MONTCLAIR STATE UNIVERSITY

Montclair, NJ 07043-1624

GENERAL CONDITIONS OF CONTRACT

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General Conditions of Contract

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GENERAL CONDITIONS OF CONTRACT

1. GENERAL REQUIREMENTS

1.1 DEFINITIONS

Acceptance of the Work: The act of the Contracting Officer, or the Contracting Officer's authorized representative, by which THE UNIVERSITY accepts the work performed as partial or complete performance of the requirements of the Contract on the part of the Contractor.
Addenda: Written interpretations, clarifications, and revisions to any of the Contract Documents issued by THE UNIVERSITY before the bid opening.
Advertisement: The public announcement, as required by law, inviting bids for work to be performed, materials to be furnished, or both.
Affiliate: Any entity that (1) directly, indirectly, or constructively controls another entity, (2) is directly, indirectly, or constructively controlled by another entity, or (3) is subject to the control of a common entity. An entity controls another entity if it owns, directly or individually, more than 50% of the ownership in that entity.
Allowance: An item included in the Bidder's Proposal for the exclusive use and benefit of THE UNIVERSITY.
Alternate Bid Item: An item of scope in the Invitation for Bids package which may alter, add to or reduce certain portions of the Work at THE UNIVERSITY's option, that is bid as a separate price by the Contractor..
Approved Equal: A product which, in the opinion of the Architect/Engineer, complies with the technical specification requirements in form, fit, functionality, maintainability, useful life and quality of performance.
Approval: The written endorsement, sanction, or authorization by THE UNIVERSITY of a proposal, plan, procedure, action, document, report, specification, design, or any part thereof, undertaken, promulgated, or developed by the Contractor in accordance with the indicated requirements of the Contract.
Architect/Engineer (A/E): The authorized representative of THE UNIVERSITY providing design and/or engineering services for the Project. This may be either internal staff or an outside consultant.
Award: THE UNIVERSITY's approval of a Bid and written notice of same to the tenderer of said Bid.
Baseline Schedule: That schedule submitted by the Contractor in accordance with Sub-Article 6.2.1 (or 6.2.4) and approved by THE UNIVERSITY.
Bid: The proposal or offer of the Bidder for the Work, when made out and submitted on the prescribed Bid Forms, properly signed, dated, and guaranteed, and which includes the schedule of Bid Items.
Bid Security: The bid bond, cashier's check, certified check or irrevocable letter of credit accompanying the bid submitted by the Bidder guaranteeing that the Bidder will enter into a Contract with THE UNIVERSITY for the performance of the Work indicated and will provide acceptable bonds and insurance if the Contract is awarded to it.
Bidder: An individual, firm, partnership, corporation, joint venture or combination thereof submitting a proposal for the Work contemplated as a single business entity and acting directly or through a duly authorized representative.
Bidder's Proposal: The prescribed Bid Form which contains the schedule of Bid Items and the Bidder's declaration to perform the work for the prices bid.
BIM: Revit Building Information Modeling software which is used in accordance with the University's BIM standards.
BIM Standards: The University's written standards governing the use of BIM by the Contractor and A/E.
Business Organization: An individual, partnership, association, joint stock company, trust, corporation, or other legal business entity or successor thereof.
Business Registration: A business registration certificate issued by the State of New Jersey, Department of the Treasury or such other form or verification that a Contractor or Subcontractor is registered with the State of New Jersey, Department of Treasury.
Calendar Day: Each and every day shown on the calendar.
Certified Statement of Claim: A written statement from the Contractor, attested to by an authorized representative of the Contractor, which clearly identifies the basis under which: entitlement is asserted; any total amount of additional Contract Price is sought; any variance to the Contract Time is sought; and/or, any relief from the requirements of the Contract Documents is requested.

Change

Order: A written order issued by the Contracting Officer to the Contractor delineating changes in the Contract Documents in conjunction with one or more Notice(s) of Proposed Change and establishing, if appropriate, an equitable adjustment to the Contract Price or Contract Time for the work affected by the change(s).
Change Order Request (COR): A request submitted to THE UNIVERSITY by the Contractor specifying a proposed addition, deduction, or change to the Contract Documents.
Construction Equipment: All machinery and equipment, together with the necessary supplies for upkeep and maintenance, and also tools and apparatus necessary for the proper and acceptable completion of the Work.
Construction Site: The geographical area of the property at which the contract work is performed, as authorized and identified by THE UNIVERSITY.
Contract: The written agreement executed by the Contracting Officer and the Contractor which covers the performance of the Work, the furnishing of labor, materials, tools and equipment and the basis of payment, and which incorporates the various Contract Documents. The Contract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations or agreements either written or oral.
Contract Documents: The Contract Documents include: The General Conditions for Construction, Technical Specifications, Contract Drawings, Contract Forms, Documents referenced by these specifications, the Notice(s) to Proceed, Directive Letters, Change Orders, and Addenda.
Contract Drawings: The official plans, sections, elevations and details in the Contract Documents or amendments thereto and supplemental drawings approved by THE UNIVERSITY which show the locations, character, dimensions and details of the Work to be performed.
Contract Item (Pay Item): A specifically described product or unit of work for which a price is listed in the Contract or the Bidder's Proposal or Schedule of Values (SOV)
Contract Limit Line: The lines shown on the drawings beyond which no construction work shall be performed unless otherwise noted on the drawings or in the specifications or by authorized change thereto
Contract Price: The total sum to be paid by THE UNIVERSITY to the Contractor for the performance of all the Work required by the Contract Documents.
Contract Time: The number of calendar days or specified date set forth in the Contract for substantial completion of the Work, including amendments authorized by Change Order thereto; also referred to as Time of Completion. Contract Time begins on the date of the Notice to Proceed which is day one (1) of the Contract Time.
Contracting Officer: The Contracting Officer shall be THE UNIVERSITY’s Vice President of Finance.
Contractor: The individual, firm, partnerships, corporation, joint venture, or any combination thereof, who, as an independent contractor, has entered into a Contract with THE UNIVERSITY, as party or parties of the second part and who is referred to throughout the Contract Documents by singular number and non-specific gender.
Days: Days shall be understood to mean calendar days unless otherwise designated.
Directive Letter: A letter issued by the Contracting Officer, or the Contracting Officer’s duly authorized designee, directing the Contractor to proceed with added, deleted or changed work.
Drawings: See Contract Drawings.
Execution of the Contract: The signing of the Contract by the authorized representative of THE UNIVERSITY and the authorized representative of the Contractor.
Extra Work: An item of work not provided for in the Contract as awarded but found essential to the acceptable completion of the Contract within its intended scope.
Failure: Inability of a component, equipment, or system to function or perform in accordance with the indicated requirements.
Final Inspection: The inspection conducted by THE UNIVERSITY to determine if the Work, or any substantial portion thereof, declared by the Contractor to be completed, has been satisfactorily completed in accordance with the requirements of the Contract and Contract Documents, and properly conditioned for final acceptance by the Contracting Officer.
Form, Fit, and Function: The technical documentation describing the physical and functional characteristics of an item as an entity, but not including any characteristics of the elements making up the item.
General Conditions: The general conditions of the Contract set forth herein.
Holidays: Specific days on which THE UNIVERSITY is not open for business.
Installed Equipment: Equipment incorporated into the Work under this Contract.
Invitation for Bids: The set of documents issued by THE UNIVERSITY's Procurement Department for the purpose of

soliciting bids.
Joint Venture: A legal association of Contractors formed for the purpose of bidding and executing a Contract as a single business entity.
LEED: The U.S. Green Building Council standards for Building, Design and Construction at the level of certification required by the University.
Materials: Substances specified for use in the Work and its appurtenances.
Notice of Proposed Change (NPC): A notice issued to the Contractor by THE UNIVERSITY specifying a proposed addition, deduction or change to the Contract Documents. A Notice of Proposed Change is not an order or authorization to incorporate revisions into the Work.
Notice of Intent to Terminate for Cause: Notice sent pursuant to 2.5.1.
Notice of Termination: Notice sent pursuant to 2.4.1.
Notice of Termination for Cause: Notice sent pursuant to 2.5.2.
Notice(s) to Proceed: The written directive from the Contracting Officer to the Contractor authorizing the Contractor to begin the prosecution of the Work in the initial Contract or for added, deleted or changed Work.
Owner: Montclair State University.
Performance and Payment Bonds: The approved form of security furnished by the Contractor and it surety guaranteeing complete performance of the Contract in conformity with the Contract Documents and the payment of legal obligations pertaining to the construction of the Contract.
Project: The specific Work required to be performed by the Contractor as described in the Contract Documents.
Project Data: Illustrations, standard schedules, performance charts, instructions, brochures, diagrams, performance and test data, test procedures, existing drawings, operational manuals, maintenance manuals, spare parts lists and data, descriptive literature, catalogs, catalog cuts, and other information furnished by the Contractor to illustrate a material, product or equipment and to support its test, installation, operation or maintenance.
Proposal: See Bid.
Purchase Order: The written document generated by the Procurement Department and issued to the Contractor for billing purposes.
Quotation: The Contractor's written response to the Notice of Proposed Change.
Reliability: The probability that equipment or a system will perform its intended functions without failure and within design parameters under specified operating conditions for which designed and for a specific period of time.
Remaining Work: Any and all Work remaining to be performed after Substantial Completion, including but not limited to, punch list work, which in the opinion of the Engineer is necessary for full conformance to the Contract.
Retainage: The percentage amount of a partial payment retained by THE UNIVERSITY from any requisitioned and certified amount until completion and final acceptance of all work covered by the Contract and issuance of a Final Certificate of Payment.
Samples: Physical examples which illustrate materials, equipment or workmanship and establish standards by which the acceptability of the Work will be judged.
Shop Drawings: Original drawings, submitted to THE UNIVERSITY or the A/E by or through the Contractor, subcontractor or any lower tier subcontractor pursuant to the Work, including, but not limited to: stress sheets, working drawings, diagrams, illustrations, schedules, performance charts, brochures, erection plans, falsework plans, framework plans, cofferdam plans, bending diagrams for reinforcing steel, reinforced concrete formwork drawings, or other supplementary plans or similar data which are prepared by the Contractor or a subcontractor, manufacturer, supplier or distributor, and which the Contractor is required to submit to THE UNIVERSITY or the A/E for review and approval.
Specifications: The directions, provisions, and requirements contained or referred to in the Contract Documents, together with all duly authorized written agreements and directives made or to be made pertaining to the manner of performing the Work, or to the quantities and qualities of materials to be furnished or the quantities and qualities of work to be performed under the Contract.
State: State of New Jersey.
Subcontractor: Any individual, partnership, firm or corporation who undertakes for the Contractor, with the prior approval of THE UNIVERSITY, the partial or total manufacture or installation, or both, of one or more items of work under the terms of the Contract, or who performs other services for the Contractor as required to fulfill

the terms of this Contract, by virtue of an agreement with the Contractor.
Substantial Completion: The point at which THE UNIVERSITY determines that the performance of work or portion thereof under the Contract, except Remaining Work, has been completed: provided that THE UNIVERSITY has determined, in THE UNIVERSITY's sole discretion, that (1) the project is safe and convenient for use and occupancy by the public and THE UNIVERSITY employees and visitors; and (2) the project and facilities resulting therefrom may be used for the purposes for which they were intended.
Substitution: A product which, in the opinion of the Engineer, does not comply in form, fit, functionality, maintainability, useful life or quality of performance, with the technical specification requirements yet is proposed by the Contractor for incorporation into the Work in lieu of a specified product.
Superintendent: The Contractor's designated representative at the Construction Site responsible for the supervision and coordination of the Work.
Supplemental General Conditions: Supplementary specified clauses setting forth conditions or requirements peculiar to the Work taking precedence over the General Conditions.
Supplier: Any individual, partnership, firm or corporation which provides materials or equipment but not labor or services to the Contractor in partial fulfillment of the Scope of the Work of the Contract and who is responsible to the Contractor by virtue of an agreement.
Surety: The corporate body authorized to issue surety bonds in New Jersey which is bound with and for the Contractor for the guarantee of its proposal and the satisfactory performance of the Work by the Contractor, and the prompt payment in full for materials, labor, equipment, rentals, utility services, and debts and obligations, as provided in the bonds.
Total Bid: The total monetary amount of the bidder's proposal in dollars for performance of the Work of the entire Contract.
Technical Data: Written, typed or printed material prepared by the Contractor, subcontractors, vendors and suppliers or others, whether or not copyrighted, and submitted by the Contractor in response to the requirements set forth in the Technical Specifications. Technical data include, but are not limited to, product data, shop drawings, pictorial representations, reports, schedules, studies, and assessments.
University: Montclair State University.
University Consultant: A firm or individual contracting with and providing professional services to THE UNIVERSITY.
Work: Work shall mean the furnishing of labor, materials, equipment, and other incidentals necessary or convenient to the successful completion of the Project and the carrying out of the duties and obligations imposed by the Contract, including alterations, amendments or extensions.

1.2 ORDER OF PRECEDENCE

The sequence of precedence pertaining to the Contract Documents is as follows:

Contract Change Orders and Directive Letters
Addenda, if any
Supplemental Conditions, if any
General Conditions
Technical Specifications
Details
Figured Dimensions
Scaled Dimensions
Drawings (large scale over small scale and detailed over general)
Referenced Standards

1.3 REFERENCED STANDARDS

1.3.1 All materials, equipment and workmanship, specified by the number, symbol or title of a referenced standard shall comply with the latest edition or revision thereof and all amendments and supplements thereto in effect on the date of the opening bids, except where a particular issue is indicated in the reference. Where products or workmanship are specified by an association, trade or federal standard, Contractor shall comply with the requirements of that standard, except where exceeded by the requirements of the Contract plans and

specifications or regulatory authorities. Where referenced standards are in conflict, the more stringent shall apply. In case of conflicting requirements between Referenced Standards and the Contract Documents, the Contract Documents shall govern.

1.3.2 Where the New Jersey Uniform Construction Code, its adopted subcodes and their referenced standards, and the other regulations described in Article 1.6 are silent regarding the construction requirements of the work specified herein, installation shall be in accordance with the Contract Documents.

1.4 INTENTION

1.4.1 The Contract Documents 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 Architect/Engineer, Project Manager, Construction Manager and/or Contracting Officer.

1.4.2 The Contract Documents are intended to be read together harmoniously and in the event of any discrepancy or ambiguity between any of them the Contractor shall perform the more extensive or stringent requirements. The Contractor has assumed the risk of complying with such inconsistencies in formulating its Contract Price and therefore waives any right to seek adjustments in the Contract Price or the Contract Time on account of any discrepancies, inconsistencies, or ambiguities among the Contract Documents. The Contract Documents supersede any and all prior documents, discussions, negotiations and understandings concerning the scope of the Work to be performed by the Contractor. The Contractor shall abide by and comply with the true intent and meaning of all the Contract Documents taken as a whole, and shall not avail itself of any apparent error or omission, should any exist.

1.4.3 The Contractor’s execution of this Contract constitutes its certification that it satisfied itself, through personal inspection, as to the correctness of information given which may affect the quantity, size and quality of materials required for a satisfactorily completed Contract, whether or not such information is indicated on the Drawings or within the Specifications. The Contractor confirms that it checked and verified conditions outside of the Contract Limit Lines to determine whether or not any conflict exists between elevations or other data shown on the drawings and existing elevations or other data outside of the Contract Limit Lines.

1.4.4 The Contractor shall not at any time after the execution of this Contract set up any claims whatsoever based upon insufficient data, patent ambiguities, inconsistencies or confusion in the Contract Documents or incorrectly assumed conditions, nor shall it claim any misunderstanding with regard to the nature, conditions or character of the work to be done under the Contract, except as provided for under Article 8.4- DIFFERING, LATENT OR UNUSUAL SITE CONDITIONS.

1.4.5 Should any error or discrepancy appear or should any doubt exist or any dispute arise as to the true intent and meaning of the Contract Documents, or should any portion of same be obscure or capable of more than one method of construction, the Contractor shall immediately apply in writing to THE UNIVERSITY for the correction or explanation thereof and, in case of dispute, the Contracting Officer's decision shall be final.

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

1.4.7 THE UNIVERSITY makes no representation concerning any existing conditions or as-built representations and the Contractor shall be responsible to make all necessary investigations, inspections and explorations to confirm the Project site conditions. The Contractor's responsibilities include determining the existence and location of all subsurface utility lines, cables and pipes that may affect performance. Any material or documentation furnished by THE UNIVERSITY concerning surface or subsurface conditions at the site to the Contractor is conveyed for the Contractor's information and the accuracy of such information is not warranted by THE UNIVERSITY. Prior to commencing Work the Contractor will engage a licensed land surveyor to perform layout work and verify all information furnished by THE UNIVERSITY. Any discrepancies will be promptly reported in writing to THE UNIVERSITY.

1.4.8 THE UNIVERSITY may act directly through its own employees or may act indirectly through retained independent third party Contractors and consultants and their employees. The Contractor shall be advised by the Contracting Officer of those persons authorized to act on THE UNIVERSITY's behalf.

1.4.9 A waiver on the part of THE UNIVERSITY of any breach of any part of the Contract shall not be held to be a waiver of any other or subsequent breach.

1.5 INTERPRETATION

1.5.1 The headings of the articles herein are for convenience of reference only and shall have no bearing on their interpretation. Whenever in these Contract Documents the following terms are used, the intent and meaning shall be interpreted as defined herein. All of the terms used herein are treated throughout the Contract as if each were the singular number and non-specific gender.

1.5.2 Wherever in the Contract Documents the words "directed", "required", "ordered", "designated", "prescribed", or words of like import are used, it shall be understood that the "direction", "requirement", "order", "designation", or "prescription" of THE UNIVERSITY is intended and similarly the words "approved", "acceptable", "satisfactory", or words of like import, shall mean "approved by", or "acceptable to", or "satisfactory to" THE UNIVERSITY unless otherwise expressly stated. Where "as shown", "as indicated", "as detailed", or words of similar import are used, it shall be understood that the reference is made to the Specifications and Drawings accompanying the Contract unless stated otherwise.

1.5.3 References to all Articles or Sections include all Sub-articles or Subsections under the Article referenced, and references to all Sub-articles include all sub-Sub-articles.

1.6 PERMITS, LAWS, AND REGULATIONS

1.6.1 THE UNIVERSITY in entering into this Contract does not waive its sovereign immunity except as required by the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq. The terms and conditions of the Contract are not intended to, and shall not be deemed to, expand the waiver of sovereign immunity as set forth in that Act.

1.6.2 The work under this Contract is subject to Federal, State, and local laws, ordinances, codes, and regulations, including those of utility companies, for work on the Project. Except as otherwise provided in the Contract Documents, the Contractor shall obtain and pay for necessary permits and make necessary arrangements with the authorities having jurisdiction. Where the Contractor's compliance with Federal, State or local laws, ordinances, codes or regulations may or will conflict with the Contract, the Contractor shall notify THE UNIVERSITY in writing for appropriate action.

1.6.3 THE UNIVERSITY will supply the Contractor with applications for construction permits, as required by the New Jersey Department of Community Affairs (DCA). The Contractor shall return within seven (7) calendar days permit applications signed and sealed to THE UNIVERSITY. THE UNIVERSITY will submit the Contractor's applications along with all fees required, to the DCA. The fees for all DCA applications shall be the responsibility of THE UNIVERSITY.

(a) Except as otherwise provided in the Contract Documents, all work shall be performed in accordance with the New Jersey Uniform Construction Code (NJUCC), N.J.A.C. 5:23-1 et seq., its adopted subcodes, and their referenced standards. Specific requirements of the NJUCC and its adopted subcodes shall supersede any conflicting requirements in other documents referenced herein.

(b) The Contractor shall be responsible for assisting THE UNIVERSITY in the preparation and submission of any new or revised plans and specifications required due to DCA requests for clarification, changes in scope of work, etc., necessary for obtaining amended or additional permits or approvals for work for which THE UNIVERSITY has already secured construction permits.

(c) The Contractor shall be responsible for requesting utility location markups and obtaining permits and approvals from utility authorities and other authorities having jurisdiction.

1.6.4 It shall be the responsibility of the Contractor to keep itself fully informed concerning all requirements of law, including but not limited to, all Federal, State, and local laws, ordinances, codes, and regulations which in any manner affect the Project, and of all such orders and decrees of bodies or tribunals having jurisdiction or authority over the same. The Contractor shall at all times observe, and shall cause its subcontractors, agents, and employees to observe, such requirements of law, and shall defend, indemnify, save, and hold harmless the State of New Jersey and THE UNIVERSITY and all of their officers, agents, and employees against claims and liabilities arising from or based upon the violation of such requirement of law whether by the Contractor or its agents, subcontractors or employees.

1.6.5 Plumbing, drainage, and sewage disposal work shall conform with applicable Federal, State and all relevant utility regulator environmental laws and regulations.

1.6.6 Electrical and applicable mechanical materials and systems shall bear the label of the Underwriters' Laboratories (UL) and shall be listed in the publication issued by the UL. Other materials or systems bearing labels of other testing laboratories may be accepted upon written approval of the Engineer. Rules of the National Fire Protection Association shall be followed explicitly unless deviations are agreed to in writing by the Engineer or otherwise modified by these specifications.

1.6.7 Work shall be conducted in accordance with the State of New Jersey Department of Labor and Workforce Development Safety Code, as promulgated by the Commissioner of Labor under the authority of the Construction Safety Act, N.J.S.A. 34:5-166 to 34:5-181, and applicable provisions of the Occupational Safety and Health Administration (OSHA), 29 CFR 1910, Rules and Regulations. Where the Construction Safety Code refers to the designation of General Contractor for enforcing compliance with the Code, such designation shall be intended to refer to the Contractor.

1.6.8 Construction work shall be performed in accordance with the requirements of the New Jersey Uniform Fire Code (NJUFC), N.J.A.C. 5:71-1 et seq.

1.6.9 The Contractor shall immediately notify THE UNIVERSITY should any review or inspection by any regulatory agency or official result in the issuance of a citation or notice of violation of any permit, regulation, statute or other governmental rule.

1.7 FEDERAL, STATE, AND LOCAL TAXES

Except as may be otherwise provided in the Contract, each Contract Item shall include all applicable taxes and duties. N.J.S.A. 54:32B-9 provides that any sale or service to THE UNIVERSITY is not subject to the sales and use taxes imposed under the Sales and Use Tax Act. N.J.S.A. 54:32B-8.22 provides that sales made to Contractors or repairmen of materials, supplies or services for exclusive use in erecting structures, or building on, or otherwise improving, altering or repairing real property of THE UNIVERSITY are exempt from the tax on retail sales imposed by the Sales and Use Tax Act. The exemption provided under N.J.S.A. 54:32B-8.22 is conditioned on the person seeking such exemption qualifying therefore pursuant to the rules and regulations and upon the forms prescribed by the New Jersey Division of Taxation. The required form,

"Contractor's Exemption Purchase Certificate" (Form No. ST-13), can be obtained by writing or calling the New Jersey Division of Taxation, Tax Information Service (TIS), West State and Willow Streets, Trenton, New Jersey 08625.

THE UNIVERSITY is exempt from Federal Excise Taxes. The State of New Jersey's Federal Excise Tax exemption number is 22-75-0050K.

The Contractor and any Subcontractor providing goods or performing services under the Contract, and each of their Affiliates, shall, during the term of the Contract, collect and remit to the Director of the Division of Taxation in the Department of the Treasury the use tax due pursuant to the "Sales and Use Tax Act", P.L 1966, c. 30 (N.J.S.A. 54:32B-1 et seq.) on all their sales of tangible personal property delivered into the State.

1.8 INDEPENDENT CONTRACTOR

The relationship of the Contractor to THE UNIVERSITY is that of an independent Contractor, and said Contractor, in accordance with its status as an independent Contractor, covenants and agrees that it will conduct itself consistent with such status, that it will neither conduct itself as, nor claim to be an officer or employee of THE UNIVERSITY or the State by reason thereof. The Contractor will not, by reason thereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of THE UNIVERSITY or the State, including, but not limited to, worker's compensation coverage, unemployment insurance benefits, social security coverage or retirement membership or credit.

1.9 ASSIGNING AND SUBCONTRACTING CONTRACT

1.9.1 The Contractor shall not transfer, assign or otherwise dispose of the Contract or Contract funds, due or to become due, or claims of any nature it has against THE UNIVERSITY to any other party except upon the express written approval of THE UNIVERSITY, which approval THE UNIVERSITY shall not unreasonably withhold. Application for subcontracting any part or parts of the work shall be made by the Contractor and shall be addressed to THE UNIVERSITY. The Contractor shall perform with its own organization and with the assistance of workmen under its immediate superintendence, work amounting to not less than 20 percent of the Contract Price, exclusive of Bid Items for Insurance, Performance/Payment Bonds, Mobilization and Allowances.

1.9.2 At the Preconstruction Meeting, the Contractor shall submit to THE UNIVERSITY a list of, and Subcontractor Evaluation Data Forms (Appendix A) for, all subcontractors to be used on the Project within the first two months. The list shall identify the subcontractor's name, nature of work and value of work to be performed, and date work is to start. Thereafter, the Contractor shall provide THE UNIVERSITY with at least 15 days' notice before engaging additional or alternative subcontractors. Each proposed subcontractor shall submit a completed Subcontractor Evaluation Data Form. THE UNIVERSITY reserves the right to reject any subcontractor with unsatisfactory qualifications, experience or record of performance. No Contract shall be entered into by the Contractor with a subcontractor before its name has been approved in writing by THE UNIVERSITY.

All Subcontractors are required to comply with the Public Works Contractor Registration Act, N.J.S.A. 34:11-56.48 et seq. as amended. Subcontractors shall not engage in the performance of any public work as defined in N.J.S.A. 34:11-56.26, unless the Subcontractor is registered pursuant to the Act. As part of the post award Subcontractor approval process detailed above, certificates of registration shall be submitted to THE UNIVERSITY for each Subcontractor.

In accordance with N.J.S.A. 52:32-44, all Subcontractors must obtain a Business Registration Certificate prior to performing work or providing goods and/or services on the contract. A Subcontractor shall provide a copy of its business registration to the Contractor who shall forward it to THE UNIVERSITY. No contract with a Subcontractor shall be entered into by the Contractor unless the Subcontractor first provides proof of valid business registration.

The Contractor shall maintain a list of the names of all Subcontractors and their current addresses, updated

as necessary during the course of the Contract performance. In conjunction with the Subcontractor approval process detailed above, the Contractor shall submit a complete and accurate list of the Subcontractors to THE UNIVERSITY before a request for final payment is made, along with proof of each subcontractor's business registration.

1.9.3 The Contractor agrees that it is as fully responsible to THE UNIVERSITY for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor hereby gives its assurance that, when minimum wage rates are specified, they shall apply to labor performed on all work subcontracted, assigned or otherwise disposed of in any way.

1.9.4 The Contractor agrees to bind every subcontractor to and have every subcontractor agree to be bound by the terms of the Contract Documents, as far as applicable to its work. Each Subcontractor Evaluation Data Form shall contain the subcontractor's certification that it has reviewed and is familiar with the Contract Documents in their entirety and that the subcontractor shall comply with all Contract requirements.

1.9.5 It is understood, however, that any consent of THE UNIVERSITY for the subcontracting of any of the work of the Contract in no way relieves the Contractor from its full obligations under the Contract. Approval by THE UNIVERSITY of a subcontractor, including a material supplier, does not relieve the Contractor or its subcontractor of the responsibility of complying with the Contract Documents. Further, the approval of a subcontractor does not imply approval of any material, installed equipment, substitution or additional approved equal.

1.9.6 When the Contractor proposes to subcontract a portion of an item which involves a breakdown of the unit of measurement of that item, it shall submit a breakdown of cost showing the value of the portion of the item to be subcontracted in relation to the value of the whole item, which shall be subject to the approval of THE UNIVERSITY.

1.9.7 Nothing contained in the Contract Documents shall create any contractual relation between any subcontractor and THE UNIVERSITY. The consent to subcontract any part of the work shall not be construed to be an approval of the said subcontract or of any of its terms, but shall operate only as an approval of the Contractor's request for the making of a subcontract between the Contractor and its chosen subcontractor.

1.9.8 All Subcontracts shall be in a form acceptable to THE UNIVERSITY and shall also contain the following mandatory provisions:

(a) The Subcontractor shall indemnify THE UNIVERSITY, its officers, directors, employees and agents on the same grounds as set forth in Article 9 of the General Conditions;

(b) The Subcontractor acknowledges that THE UNIVERSITY does not owe any duty to the Subcontractor and there is no privity of contract between THE UNIVERSITY and the Subcontractor, but THE UNIVERSITY is an intended third party beneficiary of the Subcontract;

(c) The Subcontractor consents to the assignment of the Subcontract to THE UNIVERSITY at the sole discretion of THE UNIVERSITY;

(d) The Subcontractor shall furnish THE UNIVERSITY written notice of any default by the Contractor under the Subcontract and shall afford THE UNIVERSITY a period of at least thirty (30) days within which THE UNIVERSITY may, at its sole discretion, cure any default by the Contractor before the Subcontractor exercises any right to terminate performance;

(e) The Subcontractor shall furnish certificates of insurance which evidence its compliance with the insurance provisions set forth in Article 9.2 of these General Conditions;

(f) The Subcontractor shall waive all rights for any property damage covered by any builder's risk

policy covering the Work;

(g) The Subcontractor shall waive all rights for any bodily injury, property damage, or economic damages covered by any insurance to be maintained by the Subcontractor;

(h) The Subcontractor shall execute such releases and waivers of lien as may be requested by THE UNIVERSITY; and,

(i) The Subcontractor waives all claims for consequential, special or incidental damages against the Contractor.

1.10 CONTRACTING OFFICER'S AUTHORITY

The Contracting Officer is the final interpreter of the terms and conditions of the Contract and the judge of its performance. The Contracting Officer has the sole authority to: execute the Contract; order additions, deductions and changes to the Work; render final decisions on disputes; suspend or terminate the Work, or portions thereof, except in an emergency situation endangering life or property; and accept or reject Contractor performance.

1.11 NOTICE AND COMMUNICATION

1.11.1 Written notice shall be deemed to have been duly served and received by THE UNIVERSITY and the Contractor if: (A) Delivered in person to the intended individual, to a member of the firm, an officer of the corporation or their authorized representative on the Work; or, (B) Sent by certified mail, or other mail or courier service, with delivery receipt, to the last business address known to the individual who gives the notice; or, (C) Sent by tele-facsimile followed by a hard copy to the last business address known to the individual who gives the notice; or, (D) sent by electronic mail by way of the University's electronic project management system.

1.11.2 Communications to the Contractor shall be transmitted through and coordinated by the Contractor's authorized representative(s), as designated at the Pre-Construction Conference.

1.11.3 All communications to THE UNIVERSITY shall be clearly marked with THE UNIVERSITY's Contract Number and Contract Title.

1.12 DISPUTES

Disputes arising in the performance of this Contract, which are not resolved by agreement of the parties shall be decided in writing by the Contracting Officer or its authorized representative. This decision shall be final and conclusive unless within ten (10) calendar days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Contracting Officer. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with performance of the Contract in accordance with the decision of the authorized representative of the Contracting Officer. The decision of the Contracting Officer shall be binding upon the Contractor and the Contractor shall abide by the decision. The "New Jersey Contractual Liability Act", N.J.S.A. 59:13-1 et seq., shall govern any action which may be brought by the Contractor as a result of the Contracting Officer's decision.

1.13 GOVERNING LAW; CONSENT TO JURISDICTION AND WAIVER OF TRIAL BY JURY

1.13.1 This Contract shall be construed in accordance with and shall be governed by the Constitution and laws of the State of New Jersey.

1.13.2 Except as otherwise provided in this Contract, disputes and claims arising under this Contract which are not disposed of by mutual agreement shall be governed by the laws of the State of New Jersey as they may from time to time be in effect. The Contractor, by entering into this Contract, consents and submits to the exclusive jurisdiction of the Courts of the State of New Jersey over any action at law, suit in equity or other proceeding

that may arise out of this Contract, and the Contractor agrees, during the period of performance and of Warranty, to maintain within the State of New Jersey an agent to accept service of legal process on its behalf. Notwithstanding the language of N.J.S.A. 59:13-4, the Contractor expressly waives trial by jury on any and all disputes and claims arising out of this Contract whether by or against the Contractor, THE UNIVERSITY or any other person or entity.

1.14 AUDIT AND INSPECTION OF RECORDS

Pursuant to N.J.A.C. 17:44-2.2, the contractor shall maintain all documentation related to products, transactions or services under this contract for a period of five years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request

The Contractor further agrees to include in all its subcontracts hereunder a provision to the effect that the subcontractor agrees that it will keep all Contract records and that THE UNIVERSITY and/or the State or any of their duly authorized representatives shall, until the expiration of five (5) years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, involving transactions related to the subcontractor. The term "subcontractor" as used in this clause excludes subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

The periods of access and examination described above, for records which relate to (1) appeals under the "Disputes" clause of the Contract, (2) litigation or the settlement of claims arising out of the performance of this Contract, or (3) costs and expenses of this Contract as to which exception has been taken by THE UNIVERSITY or the State of New Jersey or any of their duly authorized representatives, shall continue until such appeals, litigation, claims, or exceptions have been disposed of.

1.15 CONTRACTOR'S RESPONSIBILITIES

1.15.1 The Contractor shall appoint an authorized representative with the authority to commit and bind the Contractor with respect to all matters relating to the Contract. The Contractor shall employ a full time superintendent acceptable to THE UNIVERSITY who shall be in attendance at the Project site at all times that Work is being performed and shall not be re-assigned or replaced without the approval of THE UNIVERSITY.

1.15.2 Prior to commencement of the Work and no later than the pre-construction meeting in 6.1.3, the Contractor shall prepare and submit a Site Logistics Plan to THE UNIVERSITY and A/E for review and approval. This Plan will address such issues as access and egress to the Site (for emergency and non-emergency purposes), loading and unloading of all materials and equipment, Work hours, staging areas, use of any service or freight elevators, hoisting equipment, locations of trailers for the Contractor, Subcontractors, the Architect and THE UNIVERSITY, parking, temporary utilities, fencing, dumpster sites, storage and material shakeout areas

1.15.3 The Contractor shall supervise the performance of the Work to ensure that the Work will not be subjected to harmful or dangerous exposures to such factors as excessive static or dynamic loading, internal or external pressures, excessively high or low temperatures, thermal shock, seismic events, humidity extremes, water, soiling, chemicals, combustion, rodent or insect infestation, abrasion, solvents, excessive weathering or radiation.

