



KEAN

INSTRUCTIONS TO BIDDERS

GENERAL CONDITIONS

KEAN UNIVERSITY

UNION, NJ 07083

MIRON STUDENT CENTER ADDITION

PROJECT

BID NO. - K18-12-5-1

TABLE OF CONTENTS

| | |
|---|-----------|
| TABLE OF CONTENTS | 2 |
| I. INSTRUCTION TO BIDDERS | 6 |
| IB1. Sealed bids | 6 |
| IB2. Bid Modification..... | 8 |
| IB3. Bid Opening/Consideration of Bids/Award of Contract/Rejection of Bids | 8 |
| IB4. Contract Awards/Cancellation of Contract Award..... | 9 |
| IB5. Qualification of Bidders | 10 |
| IB6. Bid Guaranty | 11 |
| IB7. Performance and Payment Bonds | 11 |
| IB8. Addenda and Interpretations..... | 12 |
| IB9. Assignments | 13 |
| IB10. Governing Law/Federal Excise Taxes and State Sales Tax | 13 |
| IB11. Restrictive Specifications | 13 |
| IB12. Requirements of N.J.S.A 19:44A-20.13-20.25 (Formerly Executive Order 134) | 14 |
| IB12.1. Definitions | 14 |
| IB12.2. Breach of Terms of N.J.S.A. 19:44A-1 et seq., Chapter 51 and EO 117 Deemed Breach of Contract .. | 15 |
| IB12.3. Certification and Disclosure Requirements of N.J.S.A. 19:44A-1 et seq., Chapter 51 and EO 117 | 15 |
| IB12.4. State Treasurer Review | 17 |
| IB13. Offer of Gratuities/Standards Prohibiting Conflicts of Interest | 17 |
| IB14. New Jersey Business Registration Certificate | 17 |
| IB15. Completion of Project | 17 |
| IB16. Protest Procedures and Requirements | 17 |
| IB16.1. Procedure | 18 |
| IB16.2. Protest | 18 |
| IB16.3. Confidentiality of Protest | 18 |
| IB16.4. Response to the Protest | 19 |
| IB16.5. Request for Additional Information | 19 |
| IB16.6. Status of Procedural Process | 19 |
| IB17. Mandatory Language for Construction Contracts..... | 19 |
| IB18. Additional Mandatory Language for Construction Contracts pursuant to Executive Order No. 151 (Corzine, 2009)..... | 19 |
| II. GENERAL CONDITIONS | 21 |
| ARTICLE 1 – CONTRACT DOCUMENTS..... | 21 |
| 1.1. Definitions | 21 |
| 1.2. Intent of the Contract..... | 26 |
| ARTICLE 2 - CONTRACTING OFFICER & UNIVERSITY REPRESENTATION | 30 |

| | |
|---|----|
| 2.1. Contracting Officer | 30 |
| 2.2. University Representation..... | 30 |
| ARTICLE 3 - ARCHITECT/ENGINEER | 31 |
| 3.1. The Architect/Engineer | 31 |
| 3.2. Administration of the Contract | 31 |
| 3.3. Inspections-Substantial and Final-Completion..... | 32 |
| 3.4. Ownership and Use of Documents..... | 32 |
| 3.5. Architect / Engineer: Additional Responsibilities | 32 |
| ARTICLE 4 - THE CONTRACTOR..... | 34 |
| 4.1. Review of Contract | 34 |
| 4.2. New Jersey Prevailing Wage Act..... | 35 |
| 4.3 Set Aside Act..... | 36 |
| 4.4. Supervision and Construction Procedures | 36 |
| 4.5. Responsibility for the Work..... | 38 |
| 4.6. Permits-Laws-Regulations | 40 |
| 4.7. Storage, Cleaning and Final Clean Up..... | 42 |
| 4.8. Cut-overs, Interruptions to Existing Buildings | 43 |
| 4.9 Non-Regular Workdays..... | 43 |
| 4.10. Drawings, Specifications, Shop Drawings, As-Built Drawings..... | 44 |
| 4.11. Samples | 46 |
| 4.12. Miscellaneous Drawings, Charts and Manuals | 47 |
| 4.13. Openings-Channels-Cutting and Patching..... | 48 |
| 4.14. Tests - SEE ALSO ARTICLE 6 IN SUPPLEMENTAL CONDITIONS..... | 48 |
| 4.15. Equipment-Material | 49 |
| 4.16. Substitutions..... | 51 |
| 4.17. Subcontractor Approvals..... | 54 |
| 4.18. Pay Limits for Additions or Deductions for Excavation | 54 |
| 4.19. Soil Borings | 55 |
| 4.20. Coordination of Work..... | 55 |
| 4.21. Protection of Contractor's Property | 56 |
| 4.22. Patents..... | 56 |
| 4.23. Right to Audit..... | 57 |
| 4.24. Control Wiring | 58 |
| 4.25. Standby Personnel..... | 58 |
| 4.26. Completion and Acceptance | 59 |
| 4.27. Certificates of Compliance | 60 |
| 4.28. Warranty against Defective Work | 61 |
| 4.29 Document Retention | 62 |
| 4.30 Performance of Contract Services..... | 62 |
| 4.31 Buy American | 62 |
| 4.32 Compliance..... | 62 |
| ARTICLE 5 - CONTRACTOR FOR GENERAL CONSTRUCTION: SPECIAL RESPONSIBILITIES | 63 |
| 5.1. Unique Role of Responsibility-Staffing | 63 |
| 5.2. University's Reliance Upon Contractor for General Construction..... | 63 |
| 5.3. Layout, Dimensional Control and Verification, Surveyor's Control Certification | 63 |
| 5.4. Weekly Construction Reports..... | 65 |
| 5.5. Guarantee..... | 65 |
| 5.6. Inspection of Roadway Sub-grades | 66 |
| 5.7. Watchman Services | 67 |

| | |
|---|-----|
| ARTICLE 6 - TEMPORARY FACILITIES AND SERVICES | 68 |
| 6.1. Field Offices | 68 |
| 6.2. Storage Sheds, Tool Sheds, Shops, Employees Sheds | 68 |
| 6.3. Storage Areas, Employees Vehicular Parking, Equipment Marshaling Areas, Excavation Borrow/Spoils Designated Areas, etc. | 68 |
| 6.4. Temporary Toilet Facilities | 69 |
| 6.5. Temporary Drives and Walks..... | 70 |
| 6.6. Temporary Water | 70 |
| 6.7. Temporary Light and Power | 71 |
| 6.8. Electric Welding Equipment, Terrazzo Grinders, Pipe Threading Equipment, Floor Sanders | 72 |
| 6.9. Temporary Heat | 73 |
| 6.10. Temporary Enclosures | 77 |
| 6.11. Temporary Construction Fence & Signage | 77 |
| ARTICLE 7 - SUBCONTRACTORS | 78 |
| 7.1. Definition | 78 |
| 7.2. Contractor-Subcontractor Relationship | 78 |
| 7.3. New Jersey Business Registration Certificate | 79 |
| 7.4. Public Works Contractor Registration Act | 79 |
| ARTICLE 8 - RELATIONSHIP BETWEEN UNIVERSITY AND THE CONTRACTOR | 80 |
| 8.1. University's Right to Perform Work..... | 80 |
| 8.2. Mutual Responsibility..... | 80 |
| 8.3. Substantial Completion | 81 |
| 8.4. Contractor's Claims for Damages | 82 |
| 8.5. University's Right to Accelerate..... | 83 |
| 8.6. Time of Completion-Delay-Liquidated Damages..... | 83 |
| 8.7. No Damages for Delay | 85 |
| 8.8. Defense and Indemnification | 86 |
| 8.9. Contract Time - Notice to Proceed | 86 |
| ARTICLE 9 - CONSTRUCTION PROGRESS | 88 |
| 9.1. Construction Progress Schedule (CPM) by Contractor | 88 |
| ARTICLE 10 - PAYMENTS | 95 |
| 10.1. Payment to Contractor | 95 |
| 10.2. Invoices..... | 97 |
| 10.3. Interest | 98 |
| ARTICLE 11 - UNCOVERING AND CORRECTION OF WORK | 101 |
| 11.1. Uncovering of Work | 101 |
| 11.2. Correction of Work | 101 |
| 11.3. Acceptance of Defective or Nonconforming Work | 102 |
| ARTICLE 12 - PROTECTION OF PERSONS AND PROPERTY | 103 |
| 12.1. Safety Precautions and Programs..... | 103 |
| 12.2. Safety of Persons and Property | 103 |
| 12.3. Emergencies | 104 |
| ARTICLE 13 - INSURANCE AND INDEMNITY | 105 |
| 13.1. Contractor Insurance Requirements | 105 |
| 13.2. Insurance to be Carried by the University | 106 |
| ARTICLE 14 - CHANGES IN THE WORK..... | 108 |
| 14.1. Changes to Contract | 108 |

| | |
|--|------------|
| 14.2. Processing of Contractor Requests for Equitable Adjustment | 108 |
| ARTICLE 15 - ASSIGNMENT OF ANTITRUST CLAIM(S) | 112 |
| 15.1. Assignment of Antitrust Claim(s)..... | 112 |
| ARTICLE 16 - AFFIRMATIVE ACTION REQUIREMENTS | 113 |
| 16.1. Policy Statement..... | 113 |
| 16.2. Compliance with Anti-Discrimination Laws | 113 |
| 16.3. Exhibit B/ Mandatory Language | 113 |
| 16.4. Forms AA-201 & AA-202/Additional Procedures | 118 |
| 16.5. Additional Mandatory Construction Contract Language For State Agencies, Independent Authorities, Colleges and Universities Only | 119 |
| 16.6 Americans with Disabilities Act | 120 |
| ARTICLE 17 - WORK STOPPAGE; DEFAULT; TERMINATION & DISPUTES | 121 |
| 17.1. University’s Right to Stop the Work | 121 |
| 17.2. Default by Contractor | 121 |
| 17.3. Remedies for Event of Default by Contractor/Termination for Cause | 123 |
| 17.4. Termination of Contract for Convenience | 125 |
| 17.5. When the University Terminates the Contract for Convenience or for Cause Pursuant to this Article: | 126 |
| 17.6. Review of Contractor Claims and Disputes | 126 |
| 17.7. University’s Right to Carry out a Portion of the Work..... | 127 |
| 17.8. Termination for a Lack of Sufficiency of Funds | 127 |
| III. SUPPLEMENTAL CONDITIONS..... | 128 |
| ARTICLE 1 – PROJECT SCOPE | 128 |
| 1.1 Project Scope of Work..... | 128 |
| ARTICLE 2 – PROJECT SCHEDULE/LOGISTICS/SAFETY | 128 |
| 2.1 Key Dates:..... | 128 |
| 2.2 Coordination: Construction Schedule & Logistics | 129 |
| ARTICLE 3 – ALLOWANCES | 131 |
| 3.1 Definitions and Instructions: | 131 |
| 3.2 List of Allowances:..... | 131 |
| 1) Allowance No.1. – Unforeseen Conditions..... | 131 |
| a) Description: This allowance will be used to cover costs associated with Unforeseen Conditions that may be encountered on the Project. The allowance is only to be used when approved and directed by the University. | 131 |
| ARTICLE 4 – ALTERNATES | 132 |
| ARTICLE 5 – PROCEDURES FOR HANDLING HAZARDOUS MATERIALS..... | 134 |
| ARTICLE 6 – SELECT TESTING & INSPECTION TO BE PERFORMED BY OWNER..... | 134 |
| 6.1 Definitions and Instructions: | 134 |
| ARTICLE 7 – SITE DIRECTORY:..... | 135 |

I. INSTRUCTION TO BIDDERS

IB1. Sealed bids

IB1.1. Sealed bids for the Work described herein must be received and time-stamped at University Procurement and Business Services, Room 134, Maintenance Building, Attn: Faruque Chowdhury, Assistant Vice President, University Procurement and Business Services, 1000 Morris Avenue, Union, New Jersey, 07083. The closing date and time for bids will be stated at the Pre-Bid Conference and in the Advertisement and Invitation to Bid (see III. Supplemental Conditions, Article 7). Bidders are cautioned that reliance on the U.S. Mail or express shipping for timely delivery of bids is at the Bidder's risk. Failure by the Bidder to have sealed bids reach the University by the prescribed time will result in a return of the submission unopened and unread.

IB1.2. This Contract will be bid as a single prime Contract only. Bids for less than the entire Project as described herein will be deemed nonconforming.

IB1.3. The Instructions to Bidders, Bid Forms, Contract Forms, Plans and Specifications, Forms of Bid Bond, Agreement of Surety, Performance and Payment Bonds and other Contract Documents may be obtained by contacting:

University Procurement and Business Services, Room M-134
Kean University, 1000 Morris Avenue, Union, New Jersey 07083
Telephone Number 908-737-5050 or by email to procurement@kean.edu

Contract Documents will be available by download from the Project's site. Instructions for accessing the site will be distributed to Bidders by Kean University Procurement and Business Services upon payment of a non-refundable cost of \$25.00, payable by check made out to Kean University. Each Bidder is herewith put on notice that his pre-qualification with DPMC is not the sole basis for qualifying him for the award of this Work. The University reserves the right to deny award to any Bidder who is not responsible, based upon experience, past performance, compliance with Affirmative Action and Equal Employment Opportunity requirements, and financial capability to perform the Work required hereunder, or other material factors.

IB 1.4. Bids, based upon the Plans, Specifications, General, Special and Supplementary Conditions and Addenda, shall be deemed as having been made by the Bidder with full knowledge of the conditions therein. Bidders are required to visit the site prior to submitting bids for the Work herein described, and to have thoroughly examined the conditions under which the Contract is to be executed including those reasonably observable conditions of the premises which would hinder, delay, or otherwise affect the performance of the Contractor required under

the terms of the Contract. The University will not allow claims for additional costs as a result of the Contractor's failure to become aware of the reasonably observable conditions affecting his required performance. The Bidder is required to make appropriate allowances in the preparation of his Bid for the accommodation of such conditions. Bidders must warrant in the Bid Documents that the Bidder is familiar with conditions existing at the site at the time the Bid is submitted. Bidders are advised that no claim for expenses incurred, or damages sustained on account of any error, discrepancy, omissions, or conflict in the Contract Documents shall be recognized by the University unless written request for interpretation, clarification, or correction has been submitted by the Contractor pursuant to Section IB8.2.

