portion of the Work is covered prior to inspection by the C.O. or the C.A. and the A/E, especially Work specifically required by the Contract Documents to be inspected, it shall be uncovered for observation. Uncovering and replacement of covering shall be at the installation Contractor's own expense. The Contractor is obligated to advise the C.O., C.A. and the A/E of all Work scheduled to be covered which is reasonably subject to prior inspection before actual covering.
- 8.1.2 If any other portion of the Work (not specifically required to be inspected) has been covered, which the C.O., C.A. or the A/E did not request to observe prior to being covered, a request may subsequently be made to inspect such Work, and it shall be uncovered by the installation Contractor. If such Work is found to be in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be reimbursed by the University. If such Work is defective or not in accordance with the Contract Documents, the Contractor shall pay all associated costs, unless it is found that the condition was caused by the University, in which event the University shall be responsible for the payment of such costs.
- 8.2 **Correction of Work.** The Contractor shall promptly correct all Work rejected by the C.O., C.A. and the A/E as defective or as failing to conform to the Contract Documents, whether observed before or after Final Acceptance and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work, including the cost of the A/E's additional services, if any.
- 8.3 If the Contractor fails to correct defective or non-conforming Work in a timely manner, the C.O. may make arrangements for such correction by others and charge the cost of so doing to the responsible Contractor and/or its Sureties.
- 8.4 If the Contractor does not proceed with the correction of such defective or non-conforming Work within a reasonable time, fixed by written notice from the C.O. or the A/E, the C.O. may remove it and may store the materials or equipment at the expense of the Contractor.
- 8.5 The Contractor shall also be responsible for the cost of making good all Work destroyed or damaged by such correction or removal.
- 8.6 **Acceptance of Non-conforming Work.** If the C.O. determines that the best interests of the University will be served by accepting non-conforming Work, he/she may do so instead of requiring its removal and correction. In such instance, a Change Order will be issued to reflect an appropriate and equitable reduction in the contract sum. Such adjustment shall be affected regardless of Final Payment having been previously made, and the Contractor and/or its Surety will be responsible for promptly providing any funds due the University as a result thereof.

ARTICLE IX - PROTECTION OF PERSONS AND PROPERTY

- 9.1 **Safety Precautions and Programs:** In order to protect the lives and health of its employees, the Contractor shall comply with the Project Safety Program, if any, and all applicable statutes and pertinent provisions of the "Manual of Accident Prevention in Construction" issued by the Associated General Contractors of America, Inc., and shall maintain an accurate record of all cases of death, occupational disease, and injury requiring medical attention or causing loss of time from work, arising out of and in the course of employment of Work under the Contract. The Contractor alone shall be responsible for the initiating, maintaining and supervising all safety precautions and programs in connection with the Work and for any damage or injury which may result from its failure to do so or its improper construction, maintenance or operation.
- 9.2 All Contractors shall comply with the Federal Occupational Safety and Health Act of 1970 and all of the rules and regulations promulgated thereunder.
- 9.3 All Contractors shall comply with the N.J. Public Employees Occupational Safety and Health Act of 1984 and all of the rules and regulations promulgated thereunder.
- 9.4 Each Prime Contractor shall be responsible, in cooperation with and under the leadership of the General Contractor, for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. The Contractor shall designate, at the site, a responsible member of its organization 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 C.O. and the A/E.
- 9.5 The Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss.
- 9.6 **Emergencies.** In any emergency affecting the safety of persons or property, the Contractor shall act with diligence, at its direction, to prevent threatening injury, damage or loss. In such case, the Contractor shall immediately notify the C.O. through the C.A. and A/E, of the action taken and shall forthwith prepare and submit a detailed and documented request through the C.A. and A/E to the C.O. for any additional compensation or extension of time claimed by the Contractor on account of the emergency work.

ARTICLE X - INSURANCE AND INDEMNITY

- 10.1 **Contractor Insurance Requirements**
- 10.1.1 The Contractor shall secure and maintain in force for the term of the Contract, insurance coverage provided herein. All insurance coverage is subject to the approval of the University and shall be issued by an insurance company authorized to do business in the State of New Jersey and which maintains an A.M. Best rating of A- (VII) or better. The Contractor shall provide the University with current Certificates of Insurance for all coverage and renewals thereof which must contain the provision that the insurance provided in the certificate shall not be canceled for any reason except after thirty (30) days written notice to the C.O. All insurance required herein shall contain a waiver of subrogation in favor of the University. All insurance required herein, except Workers' Compensation and Owners and Contractors Protective shall name Montclair State University, the State of New Jersey, the New Jersey Educational Facilities Authority, the Architect/Engineer and Construction Manager as additional insureds.

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- 10.1.2 Commercial General Liability insurance written on an occurrence form including independent contractor liability, products/completed operations liability, contractual liability, covering but not limited to the liability assumed under the indemnification provisions of this contract. Coverage for bodily injury and property damage claims arising out of the professional acts of the general contractor and Subcontractors shall also be included. The policy shall not include any endorsement that restricts or reduces coverage as provided by the ISO CG0001 form without the approval of the University. The minimum limits of liability shall not be less than a combined single limit of one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) general aggregate, two million dollars (\$2,000,000) product/completed operations aggregate. A “per project endorsement” shall be included, so that the general aggregate limit applies separately to the project that is the subject of this contract.
- 10.1.3 Comprehensive Automobile Liability covering owned, non-owned, and hired vehicles. The limits of liability shall not be less than a combined single limit of one million dollars (\$1,000,000) per occurrence.
- 10.1.4 Worker's Compensation Insurance applicable to the laws of the State of New Jersey and other State or Federal jurisdiction required to protect the employees of the Contractor and any Subcontractor who will be engaged in the performance of this Contract. The certificate must so indicate that no proprietor, partner, executive officer or member is excluded. This insurance shall include Employers' Liability Protection with a limit of liability not less than one million dollars (\$1,000,000) bodily injury, each occurrence, one million dollars (\$1,000,000) disease, each employer, and one million dollars (\$1,000,000) disease, aggregate limit. Including the employer's liability insurance under the umbrella insurance can satisfy the limit requirements.
- 10.1.5 The Contractor shall obtain and maintain a separate Owners and Contractor's Protective Liability Insurance Policy for the same limits of liability as specified for the Commercial General Liability Insurance in the name of the University, the State of New Jersey and the New Jersey Educational Facilities Authority. The Architect/Engineer, and the Construction Manager are to be the named as additional insured. The policy shall be maintained in force for the term of the Project or one year, whichever is longer.
- 10.1.6 Excess Liability, umbrella insurance form, applying excess of primary to the commercial general liability, commercial automobile liability and employer's liability insurance shall be provided in the amount of twenty million dollars \$20,000,000.00 per occurrence as well as the general aggregate, and products/completed operations.
- 10.1.7 The contractor shall require all Subcontractors to comply with all of the insurance requirements described above. It is a contractor option to determine the amount of excess liability it will require its Subcontractors to carry. The contractor shall be responsible for obtaining certificates of insurance for all coverage and renewals thereof for each Subcontractor prior to the Subcontractor's beginning work on the project. The contractor shall provide copies of all Subcontractor certificates of insurance to the University upon request.

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10.2 Insurance To Be Carried By The University

- 10.2.1 The University shall provide insurance protection in the form of a Builders Risk Insurance or similar Policy upon the structure for which the Work on this Contract is to be done. The structure will be insured for 100% of the insurable replacement value thereof including materials, owned by the University, in place or to be used as part of the permanent construction including surplus materials.
- 10.2.2 This insurance shall not protect against damage or loss to any of the Contractor's or Subcontractor's tools, equipment, scaffolding, staging towers or forms, Contractor's materials and sheds or other temporary structures erected for used by the Contractor or Subcontractors. It is understood that the Contractor will at its own expense, carry all insurance which may be required to provide the necessary protection against such loss or damage herein described which insurance shall contain a waiver of any right of subrogation against the University.
- 10.2.3 The insurance procured by the University under this paragraph may provide for a deductible. The Contractor shall assume the responsibility for any deductible for any builder's risk loss it may make claim for under this policy.
- 10.2.4 The Contractor shall immediately notify the University, in writing and take any other appropriate steps as may be required under the standard Builder's Risk Insurance Policy in effect in the event of any loss. Prior to the acceptance of the building by the University, the Contractor shall, at the University's option, replace and repair the damaged Work as originally provided in the drawings and specifications at no additional compensation to that provided in the original contract.
- 10.2.5 All losses will be adjusted with, and payable to, the University.
- 10.2.6 The Contractor shall not include any cost for Builders Risk insurance premiums as described herein. However, this provision shall not relieve the Contractor from their obligation to complete, according to plans and specifications, the project covered by the contract, and the Contractor and their Surety shall be obligated to full performance of the Contractor's undertaking.