ARTICLE 2

2. CONTRACT TIME, SUSPENSION AND TERMINATION

2.1 TIME OF COMPLETION - DELAY - LIQUIDATED DAMAGES

2.1.1 The Contractor and THE UNIVERSITY recognize that delay in the progress or completion of the project will result in damage to the State of New Jersey in terms of the effect of the delay in the use of the Project

upon the public convenience and economic development of the State of New Jersey, and will also result in additional cost to THE UNIVERSITY for engineering, inspection, and administration of the Contract. Because some of this damage is difficult or impossible to specifically quantify, the parties agree that if the Contractor fails to substantially complete the project or any specifically designated interim milestones within the time stated in the Contract, or within such further time as may have been granted in accordance with the provisions of the Contract, or fails to complete Remaining Work, other than Punch List Work (as described in Article 12.2- SUBSTANTIAL COMPLETION) within the period fixed by THE UNIVERSITY, the Contractor shall pay THE UNIVERSITY liquidated damages, in accordance with the amount set forth in the Supplemental Conditions for each day that it is in default on time to complete the work. The Contractor and THE UNIVERSITY recognize that the failure to achieve substantial completion for the project and each interim milestone will result in distinct additional damages and that the liquidated damages which Contractor is obligated to pay for failing to achieve multiple milestones will be cumulative. The days in default shall be the number of calendar days in default when the time for completion of the Project or milestone is specified on the basis of calendar days or a fixed date; and shall be the number of working days in default when the time for completion is specified on the basis of working days. THE UNIVERSITY shall recover said damages by deducting the amount thereof from monies due or that may become due the Contractor, and if said monies be insufficient to cover said damages, then the Contractor or its Surety shall pay the amount due. This clause is expressly limited in purpose and effect to damages to THE UNIVERSITY and the State of New Jersey as a consequence of the Contractor's failure to complete the project or milestone on time. It is not intended, and shall not be construed, to apply to any other claim for damages or disputes arising from the Contractor's performance on the Project, nor shall it limit the Contractor's duty to indemnify THE UNIVERSITY for claims made by third parties.

2.1.2 The work embraced in this Contract including work authorized under Article 3.1 shall commence as soon as possible but not later than ten (10) days after receipt of a Notice to Proceed unless otherwise specified by THE UNIVERSITY.

The Contractor agrees that said work shall be prosecuted regularly, diligently, and without interruption at such rate of progress as will insure substantial completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and THE UNIVERSITY, that the time for the completion of the work herein is a reasonable time for the completion of the same. It is further agreed that float, or slack time, is not for the exclusive use or benefit of either the Contractor or THE UNIVERSITY, as further described in Article 6.2- Construction Project Schedule.

2.1.3 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 additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be of the essence of this Contract. The Contractor shall not be charged with liquidated damages when the delay in the completion of the work arises from both: a) causes beyond the reasonable control and without any fault or negligence of the Contractor, its officers, employees, agents, servants, subcontractors, and suppliers, including but not restricted to, acts of God, or of the public enemy, acts of another Contractor in the performance of a Contract with THE UNIVERSITY, fires, floods, epidemics, quarantine restrictions, labor disputes not determined by final judicial or administrative adjudication to have been caused or provoked by the illegal acts of the Contractor or one of its subcontractors or agents, freight embargoes, and unusually severe weather; and, b) such causes arise after the award of the Contract and neither were nor could have been anticipated by the Contractor by reasonable investigation before such award. The basis to define unusually severe weather will be the data showing high and low temperatures, precipitation and wind conditions in the geographic area of the Work for the previous twenty (20) years, as compiled by the recording station of the U.S. National Weather Service located nearest to the Work.

2.1.4 Even though a cause of delay meets both conditions a) and b) above, an extension shall be granted only to the extent that (i) the completion of the affected work is actually and necessarily delayed, (ii) the effect of such cause could not be anticipated and avoided or mitigated by the exercise of all reasonable precautions, efforts and measures (including planning, scheduling and rescheduling) whether before or after the

occurrence of the cause of delay, and (iii) the critical path of the project schedule is actually extended due to the delay beyond the required Contract completion date. Any reference in this Article to the Contractor shall be deemed to include materialmen, suppliers, and subcontractors, whether or not in privity of Contract with the Contractor, all of whom shall be considered as agents of the Contractor for the purposes of this Article. A delay resulting from a cause meeting all conditions in Sub-article 2.1.3 and this Sub-article 2.1.4 shall be deemed an Excusable Delay.

2.1.5 The period of any extension of time shall be only that which is necessary to make up the time actually lost as determined by THE UNIVERSITY. THE UNIVERSITY may defer all or part of its decision on an extension and any extension may be rescinded or shortened if it subsequently is found that the delay can or could have been overcome or reduced by the exercise of reasonable precautions, efforts and measures.

2.1.6 In case the Contractor shall be actually and necessarily delayed by reason of the failure of THE UNIVERSITY to deliver to the Contractor access to the Project Site or any materials or facilities to be furnished by THE UNIVERSITY which are actually needed for use in the work, or by any act or omission on the part of THE UNIVERSITY, and such delay is recognized by THE UNIVERSITY in writing, such delay shall also be deemed to be an Excusable Delay. The time for completion of the Project shall be extended by THE UNIVERSITY by the amount of time of such delay as determined by THE UNIVERSITY, but no allowance by way of damages of any kind or nature will be made for such failure.

2.1.7 As a condition precedent to the granting of an extension of time, the Contractor shall give written notice to THE UNIVERSITY within five (5) days after the time when the Contractor knows or should know of any cause which might under reasonably foreseeable circumstances result in delay for which it may claim an extension of time (including those causes for which THE UNIVERSITY itself is responsible or of which THE UNIVERSITY has knowledge), specifically stating in such notice that an extension is or may be claimed, identifying such cause and describing, as fully as practicable at that time, the nature and expected duration of the delay, including justification, and its effect on the completion of that part of the work identified in the notice. Since the possible necessity for an extension of time may materially alter the scheduling plans, and other actions of THE UNIVERSITY and since, with sufficient notice, THE UNIVERSITY may, if it should so elect, attempt to mitigate the effect of the delay for which an extension of time might be claimed, and since mere oral notice may cause dispute as to the existence or substance thereof, the giving of written notice as above required shall be of the essence of the Contractor's obligations hereunder. Failure to give the written notice within the aforementioned five (5) day period shall deprive the Contractor of any right to an extension of time, except to the extent that THE UNIVERSITY may determine otherwise in its sole discretion.

It shall in all cases be presumed that no extension, or further extension of time, is due unless the Contractor shall affirmatively demonstrate the extent thereof to the reasonable satisfaction of THE UNIVERSITY. To this end, the Contractor shall maintain adequate records supporting any claim for an extension of time, and in the absence of such records, this presumption shall be deemed conclusive.

2.1.8 In regard to an injunction or interference of public authority which may delay or impact the Project, the Contractor shall give THE UNIVERSITY a copy of the injunction or other orders and of the papers upon which the same shall have been granted.

2.1.9 Within a reasonable time after receipt of a written notice requesting an extension of time THE UNIVERSITY will advise the Contractor if such notice is adequate, or if further information is required. Failure of THE UNIVERSITY to furnish the Contractor with the foregoing advisement shall not, however, be deemed to waive THE UNIVERSITY's right to deny an extension of time. Within a reasonable time after THE UNIVERSITY, at its sole discretion, has determined that the Contractor has provided sufficient information for THE UNIVERSITY to decide on a request for an extension of time, THE UNIVERSITY shall issue a determination on that request. In the event that THE UNIVERSITY was unable to decide on a request for an extension, THE UNIVERSITY may issue at the completion of the Project, in conjunction with issuing its Final Certificate of Payment, a final determination on the Contractor's request or requests for an extension of

time.

2.1.10 Only the actual delay or impact to the Contractor necessarily resulting from the causes above-mentioned, as determined by THE UNIVERSITY, shall be considered for an extension of time. In case the Contractor shall be delayed or impacted at any time or for any period by two or more of the causes above-mentioned, the Contractor shall not be entitled to a separate extension for each one of the causes but only one period of extension shall be granted for the period of concurrent delay. In case the Contractor shall be actually and necessarily delayed by one or more of the causes above-mentioned and still subject to demonstration that the activity is on the critical path for Substantial Completion or a specifically designated interim milestone in the performance of any portion of the Project, the extension of time to be granted to the Contractor shall be only for such portion of the Project. The Contractor shall not be entitled by reason of such delay to an extension of time for the completion of the remainder of the Project. If the Contractor shall be so delayed as to a portion of the Project, it shall nevertheless proceed continuously and diligently with the prosecution of the remainder of the Project. No demand by the Contractor that THE UNIVERSITY determine any matter of extension of time for the completion of the Project or any part thereof will be of any effect whatsoever unless the same be made in writing and duly served upon THE UNIVERSITY prior to the issuance of the Final Certificate of Payment as provided for in Article 12.8, FINAL PAYMENT.

2.1.11 Delay to or impacts upon the Contractor's performance arising out of any request of the Contractor to change the order of furnishing working drawings as provided elsewhere in this Contract or arising out of any changes made or requested by the Contractor in any matters shown or indicated on the Contract Drawings will not be cause for an extension of time, and all additional costs to the Contractor, incidental to such request or change, shall be borne by the Contractor.

2.1.12 The permitting of the Contractor to go on and finish the Project or any part thereof after the time fixed for completion or after the date to which the time for completion may have been extended or the making of payments to the Contractor after any such period shall not operate as a waiver on the part of THE UNIVERSITY of any rights under this Contract, including but not limited to declaring the Contractor in default.

2.1.13 The determination of THE UNIVERSITY as to any matter of extension of time for completion of the Project or any part thereof shall be binding and conclusive upon the Contractor.

2.2 NO DAMAGES FOR DELAY

Notwithstanding anything to the contrary in the Contract Documents, and to the maximum extent permitted by law, an extension of the Contract Time, to the extent permitted under the Contract Documents, shall be the sole remedy of the Contractor for any (i) delay in the commencement, prosecution or completion of the Work; (ii) hindrance or obstruction in the performance of the Work; (iv) loss of productivity; or (v) other similar claims including but not necessarily limited to those for time extensions, accelerations, disruption or impact (collectively referred to as “Delay”) and whether or not such Delay is foreseeable, unless the Delay is caused solely by acts of THE UNIVERSITY constituting negligence, bad faith, active interference, or other tortious conduct (collectively “Owner Interference”), and then only to the extent such Owner’s Interference continues after the Contractor furnishes THE UNIVERSITY with prior written notice of such Owner Interference no later than three (3) days after commencement of such Owner Interference. Failure of the Contractor to provide such written notice in a timely manner shall constitute a complete waiver of any right to costs or damages on account of the Owner Interference. THE UNIVERSITY’s exercise of any of its rights or remedies under the Contract Documents, including, without limitation, ordering changes in the work or directing suspension, rescheduling, resequencing, or correction of the Work, regardless of the extent or frequency of THE UNIVERSITY’s exercise of such rights or remedies, shall not be construed as Owner Interference. In no event will the negligence of any other parties including but not limited to the THE UNIVERSITY’s representative, architect, construction manager, separate contractors or any other third parties be imputed to THE UNIVERSITY or otherwise constitute Owner Interference for purposes of this paragraph.

In the event of Owner Interference, and expressly subject to the Contractor’s compliance with the notice

provisions as described hereinabove, the parties agree to the following limitations on any Contractor claims for additional compensation:

(a) Waiver of any claim for consequential, special, or incidental damages including but not limited to lost opportunity, productivity loss, or impact claims;

(b) Cumulative subcontractor mark-up on all subcontract direct costs limited to 5% profit and 5% overhead markup, regardless of number of subcontractors;

(c) Extended home office overhead costs only permitted to the extent the Contractor's operations are completely idled solely as a result of the Owner Interference and, even then, limited to a cap of not greater than One Thousand ($1,000.00) Dollars per business day and subject to Contractor providing documentation in accordance with 3.2.3 and 3.5.3;

(d) Within five (5) days of commencement of any delay resulting from Owner Interference, Contractor shall take all reasonable steps to reduce labor force and costs to absolute minimum;

(e) Equipment rental costs shall be calculated based on 70% of applicable Blue Book rental rates (current edition) not to exceed 60% of the value of the equipment;

(f) No costs whatsoever arising from Owner Interference shall be due and owing in the event of concurrent causes of delay for which the Contractor is responsible or for which the Contractor is not entitled to a time extension under the Contract Documents; and

(g) Within ten (10) days of commencement of Owner Interference, and at thirty (30) day intervals thereafter, Contractor shall be responsible to fully substantiate all additional costs resulting from such Owner Interference with reasonable mathematical certainty. In no event will Contractor be entitled to substantiate any Delay claim on the basis of a total cost or modified total cost basis, but shall have the burden to prove with credible evidence and reasonable mathematical certainty those costs and damages directly and solely resulting from the Owner Interference supported by a schedule analysis that establishes revised Substantial Completion and Final Completion dates.

2.3 SUSPENSION OF WORK

2.3.1 If the Contracting Officer deems it advisable, the Contracting Officer may notify the Contractor in writing to suspend work on one or more occasions on all or any part of the Project, for a period not to exceed 90 days in the aggregate. After notification(s) is delivered to the Contractor, the Contractor shall do no work where so suspended until it has received written notice from the Contracting Officer to resume work.

2.3.2 When work is suspended as provided above, payments for the completed parts of the work will be made as provided and a suitable extension of time for completing the suspended work will be granted where appropriate. Should any single suspension be for a period greater than 45 days and the Contractor incurs unavoidable extended field overhead costs as a result of the suspension, the Contractor shall notify the Contracting Officer within 30 days of the completion of the suspension period and provide a detailed accounting of such extended field overhead costs. No profit markup will be allowed on extended field overhead costs. The Contracting Officer's determination as to the amount of compensation to be paid under this clause shall be final and conclusive. Under no circumstances shall any other compensation or allowance be made on account of such suspension. No payment will be made for work done by the Contractor on suspended work.

2.3.3 Within the period of ninety (90) days (or the lesser period specified) after a notice of suspension is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, THE UNIVERSITY shall either: a.) cancel the notice of suspension, or b.) terminate the work covered by such suspension as provided in Article 2.4, TERMINATION FOR CONVENIENCE, or c.) negotiate reasonable compensation with the Contractor for a further period of suspension.

2.4 TERMINATION FOR CONVENIENCE

2.4.1 THE UNIVERSITY may terminate performance of work under this Contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in THE UNIVERSITY's interest. The Contracting Officer shall terminate the work by delivering to the Contractor a written notice of termination ("Notice of Termination") specifying the extent of termination and the effective date.

2.4.2 After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(a) Stop work as specified in the notice.

(b) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the Contract.

(c) Terminate all subcontracts to the extent they relate to the work terminated.

(d) Assign to THE UNIVERSITY, as and if directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case THE UNIVERSITY shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(e) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.

(f) As directed by the Contracting Officer, transfer title and deliver to THE UNIVERSITY: (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the Contract had been completed, would be required to be furnished to THE UNIVERSITY.

(g) Complete performance of the work not terminated.

(h) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this Contract that is in the possession of the Contractor and in which THE UNIVERSITY has or may acquire an interest.

(i) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in Subparagraph (f) above; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by THE UNIVERSITY under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

2.4.3 After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than ninety (90) days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this ninety (90) day period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after ninety (90) days or any extension. If the Contractor fails to

submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

2.4.4 Subject to Sub-article 2.4.3 above, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid because of the termination. However, the agreed amount, whether under this Sub-article or Sub-article 2.4.5 below, exclusive of costs shown in Sub-article 2.4.5(b) below, may not exceed the total contract price as reduced by: (i) the amount of payments previously made and, (ii) the contract price of work not terminated. The Contract shall be amended, and the Contractor paid the agreed amount. Sub-article 2.4.5 below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this Paragraph.

2.4.5 If the Contractor and Contracting Officer fail to agree on the whole amount to be paid the Contractor because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined as follows, but without duplication of any amounts agreed upon under Sub-article 2.4.4 above:

(a) For contract work performed before the effective date of termination, the total (without duplication of any items) of:

(1) The cost of this work satisfactorily performed;
(2) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract if not included in subdivision (1) above; and
(3) A sum, as profit on (1) above, determined by the Contracting Officer to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subdivision (3) and shall reduce the settlement to reflect the indicated rate of loss.

(b) The reasonable costs of settlement of the work terminated, including:

(1) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
(2) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

2.4.6 Except for normal spoilage, and except to the extent that THE UNIVERSITY expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under Sub-article 2.4.5 above, the fair value, as determined by the Contracting Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to THE UNIVERSITY or to a buyer.

2.4.7 The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under Sub-article 2.4.3, 2.4.5, or 2.4.9, except that if the Contractor failed to submit the termination settlement proposal within the time provided in Sub-article 2.4.3 or 2.4.9, and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under Sub-article 2.4.3, 2.4.5, or 2.4.9, THE UNIVERSITY shall pay the Contractor (i) the amount determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken, or (ii) the amount finally determined on an appeal.

2.4.8 In arriving at the amount due the Contractor under this clause, there shall be deducted:

(a) All unliquidated advance or other payments to the Contractor under the terminated portion of this contract;

(b) Any claim which THE UNIVERSITY has against the Contractor under this contract; and

(c) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to THE UNIVERSITY.

2.4.9 If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within ninety (90) days from the effective date of termination unless extended in writing by the Contracting Officer.

2.4.10 THE UNIVERSITY may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled. If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to THE UNIVERSITY upon demand, together with interest computed at the maximum rate allowed by law. Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until ten (10) days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

2.4.11 Unless otherwise provided in this contract, or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this Contract for three (3) years after final settlement. This includes all accounts, books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor shall make these records and documents available to THE UNIVERSITY, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

2.5 TERMINATION FOR CAUSE

2.5.1 In the event that any of the provisions of this Contract are violated by the Contractor, or any of its Subcontractors, the Contracting Officer may serve written notice upon the Contractor and Surety of THE UNIVERSITY's intention to terminate the Contract for cause ("Notice of Intent to Terminate for Cause"). The Notice of Intent to Terminate for Cause shall identify the causes for the proposed termination and demand the elimination of such causes.

2.5.2 If the Contractor or Surety, within a period of seven (7) days after such notice or within such additional time as may be granted by the Contracting Officer, does not proceed in accordance therewith to make satisfactory arrangements to eliminate the causes of the proposed termination, then the Contracting Officer may terminate the Contract for cause by written notice ("Notice of Termination for Cause").

2.5.3 The Notice of Termination for Cause will terminate the Contractor's right to proceed with all items of work except as specified in the termination notice. The latter will include all work necessary to ensure the safety of the public, to properly secure existing work already constructed or partially constructed, and to secure the Project site. The work specified in the notice shall be performed in accordance with the Contract Documents and may include items of work not in the original Contract. Unless otherwise specified in the notice, all insurance policies provided by the Contractor naming THE UNIVERSITY and any other parties as additional insureds shall remain in full force and effect until issuance by THE UNIVERSITY of a Final Certificate of Payment.

2.5.4 Payment for completed or partially completed items of Work shall be made in accordance with the Contract Documents. Payment for new items, if any, will be paid either at agreed prices or paid for by time and material methods described in Sub-article 3.2.7. No other costs or compensation will be allowed the Contractor.

2.5.5 When all work specified in the termination notice is completed to the satisfaction of THE UNIVERSITY, the Contract shall terminate upon issuance by THE UNIVERSITY of a Final Certificate of Payment, pursuant to Sub-Paragraph 12.8.

2.5.6 Upon issuance of a Notice of Termination for Cause, the Surety shall have ten (10) days to advise THE UNIVERSITY in writing that it intends to take over and complete the Project in accordance with the Contract terms and conditions, without any further conditions. If so notified, the Surety shall have ten (10) days from such notice to commence the work. Upon the Surety's failure to comply with either of the above, THE UNIVERSITY may take over the work and prosecute the same to completion by contract with another contractor, or use whatever methods it deems necessary to complete the work, including completion of the Work by its own forces for the account and at the expense of the Contractor/Surety. THE UNIVERSITY may take possession of and utilize in completing the work such materials, appliances and plants as may be on the site of the work and necessary therefor.

2.5.7 Whether the Contract Work is completed by THE UNIVERSITY, either directly or through other contractors, or the Surety, the Contractor and its Surety shall be liable to THE UNIVERSITY for excess costs incurred by THE UNIVERSITY and other such damages arising out of the Termination for Cause including liquidated damages caused by the delay to the date of completion of the Project Work.

2.5.8 All such costs and damages incurred by THE UNIVERSITY will be deducted from any monies due or that may become due the Contractor and Surety. If such costs and damages exceed the sum which is available, then the Contractor and the Surety shall be liable and shall pay THE UNIVERSITY within 30 days of the issuance of an invoice for the amount of such excess.

2.5.9 In terminating the Contract for cause THE UNIVERSITY does not waive its right to sue the Contractor and/or Surety for any costs incurred or damages suffered by THE UNIVERSITY as a result of the Contractor's default and termination.

2.5.10 If, after a Notice of Termination for Cause has been issued, it is determined for any reason that the provisions of the Contract were not violated by the Contractor, or any of its Subcontractors, or if the termination of the Contract for Cause pursuant to the provisions of this Article is found by a court to be legally improper, then the termination of the Contract for cause will be treated as if it had been a termination for convenience and such termination shall be compensated for in accordance with the provisions of Article 2.4.

3. CONTRACT CHANGES

3.1 CHANGE ORDERS

3.1.1 The Contracting Officer, at the Contracting Officer’s sole discretion, may at any time during the progress of the work authorize additions, deductions, or changes to the Work as set forth below, and the Contract shall not be terminated or the surety released thereby. When changes in the work must be performed immediately, the Contracting Officer may issue a written directive to the Contractor detailing the changed work and the basis for determining compensation, and the Contractor will proceed immediately with the Work as directed, pending the execution of a formal Change Order.

If any such change causes an increase or decrease in the cost of the performance of any part of the Work and/or requires a change in the Contract Time, then a Change Order shall be issued incorporating the change. All Change Orders shall be priced in accordance with Article 3.2. The Change Order shall be a written order to the Contractor and shall describe the change with cost changes and changes to Contract Time. The Change Order shall be signed by the Contractor and returned to THE UNIVERSITY. Upon receipt, the Change Order shall be countersigned by the Contracting Officer and shall then become a part of the Contract Documents.

In the event the Contractor and THE UNIVERSITY cannot, for whatever reason, reach an agreement on cost changes or changes to Contract Time, the Contracting Officer shall issue a unilateral Change Order incorporating the change and the Contractor shall nonetheless proceed with the Work as directed therein. The

unilateral Change Order shall then become a part of the Contract Documents.

3.1.2 THE UNIVERSITY shall have the authority to order, in writing, minor changes in the work not involving an adjustment to the price of any items of work or an extension of time and not inconsistent with the intent of the Contract. Such changes shall be binding on THE UNIVERSITY and the Contractor, and shall not be the basis of increased compensation to the Contractor. Such work shall be executed under the conditions of the original Contract.

3.1.3 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 by THE UNIVERSITY to perform the Work, if any. Except as specified in Sub-article 3.1.2 above, or in an emergency endangering life or property, no change shall be made unless pursuant to a written directive of the Contracting Officer or Change Order, and no claim for an addition to the Contract Price or time shall be valid unless so ordered.

3.1.4 Should the Contractor dispute THE UNIVERSITY's interpretation of work specified in the Contract Documents and claim that work is Extra Work that will involve additional costs or Contract Time, the Contractor shall proceed with the work in accordance with THE UNIVERSITY's interpretation. In such event, the Contractor shall follow the procedures and maintain the detailed cost records set forth in Article 3.3-T&M CHANGE ORDER RECORDS pending the resolution of the dispute. In all other cases, should the Contractor perform Extra Work without first obtaining a written directive or Change Order from the Contracting Officer's authorized representative, 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 therefor.

3.1.5 The time needed to perform Extra Work shall not be the basis of claims by the Contractor for extra costs of any nature whatsoever.

3.2 CHANGE ORDER PRICING

3.2.1 Proposed additions, deductions and changes shall be defined in a Notice of Proposed Change (NPC) and issued to the Contractor in the form attached as Appendix E. The Contractor's proposal for all proposed additions, deductions and changes to the work involving cost or Contract Time shall be submitted by the Contractor to THE UNIVERSITY within 15 days, or such other time as THE UNIVERSITY may direct, after the issuance of the Notice of Proposed Change. The Contractor's cost proposal shall be structured in accordance with the format(s) set forth below and shall comply with the pricing specifications set forth in this Article 3.2. THE UNIVERSITY shall review the Contractor's proposal and, if necessary, meet with the Contractor to negotiate the proposal. Should the Contracting Officer require additional information, the Contractor will provide the requested information. The Contractor's costs for preparing, submitting, and negotiating proposals will not be paid separately and shall not be included in the proposals, but shall be considered paid for in the Contract Price.

Table 3.2.1: Change Order Cost Proposal Format		
I	II	III
LABOR[1]	Cost Calculation	Summary of Costs
Name Each Trade Classification	(Man hours) x (Labor Costs) =	A
MATERIAL[2]		
Name Each Major Type of Material	(Quantity) x (Unit Costs) =	B

[1] Labor Costs as specified in Sub-article 3.2.9.1
[2] Material Costs as specified in Sub-article 3.2.9.2

EQUIPMENT[3]		
Name Each Major Piece of Equipment	(Time) x (Unit Costs) =	C
SUBTOTAL	A + B + C =	D
OVERHEAD[4]	(D) x (Overhead %) =	E
PROFIT[5]	(D) x (Profit %) =	F
TOTAL	D + E + F =	G

3.2.2 Requests for extension of time for proposed Change Order work shall be included in the Contractor's proposal. Extensions of time will not be granted unless requested in accordance with the provisions of Sub-article 3.2.1.

3.2.3 Full documentation supporting all estimated and actual costs shall be furnished to THE UNIVERSITY if such is requested. Documentation may consist of records such as actual payroll records and receipted bills for rentals and materials. All Change Orders shall be subject to audit by the Contracting Officer or the Contracting Officer's authorized representative.

3.2.4 All proposed and incurred change order costs shall as a minimum be allowable, allocable and reasonable in accordance with the Contract cost principles. The Contracting Officer's determination on the allowability, allocability and reasonableness of incurred costs shall be final and conclusive.

3.2.5 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 Contracting Officer determines that work must be performed immediately, then the Contracting Officer will direct the Contractor to proceed on a T & M basis. Whenever the terms "labor", "materials", "equipment", "overhead" and "profit" are used herein with regard to change order cost and price proposals, they are used as these cost and price elements are defined in this Article 3.2.

3.2.6 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.

3.2.7 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 Sub-article 3.2.10. Cost proposals for labor and material shall be provided on the stationary of the parties that will be performing the work (subcontractors) and supplying material (suppliers). If the proposal results in a change order, the price will not be subject to adjustment unless there is a significant difference in the conditions of execution of the change order scope, and only at the sole discretion of the Contracting Officer.

3.2.8 Time and Material: The Contractor shall submit the same detailed breakdown of costs as set forth in Sub-article 3.2.7 for Lump Sum change orders. In addition, the Contractor shall submit a Guaranteed Maximum Price (GMP) which may be accepted or rejected by the Contracting Officer.

3.2.8.1 Time and Material with GMP: If the Guaranteed Maximum Price is accepted, the payment for such work

[3] Equipment Costs as specified in Sub-article 3.2.9.3
[4] Overhead Markups as specified in Article 3.2.9.4
[5] Profit Markups as specified in Article 3.2.9.6

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 Sub-article 3.2.10. However, in no event shall payment exceed the Guaranteed Maximum Price established by agreement between the Contractor and THE UNIVERSITY.

3.2.8.2 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 established by THE UNIVERSITY. 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 Sub-article 3.2.10.

3.2.8.3 Emergent Time and Material: Should the Contracting Officer determine that changed work must be performed immediately, and THE UNIVERSITY determines that the Contractor has insufficient time to submit a detailed cost proposal in advance of performing the work, THE UNIVERSITY 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 Sub-article 3.2.8.2, except that profit markups shall be as specified in Sub-article 3.2.10.

3.2.9 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 Sub-article 3.2.10. 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.

3.2.9.1 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. Vacation, sick and personal leave time shall be excluded from Labor Costs.

(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.

3.2.9.2 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 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.

3.2.9.3 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.
(4) Area adjustments will not be made. Equipment life adjustments will be made in accordance with the rate adjustment tables.
(5) Overtime 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 Sub-article 3.2.9.1, "Labor," of this Article.

Equipment shall be in good operating condition and suitable for the work, in the opinion of THE UNIVERSITY.

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.

3.2.9.4 Overhead Costs: Overhead shall be defined to include any and all Contractor Field Office and Home Office overhead and operating expenses whatsoever. Overhead includes, as a minimum, the following categories of expense, 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 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, and clerical and support staff;

(e) Charges and expenses for drafting, Computer Assisted Design, scheduling, billing, financing, etc. All other costs to operate and maintain the Contractor's Home Office.

(f) Insurance costs described in Sub-article 3.2.9.5.

The Contractor agrees that its overhead costs will be fully and fairly compensated by the fixed, non-negotiable overhead percentage markups set forth in Sub-article 3.2.10.

3.2.9.5 Bond and Insurance:

(a) Compensation for insurance premiums not listed in Sub-article 3.2.9.1 shall be considered paid for by 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.

(b) Compensation for increased bond costs may be added to the Change Order at a percentage rate agreed to by both parties in the Contract. If the parties do not agree upon the rate of increase for bond costs in the Contract, then the increase in bond premiums shall be considered paid for by the overhead percentages added to the sum of the actual cost of labor, material and equipment and will not be considered or paid separately by the University.

3.2.9.6 Profit: The Contractor's profit shall be negotiated as a percentage markup based on the type of work, the value of the change, 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. However under no circumstances shall negotiated markups exceed the maximum allowable markup set forth in Sub-article 3.2.10.

3.2.10 Overhead and profit markups on each change shall be calculated in accordance with the table in and this Sub-article 3.2.10.

(a) Overhead:
Notwithstanding the provisions in 3.2.9.1(a) the Contractor may charge overhead only for Work performed by employees of Contractor. The Contractor shall not be compensated for overhead on Work performed by any Subcontractor.

(b) Profit:
The Contractor may charge profit on their own work and that of their Subcontractor who perform the Work.

(c) Subcontractor Overhead and Profit:
A Subcontractor who performs the Work may markup the Change Order Pricing with overhead and profit not to exceed 10% as indicated in table 3.2.10. A Subcontractor who does **not** perform the Work and subcontracts the Work to a Subcontractor may markup the Change Order Pricing with overhead and profit not to exceed 5%.

3.2.10.1 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.

3.2.10.2 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 3.2.10.

3.2.10.3 When work is to be deleted on a lump sum or time and material basis, markups specified in Table 3.2.10, 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 3.2.10 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.

3.2.10.4 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 deleted labor, material and equipment costs. Overhead and profit markups specified in Table 3.2.10 shall be applied to:

(a) Net increase in cost basis, in which case Paragraph 3.2.10.2 shall govern;

(b) Net decrease in cost basis, in which case Paragraph 3.2.10.3 shall govern.

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

3.2.10.5 When there is a change 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 3.2.10.

3.2.10.6 When a change is authorized for standby time, markups for overhead and profit shall be as specified in Table 3.2.10. Any claim for standby time will be rejected unless documented by time sheets signed by the Inspector.

3.2.10.7 When a change 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 3.2.10 and shall be applied only to the premium portion of labor costs.

Table 3.2.10: Maximum Overhead and Profit Markups for Added Work					
Work Performed By	Change Order Pricing Basis	Cost Basis	Contractor Overhead Markup (as a % of Cost Basis	Contractor Maximum Profit Markup (as a % of Cost Basis)	Sub-Contractor Maximum Overhead & Profit (as % of Cost Basis)
Contractor	Lump Sum or T&M with GMP or Emergent	Contractor direct labor, material and equipment costs	10%	5%	NA
Sub-contractor (at any tier)	Lump Sum or T&M with GMP or Emergent	Subcontractor labor, material and equipment costs	0	5%	10% unless otherwise described in Note 1
Overtime	Lump Sum or T & M with GMP or Emergent	Premium portion of labor costs	5%	5%	5%

Note 1: A Subcontractor who performs the Work may markup the Change Order Pricing with overhead and profit not to exceed 10% as indicated in table 3.2.10 above. A Subcontractor who does **not** perform the Work and subcontracts the Work may markup the Change Order Pricing with overhead and profit not to exceed 5%.

3.3 TIME AND MATERIAL (T&M) CHANGE ORDER RECORDS

3.3.1 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 UNIVERSITY 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 tradesman 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.

3.3.2 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 Sub-article 3.2.9.2(a), above.

3.3.3 Said daily time and material work reports shall be signed by the Contractor or its authorized representative.

3.4 CONTRACTOR INITIATED CHANGE ORDERS

3.4.1 The Contractor may request a change order for an increase in the cost of the performance of any part of the Work or a change in the Contract Time only when such costs or time impacts are attributable to the following:

(a) Latent errors and omissions in the contract documents;

(b) Additional costs or an extension of Contract time for which a change order is expressly permitted under any Article in this Contract.

The Contractor must give immediate notice to THE UNIVERSITY when it becomes aware of the condition causing the initiation of a request for change.

3.4.2 Change Order Requests (COR's) will not be considered unless the Contractor has strictly complied with the notice requirements of the appropriate Articles of this Contract. The Contractor further understands and agrees that neither the procedure established under this Article nor the review of COR's by THE UNIVERSITY pursuant hereto shall in any way affect the requirements of the filing of a Notice of Claim or the filing of a suit pursuant to the provisions of N.J.S.A. 59:13-1 et seq.

3.4.3 Within 20 days of initial notification by the Contractor of a condition causing the initiation of a request for change, the Contractor must submit a Certified Statement of Claim with sufficient detail to enable THE UNIVERSITY to ascertain the basis and amount of said Certified Statement of Claim. As a minimum, the following information must accompany each request submitted pursuant to the provisions of this Sub-article:

(a) A detailed factual statement of the COR providing all necessary dates, locations and items of work affected by the COR;

(b) the date on which facts arose which gave rise to the COR;

(c) the name, function, and activity of each THE UNIVERSITY individual, official or employee involved in or knowledgeable about such COR;

(d) the specific provisions of the Contract which support or mitigate against the COR and a statement of the reasons why such provisions support or mitigate against the COR;

(e) if the COR relates to a decision of THE UNIVERSITY which the Contract leaves to THE

UNIVERSITY's discretion or as to which the Contract provides that THE UNIVERSITY's decision is final, the Contractor shall set out in detail all facts supporting its contention that the decision of THE UNIVERSITY was fraudulent or capricious or arbitrary or is not supported by substantial evidence;

(f) the identification of documents and the substance of oral communications relating to such COR;

(g) a statement as to whether the additional compensation or extension of time sought is based on the operation of the provisions of the Contract or an alleged breach of contract;

(h) if an extension of time is sought, the specific days for which it is sought and the CPM schedule data providing a logical basis for such an extension;

(i) if additional compensation is sought, the exact amount sought and a breakdown of that amount in accordance with the pricing specifications set forth in Article 3.2.

It will be the responsibility of the Contractor to furnish within a reasonable time such further information and details as may be required by THE UNIVERSITY to determine the facts or contentions involved in the COR's, including but not limited to those items identified in Article 3.5.

3.4.4 Following the submission of the Certified Statement of Claim identified in Article 3.4.3, the Contractor is responsible for amending the Certified Statement of Claim every thirty (30) days thereafter, until such time as associated costs are no longer being incurred.

3.4.5 Any new event giving rise to a COR requires a new Certified Statement of Claim.

3.5 AUDIT OF CHANGE ORDERS

3.5.1 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 date of acceptance thereof, 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.

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

3.5.3 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.

(x) worksheets used to prepare the COR or 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.