IB1.5. Bids shall be submitted on the standard form provided by the University, enclosed in a sealed envelope. The name and address of the Bidder must be indicated on the envelope, as well as indication of the University Project Number, Project location and other appropriate identification.

IB1.6. Proposed substitutions to equipment or materials or means, method, technique, sequence or procedure of construction, as specified in the Contract Documents, must be submitted to the University in accordance with directions listed on the KU-03 Bid Cost Form for 'inquiries'. Refer to General Conditions Section 4.16 for substitution requirements.

IB1.7. All amounts in the Bid Documents shall be stated in numerical figures and in written form. In case of discrepancy, the written form shall take precedence.

IB1.8. The Bidder must include in the bid envelope all items required by the bid specifications and Bid Document Checklist.

IB1.9. Except in case of emergency, Bidders have the right to challenge award of Contract to the lowest Bidder on specific and valid grounds. See IB16 for further information on protest procedures and requirements.

IB1.10. Bids shall remain open for acceptance and may not be withdrawn for a period of sixty (60) days after Bid Opening Date.

IB1.11. Bids not submitted in accordance with instructions contained herein and in the Advertisement will be considered informal and rejected as non-responsive.

IB1.12. All inquiries and requests for clarification regarding the Contract Documents shall be submitted via e-mail to:

Faruque Chowdhury at procurement@kean.edu
Adam Varava at avarava@exchange.kean.edu

Such requests shall state the Bid Number and Name of Project. Any response that the University may choose to make shall be by written Addendum to the Bid, sent via the site to all registered Bidders. Kean University will not be bound by any informal explanation, clarification, or interpretation, oral or written, by whosoever made, that is not incorporated into an Addendum to the Bid. Copies of all such Addenda will be distributed through the site to all registered Bidders and will be advertised in accordance with applicable law. Receipt of the Addenda by the Bidders shall be acknowledged in the Bid. Failure to acknowledge receipt of all Addenda may cause the rejection of the Bid as non-responsive. All Addenda issued shall become part of the Contract Documents. In its discretion, Kean University may not respond to inquiries received after the deadline date for inquiries as listed in the Advertisement and Bid Cost Form.

IB1.13. It shall be the Bidder's responsibility to notify the University and the Architect/Engineer if additional Work is required which is not shown on the drawings. Such notification must be made prior to the deadline date for inquiries as listed in the Advertisement and Bid Cost Form.

IB2. Bid Modification

IB2.1. A Bidder may modify his Bid in writing, received by the Assistant Vice President of Procurement and Business Services at any time prior to the scheduled time for receipt of bids. Upward modification must be signed by the Bidder, and must be accompanied by a similarly modified Bid Bond.

IB2.2. Written communication regarding Bid modification shall attach, in a sealed envelope, a revised Bid Cost Form, which will not be opened until the scheduled time for receipt of bids and shall be used in lieu of Bidder's original bid submission.

IB2.3. Bids may be withdrawn upon written request received from Bidders prior to the time fixed for the Bid Opening. The right to withdraw a bid is lost after a bid has been opened.

IB3. Bid Opening/Consideration of Bids/Award of Contract/Rejection of Bids

IB3.1. Bids will be publicly opened and read aloud at the advertised time and place, unless the University extends the time for the opening of Bids. Their content will be made public for the information of Bidders and other interested parties.

IB3.2. Award of Contracts or Rejection of Bids:

- a. Contracts will be awarded in accordance with N.J.S.A. 18A:64-76.1b. The award will be made, or the Bids rejected, within sixty (60) days from the date of the opening of the bids.

- b. The bid guaranty of the successful Bidder and the next two (2) lowest Bidders will be retained by the University until the execution of a formal Contract and delivery of Performance and Payment Bonds by the successful Bidder. At such time bid guarantees of the other two (2) low Bidders will be returned.
- c. The University shall award the Contract as set forth in Section IB4.
- d. The University reserves the right to waive informalities and minor irregularities in any Bid received when such waiver is in the best interests of the University and where such waiver is permitted by law.
- e. The University reserves the right to reject any and all bids when such rejection is in the best interests of the University as long as such rejection is consistent with applicable laws. The University may also reject the Bid of any Bidder who, in its judgment is not responsible or capable of performing the Contract based on financial capability, past performance, experience, or compliance with Affirmative Action requirements. A Bidder whose Bid is so rejected may request a hearing by filing a written notice to Faruque Chowdhury, Assistant Vice President for University Procurement and Business Services at the address specified in Section IB1.3 within seven (7) business days of the transmittal of the rejection.
- f. Conditional acceptance: All Bids opened by the University shall be considered conditionally accepted pending the University's detailed review and examination of the Bids.
- g. Contracts or issuance of orders resulting from this Bid will be subject to the availability and appropriation of sufficient funds to the University. A Contract will be awarded in accordance with N.J.S.A. 18A:64-76.1b. The award will be made, or the Bids rejected, within sixty (60) days from the date of the opening of the Bids.

IB3.3. The Bidder to whom the Contract is awarded shall execute and deliver the requisite Contract Documents, including Payment and Performance Bonds, within the time specified by the University. Upon the successful Bidder's failure or refusal to comply in the manner and within the time specified, the University may either award the Contract to the next lowest responsible Bidder or re-advertise for new bids.

IB4. Contract Awards/Cancellation of Contract Award

IB4.1. In executing a Contract, a successful Bidder agrees to perform his Work in

a good and workmanlike manner to the reasonable satisfaction of the University and to complete and meet Project portion milestone dates in accordance with the Project Schedule and all Work within the number of calendar days specified in the Contract.

IB4.2. The successful Bidder will be notified of the time and place for the signing of the Contract. Key Contract requirements including, but not limited to, the number of days for performance of the Contract, manner and schedule of payments and other administrative details will be reviewed at the this meeting. The time and place of the first job meeting will also be announced.

IB4.3. The Contract shall be awarded in accordance with N.J.S.A. 18A:64-76.1b. The basis of award shall be the Bid, inclusive of base bid and all alternates whose sum total is the lowest. The University may choose any and/or all alternates in no particular order, as the University deems in the best interest of the University.

IB4.4. Should submission of unit prices be required for specified items of Work in Bids, they may be considered in the evaluation of bids.

IB4.5. Cancellation of Award: The University reserves the right to cancel the award of any Contract before execution by the University, even if it has been executed by the successful Bidder, if the University determines such cancellation to be in the best interest of the University. In no event will the University have any liability for the cancellation of such award. The successful Bidder assumes sole risk and responsibility for expenses prior to execution of the Contract by the University and shall not commence Work until receipt of the written Notice to Proceed.

IB5. Qualification of Bidders

IB5.1. If the successful Bidder is a corporation not organized under the laws of the State of New Jersey, or is not authorized to do business in this State, the Award of the Contract cannot be made until such time as the successful Bidder provides proof of business registration. A business organization that fails to provide a copy of a business registration as required, or that provides false business registration information, shall be liable for a penalty of \$25 for each day of violation, not to exceed \$50,000, for each proof of business registration not properly provided. For purchases of an emergent nature, the Bidder shall provide its business registration within two (2) weeks from the date of execution of the Contract.

IB5.2. The University reserves the right to reject a Bidder at any time prior to the signing of a Contract if information or data is obtained which, in the opinion of the University, adversely affects the responsibility and/or the capability of the Bidder to undertake and to complete the Work regardless of the Bidder's previous qualifications or classification. The University may conduct any investigation as it

deems necessary to determine the Bidder's responsibility, responsiveness to Contract Documents and capacity and the Bidder shall furnish all information and data for this purpose as the University may request. Further stipulations regarding experience may be included in the Specifications.

IB5.3. Contractors and named Subcontractors must be pre-qualified in accordance with the provisions of the Pre-qualification statute (N.J.S.A. 52:35-1 et seq.). If a Contractor is not currently pre-qualified, the firm must submit to DPMC a completed Request for Classification (Form DPMC-27) and receive approval prior to submission of the bid. In the case of a single bid for all Work, the Bidder shall include in his Bid the names of his principal Subcontractors as called for on the KU-03 Single Bid Subcontractor Listing. These 'named' subcontractors must be pre-qualified in accordance with said statute. Furthermore, Bidders must make or demonstrate good faith efforts to comply with the Set-Aside requirements for SBE's participation in construction contracting Work. Non-compliance in this respect may deem the Contractor's Bid to be non-responsive.

IB6. Bid Guaranty

IB6.1. Each Bid shall be accompanied by a Bid Guaranty (see N.J.S.A. 18A:64-67), submitted as a Bid Bond or by a certified Check, made payable to the University equal to ten percent (10%) of the amount of the Bid, as evidence of good faith, which guarantees that if the Bid submitted by the Bidder is accepted, the Bidder will enter into the Contract and furnish the required Contract Documents and Payment and Performance Bonds. Nothing contained herein shall be construed as a waiver of any other legal remedies the University may have by reason of a default or breach by the Contractor. Certified Checks or Bonds submitted by unsuccessful Bidders will be returned after the Contract has been executed. Bidders electing to furnish a Bid Bond must include a Consent of Surety, and both the bond and the consent shall be in a form acceptable to the University.

IB6.2. Attorneys-in-fact who sign Bid Bonds or Contract Bonds must file a certified Power-of-Attorney with the University indicating the effective date of that power.

IB7. Performance and Payment Bonds

IB7.1. The successful Bidder shall furnish within five (5) calendar days after issuance of a notice of award, a Performance Bond (See N.J.S.A. 18A:64-68) in statutory form, in an amount equal to one hundred percent (100%) of the total Contract Price as security for the faithful performance of this Contract and also a Payment Bond (See N.J.S.A. 2A:44-143 to 147) in statutory form in amount equal to one hundred percent (100%) of the Contract Price as security for the payment of all persons and firms performing labor and furnishing materials in connection with

this Contract. Performance Bond and the Payment Bond may be in one or in separate instruments in accordance with the law. If submitted in one instrument, the Performance/Payment Bond shall be equal to two hundred percent (200%) of the total Contract Price. No Contract shall be executed unless and until each Bond is submitted to and approved by the University and the Surety must be presently authorized to do business in the State of New Jersey.

IB7.2. The cost of Bonds shall be paid for by the Contractor.

IB7.3. If at any time the University, for justifiable cause, is dissatisfied with any Surety or Sureties who have issued, or propose to issue, the Performance or Payment Bonds, the Contractor shall, within five (5) calendar days after notice from the University to do so, substitute an acceptable Bond (or Bonds) in such form and sum and executed by such other Surety or Sureties as may be satisfactory to the University. The premiums of such Bond shall be paid by the Contractor. No Contract shall be executed and/or no payment made under a Contract until the new Surety or Sureties shall have furnished such an acceptance Bond to the University.

IB7.4. Bonds must be legally effective as of the date the Contract is signed. Bonds must indicate Contractor's names exactly as they appear on the Contract. Current Attorney-in-Fact instruments and financial statement of the Surety must be included with Bond. Bonds must be executed by an authorized Officer of the Surety. Bonds furnished under this article shall conform in all respects to the requirement and language of N.J.S.A 2A:44-143 to 147.

IB8. Addenda and Interpretations

IB8.1. No Addenda and/or Interpretations of the meaning of the Plans, Specifications or other pre-bid Documents will be provided to any Bidder unless such interpretation is made in writing or electronic distribution to all prospective Bidders prior to Bid Opening. Addenda for this project will be issued via the site. Any such Addenda and/or interpretations must be acknowledged in Bids submitted. Any interpretations which are not entered in accordance with this provision shall be unauthorized and, not binding upon the University. Failure to acknowledge receipt of all Addenda and/or interpretations may result in a determination that the Bid is non-responsive.

IB8.2. Each Bidder shall be responsible for thoroughly reviewing the Contract Documents prior to submission of bids. Bidders are advised that no claim for expenses incurred or damage sustained on account of any error, discrepancy, omissions, or conflict in the Contract Documents shall be recognized by the University unless, and only to the extent that, a written request for interpretation, clarification, or correction has been submitted in compliance with Section IB1.12., and the matter has not been addressed by the University, as a response to said

written request, through the issuance of an Addenda interpreting, clarifying and/or correcting such error, discrepancy, omission, or conflict.

IB9. Assignments

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

IB10. Governing Law/Federal Excise Taxes and State Sales Tax

IB10.1. Kean University is a public higher education institution of the State of New Jersey and this Project shall be awarded and administered pursuant to the laws of the State of New Jersey, including the State College Contracts Law, N.J.S.A. 18A:64-52 et seq., and the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq.

IB10.2. Bidders, in preparing their Bids, must take into consideration applicable laws, including Federal and State Tax Laws. Bidders must make their own determinations as to the current status and applicability of any tax laws and may make no claim based upon any error or misunderstanding as to the applicability of any tax laws.

IB10.3. As a New Jersey State entity, the University is exempt from the payment of certain taxes. A copy of the University's tax exempt status form is available upon request.

IB11. Restrictive Specifications

IB11.1. Should any Bidder determine before the Bid due date that any portion of the specifications or drawings specify a particular product which can be provided by only one supplier or manufacturer, with the result that competitive prices are not available, he shall immediately notify the University's Director of Purchasing in writing of such determination.

IB11.2. If such notice is not given in a timely manner, it shall be assumed that the Bidder has included the estimate of such sole source in his Bid. In the alternative, if the University is notified in a timely manner of the requirement in the specification of a sole source of supply or manufacture, it may order the Project re-bid or may take any other lawful action.

IB11.3. Substitution requirements are specified under General Conditions, Section 4.16.

IB12. Requirements of N.J.S.A 19:44A-20.13-20.25 (Formerly Executive Order 134)

In order to safeguard the integrity of State government procurement by imposing restrictions to insulate the award of State contracts from political contributions that pose the risk to improper influence, purchase of access, or the appearance thereof, Executive Order 134 was signed on September 22, 2004 (“EO 134”). To this end, EO 134 prohibited State departments, agencies and authorities from entering into contracts exceeding \$17,500 with individuals or entities that made certain political contributions. EO 134 was superseded by Public Law 2005, c. 51, which was signed into law on March 22, 2005 (“Chapter 51”).