ARTICLE XI - CHANGES IN THE WORK

11.1. Changes to Contract

- 11.1.1. The C.O., in its sole discretion, may in order to avoid delays in the progress of Work and when in the best interests of the University, direct the Contractor in writing ("Construction Change Directive or CCD") to make any change in the Work within the general scope of the Contract, such as to authorize additions, deductions, or changes to the Work as set forth below, and the Contract shall not be terminated or the Surety released thereby. Any and all CCDs must be in writing from the C.O. and may include, but not be limited to, the following changes:
- 11.1.1.1. to the specifications (including drawings and designs);
- 11.1.1.2. to the method or manner of performance of the Work;
- 11.1.1.3. to the University-furnished facilities, equipment, materials, services, or site; or
- 11.1.1.4. directing acceleration in the performance of the Work

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- 11.1.2. If any such CCD causes an increase or decrease in the cost of the performance of any part of the Work or requires a change in the Contract Completion Date, then a Proposed Change Order (PCO) shall be created by the Contractor and issued to the CO within two (2) days after the Contractor receives the CCD and before the Contractor commences the work required by the CCD. All PCOs shall be priced in accordance with Article 11. The PCO shall be written by the Contractor and shall describe the changed Work with cost changes and changes to Contract Completion Date. The PCO shall be delivered to the C.A. and the C.O. at least 20 days before or after the work required by the CCD. The C.A. and the C.O., with the assistance of the A/E as considered necessary, will review and may negotiate the terms of the PCO, including cost and change to the Contract Completion Date, if any, with the Contractor. Within 20 days after submission of the PCO, the Contractor shall prepare and submit to the C.A. and C.O., a Change Order. The C.A. and the C.O. may either approve the Change Order or make appropriate changes and forward the Change Order to the A/E for approval. If the Change Order is approved by the A/E, the Change Order will be forwarded by the A/E to the C.O. for final review. If the Change Order is approved and executed by the C.O. the Change Order will become part of the Contract Documents.
- 11.1.3. In the event the Contractor, C.O., C.A. and A/E cannot, for whatever reason, reach an agreement on cost changes or changes to the Contract Completion Date, the C.O. shall issue a Change Order incorporating the change and the Contractor shall proceed with the Work as directed in the Change Order or CCD. The Change Order created by the C.O. shall then become a part of the Contract Documents.
- 11.1.3.1. If the Contractor requests an equitable adjustment under Article 11, the Contractor must submit to the C.A. the University's form "Contractor Change Order Request", completed in sufficient detail as requested by the C.A. or C.O., and in accordance with this article within 20 calendar days after receipt of an Change Order created by the C.O. or CCD. The cost of such work shall then be evaluated by the C.A., A/E and C.O. on the basis of the reasonable expenditures and savings for those performing the Work.
- 11.1.3.2. Where the cost of property made obsolete or excess as a result of a change is included in the Contractor's request for adjustment, the University shall have the right to prescribe the manner of disposition of such property.
- 11.1.4. The C.A. shall have the authority to order, in writing, minor changes in the Work that do not involve an adjustment to the price of any items of Work that exceed the Contracting Officer's Approval Limit or that extend the Contract Completion Date. Such changes shall be binding on the University and the Contractor, and shall not be the basis of increased compensation to the Contractor or extension of time. Such work shall be executed under the conditions of the original Contract.
- 11.1.5. All requests for Contract Completion Date extensions must be accompanied by copies of the current approved progress schedule and copies of the revised (proposed) progress schedule detailing the incorporation of the changed Work and the effects of such incorporation on progress. Failure to provide the schedule data shall be grounds for rejection of the request.
- 11.1.6. Notwithstanding any other portion of this Contract, any time extensions for changes in the Work depend upon the extent, if any, by which the changes cause delay in the completion of the Work. The Contract modification making such time extension will provide for an extension of Contract Completion Date only for those specific elements so delayed, and will not alter the Contract Completion Dates for other portions of the work. This contract modification may further provide for an equitable readjustment of liquidated damages pursuant to the new completion schedule.

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- 11.1.7. The Contractor, in connection with any request made for an equitable adjustment, shall furnish an itemized price breakdown. The breakdown shall cover all Work involved in the change whether such Work was deleted, added or changed.
- 11.1.8. Further, the price breakdown shall be in sufficient detail to permit an analysis of all material, labor, equipment, overhead costs and profit.
- 11.1.9. Any amount proposed for subcontracts shall be supported by a similar price breakdown. In addition, if the request includes a time extension, a justification (see Article 12.3.8) shall also be furnished. The request, together with the price breakdown and time extension justification, shall be furnished by the date specified.
- 11.1.10. If any change under this article causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the Work, whether or not changed by any such order, an equitable adjustment may be made in the contract price or delivery schedule or both, and the contract modified accordingly.
- 11.1.11. The percentages shall be applicable for deleted Work as well as additional Work.

11.2. Requests for Equitable Adjustment

- 11.2.1. All additions, deductions or changes to the Work as directed by Change Orders shall be executed under the conditions of the original Contract. The Change Order shall recite the additional time granted or time reduced by the University to perform the Work, if any. Except as specified in Section 11.1, or in an emergency endangering life or property, no change shall be made unless pursuant to a written directive from the C.O. and no claim for an addition to the Contract Price or Contract Completion Date shall be valid unless so ordered in writing by the C.O.. The Contractor agrees to prepare and submit, within 20 calendar days of encountering any conditions it considers a change, or upon receiving official notice of a proposed change or written CCD, an original and two copies of form "Contractor Change Order Request" to the C.A., C.O. and A/E.
- 11.2.2. Should the Contractor dispute the C.A.'s interpretation of Work specified in the Contract Documents and claim additional compensation for Work that will involve adjustment to costs or Contract Completion Date, the Contractor shall proceed with the Work in accordance with the C.A.'s interpretation. In such event, the Contractor shall follow the procedures and maintain the detailed cost records set forth in the general conditions pending the resolution of the dispute.
- 11.2.3. In all other cases, should the Contractor perform Extra Work without first obtaining a written CCD or Change Order from the C.O. such action shall be construed by the University as voluntary performance and as a waiver of any and all claims to extra payment and time.
- 11.2.4. The time needed to perform Extra Work shall not be the basis of claims by the Contractor for any extra costs.

11.2.5. Change Order Pricing

11.2.5.1. The Contractor's PCO shall be structured in accordance with the format(s) set forth in Appendix B and shall comply with the pricing specifications set forth in this Article 11. The C.A, A/E and the C.O. shall review the Contractor's PCO and, if necessary, meet with the Contractor to negotiate the PCO. Should the C.O. or C.A. require additional information, the Contractor will provide the requested information. The Contractor's costs for preparing, submitting, and negotiating PCOs will not be paid

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separately and shall not be included in the PCO, but shall be considered paid for in the Contract Price.

11.2.5.2. Requests for extension of time for the changed Work shall be included in the Contractor's PCO. Extensions of time will not be granted unless requested in accordance with the provisions of Section 14.

11.2.5.3. Full documentation supporting all estimated and actual costs shall be furnished to the C.A. and C.O. upon request. Documentation may consist of records such as actual payroll records and receipted bills for rentals and materials. All Change Orders shall be subject to review and final approval by the C.O.

11.2.5.4. All proposed and incurred Change Order costs shall, at a minimum be allowable, allocable and reasonable in accordance with the Contract cost principles and procedures in Part 31 of the Federal Acquisition Regulations in effect on the date of the Contract. The C.O.'s determination on the allowability, allocability and reasonableness of incurred costs shall be final and conclusive.