3.5.4. In the event Contractor’s claim for a Change Order is demonstrated to be unsupported or lacking merit, Contractor shall reimburse the University its actual costs for review of the Change Order and any audit which may be deducted from any amount(s) due the Contractor.

3.6 SUPPLEMENTAL CONSTRUCTION COSTS

Whenever the Bid Item "Supplemental Construction Costs" appears in the Bidder's Proposal, all additional or supplemental work authorized under this provision will be incorporated into the Contract by Change Order pursuant to Article 3.1. The Change Order will describe the additional or supplemental work with any

associated cost changes.

4. PROTECTION AND CONTROL OF PREMISES

4.1 RESPONSIBILITY FOR WORK

4.1.1 The Contractor shall be responsible for damages arising from its work on the Project, to any part of the Project work, both temporary and permanent, to adjoining property and to THE UNIVERSITY property both within and outside the project limits. The Contractor shall, at its own expense, protect finished work susceptible to damage and keep the same protected until the Project is completed and accepted by THE UNIVERSITY.

4.1.2 All Contractor and Sub-Contractor personnel are required to carry, and display when requested, a form of photo identification acceptable to THE UNIVERSITY.

4.1.3 The Contractor shall make, use, and provide proper, necessary, and sufficient precautions, safeguards, and protection against the occurrence of accident, injury, damage or hurt to person or property during the progress of the work. The Contractor alone shall be responsible for the safety, efficiency, and adequacy of its plant, appliances, and methods, and for damage or injury which may result from its failure to act in a safe, careful, efficient, and workmanlike manner. Any action or direction by THE UNIVERSITY or its representatives relating to the adequacy or implementation of the Contractor's precautions, safeguards, and protection shall in no manner relieve the Contractor of any of its obligations or responsibilities hereunder.

4.1.4 In case of an emergency which threatens persons or property, the Contractor shall act, without previous instructions from THE UNIVERSITY, in a diligent and proper manner to remedy the situation. The Contractor shall notify THE UNIVERSITY immediately. Claims for compensation by the Contractor for Extra Work arising from emergencies not caused by the Contractor shall be documented and promptly submitted for review and approval. Where the Contractor has notified THE UNIVERSITY of such emergency but has not taken any action, it shall act as instructed or authorized by THE UNIVERSITY.

4.2 USE OF PREMISES

4.2.1 Prior to the use of THE UNIVERSITY premises, the Contractor shall obtain the approval of THE UNIVERSITY for the Contractor's staging area(s), access and egress to the premises, parking area(s) for Contractor vehicles and equipment, elevator use, and any other use of THE UNIVERSITY property, facilities, or on site utilities. The Contractor shall notify THE UNIVERSITY no later than 7 days in advance of any utility shutdowns that affect THE UNIVERSITY facilities. All cut overs of existing mechanical and electrical services shall be done at a time convenient to THE UNIVERSITY and any other private or public agency having jurisdiction, so as not to interfere with facility operations.

4.2.2 The Contractor shall comply with the rules and regulations of THE UNIVERSITY. The Contractor shall confine its apparatus, the storage of materials and the operations of workmen to limits indicated by law, ordinances, permits, contract limit lines as established, or directions of THE UNIVERSITY and shall not unreasonably encumber the premises with its materials. The Contractor shall maintain a reasonably clean job site free of debris and litter.

4.2.3 The Contractor shall be responsible for hoisting and distributing material and equipment throughout the Project for its work, and the work of its subcontractors. The Contractor shall handle materials in a controlled manner with as few handlings as possible. The Contractor shall not drop or throw materials from heights. The Contractor shall not load or permit any part of a structure to be so loaded as might endanger its safety or integrity.

4.2.4 The Contractor agrees to THE UNIVERSITY's use and occupancy of a portion or unit of the Project after the portion or unit has been declared Substantially Complete by THE UNIVERSITY.

4.2.5 The Contractor shall request of and obtain from THE UNIVERSITY specific instructions, rules and regulations regarding the required conduct of the Contractor during the construction so that the security and safety of personnel and property, including both THE UNIVERSITY's and the general public's, will not be endangered. THE UNIVERSITY will not allow an increase in the Contract amount due to the Contractor's failure to determine the conditions under which it must perform its contractual obligations. The Contractor shall enforce THE UNIVERSITY's instructions regarding but not limited to signs, advertisements, fires, smoking, alcohol, safety and cleanliness on the site.

4.2.6 Accessibility to the work area shall be determined by the Contractor and approved by THE UNIVERSITY, unless otherwise indicated in the Contract Documents. It is the Contractor's responsibility to make arrangements for use of public and/or private properties required to execute and complete the work under this Contract.

4.2.7 Space that the Contractor may require for plant, equipment, storage or other purposes, in addition to that available therefor at the site of the Project, shall be procured by the Contractor and the cost thereof is considered to be included in the prices bid for the various items scheduled in the Bid. In event of default, THE UNIVERSITY has the right to take over and occupy such space, or cause it to be occupied, for the purpose of completing the Project, at the Contractor's expense. If leased, the lease shall contain a provision that in event of default by the Contractor the lease may be assigned to THE UNIVERSITY or its nominee. The Contractor agrees, in event of said default, that it will make such assignment. At the time of execution, a copy of all lease agreements shall be submitted to THE UNIVERSITY.

4.2.8 The Contractor shall provide watchmen service, when necessary or when directed by THE UNIVERSITY throughout the period of construction, to adequately protect the work, stored materials and temporary structures located on the premises, and to prevent unauthorized persons from entering upon the construction site.

4.2.9 The Contractor shall adequately insure, secure and protect its own tools, equipment, materials and supplies.

4.2.10 Regular working hours for the Contractor are from 7:00 a.m. to 4:30 p.m., Monday through Friday, unless otherwise limited by applicable State or local law. The Contractor shall obtain the written approval of THE UNIVERSITY for performance of work other than during regular working hours or on weekends or Holidays. Standard THE UNIVERSITY Holidays are as follows: New Year’s Day, Martin Luther King Day, President’s Day, Good Friday, Memorial Day (Monday observance), Independence Day, Labor Day, Thanksgiving Day and the day after, and Christmas Day. The Contractor shall advise THE UNIVERSITY no less than seven (7) days in advance of work to be performed during such times. This shall not preclude taking prudent and necessary actions in an emergency situation.

4.3 MAINTENANCE AND CLEANING OF PREMISES

4.3.1 The Contractor shall maintain and clean the premises as necessary to ensure a safe, orderly and clutter-free working environment. The Contractor shall comply with the following cleaning requirements:

4.3.2 The Contractor shall retain all stored items in an orderly arrangement to allow maximum access, not impede drainage or traffic, eliminate fire hazards and provide proper protection of materials. Weekly, and more often if necessary, the Contractor shall inspect all material storage conditions on the site and restack, tidy, or otherwise service material storage conditions to maintain an orderly arrangement. Scrap, debris, waste materials, and other items not required for the Work shall be regularly disposed of in accordance with the requirements set forth below. The Contractor shall wet down dry materials to minimize dust and prevent blowing dust. The Contractor shall maintain the site in a neat and orderly condition at all times.

4.3.3 The Contractor shall provide adequate storage for all items awaiting removal from the job site, observing all requirements for fire protection, health and protection of the environment. Combustible waste, scrap, rubbish, etc., shall be stored in properly sized metal containers (with metal covers where practical) pending removal from the premises. Pest control services shall be provided as necessary to control vermin, rodents and other

pests. Daily, and more often as necessary, the Contractor shall inspect the site and move all scrap debris and waste material to the place designated for their storage. At least once a week and more often if necessary, the Contractor shall completely remove and legally dispose of all scrap, debris and waste material from the job site. Placement of waste containers and carting schedules shall be submitted to THE UNIVERSITY for THE UNIVERSITY's review and approval. If the Contractor fails to remove debris from the site within three days after it has been given written notice to do so by THE UNIVERSITY, THE UNIVERSITY will have the debris removed by others and the cost backcharged to the Contractor.

4.3.4 Weekly, and more often if necessary, the Contractor shall sweep all interior spaces clean. "Clean", for the purpose of this Subparagraph, shall be interpreted as meaning free from dust and other material capable of being removed by use of reasonable effort and a hand-held broom.

4.3.5 Preparatory to the installation of any succeeding materials, the Contractor shall clean all structures, or pertinent portions thereof, to the degree of cleanliness recommended by the manufacturer of the succeeding material, using all equipment and materials required to achieve the required cleanliness.

4.3.6 The Contractor shall schedule cleaning operations so that dust and other contaminants resulting from any cleaning process will not fall on wet, newly painted surfaces.

4.3.7 The Contractor shall schedule final cleaning, as approved by THE UNIVERSITY, to enable THE UNIVERSITY to accept a completely clean project. Prior to completion of Work, the Contractor shall remove from the job site all tools, surplus materials, equipment, scrap, debris and waste. The Contractor shall remove all traces of soil, waste material, mortar and paint droppings, grease and other foreign matter from all interior and exterior surfaces. All floor slabs shall receive a final steam cleaning.

4.4 FIRE PREVENTION ON PREMISES

4.4.1 Each Contractor shall perform its work on or about the premises in a careful manner with full consideration to fire prevention as required by the New Jersey Uniform Fire Code (NJUFC), N.J.A.C. 5:71-1 et seq., and its referenced standards. Fire resistant materials shall be used for temporary enclosures. Storage of flammable materials on the site shall be subject to limitations specified in the NJUFC and the approval of THE UNIVERSITY, and shall be the Contractor's responsibility. Accessibility to fire hydrants shall be maintained at all times. On site open burning of rubbish, garbage, trade waste, leaves or plant life is strictly prohibited by New Jersey law.

4.4.2 Chemical extinguishers approved by THE UNIVERSITY shall be provided by the Contractor during the progress of the work where specified by the NJUFC or required by Fire Officials from the DCA Bureau of Fire Safety or the local fire department. In addition, the Contractor shall be responsible for furnishing and maintaining his own extinguisher equipment in storage sheds, warehouses, Contractor's offices, and workmen's temporary buildings.

4.4.3 The Contractor shall maintain an active program of fire prevention to keep workers fire conscious during the entire Contract duration. It shall designate one member of its organization to execute and coordinate the fire control measures of its own organization, that of all subcontractors under its jurisdiction and that of all other personnel at the site. It shall report to THE UNIVERSITY any lack of cooperation or refusal to participate on the part of any worker or subcontractor with regard to the fire prevention program. Failure of any worker or subcontractor to cooperate with the Contractor in carrying out the above program shall be grounds for barring that individual or firm from the Project.

4.4.4 Temporary heating systems provided under Article 5.6 shall conform to the requirements of the NJUFC where the building is fully or partially occupied.

4.4.5 Where required under the NJUFC, the Contractor shall be responsible for obtaining required permits from the DCA Bureau of Fire Safety for flammable or combustible gas or liquid storage, fumigation/fogging, blasting, welding, burning, cutting and torch-applied roofing or paint removal.

4.5 PROTECTION AGAINST DAMAGE

4.5.1 The Contractor shall protect existing property, structures, curbs, walks, drives, trees, shrubs, lawns, and landscape work on the site or affected by its activities from damage and shall provide such guards and covering as necessary. Damaged items shall be repaired or replaced at the Contractor's expense to the satisfaction of THE UNIVERSITY. No extension of time will be allowed for repair or replacement of damaged items. Should the Contractor not repair or replace such damaged items, THE UNIVERSITY will take corrective measures and deduct the cost from the Contract Price.

4.5.2 It shall be the responsibility of the Contractor at all times to protect construction excavations, trenches up to 10 feet from structures, and the structures from water damage, including damage by rainwater, ground water, backing up of drains, downspouts, or sewers. The Contractor shall construct and maintain necessary drainage and do pumping required to keep the Project free from water, and shall perform pumping necessary for the full and proper execution of the construction work and protection of the Project including equipment installed therein.

4.5.3 Beyond a point 10 feet from facilities, it shall be the responsibility of the Contractor to protect the trenches by shoring or other methods and perform pumping required to dispose of the surface and subsurface water to permit the satisfactory performance of the work. Each Contractor shall provide its own pumping equipment of adequate capacity and shall be responsible for fuel, cost of operators, and supervision.

4.5.4 The Contractor shall protect equipment, such as electric switch gear and HVAC equipment that is subject to damage by moisture during the period from installation of equipment to completion of the Project acceptance, and shall provide temporary waterproof enclosures and ceilings over such equipment. The interior of the enclosure shall be kept dry by whatever measures are necessary. Special openings shall be provided in the enclosures and ceilings in order to service the equipment during the protection period. The Contractor shall procure and maintain, during the protection period, insurance covering the subject equipment in the full amount of the value of the equipment. See Article 9.2- INSURANCE for submission of proof of carriage of insurance.

4.5.5 The Contractor shall remove snow and ice as may be required for the proper protection and prosecution of the Contract and to provide access to the Project Site and for the safety of workers, UNIVERSITY personnel, students and the public.

4.5.6 In the event of temporary suspension of work, or during inclement weather, or whenever THE UNIVERSITY shall direct, the Contractor shall protect, and shall cause its subcontractors to protect, carefully its and their work and materials against damage from the weather. If, in the opinion of THE UNIVERSITY, work or materials have been damaged, such work or materials shall be removed and replaced at the expense of the Contractor.

4.5.7 Unless otherwise specified or shown in the Contract Documents, the Contractor shall protect the entire construction area. It shall also install four foot high snow fence around trees that are to remain and that are located within the Contract Limit Line, at a distance equal to the branch spread of the tree or as approved by a licensed arborist.

4.6 PROTECTION OF PRIVATE PROPERTY

The Contractor shall not enter on or make use of private property in the prosecution of the Project unless written permission therefor is secured, in duplicate, from the owner of the property, one copy of which shall be filed with THE UNIVERSITY. The Contractor shall promptly restore or repair, without cost to THE UNIVERSITY and in a manner satisfactory to the owner of the property, property damaged or destroyed by its operations. Special attention shall be given to the protection of existing landscape features and natural vegetation.

4.7 PROTECTION OF PUBLIC UTILITIES

4.7.1 The terms public utility or public utilities used in this Contract shall be construed to include those publicly and privately owned. Within the site of the Project there may be public utility facilities, and notwithstanding any other clause or clauses of this Contract, the Contractor shall not proceed with its work until it has made diligent inquiry at the offices of the utility companies and municipal authorities, THE UNIVERSITY, the University's energy partner, UMM Energy Partners, LLC or other owners to determine their exact location. The Contractor shall notify, in writing, the utility companies and municipalities or other owners involved of the nature and scope of the Project and of its operations that may affect their facilities or property. Two copies of such notices shall be sent to THE UNIVERSITY.

The Contractor's attention is called to the fact that the exact locations of the various overhead and underground lines, utilities, and structures located throughout the Project are unknown, and the Contractor is advised to use extreme caution during construction. The plans showing the approximate locations of the various overhead and underground lines, utilities, and structures are to be used only as guidelines and are not guaranteed as to their accuracy or correctness. Contractor is responsible for the coordination and cost of locating underground utilities.

4.7.2 The Contractor shall carry out its work carefully and skillfully and shall support and secure public utility facilities so as to avoid damage to them. Flow in drains and sewers shall be satisfactorily maintained. The Contractor shall not move any public utility facilities without the owner's written consent and, at the completion of the work, their condition shall be as safe and permanent as before. When public utility facilities are damaged by the Contractor, it shall notify their owner, who shall cause the damage to be repaired at the Contractor's expense. If the cost thereof is not paid by the Contractor within 30 days after repairs have been completed, the Contracting Officer shall deduct an amount sufficient to cover the cost from any monies due or that may become due the Contractor under this Contract. Service connections damaged by the Contractor shall be repaired by competent skilled mechanics.

4.7.3 During the normal course of construction the Contractor may find it necessary to temporarily relocate certain public utilities in order to proceed. The Contractor will be responsible for the coordination and scheduling of all such relocations with the utility owner. If the Bid Item "Protection of Public Utilities" appears in the Bidder's Proposal, THE UNIVERSITY shall reimburse the Contractor for these relocation services upon receipt of an itemized invoice from the participating utility owner, and only for the amount of the invoices, to be submitted along with the Contractor's monthly invoice. If the Bid Item "Protection of Public Utilities" does not appear in the Bidder's Proposal, the Contractor shall assume all costs associated with the temporary relocation of public utilities.

When facilities requiring relocation belong to THE UNIVERSITY, the Contractor shall make requests for relocation by THE UNIVERSITY. The cost of such relocation shall be borne by THE UNIVERSITY.

4.7.4 Under no circumstances shall the Contractor be entitled to damages of any kind arising from the need to relocate public utilities in order to complete the Work.

4.8 PROTECTION OF EXISTING MONUMENTS

Existing monuments and title stones which need not be removed shall be left in place and protected by the Contractor against damage and dislocation. When relocation or change in the grade of existing monuments is necessary, they shall be protected in their original position until their removal is approved by THE UNIVERSITY, and shall be reset when directed and in conformance with the new lines and grades to be furnished by the Contractor. Monuments and title stones that are to be left in place or reset and are moved without approval of THE UNIVERSITY shall be replaced at the Contractor's expense.

4.9 MAINTENANCE AND PROTECTION OF ROADWAY AND PEDESTRIAN TRAFFIC

4.9.1 The Contractor shall conduct its work with the least possible obstruction of traffic. The convenience of the public and of the residents adjacent to the Project, and the protection of persons and property, are of primary importance and shall be provided for by the Contractor in an adequate and satisfactory manner. When a

detour will be established, the Contractor shall make arrangements for establishing, maintaining, and signing for it and provide safety measures as are necessary to provide traffic guidance and protection. The signage shall include safety, directional and informational signals and devices necessary to provide effective pedestrian and vehicular circulation. The number and location of the signals and devices shall be subject to THE UNIVERSITY's approval.

4.9.2 The Contractor shall erect or place, and maintain in good condition, appropriate and adequate barricades, signs, lights, beacons, approved red flasher units, rubber cones, drums and other warning and danger signals and devices at working sites, closed roads, intersections, open excavations, locations of material storage, standing equipment and other obstructions; at points where the usable traffic width of the road is reduced; at points where traffic is deflected from its normal course of lanes; and at other places of danger to vehicular or pedestrian traffic or to completed work. Flagmen will be used as necessary. The various traffic control and warning devices shall be approved by THE UNIVERSITY.

4.9.3 The Contractor shall provide, maintain and remove when no longer required, temporary driveways, parking areas and walkways that may be necessary to allow access to all parts of the Project, to adjacent property, and for handling of materials and equipment. Should the Contractor elect to place materials that will be incorporated into the permanent driveways, parking areas or walks, it shall not do so without having prepared the subgrade as may be elsewhere required by the Specifications nor will it be relieved from responsibility for providing additional materials or for reworking the subgrade, if required to make the improvements conform fully with the Specifications.

4.9.4 The Contractor shall obtain permission in writing from THE UNIVERSITY before using existing driveways or parking areas for construction purposes. It shall maintain such driveways and areas in good condition during the construction period, and at the completion of the Project, shall leave them in the essentially equal or better condition as at the start of the work to the satisfaction of THE UNIVERSITY.

4.9.5 The Contractor shall employ construction methods and means that will keep flying dust to the minimum. Trucks hauling materials shall have tight tail gates and shall be loaded with adequate freeboard of not less than three inches, without precarious cones or piles of material. It shall provide for the containment of dust on the Project, and on roads, streets and other areas immediately adjacent to the Project limits, wherever traffic or buildings that are occupied or in use are affected by such dust. The materials and methods used for dust control shall be subject to the approval of THE UNIVERSITY.

4.9.6 When vehicular or pedestrian traffic, or both, is to be maintained on new or existing roadways and pedestrian paths of travel, the Contractor shall plan and carry out its work to provide for the convenient and safe passage of such traffic. The Contractor shall provide for prompt removal from such roadways and pedestrian paths of all dirt and other materials that have been spilled, washed, tracked or otherwise deposited thereon by its hauling or other operations. Roadways and pedestrian paths within the limits of the Project which are reserved for traffic shall be maintained by the Contractor free from obstructions and in a smooth traveling condition at all times.

4.9.7 The Contractor shall not perform construction work above vehicular or pedestrian traffic until it obtains explicit written permission from THE UNIVERSITY. Subject to such permission, the Contractor shall provide the necessary devices and means to protect such traffic from falling construction materials and other objects and from painting operations, during the time that construction work is carried on above traffic.

4.9.8 The Contractor shall comply with local codes and ordinances affecting complete or partial roadway closings, detours and roadway and pedestrian protective measures. All costs associated with maintaining and protecting roadway and pedestrian traffic is at the Contractor's sole expense and is considered included in the Contract Price.

4.10 WORK FURNISHED BY OTHERS

4.10.1 THE UNIVERSITY may, and reserves the right to, enter upon the work site, or areas adjacent thereto, at any and all times during the progress of the work, or cause others to do so, for the purpose of performing work not included in these Contract Documents.

4.10.2 When such additional work is to be performed, the Contractor shall conduct its work so as not to interfere with or hinder the progress or completion of the work being performed by others. Moreover, the Contractor assumes the positive obligation of cooperating with such others and coordinating its activities with theirs. If there is a difference of opinion as to the respective rights of the Contractor and others doing work within the limits of or adjacent to the Project, THE UNIVERSITY will decide as to the respective rights of the various parties involved in order to secure the completion of THE UNIVERSITY's work in general harmony and in a satisfactory manner. THE UNIVERSITY's decision shall be final and binding on, and shall not be cause for claims by the Contractor for additional compensation. In the event the Contractor fails to cooperate with work furnished by others that impacts the schedule, the Contractor shall be responsible for the associated costs of the impact.

4.10.3 The Contractor will not be held responsible for damage or loss to work performed on the Contract or on other contracts within or adjacent to the site of the Project that may be caused by or on account of the work of others. The Contractor will be held responsible for any damage or loss done or caused by its work or forces to the work performed by other contractors within or adjacent to the site of the Project and it shall repair or make good any such damage or loss in a manner satisfactory and without cost to THE UNIVERSITY.

4.10.4 The Contractor shall examine work or materials not included in this Contract, the installation of which will affect the work in this Contract, and should the same be imperfect, incorrect or insecure, it shall notify THE UNIVERSITY immediately in order that the same may be rectified. The Contractor shall arrange its work and shall place and dispose of the materials being used so as not to interfere with the operation of others within the limits of the Project or adjacent thereto. The Contractor shall join its work with that of the others in an acceptable manner and shall perform it in proper sequence to that of the others.

5. MOBILIZATION AND TEMPORARY FACILITIES

5.1 MOBILIZATION

5.1.1 When the item Mobilization and General Requirements (Mobilization) is included as a Contract Item it shall consist of initiating the Contract, and shall include such portions of the following as are required at the beginning of the Project: setting up the Contractor's general plant, offices, shops, storage areas, sanitary and other facilities as required by the Specifications, by Federal, State, or local law or by regulation; providing access to the Project site; obtaining necessary permits, grants and licenses, and payment of fees; protecting existing utilities; lighting work areas; providing shop drawings; submittals and samples; sampling and testing of materials; providing required insurance and bonds other than the Performance Bond and Payment Bond, unless Insurance Bid Items are included in the Bidder’s Proposal. Mobilization shall also be deemed to include the Contractor’s cost of ongoing maintenance and protection of the work premises, demobilization and remobilization as necessary to accommodate sequencing the work, and all costs associated with the provision and maintenance of temporary facilities, unless a specific Bid Item has been provided in the Bidder’s Proposal for a specific element of work (e.g. Field Offices).

5.1.2 Payment for Mobilization as hereinbefore specified will be made for the lump sum price bid therefore, regardless of the fact that the Contractor may have, for any reason, shut down its work on the Project or moved equipment away from the Project and back again.

5.1.3 Except where a specific Bid Item has been provided in the Bidder’s Proposal for a specific element of work, the provisions for payment of the Contract Item Mobilization supersede any provisions elsewhere in the Contract for including the costs of these initial and ongoing services and facilities in the prices bid for the various Contract Items in the Proposal.

5.1.4 Payment to the Contractor for the item Mobilization will be made in accordance with the following schedule:

(a) When five (5) percent of the work is completed - 25 percent of the amount bid for mobilization or

two and one half (2 1/2) percent of the total Contract Price, whichever is less, will be paid.

(b) When ten (10) percent of the work is completed an additional 25 percent of the amount bid for mobilization or five (5) percent of the total Contract Price, whichever is less, will be paid.

(c) When 25 percent of the work is completed an additional 25 percent of the amount bid for mobilization or six (6) percent of the total Contract Price, whichever is less, will be paid.

(d) When 50 percent of the work is completed – an additional 25 percent of the amount bid for mobilization or ten (10) percent of the total Contract Price, whichever is less, will be paid.

(e) The percentage of work completed shall be the total of payments earned, exclusive of the amount paid for this item, as shown on the monthly certificates of the approximate quantities of work done.

(f) Upon completion of all work on the Project, payment for any amount bid for mobilization in excess of ten (10) percent of the total Contract Price will be paid.

5.1.5 When the item Mobilization is not a Contract Item, no specific payment will be made for the work included in this Article. All costs thereof shall be included in the prices bid for the various scheduled Contract Items.

5.2 FIELD OFFICE AND SANITARY FACILITIES

5.2.1 The Contractor shall provide a field office on or as convenient to the job site as possible, sufficient to accommodate THE UNIVERSITY representatives assigned to the Project. Such space, together with necessary furnishings, equipment, supplies, etc., and all utilities shall be as required by this Article.

5.2.2 Within thirty calendar days of the Notice to Proceed, the Contractor shall provide and maintain the mobile trailer units described herein with parking facilities for five vehicles. The Field Office and the parking facilities will be for the use of the Architect/Engineer, and their staff.

5.2.3 The Field Office shall be a new or like new approved weatherproof mobile trailer with a 7- foot minimum ceiling height, weatherproof windows (screened), doors each equipped with adequate locking devices, and a burglar and fire alarm system to be connected to a local 24-hour security service. The Field Office location shall be approved by THE UNIVERSITY. The trailer shall be adequately tied down to resist high winds. The Contractor shall level the Field Office trailer and provide entrance steps, landing platforms, handrails, and under trailer enclosures as directed by THE UNIVERSITY. The Contractor shall obtain required DCA permits and approvals for the Field Office as well as any subsequent permit renewals.

5.2.4 All Field Office windows are to be protected by expanded metal grilles with angle frames which are to be through bolted to 2" x 2" x 1/4" plates. All external doors are to be heavy duty construction with cylinder locks and with two 2" x 2" x 1/4" angle bars which can be placed across the closed door and padlocked in place. Padlocks to be placed through eye bolts which are to be through-bolted to 2" x 2" x 1/4" plates. Contractor shall supply the padlocks and all keys (original and copies) to THE UNIVERSITY.

5.2.5 The Contractor shall maintain and service the Field Office trailer as specified in this Article. Upon project completion, and only after receipt of written authorization from THE UNIVERSITY, the Contractor shall remove the Field Office from the job site.

5.2.6 Any relocation of the Field Office trailer and utilities during the entire project duration shall be the Contractor’s responsibility.

5.2.7 If requested by the University, Contractor shall provision the Field Office as follows:

(a) Provide adequate lighting, electrical receptacles, and ground fault circuit interruptions as required by OSHA.

(b) Provide lighting to furnish a minimum of 100 foot-candles at desk height uniformly in all areas.

(c) Provide heating and cooling equipment and any necessary fuel to maintain an ambient air temperature of 70 degrees F +/- 5 degrees F.

(d) Provide and maintain a source of hot and cold potable water for use in a flushing water closet, and for hand washing. The Contractor shall be responsible for plumbing hook-up to a sanitary line or for provision of a storage tank.

(e) Provide five separate phone lines; three lines to be equipped for voice; one for fax and one with modem capabilities. Provide and install the phone system with three new touch-tone phones with answering machine, speaker and hunting capabilities. All equipment shall be approved by THE UNIVERSITY prior to installation.

(f) Provide OSHA required fire extinguisher.

(g) Furnish the Field Office with the following new equipment and furniture as approved by THE UNIVERSITY:

Table 5.2.7: Field Office Equipment

Description	Quantity
Desk (60" x 30") with three lockable draws and rolling armchair	3
Drafting table (60" x 36") with drawer and 54" straightedge and stool	1
Reference table (54" x 30")	1
Conference table (36" x 96")	1
Metal folding chairs with saddle seat and steel back	10
Storage cabinet (36" x 18" x 6') with lock and two keys	1
Two file cabinets, four (4) drawers (legal size) with lock and key.	2
Two file cabinets, fireproof, four (4) drawers (legal size) with lock and key.	2
Greensteel marker board (36" x 48"), mounted, and supply of markers including replacements as required	1
Copier, using 8-1/2" x 11", 8-1/2" x 14", and 11" x 17" paper	1
Two cubic feet refrigerator/freezer	1
Wall clock (battery operated) 12" diameter face	1
Plain paper laser and facsimile machine capable of 8½ x 11 and 8½ x 14" Paper	1
Automatic Drip Coffee machine (10 cup)	1
Fully stocked first-aid cabinet in compliance with OSHA regulations	1
Microwave	1
Bookcase (36 x 42) with four shelves	1

5.2.8 The Contractor shall maintain and service the Field Office in accordance with the following requirements. The Contractor shall:

(a) Repair and clean the Field Office, including complete janitorial services, including cleaning and emptying of any temporary sanitary system, and trash removal, at a minimum frequency of once per week to the level approved by THE UNIVERSITY.

(b) Repair, clean, and adjust equipment specified under Sub-article 5.2.7. and provide repair/maintenance service with 24 hour response/repair time for proper operation of all copiers, typewriters, computers, and any other office equipment whether supplied by the Contractor or

supplied by others.

(c) During other than normal working hours, provide security measures and area protection adequate to insure the safety and integrity of the project site.

(d) Provide all necessary paper, including sanitary paper, and other office supplies as required by THE UNIVERSITY.

(e) Provide adequate bottled water and paper cups inside the Field Office.

(f) Provide coffee, filters, plastic stirrers, sugar, cups, napkins, and non-dairy creamer.

(g) Maintain and restock the first-aid cabinet as required.

5.2.9 Payment for the Field Office materials and services identified in this Article shall be as follows:

(a) Included and to be paid for under the Bid Item "Mobilization and General Requirements" shall be the costs for the following:

(1) Trailer site preparation and trailer delivery.
(2) Trailer utility and sanitary hookups.
(3) Trailer set-up, including: skirting, tying down, securing and making the trailer weatherproof; wooden stair and platform construction (including handrails); installation of burglar alarm system; and other miscellaneous efforts required to provide safe and orderly access to the trailer. Further, any and all labor and materials required for repair and maintenance to the above for the duration of the project.
(4) Obtaining and paying for any and all permits required for hauling, building and making utility connections for the trailer.
(5) Any costs associated with the location and/or relocation, for any reason, of the Field Office and utilities.
(6) All Field Office equipment and furnishings identified in this Article.
(7) Trailer demobilization and removal at the completion of the project, including utility disconnections, temporary construction and disposal fees.
(8) Any and all other costs associated with mobilizing, erecting, maintaining, repairing, demobilizing and removing the Field Office trailer and associated temporary improvements/structures.
(9) All costs associated with Sub-article 5.2.8 Items 1, 2 and 3.

(b) Included and to be paid for under the Bid Item Allowance "Field Office" shall be the costs for the following:

(1) Monthly rental of the Field Office trailer.
(2) THE UNIVERSITY telephone usage.
(3) THE UNIVERSITY electrical power usage.
(4) THE UNIVERSITY heating fuel expenses.
(5) Office supply account covering all costs associated with Sub-article 5.2.8 Items 4, 5, 6 and 7.

The Contractor shall submit copies of invoices from the trailer rental and utility companies and receipts for office supply expenses along with the monthly applications for payment. The Contractor shall be reimbursed for the items listed in this Sub-article 5.2.9.B as a direct expense without any additional markups for overhead or profit.

All items purchased by the Contractor under Article 5.2 shall become the property of the Contractor for his use or disposition upon removal of the Field Office.

5.3 CONSTRUCTION SIGN

The Contractor shall construct and install construction sign(s) as indicated in the Contract Documents. Lettering shall be as shown in the Contract Documents and shall include the names of the Contractors engaged on the Project and such other persons or entities as directed. The sign(s) shall be securely installed to remain rigid and plumb, shall be maintained in good condition throughout the construction period, and shall be removed when directed by THE UNIVERSITY. If the Contractor desires to install a sign other than those specified in the Contract Documents it shall first obtain the approval of THE UNIVERSITY.

5.4 TEMPORARY WATER

5.4.1 The Contractor shall provide, protect and maintain an adequate water supply for use on the Project during the period of construction, either by means of the permanent water supply line, or by the installation of a temporary water supply line. This water supply line shall be made available within 15 days after written authorization to proceed with the Project. If the source of water supply is a well, provisions covering the supply of water will include the installation of necessary power driven pumping facilities by the Contractor, as well as protection of well from contamination. The water supply shall be tested periodically by the Contractor and, if necessary, shall be chlorinated and filtered.

5.4.2 The Contractor will be required to install a valved temporary water supply connection at a point approximately 10 feet from the building or buildings and provide a meter; the actual location of the point to which the water is brought shall be determined by the Contractor.

5.4.3 If there is a charge for water, said charges shall be paid by the Contractor. When temporary water lines are no longer required they shall be removed by the Contractor and any part, or parts, of the grounds or building disturbed or damaged shall be restored to the original condition by the Contractor. The Contractor shall install its permanent water lines to the boiler room and heating equipment in sufficient time to be available for supplying water for testing and operation of the heating system when needed to supply heat on the Project.

5.5 TEMPORARY LIGHT AND POWER

5.5.1 The Contractor shall extend electrical service to the building or buildings at locations approved by THE UNIVERSITY; temporary electrical service shall be independent of the existing permanent service. Initial temporary service shall be three phase or single phase depending upon which phase arrangement is nearest to the Project site. This service shall be installed within 15 days after written Notice to Proceed with the Project. When the Contract calls for three phase permanent service, the Contractor shall install same within a reasonable time to permit use by all the trades.

5.5.2 The Contractor shall extend the service into the building and shall provide such receptacles and lighting as required for the proper conduct of the Work.

5.5.3 The Contractor shall pay for the cost of all electric energy used, and it shall also maintain and service any electrical equipment installed and necessary for maintaining heat after same is required in the building.

5.5.4 When the temporary electrical lines are no longer required they shall be removed by the Contractor and it shall restore to their original condition any part, or parts, of the grounds or building disturbed or damaged.

5.5.5 Any Contractor who fails to carry out its responsibility in the supplying of uninterrupted light and power to expedite the Project, as set forth in this Contract, shall be held responsible for such failure and the Contracting Officer shall have the right to take such action as the Contracting Officer deems proper for the protection and conduct of the work and shall deduct the costs involved from the amount due the Contractor.

5.6 TEMPORARY HEAT

5.6.1 The Contractor shall provide, protect and maintain, at its own expense, sufficient heat to the Project during the entire period of construction either by using an THE UNIVERSITY approved method of temporary heat

or, when operational, the permanent heating system.

5.6.2 Prior to any building being enclosed by walls and roof, if the outside temperature shall fall below 40 degrees F., at any time during the day or night, and the work in progress requires heat for execution and protection, the Contractor shall furnish acceptable means to provide sufficient heat to maintain a temperature of 40 degrees F., for that portion of the work which requires same.