On September 24, 2008, Governor Jon S. Corzine issued Executive Order No. 117 (“EO 117”), which is designed to enhance New Jersey’s efforts to protect the integrity of procurement decisions and increase the public’s confidence in government. EO 117 builds upon the provisions of Chapter 51. The Executive Orders and the legislation itself contain additional restrictions and reporting requirements that necessitate a thorough review of the provisions.

Pursuant to the requirements of N.J.S.A. 19:44A-1 et seq., Chapter 51 and EO 117, the terms and conditions set forth in this Section IB12 are material terms of any contract resulting from this RFP and are binding upon the parties thereto:

IB12.1. Definitions

For the purpose of this section, the following shall be defined as follows:

- a) Contribution – means a contribution reportable by the recipient under “The New Jersey Campaign Contributions and Expenditures Reporting Act,” P.L.1973, c.83 (C.19:44A-1 et seq.), and implementing regulations set forth at N.J.A.C. 19:25-7 and N.J.A.C. 19:25-10.1 et seq. Currently, contributions in excess of \$300 during a reporting period are deemed “reportable” under these laws.
- b) Business Entity – means any natural or legal person, business corporation, professional services corporation, limited liability company, partnership, limited partnership, business trust, association or any other legal commercial entity organized under the laws of New Jersey or any other state or foreign jurisdiction. It also includes (i) if a business entity is a for-profit corporation, any officer of the corporation and any other person or business entity that owns or controls 10% or more of the stock of the corporation; (ii) if a business entity is a professional corporation, any shareholder or officer; (iii) if a business entity is a general partnership, limited partnership or limited liability partnership, any partner; (iv) if a business entity is a sole proprietorship, the proprietor; (v) if a business entity is any other form of entity organized under the laws of New

Jersey or any other state or foreign jurisdiction, any principal, officer or partner thereof; (vi) any subsidiaries directly or indirectly controlled by the business entity; (vii) any political organization organized under 26 U.S.C.A. 527 that is directly or indirectly controlled by the business entity, other than a candidate committee, election fund, or political party committee; and (viii) with respect to an individual who is included within the definition of “business entity,” that individual’s spouse or civil union partner, and any child residing with the individual, provided, however, that EO 117 shall not apply to a contribution made by such spouse, civil union partner, or child to a candidate for whom the contributor is entitled to vote or to a political party committee within whose jurisdiction the contributor resides unless such contribution is in violation of Chapter 51.

IB12.2. Breach of Terms of N.J.S.A. 19:44A-1 et seq., Chapter 51 and EO 117 Deemed Breach of Contract

It shall be a breach of the terms of the contract for the Business Entity to (i) make or solicit a contribution in violation of N.J.S.A. 19:44A-1 et seq., Chapter 51 and EO 117, (ii) knowingly conceal or misrepresent a contribution given or received; (iii) make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution; (iv) make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate of holder of the public office of Governor, or to any State or county party committee; (v) engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by the business entity itself, would subject that entity to the restrictions of N.J.S.A. 19:44A-1 et seq., Chapter 51 and EO 117; (vi) fund contributions made by third parties, including consultants, attorneys, family members, and employees; (vii) engage in any exchange of contributions to circumvent the intent of N.J.S.A. 19:44A-1 et seq., Chapter 51 and EO 117; or (viii) directly or indirectly, through or by any other person or means, do any act which would subject that entity to the restrictions of N.J.S.A. 19:44A-1 et seq., Chapter 51 and EO 117.

IB12.3. Certification and Disclosure Requirements of N.J.S.A. 19:44A-1 et seq., Chapter 51 and EO 117

a) The University shall not enter into a contract to procure from any Business Entity services or any material, supplies or equipment, or to acquire, sell or lease any land or building, where the value of the transaction exceeds \$17,500 if that Business Entity has solicited or made any contribution of money, or pledge of contribution, including in-kind contributions to a candidate committee and/or election fund of any candidate for or holder of the public office of Governor or Lieutenant Governor, or to any State or county political party committee, legislative leadership committee or a municipal political party committee during

certain specified time periods.

b) Prior to awarding any contract or agreement to any Business Entity, the Business Entity proposed as the intended awardee of the contract shall submit the Vendor Certification and Disclosure Form, certifying that no contributions prohibited by N.J.S.A. 19:44A-1 et seq., Chapter 51 and EO 117 have been made by the Business Entity and reporting all contributions the Business Entity made during the preceding four years to any political organization organized under 26 U.S.C. 527 of the Internal Revenue Code that also meets the definition of a “continuing political committee” within the mean of N.J.S.A. 19:44A-3(n) and N.J.A.C.19:25-1.7. The required form and instructions, available for review on the Division of Purchase and Property website at <http://www.state.nj.us/treasury/purchase/forms.shtml> shall be provided to the intended awardee for completion and submission to the University with the Notice of Intent to Award. Upon receipt of a Notice of Intent to Award a Contract, the intended awardee shall submit to the University, the Certification and Disclosure(s) within five (5) business days of the University’s request. Failure to submit the required forms will preclude award of a contract under this Bid, as well as future contract opportunities.

c) Further, the Contractor is required, on a continuing basis, to report any contribution it makes during the term of the contract, and any extension(s) thereof, at the time any such contribution is made. The required form and instructions, available for review on the Division of Purchase and Property website at <http://www.state.nj.us/treasury/purchase/forms.shtml>, shall be provided to the intended awardee with the Notice of Intent to Award.

d) Any Business Entity making a contribution of money or any other thing of value, including an in-kind contribution, or pledge to make a contribution of any kind to a candidate for or the holder of any public office having ultimate responsibility for the awarding of public contracts, or to a political party committee, legislative leadership committee, political committee or continuing political committee, which has received in any calendar year \$50,000 or more in the aggregate through agreements or contracts with a public entity, shall file an annual disclosure statement with the New Jersey Election Law Enforcement Commission, established pursuant to section 5 of P.L.1973, c.83 (C.19:44A-5), setting forth all such contributions made by the Business Entity during the 12 months prior to the reporting deadline. Any Business Entity that fails to comply with the provisions of this section shall be subject to a fine imposed by the New Jersey Election Law Enforcement Commission in an amount to be determined by the commission which may be based upon the amount that the Business Entity failed to report.

IB12.4. State Treasurer Review

The State Treasurer or his designee shall review the Disclosures submitted pursuant to this section, as well as any other pertinent information concerning the contributions or reports thereof by the intended awardee, prior to award, or during the term of the contract, by the Contractor. If the State Treasurer determines that any contribution or action by the Contractor constitutes a breach of contract that poses a conflict of interest in the awarding of the contract under this solicitation, the State Treasurer shall disqualify the Business Entity from award of such contract.

IB13. Offer of Gratuities/Standards Prohibiting Conflicts of Interest

IB13.1. It is unlawful to offer, pay or give any fee, commission, compensation, gift or gratuity to any person employed by the State. It is the policy of the University to treat the offer of any gift or gratuity by any company, its officers, or employees, to any person employed by Kean University as grounds for disqualification of such company from bidding on and, providing Work or materials on University Contracts.

IB13.2. Standards Prohibiting Conflicts of Interest: The successful Bidder shall comply with the provisions of the Conflicts of Interest Law, N.J.S.A. 52:13D-12 to 28 and all other ethics laws, regulations and Executive Orders, including N.J.S.A. 18A:64-6.1. In addition, Contractor agrees to be bound by the provisions of the Vendor's Code of Ethics and Business Ethics Guide, and execute a Certification evidencing compliance with Executive Order #36. Copies of these documents are collectively attached in the Bid Document Forms section.

IB14. New Jersey Business Registration Certificate

Bidder agrees that it will comply with the provisions of P.L. 2009, c. 315, which requires all businesses, prior to being awarded a public contract by a State college or university, to register with the New Jersey Department of Treasury. Each Bidder shall submit proof of a valid and current business registration with the Division of Revenue prior to a contract being awarded or authorized.

IB15. Completion of Project

The successful Bidder shall complete all Work for the Project according to the schedule set forth in the Supplemental Conditions.

IB16. Protest Procedures and Requirements

This Section describes the policies and procedures governing receipt and resolution

of Bidder protests.

IB16.1. Procedure

IB16.1.1. Parties: Only an interested party may file a protest.

IB16.1.2. Protests based upon the anticipated award of a Contract shall be filed no later than ten (10) calendar days after the notification to the unsuccessful Bidders of Kean University's intent to award a Contract.

IB16.1.3. All protests must be filed in writing. Oral protests will not be accepted.

IB16.1.4. Where to file: Protests must be filed directly with the University's Director of Purchasing at the address indicated in the bid solicitation.

IB16.2. Protest

IB16.2.1. Any Protest must contain the following information:

- a. The name, address and telephone of the protestor;
- b. Identity of the Project (by number and description);
- c. A statement of the specific grounds for protest and any supporting documentation. Additional materials in support of the protest will only be considered if filed within the times limits set in paragraph IB16.1.2;
- d. An indication of the ruling or relief desired from the University.

IB16.2.2. If the Protest is filed before Contract Award, the potential successful Bidder will be advised by the University of the Pending Protest.

IB16.2.3. If deemed appropriate by the University, an informal conference on the merits of the protest may be conducted with all interested parties allowed to attend.

IB16.3. Confidentiality of Protest

Material submitted by a protestor will not be withheld from any interested party, except to the extent that the withholding of information is permitted or required by law or regulation. If the protestor considers that the protest contains proprietary material which should be withheld, a statement advising of this fact must be affixed to the front page of the protest documents and the alleged proprietary information must be so identified wherever it appears.

IB16.4. Response to the Protest

Kean University's Contracting Officer, or designee, will respond to the Protest within a reasonable time after its receipt and shall address only the issues raised originally by the protestor.

IB16.5. Request for Additional Information

Failure by the protestor to comply expeditiously with a request for information as specified by the University's Contracting Officer, or designee, may result in a determination of the protest without consideration of the additional information. If any parties to the protest request information from another party, the request shall be made to the University's Contracting Officer, or designee, and shall be complied with by the other party within five (5) business days if the University so directs.

IB16.6. Status of Procedural Process

Upon timely receipt of a protest, Kean University will withhold award until after resolution of the protest for protests filed after bid opening. However, the University may award a Contract whenever the University, in its sole discretion, determines that:

- a. The items or Work to be procured are urgently required; or
- b. Delivery or performance will be unduly delayed by failure to make the award promptly; or
- c. Failure to make prompt award will otherwise cause undue harm to the University.

IB17. Mandatory Language for Construction Contracts

The successful Bidder for this Contract agrees to be bound by the mandatory language for construction contracts required by N.J.A.C. 17:27. This language is incorporated into the Contract under Article 16.3 of the General Conditions.

IB18. Additional Mandatory Language for Construction Contracts pursuant to Executive Order No. 151 (Corzine, 2009)

On August 28, 2009, Governor Jon S. Corzine signed Executive Order No. 151 which enhances inclusion efforts for minorities and women to benefit from the New Jersey Economic Assistance and Recovery Plan and the American Recovery and Reinvestment Act of 2009 (ARRA). The Executive Order includes a provision which requires all state agencies, independent authorities and colleges and universities to include additional mandatory equal employment and affirmative action language in its construction contracts. It is important to note that this

language is in addition to and does not replace the mandatory contract language and good faith efforts requirements for construction contracts required by N.J.A.C. 17:27-3.6, 3.7 and 3.8. This additional mandatory language is incorporated into the Contract under Article 16.5 of the General Conditions.

II. GENERAL CONDITIONS

ARTICLE 1 – CONTRACT DOCUMENTS

1.1. Definitions

Architect or Engineer means the Architect or the Engineer (Architect/Engineer) engaged by the University to act as the authorized representative of the University for this Project.

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 drawings accompanying this Contract unless stated otherwise. The word "provide" as used herein shall be understood to mean "provided complete in place," that is "furnished and installed.”

Addendum or Addenda means a document, issued by the University prior to opening of bids which supplements, revises or modifies the solicitation documents furnished for bidding purposes.

Change Order Request Form means a request for equitable adjustment made by the Contractor in response to written direction by the University pursuant to Article 14 entitled "Changes in the Work."

Change in the Work means a change in the Project, the Work or the Contract Documents, including, but not limited to, an increase or decrease in Work, or an acceleration of time for the performance of the Work, or a change in the sequence in which the Work is to be performed.

Claims means the differences between the University and a Contractor concerning extra Work, alleged errors or omissions in the specifications or drawings, unreasonable delays, damages to Work, informal suspensions or interferences by University employees and like matters.

Cold Weather means the period between midnight of November 14 and midnight March 15, regardless of the ambient temperature, or, for periods outside of these dates, a period when any of three (3) consecutive days from the schedule date of concrete placement, the average daily temperature is or is expected to fall below 40°. The forecast of the daily temperature data that is required to calculate this average daily temperature shall be procured from the closest local NOAA monitoring station located in the City of Newark.

Construction Change Directive means a written order, signed by the University’s

representative, directing a change in the Work prior to agreement on appropriate Contract price and Contract Time adjustments.

Construction Manager means the Construction Manager retained by the University to provide administrative and construction management services, and to act as the authorized representative of the University.

Construction Operations shall include removals, demolition, movement of utilities or other facilities, and actual construction of any of the temporary and permanent structures, installation of equipment, or any other Work required by Contract. The term shall not include mobilization, procurement and storage of materials and plants, providing engineering, Performance Bond and Payment Bond, surveys, shop drawings, field offices, or other schedules, certificates, forms or documents necessary prior to the performance of Work on Pay items.

Contract means the entire and integrated agreement between the Contractor and the University encompassing all of the Contract Documents. The Contract Documents supersede all prior negotiations between the Contractor and the University. The Contract Documents form the Contract between the University and the Contractor setting forth the obligations of the parties there under, including, but not limited to, the performance of the Work and the basis of payment.

Contract Documents means the Contract, Instruction to Bidders, the Contractor's Bid Documents, the Conditions of the Contract (General, Supplemental and Special), all Addenda and interpretations issued prior to the bid opening date, any modifications issued after execution of the Contract, any plans, drawings, specifications, or other documents which are attached or incorporated by reference to said documents, together with any such plans, drawing, specifications, schedules, or other documents which may be produced pursuant to this Contract or derived therefore and which are intended to bind the Contractor and the University.