11.2.5.5. The value of any change in the Contract shall be determined in accordance with the following pricing bases, listed in the order of priority of use: a) Unit Price, b) Lump Sum and c) Time and Material (T&M). Unit Prices shall govern if contained in the Bidder's Proposal for the applicable work. If no Unit Prices apply, then a Lump Sum pricing approach shall be used. If a Lump Sum cannot be determined, or agreement cannot be reached, or the C.A. determines that work must be performed immediately for work having an estimated cost that does not exceed the C.O. Approval Limit, then the C.A. may direct the Contractor to proceed on a T & M basis.

11.2.5.6. Whenever the terms "labor", "materials", "equipment", "overhead" and "profit" are used herein with regard to Change Order costs, they are used as these cost and price elements are defined in this Article 11.

11.2.5.7. Unit Price Basis: Whenever unit prices govern, the Contractor's cost proposal shall identify the additional estimated quantities required for the Work. The unit price included in the Contract, or subsequently agreed upon, shall be used to solely determine the increased or decreased cost of the Work. The unit price shall be deemed to include all costs for labor, material, overhead and profit and the increase or decrease in the cost of the Work shall be on a dollar for dollar basis.

11.2.5.8. Lump Sum Basis: When unit prices do not apply, the Contractor shall submit a detailed breakdown of labor, materials, and equipment. The Contractor shall add to this overhead and profit markups as specified in Section 11.2.5.10.7. Cost proposals for labor and material shall be provided on the stationery of the parties that will be performing the work (Subcontractors) and supplying material (suppliers).

11.2.5.9. Time and Material: The Contractor shall submit the same detailed breakdown of costs as set forth in Section 11.2.5.8. for Lump Sum change orders. In addition, the Contractor shall submit a Guaranteed Maximum Price (GMP) which may be accepted or rejected by the C.O.

11.2.5.9.1. Time and Material with GMP: If the Guaranteed Maximum Price is accepted, the payment for such work shall not exceed the actual cost for labor, materials, and equipment. To this may be added overhead and profit mark-ups both as specified in Section 11.2.5.10.7. However, in no event shall payment exceed the Guaranteed Maximum Price previously approved by the C.O.

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11.2.5.9.2. **Time and Material with Upset Price:** If the Guaranteed Maximum Price submitted by the Contractor is rejected, the University may direct the Contractor to proceed on a time and material basis with an upset price approved by the C.O. The Upset price shall be the limit of authorization for performance of the Extra Work by the Contractor. At such time as the Contractor has expended eighty percent (80%) of the authorized limit, the University may establish a new limit by revising the Upset price. However, if the University chooses not to establish a revised Upset price, the Contractor shall cease the time and material work when the original Upset price has been reached. The payment for such work shall include the actual cost for labor, materials and equipment. To this may be added overhead and profit mark-ups as specified in Section 11.2.5.10.7. Any revision to the Upset price must be approved by the C.O.

11.2.5.9.3. **Emergent Time and Material:** Should the C.A. determine that changed work must be performed immediately for public safety and welfare, and the C.A., determines that the Contractor has insufficient time to submit a detailed cost proposal in advance of performing the work, the C.A. may direct the Contractor to proceed on an emergent time and material basis with an Upset price established by the University. The terms of performance and payment shall be as set forth in Section 11.2.5.9.2, except that profit markups shall be as specified in Section 11.2.5.10.7. The C.A. is authorized to approve such work for an Upset price that does not exceed the C.O. Approval Limit. If the Upset price does, or is expected to, exceed the C.O. Approval Limit, C.O. approval is required for such excess.

11.2.5.10. The University will consider for payment only the labor, material and equipment cost elements as specified herein in conjunction with any cost proposal submitted by the Contractor. These cost elements, individually or together, shall serve as the cost basis upon which applicable markups for profit and overhead shall be applied, all as specified in Section 11.2.5.10.7. These costs elements, together with the applicable markups for profit and overhead, shall constitute full compensation for all direct and indirect costs and shall be deemed to include all items of expense not specifically designated.

11.2.5.10.1. **Labor Costs**

- a) For necessary labor and foremen in direct charge of the specific operations, whether the employer is the Contractor, Subcontractor or another, the Contractor shall receive the rate of wage (or scale) actually paid as shown in its certified payrolls for each and every hour that said labor and foremen are actually engaged in such work.
- b) The Contractor shall also receive the actual costs paid to, or in behalf of, workers by reason of health and welfare benefits, pension fund benefits or other benefits, when such amounts are required by collective bargaining agreements or other employment contracts, or the Contract prevailing wage determination, generally applicable to the classes of labor employed on the work.
- c) The Contractor shall receive the actual cost paid to applicable State and Federal agencies and insurance carriers for Worker's Compensation Insurance, Federal Insurance Compensation Act (FICA, Social Security), Unemployment Insurance and Contractor's General Liability and Worker's Disability.

11.2.5.10.2. **Material Costs:** Only materials furnished by the Contractor and necessarily used in the performance of the Work will be paid for. The cost of such

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materials will be the cost to the purchaser, whether Contractor, Subcontractor or other forces from the supplier thereof, together with transportation charges actually paid by the Contractor, except as the following are applicable.

- (a) If a cash or trade discount by the actual supplier is offered or available to the purchaser, it shall be credited to the University notwithstanding the fact that such discount may not have been taken.
- (b) If materials are procured by the purchaser by any method which is not a direct purchase from and a direct billing by the actual supplier to such purchaser, the cost of such materials shall be deemed to be the price paid to the actual supplier as determined by the University plus the actual costs, if any, incurred in the handling of such materials.
- (c) If the materials are obtained from a supply or source owned wholly or in part by the purchaser, the cost of such materials shall not exceed the price paid by the purchaser for similar materials furnished from said source on Contract Items or the current wholesale price for such materials delivered to the job site, whichever price is lower.
- (d) If the cost of such materials is, in the opinion of the University, excessive, then the cost of such material shall be deemed to be the lowest current wholesale price at which such materials are available in the quantities concerned delivered to the job site, less any discounts as provided in Subparagraph (a) above.
- (e) If the Contractor does not furnish satisfactory evidence of the cost of such materials from the actual supplier thereof, the cost shall then be determined in accordance with Paragraph (d) above.

The University reserves the right to furnish such materials as it deems advisable, and the Contractor shall have no claims for costs and markups on such materials.

11.2.5.10.3. Equipment and Plant Rental Costs:

(a) Contractor Owned Equipment and Plant - The hourly rates for Contractor owned equipment and plant will be based on "Rental Rate Blue Book for Construction Equipment" or the "Rental Rate Blue Book for Older Construction Equipment" (both referred to hereafter as the "Blue Book"), published by Nielsen/DATAQUEST, Inc. of Palo Alto, California. The Blue Book shall be used in the following manner:

- (1) The hourly rate will be determined by dividing the "monthly" rate set out in the Blue Book by 176. The "weekly," "hourly," and "daily" rates listed in the Blue Book will not be used.
- (2) The number of hours to be paid for shall be the number of hours that the equipment or plant is actually used on a specific activity.
- (3) The "current revisions" to the Blue Book will be used in establishing rates. The "current revision" applicable to specific Change Order Work will be the "current revision" as of the first day of Work performed on that Change Order Work and that rate will apply throughout the period the Change Order Work is being performed.

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(4) Area adjustments will not be made. Equipment life adjustments will be made in accordance with the rate adjustment tables.

(5) Overtime, only if authorized and approved in advance by the C.O., shall be charged at the same rate indicated in (1), above.

(6) The "estimated operating costs per hour" shall be used for each hour that the equipment or plant is in operation on the Change Order Work. No such costs shall apply to idle time regardless of the cause of the idleness.

(7) Idle time for equipment will not be paid for, except where the equipment has been held on the Project site on a standby basis at the request of the University and, but for this request, would have left the Project site. Such payment will be made at one half (1/2) the rate established in (1), above.

(8) The rates as established above shall be deemed to include the cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs, overhaul, and maintenance of any kind, depreciation, storage, overhead, profits, insurance, costs of moving equipment or plant on to and away from the site, and incidentals (including labor and equipment).

(9) Operator costs shall be paid only as provided in Section 11.2.5.10.1., "Labor," of this Article.