5.6.3 Heating of field office, storage spaces, concrete and masonry materials and working area heating required prior to enclosure, as specified herein, shall be provided by the Contractor as specified in the Contract Documents.

5.6.4 When the outside temperature falls below 40 degrees F., at any time during the day or night, the Contractor shall furnish sufficient heat, by the use and maintenance of LP gas heaters or other system approved by THE UNIVERSITY, to maintain a temperature of 45 degrees F. within the enclosed area of the building at all times and shall remove same when no longer required. The Contractor shall provide or arrange at its own expense supervision of the LP gas heaters at all times prior to start of the permanent heating system. The Contractor shall furnish and pay for all fuel required for the above temporary installation during the term of this contract.

5.6.5 The Contractor will be held responsible for freeze ups following enclosure of the building. The Contractor shall remove soot, smudges, and other deposits from walls, ceilings, and exposed surfaces which are the result of the use of heating equipment including the permanent heating system during the period of its use for supplying heat. The Contractor shall not do any finish work until the areas are properly cleaned.

5.6.6 A building, or major unit thereof, shall be considered "enclosed" when: (1) the exterior walls have been erected; (2) temporary roof or permanent roof is installed and in watertight condition; and (3) temporary or permanent doors are hung and window openings are closed with either permanent or temporary weather tight enclosures (cardboard, muslin and light canvas materials are not acceptable; any impervious transparent material is acceptable). A major unit of building as referred to herein shall be: (1) an entire separate structure; (2) a fully enclosed wing which shall have a floor area equal to at least 50 percent of the total floor area of

the Project; or (3) a section which shall have a floor area equal to at least 50 percent of the total floor area of the Project.

5.6.7 The Contractor shall continue to provide acceptable means of temporary heat until the permanent heating system is operational. If the permanent heating system is not acceptable to THE UNIVERSITY for providing sufficient heat, the Contractor shall continue to provide temporary heat as described above and as ordered by THE UNIVERSITY.

5.6.8 When the heating system provided by the Contractor is designed for tie-in to existing steam lines for source of heat, THE UNIVERSITY will provide steam for temporary heat through the Project's permanent heating system and the cost shall be paid to the University by the Contractor. The Contractor shall arrange, at its own cost, for connections and separate meters.

5.6.9 Valves, traps and other parts of the heating system which are permanently installed by the Contractor and used for supplying heat during the construction period need not be replaced, provided the system was in acceptable condition prior to its use, and further, that the system is properly cleaned and adjusted to operate after the permanent system is in use to the satisfaction of THE UNIVERSITY. Seven (7) days prior to acceptance by THE UNIVERSITY of the heating system as substantially complete, the Contractor shall replace disposable filters or turn over spare sets of filters to THE UNIVERSITY.

5.7 TEMPORARY PARTITIONS, ENCLOSURES, GLAZING BREAKAGE AND CLEANING

5.7.1 Whenever necessary, in order to maintain proper temperatures for the prosecution of the work, or for the protection thereof, the Contractor shall furnish and maintain temporary enclosures and partitions. All

openings in exterior walls not enclosed with finishing materials shall be closed temporarily. Window sashes may be installed and glazed. Temporary wood doors shall be provided at door openings. Temporary partitions shall be securely anchored, stable, well-constructed and maintained, and fit for the purpose intended, ie. Work area separation, protection of the public, delineation of pedestrian pathways, etc.

5.7.2 The Contractor shall be responsible for all breakage of glazing after same has been installed, no matter by whom or what caused, and shall replace all broken, scratched or otherwise damaged glazing before the completion and acceptance of the Work. The Contractor shall wash all glazing on both sides at completion, or when directed, removing all paint spots, stains, plaster, etc.

5.7.3 The Contractor shall provide and maintain necessary temporary dustproof partitions around areas of work in any existing building.

5.8 TEMPORARY, INTERMEDIATE AND HIDDEN WORK

5.8.1 The Contractor shall be responsible for temporary, intermediate and hidden work, including the furnishing and setting of sleeves, built in items, anchors, inserts, and chases for its work. The Contractor shall build these items into the construction. The Contractor shall build recesses, channels, chases, openings, and flues, and leave or create holes where shown on Drawings or where directed for steam, water or other piping, electrical conduits, switch boxes, panel boards, flues and ducts, or other features of the heating and ventilating work. Subcontractors requiring such recesses, channels, chases, openings, and flues shall furnish to the Contractor complete details and drawings of such as required in connection with the work. Such information shall be furnished in complete form and in ample time to allow the construction work to proceed without interruption or delay. These details and drawings shall be furnished in accordance with Article 6.5- SHOP AND WORKING DRAWING SUBMITTALS to THE UNIVERSITY for review and approval prior to installation.

5.8.2 The Contractor shall close, build in, and finish around or over openings, chases, channels, pockets, and sleeves after installation has been completed.

5.8.3 Positive instructions in writing shall be obtained from the Architect/Engineer before cutting or boring floor beams, floor constructions, or supporting members.

5.9 DEMOBILIZATION

At the completion of the Work and prior to final payment, the Contractor shall remove temporary facilities entirely from the site including, but not limited to the following: Field offices, trailers, shanties, sheds, temporary electric services, temporary water hydrants, temporary fences, project sign, job telephone, temporary roads, temporary toilets, temporary enclosures, dust barriers, and other temporary protection devices. The Contractor shall conduct final cleaning activities and restore all disturbed landscaping, street and sidewalk surfaces, subsurfaces and overhead structures, if any. Should the Contractor fail to remove such temporary facilities and restore disturbed conditions, THE UNIVERSITY shall perform such activities as necessary and deduct the cost from the Contractor's final payment.

6. PROJECT ADMINISTRATION AND DOCUMENT CONTROL

6.1 PROJECT MEETINGS

6.1.1 The Contractor, subcontractor, supplier or vendor whose presence is necessary, unless excused in writing by THE UNIVERSITY, shall attend project meetings when called by THE UNIVERSITY for the purpose of discussing the execution of the Work. The initial pre-construction meeting will generally be held prior to commencement of the work at a time, date and location to be set by the Contracting Officer.

6.1.2 General Requirements for Project Meetings:

(a) One of the persons designated by the Contractor to attend and participate in the project meetings shall have all required authority to commit the Contractor to solutions agreed upon in the project meetings.

(b) To the maximum extent practicable, advise THE UNIVERSITY at least 24 hours in advance of project meetings regarding all items to be added to the agenda.

(c) THE UNIVERSITY will compile the official minutes of each project meeting and will furnish three (3) copies to the Contractor. If the University delegates responsibility to prepare official minutes to the Contractor, the Contractor shall prepare such minutes at no additional cost to the University.

(d) Except as noted below for the Pre-Construction Meeting, Project Meetings will be held once every two weeks. The Contractor and THE UNIVERSITY shall coordinate as necessary to establish a mutually acceptable schedule for meetings.

6.1.3 Pre-Construction Meeting:

(a) A pre-construction meeting will be scheduled by THE UNIVERSITY. The Contractor shall provide attendance by an authorized representative and authorized representatives of all major subcontractors. THE UNIVERSITY will advise other interested parties and request their attendance. THE UNIVERSITY and the Contractor will arrange to review details of construction, and if appropriate, to walk the project with the Contract Drawings in hand and carefully observe all pertinent conditions relating to the construction of the Work, including the status of right-of-way, existing structures and obstructions to be removed, altered or changed.

(b) Minimum Pre-Construction Agenda: The Contractor shall be prepared to discuss:

(1) Organizational arrangement of Contractor's forces and personnel, and those of subcontractors, materials suppliers, Engineer and Construction Manager.
(2) Established channels and procedures for communications as approved by THE UNIVERSITY.
(3) Construction schedule, including sequence of critical work as described in Article 6.2- CONSTRUCTION PROJECT SCHEDULE.
(4) Contract Documents, including distribution of required copies of original documents and revisions.
(5) Processing of shop drawings and other data submitted to THE UNIVERSITY for review.
(6) Processing of field decisions and contract change orders.
(7) Rules and regulations governing performance of the Work.
(8) Procedures for safety and first aid, security, quality control, housekeeping, and other related matters.
(9) Existing conditions.
(10) Equal employment regulations.
(11) DBE requirements.
(12) Quality assurance.
(13) MSDS submittal requirements as set forth in Article 9.7- ENVIRONMENTAL COMPLIANCE AND LIABILITY.
(14) Subcontractor submittals and approvals as set forth in Article 1.9- ASSIGNING AND SUBCONTRACTING CONTRACT. The Contractor shall provide the initial submittals noted therein.
(15) Contract Completion and liquidated damages.
(16) University policies applicable to the Contractor, e.g. parking policies, contractor parking, permits, use of University electronic project management system, and University BIM standards

6.1.4 Project Meetings:

(a) Attendance: To the maximum extent practicable, assign the same person or persons to represent the Contractor and major Subcontractors, as requested by THE UNIVERSITY, at project meetings throughout progress of the Work. If requested by THE UNIVERSITY, subcontractors, material suppliers, and others shall attend those project meetings in which their aspects of the Work are involved.

(b) Minimum Agenda for Project Meetings:

(1) Review, revise as necessary, and approve minutes of previous meeting.
(2) Questions and issues unresolved at the previous Project Meeting.
(3) Architect/Engineer's and/or Contractor's unsatisfied request for information.
(4) Work accomplished since the previous Project Meeting, off-site fabrication problems, product delivery problems, proposed changes, and other circumstances which might delay progress of the Work.
(5) Corrective measures and procedures developed to regain planned and scheduled progress.
(6) Field observations, problems, Engineer's or Construction Manager's decisions, work quality, and employee work standards.
(7) Plan of the following three (3) month's Work.
(8) Status of DBE subcontractors.
(9) NPC, COR and Change Order statuses.
(10) CPM status.
(11) Submittal schedule.
(12) Safety.
(13) Others, as required.

6.2 CONSTRUCTION PROJECT SCHEDULE

6.2.1 The Contractor shall be responsible for preparing and furnishing, at the pre-construction meeting, an initial draft of a coordinated combined project schedule that incorporates the project schedules of the Contractor and its subcontractors' activities for the prosecution of the work. The schedule shall be a CPM (Critical Path Method) schedule with major milestones in sufficient detail satisfactory to THE UNIVERSITY.

6.2.2 Float, or slack time, in the schedule is defined as the amount of time between the early start date and late start date or the early finish and late finish date of any activity. The definition of float or slack time also includes the amount of time between the late finish date of the Contractor's schedule and the time for completion specified in the Contract Documents, if the Contractor's scheduled late finish date is earlier than the Contract Time. Float or slack time is not for the exclusive use or benefit of either the Contractor or THE UNIVERSITY, but for the overall benefit of the project as determined by THE UNIVERSITY. Extensions of time for performance under any and all of the provisions of this Contract will be granted only to the extent that the critical path of the project schedule is actually extended due to the delay beyond the required Contract completion date. The Contractor shall not sequester shared float through such strategies as excessively extending durations, artificially constraining resources, or introducing faulty logic relationships between schedule activities.

6.2.3 The Contractor shall prepare and maintain the Contract Schedule by the use of skilled and experienced scheduling personnel; each with at least five years' experience or the equivalent thereof in detailed scheduling. Such personnel shall be directly involved in the planning, scheduling, evaluating, and progress reporting of the work. The Contractor shall submit the qualifications of the scheduler/scheduling consultant for approval at the Pre-Construction Meeting. Should the scheduler/scheduling consultant's qualifications prove unacceptable to THE UNIVERSITY, the Contractor shall submit the qualifications of a substitute scheduler/scheduling consultant within seven (7) days of THE UNIVERSITY's rejection of the originally proposed personnel.

6.2.4 No later than 10 days after the Notice to Proceed, Contractor shall submit to THE UNIVERSITY a Detailed Project Schedule (DPS). This DPS shall outline all activities and sequences of operations, as needed, for the

orderly performance and timely completion of all work in accordance with the Contract, commencing with the Notice to Proceed and concluding with the point in time when all physical work (Remaining Work) is complete and all administrative close out documentation has been accepted by THE UNIVERSITY. The schedule should take into account mandatory sequencing, phasing, and restrictions of access to the Project Area, if any. The DPS is required to ensure adequate planning and scheduling of the work by Contractor and to enable THE UNIVERSITY to evaluate work progress and to make progress payments. No progress payments (excluding payments for mobilization) will be made until a DPS is approved by THE UNIVERSITY.

6.2.5 Within 14 days of receipt of Contractor's DPS, THE UNIVERSITY will review the schedule for conformance with the Contract and provide the Contractor with THE UNIVERSITY's comments. The Contractor shall incorporate THE UNIVERSITY's comments into the DPS and shall resubmit the DPS to THE UNIVERSITY within seven days of receipt of such comments. Contractor shall repeat this process (at its own expense) until THE UNIVERSITY approves the DPS.

6.2.6 Upon approval by THE UNIVERSITY, the Contractor's DPS shall become the Baseline Schedule for the work. This schedule shall be used by Contractor for planning, scheduling and executing the work, for monitoring and reporting progress to THE UNIVERSITY, and as a basis for progress payments. Progress shall be shown in terms of remaining duration, actual dates and percent complete for each activity. During the life of this Contract, Contractor shall make monthly progress updates to the DPS. The updated DPS reflecting progress through the end of the month, as determined by THE UNIVERSITY during the schedule meetings, shall be submitted by the fifth work day of the following month. Under no circumstances at any time during the project shall the Contractor make any changes to the THE UNIVERSITY-approved Baseline Schedule logic, durations and construction sequencing without first receiving the written approval of THE UNIVERSITY.

6.2.7 The DPS shall be a CPM schedule prepared with the software "Primavera", latest version, using the precedence diagram method. The DPS shall show a clear and definable critical path for the work. All imposed or constrained dates shall be clearly identified. The DPS shall include all contractual milestones and activities for the complete scope of the work including interface activities with other parties such as utility companies and outside agencies. Contractor's activities shall delineate the individual components of the work such as design efforts, submittals, procurement activities, fabrication, deliveries, construction operations, application and receipt of permits and testing. For each activity in the DPS, Contractor shall include:

(a) Description, which shall clearly describe the operation and the location where it is occurring.
(b) Durations, which shall be expressed in calendar days. Durations shall not exceed 20 workdays except in the case of non-construction activities such as a procurement of materials, fabrication and delivery of equipment or other such activities. Durations shall include allowances for lost time and inefficiencies. Activities that have started shall show the remaining duration.
(c) Activity code, which will be utilized to allow for breakdown of the total schedule by work area, phase of work, activity type, etc. A responsibility code (as part of the activity code), shall individually and singularly denote Contractor, each subcontractor, outside agencies, utilities, and any other parties performing the activity.
(d) The number of person-hours required performing the activity. The number of person-hours shall be shown as a resource using integers.
(e) The percent complete using integers, which represents the activity's progress as of the status date.
(f) For updates of progress, the actual start and finish dates.

6.2.8 Every DPS Submittal shall include a CD-ROM containing the Contract schedule and all related files generated by the "Primavera" backup utility and shall include five hard copies of the following graphical and tabular reports:

(a) Graphical:

(1) Activity Bar Chart (ABC), on 8-1/2 inch by 11 inch or 11 inch by 17 inch paper with

activities grouped by work areas and sorted by early start.

(b) Tabular:

(1) Activity Listing Report (ALR), sorted by activity identifier and including predecessor activities, successor activities, resources, and allocated dollar amount. Show constraint dates on a separate line.
(2) Total Float Report (TFR), sorted by total float with a secondary sort by early start and including predecessor activities and successor activities.
(3) Early Start Report (ESR), sorted by early start with a secondary sort by total float.
(4) Cost Control Activity Report (CCAR), sorted by activity identifier and including the dollar amount earned to date for each activity (to be used as invoice back up).
(5) Predecessor-Successor Report (PSR), sorted by activity number.

6.2.9 Every DPS Submittal shall include a written Narrative Report explaining the CPM schedule and the Contractor's approach for meeting the interim and completion milestones. This report will include an analysis and summary of the contents of the computer reports and will address, as a minimum, the following:

(a) Description of the Project status.

(b) Critical path analysis which takes into account construction sequencing, major procurement items that may influence the critical path, activities that influence interim contract milestones, and THE UNIVERSITY approved constraint dates.

(c) Total float

(d) Schedule slippage, including a comparison to the previous month's status.

(e) List of activities that may become critical within the next 30 day period.

(f) Logic revisions/other changes as approved by THE UNIVERSITY.

(g) If the project falls behind, the measures the Contractor will take to get the project back on schedule.

6.2.10 In the event that it is necessary for Contractor to revise the durations, construction sequencing or logic of the DPS, the revised DPS shall be submitted to THE UNIVERSITY for approval, at no additional cost to THE UNIVERSITY. Minor changes to the DPS, such as re-sequencing of activities, may be approved at a Project or Schedule Meeting; a minor change is not considered a revision in the context of this Paragraph. However, a revision shall incorporate all previously made changes, major or minor, to reflect current as-built and as-planned conditions. Reasons for revisions may include, but are not limited to, the incorporation of an approved change order or changes required to recover lost time if THE UNIVERSITY determines that work is not progressing in accordance with the Baseline Schedule. In the case of minor changes or revisions that were made to improve Contractor's work progress and are not part of a change order, the monetary value of the activities in the revised portion of the schedule shall be identical, in aggregate value, to the value of that same work as reflected in the initial Baseline Schedule.

6.2.11 THE UNIVERSITY will conduct Schedule Meetings as necessary with the Contractor to review and discuss the schedule. Schedule Meetings will generally be held as part of a progress meeting. If necessary, they shall be held as separate meetings. All Schedule Meetings shall be attended by the Contractor's Project Manager or a designee, who shall have the authority to make decisions on behalf of, and commit the resources of, the Contractor. The Contractor's superintendent and appropriate scheduling staff shall also attend the meetings. At these meetings, THE UNIVERSITY will examine and comment on the Contractor's DPS. Schedule slippages will be analyzed and corrective actions will be discussed and agreed upon.

6.2.12 THE UNIVERSITY will plan the Schedule Meetings so that, regardless of frequency, there will always be a Schedule Meeting taking place on or about the 25th day of the month. During this "monthly" Schedule Meeting, in addition to the in-depth review of the DPS, the Project progress (i.e., completed activities and percent complete of partially completed activities) shall be presented by the Contractor and reviewed by THE UNIVERSITY. THE UNIVERSITY shall determine the percent of work complete and advise the Contractor accordingly. Subsequent to this meeting, the DPS shall be updated with the progress, as determined by THE UNIVERSITY, and the Contractor shall submit the monthly Narrative Report and the revised DPS to THE UNIVERSITY as part of its Payment Application. THE UNIVERSITY's review of the DPS and Narrative Report shall not constitute THE UNIVERSITY's approval of any Contractor changes to the logic, durations and construction sequencing of the previously approved Baseline Schedule unless THE UNIVERSITY specifically confirms in writing its acceptance of such changes. Unless otherwise directed by the University, the submittals required by this Section shall be provided to the University by the Contactor using the University's electronic project management system.

6.2.13 In the event of a change order, the Contractor must clearly demonstrate how it proposes to incorporate the change order into the schedule. The Contractor shall provide, as part of its change order documentation and prior to change order negotiations, a schedule that clearly identifies the newly introduced change order work activities, the CPM path(s) affected and a narrative explaining the schedule impact of the change order to the DPS. If Contractor fails to notify THE UNIVERSITY of the schedule changes associated with a change order, it will be deemed an acknowledgment by Contractor that the change order has no impact on the schedule.

6.2.14 All change order work activities shown in the schedule are considered to be tentative unless a Directive Letter or Change Order has been issued incorporating the changed Work into the Contract. Acceptance of a schedule containing change order work activities will not be construed to be approval of the value of the change, the duration of the work or constraints concerning the changed activities. The applicable Directive Letter or Change Order shall govern the monetary value and Contract Time impact of the changed work.

6.2.15 The Contractor shall furnish sufficient labor, plant and equipment to insure the prosecution of the work in accordance with the approved Project Schedule. If, in the opinion of THE UNIVERSITY, the Contractor falls behind in the prosecution of the Work as indicated in the Project Schedule, the Contractor shall take such steps as may be necessary to improve its progress. THE UNIVERSITY may require the Contractor to increase the number of shifts, days of work, and/or the amount of plant and equipment, all without additional cost to THE UNIVERSITY.

6.3 CONTRACT DRAWINGS AND SPECIFICATIONS

6.3.1 Unless otherwise provided in the Contract Documents, THE UNIVERSITY will furnish to the Contractor, free of charge, a maximum of six (6) full size copies of conformed Drawings and Specifications for the execution of the work or an electronic version using the University's electronic project management system. In accordance with the University's BIM Standards, the Contractor shall at all times keep one copy of all Contract Documents up to date and in good order, available to the Architect/Engineer and to the Architect/Engineer's representatives. In accordance with the University's BIM Standards, the Contractor shall keep its prints of the Contract Drawings up to date at all times by marking on them the final location of any changes in the Work and providing them to the University promptly thereafter. Prior to final payment and in accordance with the University's BIM Standards, the Contractor shall submit a copy of the marked-up drawings of all Contract Drawings whether altered or not to THE UNIVERSITY. These marked up As-Built Drawings shall become the property of THE UNIVERSITY.

6.3.2 The Architect/Engineer or THE UNIVERSITY may furnish additional detail instructions to the Contractor by means of supplemental drawings or otherwise, necessary for the proper execution of the work. Such drawings and instructions shall be consistent with the Contract Documents and reasonably inferable therefrom. The work shall be executed in conformity therewith and the Contractor shall do no work without proper drawings and instructions.

6.3.3 When the Contractor requests clarifications of Contract Drawings and Specifications it must give written

notice to THE UNIVERSITY with at least 14 calendar days lead time for THE UNIVERSITY and Architect/Engineer to provide timely instruction or interpretation.

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

6.3.5 Dimensioned and full size drawings shall take precedence over scaled dimensions. Where the work is shown in complete detail on only half or a portion of a drawing or there is an indication of continuation, the remainder being shown in outline, the work drawn out in detail shall be understood to apply to other like portions of the Project.

6.4 GENERAL REQUIREMENTS FOR SUBMITTALS

6.4.1 The Contractor shall furnish such submittals as may be required by the Contract Documents and revise and resubmit as necessary and in accordance with the University's BIM standards to establish compliance with the specified requirements. Subject to the review and approval of the Architect/Engineer, the Contractor will establish a submittal control system which will identify the submittals including samples required to be submitted, submission date, dates reviewed and approved by the Contractor, dates received and approved by the Architect/Engineer, and dates transmitted to the University. The Contractor will mark up all Subcontractor or supplier submittals and transmit them to the Architect/Engineer for review and approval. Prior to each submittal, the Contractor shall carefully review and coordinate all aspects of each item being submitted and verify that each item and the submittal for it conforms in all respects with the requirements of the Contract Documents. By approving the submittals, the Contractor certifies that this coordination has been performed and verifies that all materials, field measurements, and field construction criteria are correct and that the submittals have been coordinated with the Contract Documents. The Contractor will not be relieved of its responsibility for any errors in submittals which it transmits to the Architect/Engineer by virtue of the Architect/Engineer's approval of same. All submittals will be certified and approved by an authorized Contractor representative. After completion of all installation, the Contractor will furnish a Final Statement of Certification confirming that all materials and equipment are in compliance with the Contract Documents. At the direction of the University, all submittals shall be provided to the University by the Contractor using the University's electronic project management system and in accordance with the University's BIM Standards.

6.4.2 No later than thirty-five (35) days after the Notice to Proceed, and before any items are submitted for review, the Contractor shall submit to THE UNIVERSITY two (2) copies of the Detailed Project Schedule as approved by THE UNIVERSITY.

6.4.3 The Contractor shall compile a complete and comprehensive schedule of all submittals anticipated to be made during progress of the Work which shall include a list of each type of item for which Contractor's drawings, shop drawings, Certificates of Compliance, material samples, guarantees, or other types of submittals are required. Upon review and approval of the Submittal Schedule by THE UNIVERSITY, the Contractor will be required to adhere to the schedule except when specifically otherwise permitted in writing by THE UNIVERSITY. The submittal schedule shall be incorporated into the Construction Project Schedule specified in Article 6.2.

6.4.4 The Contractor shall coordinate the submittal schedule with all necessary subcontractors and materials suppliers to ensure their understanding of the importance of adhering to the approved submittal schedule and their ability to so adhere. The Contractor shall coordinate as required to ensure the grouping of submittals as described in Sub-article 6.4.11 herein.

6.4.5 The Contractor shall submit documentation such as certificates, reports, test results, delivery tickets, manufacturers' literature, etc., as specified in the Technical Specifications to THE UNIVERSITY for THE UNIVERSITY's use and approval. Where contents of submitted literature from manufacturers or other submittals includes data not pertinent to the submittal, the Contractor shall clearly indicate which portion of the contents is being submitted for review. The Contractor shall submit six (6) copies of each of the various

items required to THE UNIVERSITY, except that only one (1) copy of delivery ticket will be required. Three (3) copies will be returned to the Contractor.

6.4.6 Unless automatically paginated by the University's electronic record management system, The Contractor shall consecutively number all submittals and accompany each submittal with a letter of transmittal containing all pertinent information required for identification and checking of submittals to the satisfaction of THE UNIVERSITY. The Contractor shall on at least the first page of each copy of each submittal, and elsewhere as required for positive identification, clearly indicate the submittal number in which the item was included.

6.4.7 When material is resubmitted for any reason, the Contractor shall transmit under a new letter of transmittal. All resubmittals shall carry the same submittal number as the original submittal except that an appendage ".01", ".02", ".03", etc. shall be added to indicate that the material is a first, second, third, etc. resubmission. For example, submission 177.01 would indicate the first resubmission; 177.02, would indicate a second resubmission; and 177.03, would indicate a third resubmission, etc.

6.4.8 The Contractor shall maintain an accurate submittal log for the duration of the Contract, showing current status of all submittals at all times and make the submittal log available for THE UNIVERSITY's review upon request.

6.4.9 The Contractor shall, prior to submittal, use all means necessary to fully coordinate all material including, but not necessarily limited to:

(a) Determining and verifying all interface conditions, catalog numbers, and similar data.

(b) Coordinating with other trades as required.

(c) Clearly indicating all deviations from requirements of the Contract Documents.

6.4.10 Unless otherwise specified, the Contractor shall make all submittals in groups containing all associated items to ensure that information is available for checking each item when unit is received. Partial submittals may be rejected by THE UNIVERSITY as not complying with the provisions of the Contract Documents and the Contractor shall be strictly liable for all delays by such non-compliance.

6.4.11 The Contractor shall make all submittals in advance of schedule dates for installation to provide sufficient time required for reviews, for securing necessary approvals, for possible revisions and resubmittals, and for placing orders and securing delivery. All submittals shall be made within the first six (6) months of the Project.

6.4.12 In scheduling, the Contractor shall allow at least ten (10) calendar days from receipt of the submittal for review. THE UNIVERSITY will stamp all submittals "Received", and the date so stamped shall be the official receipt date. Delays caused by tardiness in receipt by THE UNIVERSITY of submittals will not be an acceptable basis for extension of the Contract Time.

6.4.13 The Architect/Engineer's review of submittals will be general, but should not be construed:

(a) As permitting any departure from the Contract requirements.

(b) As offering relief from the responsibility for any errors, omissions or negligence in the preparation by the Contractor of details, dimensions, materials, etc.

(c) As approving departures from details furnished by the Architect/Engineer, except as otherwise provided herein.

6.4.14 The Contractor shall take responsibility for and bear all cost of damages which may result from the ordering

of any material or from proceeding with any part of the work prior to the final review by the Architect/Engineer of necessary submittals, including Shop and Working Drawings and all other required submittals.

6.4.15 Full compensation for furnishing all submittals shall be considered as included in the payments for the Contract Items to which such submittals relate and no additional compensation will be allowed therefor.

6.4.16 The provisions of Article 6.4 apply to all submittals.

6.5 SHOP AND WORKING DRAWING SUBMITTALS

6.5.1 The Contractor shall submit, with such promptness as to cause no delay in the work, a reproducible and five (5) legible copies of all completed and detailed shop, setting or working drawings, details and schedules as are necessary in BIM LOD 500 or such other format requested by the UNIVERSITY to adequately perform the Work to THE UNIVERSITY for review as to conformance to the design. By approving and submitting shop drawings, the Contractor thereby represents that it has determined and verified field measurements, field construction criteria, materials, catalog numbers, and similar data, or will do so, and that it has checked and coordinated each shop drawing with the requirements of the Work and of the Contract Documents. Drawings submitted by the Contractor on behalf of subcontractors shall have been checked by the Contractor before being submitted. At the direction of the University, all shop, setting or working drawings, details and schedules shall be provided to the University by the Contractor using the University's electronic project management system and in accordance with the University's BIM Standards.

6.5.2 The Architect/Engineer will review the shop and working drawings within 30 Days. The drawings will be returned to the Contractor reviewed and with comments. The Contractor shall make corrections if required by the Architect/Engineer and resubmit a reproducible and five (5) copies for approval as well as in BIM LOD 500 format. After final approval of the Drawings has been received, the Contractor shall immediately send the Architect/Engineer a minimum of three (3) prints of the finally approved drawings as well as in BIM LOD 500 format, plus the required number of approved prints each to every other affected Contractor. The Contractor shall prepare all work and shop drawings on sheets measuring 24 inches by 36 inches unless otherwise approved by THE UNIVERSITY. The Contractor shall make all shop drawings and working drawings accurately to a scale sufficiently large to show all pertinent aspects of the item and its method of connection to the Work. The Contractor shall provide each drawing with a blank area 5 inches by 5 inches, located adjacent to the title block, and labelled as shown in the following Table. Failure to comply with these instructions will be sufficient reason to return such drawings to the Contractor without any action being taken. The title block on every sheet, and cover sheet, shall display the following:

Table 6.5.2 Shop Drawing Labeling

MSU Project Number and Name
Number and Title of the Drawings
Date of Drawing and Revision Number
Name of Contractor and Subcontractor submitting Drawing
Clear identification of contents and location or work
Specification Article Number
Name; New Jersey State Registration Number and seal of professional Engineer certifying the drawings if engineering computations are involved or if original design work is depicted
Submittal Number

6.5.3 The Contractor's shop drawings shall show the general arrangement and such details as are necessary to provide a comprehensive description of the work to be performed. Shop Drawings shall consist of, but are not limited to, fabrication and erection drawings, schedule drawings, manufacturer's scale drawings, wiring and control diagrams, cuts of entire catalogs, pamphlets, descriptive literature, performance and test data.

6.5.4 Shop drawings for steel structures shall consist of shop, erection, lifting and rigging plans, and other drawings, showing details, dimensions, sizes, and other information necessary for the complete fabrication

and erection of the metal work. Shop drawings for concrete structures shall consist of such additional detailed drawings as may be required for the prosecution of the work and may include drawings of falsework, bracing, centering, formwork, and masonry layout diagrams. The Contractor shall check completely the rod lists and details of reinforcement steel shown on the plans and shall submit complete shop drawings for the reinforcement steel to THE UNIVERSITY for the Architect/Engineer's review. Material specification designations for the various components of the structures shall be noted on the drawings. If structural steel is scheduled for payment on the basis of weight, shop drawings for steel structures shall include a shop bill of material on each individual drawing showing pertinent information including weights of items together with the total weight of steel for that shop drawing.

6.5.5 Working Drawings shall consist of, but are not limited to, plans for temporary structures such as decking, temporary bulkheads, support of excavation, support of utilities, groundwater control systems and forming and falsework; for underpinning; and for such other work as may be required for construction but which does not become an integral part of the completed project. They shall be accompanied by calculations or other sufficient information to completely explain the structure or system described and its intended manner of use. The Contractor shall coordinate drawings for work on utilities, streets and other facilities which are constructed for owners other than THE UNIVERSITY so that the information required by these other owners is included on the Working Drawings.

6.5.6 At the time of submission the Contractor shall inform the Engineer in writing of any deviation in the shop drawings from the requirements of the Contract Documents. If drawings show variations from the Contract requirements because of standard shop practice or for other reasons, the Contractor shall describe such variations in the letter of transmittal.

Failure to describe such variation to THE UNIVERSITY, and the Architect/Engineer's review of shop drawings, shall not relieve the Contractor of responsibility for deviation from the requirements of the Contract Documents unless the Contractor has informed the Engineer in writing of such deviation at the time of submission and the Architect/Engineer has given written acceptance of the specific deviation. Neither shall the Architect/Engineer's review relieve the Contractor from responsibility for errors or omissions in the shop drawings nor relieve the Contractor from the responsibility for executing the work in accordance with the Contract Documents.

6.5.7 Drawings Not In Conformance:

(a) If corrections to the drawings are required, each print will be marked "REJECTED" or "FURNISH AS CORRECTED" or "REVISE AND RESUBMIT" and in each case the required corrections will be shown.

(b) Each resubmittal will be handled in the same manner and review timeframe as the first submittal.

(c) The Contractor shall direct specific attention, in writing or on the resubmitted drawings to revisions other than the corrections requested by the Architect/Engineer or THE UNIVERSITY on previous submittals.

(d) If any corrections indicated on the drawings constitutes a change of the Contract requirements, the Contractor shall give direct and specific notice to THE UNIVERSITY.

(e) Work indicated on drawings marked "CONFORMS AS NOTED" or "FURNISH AS CORRECTED" may be carried out without resubmission if progressed "As Noted" or "As Corrected".

(f) At the direction of the University, all such drawings shall be provided to the University by the Contractor using the University's electronic project management system and in accordance with the University's BIM Standards.

6.5.8 Drawings In Conformance:

(a) Each copy of the drawings will be identified as conforming by being stamped, "REVIEWED", and dated by the Architect/Engineer.

(b) When Shop and Working Drawings have been completed and stamped "REVIEWED," the Contractor shall carry out the construction in accordance therewith and make no further changes therein except upon written instructions from THE UNIVERSITY.

(c) At the direction of the University, all such drawings shall be provided to the University by the Contractor using the University's electronic project management system and in accordance with the University's BIM Standards.

6.6 SAMPLES SUBMITTALS

6.6.1 The Contractor shall furnish samples as required by the Contract Documents and as directed by THE UNIVERSITY for review and acceptance. The work shall be in accordance with accepted samples. Such samples shall be submitted promptly to THE UNIVERSITY, at the beginning of the work, so as to give THE UNIVERSITY ample time to obtain approval from the Architect/Engineer. A list of samples required by THE UNIVERSITY is for THE UNIVERSITY's convenience only, and shall not be construed as limiting the number or type of samples which the Contractor shall furnish.

6.6.2 Procedure for Submittal of Samples:

(a) The samples submitted by the Contractor shall be of the precise article, product or material proposed to be furnished.

(b) The Contractor shall submit all samples in the quantity identified.

(c) The Contractor shall prepay all shipping charges on samples.

(d) The Contractor shall label each sample indicating the following:

(1) Name of Project and Contract Number;
(2) Name of Contractor and Subcontractor;
(3) Material or equipment represented;
(4) Source;
(5) Name of producer and brand (if any);
(6) Specification Section, article or paragraph;
(7) Location in Project; and
(8) Submittal Number.