Contract Limit Lines refers to those lines shown on the Drawings which limit the boundaries of the Project and beyond which no construction Work or activities shall be performed by the Contractor unless otherwise noted on the Drawings or Specifications.

Contract Line Item Number (CLIN) means a specifically described unit of Work for which a price is provided in the Contract.

Contract Time means the number of calendar days including authorized adjustments allowed for project completion. When a specified completion date is shown in the Contract Documents in lieu of the number of calendar days, Completion shall be on or before that date. Specified completion date and calendar day means the Contract shall be completed on or before the day indicated even when that date is a Saturday, Sunday or holiday.

Contractor means the person or persons, partnership, or corporation named as Contractor in this Contract, operating as an independent Contractor and not as an agent of the State or University in the performance of its functions. Whether referred to as "Contractor," "General Construction Contractor," "Prime," or "Single Contractor", it shall be understood to mean Contractor.

Contracting Officer means the public official charged with administering the performance of the Work under the Contract on behalf of the University and includes his/her duly authorized representative. He/She has the legal authority to administer the Contract and represent the University in all relationships with Contractor. In the sole discretion of the University, responsibilities of the Contracting Officer may be fulfilled by the Vice President or Director of Campus Planning.

Director means the individual serving as the Kean University's Vice President or Director of Campus Planning. Such individual may also be authorized to act as the Contracting Officer or the Contracting Officer's duly authorized representative in the overall management/administration of the Project.

Final Completion or Contract Completion means that point in time after Substantial Completion and Final Acceptance when all requirements of the Contract Documents, (Punch List, Final Certificate of Occupancy, etc.), have been satisfied, final payment has been tendered and the Contractor has satisfactorily executed and delivered to the Architect/Engineer and the University all documents, including "AS-BUILT" drawings and computer disks, certificates, and proofs of compliance required by the Contract Documents; it being understood that the satisfactory execution and delivery of said documents, certificates, and proofs of compliance is a requirement of the Contract.

Force Majeure Event means any event beyond the control of the parties that is not due to an act or omission of either party (or any Subcontractor or other person or entity for which the Contractor may be contractually or legally responsible) that materially and adversely affects the parties' obligations under the Contract, to the extent that such event (or the effects thereof) could not have been avoided or mitigated by the due diligence and use or reasonable efforts by the Contractor. Such events may include acts of God, tornadoes, floods, hurricanes, earthquakes, abnormal weather conditions, epidemics, quarantine restrictions, acts of the State or Federal Government in their sovereign capacity, wars, riots and civil commotion. A Force Majeure event does not include typical weather conditions.

Notice is a written directive or communication served on the Contractor to act or perform Work or carry out some other Contractual obligation. It shall be deemed to have been duly served if delivered to an individual or member of the firm or entity or to an officer of the corporation for whom it was intended. This includes delivery

by courier or registered or certified mail or telegram to the business address cited in the Contract Documents.

Plans mean any drawings, reproductions or electronic version of the drawing files thereof pertaining to the details of the Work contemplated by this Contract.

Project is a general term for identification of the total Contract. It includes the Work and administrative aspects required to fully satisfy the Contract requirements.

Project Schedule means the most current schedule for the Project submitted by the Contractor and approved by the University, as described in the Contract Documents. Initially, the Project Schedule shall be the approved baseline Project Schedule and thereafter it shall be the most recent, revised and approved Project Schedule.

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

Punch List means the list of incomplete or defective Work that remains to be completed after achievement of Substantial Completion and to be corrected within thirty (30) days of issuance.

Retainage means any money withheld by the University from funds otherwise due to the Contractor, as delineated in the Contract Documents.

Retainage for the project will be withheld at 2% as per New Jersey Statute 18A:64-76.4.

"Site, "Construction Site" or "Project Site" refers to the geographical area of the entire University campus at which the Work under the Contract is to be performed.

Specifications means all written agreements, instructions or other documents in or pursuant to this Contract pertaining to the method of performing the Work and the results to be obtained.

State or Agency of the State as are used herein shall mean the State of New Jersey.

Subcontractor means the person or persons, partnership, corporation or other entity who enters into a contract with the Contractor for the performance of Work under this Contract, or the Subcontractors of any tier of such individual or corporation.

Substantial Completion means the date the building or facility is operational or capable of serving its intended use even though all permanent installations are not in place. The determination as to the date of Substantial Completion shall be made pursuant to the issuance of a Temporary Certificate of Occupancy by the New Jersey Department of Community Affairs, if applicable and Section 8.3 of the

General Conditions.

Supplemental Conditions means any documents or language appended hereto which revise, clarifies or augments the General Conditions and the Instructions to Bidders.

Surety means the corporate body bound with and for the Contractor for the full and complete performance of the Contract and for the payment of all debts and obligations pertaining to the Work.

Systems Assurance shall mean the totality of all quality control and assurance requirements specified in the Contract Documents.

Testing Services means the testing and evaluating of component parts, or the whole, by a privately owned facility, for certification of the composition or construction of the material or product. The agency providing testing services must be approved by the State of New Jersey, Division of Building and Construction or its successor agency for the intended scope of testing services under this Contract. The testing agency must be independent from the Contractor.

Unit Schedule Breakdown comprises a detailed list of the Work activities required for Project construction, other elements associated with fulfilling the requirements of the Contract (bonds, insurance, etc.), major items of material or equipment as well as labor and the prices associated therewith. The level of detail required of the Unit Schedule Breakdown shall be determined by the Architect with approval from the University.

University and/or Owner as used herein shall mean Kean University of Union, New Jersey and its employees and representatives, including but not limited to the Vice President or Director of Campus Planning and Contracting Officer.

Work as used herein shall mean all of the construction efforts required by the Contract Documents and includes the Work and all supervision, labor, material and equipment necessary to complete such construction. Unless otherwise specifically noted, the Contractor shall provide and pay for all labor, supervision, material, equipment, permits, fees, tools, construction equipment and machinery, utilities, transportation and other facilities and services necessary for the proper execution and completion of the Work.

Wherever in the specifications or upon the drawings the words "directed," "required," "ordered," "designated," "prescribed," or words of like import are used, it shall be understood that the "direction," "requirement," "order," "designation," or "prescription," of the University/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/University unless otherwise expressly stated.

1.2. Intent of the Contract

1.2.1 The Drawings and Specifications of the Contract are intended to require the Contractor to provide for everything reasonably necessary to accomplish the proper and complete finishing of the Work. All Work and Materials included in the Specifications and not shown on the Drawings, or shown on the Drawings and not in the Specifications, shall be furnished by the Contractor as if described in both. Any incidental material, and/or Work not specified in the Drawings and/or the Specifications which are, nevertheless, necessary for the true development thereof and reasonably inferable therefore, the Contractor shall understand the same to be implied and required, and he shall perform all such Work and furnish all such material as if particularly delineated or described therein. Should there be an obvious error or omission in the Drawings or Specifications, and such error or omission was not requested, in writing, to be clarified via an Addendum, prior to Bid Opening Date, it shall be the Contractor's responsibility to complete the Work as reasonably required, consistent with the intent of such Drawings and Specification as may be interpreted by the University.

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

1.2.3 Each and every provision required by law to be inserted in the Contract Documents shall be deemed to have been inserted therein. If any such provision

has been omitted or has not been correctly inserted, then upon application of either party, the Contract shall be physically amended to provide for such insertion or correction.

1.2.4 The organization of the Specifications into Divisions, Sections and Articles, and the arrangement of Drawings, shall not be construed by the Contractor as being intended to divide or allocate the Work among Subcontractors in any manner or to establish the extent of the Work to be performed by any trade. The Contractor is solely responsible for complying with all Drawings and Specifications, Divisions, Articles, Sections, Subsections, etc.

1.2.5. Unless otherwise provided in the Contract Documents, the University will furnish to the Contractor, free of charge, electronic copies, of the Drawings, and Specifications and additional instructions by means of Supplemental Drawings and documents otherwise necessary for the proper execution of the Work. Upon request, additional Drawings will be furnished at the Contractor's expense.

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

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

1.2.8. The sequence of precedence pertaining to interpretation of Contract Documents is as follows:

- a. Executed Contract
- b. Addenda/Interpretations.
- c. Supplemental and Special General Conditions
- d. Specifications, including General Conditions
- e. Drawings, in following order of precedence:
 - (1) Notes on Drawings
 - (2) Large scale details
 - (3) Figured dimensions
 - (4) Scaled dimensions

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

1.2.9 On all Work involving alterations, remodeling, repairs or installation

within existing buildings, it shall be the responsibility of the Contractor by personal inspection of the existing building, facility, plant or utility system, to satisfy himself as to the accuracy of any information given which may affect the quantity, size and/or quality of materials required for a satisfactorily completed Contract, whether or not such information is indicated on the Drawings or included in the Specifications. All Contracts shall include the cost of all material and labor required to complete the Work based on reasonably assumed conditions. Should the Contractor anticipate additional clarification/information on any Work item during construction, the Contractor shall be solely responsible for requesting, in writing, clarification, interpretations or corrections from the Architect/Engineer and University pursuant to Section IB8.2.

1.2.10. Dimensions of the Work shall not be determined by scale or rule, and figured dimensions shall be followed at all times, unless obvious discrepancies exist. The Contractor shall verify all dimensions at the job site, and shall take any and all measurements necessary to verify the drawings and to properly lay out the Work. Any discrepancies affecting the layout of the Work shall be called to the Architect/Engineer's attention. No Work so affected shall proceed until such discrepancy is corrected, and written confirmation of the resolution is provided by the Architect/Engineer who is representing the University.

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

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

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

1.2.14. Where no explicit quality or standards for material or Workmanship are established for Work, such Work is to be of good quality for the intended use and consistent with the quality of the surrounding Work and of the construction or the Project generally.

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

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

ARTICLE 2 - CONTRACTING OFFICER & UNIVERSITY REPRESENTATION

2.1. Contracting Officer

The University's Contracting Officer maintains general administration and direction of the Work. The Contracting Officer is the interpreter of the conditions of the Contract and the judge of its performance.

2.2. University Representation

Any reference to the University shall include its employees and representatives. In addition, the University may be represented on site by a Construction Manager and its staff. The Construction Manager will conduct on-site inspections, maintain logs of construction progress and problems encountered; recommend Contractor's requisition for payments subject to final approval by the University; attend job meetings; carry out liaison with the Architect/Engineer and Contractor; prepare and submit reports on special problems associated with the job; evaluate and process Change Orders, and generally remain fully cognizant and be kept informed by the Contractor of every aspect of ongoing construction. The University's representatives, including the Construction Manager, have only those duties which are required of an Owner; responsibility for completion of this Project, pursuant to the Contract Documents, remains with the Contractor. No right of the University exercised hereunder shall be considered a waiver of the Contractor's obligation, or any obligations created by this Contract, which may be modified or excused only in accordance with the terms of the Contract.

ARTICLE 3 - ARCHITECT/ENGINEER

3.1. The Architect/Engineer

3.1.1. The Architect/Engineer is the person or persons lawfully licensed to practice Architecture or Engineering in the State of New Jersey. The Architect/Engineer is responsible for the design of this Project and for certain Project administration as identified in the Contract Documents. The Architect/Engineer is referred to throughout the Contract Documents as if singular in number. The term Architect/Engineer means the same or his authorized representatives.

3.1.2. When the University provides full supervision and management of a Project, the Architect / Engineer's role is that of consultant to the University.

3.2. Administration of the Contract

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

3.2.2. The Architect/Engineer will monitor the execution and progress of the Work and will immediately notify the Director of any related problems. The Architect/Engineer will at all times be provided access to the Work. The Contractor shall provide facilities for such access so as to enable the Architect/Engineer to perform their functions under the Contract Documents.

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

3.2.4. The Architect/Engineer will recommend the rejection of Work which he believes does not conform to the Contract Documents. Whenever, in his opinion, he considers it necessary or advisable, he may request the University to provide special inspection or testing of the Work, whether or not such Work has been fabricated, installed or completed.

3.2.5. The Architect/Engineer will issue written interpretations necessary for the proper execution and progress of the Work, in the form of drawings or

otherwise. Such interpretation will be consistent with, and reasonably inferable from the Contract Documents.

3.2.6. Based on the Architect/Engineer's on-site observations and evaluations of the Contractor's application for payment, the Architect/Engineer will determine the amounts owing to the Contractor and will certify the Contractor's application for payment to the University.

3.2.7. The Architect/Engineer, will review, approve or take other appropriate action relating to Contractor's submittals, such as Shop Drawings, Product Data and Samples, to assure conformance with the design requirements and the Plans and Specifications of the Work. Such actions shall be taken with reasonable promptness. Approval of a specific item shall not indicate approval of an assembly of which the item is a component.

3.2.8. The Architect/Engineer will periodically review the Contractor's "As-Built" drawings to insure that they are up-to date.

3.2.9. Where the Architect/Engineers language may conflict with the University's, the language that is most beneficial to the University shall take precedence.

3.3. Inspections-Substantial and Final-Completion

The Architect/Engineer will conduct inspections, accompanied by the Contractor and Director or his authorized representative, to determine the milestone dates and dates of Substantial and Final Completion. The Architect/Engineer will receive and forward to the Director for his review, written warranties and related documents required by the Contract Documents and assembled by the Contractor, and will approve the issuance of a Certificate of Final Completion.

3.4. Ownership and Use of Documents

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

3.5. Architect / Engineer: Additional Responsibilities

In addition to the duties specified elsewhere in the Contract Documents, the

Architect/ Engineer and the Contractor shall perform as follows in relation to one another:

3.5.1. Contractor will permit the Architect/Engineer to inspect delivery of any off site materials that are being requisitioned by the Contractor.

3.5.2. Upon request by the Architect/Engineer, Contractor will schedule visits to fabrication plants to inspect status of various fabricated materials with regard to quality and scheduled delivery. Contractor will allow the Architect/Engineer access to such facilities.

3.5.3. Contractor will attend preconstruction conference and biweekly Project meetings, or more often if necessary, at times and locations specified by the Architect/Engineer.

3.5.4. Contractor shall submit to the University through the Architect/Engineer all information or requests concerning scheduling, Contract or change order/claims.

3.5.5. The Architect/Engineer will receive, log, and transmit to the University and evaluate any requests from Contractor for interpretations of the meaning and intent of the Contract Documents.