Equipment shall be in good operating condition and suitable for the Work, in the opinion of the C.A. Equipment used by the Contractor shall be specifically described and be of suitable size and capacity required for the Work to be performed. In the event the Contractor elects to use equipment of a higher rental value than that suitable for the Work, payment will be made at the rate applicable to the suitable equipment. The equipment actually used and the suitable equipment paid for will be recorded as a part of the record for Change Order Work. If there is a differential in the rate of pay of the operator of oversize or higher rate equipment, the rate paid for the operator will likewise be that for the suitable equipment. In the event that a rate is not established in the Blue Book for a particular piece of equipment or plant, the University shall establish a rate for that piece of equipment or plant that is consistent with its cost and use.

The provisions of this Subparagraph:

(a) "Contractor Owned Equipment and Plant" shall apply to the equipment and plant owned directly by the Contractor or by entities which are divisions, affiliates, subsidiaries or in any other way related to the Contractor or its parent company.

(b) Rented Equipment and Plant - In the event that the Contractor does not own a specific type of equipment and must obtain it by rental, it shall be paid the actual rental for the equipment for the time that the equipment is actually used to accomplish the work, plus the cost of moving the equipment on, to, and away from the job. The Contractor shall provide a copy of the paid receipt for the rental expense incurred.

11.2.5.10.4. **Overhead Costs:** Overhead shall be defined to include any and all actual costs incurred for Contractor Field Office and Home Office overhead and operating expenses whatsoever. Overhead includes, as a minimum, the following categories of expenses actually incurred, regardless of whether or not the Contractor's accounting system allocates such expenses on a direct or indirect basis:(a) Salary and expenses of all

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Field Office employees, including project managers, supervising officers, supervising employees, superintendents, technical, scheduling or engineering employees, draft persons and clerical or stenographic employees; (b) Charges for minor equipment, small tools, and other miscellaneous supplies and expenses, including computers and telephones, personal protection equipment, shovels, picks, axes, saws, bars, sledges, lanterns, jacks, cables, pails, wrenches, etc.; (c) Charges for trailer rentals, utility and other temporary facility rental and maintenance charges, monthly utility charges, and all other costs to operate and maintain Contractor's Field Office unless otherwise provided as a direct charge elsewhere in the contract; (d) Salary and expenses of Home Office employees, including executive officers, managers, professional and administrative staff, schedulers, cost estimators, and clerical and support staff; (e) Charges and expenses for drafting, Computer Assisted Design, scheduling, billing, financing, etc.; (f) All other costs to operate and maintain the Contractor's Home Office; (g) Bond and insurance costs described in Section 11.2.5.10.2. The Contractor agrees that its overhead costs will be fully and fairly compensated by the fixed, non-negotiable overhead percentage markups set forth in Section 11.2.5.10.7.

11.2.5.10.5. **Bond and Insurance:** Compensation for bond premiums and other insurance premiums not listed in Section 11.2.5.10.7. shall be considered paid for under the overhead percentages added to the sum of the actual cost for labor, material and equipment and will not be considered or paid separately by the University.

11.2.5.10.6. **Profit:** The Contractor's profit shall be negotiated as a percentage markup based on the type of work, the value of the Change Order, the pricing basis and the amount of risk to the Contractor associated with the work to be performed. The Contractor agrees that the profit percentage markups are subject to negotiation on each Change Order. However under no circumstances shall negotiated markups exceed the maximum allowable markup set forth in Section 11.2.5.10.7.

11.2.5.10.7. Overhead and profit markups on each Change Order shall be calculated in accordance with this Section 11.2.5.10.7.7. Where Work is performed by Subcontractors at any tier, the Contractor shall reach an agreement with such Subcontractors as to the distribution of payments, including overhead and profit markups made by the University for such Work. No additional payment therefore will be made by the University by reason of the performance of the Work of any Subcontractor.

11.2.5.10.7.1. When Work is to be added or deleted on a Unit Price basis, the Unit Price shall govern and is deemed to include all markups for overhead and profit. No additional markups for overhead and profit will be allowed. When a complete Bid Item is deleted, it shall be treated as a Unit Price Bid item (regardless of whether it is a Lump Sum or Unit Price item) and the total bid price for that item shall be deducted from the Contract Price.

11.2.5.10.7.2. When Work is to be added on a lump sum or time and material basis, markups for profit and overhead shall be as specified in Table 11.2.

11.2.5.10.7.3. When Work is to be deleted on a lump sum or time and material basis, markups specified in Table 11.2, for overhead costs that will not be incurred and profit that would have been realized if the Work had not been deleted, shall be included in the deductive cost proposal submitted by the Contractor. If the Contractor's deductive cost proposal does not include an amount for overhead and profit, the Contracting Officer will add the markups specified in Table 11.2 to the cost proposal. When Work is to be deleted, the Contractor may include documented cancellation and restocking charges and subtract those charges from the cost basis of the deductive cost proposal.

11.2.5.10.7.4. When Work is to be both added and deleted on a lump sum or time and material basis, the cost basis shall be determined first by calculating both the added and

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deleted labor, material and equipment costs. Overhead and profit markups specified in Table 11.2 shall be applied to:

- a) Net increase in cost basis, in which case Paragraph 11.2.5.10.7.2 shall govern;
- b) Net decrease in cost basis, in which case Paragraph 11.2.5.10.7.3 shall govern.

Should there be a net change in cost basis of zero, there will be no change to the Contract Price.

11.2.5.10.7.5. When there is a Change Order only to the material being supplied and no additional labor cost will be incurred by the Contractor or Subcontractors at any tier, markups for overhead and profit shall be as specified in Table 11.2.

11.2.5.10.7.6. When a Change Order is authorized for standby time, markups for overhead and profit shall be as specified in Table 11.2. Any claim for standby time will be rejected unless documented by time sheets signed by the CA.

11.2.5.10.7.7. When a Change Order is authorized for overtime and the work to be performed is an established item of work, markups for overhead and profit shall be as specified in Table 11.2 and shall be applied only to the premium portion of labor costs.

Table 11.2: Maximum Overhead and Profit Markups for Added Work

Work Performed By	Change Order Pricing Basis	Cost Basis	Overhead Markup (as a % of Cost Basis)	Maximum Profit Markup (as a % of Cost Basis)
Contractor	Lump Sum or T&M with GMP or T&M with MSU Upset price or Emergent T&M	Contractor labor, material and equipment costs	10%	5%
Subcontractor (at any tier)	Lump Sum or T&M with GMP or T&M with MSU Upset price or Emergent T&M	Subcontractor invoiced amount to Contractor	0%	5%
No Additional Labor	LS All T&M's	Only Material Costs	2.5%	2.5%
Standby Time	T&M Only	Labor Costs Only	5%	5%
Overtime	T&M Only	Premium Labor Costs Only	5%	5%

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11.3 Time and Material (T&M) Change Order Records

11.3.1. The Contractor shall maintain its records in such a manner as to provide a clear distinction between the direct costs of T & M Work and the costs of other Work. From the above records, the Contractor shall furnish the Contract Administrator completed daily work reports for each day's Work to be paid for on a T & M basis. The Daily T&M Work Reports shall be detailed as follows:

- (a) Name, classification, date, daily hours, total hours, rate, and extension for each laborer and foreman.
- (b) Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment.
- (c) Quantities of materials, prices, and extensions.
- (d) Transportation of materials.
- (e) Cost of property damage, liability, and worker's compensation insurance premiums, unemployment insurance contributions, bonds, and social security tax.

11.3.2. Material charges shall be substantiated by valid copies of vendor's invoices. Such invoices shall be submitted with the Daily Work Reports, or if not available, they shall be submitted with subsequent Daily T&M Work Reports. Should said vendor's invoices not be submitted within 60 days after the date of delivery of the material, the University reserves the right to establish the cost of such materials at the lowest current wholesale prices at which said materials are available, in the quantities concerned delivered to the location of Work less any discounts provided in Section 11.2.5.10.2(a), above.

11.3.3. Daily T&M Work Reports shall be signed by the Contractor or its authorized representative.

11.3.4. The C.A. will compare the University's records with the completed DailyT&M Work Reports furnished by the Contractor and make any necessary adjustments. Except when Daily T&M Work Reports are submitted for the purpose of recording the cost of disputed items of Work, as required under Section 11.2.1, when Daily T&M Work Reports are agreed upon and signed by both parties, said reports shall become the basis for the Contractor to submit a PCO and Change Order.