6.7 PRODUCT AND EQUIPMENT SUBMITTALS

6.7.1 The Contractor shall, within 30 days after the Notice to Proceed date, notify THE UNIVERSITY in writing of the names of manufacturers, products, and equipment. THE UNIVERSITY may reject products or installed equipment not in conformance with the specifications. The Contractor shall properly submit complete identifying information, note whether the item is included in the Specifications and state Specifications Section and Paragraph. Requests for approval of alternate products and equipment (approved equals or substitutions) shall comply with the provisions of Articles 6.7.3 or 6.7.4, as applicable.

6.7.2 Where a particular brand or manufactured product is specified, it is to be regarded as a standard. Another brand or make which meets or exceeds the specifications, in the sole discretion of THE UNIVERSITY, may be accepted, in accordance with Article 6.7.3.

6.7.2.1 The designs in the Contract are based on the first named manufacturer's product in the approved equal list of manufacturer's products in each Section of the Technical Specifications. Where the Contractor proposes to

use a product from the approved equal list other than the first named, the Contractor shall pay all costs for modifications of the design, including all re-engineering costs and any additional construction costs associated with the use of that product. Written approval shall be obtained from the Architect/Engineer through THE UNIVERSITY prior to any use of a product other than the first named.

6.7.2.2 Where a performance is specified and no manufacturer is listed, the Contractor shall submit in accordance with Sub-article 6.7.1 the name of the manufacturer, the product proposed, and detailed information showing its characteristics.

6.7.2.3 Where a choice of color, pattern, or texture is available for a specified product, the Architect/Engineer will make a selection from the manufacturer's highest and best standards.

6.7.2.4 Where the Contractor requests that a manufacturer’s product be added to the approved equal list it shall follow the procedure set forth in Sub-article 6.7.3 below. Any THE UNIVERSITY approval of an additional approved equal is subject to the conditions of Sub-article 6.7.2.1 above.

6.7.2.5 Where the Contractor requests that an alternate product be substituted for that specified, the terms of Sub-article 6.7.4. below shall apply.

6.7.3 Requirements for Approved Equals: Should the Contractor desire to use a product other than those identified in the approved equals list, it shall first make application to the Architect/Engineer in writing, otherwise it will be held to what is specified. The application shall clearly identify that it is a “Request for Additional Approved Equal”.

6.7.3.1 The procedure for submitting for an additional approved equal will be as follows: The Contractor shall submit five (5) copies of the request and data. The Contractor shall amend and update data when changes concerning information on products become known. The Contractor shall include the following information:

(a) Complete data substantiating compliance of proposed approved equal with requirements of the Specifications and Contract Drawings.

(b) For products:

(1) Product identification, including manufacturer's name and address, model number and options.
(2) Installation characteristics, installation drawings, manufacturer's literature including product description, performance and test data, and reference standards if pertinent.
(3) Name and address of project(s) on which product was used under similar circumstances, and date of installation.

(c) For construction methods:

(1) Detailed description of proposed method.
(2) Drawings illustrating methods.

(d) Itemized comparison of proposed manufacturer’s product with first-named product specified. Include differences in estimated life, estimated maintenance, availability of spare parts and repair services, energy consumption, performance capacity, salvage ability, manufacturer's warranties, LEED® value, and other material differences. The Contractor may be required, at its own expense, to perform tests to demonstrate proof of equality.

(e) Data relating to changes in Construction Schedule.

(f) In making a request for an additional approved equal, Contractor is certifying:

(1) That it personally investigated the proposed product and/or method; that it believes, to the best of its knowledge and information, that product and/or method is either equivalent or superior to the product and/or method specified; and that it will update information as new or different data becomes known to the Contractor.

(2) That it will furnish the same guarantee as it would for the product and method specified.

(3) That it will coordinate installation of proposed product and method into the Work, and will make those changes required for the Work to be complete in all respects, all at no additional expense to THE UNIVERSITY.

(4) That it waives all claims for additional costs and entitlement to any extension of Contract Time as a result of requesting approval of an additional approved equal, whether such approval is granted by THE UNIVERSITY or not.

6.7.3.2 THE UNIVERSITY reserves the right, at its sole discretion, to deny requests for additional approved equals should it deem the number of such requests to be excessive.

.4 Requirements for Substitutions: The Contractor agrees that THE UNIVERSITY is under no obligation to consider substitutions of any kind and may direct the Contractor to proceed with the work as specified. THE UNIVERSITY shall not be liable for any costs or delays in action upon or for failure to act upon a proposed request for substitution. Requests for substitutions will not be considered if, in the opinion of THE UNIVERSITY, the substitutions are excessively broad in scope, require substantial revision of the Contract Drawings or Specifications, require substantial administrative effort and expense to review or are otherwise not in THE UNIVERSITY's best interest. Substitutions merely indicated or implied on shop drawings or product data submittals will not be considered if no formal request for substitution has been submitted in accordance with this Article.

THE UNIVERSITY's approval of such a shop drawing or data submittal shall not constitute approval of a substitution and the Contractor shall be liable for all costs for corrective work to provide products in conformance with the Contract Documents.

When making a request for substitution, the Contractor shall follow the same procedural and data submission requirements as set forth in Sub-article 6.7.3 above, except that any such submission shall be clearly identified as a "Request for Substitution". The Contractor shall include the following additional information:

(a) A detailed cost breakdown of the proposed product in comparison to the product specified, naming the difference in cost in each case. The cost breakdown shall be submitted in the format specified in Article 3.2.

(b) A description of the benefit that will accrue to THE UNIVERSITY should approval of the proposed substitution be granted.

If a substitute item is approved and the substitute item changes the scope of work under this or other contracts from the original specifications, then the Contractor offering the substitute item shall be responsible for all added costs and additional Contract Time involved by reason of the change in its work and the work of other contracts, including redesign. Any reduction in costs involved by reason of the change in its work shall be deducted from the Contract Price by Change Order. No change involving cost shall be made without the written consent of the Contracting Officer. Contractor shall be responsible for all third party costs incurred by the University to review any Request for Substitution.

6.8 VALUE ENGINEERING SUBMITTALS

6.8.1 Value Engineering is defined as cost reduction proposals initiated and developed by the Contractor for changing the materials or other requirements of the Contract. This clause does not apply to such proposal unless it is identified by the Contractor at the time of submission to THE UNIVERSITY as a proposal submitted pursuant to this clause. The cost reduction proposals contemplated are those that:

(a) Would result in less costly items or components of items than those specified herein without

impairing any of the items' essential functions and characteristics such as service life, reliability, economy of operation, ease of maintenance, and necessary standardized features; and,

(b) Would require, in order to be applied to this Contract, a Change Order to the Contract.

6.8.2 Cost reduction proposals as defined herein will be processed expeditiously and in the same manner as prescribed for any other proposal which would likewise necessitate issuance of a Change Order. As a minimum, the following information shall be submitted by the Contractor with each proposal.

(a) A description of the difference between the existing Contract requirements and the proposed change, and the comparative advantages and disadvantages of each;

(b) An itemization of the requirement of the Contract which must be changed if the proposal is adopted and suggested wording for revisions required;

(c) An estimate of the reduction in performance costs that will result from adoption of the proposal taking into account the costs of implementation by the Contractor and the basis for the estimate;

(d) A prediction of the effects the proposed change would have on other costs to THE UNIVERSITY such as THE UNIVERSITY furnished property costs, costs of related items, and costs of maintenance and operation;

(e) A statement of the time by which a Change Order adopting the Proposal must be issued so as to obtain the maximum cost reduction during the remainder of the Contract, noting any effect on maintaining the Contract delivery schedule.

6.8.3 THE UNIVERSITY shall not be liable for delays in action upon or for failure to act upon a proposal submitted pursuant to this clause. The decision of the Contracting Officer as to the acceptance or rejection of such proposal under this Contract shall be final and shall not be subject to the "Disputes" clause of this Contract. Unless and until a Change Order adding such proposal to the Contract is issued, the Contractor shall remain obligated to perform in accordance with the existing terms of the Contract. THE UNIVERSITY may accept in whole or in part a cost reduction proposal submitted pursuant to this clause by issuing a Change Order which will identify the cost reduction on which it is based.

6.8.4 If a cost reduction proposal submitted pursuant to this clause is accepted under this Contract, an equitable adjustment in the Contract Price and in other affected provisions of this Contract shall be made in accordance with this clause. If the equitable adjustment involves a reduction in the Contract Price, it shall be established by determining the amount of the total estimated decrease in the Contractor's cost of performance resulting from the adoption of the cost reduction proposal, taking into account the cost of implementing the change by the Contractor, and reducing the Contract Price by one hundred (100%) percent of such decrease.

6.9 PROGRESS PHOTOGRAPH SUBMITTALS

6.9.1 Prior to construction beginning but no later than the pre-construction meeting, and after construction operations have been started at the site, the Contractor shall have twenty (20) different color photographs taken each month, by a professional photographer, until completion of the Work. THE UNIVERSITY will designate the location of views to be taken each month. The Contractor shall submit three (3) sets of prints of each photograph to THE UNIVERSITY within ten (10) days after taking.

6.9.2 The prints shall be standard commercial quality, 8 x 10 inches, single weight glossy paper. Each print shall have an information box, stamped on the back, 1-1/2 x 3-1/2 inches, and arranged as follows:

Table 6.9.2 Photo Labeling
THE UNIVERSITY
MSU Project Name

MSU Project Number
Contractor
Photograph Number
Date
Submittal Number
Information regarding view such as location,
direction or site and significant points of interest

6.9.3 The Contractor shall enclose the three (3) sets of photographs back-to-back in a double-faced plastic sleeve punched and bound in separate standard three-ring binders.

6.9.4 Negatives: The Contractor shall submit the negatives with the photos to THE UNIVERSITY.

6.9.5 At the direction of the University, all such photographs shall be provided to the University by the Contractor using the University's electronic project management system.

6.10 REPORTS, RECORDS AND DATA SUBMITTALS

The Contractor shall submit to THE UNIVERSITY such schedules of quantities and costs, progress schedules, certified payrolls, reports, estimates, records and other data as THE UNIVERSITY may request concerning work performed or to be performed under this Contract. The cost of submitting all such data shall not be paid separately and is considered paid for under the various items contained in the Bidder's Proposal.

6.11 AS-BUILT DRAWINGS AND QUANTITIES SUBMITTAL

6.11.1 The Contractor shall keep the Contract Drawings up to date at all times by marking on them the final location of any changes in the Work. These drawings shall be identified as the "Marked-Up Drawings". The data shall be transferred regularly by the Contractor to transparencies furnished by THE UNIVERSITY at the expense of the Contractor.

6.11.2 Prior to final payment the Contractor shall submit a copy of the Marked-Up Drawings of all Contract Drawings whether altered or not to THE UNIVERSITY with the Contractor's certifications as to the accuracy of the information. As built drawings shall be entitled "AS-BUILT" above the Title Block and dated. This information shall be reviewed by THE UNIVERSITY; such review by THE UNIVERSITY is for content only and not for accuracy and does not relieve the Contractor of its certification. The Contractor shall pay for the cost of reproduction. Upon completion of the Work and prior to release of final payment the Contractor shall transfer all as-built data to 24" x 36" transparencies (sepia mylar or mylars) at the expense of the Contractor. These Marked-Up Drawings and As-Built Drawings shall be submitted to and become the property of THE UNIVERSITY. At the direction of the University, all Marked Up Drawings and As-Built Drawings shall be provided to the University by the Contractor using the University's electronic project management system and in accordance with the University's BIM Standards.

6.11.3 The Contractor shall use the latest version of Revit Building Information Modeling (BIM) software to a Level of Development LOD 500 for shop drawing submittals and shall include all building systems and major components for coordination and clash detection purposes.

The Contractor shall meet with the University and the Architect/Engineer prior to execution of the Contract and obtain all information necessary for Contractor to comply with the University's expectation of its use of BIM. The Contractor shall comply with all directions given by the Architect/Engineer concerning Contractor and Contractor's Subcontractor's use of and contributions to BIM in the engineering and submittal process.

The Contractor shall submit all shop drawings and submittals to the Architect/Engineer for review. The shop drawings and submittals shall be input by Contractor into, and modeled by, the BIM software to identify potential clash or coordination issues prior to the submission of any shop drawings. This will include but not be limited to structural steel, elevated slabs, HVAC systems, plumbing, power, lighting, IT

and AV infrastructure, and fire protection systems, etc. Contractor shall execute an Electronic Document Release Agreement and BIM Exhibit, in order to obtain CAD drawings derived from the BIM model (LOD 500). The Contractor and its Subcontractors shall also meet and coordinate regularly with the Architect/Engineer to develop models, identify clash detection, and eliminate conflicts among submittals and shop drawings.

The Contractor shall submit its Marked Up Drawings to the Architect/Engineer for inclusion in BIM and CAD throughout the Project and for use in the conformed As Built Drawings the Contractor will update both BIM and CAD files to incorporate these changes and the Marked Up Drawings throughout the Project and to create As Built Drawings. The Contractor will submit the Marked Up Drawings to the University as created in BIM throughout the Project, and As Built Drawings to the University in electronic format (CAD) within 30-days of Substantial Completion and before a final payment is due. The As-Built drawings must indicate all field changes. Final Payment will not be approved by the Architect/Engineer and/or the University to Contractor until after they have determined that the Marked Up Drawings and As-Built Drawings are accurate.

The University shall have full, complete and unfettered access to the Contractor's drawings, submittals, and As Built Drawings and revisions thereto, in both CAD and BIM formats, throughout the Project. The BIM Model that shall be used by Contractor will be in such a format and detail as may be acceptable to the University and will be conveyed by the University to Contractor with such licenses as are needed, to permit the Contractor to utilize the BIM Model for any purpose the University deems appropriate in the operation, maintenance, renovation, construction or alteration of the Project.

The Contractor shall also follow and implement the University's BIM Standards.

7. QUALITY ASSURANCE AND QUALITY CONTROL

7.1 QUALITY ASSURANCE

7.1.1 General: The Contractor shall establish and maintain a quality assurance program in accordance with ANSI/ASQC Q9001-1994 and any subsequent updates thereto. The program shall ensure compliance with the requirements of the Contract Documents and shall include provisions ensuring compliance by subcontractors should any portion of the Work be subcontracted.

7.1.2 Six copies of the Contractor's quality assurance program shall be submitted to THE UNIVERSITY at the pre-construction meeting for review and approval by THE UNIVERSITY. Work undertaken by the Contractor before THE UNIVERSITY's formal approval of the Contractor's program will be at the Contractor's sole risk and expense. A quality assurance audit of the Contractor's quality assurance program may be conducted by THE UNIVERSITY at any time.

7.1.3 The Contractor's designated quality assurance program shall not be changed without the written concurrence of THE UNIVERSITY. Work undertaken by the Contractor before receipt of written concurrence from THE UNIVERSITY concerning such changes of the Contractor's quality assurance program will be at the Contractor's sole risk and expense.

7.1.4 The Contractor's quality assurance operations may be subject to THE UNIVERSITY verification at any time. Verification shall include, but not be limited to: Audit of the quality assurance program; surveillance of the operations to determine that practices, methods, and procedures of the program are being properly implemented; inspection to measure the quality of items offered for acceptance; and inspection of items prior to release for shipment to ensure compliance with requirements of the Contract Documents.

7.1.5 Failure by the Contractor to promptly correct deficiencies discovered by the Contractor or of which the Contractor is notified by THE UNIVERSITY may be cause for suspension of the Contract until corrective

action has been taken or until conformance of the Work to prescribed criteria has been demonstrated to and approved by THE UNIVERSITY. As a result of such suspension, no adjustment will be made with respect to increases in the cost or time.

7.2 MATERIAL - WORKMANSHIP - LABOR

7.2.1 Only approved materials shall be used, and the Work shall be carefully carried out in strict accordance with the general and detail drawings. THE UNIVERSITY shall have full power at any time to reject such work or material which does not, in THE UNIVERSITY's opinion, conform to the true intent and meaning of the Contract Documents.

7.2.2 Work when completed in a substantial and workmanlike manner, to the satisfaction of THE UNIVERSITY, shall be accepted by THE UNIVERSITY in writing. Unless otherwise specified all materials used shall be new.

7.2.3 The Contractor shall furnish and pay for necessary transportation, scaffolding, centering, forms, water, labor, tools, light, power, and mechanical appliances, permits for the installation and construction of work, and all other means, materials, and supplies for properly prosecuting its work under the Contract, unless expressly specified otherwise. The Contractors and all subcontractors shall rely on their own measurements for the performance of their work.

7.2.4 The Contractor shall furnish necessary and approved materials in ample quantities and as frequently as required to avoid delay in the progress of the work, and shall so store them as to prevent interference with work not under this Contract.

7.2.5 The Contractor shall employ qualified and competent personnel in their respective lines of work. Should THE UNIVERSITY deem any employee incompetent or negligent or for any cause unfit for the employee's duties, the Contractor shall dismiss that person, and that individual shall not again be employed on the work. No Contractor will be required to employ for any work any person against whom it has a reasonable objection.

7.2.6 The Contractor shall employ a full-time superintendent assigned solely to this Project who shall have full authority to act for the Contractor. It is understood that such representative shall be acceptable to THE UNIVERSITY and shall be one who is to be continued in that capacity for the particular job involved unless that individual ceases to be on the Contractor's payroll.

The various subcontractors shall have competent foremen in charge of their respective part of the work at all times. They are not to employ on the work an unfit person or anyone not skilled in the work assigned to that person.

The Contractor shall give the work its special supervision, lay out its own work, do the necessary leveling and measuring or employ a competent New Jersey licensed engineer or land surveyor satisfactory to THE UNIVERSITY to do so. If, due to trade agreement, additional standby personnel are required to supervise equipment or temporary services used by other trades, the Contractor shall provide such standby services.

The superintendence and the number of workmen shall be sufficient to insure the completion of the Project within the time stipulated therefore.

7.2.7 No materials or supplies for the work shall be purchased by the Contractor or by any subcontractor which are subject to a lien or other encumbrance or an agreement by which an interest is retained by the seller. The Contractor and all subcontractors warrant that they have good title to materials and supplies used by them in the work, free from liens, claims or encumbrances.

7.2.8 Manufacturer's Instructions: Where installations include manufactured products, the Contractor shall comply with the manufacturer's applicable instructions and recommendations for installation to the extent that these

instructions and recommendations are more explicit or more stringent than the requirements indicated in the Contract Documents.

7.2.9 Where the specifications or the manufacturer's instructions or warranty require that the site be visited and inspected by a representative of the manufacturer prior to the commencement of a particular item of work, the Contractor shall ensure that said visit or inspection occurs, and is recorded in wirting with notes regarding approvals, exceptions and recommendations, and that THE UNIVERSITY be given no less than 24 hours' notice of arrival of the manufacturer's representative.

7.3 INSPECTION OF WORK

7.3.1 THE UNIVERSITY shall at all times have access to the work whether it is in preparation or in progress and the Contractor shall provide proper facilities for such access and for inspection and testing. THE UNIVERSITY reserves the right, at its option, to employ the services of professional consultants for any phase of the work as it may deem to be in the best interest of THE UNIVERSITY. The Contractor shall cooperate with THE UNIVERSITY and these consultants and shall provide access to the work and facilities for inspection and testing.

7.3.2 If the Specifications, the Engineer's or Construction Manager's instructions, laws, ordinances or public or private authority require work to be specifically tested or approved, the Contractor so affected shall give THE UNIVERSITY three days' notice in writing of its readiness for inspection, and if the inspection is by an authority other than THE UNIVERSITY, of the date fixed for such inspection. Inspections by THE UNIVERSITY will be promptly made. If such work should be covered up or otherwise concealed from view without approval or consent of THE UNIVERSITY, it must, if required by THE UNIVERSITY, be uncovered for examination and recovered after the examination at the Contractor's expense. There will be no extension of time to the Contract for uncovering or recovering work.

7.3.3 Except as otherwise provided herein, materials and installed equipment used in the construction of the Project shall be adequately tested according to standards of the trade, industry or as required by THE UNIVERSITY, at the expense of the Contractor.

7.3.4 Whenever, in THE UNIVERSITY's opinion, THE UNIVERSITY considers it necessary or advisable to insure the proper implementation of the intent of the Contract Documents, THE UNIVERSITY will have authority to require special inspection or testing of the work in addition to that required elsewhere in the Contract Documents, whether or not such work be then fabricated, installed or completed. However, neither THE UNIVERSITY's authority to act under this Subsection, nor any decision made by THE UNIVERSITY either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of THE UNIVERSITY to the Contractor, subcontractor, their agents or employees, or any other person performing part of the work.

7.3.5 If after commencement of the Work THE UNIVERSITY determines that some portion of the Work requires special inspection, testing or approval not provided for elsewhere in the Contract Documents, THE UNIVERSITY will proceed with such inspection, testing or approval under contract with a third party for such services, or instruct the Contractor to order such special inspection, testing or approval. If such special inspection or testing reveals a failure of the Work to comply (1) with the requirements of the Contract Documents or (2) with respect to the performance of the Work, with laws, ordinances, rules, regulations or orders of public authority having jurisdiction, the Contractor shall bear all costs thereof, including THE UNIVERSITY's additional services made necessary by such failure; otherwise THE UNIVERSITY shall bear such costs, and an appropriate change order will be issued.

7.3.6 The Contractor shall cooperate fully with THE UNIVERSITY and any testing company and supply materials for testing as required.

7.3.7 All construction subcode inspections shall be performed by the University's Construction Code Official in

accordance with a Memorandum of Understanding with the NJDCA. The Contractor shall be responsible for requesting subcode inspections, as necessary, by contacting the University's Construction Code Official directly. The Contractor shall abide by all instructions regarding subcode inspection procedures. The Contractor is responsible for notifying THE UNIVERSITY of the time and date.

7.4 PLANT INSPECTION

THE UNIVERSITY may undertake the inspection of materials at the source. Manufacturing plants may be inspected periodically for compliance with specified manufacturing methods. Material samples may be obtained for laboratory testing by the University for compliance with materials quality requirements. This may be the basis for acceptance of manufactured lots as to quality.

In the event plant inspection is undertaken the following conditions shall be met:

(a) THE UNIVERSITY shall have the cooperation and assistance, at no expense to the University, of the Contractor and the producer with whom it contracted for the provision of materials and equipment.

(b) THE UNIVERSITY shall have, at no additional expense, full entry at all times to such parts of the plant as may concern the manufacture or production of the materials being furnished.

(c) If required by THE UNIVERSITY, the Contractor shall arrange for approved office space for the use of the inspector at no additional expense to the University; such space to be located conveniently in or near the plant.

(d) Adequate safety measures shall be provided and maintained by the Contractor at no expense to the University.

It is understood that THE UNIVERSITY reserves the right to retest materials which have been tested and accepted at the source of supply after the same have been delivered and to reject materials which, when retested, do not meet the requirements of the Contract Documents. The cost of retesting in case of rejection shall be borne by the Contractor at no expense to the University.

7.5 INSTALLED EQUIPMENT TESTING AND TRAINING

7.5.1 When mechanical, electrical or other equipment is installed it shall be the responsibility of the Contractor to operate it for a satisfactory period of time as required by the Contract Documents for proper testing of the equipment and instructing THE UNIVERSITY operating personnel. Fuel, power, and other items or services required for proper testing of equipment and for the period of instruction shall be provided at the expense of the Contractor furnishing such equipment. The Contractor shall provide THE UNIVERSITY with a minimum of three (3) days prior written notice of the performance of a test. Tests shall be conducted in the presence of THE UNIVERSITY. Test results shall be submitted and approved by THE UNIVERSITY prior to acceptance of the installation.

7.5.2 Within 30 days after Contractor's installation of mechanical, electrical or other equipment and as a condition to being paid for same, the Contractor shall furnish one (1) paper and one (1) electronic copy of each "Operating and Maintenance Booklet" which shall contain not less than the following (as applicable to each trade):

(a) Manufacturer's service manuals and equipment parts list of all functional components of the system including control diagrams, wiring diagrams of controllers, and explanation and description of each system;

(b) A complete typewritten list of all items of pertinent equipment including compressors, pumps, fans, motors, coils, etc. with nameplate date, capacities, model numbers, lubrication charts and preventive maintenance schedule;

(c) Trouble shooting guides and testing instructions;

(d) Manufacturer's parts list and ordering requirements;

(e) Names, addresses and telephone numbers of all manufacturers agents, Subcontractors, supply houses, etc. from which replacement parts, service and operating information can be obtained;

(e) The manuals shall be divided into indexed sections with tabs dividing sections, for A) Mechanical/HVAC, B) Electrical/Lighting, C) Finish Schedules; and

(f) such other information required by the University's BIM Standards.

7.5.3 The Contractor shall instruct THE UNIVERSITY designated personnel as to the proper operation of all equipment and apparatus, and each of the various systems specified. No later than two weeks prior to conducting training sessions, the Contractor shall submit a Training Plan for THE UNIVERSITY's approval. The Training Plan shall include the instructor's qualifications, the proposed training schedule and an outline of the instructor's lesson plan. Training session topics shall include, as a minimum, a detailed review of operating and maintenance procedures, spare parts, tool requirements, prescribed lubricants and fuels, hazards and warranties. The Contractor shall be responsible for providing all visual aids and training materials. Training sessions shall be conducted at a time and place convenient to THE UNIVERSITY personnel.

The Contractor, after issuing complete instructions and direction to the THE UNIVERSITY designated personnel, shall secure from such persons a signed acknowledgment in duplicate stating that complete and comprehensive instructions have been received and understood. The Contractor shall then forward the two copies of the signed acknowledgment to THE UNIVERSITY for record purposes.

7.6 LABORATORY TESTING AND INSPECTION

7.6.1 General Requirements:
THE UNIVERSITY will retain the services of an independent testing laboratory to perform structural steel, reinforced concrete, soils and any other testing services required by THE UNIVERSITY. The Contractor shall cooperate with the laboratory at no expense to the University to facilitate the execution of its required services. Employment of the laboratory shall in no way relieve the Contractor of its obligations to either perform any other testing and inspection work as required by the Contract Documents or to perform any other item of Work.

7.6.2 Related Requirements:

(a) Laboratory Selection: The Contractor shall submit the name and qualifications of three independent testing laboratories for approval to THE UNIVERSITY. The Contractor shall solicit pricing from each prospective testing and inspection laboratory for the services requested by THE UNIVERSITY. The pricing information shall be submitted with the qualification submissions listed in Sub-article 7.6.3. THE UNIVERSITY shall determine the best qualified laboratory.

(b) Payment: Payment for the services described herein shall be made only for work which is actually performed and approved by THE UNIVERSITY. Payment shall be at the rates quoted for the services listed in the Supplementary General Conditions and shall be in effect from the Notice to Proceed date and for a two year period thereafter.

Rates and fees are to be based on work performed between 8:30 a.m. and 4:30 p.m.; overtime rate of 1-1/2 times the corresponding hourly rates may be applied for work performed after 4:30 p.m.

and before 8:30 a.m. The overtime rate shall also be applicable for weekends and holidays.

Travel expenses for inspection and testing services rendered outside the 50 mile radius of Newark, New Jersey shall be completely documented to the satisfaction of THE UNIVERSITY. Any out of town travel expenses shall be pre-approved via an estimate submitted by the laboratory.

THE UNIVERSITY shall pay only the amounts of the laboratory invoices, under the allowance amount included by THE UNIVERSITY as a Bid Item in the Bidder's Proposal. The allowance may be adjusted upward or downward at THE UNIVERSITY's sole discretion, to reflect actual costs. THE UNIVERSITY shall pay for the initial testing only. Should any material fail to satisfy the test requirements, the Contractor shall be responsible for any additional costs and delays to retest or test replacement material.

7.6.3 Qualification of Laboratory:

To be qualified the laboratory shall:

(a) Meet "Recommended Requirements for Independent Laboratory Qualification", published by American Council of Independent Laboratories.

(b) Meet basic requirements of ASTM E329, "Standards of Recommended Practice for Inspection and Testing Agencies for Concrete and Steel as Used in Construction."

(c) Be authorized to operate in the State of New Jersey.

(d) Submit copy of report inspection of facilities made by Materials Reference Laboratory of National Bureau of Standards during the most recent tour of inspection, with memorandum of remedies of any deficiencies reported by inspection.

(e) Have testing equipment:

(1) Calibrated at reasonable intervals by devices of accuracy traceable to either:

i. National Bureau of Standards; or
ii. Accepted value of natural physical constants.

7.6.4 Laboratory Duties:

The laboratory shall promptly submit three (3) copies of a written report of each test and inspection to THE UNIVERSITY for distribution. Each report shall include:

(a) Date issued;

(b) Project title and number;

(c) Testing laboratory name, address and telephone number;

(d) Name and signature of laboratory inspector;

(e) Date and time of sampling or inspection;

(f) Record of temperature and weather conditions;

(g) Date of test;

(h) Identification of product and specification section;

(i) Location of inspection or test;

(j) Results of tests and compliance with Contract Documents; and

(k) Interpretation of test results, when requested by THE UNIVERSITY.

7.6.5 Limitation of Authority of Testing Laboratory:

Laboratory is not authorized to:

(a) Release, revoke, alter or enlarge on requirements of Contract Documents;

(b) Approve or accept any portion of the Work; or

(c) Perform any duties of the Contractor.

7.6.6 Contractor's Responsibilities:

(a) Cooperate with laboratory personnel, provide access to work, and to manufacturer's operations.

(b) Secure and deliver to the laboratory adequate quantities or representational samples of materials proposed to be used and which require testing.

(c) Provide to the laboratory the preliminary design mix proposed to be used for concrete, and other materials mixes which require control by the testing laboratory.

(d) Furnish copies of products test reports as required.

(e) Furnish incidental labor and facilities:

(1) To provide access to work to be tested;
(2) To obtain and handle samples at the Project Site or at the sources of the product to be tested;
(3) To facilitate inspections and tests; and
(4) For storage and curing of test samples.

(f) Notify laboratory sufficiently in advance of operations to allow for laboratory assignment of personnel and scheduling of tests. THE UNIVERSITY reserves the right to have materials that were not properly tested, removed and replaced at no additional cost to THE UNIVERSITY.

(g) When test or inspections cannot be performed after such notice, reimburse laboratory for laboratory personnel and travel expenses incurred due to Contractor's actions or inactions.

(h) The Contractor shall have the laboratory perform additional tests as required by THE UNIVERSITY.

7.7 CERTIFICATION OF COMPLIANCE

Certain materials as specified elsewhere will be accepted on the basis of certificates of compliance stating that such materials or assemblies fully comply with the requirement of the Contract. The form of the certificates of compliance shall be approved by THE UNIVERSITY.

Materials or assemblies used on the basis of certificates of compliance may be sampled and tested at any time and if found not to be in conformity with the Contract requirements, will be subject to rejection whether in place or not. The Contractor shall require the manufacturer or supplier to furnish three copies of Certificates of Compliance with each delivery of materials, components, and manufactured items that are acceptable by certification. Two copies shall be furnished to THE UNIVERSITY and one copy shall be retained by the Contractor.

Certificates of Compliance shall contain the following information:

(a) Project to which the material is consigned.

(b) Name of the Contractor to which the material is supplied.

(c) Kind of material supplied.

(d) Quantity of material represented by the certificate.

(e) Means of identifying the consignment, such as label marking, seal number, manufacturer or supplier, and such additional information as required to make positive identification.

(f) Date and method of shipment.

(g) A statement that the material has been tested and found in conformity with the pertinent Contract requirements stated in the certificate and that test results pertaining to the material are either on file with the producer and available upon request or attached to the certificate.

(h) Signature of a person having legal authority to bind the supplier.

(i) Signature attested to by a Notary Public.

No payments relative to materials specified to be accepted on the basis of Certificates of Compliance shall be made until THE UNIVERSITY is in possession of an acceptable Certificate of Compliance.

A Certificate of Compliance shall not be construed as a waiver of THE UNIVERSITY's right to test the material or assemblies supplied.

7.8 NON-CONFORMING WORK AND MATERIALS

7.8.1 In the event the Contractor fails to perform the Work in accordance with the terms of the Contract, THE UNIVERSITY, upon three (3) days prior written notice, and without prejudice to any other remedy under the Contract, may perform or cause to be performed any portion of the Work. In such event, the Contractor shall be liable for all additional costs and expenses incurred by THE UNIVERSITY in so performing the Work, including any attorneys' fees and costs and an administrative overhead mark-up of fifteen percent (15%), and THE UNIVERSITY shall be able to offset immediately such costs and expenses against any monies otherwise due and owing to the Contractor

7.8.2 Materials or work found to be defective, or not in strict conformity with the requirements of the Contract Documents, or defaced or damaged through the acts or omissions of a Contractor or its subcontractors, or through action of fire, weather, vandalism or other causes, shall be removed immediately and new materials or work substituted therefor to the satisfaction of THE UNIVERSITY without delays by the Contractor involved and at its sole cost and expense. Under no circumstances shall the Contractor be entitled to an extension of time for correcting defective work.

7.8.3 Should THE UNIVERSITY determine that work, including work of an administrative nature, is not in conformance with the requirements of the Contract Documents, THE UNIVERSITY shall issue a Non-

Conformance Notice (NCN). The NCN shall state the work or material which is non-conforming and establish a reasonable time period for correcting the non-conforming work or material. Should the Contractor fail to correct, repair or replace the non-conforming work or material in a timely manner, THE UNIVERSITY may take such actions as THE UNIVERSITY deems necessary to protect THE UNIVERSITY's and the public's interest, including but not limited to, withholding payments, suspending all or a portion of the Work, terminating the Contract for Default, denying future prequalification or subcontractor approvals, and/or suspending or debarring the Contractor from bidding on future THE UNIVERSITY contracts.

7.8.4 No previous inspection or certification shall be held as an acceptance of defective work or materials or to relieve the Contractor from the obligation to furnish sound materials and to perform good satisfactory work. The Engineer shall be the final judge of the materials and work furnished.

7.8.5 The Contractor shall be given every opportunity to correct defective or damaged work; however, if the Contracting Officer deems it inexpedient to have the Contractor correct work damaged or done not in accordance with the Contract, the difference in value between such work and that specified, as determined by the Contracting Officer, together with the cost and expense of correcting the work, shall be deducted from the Contract Price.

7.9 WARRANTY AGAINST DEFECTIVE WORK

7.9.1 In addition to other warranties set out elsewhere in this Contract, the Contractor warrants that work performed under this Contract conforms to the Contract requirements and is free of defect of equipment, material or design furnished, or workmanship performed by the Contractor or its subcontractors or suppliers at any tier. Such warranty shall continue for a period of one year from the date of Acceptance of the Work. Under this warranty, the Contractor shall remedy at its own expense any such failure to conform or any such defect. In addition, the Contractor shall remedy at its own expense damage to THE UNIVERSITY owned or controlled real or personal property, when that damage is the result of the failure of the Contractor or its subcontractors or suppliers at any tier to conform to contract requirements or any such defect of equipment, material, workmanship, or design. The Contractor shall also restore work damaged in fulfilling the terms of this clause. The Contractor's warranty with respect to work repaired or replaced hereunder will run for one year from the date of the acceptance by THE UNIVERSITY of such repair or replacement.