3.5.6. The Architect/Engineer will monitor all training by the Contractor to Owner's representatives for equipment and maintenance procedures.

ARTICLE 4 - THE CONTRACTOR

4.1. Review of Contract

4.1.1. The Contractor has the duty and warrants and represents that he has thoroughly examined and is familiar with all of the Contract Documents, including but not limited to, the complete set of Drawings and Specifications of the entire Project; that he has noted cases where it is specified that certain Work or materials, or both, are to be omitted from the Contract and to be furnished or installed by another, that he has carefully examined the site and the Contract Documents; that from his own investigations he has satisfied himself as to the nature and location of the Work, the current local equipment, labor and material conditions, and all matters which may in any way affect the Work or its performance. The Contractor is responsible to check and verify all conditions inside and outside the Contract Limit Lines to determine whether any conflict exists with the Work he is required to perform under the Contract.

The submission of a bid is conclusive evidence that the Bidder has made such examination and is fully aware of the conditions to be encountered in performing the Work including any subsurface condition which could be ascertained by due diligence and as to the requirements of the Contract Documents. This includes a check on elevations, utility connections and other site data.

Within the site of the Project there may be public utility structures, and, notwithstanding any other clause or clauses of this Contract, the Contractor shall not proceed with the Work until he has made diligent inquiry at the utility companies and municipal authorities 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 his operation that may affect their facilities or property. The Contractor is directed to the fact that the approximate locations of known utility structures and facilities that may be encountered within and adjacent to the limits of the Work may be shown on the plans. The accuracy and completeness of this information is not guaranteed by the University, and the Contractor is advised to ascertain for himself all the facts concerning the location of these utilities. The Contractor shall carry out his Work carefully and skillfully and shall support and secure utility structures so as to avoid damage to them. It is understood and agreed that the Contractor has considered in his bid all of the permanent and temporary utility facilities in their present and/or relocated positions as shown on the plans and as revealed by his site investigation, is cognizant of the limited ability of the University to control the actions of the utilities and in his bid has made allowance for the fact that additional compensation will not be allowed for any delays, inconvenience or damage sustained by him due to any interference from

the said utility facilities or the operation of moving them. As a result of such examination and investigation, the Contractor warrants and represents that he fully understands the intent and purpose of the Contract Documents and his obligations there under and that he accepts responsibility for and is prepared to execute and fulfill completely, by his construction Work, the intent of the Contract, without exception and without reservation, at the price specified in the Contract.

4.1.2. The Contractor shall carefully study and compare the Contract Documents during the progress of the Work and shall immediately report any error, inconsistency or omission to the Architect/Engineer and/or Construction Manager upon discovery. The Contractor shall immediately report any error, inconsistency or ambiguity detected during the course of the Project to the University and shall do no Work thereafter which may be affected by such error until the University has had the opportunity to respond and clarify the Work it wants performed in view of this information. Wherever any inconsistency or omission appears, it shall be disposed of pursuant to appropriate procedures set forth elsewhere herein.

4.1.3. Unless otherwise ordered in writing by the University, the Contractor shall perform no portion of the Work without approved Change Orders, Shop Drawings or Samples for such portions of the Work, or other approvals as may be applicable and required by the Contract Documents.

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

4.1.5. The Contractor shall at all times enforce strict discipline and good order along his employees and shall not employ on the Work any unfit person or anyone not skilled or suitably trained in the task assigned to him.

4.1.6. The Contractor shall be obligated to pay the prevailing wage rates set forth in the Specifications. He shall abide by the requirements of the State's Affirmative Action and Set-Asides Programs. He also shall be responsible to insure that all principles of safety are carried out as further described in Article 12 herein.

4.2. New Jersey Prevailing Wage Act

4.2.1. The Contractor and all of his Subcontractors shall comply with the New

Jersey Prevailing Wage Act Laws of 1963, Chapter 150, and all amendments thereto, as provisions of this Act have hereby been made a part of this Contract. Provisions of the Act include, but are not limited to:

- a. Each Contractor and Subcontractor performing public 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 as determined by the Commissioner, including the effective date of any changes thereof, in prominent and easily accessible places at the site of the Work or at such place or places as are used by the Contractor to pay Workers their wages.
- b. The Contractor's signature on the bid is his guarantee that neither he nor any Subcontractor is currently listed nor on record by the Commissioner as one who has failed to pay the Prevailing Wages according to the Prevailing Wage Act.
- c. In the event it is found that any Workman, employed by any Contractor or any Subcontractor covered by any Contract in excess of \$2,000 for any public Work to which the University is party, has been paid a rate of wages less than the Prevailing Wage required to be paid by such Contract, the University may terminate the Contractor's or Subcontractor's right to proceed with the Work, or such part of the Work as to which there has been a failure to pay required wages and may otherwise prosecute the Work to completion.
- d. Nothing contained in the Prevailing Wage Act shall prohibit the payment of more than the Prevailing Wage Rate to any workman employed on a public work project.
- e. The requirement for Prevailing Wage Act may be modified if the project employs the use of a Project Labor Agreement.

4.3 Set Aside Act

Pursuant to and consistent with the State's Set-Aside Act for Small Businesses, Female Businesses and Minority Businesses, N.J.S.A. 52:32-17 et seq., the Contractor shall make and/or demonstrate good faith efforts to comply with the State's set-aside contracting programs.

4.4. Supervision and Construction Procedures

4.4.1. The Contractor shall supervise and direct the Work using his best skill

and attention. He shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract.

4.4.2. The Contractor shall employ a full-time, competent Superintendent and necessary Foremen/women and assistants, who shall be in attendance on the Project site at all times during the progress of the Work. The Superintendent shall represent the Contractor and all communications given to the Superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. The University reserves the right to require a change in a Superintendent if his performance, as judged by the Director, or his duly assigned representative, is deemed to be inadequate. Upon application, in writing to the Director, this requirement for full-time superintendent may be waived by the Director should he determine that such staffing is not required by the University.

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

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

4.4.5. The Contractor shall, at all times, employ sufficient labor and equipment for prosecuting the several classes of Work to full completion and in the manner and time required by the Contract Documents.

All Workers shall have sufficient skill and experience to properly perform the Work assigned to them. Workers engaged in special Work or skilled Work shall have sufficient experience in that Work and in the operation of the equipment required to perform the Work satisfactorily.

Any person employed by the Contractor or by any Subcontractor who, in the opinion of either the Architect/Engineer or University does not perform Work in a proper and skillful manner or is intemperate or disorderly shall, at the written request of the Architect/Engineer or University, be promptly removed by the

Contractor or Subcontractor employing the person and shall not be again employed in any portion of the Work without University approval. Should the Contractor fail to remove such person or persons as required, or fail to furnish suitable and sufficient personnel for the proper prosecution of the Work, the University may suspend the Work by written notice until compliance with such order.

All equipment, which is proposed to be used on the Work, shall be of sufficient size and in such mechanical condition as to meet the requirements of the Work and to produce a satisfactory quality of Work and meet all requirements of OSHA or other AHJ.

When the methods and equipment to be used by the Contractor in accomplishing the construction are not specified, the Contractor is free to use any methods or equipment that accomplished the Work. When the use of certain methods and equipment is specified, the specified methods and equipment shall be used unless otherwise authorized in accordance with other specification sections.

4.5. Responsibility for the Work

4.5.1. The Contractor shall be responsible to the University, and to other contractors that may be under Contract with the University on this Project, for the acts and omissions of his employees, Subcontractors and their agents and employees which injure, damage or delay such other contractors in the performance of their Work. This responsibility is not limited by the applicable provisions stated elsewhere herein, but is in conjunction with, and related thereto.

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

4.5.3. The Contractor shall defend, protect, indemnify and save harmless the University from all claim, suits, actions, damages and costs of every name and description arising out of, or resulting from, the performance of the Work under this Contract. This responsibility is not limited by the provisions of other indemnification provisions included elsewhere herein.

4.5.4. In order to protect the lives and health of its employees, the Contractor shall comply with all applicable statutes and pertinent provisions of the

O.S.H.A. & the “Manual of Accident Prevention in Construction” issued by the Associated General Contractors of America, Inc., and shall maintain an accurate record of all cases of death, occupational disease, and injury requiring medical attention or causing loss of time from Work, arising out of and in the course of employment on Work under the Contract. The Contractor alone shall be responsible for the safety, efficiency and adequacy of his plant, appliances and methods, and for any construction, maintenance or operation.

4.5.5 Cutting and Patching

Cutting, chasing, or boring in the existing buildings or Work and/or structures existing when the Contractor has addressed the situation, shall be performed by the Contractor at no additional cost to the University as required.

Cutting, chasing, or boring will not be permitted in bearing walls, trusses, girders, or similar structural items unless special permission is obtained from the Architect/Engineer.

Patching for work cut, chased or bored by the Contractor shall be done with Workers skilled in the trade. Finishes shall be restored to match the surrounding or adjacent surfaces perfectly in material, color and texture.

Where not indicated on drawings or specified, provide all holes, chases and openings required for Work in, or through construction elements or equipment. Where such holes, chases and openings are not permitted by the Architect/Engineer, relocate Work to clear obstruction as directed by the Architect/Engineer.

4.5.6. Special Inspection, Testing or Approval

Whenever the Architect/Engineer considers it necessary or advisable to ensure the proper implementation of the Contract Documents, the Architect/Engineer has 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 is then fabricated, installed or completed. However, neither the Architect/Engineer’s authority to act under this Subsection nor any decision made by the Architect/Engineer either to exercise or not to exercise such authority, creates a duty or responsibility of the Architect/Engineer to the Contractor, any Subcontractor, or any of their agents or employees performing any of the Work.

If such special inspection or testing reveals a failure of the Work to comply with the requirements of the Contract Documents or, with respect to the performance

of the Work, with laws, ordinances, rules, regulations, or orders of any public entity having jurisdiction, the Contractor shall bear all costs thereof, including additional costs incurred by the University that were made necessary by such failure.

4.5.7 Cooperation by Contractor

The Contractor shall give the Work the constant attention necessary to facilitate the progress thereof, and shall cooperate with the Architect/Engineer, the University, and other contractors in every way possible.

The Contractor shall designate in writing before starting Work, a competent, English-speaking Superintendent capable of reading and thoroughly understanding the Contract Documents, and thoroughly experienced in the type of construction being performed. The Superintendent shall have the authority to represent and act for the Contractor. An alternate to the Superintendent, with equal education and qualifications, shall also be designated.

The Superintendent or the alternate shall be present at the site of the Project at all times while Work is actually in progress on the Contract irrespective of the amount of Work being performed under the Contract or otherwise subcontracted. The Superintendent or the alternate shall have full authority to execute orders or direction from the Architect/Engineer, without delay, and to promptly supply such materials, equipment, tools, labor, and incidentals as may be required. When Work is not in progress and during periods when Work is suspended, arrangements acceptable to the University shall be made for any emergency Work that may be required. The Superintendent shall attend all job meetings.

4.6. Permits-Laws-Regulations

4.6.1. Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for all permits, inspections and fees, required by the New Jersey Uniform Construction Code and the New Jersey Department of Community Affairs. The Contractor shall secure and pay for all permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work and which are legally required at the time of receipt of bids unless alternate form of payment is specified in the Supplemental Conditions. The Contractor shall secure and pay for all required Certificates of Occupancy unless alternate form of payment is specified in the Supplemental Conditions.

4.6.2. All general construction, fire protection, plumbing and electrical Work is to be done in accordance with the New Jersey Uniform Construction Code. No

Work requiring inspections and approval or construction code officials is to be covered or enclosed prior to inspection and approval by appropriate code enforcement officials.

4.6.3. The Work under this Contract is exempt from local (municipal) ordinances, codes and regulations as related to the building and the site, on which it is located, except where construction could adversely affect adjacent property, public sidewalks and/or streets. The Contractor shall coordinate his activities with municipal and/or highway authorities having appropriate jurisdiction.

4.6.4. Soil conservation measures are to be in accordance with the applicable Union County Soil Conservation District requirements, as well as all applicable State and federal requirements.

4.6.5. All sewage disposal Work shall conform to the regulations of the New Jersey Department of Environmental Protection.

4.6.6. It is the Contractor's responsibility to request, in a timely manner, inspections by all regulatory agencies having jurisdiction over the Project.

4.6.7. The University, at Contract award, or upon Contractor's request, will name the inspector/inspection agency responsible for code enforcement. A Certificate of Electrical Code Compliance is to be obtained from the electrical inspector prior to the issuance of the certificate of Final Acceptance for electrical Work. All Certificates of Occupancy must be secured prior to the issuance of the certificate of Final Acceptance for all trades.

4.6.8. Consistent with Subsection 4.5.4., the Contractor shall be responsible for and save harmless the University from all fines, penalties, or loss incurred for, or by reason of the violation of any municipal ordinance or regulation or laws of the State, while said Work is in the process of construction.

4.6.9. All Contractors shall comply with the Federal Occupational Safety and Health Act of 1970 and all of the rules and regulations promulgated there under and the Worker and Community Right to Know Act (PL 1983, c. 315; N.J.S.A. 34:5A-1, et seq).

4.6.10. If as a result of a finding, by an appropriate finder of fact, it is established that the Contractor caused a substantial violation of a State, local or federal statute or regulation on said Project, the University may declare the Contractor to be in default.

4.6.11. Prior to the start of any crane equipment operations, the Contractor shall make all necessary applications and obtain all required permits from the Federal Aviation Administration (FAA). Also, adequate notice must be given to the University before crane is brought on site. The Sequence of operations, timing and methods of conduction of the Work shall be approved by the FAA to the extent that it relates to their jurisdiction.

4.7. Storage, Cleaning and Final Clean Up

4.7.1. The Contractor shall confine his apparatus, the storage of his equipment, tools and materials, and his operations and Workmen to areas permitted by law, ordinances, permits, Contract limit lines as established in the Contract Documents, the rules and regulations of the University, or as ordered by the Director, and shall not unreasonably encumber the site or the premises with his materials, tools and equipment.