11.4 Audit of Change Orders

11.4.1. The cost records of the Contractor and its Subcontractors pertaining to Change Orders shall be open to inspection or audit by representatives of the University during the life of the Contract and for a period of not less than three years after the Completion Date, and the Contractor and its Subcontractors shall retain such records for that period. This audit provision shall apply whether or not such Change Orders are part of a suit pending in the courts of this State pursuant to the New Jersey Contractual Liability Act. The audit may be performed by employees of the University or by an auditor under contract with the University. The audit may begin on ten (10) days notice to the Contractor or its Subcontractor. The Contractor or Subcontractor shall provide adequate facilities, acceptable to the University, for such audit during normal business hours. The Contractor or its Subcontractor shall make a good faith effort to cooperate with the auditors.

11.4.2. If an audit is to be commenced more than 60 days after the acceptance date of the Contract, the Contractor will be given a reasonable notice of the time when such audit is to begin.

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11.4.3. As a minimum, the Contractor shall maintain and the auditors shall have available to them the following documents:

- (a) daily time sheets and foreman's daily reports.
- (b) union agreements.
- (c) insurance, welfare and benefits records.
- (d) payroll registers.
- (e) earnings records.
- (f) payroll tax forms.
- (g) material invoices and/or requisitions.
- (h) material cost distribution worksheet.
- (i) equipment records (list of company equipment, rates, etc.)
- (j) vendors', rental agencies', and Subcontractors' invoices.
- (k) Subcontractors' payment certificates.
- (l) canceled checks (payroll and vendors).
- (m) job cost report.
- (n) job payroll ledger.
- (o) general ledger.
- (p) cash disbursements journal.
- (q) financial statements for all years reflecting the operations on this Project.
- (r) income tax returns for all years reflecting the operations on this Project.
- (s) depreciation records on all company equipment whether such records are maintained by the company involved, or its accountant, or others.
- (t) if a source other than depreciation records is used to develop costs for the Contractor's internal purposes in establishing the actual cost of owning and operating equipment, all such other source documents.
- (u) all documents which reflect the Contractor's actual profit and overhead during the years this Project was being performed and for each of the five years prior to the commencement of this Project.
- (v) all documents related to the preparation of the Contractor's bid including the final calculations on which the bid was based.
- (w) all documents which relate to each and every Change Order together with all documents which support the amount of claimed costs.

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- (x) worksheets used to prepare the cost proposal tracing the cost elements of the Change Order (including, but not limited to, labor, benefits and insurance, materials, equipment and Subcontractors) to the primary records which establish the time periods, individuals, hours, rates, materials and equipment involved in the Change Order.

ARTICLE XII - CONSTRUCTION PROGRESS

12.1. CPM Consultant

12.1.1. The University may have contracted for the services of a Critical Path Method (CPM) scheduling consultant for project planning, scheduling and control. If such has been arranged, then section 12.3 shall be applicable. In the event that a CPM consultant has not been retained by the University, then Section 12.2 shall pertain. In the absence of a statement in the bid documents that a CPM consultant has been retained, the Contractor shall assume that there will be no CPM consultant associated with the project.

12.2. Construction Progress Schedule (No CPM Scheduling Consultant)

12.2.1. The Project shall be completed by the Contract Completion Date. The General Construction Contractor shall be responsible for preparing and furnishing to the University through the A/E, before the first Payment Application Request is submitted, a coordinated combined progress schedule which incorporates the progress schedules of all Prime Contractors and Subcontractors engaged on the Project.

The schedule shall be in the form of an arrow network diagram, bar chart or other recognized graphic progress schedule format, in sufficient detail to satisfy the A/E and the University.

12.2.2. The General Construction Contractor shall submit copies of its initial draft of this schedule to all Prime Contractors and Subcontractors.

Each Prime Contractor and Subcontractor shall then prepare a progress schedule for its own Work, properly coordinated with the General Construction Contractor's initial draft, and then submit to the General Construction Contractor for its preparation of the final draft of a single coordinated progress schedule. Payment Application Requests will not be reviewed or processed by the University until and unless such a single coordinated combined progress schedule has been submitted to and approved by the A/E, C.A. and the C.O. This submission shall be no later than thirty (30) calendar days after the University issues a Notice to Proceed to the Contractor. If any Contractor delays its submission, the project schedule will be submitted without this input and any payments otherwise due the Contractor will be withheld pending compliance.

12.2.3. The progress schedule, based upon the Contractor's logic and time estimates, shall indicate in suitable detail for display, all significant features of the Work of each Contractor, including the placing of orders and anticipated delivery dates for critical items, submissions and approvals of shop drawings, all Work activities to be performed by each Contractor, the beginning and time duration thereof, and the dates of substantial and final completion of the various branches of the Work.

12.2.4. Immediately upon such approval, the General Construction Contractor shall prepare and distribute three copies of the progress schedule to the C.O. and C.A. plus two copies to each Prime Contractor and to the A/E. In the event a new Prime Contractor or Subcontractor is added to the job, the General Construction Contractor shall furnish a revised schedule immediately with copies as indicated. The final coordinated schedule shall be signed and dated by all Prime Contractors and Subcontractors involved.

12.2.5. Each Contractor shall furnish sufficient labor and construction plant and equipment to ensure the prosecution of the Work in accordance with the project schedule. If the latest completion time for

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any significant job does not come within the time allowed by the project schedule, the sequence of jobs and/or the time for performance of jobs shall be revised by the Contractor and the General Construction Contractor through concurrent operations, additional manpower, additional shifts, overtime, etc. until it is assured that the Contract Completion Date will be met.

No additional charges to the University will be allowed the Contractor(s) for overtime, additional manpower, equipment, additional shifts, etc. (except as may be provided elsewhere in the contract), if such expediting procedures or measures are necessary to meet the Contract Completion Date.

12.2.6 .Contractor(s) agree that it will make no claim for, and have no right to, additional payment or extension of time for completion of the Work, or any other concession because of any misinterpretation or misunderstanding on the Contractor's part of the project schedule, the Contractor's failure to attend the pre-bid conference, or because of any failure on the Contractor's part to become fully acquainted with all conditions relating to the project schedule and the manner in which it will be used on the Project, or because of any other Contractor's failure to properly participate in the development of a schedule or to perform the Contract in accordance with the project schedule.

12.3. Construction Progress Schedule (with CPM Scheduling Consultant)

12.3.1. Critical Path Method (CPM):

12.3.1.1. The Project shall be monitored by a detailed critical path method scheduling system. This system shall be the basis for the evaluation of all Contractors' performance and for progress payments to all Contractors.

12.3.1.2. A CPM consultant may be retained by University. The duty of the CPM consultant is to aid all Contractors in efficiently coordinating their Work. If the CPM consultant becomes aware of any inefficiency, it shall report same to University. If such inefficiencies cannot be voluntarily resolved among the Contractors, the matter shall be referred to the C.A. and C.O. The C.O. shall order the resolution of the problem by requiring each Contractor to undertake certain activities to ameliorate the inefficiency. The CPM consultant is not an agent of the University but is an Independent Contractor.

12.3.1.3. All Contractors shall provide all the information necessary for the CPM consultant employed by University to develop a CPM network plan demonstrating complete fulfillment of all construction contract requirements as necessary for the CPM consultant to keep the network plan up to date in accordance with the requirements of this section. Construction logic and activity time duration shall be established by all Contractors consistent with contract requirements and reflective of proper coordination between trades. The level of detail to be reflected on the CPM schedule shall be established by the CPM consultant. All Contractors shall utilize the plan in planning, coordinating and performing the Work under this Contract (including all activities of Subcontractors, equipment vendors and suppliers).

12.3.1.4. A pre-bid conference may be conducted at the discretion of the University to explain to prospective bidders how this section will be implemented and to answer questions regarding the scheduling operations. However, whether or not such a meeting is conducted, Contractors will be responsible to follow the requirements of this section.

12.3.1.5. Upon completion of the CPM system, as defined in this section, all Contractors agree that the CPM consultant's project network schedule is the designated plan for completion of all Work by the Contract Completion Date, and each Contractor will assume full responsibility for the prosecution of the Work as shown. All Contractors shall indicate formal acceptance of the schedule by signing the finalized initial network diagrams and computer schedule listing.