7.9.2 THE UNIVERSITY shall notify the Contractor in writing within a reasonable time after the discovery of failure, defect, or damage. Should the Contractor fail to remedy failure, defect or damage described in the first paragraph of this Article within a reasonable time after receipt of notice thereof, THE UNIVERSITY shall have the right to replace, repair, or otherwise remedy such failure, defect, or damage at the Contractor's expense.

7.9.3 In addition to the other rights and remedies provided by this clause, subcontractor's, manufacturers', and suppliers' warranties, expressed or implied, respecting work and materials shall, at the direction of the Contracting Officer, be enforced by the Contractor for the benefit of THE UNIVERSITY. In such case if the Contractor's warranty under the first paragraph of this Article has expired, a suit directed by THE UNIVERSITY to enforce a subcontractor's, manufacturer's or supplier's warranty shall be at the expense of THE UNIVERSITY. The Contractor shall obtain warranties which the subcontractors, manufacturers, or suppliers would give in normal commercial practice.
If directed by the Contracting Officer, the Contractor shall require any such warranties to be executed in writing to THE UNIVERSITY.

7.9.4 Notwithstanding other provisions of this Article, unless such a defect is caused by the negligence of the Contractor or its subcontractors or suppliers at any tier, the Contractor shall not be liable for the repair of defects of material or design furnished by THE UNIVERSITY nor for the repair of damage which results from any such defect in THE UNIVERSITY furnished material or design.

7.9.5 The warranty specified herein shall not limit THE UNIVERSITY's rights under Article 13.3, COMPLETION

AND FINAL ACCEPTANCE.

8. EXCAVATION AND DIFFERING SITE CONDITIONS

8.1 UNCLASSIFIED EXCAVATION

Unless otherwise provided elsewhere in this Contract, excavation work shall be considered unclassified excavation and shall consist of the removal of earth, rock, abandoned utilities, foundations and all other materials encountered of whatever nature.

8.2 MEASUREMENT OF PAY LIMITS FOR EXCAVATION

The method of measurement and establishment of pay limits for additions or deductions for excavation shall be as follows:

Basement Excavations: Pay limit for excavation shall be in accordance with cross sections limited by vertical parallel planes extending 24 inches outside of foundation walls shown on Contract Drawings, and horizontal plane along bottom of basement concrete slab or footings.

Pipelines and Encased Utilities: Pay limit for trench excavation shall be limited to width of 36 inches or the largest diameter of pipe barrel plus 24 inches, whichever is greatest and depth at bottom of pipe barrel. When rock is encountered, the Contractor shall excavate to six inches below bottom of pipe barrel. A compacted granular fill bid for the pipe shall be provided by the Contractor. No additional payment will be made for this addition of six inches and granular fill.

Encased Electrical Conduit, Steam Transmission Lines, Unformed Foundation Footings: Pay limit for the width and depth of trench excavation shall be limited to the width and elevations of the structure(s) shown on the Contract Drawings.

Where unsuitable foundation material is encountered, the Contractor shall excavate to elevations as directed by THE UNIVERSITY. Unit prices for additional excavation and replacement with approved compacted granular fill, if stated in the proposal form, shall be used as a basis for additional payment by THE UNIVERSITY.

8.3 SOIL BORINGS

Where data pertaining to test pits, test borings, or any like information are given, by drawings or in writing, they are for general information only and shall not relieve the Contractor from the responsibility for making such investigations as may have been necessary to insure that its bid was based on actual conditions.

8.4 DIFFERING, LATENT OR UNUSUAL SITE CONDITIONS

8.4.1 The Contractor shall not proceed with the work at the site until it has satisfied itself that the topographic data in the Contract Documents are correct.

8.4.2 Should the Contractor encounter subsurface and latent conditions at the site materially differing from those shown on the plans or indicated in the Specifications it shall immediately give notice to THE UNIVERSITY of such conditions before they are disturbed. THE UNIVERSITY will thereupon promptly investigate the conditions, and if it finds that they materially differ from those shown on the plans or indicated in the Specifications, it will promptly make such changes in the plans and/or Specifications as it may find necessary. Any increase or decrease of cost and time of completion resulting from such change shall be adjusted in the manner provided in Article 3.1, CHANGE ORDERS.

8.4.3 The Contractor shall promptly, and before such conditions are disturbed, notify THE UNIVERSITY in writing of any other unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as belonging in work of the character provided for in this Contract. THE UNIVERSITY shall promptly investigate the conditions, and if it finds that such conditions do materially so differ that they could not have been discovered by the Contractor through

employing the high standard of care required in the Contractor's pre-bid investigations and that they cause an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the Work under this Contract, an equitable adjustment shall be made in accordance with Article 3.2.

8.4.4 No claim of the Contractor under this Article shall be allowed unless the Contractor has given the written notice required above.

8.4.5 No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after substantial completion under this Contract.

8.4.6 The Contractor waives its right of claim if it disturbs the condition prior to submitting notice to THE UNIVERSITY and before the Contracting Officer acts thereon.

9. INDEMNIFICATION AND LIABILITY

9.1 INDEMNIFICATION; RISKS ASSUMED BY THE CONTRACTOR

9.1.1 The Contractor shall defend, indemnify and save harmless the State of New Jersey, New Jersey Educational Facilities Authority ("NJEFA"), Architect/Engineer and THE UNIVERSITY and their officers, employees, servants and agents from all suits, actions, or claims of any character including, but not limited to, expenditures and costs of investigations, hiring of witnesses, court costs, counsel fees, settlements, judgments or otherwise, brought because of any injuries or damage received or sustained by any person, persons, or property on account of the operations of said Contractor or its subcontractors in the performance of the work specified in this Contract; or on account of or in consequence of any neglect in safeguarding the work as specified in this Contract; or because of any act or omission, neglect, or misconduct of said Contractor or its subcontractors in the performance of the work specified in this Contract; or from any claims or amounts arising or recovered under the Worker's Compensation Act, or any other law, ordinance, order, or decree. So much of the money due the said Contractor under and by virtue of this Contract as may be considered necessary by THE UNIVERSITY for such purpose may be retained for the use of THE UNIVERSITY; except that money due to the Contractor will not be withheld when the Contractor produces satisfactory evidence that it is adequately protected by public liability and property damage insurance. THE UNIVERSITY shall, as soon as practicable after a claim has been made against it, give written notice thereof to the Contractor along with full and complete particulars of the claim. If the suit is brought against THE UNIVERSITY, THE UNIVERSITY shall immediately forward to the Contractor every claim, demand, complaint, notice, summons, pleading or other process received by THE UNIVERSITY or its representatives. THE UNIVERSITY shall have the right, but not the obligation, to participate, to the extent it deems appropriate, in the defense of the matter and must concur in the terms of any settlement or other voluntary disposition of the matter. In the defense of any such claims, demands, suits, actions and proceedings, the Contractor shall not raise or introduce, without the express written permission in advance of the Attorney General of the State of New Jersey, any defense involving in any way the immunity of THE UNIVERSITY or the State of New Jersey, the jurisdiction of the tribunal over THE UNIVERSITY or the State of New Jersey, or the provisions of any statutes respecting suits against THE UNIVERSITY or the State of New Jersey.

9.1.2 The Contractor assumes the following distinct and several risks, whether they arise from acts or omissions whether negligent or not of the Contractor, its subcontractors, suppliers, employees, agents, and others working for the Contractor on the Project, of THE UNIVERSITY or of third persons, or from any other cause, and whether such risks are within or beyond the control of the Contractor, excepting only risks which arise from solely affirmative acts performed by THE UNIVERSITY subsequent to the execution of the Contract with actual and willful intent to cause the loss, damage, and injuries described in Paragraphs (a) and (b) below:

(a) Risks of Loss or Damage to the Construction: Until completion of all work and the acceptance of the Project by THE UNIVERSITY, the Contractor shall have the charge and care of the work and

of the materials to be used therein, whether permanent or temporary, including materials for which it has received partial payment and shall take every precaution against injury or damage to any part thereof by the action of the elements or from any other cause, whether arising from the execution or from the non-execution of the work. The Contractor shall rebuild, repair, restore, and make good all injuries or damages to any portion of the work occasioned by any of the above causes before acceptance and shall bear the expense thereof. However, the Contractor shall not assume the risk for damage to the work due to acts of war.

Where necessary to protect the work or materials from damage the Contractor shall in furtherance

of the above Paragraph, but not by way of limitation, at its expense, provide suitable drainage for the Project and erect such temporary structures as are necessary to protect the work or materials from damage. The risks for failure to take such actions are assumed by the Contractor.

In case of suspension of work from any cause whatever, the Contractor shall continue to be responsible for the Project as provided above and shall take such precautions as may be necessary to prevent damage to the Project, shall provide for drainage and shall erect necessary temporary structures, signs or other facilities. During such period of suspension of work, the Contractor shall properly and continuously maintain in an acceptable growing condition living material in newly established plantings, seedings, and soddings furnished under this Contract, and shall take adequate precautions to protect new tree growth and other important vegetative growth against injury. If ordered by THE UNIVERSITY, the Contractor shall properly store during such suspension of work materials which have been partially paid for by THE UNIVERSITY or which have been furnished by THE UNIVERSITY. Such storage by the Contractor shall be on behalf of THE UNIVERSITY. THE UNIVERSITY shall at all times be entitled to the possession of such materials, and the Contractor shall promptly return the same to the site of the work when requested. The Contractor shall not dispose of any of the materials so stored except on written authorization from THE UNIVERSITY. The Contractor shall be solely responsible for the loss of or damage to such materials.

(b) Risk of Loss to Property in Performing the Work: The risk of loss or damage to any property of the Contractor, and of claims made against the Contractor or THE UNIVERSITY for loss or damage to any property of subcontractors, supplier, workmen, and others performing the work, and to lessors, occurring at any time prior to completion of removal of such property from the construction site or THE UNIVERSITY's premises, or the vicinity thereof shall be borne by the Contractor.

9.1.3 Neither the acceptance of the Project by THE UNIVERSITY nor the making of final payment shall release the Contractor from its obligations under this Article. Moreover, neither the enumeration in this Subparagraph nor the enumeration elsewhere in this Contract of particular risks assumed by the Contractor or of particular claims for which it is responsible shall be deemed: (a) to limit the effect of the provisions of this Article or of any other provision of this Contract relating to such risks or claims; (b) to imply that it assumes or is responsible for risks or claims only of the type enumerated in this Article or in any other provision of this Contract; or (c) to limit the risks which it would assume or the claims for which it would be responsible in the absence of such enumerations.

9.1.4 The Contractor expressly understands and agrees that insurance protection required by the Contract, or otherwise provided by the Contractor, shall in no way limit the Contractor's responsibility to defend, indemnify, and save harmless THE UNIVERSITY and the State as herein provided.

9.2 INSURANCE

The Contractor shall secure and maintain in force for the term of the Contract, insurance coverage provided herein. All insurance coverage is subject to the approval of the University and shall be issued by an insurance company authorized to do business in the State of New Jersey and which maintains an A.M. Best rating of A- (VII) or better. The Contractor shall provide the University with current Certificates of Insurance for all coverage and renewals thereof which must contain the provision that the insurance provided in the certificate shall not be canceled for any reason except after thirty (30) days written notice to the University. All insurance required herein shall contain a waiver of subrogation in favor of the University. All insurance required herein, except Workers' Compensation and

Owners and Contractors Protective, shall name Montclair State University, the State of New Jersey, the New Jersey Educational Facilities Authority, the Architect/Engineer and Construction Manager as additional insureds. The Contractor shall procure and maintain until the issuance of the Final Certificate of Payment, the types of insurance specified below:

9.2.1. 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.

9.2.2. 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. Additionally the policy must be endorsed to include coverage as provided Under Sections 29 and 30 of the Motor Carrier Act of 1980.

9.2.3. 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 employee, 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.

9.2.4. 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.

9.2.5. Excess Liability, umbrella insurance form, applying excess of primary to the commercial general liability, commercial automobile liability and employer's liability insurance shall be provided with minimum limits of twenty million dollars ($20,000,000) per occurrence, twenty million dollars ($20,000,000) general aggregate, and twenty million dollars ($20,000,000) products/completed operations.

9.2.6. 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.

9.2.7 Asbestos Abatement Liability:

The Contractor (or whoever is performing the removal of any Asbestos Containing Material (ACM)) shall maintain throughout the entire period of their performance under this Contract, Asbestos Abatement Liability Insurance in the amount of $2,000,000 per loss and $2,000,000 in the aggregate. The Contractor (or whoever is responsible for transporting and disposing of the ACM) shall maintain throughout the entire period of their performance under this Contract Transportation Pollution Coverage (Form MCS90) in the amount of $2,000,000 or statutory minimum whichever is greater.

9.2.8 Environmental Impairment Liability:
The Contractor (or whoever is performing environmental removal or remediation work) must procure and maintain through the life of the Contract Environmental Impairment Liability Insurance, including lead abatement if required, and removal operations in an amount of $2,000,000 per occurrence and $2,000,000 aggregate. Transport of any hazardous waste generated under this Contract shall require Hazardous Waste Haulers Insurance (MCS90) in an amount of $2,000,000 per occurrence or statutory minimum, whichever is greater.

9.2.11 The Contractor shall not commence work under this Contract until it has obtained the insurance required under this Paragraph and such insurance has been approved by the Contracting Officer, nor shall the Contractor allow any subcontractor to commence work on its subcontract until the insurance required of the subcontractor has been so obtained and approved.
If the insurance provided by the Contractor fails to comply with the requirements listed herein, or if the Contractor fails to maintain such insurance, then THE UNIVERSITY maintains the right to stop work until proper evidence is provided.

9.2.12 The cost of providing the required insurance shall be included under the Bid Item "General Conditions" whenever such a bid item is listed in the Bidder's Proposal. If no such item is listed then the cost shall be considered included under the total lump sum bid or allocated within the unit prices that sum to the total bid price.

9.3 LIMITATIONS OF LIABILITY
In no event, whether under the provisions of this Contract, as a result of breach of Contract, tort (including negligence) or otherwise, shall THE UNIVERSITY or the State be liable to the Contractor for special, consequential, incidental or penal damages including, but not limited to, loss of profit or revenues, loss of rental value for Contractor owned equipment, damages to associated equipment, additional risk, cost of capital or interest of any nature (whether characterized as damages for the retention of money, an increase in the cost of performance, a penalty, or otherwise).

9.4 NO THIRD PARTY BENEFICIARIES
It is specifically agreed between the parties executing this Contract that it is not intended by any of the provisions of any part of the Contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to the Contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of the Contract.

It is the further intent of THE UNIVERSITY and the Contractor in executing this Contract that no individual, firm, corporation or any combination thereof, which supplies materials, labor, services or equipment to the Contractor for the performance of the work becomes thereby a third party beneficiary of this Contract. THE UNIVERSITY and the Contractor understand that such individual, firm, corporation or combination thereof, has no right to bring an action in the courts of this State against the State or THE UNIVERSITY, by virtue of this lack of standing and also by virtue of the provisions of the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq.

9.5 PERSONAL LIABILITY OF PUBLIC OFFICIALS
In carrying out the provisions of the Contract, or in exercising power or authority granted to them by or within the scope of the Contract, there shall be no liability upon any THE UNIVERSITY employee, either personally or as officials of the State, it being understood that in all such matters they act solely as agents and

representatives of the State.

9.6 INTELLECTUAL PROPERTY

If the Contractor uses any design, device or materials covered by letters, patent or copyright, it shall provide for such use by suitable agreement with the owner of such patented or copyrighted design, device or material. It is mutually agreed and understood that, without exception, the Contract Price shall include all royalties or costs arising from the use of such design, device or materials in any way involved in the Work. The Contractor shall defend, indemnify and save harmless the State, THE UNIVERSITY, and their officers, agents, servants, and employees from any and all claims for infringement by reason of the use of such patented or copyrighted design, device or materials or any trademark or copyright in connection with Work agreed to be performed under this Contract, and shall defend and indemnify the State, THE UNIVERSITY, and their officers, agents, servants, and employees, for any cost, expense or damage which it or they may be obliged to pay by reason of such infringement at any time during the prosecution of the Work or after completion of the Work.

9.6.1 INSURANCE TO BE CARRIED BY THE UNIVERSITY

9.6.1.1 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.

9.6.1.2 This insurance shall not protect against damage or loss to any of the Contractor's or Subcontractor's tools, equipment, scaffolding, staging towers or forms, Contractor's materials and sheds or other temporary structures erected for used by the Contractor or Subcontractors. It is understood that the Contractor will at their own expense, carry all insurance which may be required to provide the necessary protection against such loss or damage herein described which insurance shall contain a waiver of any right of subrogation against the University.

9.6.1.3 The insurance procured by the University under this paragraph may provide for a deductible in the amount of $100,000.00. The Contractor shall assume the responsibility for any deductible for any builder’s risk loss it may make claim for under this policy.

9.6.1.4 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.

9.6.1.5 All losses will be adjusted with, and payable to, the University.

9.6.1.6 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.

9.6.1.7. Claims made under the Builders Risk Insurance Policy provided by the University shall be paid to the University. Contractor and Contractor’s subcontractors shall not be named additional insured of the Builders Risk Insurance Policy. The Builders Risk Insurance Policy shall not contain a waiver of subrogation claim in favor of the Contractor.

9.7 ENVIRONMENTAL COMPLIANCE AND LIABILITY

9.7.1 The Contractor shall conduct all activities in compliance with all applicable federal, state and local laws,

rules, regulations and permits designed to prevent or control the discharge of substances into the land, water and air and to protect individual health and safety. The Contractor will indemnify, hold harmless and defend THE UNIVERSITY, the State of New Jersey, their directors, officers, employees, agents and assigns from and against any and all suits, actions, proceedings, costs, fines, penalties and claims arising from or alleged to have arisen from its violation of any such environmental, health or safety laws, rules, regulations or permits whenever such suits, actions, claims or proceedings shall be commenced, or whenever such costs are accrued, except for any violations, if any, at THE UNIVERSITY facility existing prior to the Contractor's activities. The Contractor shall take reasonable and necessary precautions to prevent the discharge of hazardous substances, including asbestos and petroleum products, onto THE UNIVERSITY property or into the environment, including the air. Failure to comply will be considered grounds for default, and THE UNIVERSITY may terminate the Contract in accordance with Article 2.5, TERMINATION FOR CAUSE. The indemnification obligations hereunder shall survive the completion or termination of this Contract.

9.7.2 No later than two weeks after the Notice to Proceed for this project, the Contractor shall supply to THE UNIVERSITY a set of MSDS for any and all chemicals, materials or substances intended for use in the completion of the project that are covered by reference or definition by the OSHA Hazard Communication Standard (hereinafter HCS) and/or the New Jersey Worker and Community Right-to-Know Act, N.J.S.A. 34:5A-1 et seq. The chemical name and Chemical Abstract Service (hereinafter CAS) number must be provided for all hazardous substances and for the five most predominant ingredients. If this information is not available on the MSDS, the information must be provided under separate cover when the MSDS is submitted. The Contractor shall also supply to THE UNIVERSITY a copy of its written hazard communication program as defined by the OSHA-HCS and the New Jersey Worker and Community Right-to-Know Act, N.J.S.A. 34:5A-1 et seq.

9.7.3 In addition to supplying THE UNIVERSITY with the MSDS, the Contractor shall obtain the expressed written approval of THE UNIVERSITY to use any chemicals with a flammability or reactivity hazard classification of 2, 3, or 4 as defined by the National Fire Protection Association Standard N FPA704.

9.7.4 During the performance of this contract, the Contractor shall take any and all necessary precautions to ensure that personnel and property of THE UNIVERSITY, the Contractor, third parties, and the general public are not exposed to physical or health hazards from any of the aforementioned chemicals, materials and substances. In addition, the aforementioned chemicals, materials and substances shall be labeled with the chemical name and CAS number of all hazardous substances including the five most predominant ingredients in accordance with the requirements of OSHA-HCS and the New Jersey Worker and Community Right-to-Know Act.

9.7.5 In the event the Contractor obtains any new information pertaining to the aforementioned chemicals, materials and substances during the performance of the work on this contract, the Contractor shall immediately make that information available to THE UNIVERSITY.

9.7.6 The Contractor's format shall meet the requirements of OSHA-HCS. Alternative formats may be accepted provided they meet the requirements of the OSHA-HCS and New Jersey Worker and Community Right-to-Know Act.

10. ETHICAL REQUIREMENTS

10.1 COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, THE UNIVERSITY shall have the right to annul this Contract without liability and in its discretion to deduct from the Contract Price, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

10.2 OFFICIALS NOT TO BENEFIT

10.2.1 Interest of Members of Congress: No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Contract or to any benefit arising therefrom.

10.2.2 Interest of Public Officials: No member, officer or employee of THE UNIVERSITY or the State shall have any interest, direct or indirect, in this Contract or the proceeds thereof. No former member, officer or employee of THE UNIVERSITY who, during that person's tenure, had a direct, substantial involvement with matters that are related to this Contract, shall have any interest, direct or indirect, in this Contract or the proceeds thereof.

10.3 GRATUITIES

10.3.1 The Contracting Officer may, by written notice to the Contractor, terminate the right of the Contractor to proceed under the Contract if it is found, after notice and hearing, that gratuities (in the form of entertainment, gifts or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer, agent or employee of THE UNIVERSITY with a view toward securing a contract or securing favorable treatment with respect to the performance of such Contract; provided that the existence of the facts upon which THE UNIVERSITY makes its findings shall be in issue and may be reviewed in any competent court.

10.3.2 In the event this Contract is terminated as provided in the preceding Paragraph, THE UNIVERSITY shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the Contract by the Contractor.

10.4 THE UNIVERSITY CODE OF ETHICS

10.4.1 It is THE UNIVERSITY policy that Contractors must avoid all situations where proprietary or financial interest, or the opportunity for financial gain, could lead an officer or employee of THE UNIVERSITY to secure favored treatment for any organization or individual. Contractors must also avoid circumstances and conduct which may not constitute actual wrongdoing, or conflict of interest, but might nevertheless appear questionable to the general public, thus compromising the integrity of THE UNIVERSITY. For the purposes of this Article only, THE UNIVERSITY shall be deemed to include any person contracting with THE UNIVERSITY to perform services on the Project. All Contractors must comply with THE UNIVERSITY's Code of Ethics contained in this Article.

10.4.2 The Contractor shall not employ any THE UNIVERSITY officer or employee in the business of the Contractor or in professional activity in which the Contractor is involved with the THE UNIVERSITY officer or employee.

10.4.3 The Contractor shall not offer or provide any interest, financial or otherwise, direct or indirect, to any THE UNIVERSITY officer or employee, in the business of the Contractor or in professional activity in which the Contractor is involved with the THE UNIVERSITY officer or employee. The Contractor shall not cause or influence, or attempt to cause or influence, any THE UNIVERSITY officer or employee to act in his or her official capacity in any manner which might tend to impair the objectivity or independence of judgment of that THE UNIVERSITY officer or employee.

10.4.4 The Contractor shall not cause or influence, or attempt to cause or influence, any THE UNIVERSITY officer or employee to use or attempt to use his or her official position to secure any unwarranted privileges or advantages for that Contractor or any other person.

10.4.5 The Contractor shall not offer any THE UNIVERSITY officer or employee any gift, favor, service or other thing of value under circumstances from which it might be reasonably inferred that such gift, service or other thing of value was given or offered for the purpose of influencing the recipient in the discharge of his or her official duties. In addition, employees or officers of THE UNIVERSITY will not be permitted to accept breakfasts, lunches, dinners, alcoholic beverages, tickets to entertainment and/or sporting events, or any other item which could be construed as having more than nominal value.

10.4.6 In accordance with N.J.A.C. 16:72-4.1, the Contractor may be suspended and/or debarred if the Contractor:

(a) Makes any offer or agreement to pay or to make payment of, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any THE UNIVERSITY Board member, officer, or employee or to any member of the immediate family of such Board member, officer, or employee, or any partnership, firm, or corporation with which they are employed or associated, or in which such Board member, officer, or employee has an interest within the meaning of N.J.S.A. 52: 13D-13g;

(b) Fails to report to the Attorney General and to the Executive Commission on Ethical Standards in writing forthwith the solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any THE UNIVERSITY Board member, officer, or employee;

(c) Undertakes, directly or indirectly, any private business, commercial, or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sale, directly or indirectly of any interest in such Contractor to, any THE UNIVERSITY Board member, officer, or employee having any duties or responsibilities in connection with the purchase, acquisition, or sale of any property or services by or to THE UNIVERSITY, or with any person, firm, or entity with which he has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationship subject to this provision shall be reported in writing forthwith to the State Ethics Commission , which may grant a waiver of this restriction upon application of the THE UNIVERSITY Board member, officer, or employee upon a finding that the present or proposed relationship does not present the potential, actuality, or appearance of a conflict of interest;

(d) Influence or attempts to influence or causes to be influenced, any THE UNIVERSITY Board member, officer, or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of such Board member, officer, or employee; or

(e) Causes or influences or attempts to cause or influence, any THE UNIVERSITY Board member, officer, or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the Contractor or any other person.

11. SOCIAL AND ECONOMIC REQUIREMENTS

11.1 NEW JERSEY PREVAILING WAGE ACT

11.1.1 The Contractor and each subcontractor shall comply with the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq., and this Act is hereby made a part of this Contract. All workers shall be paid not less than the prevailing wage rate as designated by the Commissioner of Labor and Workforce Development or the Commissioner’s duly authorized deputy or representative.

In the event it is found that any worker has been paid a rate of wages less than the prevailing wage required to be paid by this Contract, the Contracting Officer may terminate the Contractor's or subcontractor's right to proceed with the work, or such part of the work as to which there has been a failure to pay required wages, and take such action it deems necessary or prosecute the work to completion.

The UNIVERSITY shall furnish as part of the Contract a copy of the prevailing minimum wage rates which shall be paid to the workers employed in the performance of the Contract.

11.1.2 Nothing contained in the Prevailing Wage Act shall prohibit the payment of more than the prevailing wage rate to any worker employed on the Project.

11.1.3 The Contractor and each subcontractor performing work for THE UNIVERSITY who is subject to the

provisions of the Prevailing Wage Act shall post the prevailing wage rates for each craft and classification involved, including the effective date of any changes thereof, in prominent and easily accessible places at the site of the work or at such place or places as are used by them to pay workers their wages.

11.1.4 The bidder's signature on the proposal is its guarantee that neither it nor any subcontractor it intends to contract with is currently listed by or on record with the Commissioner of Labor and Industry as one who failed to pay the prevailing wages according to the Prevailing Wage Act.

11.1.5 The Contractor and all of its subcontractors performing work at the site must prepare their bids as to labor costs in accordance with the prevailing wage (valid for the date the bids are to be submitted) for the geographical area of the Project Site.

11.1.6 After the completion of all construction work and before the proposed Final Certificate of Payment will be issued, the Contractor and subcontractors shall furnish THE UNIVERSITY with written statements in form satisfactory to THE UNIVERSITY certifying to the amounts then due and owing from the Contractor and subcontractors filing such statement to any and all workers for wages due on account of the Contract, setting forth therein the names of the persons whose wages are unpaid and the amount due to each respectively, which statement shall be verified by the oath of the Contractor or subcontractor, as the case may be, that it has read such statement subscribed by the Contractor or subcontractor, knows the contents thereof, and that the same is true of its own knowledge, provided, however, that nothing herein shall impair the right of the Contractor to receive Final Payment because of failure of any subcontractor to comply with provisions of this Article.

11.2 EQUAL OPPORTUNITY

11.2.1 Equal Employment Opportunity

The parties to this Contract do hereby agree that the provisions of N.J.S.A. 10:2-1 through 10:2-4 and N.J.S.A. 10:5-31 et seq. (P.L. 1975, c.127) as amended and supplemented and the rules and regulations promulgated pursuant thereto are hereby made a part of this Contract and are binding upon them.

The Contractor agrees that at the time the signed contract is returned to THE UNIVERSITY, Contractor shall submit to THE UNIVERSITY and the New Jersey Department of Treasury, Division of Public Contracts Equal Employment Opportunity Compliance an Initial Project Workforce Report (Form AA-201) consisting of forms provided by THE UNIVERSITY and completed by Contractor in accordance with Subchapter 7 of the regulations promulgated by the Treasurer pursuant to P.L. 1975, c.127.

11.2.2 Executive Order 151 Mandatory EEO and Affirmative Action Requirements
It is the policy of the THE UNIVERSITY that its contracts should create a workforce that reflects the diversity of the State of New Jersey. Therefore, contractors engaged by THE UNIVERSITY to perform under a construction contract shall put forth a good faith effort to engage in recruitment and employment practices that further the goal of fostering equal opportunities to minorities and women.

The Contractor must demonstrate to the THE UNIVERSITY's satisfaction that a good faith effort was made to ensure that minorities and women have been afforded equal opportunity to gain employment under the THE UNIVERSITY's contract with the Contractor. Payment may be withheld from a contractor's contract for failure to comply with these provisions.

Evidence of a "good faith effort" includes, but is not limited to:

(a) The Contractor shall recruit prospective employees through the State Job bank website, managed by the Department of Labor and Workforce Development, available online at http://NJ.gov/JobCentralNJ.

(b) The Contractor shall keep specific records of its efforts, including records of all individuals

interviewed and hired, including the specific numbers of minorities and women.

(c) The Contractor shall actively solicit and shall provide THE UNIVERSITY with proof of solicitations for employment, including but not limited to advertisements in general circulation media, professional service publications and electronic media.

(d) The Contractor shall provide evidence of efforts described at 2 above to THE UNIVERSITY no less frequently than once every 12 months.

(e) The Contractor shall comply with the requirements set forth at N.J.A.C. 17:27.

11.2.3 Subcontracts; Equal Employment Goals

The Contractor agrees to incorporate these State of New Jersey EEO Provisions for Construction Contracts in its construction subcontracts.

The New Jersey Department of Treasury, Division of Public Contracts Equal Employment Opportunity Compliance (hereinafter "Division") shall individually establish the targeted minority and women employment goals for determining good faith equal employment opportunity efforts by each construction contractor and subcontractor for each trade on each contract. The Division shall review the trades to be utilized during the completion of the work as reported on the Initial Project Workforce Report and determine the targeted employment goals based upon the number of qualified minorities and women available as reported by the New Jersey Department of Labor, Division of Planning and Research in its report, EEO Tabulations—Detailed Occupations by Race/Hispanic Groups.

In accordance with N.J.A.C. 17:27, Contractors and subcontractors are required to make a good faith effort to provide equal employment opportunity for minorities and women. Failure to make good faith efforts to provide equal employment opportunity for minorities and women may result in sanctions including fines/penalties, withholding of payment, termination of the contract, suspension/debarment or such other action as provided by law.

The Contractor shall obtain the targeted employment goals from the Division's website at www.state.nj.us/treasury/contract compliance or request the employment goals from the Division of Public Contracts Equal Employment Opportunity Compliance after submitting the initial project workforce report to the Division of Public Contracts Equal Employment Opportunity Compliance.

The Contractor shall then be responsible for the completion and submittal of a Monthly Project Workforce Report (Form AA-202) for the duration of this contract.

11.2.4 Mandatory Equal Employment Opportunity Language for Construction Contracts.

During the performance of this contract, the contractor agrees as follows:

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, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity 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.

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, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union or 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.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer, pursuant to N.J.S.A.10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

When hiring or scheduling workers in each construction trade, the contractor or subcontractor agrees to make good faith efforts to employ minority and women workers in each construction trade consistent with the targeted employment goal prescribed by N.J.A.C. l7:27-7.2; provided, however, that the Dept. of Labor Workforce & Development ("LWD"), Construction EEO Monitoring Program, may, in its discretion, exempt a contractor or subcontractor from compliance with the good faith procedures prescribed by the following provisions, A, B, and C, as long as the Dept. of LWD, Construction EEO Monitoring Program is satisfied that the contractor or subcontractor is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the Dept. of LWD, Construction EEO Monitoring Program, that its percentage of active "card carrying" members who are minority and women workers is equal to or greater than the targeted employment goal established in accordance with N.J.A.C.17:27-7.2.

The contractor or subcontractor agrees that a good faith effort shall include compliance with the following procedures:

(A) 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 business 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 and the Americans with Disabilities Act. If the contractor or subcontractor is unable to obtain said assurances from the construction trade union at least five business days prior to the commencement of construction work, the contractor or subcontractor agrees to afford equal employment opportunities minority and women workers directly, consistent with 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 women workers consistent with affording equal employment opportunities as specified in this chapter, the contractor or subcontractor agrees to be prepared to provide such opportunities to minority and women workers directly, consistent with this chapter, by complying with the hiring or scheduling procedures prescribed under (B) below; and the contractor or subcontractor further agrees to take said action immediately if it determines that the union is not referring minority and women workers consistent with the equal employment opportunity goals set forth in this chapter.

(B) If good faith efforts to meet targeted employment goals have not or cannot be met for each construction trade by adhering to the procedures of (A) 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:
(l) To notify the public agency compliance officer, the Dept. of LWD, Construction EEO Monitoring Program, and minority and women referral organizations listed by the Division pursuant to N.J.A.C.17:27-5.3, of its workforce needs, and request referral of minority and women workers;
(2) To notify any minority and women workers who have been listed with it as awaiting available vacancies;
(3) Prior to commencement of work, to request that the local construction trade union refer minority and women workers to fill job openings, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade;

(4) To leave standing requests for additional referral to minority and women workers with the local construction trade union, provided 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;
(5) If it is necessary to lay off some of the workers in a given trade on the construction site, layoffs shall be conducted in compliance with the equal employment opportunity and non-discrimination standards set forth in this regulation, as well as with applicable Federal and State court decisions;
(6) To adhere to the following procedure when minority and women workers apply or are referred to the contractor or subcontractor:

(i) The contactor or subcontractor shall interview the referred minority or women worker.
(ii) If said individuals have never previously received any document or certification signifying a level of qualification lower than that required in order to perform the work of the construction trade, the contractor or subcontractor shall in good faith determine the qualifications of such individuals. The contractor or subcontractor shall hire or schedule those individuals who satisfy appropriate qualification standards in conformity with the equal employment opportunity and non-discrimination principles set forth in this chapter. However, a contractor or subcontractor shall determine that the individual at least possesses the requisite skills, and experience recognized by a union, apprentice program or a referral agency, provided the referral agency is acceptable to the Dept. of LWD, Construction EEO Monitoring Program. If necessary, the contractor or subcontractor shall hire or schedule minority and women workers who qualify as trainees pursuant to these rules. All of the requirements, however, are limited by the provisions of (C) below.
(iii) The name of any interested women or minority individual shall be maintained on a waiting list, and shall be considered for employment as described in (i) above, whenever vacancies occur. At the request of the Dept. of LWD, Construction EEO Monitoring Program, the contractor or subcontractor shall provide evidence of its good faith efforts to employ women and minorities from the list to fill vacancies.
(iv) If, for any reason, said contractor or subcontractor determines that a minority individual or a woman is not qualified or if the individual qualifies as an advanced trainee or apprentice, the contractor or subcontractor shall inform the individual in writing of the reasons for the determination, maintain a copy of the determination in its files, and send a copy to the public agency compliance officer and to the Dept. of LWD, Construction EEO Monitoring Program.