4.7.2. The Contractor shall at all times during the Progress of the Work keep the premises and the job site free from the accumulation of all refuse, rubbish, scrap materials and debris caused by his operations, to the end that at all times the premises and site shall present a neat, orderly and workmanlike appearance. This is to be accomplished as frequently as is necessary by the removal of such material, debris, etc. from the site and the University's premises. For the protection of the Workers as well as the University, the site shall be broom swept clean at the end of the day. Loading, cartage, hauling and dumping will be at the Contractor's expense.

4.7.3. At the completion of Work, the Contractor shall remove all his tools, construction equipment, machinery, temporary staging, false Work, form Work, shoring, bracing, protective enclosures, scaffolding, stairs, chutes, ramps, runways, hoisting equipment, elevator, derricks, cranes, Project signage etc. from the Project Site.

4.7.4 Should the Contractor not promptly and properly discharge his obligation relating to Cleaning and Final Clean Up, the University shall have the right to employ others and to charge the cost thereof to the Contractor, after first having given the Contractor a three (3) working day written notice of such intent.

4.7.5. The Contractor's responsibilities in final clean up include:

- a. Removal of all debris and rubbish resulting from or relating to his Work. Rubbish shall not be thrown from building openings above the ground floor unless contained within chutes;

- b. Removal of putty stains from glass and mirrors; wash and polish inside and outside;
- c. Removal of marks, undesirable stains, fingerprints, other soil, dust or dirt, from painted, decorated or stained woodwork, plaster or, plasterboard, metal acoustic tile and equipment surfaces;
- d. Removal of spots, paint and soil from resilient, glazed and unglazed masonry and ceramic flooring and wall Work;
- e. Removal of temporary floor protection, clean, wash or otherwise treat and/or polish, as directed by the University, all finished floors;
- f. Clean exterior and interior metal surfaces, including doors and window frames and hardware of oil stains, dust, dirt, paint and the like, polish where applicable, and leave without fingerprints or blemishes; and
- g. Restoration of all landscaping, roadway and walkways to pre-existing condition. Damage to trees and plantings shall be repaired in the next planting season and such shall be guaranteed for one year from date of repair and/or replanting. Remove Project signage and dispose; cover holes in soil level with grade.

4.7.6. In each instance, the Clean-up Work shall be performed and paid for by the Contractor.

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

4.8. Cut-overs, Interruptions to Existing Buildings

All cut-overs of mechanical, electrical and any other services to existing buildings shall be scheduled and coordinated in advance with the University's representative and done at a time convenient to the University so as not to unreasonably interfere with its operations.

4.9 Non-Regular Workdays

4.9.1. Regular working hours shall be 7:00 a.m. to 3:30 p.m., Monday through Friday. Changes thereto may be granted with written approval of the Director. Any Work required to be performed after regular working hours or on Saturdays, Sundays, or Legal Holidays as may be reasonably required and consistent with contractual obligations, shall be performed without additional expense to the University. Contractor shall obtain approval of the Director for performance of Work after regular working hours or on non-regular work days at least 24 hours prior to the commencement of overtime, unless such overtime Work is caused by an emergency.

4.10. Drawings, Specifications, Shop Drawings, As-Built Drawings

4.10.1. The Director will furnish, after he becomes aware of its need, additional Instructions for the proper execution of the Work. All Drawings and Instructions issued by the University shall be consistent with the Contract Documents and reasonably inferable there from the Work shall be executed in conformity therewith. The Contractor shall do no Work without proper Drawings and Instructions. In giving such additional Instructions, the Director will have the authority to make minor changes in the Work, not involving extra cost. Drawings and Instructions with such supplementary details, as may be furnished or approved, are understood to be included in and as part of the Contract.

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

4.10.3. The Contractor shall not, at any time after the execution of his Contract, make any claims whatsoever based upon insufficient data or his incorrectly assumed conditions, nor shall he claim any misunderstandings with regard to the nature, conditions or character of the Work to be done under the Contract and he shall assume all risks resulting from any change in conditions not under the control of the University which may occur during the progress of the Work. The Contractor is responsible for verifying all field conditions prior to preparation and issuance of Shop Drawings; the Contractor shall coordinate the Work of all trades, ascertain existing field conditions and intent of Contract documents prior to submission of Shop Drawings.

4.10.4. The Contractor shall prepare a schedule of the proposed progress of the Work, fixing dates when the various details, shop drawings and supplemental drawings, if any maybe required, within two (2) weeks after the first field meeting. The Contractor shall submit to the Architect/Engineer and the

Director's representative for approval, Shop Drawing-Sample Submission Schedule which shall be used as a basis for complying with the overall Progress Schedule.

The Contractor shall promptly submit, so as to cause no delay in his own Work, all required submittals as specified in the Contract Documents. Within five (5) working days of final approval the Contractor shall send the Architect/Engineer a minimum of six (6) copies of all prints required for maintenance manuals and Catalog cuts. The Architect/Engineer will make proper distribution of all Drawings as directed by the University.

4.10.5. The Contractor shall not use the Contract Drawings for submission of shop drawings. All shop drawings sizes shall be in multiples of 9" x 12" (e. g. 18" x 24"; 24" x 36", etc.), as approved by the Architect/Engineer.

4.10.6. Attached to the Contractor's initial submission of such Drawings or catalog data shall be an itemized schedule, known as the Submittal Log, listing dates by which all other Submissions will be forwarded to the Architect/Engineer. The Contractor also has the responsibility to submit coordinated Drawings whenever two or more trades are occupying common space. Any list of Drawings prepared by the Architect/Engineer is for the University's convenience only, and shall not be construed as limiting the number of Drawings the Contractor shall furnish.

4.10.7. If the Contractor desires to make any deviations or changes from the requirements of the Contract Documents, he shall obtain the consent of the University to such changes, in writing, before submitting Drawings showing such proposed changes. All Drawings submitted by the Contractor shall have been checked and approved by him/her prior to submission. The Drawings and Specification references shall be noted on all submissions. Failure to comply with these instructions will be sufficient reason to return such Drawings to the Contractor without any action being taken. Any burden from these actions that negatively impact the schedule will be borne by the Contractor.

4.10.8. The Contractor shall keep one set of drawings on the Project site at all times that are to be marked "As-Built". The Contractor shall, during the course of the Project, mark these drawings with colored pencils to reflect any changes as well as dimension the location of all pipe runs, conduits, traps, footing depths or any other information not already shown on the Contract drawings or differing there from. All required utilities outside the building shall be located by a metes and bounds survey performed by a licensed surveyor who shall certify as to its accuracy. These marked-up drawings and surveys shall be made available to the University at any time during the progress of the Work. These shall

include the drawings of principal Subcontractors as well. As-built drawings shall be reviewed and approved by the University as a prerequisite to the review of Contractor's payment applications.

4.10.9. In instances where sepiatop drawings and/or erection drawings, of a scale larger than the Contract Drawings, are prepared by a Contractor, such drawings and sepiatop will be accepted in lieu of marked-up Contract Drawings, provided they are updated as per Subsection 4.10.8. A master sheet of the same dimensions as the Contract Drawings shall be prepared by the Contractor on a tracing which shall indicate, sheet by sheet, a cross reference to all shop drawings pertaining to that drawing. All drawings and sepiatop as required in Subsections 4.10.8. and 4.10.9. Shall be labeled "As-Built" above the title block and dated.

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

4.10.11. The Architect/Engineer shall obtain original tracings at the University's Office of Facilities and Campus Planning. (No original tracings will be mailed). All "As-Built" drawings as submitted by Contractor shall be labeled "As-Built" above the title block and dated. This information shall be checked, edited and certified by the Architect/Engineer, who shall then transpose such information from the Contractor's "As-Built" drawings to the original tracings and certify that such tracings reflect "As-Built" status, and deliver said tracings to the University. Where shop drawings have been used by the Contractor for "As-Built" documentation, the tracing provided in Subsection 4.10.9. Providing cross reference information shall be included in the set of "As-Built" drawings furnished to the University.

4.11. Samples

4.11.1 The Contractor shall furnish for approval all Samples as directed by the University. The Work shall be in accordance with approved samples. Such Samples shall be submitted promptly to the University, through the Architect/Engineer, at the beginning of the Work, so as to give the University time to examine them. Any list of Samples prepared by the Architect/Engineer is for the University's convenience only, and shall not be construed as limiting the number of Samples which the Contractor shall furnish upon request of the Architect/Engineer.

4.12. Miscellaneous Drawings, Charts and Manuals

4.12.1. Roughing Drawings and Operating Manuals: Plumbing, HVAC, Electrical and other machinery and mechanical equipment items requiring utility service connections, shall have their respective Shop Drawings accompanied by manufacturer's certified Roughing Drawings, indicating accurate locations and sizes of all service utility connections.

4.12.2. Sleeve and Opening Drawings

Prior to installing service utilities or other piping etc. through structural elements of the building, the Contractor shall prepare and submit, for approval of the Architect accurate dimensioned Drawings indicating the position and sizes of all sleeves and openings required to accommodate his Work and installation of his piping, equipment, etc., with reference to the established dimensional grid of the Buildings such Drawings must be submitted in sufficient time to allow proper coordination with reinforcing steel Shop Drawings and proper placing in the Field.

4.12.3. Control Valve and Circuit Location Charts and Diagrams

The Contractor shall prepare a complete set of inked or typewritten control valve and circuit location diagrams, charts, diagrams and lists under frame glass in appropriate designated equipment rooms, as directed. Contractor shall also furnish one line diagrams, as well as such color coding of piping and wiring to be framed under glass and installed where directed. These diagrams shall be supplied as a hard copy and an electronic file.

4.12.4. Operating and Maintenance Manuals:

Four (4) copies of all operating and Maintenance Manuals, as identified and described by the Architect/Engineer in the Contract specifications, are to be furnished by the appropriate Subcontractors. Operating and Maintenance manuals shall include a complete description of all systems and equipment; diagrams indicating connectors, oiling requirements, types of lubricants to be used, and method of operating equipment. These manuals must be submitted to the Architect/Engineer for review and approval at the earliest date possible but in all cases prior to final acceptance. Included within the manuals shall be a list of names, addresses and telephone numbers of Subcontractors involved in the installation and firms capable of performing services for each mechanical item.

4.12.5. As a pre-condition to the acceptance of a facility for beneficial use;

Contractor shall provide a "throw-away" copy of operations and maintenance manuals to allow the University to operate the equipment prior to receiving the hard bound copies required by the Contract.

4.13. Openings-Channels-Cutting and Patching

4.13.1. The Contractor shall be responsible for furnishing and setting of sleeves, built-in items, anchors, inserts, etc. for his Work and for all cutting, fitting, closing in, patching, finishing or adjusting of this Work in a new and/or existing construction as required for the completed installation. The Contractor shall build these Work items into the construction.

4.13.2. The Contractor shall build recesses, channels, chases, openings and flues, and shall 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 any other feature of the heating and ventilating Work.

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

4.14. Tests - SEE ALSO ARTICLE 6 IN SUPPLEMENTAL CONDITIONS

4.14.1. The Contractor shall notify the University, in writing, of all Work required to be inspected, tested or approved. The notice shall be provided no later than five (5) working days prior to the scheduled inspection, tests or request for approval. The Contractor shall bear all costs of such inspection, tests or approvals unless otherwise specified.

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

4.14.3. When the University requires special or additional inspections, testing or approvals it will, in writing, direct the Contractor to secure the services for such special or additional inspections, testing or approvals and the Contractor shall give notice as provided for in Subsection 4.14.1 above. In the event such special or additional inspections or testing reveal a failure of the Work to comply with

the terms and conditions of the Contract, the Contractor shall bear all costs thereof, including all costs incurred by the University made necessary by such failures; otherwise the University shall bear all costs and an appropriate change order will be issued.

4.14.4. The Contractor shall acquire testing services using only those firms/entities pre-qualified by the Division of Property Management and Construction (“DPMC”). A list of those pre-qualified firms/entities shall be secured from the DPMC by the Contractor and supplied to the University. Failure to use a firm/entity pre-qualified by the DPMC shall be grounds for rejection of the inspection or test as a nonconformance.

4.14.5. All submittal of inspections and test reports or requests for approval shall be accompanied by a certification signed by the Contractor attesting to his knowledge of the submittal, acceptance of its findings and acknowledgement that material tested meets the required standard and certify the report's representation of the facts. Failure to provide the written certification shall be grounds for rejection of the submittal.

4.14.6. In addition to the above, the Contractor agrees to insert in all contracts or purchase orders for inspection and testing the requirement for the inspection or testing firm/entity to submit, in conjunction with the report to the Contractor, a copy of the report directly to the University. The copy shall be held pending receipt of the Contractor's certification of the report. Further, the Contractor agrees to require all reports to be submitted within fourteen (14) calendar days of the test or inspection. Failure to provide reports within the required time shall be addressed pursuant to Section 10.3.9 of the General Conditions.

4.14.7. Testing requirements for real property installed equipment (RPIE) to be furnished by the Contractor, when such testing is required by code, Contract or the manufacturer shall be performed by a DPMC pre-qualified testing laboratory or, in the absence of such, by the manufacturer or its authorized representative. The Contractor shall provide the five-day (5) notice to the University prior to testing. The University shall witness all tests.

4.15. Equipment-Material

4.15.1. The Contractor warrants to the University and the Architect/Engineer that all materials and equipment furnished under the Contract will be new, unless otherwise specified, and that all Work will be of good quality, free from faults and/or defects, and in conformance with the Contract Documents. All Work not conforming to these requirements, including substitutions not properly approved

and authorized, may be considered defective and rejected by the University or the Architect/Engineer. If required by the Architect/Engineer or the University, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by the provisions of the other paragraphs contained herein.

4.15.2. The original and three (3) copies of request for approval of materials shall be forwarded to the Architect/Engineer for approval. Each item of material listed shall be marked "As Specified" or "Unspecified", as the case may be.

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

4.15.4. The Contractor shall furnish and pay for all necessary transportation, storage, scaffolding, centering, forms, water, labor, tools, light and power mechanical appliances and all other means, materials and supplies for properly prosecuting the Work under this Contract, unless, expressly specified otherwise. The Contractor shall make arrangements to have representatives of his firm at the site to accept delivered materials. The University will not be held responsible for damage, theft, or disappearance of Contractor's property. The Contractor shall be responsible for furnishing and paying for any and all temporary, conveying systems to transport materials and equipment up and down all floors.