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12.3.1.6. All Contractors shall furnish sufficient labor and construction plant and equipment to ensure the prosecution of the Work in accordance with the approved progress schedule. If, in the opinion of the University, a Contractor falls behind the progress schedule, the Contractor shall take such steps as may be necessary to improve its progress, and the University may require the Contractor to increase the number of shifts, days of work and/or the amount of construction plant and equipment, all without additional cost to the University and as provided in Section 8.5.1. If the Contractor fails to take such steps upon receipt of written notice from the C.O. or C.A., the University may make arrangements with others to perform selected portions of the Work and charge the cost so doing to the Contractor and/or its surety.

12.3.2 Initial Submittal

12.3.2.1. To the extent necessary for the CPM consultant to reflect in the arrow diagrams the plan for completion of this contract, all Contractors shall meet with and assist the CPM consultant and furnish, within ten calendar days after the University issues a Notice for this Project to Proceed to the Contractor, all necessary information for the preparation of the scheduling system. This information shall include, but not necessarily be limited to a logical sequencing of Work operations, activity time estimates, intended crew flow, activity costs and estimated manpower requirements for each activity.

The Contractor shall be responsible to reflect on the network diagram all Subcontractor Work, as well as its own Work, in proper coordinated sequence with the Work of all other Prime Contractors and their Subcontractors. The Contractor shall be prepared to meet as many times as necessary with the CPM consultant and all other Prime Contractors to develop the information required for the timely development of the project CPM schedule.

The initial CPM schedule that is submitted to the University will show a coordinated plan for Work for all Contractors, thereby providing a common basis of acceptance, understanding, and communication. This schedule shall be approved by all Prime Contractors prior to submittal for University review.

The General Construction Contractor shall provide the initial schedule information and all subsequent updates to the CPM in hard copy and electronically. The electronic copy shall be in P3 or Suretrack in P3 format or approved equal. The CPM consultant will submit for University review an arrow diagram describing the activities to be accomplished and their dependent relationships, together with a computer-produced calendar-dated schedule showing starting and completion dates for each Work item. All completion dates shown shall be within the period specified to meet the Contract Completion Date and shall be in compliance with all intermediate milestones.

In conformance with Article 10 relating to "Payments," each Prime Contractor shall furnish a breakdown of the total contract price by assigning dollar values (costs estimates) to each applicable network activity, which cumulatively equals the total contract amount. Upon acceptance by University, the values will be used as a basis for determining progress payments. The Contractor's overhead and profit shall be prorated through all activities. Progress payments to the Contractor shall be dependent upon final acceptance of the costed CPM system as described herein.

12.3.2.2. The arrow diagram shall show the sequence and interdependence of activities required to complete all Work by the Contract Completion Date. In preparing the arrow diagram, all Contractors shall assist the CPM consultant by breaking up the Work into activities of a duration of no longer than ten working days each, except as to non-construction activities (such as procurement of materials, delivery of equipment and concrete curing) and any other activities for which the consultant may approve the showing of longer duration.

The diagram shall show all activities for actual Work for each category of the project and all activities, including but not limited to, the Contractor's submittal of shop drawings, templates and

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equipment, material fabrication, delivery of equipment and material, and the delivery of Owner-furnished equipment, if applicable.

Activity duration (i.e., the Contractor's single best estimate, considering the scope of the activity) shall be furnished by the Contractor to the CPM consultant for each activity on the diagram. If requested by the CPM consultant, the Contractor shall furnish any information needed to justify the reasonableness of activity time duration. Such information shall include, but not be limited to, estimated activity manpower, unit quantities, and production rates.

To the extent that the arrow diagram or revised arrow diagram shows anything not jointly agreed upon or fails to show anything jointly agreed upon, it shall not be and shall not be deemed to have been approved by University.

Failure by either the Contractor or the CPM consultant to include any element of Work required for the performance of the contract shall not excuse the Contractor from completing all Work required within any applicable date, notwithstanding University approval of the arrow diagrams. The level of detail to be reflected in the CPM system shall be established by the CPM consultant. Seasonal weather conditions shall be considered in the planning and scheduling of all Work influenced by high or low ambient temperatures for the completion of all Work within the allotted contract time. In addition, appropriate allowances shall be made for anticipated time losses due to normal rain and snow conditions by statistically expanding the estimated time duration for weather-sensitive activities.

Accompanying the arrow diagram and computer scheduling listing, the CPM consultant shall furnish a computer-generated cost requisition listing, which shall provide a separate tabulation of each activity shown on the CPM schedule in order of bid item or trade responsibility code as agreed to by University. This listing shall show, for each activity, the estimated dollar value of Work in place for totally or partially completed activities, including subtotals by bid items and grand totals for the Project. The cost requisition listing shall also contain monthly activities reflecting the cost of project overhead and administrative expenses, and activities reflecting the monthly cost of administering the Project's general conditions.

The cost requisition listing shall generate the Contractor's monthly Payment Application Requisition directly from the CPM updating, utilizing the cost information furnished by the Contractor and approved by University, and current project status determined in accordance with the requirements of Section 12.3.4.

12.3.3. Review and Approval:

Within ten (10) calendar days after receipt of the initial arrow diagram, computer-produced schedule and cost requisition listing, the C.A. and the C.O. shall meet with the Contractor and CPM consultant for joint review, correction, or adjustment of the proposed plan and schedule to evaluate the cost values assigned to each activity.

Within ten (10) calendar days after the joint review, the CPM consultant will revise the arrow diagram and/or computer-produced schedule in accordance with agreements reached during the joint review, and shall submit two copies each of the revised arrow diagram, computer-produced schedule and cost requisition listing to University.

The re-submission will be reviewed by by the C.A. and the C.O. and, if found to be as previously agreed upon, will be approved. An approved copy of each will be returned to the CPM consultant. Each Contractor shall approve the schedule at that time.

However, if any Contractor objects to the schedule to be adopted, the Contractor shall, within ten (10)calendar days, state these objections in writing to the University, specifying the precise position of the schedule to which the Contractor objects and the reasons therefore, and identifying the basis of the objection.

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Each Contractor will be deemed to have accepted the schedule as adequate, proper and binding in all respects and shall not raise objections to the schedule except to the extent as required in this article.

The Contractor will then meet with the C.A. and the C.O., the CPM consultant, and all other Contractors as necessary to develop a contractually compliant schedule. The CPM consultant will revise the arrow diagram and the computer-produced schedule in accordance with the agreements reached during this final review and shall submit two copies each of the revised arrow diagram, computer-produced schedule and cost requisition listing to University.

The re-submission will be reviewed by the C.A. and the C.O.'s designated representative and, if found to be as previously agreed upon, will be approved. An approved copy of each will be returned to the CPM consultant.

Each Contractor shall review the schedule to ensure that it reflects all charges agreed to and if all changes have been made, each Contractor shall approve and sign the network diagrams, computer-produced schedule and cost requisition listing at that time. Approval will be without reservation, and each Contractor will be deemed to have accepted the schedule as adequate, proper and binding in all respects and shall not raise objections to the schedule. After the network diagrams and computer-produced schedule have been signed, the CPM consultant shall forward to each Contractor one set of copies of the network diagrams and computer-produced schedule. The arrow diagram and the computer-produced schedule with approved signatures shall constitute the project work schedule until subsequently revised in accordance with the requirements of this section.

12.3.4. Progress Reporting and Changes:

12.3.4.1. Once every month, or more often if required by the University, all Contractors shall meet with the CPM consultant, the C.A. and the C.O. , and provide the information necessary for the CPM consultant to prepare and submit to University a revised (updated) arrow diagram and computer-generated schedule listing showing:

12.3.4.1.1. Approved changes in activity sequencing;

12.3.4.1.2. Changes in activity duration for not started or partially completed activities where agreed upon;

12.3.4.1.3. The effect of any delays in any activities in progress, and/or the impact of known delays which are expected to affect the Work;

12.3.4.1.4. The effect of Contractor modifications (activity duration, logic and cost estimates) to the network;

12.3.4.1.5. Changes to activity logic, where agreed upon, to reflect revision in the Contractor's work plan, i.e., changes in activity duration, cost estimates, and activity sequences for the purposes of regaining lost time or improving progress; and

12.3.4.1.6. Changes to milestones, due dates, and the overall Contract Completion Date which have been agreed upon by University, as required herein, since the last revision of the CPM schedule.