(7) To keep a complete and accurate record of all requests made for the referral of workers in any trade covered by the contract, on forms made available by the Dept. of LWD, Construction EEO Monitoring Program and submitted promptly to the Dept. of LWD, Construction EEO Monitoring Program upon request.

(C) The contractor or subcontractor agrees that nothing contained in (B) above shall preclude the contractor or subcontractor from complying with the union hiring hall or apprenticeship policies in any applicable collective bargaining agreement or union 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. However, where the practices of a union or apprenticeship program will result in the exclusion of minorities and women or the failure to refer minorities and women consistent with the targeted county employment goal, the contractor or subcontractor shall consider for employment persons referred pursuant to (B) above without regard to such agreement or arrangement; provided further, however, that the contractor or subcontractor shall not be required to employ women and minority advanced trainees and trainees in numbers which result in the employment of advanced trainees and trainees as a percentage of the total workforce for the construction trade, which percentage significantly exceeds the apprentice to journey worker ratio specified in the applicable collective bargaining agreement, or in the absence of a collective bargaining agreement, exceeds the ratio established by practice in the area for said construction trade. Also, the contractor or subcontractor agrees that, in implementing the procedures of (B) above, it shall, where applicable, employ minority and women workers residing within the geographical jurisdiction of the union.

After notification of award, but prior to signing a construction contract, the contractor shall submit to the public agency compliance officer and the Dept. of LWD, Construction EEO Monitoring Program an initial project workforce report (Form AA201) electronically provided to the public agency by the Dept. of LWD, Construction EEO Monitoring Program, through its website, for distribution to and completion by the contractor, in accordance with N.J.A.C.17:27-7. The contractor also agrees to submit a copy of the Monthly

Project Workforce Report once a month thereafter for the duration of this contract to the Dept. of LWD, Construction EEO Monitoring Program, and to other public agency compliance officer.

The contractor agrees to cooperate with the public agency in the payment of budgeted funds, as is necessary, for on-the-job and/or off the job programs for outreach and training of minorities and women.

(D) The contractor and its subcontractors shall furnish such reports or other documents to the Dept. of LWD, Construction EEO Monitoring Program as may be requested by the Dept. of LWD, Construction EEO Monitoring Program from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Dept. of LWD, Construction EEO Monitoring Program for conducting a compliance investigation pursuant to N.J.A.C.17:27-1.1 et seq.

11.2.3 Equal Opportunity for Individuals with Disabilities

The Contractor and THE UNIVERSITY agree that the provisions of Title II of the Americans with Disabilities Act of 1990 (the "Act") (42 USC §12101 et seq.), which prohibits discrimination on the basis of disability by public entities in all services, programs, and activities provided or made available by public entities, and the rules and regulations promulgated thereto, are made a part of this Contract. In providing any aid, benefit, or service on behalf of THE UNIVERSITY pursuant to this Contract, the Contractor agrees that the performance shall be in strict compliance with the Act. In the event that the Contractor, its agents, servants, employees, or subcontractors violate or are alleged to have violated the Act during the performance of this Contract, the Contractor shall defend THE UNIVERSITY and the State of New Jersey in any action or administrative proceeding commenced pursuant to this Act. The Contractor shall indemnify, protect, and save harmless THE UNIVERSITY and the State, their agents, servants, and employees from and against any and all suits, claims, losses, demands, or damages of whatever kind or nature arising out of or claimed to arise out of the alleged violation. The Contractor shall, at its own expense, appear, defend, and pay any and all charges for legal services and any and all costs and other expenses arising from such action or administrative proceeding or incurred in connection therewith. If any action or administrative proceeding results in an award of damages against THE UNIVERSITY or the State or if THE UNIVERSITY or the State incur any expense to cure a violation of the Act, the Contractor shall satisfy and discharge the same at its own expense.

THE UNIVERSITY shall, as soon as practicable after a claim has been made against it, give written notice thereof to the Contractor along will full and complete particulars of the claim. If any action or administrative proceeding is brought against THE UNIVERSITY or any of its agents, servants, and employees, THE UNIVERSITY shall expeditiously forward to the Contractor every demand, complaint, notice, summons, pleading, or other process received by it or its representatives.

It is expressly agreed and understood that any approval by THE UNIVERSITY of the services provided by the Contractor pursuant to this Contract will not relieve the Contractor of the obligation to comply with the Act and to defend, indemnify, protect, and save harmless THE UNIVERSITY pursuant to this paragraph.

The Contractor expressly understands and agrees that the provisions of this indemnification clause shall in no way limit the Contractor's obligations assumed in this Contract, nor shall they be construed to relieve the Contractor from any liability, nor preclude THE UNIVERSITY from taking any other actions available to it under any other provisions of this Contract or otherwise at law.

11.2.4 Pursuant to N.J.S.A. 34:11-56.14, a Contractor who enters into a contract with the University for a public work, as defined in N.J.S.A. 34:11-56.26, shall provide a report to the Commissioner of Labor and Workforce Development, through certified payroll records as required by N.J.S.A. 34:11-56.25, containing information regarding the gender, race, job title, occupational category, and rate of total compensation of every employee of the Contractor employed in the State of New Jersey in connection with the contract with the University. The Contractor shall provide a report to the Commissioner throughout the duration of the contract with an update to the information whenever payroll records are required to be submitted to the University pursuant to N.J.S.A. 34:11-56.25, et. seq. The Contractor shall report such information using a form adopted by the Commissioner which can be found on the NJ Department of Labor website here: https://www.nj.gov/labor/forms_pdfs/equalpayact/MW-562withoutfein.pdf. Instructions for filling

out the form can be found here: https://www.nj.gov/labor/forms_pdfs/equalpayact/mw-564_instructions.pdf. Reports may be made via a printable PDF available on the Department of Labor web site, or uploaded in a spreadsheet. Completed reports should be emailed to: equalpayact@dol.nj.gov or such other address identified by the Commissioner.

11.3 UTILIZATION OF SMALL BUSINESS ENTERPRISES

In connection with the performance of this Contract, the Contractor shall cooperate with THE UNIVERSITY in meeting its commitments and goals with regard to the maximum utilization of small business enterprises and will use its best efforts to insure that small business enterprises shall have the maximum practicable opportunity to compete for subcontract work under this Contract.

The term "small business enterprise" means a business which has its principal place of business in the State, is independently owned and operated, has no more than 100 full-time employees, and has gross revenues that do not exceed either $1 million or the applicable annual revenue standards set forth in 13 CFR 121.201, whichever is higher.

The Contractor shall fully comply with the requirements and provisions set forth in the RFP SBE Requirements for Construction Contracts.

11.4 SOURCE DISCLOSURE REQUIREMENTS

11.4.1 Under Statute N.J.S.A. 52:34-13.2, effective August 3, 2005, all contracts primarily for services awarded by THE UNIVERSITY shall be performed within the United States, except when the Contracting Officer certifies in writing a finding that a required service cannot be provided by a Contractor or Subcontractor within the United States.

11.4.2 All bidders seeking a contract primarily for services with THE UNIVERSITY must disclose the location, by country, where services under the contract, including subcontracted services, will be performed.

If any of the services cannot be performed within the United States, the bidder shall state with specificity the reasons why the services cannot be so performed. THE UNIVERSITY's Contracting Officer shall determine whether sufficient justification has been provided by the bidder to form the basis of his certification that the services cannot be performed in the United States and whether to seek the approval of the Executive Director. Accordingly, the bidder should submit with its bid the attached Source Disclosure Certification form. If the information is not submitted with the bid, it shall be submitted within five (5) business days of THE UNIVERSITY's request.

Failure to submit sourcing information when requested by THE UNIVERSITY shall preclude award of contract to the bidder.

11.4.3 Breach of Contract for Shift of Services Outside the United States:

If, during the term of the contract, the Contractor or Subcontractor, who had on contract award declared that services would be performed in the United States, proceeds to shift the performance of the services outside the United States, the Contractor shall be deemed to be in breach of its contract, which contract shall be subject to termination for cause pursuant to Article 2.5 of the General Conditions For Construction, unless previously approved by the Contracting Officer and the Executive Director.

12. ACCEPTANCE AND COMPLETION

12.1 PARTIAL ACCEPTANCE

If at any time during the prosecution of the Project the Contractor completes a unit or portion of the Project, such as a structure, it may request that THE UNIVERSITY make a final inspection of that unit. THE UNIVERSITY reserves the right to reject the request made by the Contractor if THE UNIVERSITY, in its sole discretion, determines that the unit or portion of the project should not be the subject of a Partial Acceptance.

If THE UNIVERSITY determines that Partial Acceptance of the unit or portion of the Project is appropriate and finds upon inspection that the unit or portion is satisfactorily completed in compliance with the Contract, THE UNIVERSITY may accept that unit as being completed and the Contractor may be relieved of the responsibility of doing further work on or maintaining that unit or portion of the Project. Such Partial Acceptance shall in no way void or alter the terms of the Contract, including Articles 9.1- Indemnification & Risks Assumed by the Contractor, nor shall it be construed as relieving the Contractor of full responsibility for making good defective work or materials found at any time before Final Acceptance pursuant to Article 13.3.

12.2 SUBSTANTIAL COMPLETION

12.2.1 The Work shall be deemed substantially complete when, in the opinion of THE UNIVERSITY (whose judgment shall be conclusive), so much thereof has been completed in accordance with the terms of the Contract Documents that THE UNIVERSITY may occupy the site of the work and use the work and the facilities resulting therefrom for the purposes for which they are intended. Unless THE UNIVERSITY determines that temporary pavement is sufficient, substantial completion will not be deemed to have occurred prior to the backfilling and restoration of street surfaces (if any) and the restoration of other surfaces, subsurfaces and overhead structures. Upon such substantial completion THE UNIVERSITY shall issue a Certificate of Substantial Completion. The issuance of this Certificate shall not relieve the Contractor from its obligation hereunder to finally complete all of the work of the Contract.

12.2.2 The work remaining to be completed after substantial completion in order for the Contractor to fulfill its obligations to fully complete the Work in accordance with the Contract shall be known as the "Remaining Work". The Remaining Work shall generally be limited to minor defects or omissions (also known as "Punch List Work"). However, THE UNIVERSITY may include as part of Remaining Work, work which would ordinarily be required for substantial completion. Such other Remaining Work includes, but is not limited to, work not done because of seasonal factors or work which cannot be done until third persons perform other work which is not the Contractor's responsibility under the Contract. Nothing herein, however, shall diminish the right of THE UNIVERSITY to determine what is necessary for substantial completion in accordance with Sub-article 13.2.1 above.

12.2.3 THE UNIVERSITY shall advise the Contractor of the time required to complete Punch List Work and the time required to complete all other Remaining Work. Failure to complete in a timely manner all Remaining Work, other than Punch List Work, will result in the Contractor being liable for liquidated damages as set forth in Article 2.1, TIME OF COMPLETION - DELAY - LIQUIDATED DAMAGES. As an additional remedy for such failure, and not in lieu of liquidated damages, THE UNIVERSITY may complete the Remaining Work including Punch List Work, either by its own forces or by other contractors. The Contractor shall be entitled to payment according to the Contract Price upon such completion, subject however to THE UNIVERSITY's right to reimbursement for its costs of completion. THE UNIVERSITY may deduct such costs from any payment or payments due to the Contractor, and if such costs exceed the amount due the Contractor, the Contractor shall promptly pay such excess to THE UNIVERSITY. THE UNIVERSITY's entitlement to such reimbursement shall in no respect relieve the Contractor of its obligation to timely complete the Remaining Work.

12.2.4 Before final inspection, completion and acceptance of the Project, borrow and local material sources and areas occupied by the Contractor in connection with the work shall be cleaned of rubbish, excess materials, temporary structures and equipment, temporary utilities disconnected and the work shall be left in an acceptable condition. The final inspection and acceptance will not be made by THE UNIVERSITY until the Project has been completed, including all work identified as "Remaining Work" (Punch List Work).

12.3 COMPLETION AND FINAL ACCEPTANCE OF THE WORK

12.3.1 When the Contractor believes that the Project has been fully completed, the Contractor shall provide written notification to THE UNIVERSITY that the Project is ready for final inspection by THE UNIVERSITY.

If THE UNIVERSITY finds the Work to be in compliance with the Contract, it will notify the Contracting Officer establishing completion as of the date of notification from the Contractor. If the Contracting Officer concurs, the Contractor will be issued a Certificate of Final Acceptance.

If THE UNIVERSITY's inspection discloses that the Work is not in conformance with the Contract, THE UNIVERSITY will advise the Contractor as to the particular defects to be remedied. Upon correction of the defects, the Contractor shall provide written notification to THE UNIVERSITY and another inspection shall be made. This procedure shall be repeated until THE UNIVERSITY finds the work to be in compliance with the Contract.

Payments made to the Contractor before the final acceptance do not commit THE UNIVERSITY to acceptance of the Project.

12.3.2 THE UNIVERSITY shall not be precluded or estopped, by any measurement, estimate or certificate made either before or after the completion and final acceptance of the Project and payment therefore if such measurement, estimate or certificate is found to be in error or untrue, from showing the true amount and character of the work performed and materials furnished by the Contractor, or from showing that any such measurement, estimate or certificate is incorrectly made or untrue, or that the work or materials do not conform in fact to the requirements of the Contract. THE UNIVERSITY shall not be precluded or stopped, notwithstanding any such measurement, estimate or certificate, and payment made in accordance therewith, from recovering from the Contractor and its Surety such damages as it may sustain by reason of the Contractor's failure to comply or to have complied with the terms of the Contract.

12.3.3 The Contractor, without prejudice to the terms of the Contract, shall be liable to THE UNIVERSITY at any time both before and after acceptance for latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards THE UNIVERSITY's rights under any warranty or guarantee.

13. MEASUREMENT AND PAYMENT

13.1 SCOPE OF PAYMENT

13.1.1 The Contractor shall receive and accept compensation provided for in the Contract as full payment for furnishing materials and for performing work under the Contract in a complete and acceptable manner and for risk, loss, damage or expense of whatever character arising out of the nature of the work or the prosecution thereof.

13.1.2 If the specifications relating to a unit price in the Proposal require that the said unit price cover and be considered compensation for certain work or material essential to the item, this same work or material will not also be measured or paid for under any other item which may appear elsewhere in the Contract.

13.1.3 If the specifications include Work for which no specific method of payment is provided, no separate payment will be made for that Work and the cost thereof shall be considered as included in the prices paid for the various scheduled Contract Items.

13.1.4 Except as specifically provided otherwise, no separate payment will be made for any of the requirements of the General and Supplemental Conditions, and the cost thereof shall be considered as included in the various scheduled Contract Items.

13.1.5 Notwithstanding any other provision of this Contract, for a period of three years after acceptance, all estimates and payments (including the Final Certificate of Payment and payments made pursuant to the Final Certificate of Payment) shall be subject to correction and adjustment for clerical or other errors in the calculations involved in the determination of quantities and payments. The Contractor and THE UNIVERSITY agree to pay to the other any sum due under the provisions of this Article.

13.2 QUANTITIES: MEASUREMENT AND PAYMENT

Work completed under the Contract will be measured by THE UNIVERSITY according to United States standard measure. The method of measurement and computations to be used in determination of quantities of material furnished and of work performed under the Contract will be those methods generally recognized as conforming to good engineering practice.

13.3 PARTIAL PAYMENTS

13.3.1 Monthly Applications for Payment will be made of the approximate quantities of work satisfactorily performed in accordance with the Contract Documents during the preceding month. Partial payments on account of such monthly Application for Payment will be made based on the prices bid in the Proposal or as provided by change order. The Contractor will also be paid under the monthly Applications for Payment for materials delivered in accordance with Article 12.4, MATERIALS PAYMENTS and Article 8.2, MEASUREMENT OF PAY LIMITS FOR EXCAVATIONS.

For each lump sum bid item excluding Performance/Payment Bond, Mobilization and Allowances, the Contractor shall submit for THE UNIVERSITY's review and approval a "Schedule of Values" (a detailed price breakdown of all individual items of work that are contained in said bid items) within ten (10) days of the Notice to Proceed. The approved Schedule of Values shall be incorporated into each Application for Payment and shall be used by THE UNIVERSITY as the basis for partial payment and, if it so elects, as a basis for determining values of work it wishes to modify or delete.

13.3.2 No such payment shall be required to be made, in the judgment of THE UNIVERSITY, when the work is not proceeding in accordance with the Contract Documents or following THE UNIVERSITY giving the Contractor or surety notice of delay, neglect or default.

13.3.3 No such payment shall be construed to be an acceptance of any defective work or improper materials. THE UNIVERSITY upon determining that any payment under a previous monthly Application for Payment was improper or unwarranted for any reason may deduct the amount of such payment from the subsequent monthly Application for Payment and partial payments made to the Contractor and give written notice of the deficiency and a demand for the correction of the deficiencies.

13.3.4 Material and work covered by partial payments made shall thereupon become the sole property of THE UNIVERSITY but this provision shall not be construed as relieving the Contractor from the sole responsibility for care and protection of materials and work upon which payments have been made or restoration of any damaged work, correction of incorrect or inadequate or non-complying work, or as a waiver of the right of THE UNIVERSITY to require fulfillment of terms of the Contract.

13.3.5 THE UNIVERSITY shall deduct from any monthly Application for Payment and payment and the final payment such amounts as are required to be deducted pursuant to provisions of the Contract Documents.

13.3.6 In accordance with N.J.S.A. 52:32-40 and 52:32-41, prior to the issuance of a partial payment by THE UNIVERSITY to the Contractor, the Contractor shall certify that any subcontractors or suppliers have been paid any amount due from any previous partial payment and shall be paid any amount due from the current partial payment, or that a valid basis for withholding payment exists and the Contractor has complied with the applicable notice provisions.

13.4 MATERIALS PAYMENTS

13.4.1 The monthly Applications for Payment and payments made on account thereof will also include, when allowed by THE UNIVERSITY, an amount equal to the actual cost of materials furnished but not incorporated into the work, provided, however, that such amount shall not exceed 85 percent of the Contractor's bid price for the Contract Item into which the material will be incorporated, and the quantity allowed does not exceed the corresponding quantity estimated in the Contract.

13.4.2 Before including payments for such materials in an Application for Payment, THE UNIVERSITY must be satisfied that:

(a) The materials have been properly stored and protected by the Contractor or have been stored at locations owned or leased by THE UNIVERSITY,

(b) The materials have been inspected and appear to be acceptable,

(c) The Contractor has provided THE UNIVERSITY an invoice or bill of sale sufficient to show the price paid for the materials and proof that title, if applicable, has been transferred to THE UNIVERSITY,

(d) The materials, if stored on property not belonging to THE UNIVERSITY, are fenced in with access limited to THE UNIVERSITY and the Contractor or their authorized agents and the fenced in materials are clearly identified in large letters as being without encumbrances and for use solely on this Project, and

(e) When such materials are stored in a leased area, the lease is made out to the Contractor and provides that it shall be cancelled only with the written permission of THE UNIVERSITY.

13.4.3 The Contractor assumes full responsibility for the safe storage and protection of the materials and nothing in this Paragraph shall alter the provisions of Article 9.1, INDEMNIFICATION; RISKS ASSUMED BY THE CONTRACTOR. If materials paid for under this Article are damaged, stolen or prove to be unacceptable, the payment made therefor shall be deducted from subsequent estimates and payment.

13.4.4 Payment for materials as provided in this Article shall not be deemed to be an acceptance of such materials, and the Contractor shall be responsible for and must deliver to the site and properly incorporate in the work only those materials that comply with the Contract.

13.4.5 No payment for living or perishable plant materials will be made until they are accepted by THE UNIVERSITY.

13.4.6 The Contractor shall pay all costs of handling and delivering materials to and from the place of storage to the site of the work, as well as storage rental. Taxes levied by any government against the materials shall be borne by the Contractor.

13.5 RETAINAGE

13.5.1 In making partial payments for work, there will be retained by THE UNIVERSITY ten (10%) percent of the estimated amount until completion and final acceptance of all work covered by the Contract and issuance of a Final Certificate of Payment.

13.5.3 The Contractor shall defend, indemnify and save THE UNIVERSITY harmless from claims arising out of the demands of Subcontractors, laborers, workmen, mechanics, Suppliers, and furnishers of machinery and parts thereof, equipment, power tools, and supplies, including commissary, incurred in the furtherance of the performance of this Contract. The Contractor shall, at THE UNIVERSITY's request, furnish satisfactory evidence that all obligations of the nature herein above designated have been paid, discharged or waived. The retainage specified herein shall not be paid to the Contractor until such obligations have been paid, discharged or waived. Recourse may also be made, if necessary, to the payment bond.

13.6 SUBCONTRACTOR PAYMENTS AND RETAINAGE

13.6.1 A Subcontractor shall look only to the Contractor for the payment of any claims of any nature whatsoever

arising out of the said subcontract, and said Subcontractor agrees, as a condition of THE UNIVERSITY's consent to the making of said subcontract, that it shall make no claim whatsoever against THE UNIVERSITY, its officers, agents, servants or employees for any work performed or thing done by reason of said subcontract, or for any other cause whatsoever that may arise by reason of the relationship created between the Contractor and Subcontractor by the subcontract.

13.6.2 The Contractor agrees to pay each Subcontractor and Supplier under this Contract for satisfactory performance of its contract no later than ten (10) days from the receipt of each payment the Contractor receives from THE UNIVERSITY. The Contractor shall ensure that all lower tier Subcontractors and suppliers are paid all invoiced amounts (less retainage) that meet all applicable requirements within 15 days from the payment the Subcontractor receives from the Contractor.

13.6.3 In accordance with N.J.S.A. 52:32-40 and 52.32-41, the Contractor shall certify, prior to the issuance of a progress payment by THE UNIVERSITY, that all Subcontractors and Suppliers have been paid any amounts due from previous progress payments and shall be paid any amounts due from the current progress payment. Alternatively, the Contractor shall certify that there exists a valid basis under the terms of the Subcontractor's or Supplier's contract to withhold payment from the Subcontractor or Supplier and therefore payment is withheld.

13.6.4 If the Contractor withholds payment from the Subcontractor or Supplier, the Contractor shall provide to the Subcontractor or Supplier written notice thereof. The notice shall detail the reason for withholding payment and state the amount of payment withheld. If a Performance/ Payment Bond has been provided under this Contract, the Contractor shall send a copy of the notice to the Surety providing the bond for the Contractor. A copy of the notice shall also be submitted to THE UNIVERSITY with the certification that payments are being withheld.

13.6.5 Should the Contractor provide notice and proceed to withhold payment from any Subcontractor or Supplier, THE UNIVERSITY may elect, at its sole discretion, to help resolve the dispute. THE UNIVERSITY's efforts shall be limited to meeting with the Contractor and the Subcontractor or Supplier and reviewing the relevant facts with both parties. THE UNIVERSITY will not act as a decider of fact nor will THE UNIVERSITY direct a settlement to the dispute. Any THE UNIVERSITY effort is solely intended to assist the parties in understanding their respective positions and to encourage a reasonable resolution of the dispute.

13.6.6 The Contractor agrees to make retainage payments to each Subcontractor or Supplier within 15 days after the Subcontractor's or Supplier's work is completed. Only Subcontractors whose work has been 100% completed, including all Punchlist Work and any other Remaining Work, and who have supplied closeout documents shall be eligible for release of retainage. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of THE UNIVERSITY.

13.6.7 THE UNIVERSITY agrees to release an equivalent amount of Contractor retainage provided that a) there are no offsetting claims from THE UNIVERSITY (including, but not limited to, liquidated damages), other Subcontractors, Suppliers, materialmen or workers, and b) none of the other reasons to withhold payments specified under Article 12.7 exists. Prior to release of the Contractor's retainage, the Contractor shall provide to THE UNIVERSITY executed copies of the following Subcontractor Closeout Documents, as appropriate: Consent of Surety to Final Payment to the Subcontractor, Subcontractor's Certificate of Amounts Due Workers For Wages, a Subcontractor Affidavit of Payment of Debts and Claims, a Subcontractor Affidavit of Release of Liens and a Certificate of Final Acceptance of Subcontractor Work, all in the form shown in Appendix B to the Contract.

13.6.8 Notwithstanding THE UNIVERSITY's release or partial release of retainage, nothing in this Article shall be deemed to constitute any waiver or initiation of the applicable warranty period, or THE UNIVERSITY's partial or final acceptance of the Work, or any portion thereof, unless either a Certificate of Partial Acceptance or a Certificate of Final Acceptance has been executed by THE UNIVERSITY, in the form(s) shown in Appendix B to the Contract.

13.7 PAYMENTS WITHHELD

13.7.1 THE UNIVERSITY may withhold or, on account of subsequently discovered evidence, nullify the whole or a part of a certificate for payment to such extent as may be necessary to protect THE UNIVERSITY from loss on account of:

(a) Defective work not remedied;

(b) Claims filed, or reasonable evidence indicating probable filing of claims;

(c) Failure of the Contractor to make payments promptly to Subcontractors or Suppliers for material or labor;

(d) Termination of the Contract for cause or convenience;

(e) Damage to another contractor caused by Contractor;

(f) Lack of updated and approved CPM schedule;

(g) Submission of incomplete payment invoice;

(h) Liquidated damages due to Contractor's failure to substantially complete the Project or any specifically designated interim milestone(s) within the time stated in the Contract;

(i) Reasonable evidence that Contractor may not substantially complete the Project or any specifically designated interim milestone(s) within the time stated in the Contract;

(j) Previous overpayments; and

(k) Lack of compliance with Contract terms.

13.7.2 When the above grounds are removed, certificates of payment will be issued for amounts withheld because of them, less appropriate adjustments.

13.8 FINAL PAYMENT

13.8.1 Submissions required from the Contractor as a condition of final payment, include, but are not limited to, the following items:

(a) Completed Operations Insurance Certificate,

(b) Affidavit of Payment of Debts and Claims,

(c) Affidavit of Release of Liens,

(d) Consent of Surety to Final Payment,

(e) Certificate of amounts due workers for wages on the work pursuant to N.J.S.A. 34:11-56.25 et seq.,

(f) The one year and special written guarantees for periods of time in excess of the one year general guarantee,

(g) Operating instructions and maintenance manuals for equipment as required under Article 7.5.3. The maintenance and operating information shall be organized into suitable sets. Where applicable, these include: Operating and emergency instructions, replacement parts listing, maintenance contracts, warranties, guarantees, wiring diagrams, recommended "turn around" cycles, inspection procedures,

shop drawings, product data, and similar applicable information for each type of equipment. Each set should be bound in a plastic covered binder. Identification should be printed clearly on both front and spine of each binder, and a complete typewritten index of contents should be provided. These shall be submitted to THE UNIVERSITY for review by the Engineer. Corrections as required shall be made and then five (5) copies submitted in final form to THE UNIVERSITY. At the direction of the University, all such instructions and maintenance manuals for equipment shall be provided to the University by the Contractor using the University's electronic project management system.

(h) Markup Drawings, as required under Article 6.11,

(i) Certificate of Final Acceptance,

(j) Final payment request based on 100 percent completion of the work with all releases, certificates, consents, guarantees, warranties, and other documents, attached as required, including "Consent of Surety", and

(k) Final Contractor Monthly DBE Payment Report.

13.8.2 The Proposed Final Certificate of Payment will show the total amount payable to the Contractor, including therein an itemization of said amount segregated as to Contract Item quantities, Extra Work and other basis for payment, and shall also show therein all deductions made or to be made for prior payments and as required pursuant to the provisions of the Contract Documents. All prior Applications for Payment and payments shall be subject to correction in the Proposed Final Certificate of Payment. Within 30 days after said Proposed Final Certificate of Payment has been issued to the Contractor, the Contractor shall submit to THE UNIVERSITY its written approval of said Final Certificate of Payment or a written statement of all outstanding COR's it has arising under or by virtue of the Contract or any action by any THE UNIVERSITY employee, agent or officer in the prosecution of the Contract. COR's will not be considered unless the Contractor has strictly complied with the requirements of Article 3.4 - CHANGE ORDER REQUESTS.

13.8.3 On the Contractor's approval, or if it files no statement of outstanding COR's within said period of 30 Days, the Contracting Officer will issue a Final Certificate of Payment in writing in accordance with the proposed Final Certificate of Payment submitted to the Contractor and within 30 Days thereafter, THE UNIVERSITY will pay the entire sum due thereunder. Such Final Certificate of Payment and acceptance by the Contractor of the Final Payment based thereon shall operate as a release by the Contractor of the State and THE UNIVERSITY, their agents, officers and employees, from all claims and liability of whatsoever nature for anything done or furnished or in any manner growing out of the performance of the Contract.

13.8.4 If the Contractor within said period of 30 Days files a statement of outstanding COR's, the Contracting Officer will issue a Conditional Final Certificate of Payment in accordance with the proposed Final Certificate of Payment. Within 30 Days thereafter, THE UNIVERSITY will pay the sum due there under, provided the Contractor has in good faith provided the detailed COR cost information required by Article 3.4. The Contractor may request up to an additional 30 Days within which to provide the required information.

13.8.5 Failure to submit such detailed cost information as to any COR within the 60 Days provided from the date of the issuance of the proposed Final Certificate of Payment shall operate as a waiver of those COR's as to which such information is not provided and a release by the Contractor in favor of the State and THE UNIVERSITY as to such COR. THE UNIVERSITY will then issue a Conditional Final Payment based on the Conditional Final Certificate. Acceptance by the Contractor of this Conditional Final Payment shall constitute a release by the Contractor of the State and THE UNIVERSITY, their agents, officers and employees, from all claims and liability of whatsoever nature for anything done or furnished or in any manner growing out of the performance of the Contract except those COR's filed in response to the proposed Final Certificate and not waived as herein provided for failure to provide information and details.

13.8.6 The Contracting Officer's decision on outstanding COR's will be rendered in accordance with Article 1.15-

DISPUTES.

13.8.7 Upon final resolution of the outstanding COR's, the Contracting Officer shall then make and issue a Final Certificate of Payment, and within 30 days thereafter, THE UNIVERSITY will pay the entire sum, if any, found due thereon. Such Final Payment, if it resolves any of the COR's reserved under the Conditional Final Payment, will operate as a release in favor of the State, and THE UNIVERSITY, their agents, officers and employees as to such claims.

13.8.8 No payment, however, final or otherwise, shall operate to release the Contractor or its Sureties from any obligations under this Contract or the Performance and Payment Bond.

APPENDIX A

SUBCONTRACTOR
EVALUATION DATA FORM

_____

(PROJECT)

_____

(SUBCONTRACTOR)

_____

(DATE)

SUBCONTRACTOR EVALUATION DATA FORM

1. Proposed Project: _____
2. Proposed work or trade: _____ Division Nos.: _____
3. Approximate Contract Amount: _____
4. Company Name: _____

   _____ Corp._____ Partnership _____ Individual _____ Joint Venture
5. Principal Office Location: _____

   _____

   Phone: _____ Person in Charge: _____
6. Name and Title of Principals:

   _____

   _____

   _____
7. Branch Office Locations:

   _____

   Phone: _____

   _____

   Phone: _____
8. Office which would be directly responsible for work at this project.

   _____

   _____

   _____
9. Subcontractor Information Data Form as required by Federal Regulation, submitted herewith.
10. Number of years organization has been in business under present name:

    _____
11. List all other names under which the company has done business and for how many years.

    _____

    _____

    _____
12. State Licensed or Certified to do business in:

    _____
13. Certificate of registration pursuant to P.L.1999, C.238, "THE PUBLIC WORKS CONTRACTOR REGISTRATION ACT": (Copy attached) Yes: _____ No: _____
14. Business Registration Certificate (P.L. 2004, c.57): (Copy attached) Yes: _____ No: _____
15. Have you ever failed to complete any work awarded to you? If so, note When, Where, And Why:

    _____

16. List Name, address, type of work and person in charge for any sub-sub, 3rd tier subcontractors, or major suppliers to whom portions of this sub-contract will be left:

Name: _____ Phone: _____ Attn: _____

Address: _____ Work: _____ Value: _____

Name: _____ Phone: _____ Attn: _____

Address: _____ Work: _____ Value: _____

Name: _____ Phone: _____ Attn: _____

Address: _____ Work: _____ Value: _____

17. Do you qualify as a DBE/SBE/ESBE on this project:

18. Surety company that normally handles bonding: _____

Company Name: _____ No. of Years: _____

Agent: _____ Phone: _____

Address: _____

Bond Limits: _____

19. Project references: (List four projects where you performed similar work to this project):

NAME	**ADDRESS**	**PHONE**	**CONTACT**

20. Are you listed in Dunn & Bradstreet: _____ What City? _____

21. List all projects that you are participating in litigation against the owner:

_____

22. Annual Billings: _____

23. The undersigned certifies that it is aware of the terms, conditions, specifications and other Contract requirements of the Prime Contract.

24. The undersigned certifies the truth and correctness of all statements and of all answers to questions made herein.

COMPANY: _____

BY: _____

TITLE: _____

MONTCLAIR STATE UNIVERSITY
SUBCONTRACTOR INFORMATION DATA FORM

(MANDATORY FORM TO BE FILLED OUT ENTIRELY)

***Contract No:*_____*Project Name:* _____**

***Prime Contractor Name:*_____**

***Address:*_____**

Complete the information below for ALL SUBCONTRACTORS

Company's Full Name	**SUBCONTRACTOR**
Address	
City	
Zip	
County	
Phone	
Fax	
E-mail	
Owner	
Date Established	
Date Certified	
Ethnicity	
Gender	
Certification Status: Non SBE or SBE I, SBE II, SBE III, SBE IV or SBE V (please indicate all that apply)	
Federal Tax ID # / SSN #	
Annual Gross Receipts: A – Less than $500K *B - $500K to $1M* *C - $1M to $2M* *D - $2M to $5M* *E - $5M and over* **indicate the letter that applies*	
Primary Industry Operation Code:	

APPENDIX B- CLOSEOUT FORMS

Affidavit of Payment of Debts and Claims

Affidavit of Release of Liens

Consent of Surety to Final

Payment

Certificate of amounts due workers for wages on the work pursuant to N.J.S.A. 34:11-56.25 et seq.

Certificate of Substantial Completion

Certificate of Partial Acceptance

Certificate of Final Acceptance

Proposed Final Certificate of

Payment

Final Certificate of Payment

Subcontractor Affidavit of Payment of Debts and Claims

Subcontractor Affidavit of Release of Liens

Consent of Surety to Final Payment to the Subcontractor

Subcontractor's Certificate of amounts due workers for wages on the work pursuant to N.J.S.A. 34:11-56.25 et seq.

Certificate of Final Acceptance of Subcontractor's Work

AFFIDAVIT OF
PAYMENT OF
DEBTS AND CLAIMS

TO: Montclair State University
855 Valley Road
Clifton, New Jersey 07013

CONTRACT NO.:

CONTRACTOR:

PROJECT:

CONTRACT DATE:

STATE OF:

COUNTY OF:

The undersigned, pursuant to Sub-article 12.8.1 of the Contract's General Conditions for Construction, hereby certifies that, except as listed below he has paid in full or has otherwise satisfied all obligations for all materials and equipment furnished, for all work, labor, and services performed, and for all known indebtedness and claims against the CONTRACTOR for damages arising in any manner in connection with the performance of the Contract referenced above for which MONTCLAIR STATE UNIVERSITY or its property might in any way be held responsible.