4.15.5. The Contractor shall comply with all applicable federal, State and local laws, ordinances, rules, regulations and orders, including but not limited to the provisions of Chapter 33, of Title 52 of the Revised Statutes (R.S. 52:33-1 et seq.) requiring that domestic materials be acquired or used for a public work unless "the head of the department, or other public officer charged with the duty by law, shall determine it to be inconsistent with the public interest, or the cost to be unreasonable." Wherever practicable, preference shall be given at all times to material and equipment manufactured or produced in the United States, where such preference is reasonable and will best serve the interest of the University.

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

4.15.7. The Contractor shall provide Maintenance Bonds for systems and

components of the Work for two (2) years after Substantial Completion. Maintenance Bonds shall be equal to 100% of the value of the system or components for which security for the faithful performance of warranty and maintenance work is required and specified. Maintenance Bonds shall be issued by the Surety as a requirement to Contract closeout. Maintenance Bonds shall be submitted in Standard AIA format.

4.15.8. Plant Inspection

The University and its representatives may undertake the inspection of materials, systems, manufactured assemblies and products at the source. Manufacturing plants may be inspected periodically for compliance with specified manufacturing methods. Samples may be obtained for laboratory testing for compliance with materials quality requirements.

4.16. Substitutions

4.16.1. In the event a Contractor should propose a substitution for the specified equipment or materials, it shall be his responsibility to submit proof of equality, and to provide and pay for any test or analysis which may be required by the University in order to evaluate such proposed substitution.

4.16.2. Where any particular brand or manufactured article is specified, it shall be regarded as a standard. Similar products of other manufacturers capable of equal or better performance and quality may be accepted, if approved by the University, and/or Architect/Engineer.

4.16.3. The application for approval of a substitution by the Contractor shall include the following information:

- a. Identifying information shall be completely furnished;
- b. Note whether the item is included in the Specifications, in which case identify the Specification paragraph and section;
- c. Attach data indicating in detail whether and how the substitution differs, if at all, from the article specified;
- d. In the credit to be offered for the substitution, a detailed itemization of the amount of credit must be shown;
- e. If the proposed substitution involves a change in scope of the Work under the Contract Documents, then the Contractor shall undertake and

agrees to be responsible for any and all added costs involved by reason of the change in the Work, including redesign, if any;

f. When requesting approval of an out-of-state Subcontractor or material manufacturer or supplier, a statement indicating that the Contractor has complied with the provisions of (i) P.L. 2005, c. 92, which requires that all services under this Contract or any subcontract awarded thereto be performed within the United States of America and (ii) N.J.S.A. 52:32-1, which requires that manufactured items or farm products provided under this Contract to be used in a public work shall be manufactured or produced in the United States;

g. An agreement by the Contractor to submit proof of equality and to have such tests performed at his own expense as may be required by the University or the Architect/Engineer for approval;

h. No Contractor shall base his bid on substitutions, which may have been approved on previous Projects. Bids shall be based solely on Plans and Specification of the subject Project; and

i. Proposed substitutions must be submitted, for review and approval by the Architect/Engineer after the contract is awarded. For substitutions prior to the bid opening refer to IB1.6.

Whenever materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular supplier, the naming of the item is intended to establish type, function, and quality required. Unless the name is followed by words indicating that no substitution is permitted, equivalent materials or equipment of other suppliers may be accepted if sufficient information is submitted by the Contractor to allow the Architect/Engineer to determine that the material or equipment proposed is equivalent or equal to that named. Requests for review of substitute items of material or equipment will not be accepted from anyone other than the Contractor. If the Contractor wishes to furnish or use a substitute item of material or equipment, the Contractor shall make written application to the Architect/Engineer for approval thereof, certifying that the proposed substitute performs adequately the functions and achieves the results called for by the general design, is similar and of equal substance to that specified, and is suited to the same use as the specified. The application for substitution shall state that the evaluation and approval of the proposed substitute does not prejudice the Contractor's achievement of Completion on time. It shall also state whether or not approval of the

proposed substitute for use in the Work requires a change in any of the Contract Documents (or in the provisions of any other direct Contract with the University for Work on the Project) to adapt the design to the proposed substitute; and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute in connection with the substitute from that specified shall be identified in the application, and available maintenance, repair and replacement service shall be indicated. The application shall also contain an itemized estimate of all costs that result directly or indirectly from approval of such substitute, including costs of redesign, all of which will be considered in evaluating the proposed substitute. The Architect/Engineer may, at his sole discretion, require the Contractor to furnish additional data about the proposed substitute.

If a specific means, method, technique, sequence, or procedure of construction is indicated in or required by the Contract Documents, the Contractor may furnish or use a substitute means, method, technique, sequence, or procedure of construction which is acceptable, if the Contractor submits sufficient information to allow the Architect/Engineer to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents. The procedure for review by the Architect/Engineer shall be similar to that described in the previous paragraph.

The Architect/Engineer is to be allowed a reasonable time within which to evaluate each proposed substitute. The Architect/Engineer will be the sole judge of acceptability, and no substitute shall be ordered, installed or used without an approved working drawing.

If approval is given, it is on condition that the Contractor is fully responsible for producing Work in conformity with Contract requirements. If, after trial use of the substituted materials, equipment, means, method, technique sequence, or procedure of construction, the Architect/Engineer determines that the Work produced does not meet Contract requirements, the Contractor shall discontinue the use of the substitute and shall complete the remaining Work with the specified materials, equipment, means, method, technique sequence, or procedure of construction. The Contractor shall remove the deficient Work and replace it as specified, or take such other corrective action as the Architect/Engineer may direct. Changes will not be made in the basis of payment for the Pay Items involved, or in the Contract time as a result of authorized substitutes. The Architect/Engineer may require the

Contractor to furnish, at no cost to the University, a special performance guarantee or other surety with respect to any substitute. The Architect/Engineer will document the time required by the University in evaluating proposed substitutions and in making changes in the Contract Documents. When the Architect/Engineer determines that a proposed substitute is unacceptable, the Contractor shall reimburse the University for the cost of evaluating each proposed substitute.

When the Contract Documents permit the use of more than one type of material, equipment, or product, only one type may be chosen from the permitted options, and that one type is to be used consistently throughout the Project.

Since substitutions are primarily for the financial benefit of the Contractor, a credit change order shall accompany each request for substitution.

4.17. Subcontractor Approvals

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

4.18. Pay Limits for Additions or Deductions for Excavation

The method of measurement and establishment of pay limits for additions or deductions for excavation shall, where expressly authorized in these General Conditions and/or Specifications, be as follows:

- a. Basement Excavations: Pay Limit for excavation shall be in accordance with cross-section limited by vertical parallel planes extending twenty-four (24) inches outside of foundation walls as shown on Contract Drawings, and horizontal plane along bottom of basement concrete slab or footings.
- b. All Pipelines and Encased Utilities: Pay limit for trench excavation shall be limited to width of thirty-six (36) inches or the largest diameter of pipe barrel plus twenty-four (24) inches, whichever is greatest, and depth at bottom of pipe barrel. When rock is encountered, the Contractor shall excavate to six (6) inches below bottom of pipe barrel. A compacted granular fill for the pipe shall be provided by the Contractor. No additional payment will be made for this additional six (6) inches of

granular fill.

c. Encased Electrical Conduit, Steam Transmission Lines, Unformed Foundation Footing: Width and depth of trench shall be limited to same width and elevations of structure shown on Contract Drawings.

d. Unsuitable Foundation Material: Where unsuitable foundation material is encountered, the Contractor shall excavate to elevation as directed by the University. Unit prices for additional excavation and replacement with approved compacted granular fill, if stated in the bid form, shall be used as basis for additional payment by the University. In the event that no unit price is included in the bid form, the unit prices shall be negotiated with the University prior to performance of the Work or shall be done, at the option of the University, on a time and material basis plus ten percent (10%) profit and charged against allowance, if carried.

4.19. Soil Borings

Soil borings or test pits or other subsurface information have been secured by an independent contractor for the University prior to design and construction of the Project and have been included in the Contract Documents for the Contractor's use. The Contractor assumes full responsibility for interpretation of said borings, and the University shall have no responsibility or liability should the data provided prove to be incorrect or unrepresentative. The entire provisions of Section 5.6 shall also apply hereto.

4.20. Coordination of Work

4.20.1. The Contractor shall be responsible for coordinating all Work performed upon the Project, as follows:

a. The Contractor shall be responsible for all arrangements for the storage of materials;

b. The Contractor shall keep informed of the progress and the details of work of his Subcontractors and he shall be solely responsible for the progress, performance and workmanship of his Subcontractors, and shall notify the University and Architect/Engineer immediately of the lack progress or defective workmanship on the part of Subcontractors. Contractors shall provide scheduling updates at the bi-weekly Project meetings.

- c. Failure of the Contractor to keep informed of the Work progressing at the site and failure to give notice of lack of progress or defective workmanship by others shall be construed as acceptance by him of the status of the Work as being satisfactory for proper coordination and completion of the Project.
- d. The Contractor shall be responsible to supervise, direct, coordinate, and manage the conduct of the construction and the efforts of all Subcontractors so as to deliver the Project as required under the Contract.
- e. Project planning, scheduling and control ("Critical Path Method"):The Contractor and all Subcontractors agree to cooperate and coordinate operations in order to meet effectively all scheduled task deadlines as further described in Article 9 of these General Conditions.

4.20.2. The Contractor shall refer to all of the Drawings, including those showing primarily the Work of the mechanical, electrical and other specialized trades, and to all of the Articles of the Specifications, and shall perform all Work reasonably inferable there from as being necessary to produce the indicated results. The Contractor shall ensure that all his Subcontractors are fully familiar with their obligations to the Contractor in his performance of the Contract.

4.20.3. This Project as described by these Specifications and accompanying Drawings is bid under a single prime Contract as mandated by IB1.2 of the Instructions to Bidders. However, this section will apply to Work relating to this Project and not described herein as part of this Project.

4.21. Protection of Contractor's Property

The Contractor shall adequately secure and protect his own tools, equipment materials and supplies. The University assumes no liability for any damage, theft or negligent injury to the Contractor's property, or to the property of his employees, agents or Subcontractors.

4.22. Patents

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

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

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

4.23. Right to Audit

4.23.1. The University reserves the right to audit the records of the Contractor in connection with all matters related to this Contract. The Contractor agrees to maintain his records in accordance with generally accepted accounting principles, for a period of not less than five (5) years after receipt of final payment.

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

4.23.2. The Contractor shall develop, maintain and make available to the University, on request, such schedule of quantities and costs, progress schedules, payrolls, reports, estimates, change orders, all original estimates, takeoffs, and other bidding documents, all Subcontractors and Supplier contracts and changes, all records showing all costs and liabilities incurred or to be incurred in connection with the Project, including all Subcontractor and costs incurred in labor and personnel of any kind, records and other data as the University may request concerning Work performed or to be performed under this Contract.

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

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

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

4.23.6. Contractor shall not permit his Subcontractor to subcontract work without expressed written approval of the University.

4.23.7. The Contractor acknowledge and agrees that the Contractor's obligation to establish, maintain and make available records and the University's right to audit as delineated herein, shall extend to actual costs incurred by Subcontractors in performing work required under the Contractor any supplemental agreement thereto. The Contractor shall require in all subcontracts that the Subcontractor establish, maintain and make available to the University all records as defined and delineated herein relating to all work performed under the Subcontractors including Work performed by a Subcontractor.

4.24. Control Wiring

The Contractor shall furnish and install all electrical control wiring for required mechanical equipment, including but not limited to heating, ventilating and air conditioning systems; ATC Systems; boilers, remote monitoring systems; and so forth. The Contract shall include the cost of all such control wiring and its installation in his bid. The Contractor shall employ a Subcontractor approved by the DPMC for all such control wiring. Installed or control wiring must connect to a point of electrical power supply as shown on the Contract Documents, or as required by field conditions.

4.25. Standby Personnel

If the Contractor is obligated to employ standby personnel by trade agreement to which he is a party, he shall determine and include all such costs thereof in his bid. The Contractor shall not, at any time, make a claim to the University for costs relating to standby maintenance or standby supervision for electric motor-driven or

other equipment. The University, under no condition, will entertain or consider a claim in this regard unless such claim is made as result of the University's unreasonable refusal to accept Beneficial Occupancy of the completed Project.

4.26. Completion and Acceptance

Prior to written notice that the Work has reached 100% completion, the Contractor shall punch list, review and ascertain the completion of the Work. The Contractor shall submit supporting documentation which includes the Contractor's punch lists issued to their Subcontractors in evidence of completion of Work. The Contractor shall also schedule and receive favorable disposition for all required final inspections by the New Jersey Department of Community Affairs (or other governing bodies) and secure the required Certificates of Occupancy.

Upon receipt by the Architect/Engineer of written notice from the Contractor that the Work has reached 100% Completion and is ready for final inspection and Acceptance, the Architect/Engineer will promptly make such an inspection. When such inspection indicates that the Work is to be in compliance with the Contract, the Architect/Engineer will promptly issue a Certificate of Completion stating that, to the best of its knowledge, information and belief, and on the basis of observations and inspections, the Work has been completed in accordance with the terms and conditions of the Contract. If, however, the final inspection discloses that the Work has not reached Completion, the Architect/Engineer will give the Contractor the necessary instructions for the correction of deficiencies, and the Contractor shall immediately comply with, and execute such instructions. Upon correction of the deficiencies the Contractor shall re-notify the Architect/Engineer, and another inspection will be made. This procedure is to be repeated until a Certificate of Completion is issued.

At the request of the Contractor, the Architect/Engineer may issue a Certificate of Completion without receiving all required documents, certificates, or proofs of compliance. The Contractor's request must satisfactorily establish that the Contractor could not reasonably and in good faith provide the required documents, certificates, or proofs of compliance at a time contemporaneous with completion and with the Project being ready for use by the University to the degree contemplated and required by the Contract. In such instances where a Certificate of Completion is issued, the Contractor shall expeditiously provide the exempted document, certificate, or proofs of compliance. Final payment will not be made, however, until all such documents, certificates, and proofs of compliance have been satisfactorily executed and delivered to the Architect/Engineer.

The Certificate of Completion is issued establishing Completion as of the date of the notice or re-notice from the Contractor. If the University concurs in the

Certificate of Completion, the Contractor will be notified of Acceptance and the date thereof.