The CPM schedule shall accurately reflect the manner in which the Contractors intend to proceed with the Project and shall incorporate the impact of all delays and Change Orders as soon as these factors can be defined. All changes made to the schedule shall be subject to approval by the University, as required herein, prior to inclusion in the CPM schedule.

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If the C.A., C.O. and the Contractor are unable to agree as to the amount of time to be allowed for Work in a Change Order, or the manner in which the Work is to be reflected on the arrow diagram, the CPM consultant shall modify the Progress Schedule to reflect a logical time duration pending final University decision.

If non-approved Contractor logic and time duration are used, the Contractor agrees that any time which is projected to be lost on the project as a result of these schedule changes will be considered the responsibility of the Contractor until a final agreement has been made or a final decision rendered by University regarding the manner in which the Change Order Work is to be reflected on the schedule. When this final decision has been made by the University, the CPM consultant shall revise the CPM schedule in accordance with such decision and issue a final analysis of the effect of the change on the Project.

If the Contractor desires to revise the logic of the approved CPM schedule so as to reflect a sequence of construction which differs from that originally agreed to, the Contractor must first obtain the approval of the General Construction Contractor and all Contractors whose work may be affected by the changes, and then must obtain the approval of the University. If this change extends the Contract Completion Date of the Project or delays the Work of other trades, the Contractor agrees that these impacts and all associated costs will be considered a claim to be assessed against the Contractor initiating the revision to the logic and will not be the basis for a project time extension.

12.3.4.2. Once each month, at the same time the network is updated, the CPM consultant, Contractor, C.A. and C.O. shall jointly make entries on the proceeding network diagram schedule to show actual progress, identify those activities started by date and those completed by date during the previous period, show the estimated time required to complete each activity started but not yet completed, show activity percent completed and/or dollars earned, and reflect any changes in the arrow diagram approved in accordance with the preceding paragraph. After completion of the joint review and University's approval of all entries, the CPM consultant will submit updated network diagrams, an updated computer-produced calendar-dated schedule and cost requisition listing to the University and all Contractors.

The resultant monthly CPM computer printout and network diagrams shall be recognized by the Contractor as its sole updated construction schedule to complete all remaining Work.

12.3.4.3. In addition to the foregoing, once each month the General Construction Contractor will receive a narrative report prepared by the CPM consultant. The narrative report will include a description of the amount of progress during the last month in terms of completed activities in the plan currently in effect, a description of problem areas, current and anticipated delaying factors and their estimated impacts on the performance of other activities and completion dates, and recommendations on corrective action for the Contractor(s). Within seven (7) calendar days after receipt of this report, the General Construction Contractor, after review with all other Contractors and or Subcontractors, shall submit to the C.A. and C.O. a written explanation of corrective action taken or proposed. The University, after reviewing written submissions, shall make a decision binding all parties.

12.3.5 Payments to Contractor:

12.3.5.1. The monthly submission of the computer-produced calendar-dated schedule shall be an integral part and basic element of the estimate upon which progress payments shall be made pursuant to the provisions of Article 10. The Contractor shall be entitled to progress payments only upon receipt by University of an updated computer-produced calendar-dated schedule and cost requisition listing as mentioned under 12.3.4.2 above.

12.3.5.2. Payments to Contractors shall be based upon the results of the computer-generated cost requisition listing which shall be prepared in conjunction with each updating of the CPM

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system as described above. Wherever required by the C.A. and/or C.O., the Contractors shall provide sufficient documentation to confirm reported progress for any costed items appearing in the scheduling and requisition system (e.g., bills of lading for delivered material and equipment).

12.3.5.3. Payments to Contractors shall be dependent upon the Contractor furnishing all of the information and data which in the judgment of C.A. and C.O. is necessary to ascertain actual progress, and all the information and data necessary to prepare any necessary revisions to the computer-produced calendar-dated schedule, cost requisition listing and/or the network arrow diagram. University's determination that the Contractor has failed or refused to furnish the required information and data shall constitute a basis for withholding payments until the required information and data is furnished and the schedule and/or diagram is prepared or revised on the basis of such information and data.

12.3.6 Biweekly Progress Meetings:

12.3.6.1. Every two weeks the CPM consultant will conduct coordination and scheduling meeting on the job site.

At this meeting, each Contractor shall provide detailed information regarding the work schedule to be performed during the upcoming two weeks so that the CPM consultant can prepare bar chart schedules for the period. Biweekly scheduling by the Contractors shall be in accordance with the priorities and degree of concurrent Work required by the official CPM schedule for the Project.

Each Contractor shall be prepared to explain any difference between the Contractor's biweekly schedules and the priorities required by the latest updating of the official CPM schedule.

At the biweekly scheduling meeting, the CPM consultant shall review the bar charts for the proceeding two weeks, and each Contractor, as appropriate, shall report the progress actually achieved for each activity which was scheduled to be performed during the two weeks, including the actual dates on which the Work was performed. All Contractors agree that this information shall constitute the official historical record of project progress.

At each biweekly scheduling meeting, each Contractor shall document any current delays to Work operations. In addition, Contractors shall provide any available information regarding any potential delays which they anticipate (i.e., procurement delays, expected strikes, etc.).

12.3.6.2. Following the biweekly scheduling meeting, the CPM consultant shall issue to each Contractor a set of biweekly bar charts as developed at the meeting which shall constitute the construction schedule for the coming two weeks. The CPM consultant shall also issue a narrative biweekly progress report and analysis documenting all pertinent issues discussed during the meeting, including but not limited to, progress achieved during the preceding two weeks and analysis of any delays reported to constitute current or anticipated impacts to timely construction.

12.3.6.3. Each Prime Contractor shall be represented at the biweekly scheduling meeting by its project manager, who shall have complete authority to provide the information required for the development of the next two weeks bar chart schedule, documentation of past progress and documentation of delays. Contractor representatives shall also be authorized to discuss at these meetings corrective action planned to overcome delaying conditions.

12.3.7 Responsibility for Completion:

Each Contractor agrees that whenever it becomes apparent from the current monthly computer-produced calendar-dated schedule that any milestone date or the Contract Completion Date will not be met, the Contractor will take some or all of the following actions at no additional cost to the University:

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12.3.7.1. Increase construction manpower in such trades and numbers as will substantially eliminate, in the judgment of the University, the backlog of Work.

12.3.7.2. Increase the number of working hours per shift, shifts per working days, working days per week, or the amount of construction equipment, or any combination of the above sufficiently to substantially eliminate, in the judgment of the University, the backlog of Work; and/or

12.3.7.3. Reschedule activities to achieve maximum practical concurrence of accomplishment of activities.

12.3.8. Adjustment of Contract Completion Date:

12.3.8.1. The Contract Completion Date will be adjusted only for causes specified in this Contract and in the manner permitted by the terms of this Contract. In the event a Contractor requests an extension of the Contract Completion Date, the Contractor shall furnish such justification and supporting evidence as required by and within the time required by the terms of this Contract, and such additional information the University requires to evaluate the Contractor's request. The C.O. shall then make a finding of fact and advise the Contractor in writing thereof.

If the C.O. finds that the Contractor is entitled to any extension of the Contract Completion Date the determination as to the total number of calendar day's extension shall be based upon the currently approved computer-produced calendar-dated schedule and on all data relevant to the extension. Such data will be included in the next updating of the schedule.

12.3.8.2. Not used

12.3.8.3. All Contractors acknowledge and agree that the evaluation of project delays and determinations regarding time extension will be based upon the project CPM schedule and the following criteria:

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

Each Contractor further agrees that there will be no basis for a claim for cost escalation for any activity which is completed on or before its initially required late end date as shown on the initial approved CPM schedule, regardless of the justifiability or any delaying factors which might have resulted in the elimination of float which was originally available for the activity. Float time shown on the CPM schedule shall not be used arbitrarily by any Contractor in a manner which, in the opinion of the University, unnecessarily delays other Contractors from proceeding with their Work in a way which is detrimental to the interests of the University. If any Contractor refuses to perform Work which is available to it, the University may, regardless of the float shown to be available for the Work, consider the Contractor to be in violation of the Contract Documents.