EXCEPTIONS: *(If none, write "NONE". The CONTRACTOR shall furnish bond satisfactory to the MONTCLAIR STATE UNIVERSITY for each exception.)*

SIGNED,

CONTRACTOR

*By:*_____

*Title:*_____

Subscribed and sworn to before me this

_____ *day of* _____, *20*_____

Notary Public of

My commission expires , 20

(SEAL)

AFFIDAVIT OF RELEASE OF LIENS

TO: Montclair State University
855 Valley Road
Clifton, New Jersey 07013

CONTRACT NO.:

CONTRACTOR:

PROJECT:

CONTRACT DATE:

STATE OF:

COUNTY OF:

The undersigned, pursuant to Sub-article 12.8.1 of the Contract's General Conditions for Construction, hereby certifies that to the best of his knowledge, information and belief, except as listed below, there are no liens filed against any property of MONTCLAIR STATE UNIVERSITY by the CONTRACTOR, or any subcontractors, suppliers of materials and equipment, or performers of work, labor or services arising from the performance of the Contract referenced above.

EXCEPTIONS: *(If none, write "NONE". The CONTRACTOR shall furnish bond satisfactory to the MONTCLAIR STATE UNIVERSITY for each exception.)*

SIGNED,

CONTRACTOR

Subscribed and sworn to before me this

_____ day of _____, 20_____

Notary Public of

My commission expires , 20

By:_____

Title:_____

(SEAL)

CONSENT OF SURETY
TO FINAL PAYMENT

Bond No.

TO: Montclair State University	***CONTRACT NO.:***
855 Valley Road	
Clifton, New Jersey 07013	***CONTRACTOR:***
PROJECT:	***CONTRACT DATE:***

In accordance with the General Conditions for Construction, Sub-article 12.8.1 of the Contract between MONTCLAIR STATE UNIVERSITY and the CONTRACTOR as indicated above, the

, SURETY COMPANY

on bond of

, CONTRACTOR

hereby approves and consents to the final payment to the CONTRACTOR, and agrees that final payment to the CONTRACTOR shall not relieve the SURETY COMPANY of any of its obligations to

MONTCLAIR STATE UNIVERSITY
855 Valley Road
Clifton,, New Jersey 07013 , ***OWNER***

as set forth in said Surety Company's bond.

IN WITNESS WHEREOF, the SURETY COMPANY has hereunto set its hand this_____ day of _____, 20____ .

_____
Surety Company

*Attest:*_____ _____
Signature of Authorized Representative

(Seal): _____

Title:

CERTIFICATE OF
AMOUNTS DUE WORKERS
FOR WAGES

TO: Montclair State University
855 Valley Road
Clifton, New Jersey 07013

CONTRACT NO.:

CONTRACTOR:

PROJECT:

CONTRACT DATE:

The undersigned CONTRACTOR, pursuant to Sub-articles 11.1.6 and 12.8.1 of the Contract's General Conditions for Construction, hereby certifies that, except as listed below he has paid in full all wages earned on the work to all laborers, mechanics, apprentices, trainees, watchmen, guards, and workers in general employed by him or by any subcontractor performing work under the Contract on the Project. It is further certified that all laborers, mechanics, apprentices, trainees, watchmen, guards, and workers in general have been paid wages at rates not less than those required by the Contract provisions and pursuant to N.J.S.A. 34:11-56.25 et seq., and that the work performed by each such laborer, mechanic, apprentice, trainee, watchman, guard, and worker in general conformed to the classifications set forth in the Contract or training program provisions applicable to the wage rate paid.

EXCEPTIONS: *(If none, write "NONE"; for each exception, the CONTRACTOR shall provide complete and detailed explanation.)*

SIGNED,

CONTRACTOR

*By:*_____

*Title:*_____

Date: _____

Subscribed and sworn to before me this

_____ *day of* _____, *20*_____

Notary Public of

My commission expires , 20

(SEAL)

CERTIFICATE OF SUBSTANTIAL COMPLETION

TO: Montclair State University
855 Valley Road
Clifton, New Jersey 07013

CONTRACT NO.:

CONTRACTOR:

PROJECT:

CONTRACT DATE:

The undersigned Project Manager hereby certifies that a field inspection performed on _____, 20____ at the above captioned Project revealed that the CONTRACTOR has substantially completed his base contract and all authorized additional work for the following items of work:

All Contract Bid Items

Bid Item(s) No.

Other

It is further certified that the items of work above enumerated have been satisfactorily completed in accordance with the Contract Documents, and that as of the aforementioned date MONTCLAIR STATE UNIVERSITY may take beneficial occupancy of the subject work.

The Remaining Work to be completed in order to achieve one hundred percent (100%) completion is hereby listed in the Punch List Work attached hereto.

SIGNED,

MONTCLAIR STATE UNIVERSITY

By: _____

Title: _____

ACCEPTED,

CONTRACTOR

By: _____

Title: _____

Date: _____ *Date:* _____

CERTIFICATE OF PARTIAL ACCEPTANCE

TO: Montclair State University
855 Valley Road
Clifton, New Jersey 07013

CONTRACT NO.:

CONTRACTOR:

PROJECT:

CONTRACT DATE:

The undersigned Project Manager hereby certifies that a field inspection performed on _____, 20____ at the above captioned Project revealed that the CONTRACTOR has completed one hundred percent (100%) of the work described below within its base contract and all authorized additional work for the following items of work:

Bid Item(s) No.

Other

It is further certified that the items of work above enumerated have been satisfactorily completed in accordance with the Contract Documents, and that as of the aforementioned date MONTCLAIR STATE UNIVERSITY may take beneficial occupancy of the subject work.

SIGNED,

MONTCLAIR STATE UNIVERSITY

By: _____

Title: _____

Date: _____

ACCEPTED,

CONTRACTOR

By: _____

Title: _____

Date: _____

CERTIFICATE OF FINAL ACCEPTANCE

TO: Montclair State University
855 Valley Road
Clifton, New Jersey 07013

CONTRACT NO.:

CONTRACTOR:

PROJECT:

CONTRACT DATE:

In accordance with Sub-article 12.8.1.9 and 13.3.1 of the Contract's General Conditions for Construction, the undersigned CONTRACTOR hereby notifies that as of _____, 20____ the base contract and all authorized additional work has been 100% completed, including but not limited to the Remaining Work (Punch List Work) listed on the attached Certificate(s) of Substantial Completion.

SIGNED,

CONTRACTOR

By: _____

Title: _____

The undersigned Project Manager hereby certifies that on _____, 20____ a final field inspection was performed on the Project and all base and authorized additional work found to be 100% complete in accordance with the Contract Documents.

In testimony thereof, this Certificate of Final Acceptance is signed on this _____day of _____, 20__.

SIGNED,

_____
Project Manager

_____
Title

CONCURRENCE,

_____
Contracting Officer

_____
Title

PROPOSED FINAL CERTIFICATE OF PAYMENT

TO: Montclair State University
855 Valley Road
Clifton, New Jersey 07013

CONTRACT NO.:

CONTRACTOR:

PROJECT:

CONTRACT DATE:

The undersigned Project Manager, considering that

, CONTRACTOR

on the above referenced Contract has completed one hundred percent (100%) of the base contract and all authorized additional work, and fulfilled all his contractual obligations including those enumerated in Sub-article 12.8.1 of the Contract's General Conditions for Construction, hereby proposes that a Final Payment in the amount of be issued to said CONTRACTOR in compensation for the unpaid balance of his work under this Contract.

Original Contract Value:	*$*	
Total Contract Changes Value	_____	
Changed Contract Value:	*$*	
Less: Payments to Date:	_____	
Balance Due Contractor:	*$*	
Less: Deductions:	_____	*(1)*
Total Final Payment Amount:	*$* _____	

(1) Deductions Explanations:

It is further understood that this Final Payment includes all direct and indirect costs attributable to this Contract, and that the CONTRACTOR will not seek further compensation for any other costs related to this Contract.

SIGNED,

_____

Title: _____

ACCEPTED CONTRACTOR,

_____

Title: _____

Date: _____ *Date:* _____

FINAL CERTIFICATE OF PAYMENT
(Attach to Final Payment Request)

TO: Montclair State University
855 Valley Road
Clifton, New Jersey 07013

CONTRACT NO.:

CONTRACTOR:

PROJECT:

CONTRACT DATE:

The undersigned Project Manager, considering that

, CONTRACTOR

on the above referenced Contract has completed one hundred percent (100%) of the base contract and all authorized additional work, and fulfilled all his contractual obligations including those enumerated in Sub-article 12.8.1 of the Contract's General Conditions for Construction, hereby proposes that a Final Payment in the amount of be issued to said CONTRACTOR in compensation for the unpaid balance of his work under this Contract.

Original Contract Value:	*$*	
Total Contract Changes Value	_____	
Changed Contract Value:	*$*	
Less: Payments to Date:	_____	
Balance Due Contractor:	*$*	
Less: Deductions:	_____	*(1)*
Total Final Payment Amount:	*$*_____	

(1) Deductions Explanations:

It is further understood that this Final Payment includes all direct and indirect costs attributable to this Contract, and that the CONTRACTOR will not seek further compensation for any other costs related to this Contract.

SIGNED,

_____

Title: _____

Date: _____

ACCEPTED CONTRACTOR,

_____

Title: _____

Date: _____

SUBCONTRACTOR AFFIDAVIT OF PAYMENT OF DEBTS AND CLAIMS

TO: Montclair State University
855 Valley Road
Clifton, New Jersey 07013

CONTRACT NO.:

CONTRACTOR:

SUBCONTRACTOR:

PROJECT:

CONTRACT DATE:

STATE OF:

COUNTY OF:

The undersigned, pursuant to Sub-article 12.6.7 of the Contract's General Conditions for Construction, hereby certifies that, except as listed below, he has paid in full or has otherwise satisfied all obligations for all materials and equipment furnished for all work, labor and services performed, and for all known indebtedness and claims against the SUBCONTRACTOR for damages arising in any manner in connection with the performance of the Contract referenced above for which MONTCLAIR STATE UNIVERSITY or its property might in any way be held responsible.

EXCEPTIONS: *(If none, write "NONE". The CONTRACTOR shall furnish bond satisfactory to MONTCLAIR STATE UNIVERSITY for each exception.)*

SIGNED,

SUBCONTRACTOR

*By:*_____

*Title:*_____

Subscribed and sworn to before me this

_____ *day of* _____, *20*_____

Notary Public of

My commission expires , 20

(SEAL)

SIGNED,

CONTRACTOR

*By:*_____

Subscribed and sworn to before me this

_____ *day of* _____, *20*_____

Notary Public of

My commission expires , 20

*Title:*_____ *(SEAL)*

SUBCONTRACTOR AFFIDAVIT OF RELEASE OF LIENS

TO: Montclair State University
855 Valley Road
Clifton, New Jersey 07013

CONTRACT NO.:

CONTRACTOR:

SUBCONTRACTOR:

PROJECT:

CONTRACT DATE:

STATE OF:

COUNTY OF:

The undersigned, pursuant to Sub-article 12.6.7 of the Contract's General Conditions for Construction, hereby certifies that to the best of his knowledge, information and belief, except as listed below, there are no liens filed against any property or Contract funds of MONTCLAIR STATE UNIVERSITY by the SUBCONTRACTOR, or its suppliers of materials and equipment, or performers of work, labor or services arising from the performance of the Contract referenced above.

EXCEPTIONS: *(If none, write "NONE". The CONTRACTOR shall furnish bond satisfactory to MONTCLAIR STATE UNIVERSITY for each exception.)*

SIGNED,

SUBCONTRACTOR

Subscribed and sworn to before me this

_____ day of _____, 20_____

Notary Public of

My commission expires , 20

By:_____

Title:_____

(SEAL)

SIGNED,

CONTRACTOR

Subscribed and sworn to before me this

_____ day of _____, 20_____

Notary Public of

My commission expires , 20

By:_____

*Title:*_____ *(SEAL)*

CONSENT OF SURETYTO FINAL
PAYMENT TO THE SUBCONTRACTOR

Bond No.

TO: Montclair State University
855 Valley Road
Clifton, New Jersey 07013

CONTRACT NO.:

CONTRACTOR:

SUBCONTRACTOR:

PROJECT:

CONTRACT DATE:

In accordance with the General Conditions for Construction, Sub-article 12.6.7 of the Contract between MONTCLAIR STATE UNIVERSITY and the CONTRACTOR as indicated above, the

, SURETY COMPANY

on bond of

, CONTRACTOR

hereby approves to the final payment to the SUBCONTRACTOR, and agrees that final payment to the SUBCONTRACTOR shall not relieve the SURETY COMPANY of any of its obligations to

MONTCLAIR STATE UNIVERSITY
855 Valley Road
Clifton,, New Jersey 07013 ***, OWNER***

as set forth in said Surety Company's bond.

IN WITNESS WHEREOF, the SURETY COMPANY has hereunto set its hand this_____ day of _____, 20____ .

_____
Surety Company

*Attest:*_____

_____
Signature of Authorized Representative

(Seal):

_____

Title:

SUBCONTRACTOR'S CERTIFICATE OF AMOUNTS DUE WORKERS FOR WAGES

TO: Montclair State University
855 Valley Road
Clifton, New Jersey 07013

CONTRACT NO.:

CONTRACTOR:

SUBCONTRACTOR:

PROJECT:

CONTRACT DATE:

The undersigned SUBCONTRACTOR, pursuant to Sub-articles 11.1.6 and 12.6.7 of the Contract's General Conditions for Construction, hereby certifies that, except as listed below, he has paid in full all wages earned on the work to all laborers, mechanics, apprentices, trainees, watchmen, guards, and workers in general employed by him. It is further certified that all laborers, mechanics, apprentices, trainees, watchmen, guards, and workers in general have been paid wages at rates not less than those required by the Contract provisions and pursuant to N.J. S.A. 34:11-56.25 et seq., and that the work performed by each such laborer, mechanic, apprentice, trainee, watchman, guard, and worker in general conformed to the classifications set forth in the Contract or training program provisions applicable to the wage rate paid.

EXCEPTIONS: *(If none, write "NONE"; for each exception, the SUBCONTRACTOR shall provide complete and detailed explanation.)*

SIGNED,

SUBCONTRACTOR

*By:*_____

*Title:*_____

Subscribed and sworn to before me this

_____ *day of* _____, *20*_____

Notary Public of

My commission expires , 20

(SEAL)

SIGNED,

CONTRACTOR

*By:*_____

*Title:*_____

Subscribed and sworn to before me this

_____ *day of* _____, *20*_____

Notary Public of

My commission expires , 20

(SEAL)

CERTIFICATE OF FINAL ACCEPTANCE
OF SUBCONTRACTOR'S WORK

TO: Montclair State University
855 Valley Road
Clifton, New Jersey 07013

CONTRACT NO.:

CONTRACTOR:

SUBCONTRACTOR:

PROJECT:

CONTRACT DATE:

In accordance with Sub-article 12.6.7 of the Contract's General Conditions for Construction, the undersigned SUBCONTRACTOR hereby notifies the MONTCLAIR STATE UNIVERSITY that as of _____ _____, 20__ its Subcontract work and all authorized additional work has been 100% completed, including but not limited to the Remaining Work (Punch List Work) listed on the attached Certificate(s) of Substantial Completion.

SIGNED,

_____

Title: _____

Date: _____

ACCEPTED CONTRACTOR,

_____

Title: _____

Date: _____

The undersigned Project Manager hereby certifies that on _____, 20__ a final field inspection was performed on the Subcontractor's work and all Subcontract work and authorized additional work found to be 100% complete in accordance with the Contract Documents.

This Certificate of Final Acceptance of Subcontractor's work is signed on this ___ day of _____, 20__.

SIGNED,

_____
Project Manager

_____
Title

CONCURRENCE,

_____
Contracting Officer

_____
Title

APPENDIX C

CONTRACT EXECUTION FORM

AGREEMENT

THIS AGREEMENT, made this **___ of _____, 20__** in the county of Essex in the State of New Jersey by and between:

Montclair State University
1 Normal Avenue
Montclair, New Jersey 07043
(Hereinafter - MSU)

and

(Hereinafter – Contractor)

In consideration of the mutual promises herein, the parties agree as follows:

Term. The term of this contract will be _____.

Pursuant to N.J.S.A. 18A:64:79, all multi-year contracts shall be subject to the availability and appropriation annually of sufficient funds as may be required to meet the extended obligation.

Service. The Contractor shall provide _____ to Montclair State University, hereinafter called "Service" as described in Request for Proposal #_____ dated _____; Addendum(s) No. __ dated _____, which are incorporated and made part of this Agreement. This Agreement also includes the Contractor's response dated _____ to Request for Proposal #_____, including the following: _____. In the event of any inconsistency or conflict between or among the provisions of this Agreement and the attachments, the inconsistency or conflict should be resolved by giving precedence to the documents as follows: 1) this Agreement; 2) Addendum(s) #__; 3) Request for Proposal #978_____; and 4) Contractor's Response dated _____.

Consideration. In full and complete consideration for the services rendered hereunder, Contractor shall invoice MSU for services provided by Contractor under terms of this Agreement at rates stated in the Pricing Sheet, Attachment A**.**

Payment Terms.
The Contractor shall make an application for payment and shall submit it to MSU for approval in accordance with the requirements of Terms and Conditions of this Agreement. Upon approval, MSU shall pay Contractor for work satisfactorily completed and identified on said application.

Compliance with Law. The Contractor shall comply with the provisions of Chapter 33, of title 52 on the Revised Statutes (R.S. 52:33-l et seq.) requiring that preference be given to the use of domestic materials or as it may be governed by Federal Law or Regulations.

This Agreement shall be subject to all of the provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:l-l et seq., the New Jersey Contractual Liability Act, N.J.S.A. 59:l3 et seq., and the availability and appropriation of sufficient funds. The State of New Jersey does not carry public liability insurance, but the liability of the State and obligations of the State to be responsible for tort claims against its employees is covered under the terms and provisions of the New Jersey Tort Claims Act.

Amendment. This Agreement may only be amended by mutual agreement of the parties, which shall be set forth in writing and signed by both parties.

Assignment. Neither party shall assign or transfer any interest under this Agreement without the express written consent of the other party. This Agreement is governed by the laws of the State of New Jersey.

Both parties to this Agreement confirm that they have read this Agreement, understand it and agree to be bound by its terms. Both parties further agree that this written instrument is the complete and exclusive statement of their agreement, which supersedes all prior statements, oral or written, relating to the subject matter of this Agreement

IN WITNESS WHEREOF, the parties to these present have executed this contract in three (3) counterparts, each of which shall be deemed an original, on the year and day first above mentioned.

ATTEST:

_____ by _____
(Witness)

_____ Name
(print)

Corporate Seal

_____ Title
Date

_____by_____
(Witness) Montclair State University

Donald D. Cipullo_____

Vice President for Finance and Treasurer____
Date

APPENDIX D
MONTCLAIR STATE UNIVERSITY
GENERAL CONDITIONS

ELECTRONIC PROJECT MANAGEMENT SYSTEM

PART 1 - GENERAL

1.01 SUMMARY

A. The Owner has setup an Internet based electronic project management system.

B. The project website provides secured access to Vendors. Each user will have a separate login and password to access the project website as provided and designated by the Owner's system administrator. Limited access is available to the Vendor and its designated representatives. Only the Vendor's contract administrator and their respective Field Representative(s) shall have access to the web-based software.

C. Project management related processes shall be submitted, tracked, and responded to by the Vendor, Owner's representative(s), and/or the Architect-Engineer firm of record, only through this system over the Internet. Processes and related materials that will be managed through the project website will include, but not be limited to:

- RFIs
- Submittals
- Daily Field Logs
- Meeting Minutes
- Site Photos
- Documents
- Cost Tracking
- Change Orders
- Pay Applications
- Schedule of Values

D. Paper copies shall not be accepted unless specifically requested. An example of a requested paper copy may include, but not be limited to color samples, color boards, raised seal documents, and other material samples. Wherever paper copies are applicable, only University approved forms may be utilized.

E. Where Certified Payrolls are required only AIA or University approved documents will be accepted for payment, with required backup documents including but not limited to:

- Copy of Approved Pencil Requisition
- Subcontractor Releases
- Timesheets and Reimbursibles (if Construction Manager)

F. Vendor may arrange a demonstration of the project management software by contacting the vendor. A public link to the current project management software user manual is available at: http://www.montclair.edu/media/montclairedu/facilities/projectmates/UF_Projectmates_User_Manual.pdf

1.02 REQUIREMENTS

A. The project website includes secured document management system for storing drawings and specifications.

B. The project website includes database driven applications for managing RFIs, Submittals, Daily Field Logs and Meeting Minutes, as well as cost tracking workflow including Change

Orders, and Pay Applications. All items shall be entered, submitted, tracked, and responded to online.

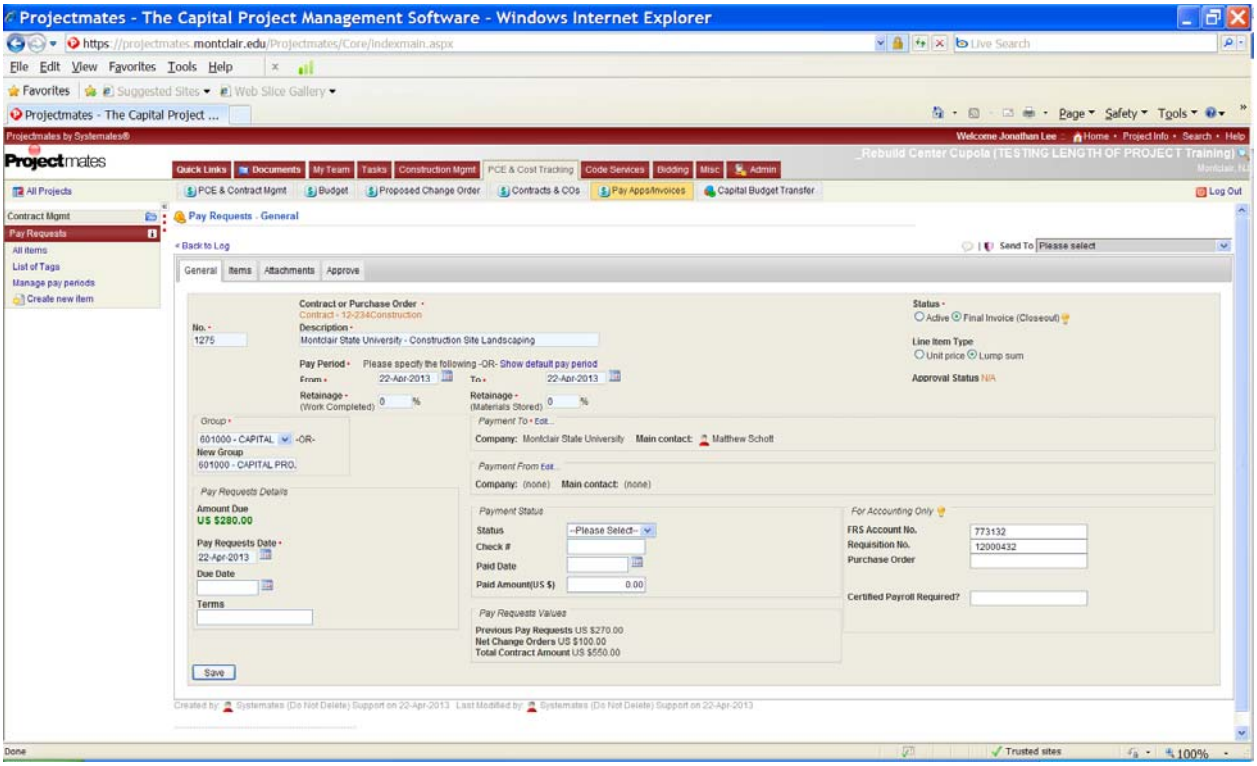
PART 2 - PRODUCTS

Projectmates website at https://projectmates.montclair.edu
By Systemates, Inc., Dallas, Texas
214-217-4100
info@systemates.com

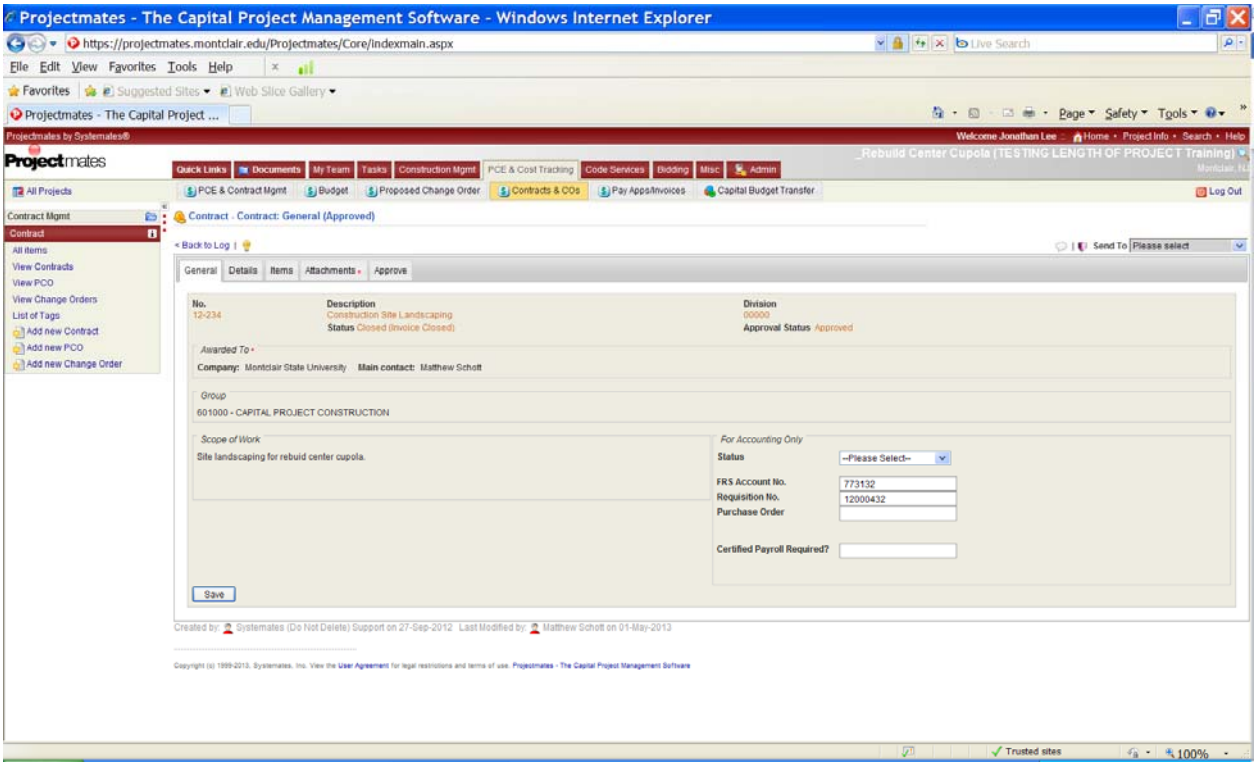
PART 3 - EXECUTION

A. TRAINING: An initial three (3) hour training session will be provided by the Owner. Any additional training expenses will be borne by the Vendor. Additional training can be arranged by contacting software vendor Systemates Inc. directly.
B. SUPPORT: Your project contact at MSU may be contacted for any technical questions regarding the project website. Software support will also be available by the software provider to all users of the project, if those users have undergone end-User training by the Owner and/or software provider.
C. OPERATION: Vendors shall maintain a Windows based computer system on the jobsite with minimum specifications as follows:
Windows XP or 7 with Microsoft Internet Explorer 8.0 or greater; Intel Pentium Processor 2.0 GHz or better, 2048 MB memory or better, JAVA 2, Active-X, cookies enabled, hi-speed network connection, monitor with resolution of 1280x720 or better, and the ability to scan documents.
D. PROJECT ARCHIVE: User may request a copy of their data in machine-readable, searchable format under a separate Statement of Work from the software provider. Cost of said documents will be provided at a rate commensurate with current rates, and not to exceed $1,000 per project archive.

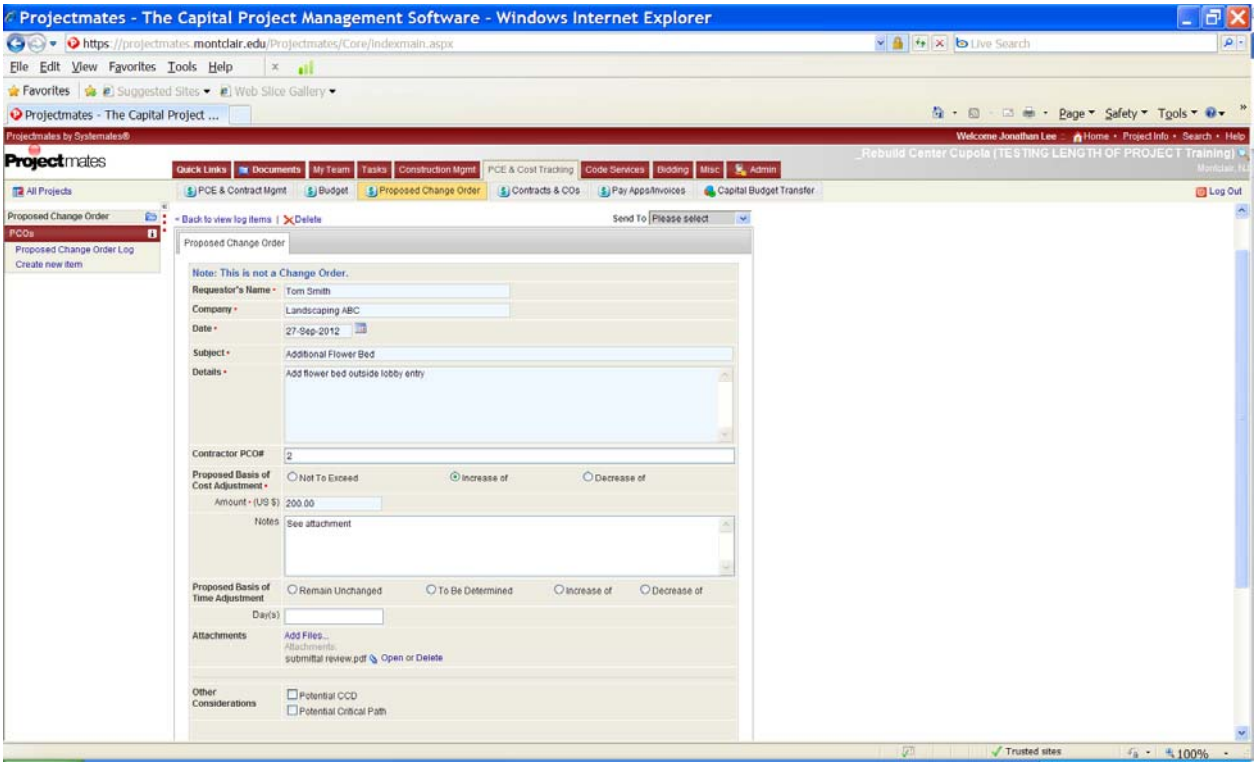
Projectmates Screen Sample: Pay Application



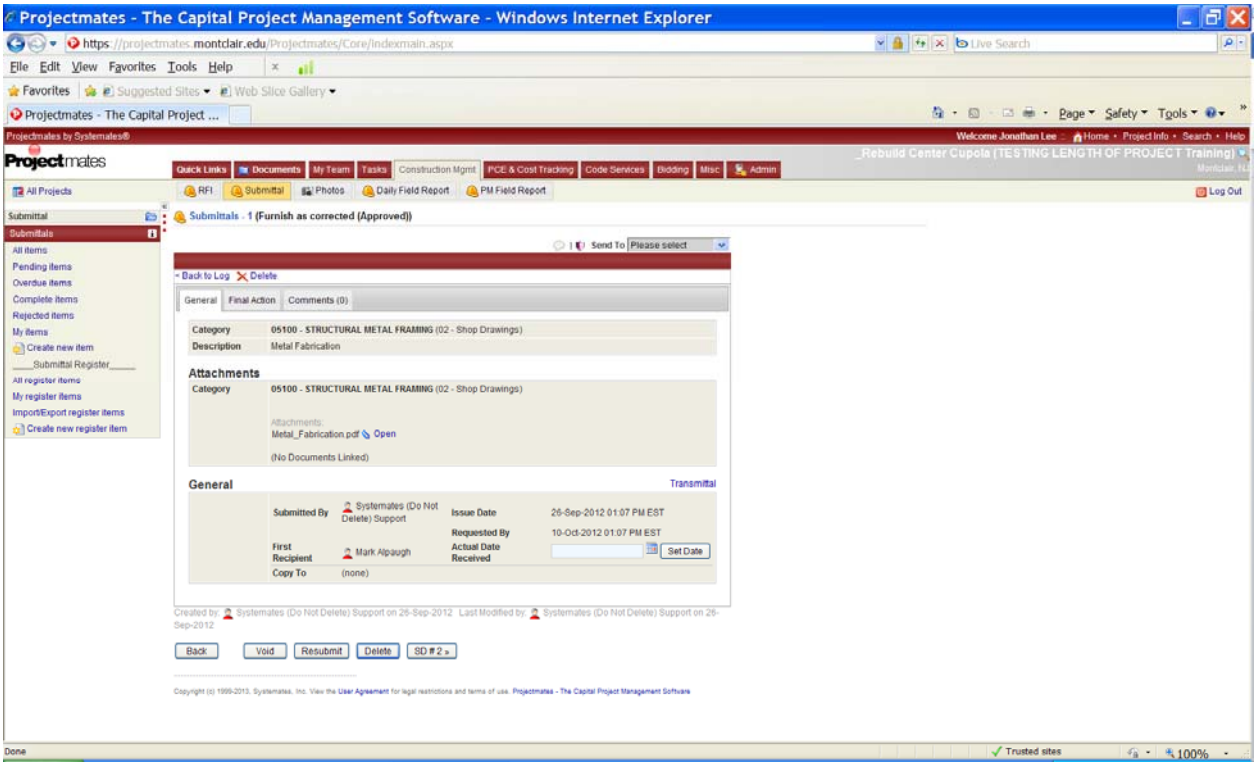
Projectmates Screen Samples: Contracts



Projectmates Screen Samples: Proposed Change Order



Projectmates Screen Samples: Submittals



Appendix E

MONTCLAIR STATE UNIVERSITY
CONTRACT CHANGE ORDER REQUEST

Project Title & Location: _____ MSU Project No: _____
Contractor Name: _____ Contract PO #: _____

		Subtotals	Totals
	Work performed by Prime GC (direct)		
A	Cost of work	$	
B	Overhead (10%)	$	
C	Total cost of direct work by GC (lines A + B)		$
	Work performed by Sub Contractor of GC		
D	Cost of work	$	
E	Subcontractor Overhead & Profit (10%) *	$	
F	Subcontractor Total (lines D + E)		$
G	Total GC direct and subcontractor work (lines C + F)		$
	Other GC Costs		
H	GC Profit (5% of line G)		$
I	GC Bond cost (for lines G + H)		$
J	Total cost of Change Order (G + H + I)		$

* Only the subcontractor performing the work may charge overhead. If a lower tier subcontractor (subs sub) performs the work, they are entitled to the overhead charge. The 1st tier subcontractor may charge profit only

Date: Jan 18, 2018