In such instances, the C.O. may, without prejudice to any right or remedy, and after giving the Contractor and its surety a three (3) working day written notice to forthwith commence and continue with the Work with diligence and promptness,

terminate the employment of the Contractor by the issuance of a written notice to that effect to the Contractor and its surety at any time subsequent to three(3) working days thereafter, should either or both of them fail to comply with the directive of the original three (3) working day notice mentioned above.

12.3.8.3.2. Each Contractor agrees that no time extension will be granted for time lost due to normal seasonal weather conditions. In order to qualify for consideration for a time extension due to adverse weather conditions, it must be shown that the weather conditions during a given quarterly period (summer, fall, winter, spring) were more severe than the previous ten-year average for the Project's geographical area, and that these weather conditions critically impacted the Contract Completion Date by delaying the performance of Work on the Project critical path.

If abnormal weather losses can be shown to have affected the Project critical path, a non-compensable time extension will be considered for that portion of the proven weather-related delays, which exceeded normal weather losses which should have been anticipated for the quarterly period in question.

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

12.3.8.3.3. In order for a given issue (i.e., delay, Change Order, etc.) to be considered as a basis for changing the Contract Completion Date, it must meet both of the following criteria:

12.3.8.3.3.1. It must be beyond the control of the Contractor and due to no direct fault of the Contractor; and

12.3.8.3.3.2. It must result in a direct delay to Work on the Project critical path.

12.3.8.3.4. Each Contractor acknowledges and agrees that actual delays to activities which, according to the computer-produced calendar-dated schedule, do not directly affect the Project critical path do not have any effect on the Contract Completion Date and will not be the basis for a change therein.

12.3.8.3.5. Concurrent delays are defined as two or more delays or areas of work slippage which are totally independent of one another and which, if considered individually, would each affect the Contract Completion Date according to the CPM schedule.

Where the CPM consultant determines that concurrent delays exist, each Contractor acknowledges and agrees that the following criteria will be used to evaluate time extension:

12.3.8.3.5.1. If the current CPM schedule shows two or more concurrent delays, with one analyzed to be the responsibility of University and the other analyzed to be the responsibility of the Contractor, a non-compensable time extension will be considered only if the excusable delay affects the Project critical path and this delay is shown to be a greater amount than the other concurrent delays when their impacts are independently considered. In this event, a non-compensable time extension will be considered only for that portion of time by which the excusable delay exceeds all concurrent non-University caused delays.

For example, if an excusable impact delays the project by 100 calendar days and concurrent contract-caused slippage independently delays the final completion date by 90 calendar days, a time extension will only be considered for a maximum of ten calendar days, provided the excusable delay is on the Project critical path.

12.3.8.3.5.2. If the CPM schedule shows concurrent delays with some excusable delays and some the fault of the Contractor, and if the Contractor-caused delays are analyzed to be the main determining impact to the Project critical path, then there will be no basis for a Project time extension regardless of the nature of the concurrent excusable delays. A concurrent time extension may, however, be considered for that portion of the Project slippage which is shown on the CPM schedule to be totally attributable to excusable delays.

12.3.8.3.5.3. A time extension shall not be granted for concurrent delays that did not affect the Project critical path.

ARTICLE XIII - AFFIRMATIVE ACTION REQUIREMENTS (Revised 7/19/93)

13.1 Policy Statement

It has long been the policy of Montclair State University to promote equal employment opportunity by prohibiting discrimination in employment and requiring Affirmative Action in performance of contracts funded by the University. This policy has been reinforced and expanded by an act of the Legislature. The laws of New Jersey, N.J.S.A. 10:5-31, et seq., provide that no public works contractor can be awarded nor any moneys paid until the prospective Contractor has agreed to contract performance which complies with the approved Affirmative Action Plan. The law applies to each political subdivision and agency of the State and includes procurement and service contracts as well as construction contracts.

13.2 Mandatory Language

During the performance of this Contract, all Contractors agree as follows:

- a. The Contractor or Subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, sex, or affectional or sexual orientation. Except with respect to affectional or sexual 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, or 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 the public agency compliance officer setting forth provisions of this nondiscrimination clause.
- b. 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 or affectional or sexual orientation.
- c. The Contractor or Subcontractor, where applicable, 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, to be provided by the C.O., advising the labor union or

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workers' representative of the Contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- d. The Contractor or Subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 19:5-31 et seq., as amended and supplemented from time to time.
- e. 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 the Affirmative Action Office may, in its discretion, exempt a Contractor or Subcontractor from compliance with the good faith procedures prescribed by the following provisions (1), (2) and (3) below, as long as the Affirmative Action Office is satisfied that the Contractor is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the Affirmative Action Office, 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, promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., 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:
 - (1) If the Contractor or Subcontractor has a referral agreement or arrangement 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 from the construction trade union at least five 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 (2) below; and the Contractor or Subcontractor further agrees to take said action immediately if it determines or is so notified by the Affirmative Action Office that the union is not referring minority and female workers consistent with the applicable employment goal.
 - (2) 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 (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 county employment goals:
 - (a) To notify the C.A., University's Affirmative Action Office, and at least one approved minority referral organization of its manpower needs, and request referral of minority and female workers.

- (b) To notify any minority and female workers who have been listed with it as awaiting available vacancies.
- (c) 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.
- (d) To leave standing requests for additional referral 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.
- (e) 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 or any other construction site in the area on which its workforce composition is not consistent with an employment goal established pursuant to N.J.A.C. 17:27.
- (f) To adhere to the following procedure when minority and female workers apply or are referred to the Contractor or Subcontractor:
 - (i) 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 recognized by any workers 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 the Affirmative Action Office and provided further, that, if necessary, the Contractor or Subcontractor shall hire minority and female workers who qualify as trainees pursuant to these rules. All of these requirements, however, are limited by the provisions of (3) below.
 - (ii) 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 consistent with the applicable employment goal.

- (iii) 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 the public agency compliance officer and to the Affirmative Action Office.
 - (g) 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 the Affirmative Action Office and submitted promptly to that office upon request.
- (3) The Contractor or Subcontractor agrees that nothing contained in (2) 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 (2) 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 workers 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 (2) above, it shall, where applicable, employ minority and female workers residing within the geographical jurisdiction of the union.
- (4) The Contractor agrees to complete an Initial Project Workforce Report on forms provided by the Affirmative Action Office or in the form prescribed by the Affirmative Action Office and submit a copy of said form no later than three days after signing a construction contract; and to submit a copy of a Monthly Project Workforce to the Affirmative Action Office and to the University compliance officer once a month (by the seventh work day of each month) thereafter for the duration of this Contract. The Contractor agrees to cooperate with the University 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 Project.
- (5) The Contractor and its Subcontractors shall furnish such reports or other documents to the Affirmative Action Office as may be requested by the

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office from time to time in order to carry out the purposes of the regulations, and public agencies shall furnish such information as may be requested by the Affirmative Action Office for conducting a compliance investigation pursuant to N.J.A.C. 17:27-10.1 et seq.

Provisions (e) and (f) are not required for Subcontractors with four or fewer employees in the company or a contractor which has presented evidence of a federally approved or sanctioned affirmative action program.

13.3 Additional Procedures

All construction contracts over \$19,500.00 require both an Initial and Monthly update of the Minority and Female distribution of the Contractor's employees. The Contractor must also include this information for employees of each Subcontractor.

As the first step in the process, the Contractor shall process the Initial Project Workforce Report (Form AA 201). After having submitted this form to the Affirmative Action Office in Trenton, (P.O. Box 209, Trenton, New Jersey 08625-0209), the Contractor will be given the pink monthly follow-up form. Monthly Project Workforce Report – Construction (Form AA 202).

The Contractor shall submit two copies of the form to the above Trenton Affirmative Action Office.

An information copy is required to "Public Agency," which, in this case, is Montclair State University. Payment Application Requests will not be processed unless this form is attached thereto.

ADHERENCE TO GENERAL CONDITIONS OF CONTRACT

I certify that I have read and understand Montclair State University's General Conditions of Contract and accept without exceptions all terms and conditions contained therein.

Name of Firm

Authorized
Signature _____

Name (print) _____

Title _____

Date _____