After Acceptance, the Contractor is relieved of the duty of maintaining and protecting the Work as a whole. In addition, the Contractor is relieved of its responsibility for damage to the Work, which may occur after Acceptance. However, nothing herein shall be construed to limit the provisions of other specification sections under this Contract.

4.27. Certificates of Compliance

Materials, systems, components, elements of the Work or assemblies, as specified, will be accepted on the basis of Certificates of Compliance stating that such materials, systems, components, elements of the Work or assemblies fully comply with the requirements of the Contract. The Architect/Engineer must approve the form of Certificates of Compliance.

If materials, systems, components, elements of the Work or assemblies are found not to be in conformance with the Contract requirements, materials, systems, components, elements of the Work or assemblies will be rejected whether in place or not. The Contractor shall require the manufacturer or supplier to furnish four (4) copies of Certificate of Compliance with materials, components, and manufactured items that are acceptable by certification. One copy shall be furnished to the Architect/Engineer, one copy shall be furnished to the University, and the Contractor shall retain one copy.

Certificates of Compliance are to contain the following information:

1. Project to which the material is consigned.
2. Name of the Contractor to which the material is supplied.
3. Kind of material, system, component, element of the Work, assembly and/or product supplied.
4. Quantity represented by the Certificate.
5. Means of identifying the consignment, such as label marking, seal, number, etc.
6. Date and method of shipment.
7. Statement that the material, assembly, product, system, system component, has been tested and found in conformity with the pertinent Contract requirements stated in the Certificate.
8. Signature of a person having legal authority to bind the supplier.
9. Signature attested to by a notary public or other properly authorized person.

Payments will not be made for materials, systems, components, and

elements of the Work, assemblies or products specified to be accepted on the basis of Certificates of Compliance until the University and the Architect/Engineer has received the required Certificate of Compliance.

4.28. Warranty against Defective Work

In addition to any other rights or remedies the University may have against the Contractor, its officers, employees, agents, Subcontractors, fabricators, and suppliers under other provisions of the Contract Documents or as are otherwise allowed in law or equity, the following rights, remedies, and obligations are imposed by this Subsection:

1. All Subcontractors', manufacturers', and suppliers' warranties, express or implied, respecting any Work or materials shall, at the direction of either the University or the Architect/Engineer, be enforced by the Contractor for the benefit of the University. The Contractor shall obtain any warranties that Subcontractors, manufacturers, fabricators, and suppliers would give in normal commercial practice. The Contractor shall require any such warranty to be executed in writing to the University.
2. The Contractor warrants that Work performed conforms to the Contract requirements and is free of any defect of equipment, material or design furnished, or workmanship performed by the Contractor or any of its Subcontractors, fabricators, or suppliers at any tier. Such warranty shall continue for a period of one year following Acceptance, unless a longer warranty term is specified and required by other sections of the Contract Documents. 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 any damage to the University owned or controlled real or personal property, when that damage is the result of the Contractor's failure to conform to Contract requirements or any such defect of equipment, material, Workmanship, or design. The Contractor shall also restore any Work damaged in fulfilling the terms of this clause. The Contractor's warranty with respect to Work repaired or replaced hereunder shall run for one year from the date of such repair or replacement, or for a longer period of time in accordance with other specification sections in the Contract Documents.
3. The University or Architect/Engineer will notify the Contractor in writing of the discovery of any failure, defect, or damage. Should the Contractor fail to remedy any failure, defect, or damage described in the paragraph above, within three (3) business days after receipt of notice

thereof, the University will have the right to replace, repair, or otherwise remedy such failure, defect, or damage at the Contractor's expense.

4.29 Document Retention

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.

4.30 Performance of Contract Services

Contractor shall comply with the provisions of P.L. 2005, c. 92, which requires that all services under this Contract or any subcontract awarded thereto be performed within the United States of America.

4.31 Buy American

Pursuant to N.J.S.A. 52:32-1, if manufactured items or farm products will be provided under this Contract to be used in a public work, they shall be manufactured or produced in the United States and the Contractor shall be required to so certify.

4.32 Compliance

Contractor must comply with all local, State and federal laws, rules and regulations applicable to this Contract and to the goods delivered and/or services performed under this Contract.

ARTICLE 5 - CONTRACTOR FOR GENERAL CONSTRUCTION: SPECIAL RESPONSIBILITIES

5.1. Unique Role of Responsibility-Staffing

The Contractor has the responsibility for being the supervisor, manager, overseer, coordinator and expeditor of all the Subcontractors and of the total construction process and all of its parts, in accordance with the Contract Documents. The Contractor shall not claim any damages resulting from the University's exercise or failure to exercise its discretionary powers. In executing the duties assumed by these responsibilities the Contractor shall provide sufficient executive and supervisory staff in the field to accomplish efficient and expeditious handling of these matters. There shall be at least one (1) full-time Project Manager assigned by the Contractor, as well as the field staff referred to above; the Project Manager shall attend each Progress Meeting at the site. The Contractor includes in his Bid a sum sufficient to perform these responsibilities.

5.2. University's Reliance Upon Contractor for General Construction

5.2.1. The University relies upon the organization, management, skills, cooperation and efficiency of the Contractor to supervise, direct, control and manage the General Construction Work and the efforts of all Subcontractors, so as to deliver the completed Project in conformance with the Contract Documents and within the scheduled time.

5.2.2. The Contractor shall include in his bid an amount sufficient to cover his cost of furnishing necessary administrative and supervisory forces to coordinate his own Work and that of his Subcontractors. All of the Subcontractors shall be responsible to the Contractor for performance of their Contract Work and for meeting those dates within the final Project progress schedule as approved by all parties to the Contract. It must be clearly understood that the University will rely on the fact that the Contractor has included in his bid sufficient funds to perform this function.

5.3. Layout, Dimensional Control and Verification, Surveyor's Control Certification

5.3.1. The Contractor shall be responsible for locating and laying out the Building and all of its parts on the site, in strict accordance with the Drawings and Specifications, and shall accurately establish and maintain dimensional control. He shall employ and pay for the services of a competent and licensed New Jersey Engineer or Land Surveyor (who shall be approved by the University), to perform all layout Work, and to test the levels of excavations, footing base plates, columns, walls and floor and roof lines, and furnish to the

Architect/Engineer and University, as the Work progresses, certificates that each of such levels is as required by the Drawings and Specifications. The plumb lines of walls, etc., shall be tested and certified by the Surveyor as the Work progresses.

5.3.2. The engineer or surveyor, in his layout Work, both on the Site and within the Building, shall establish all points, lines, elevations, grades and bench marks for proper control and execution of the Work. He shall establish a single permanent Bench Mark as directed to which all three (3) coordinates of dimensional control shall be referred. He shall verify all University-furnished topographical and utility survey data and all points, lines, elevations, grades and bench marks. Should any discrepancies be found between information given on Drawings and the actual Site or field conditions, the Contractor shall notify the Architect/Engineer of such discrepancy, and shall not proceed with any Work affected until receipt of written instructions from the Architect/Engineer.

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

5.3.4. Project Sign: The Contractor shall erect and maintain one (1) sign at the Project Site, as shown on the Drawings and located as directed by the University. Paintings shall be done by a professional sign painter, with two (2) coats of exterior paint, colors, letter face and layout as shown. No other signs will be permitted at the Site. Upon completion of the Project, and when directed by the University, the Contractor shall remove the sign. Should there be a change in the listed officials, the Contractor shall make appropriate changes to the sign at his expense. The Contractor shall submit to the University a rendering of the project sign for approval by the University.

5.3.5. The Contractor, at his expense, shall provide and maintain necessary temporary dustproof partitions around areas of Work in any existing building or in new building areas as directed by the Architect/Engineer or the University.

5.3.6. Repair of cracks: The Contractor accepts sole responsibility for repair of uncontrolled dislodgement, cracking, de-lamination and peeling of finished surfaces such as concrete, precast concrete, cast and natural stone, unit masonry, millwork, plaster, glass and applied finishes such as paint, and special coatings

within the Contract scope and the limits of specified guarantee periods, regardless of the cause.

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

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

5.3.9. Contractor shall be responsible for complying with all applicable OSHA & New Jersey Uniform Construction Code requirements, including, but not limited to furnishing and paying for temporary fire protection; dumpster for trash, debris, etc; clean up, fall protection, traffic & pedestrian safety, training, pre-planning and trash chutes.

5.4. Weekly Construction Reports

5.4.1. Contractor will submit a ‘Weekly Construction Report’ to include digital dated progress photos, work logs and notes on all pertinent construction progress, construction issues, safety compliance and inspections by AHJ, etc.

5.4.2. Contractor will submit and keep current a ‘Two Week Lookahead Schedule’ indicating where work will take place, advance notices for service interruptions, etc. in addition to updating the overall progress schedule as required.

5.5. Guarantee

5.5.1. Neither the Final Certification of Payment, nor any provision in the Contract Documents, nor partial or entire occupancy of the premises by the University, shall constitute an acceptance of Work not done in accordance with the Contract Documents. Nor shall it relieve the Contractor of liability with respect to any expressed or implied warranties or responsibility for faulty materials or workmanship. The University will give notice of observed defects with reasonable promptness.

5.5.2. In addition to guarantees otherwise specified in other sections of the Specifications, the Contractor and each individual Subcontractor shall guarantee and warrant, in writing, the Work to be performed, and all materials to be

furnished under this Contract against the defects in materials of workmanship and to pay for the value of repair of any damage to other Work resulting therefrom for a period of one (1) year from date of Substantial Completion. All guarantees, bonds, etc., required by the Specifications shall be in writing in requisite legal form, and delivered to the University at the time of submission of requisition for final payment. All Subcontractor's guarantees, bonds, etc., shall be underwritten by the Contractor, who shall obtain and deliver same to the University before the Work shall be deemed finished and accepted.

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

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

5.6. Inspection of Roadway Sub-grades

5.6.1. The Contractor shall notify the Architect/Engineer and the University forty-eight (48) hours prior to anticipate completion of all roadway sub-grade work. The University will schedule an inspection by the 3rd Party Testing & Inspection agency to insure that the sub-grade meets the compaction standards. All sub-grades shall be proof rolled for such inspection. If compaction soils tests are required, these will be done by soils testing laboratories through the University, unless contrary provisions are made elsewhere in the Specifications. The Contractor shall not proceed with base course until the results of the compaction tests are determined and upgrade approved by the Architect/Engineer.

5.7. Watchman Services

5.7.1. The Contractor shall provide watchman services 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. The period of time and the hours of the day or night required for such services shall be established by the University in consultation with the Contractor, and must be sufficient to insure adequate protection as described herein. If the University determines that adequate protection is not being provided, the Contractor will be directed to increase the service, which shall be provided at no extra cost to the University.

5.7.2. It will be the Contractor's responsibility to maintain a safe and secure jobsite location which prevents unauthorized entry at all times. Watchmen Services may not be required if the Project area and job site in general can be properly and adequately secured at the end of each shift.

ARTICLE 6 - TEMPORARY FACILITIES AND SERVICES

6.1. Field Offices

6.1.1. The Contractor will provide, on-site, and maintain during the Project construction, a suitable weather-tight insulated Field Office for use by the Contractor and conveniently located for reception and continuous use and shall maintain therein a complete set of Contract Documents including Plans, Specifications, D.C.A. released drawings, change orders, logs and other details and correspondence. The Field Office shall contain approved and safe heating facilities and lighting, convenience outlets, telephone and data lines, fire extinguisher, minimum of two (2) operating windows of fifteen (15) s.f. each, outside door, handle, hasp and padlock. The Field Office shall be removed upon completion of the Project as directed by the University or Architect/Engineer.

6.1.2. The Contractor Field Office will include desk space for one (1) Owner's Rep. or A/E for his/her use during field visits. The Contractor Field Office will also include conference facilities, including furniture, to host project meetings for approximately 8 people.

6.1.3. The Contractor shall be responsible for the maintenance of offices and the Meeting Room including the cost of heating, electric current, janitor's services and other incidentals.

6.1.4. The Contractor shall make provisions for the furnishing and installation of his own telephones, computer and facsimile lines in the field offices.

6.2. Storage Sheds, Tool Sheds, Shops, Employees Sheds

6.2.1. The Contractor will provide and maintain, for his own use, and as deemed necessary, suitable and safe temporary storage, tool shops, and employee's sheds, for proper protection, storage Work and shelter, respectively; maintain properly, and remove, them at completion of Work. Locations shall be directed by the University. Rooms in the building may be used as shops and store rooms, with the approval of the University and the Architect/Engineer. The Contractor making use of these areas shall be responsible for correcting defects and damage caused by such used and for keeping, these areas clear and clean.

6.3. Storage Areas, Employees Vehicular Parking, Equipment Marshaling Areas, Excavation Borrow/Spoils Designated Areas, etc.

The Contractor shall be responsible for providing for his own requirements for these areas. Contractor shall locate these areas, to suit Project requirements, with

the University's concurrence. Parking shall be designated by the University; no employee parking shall be allowed on green areas of the campus, or, on undesignated parking areas.

6.4. Temporary Toilet Facilities

6.4.1. The Contractor shall provide and pay for suitable temporary toilets, at a location approved by the University, on the site, prior to the start of any field Work. Temporary toilet facilities shall comply with State and Local laws. The Contractor will be responsible for maintenance, removal and relocation as described hereinafter.

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

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

6.4.4. One (1) unit shall be provided for each twenty (20) employees. In addition, one (1) unit together with a Lavatory shall be provided in the Architect/Engineer's office. Lavatory and toilet will be so arranged as to accommodate the Meeting Room and the Architect/Engineer's office. The Contractor will be responsible for maintenance and daily cleaning.

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

6.4.6. Toilet facilities in a multiple-story building shall be located on no less than every other floor, unless otherwise directed.

6.4.7. Relocate facilities inside building and connect to water and sewer as soon as Work will allow.

6.4.8. When toilets are connected to water and sewer lines, take precautions to prevent freezing.

6.4.9. Remove units from site at completion of Work, when so directed.

6.4.10. Workers are not to use the finished bathroom and toilet facilities in the Project buildings (reasonable steps must be taken by the Contractor to enforce this rule). Any costs incurred by the University for cleaning, or repairing

toilet rooms and fixtures as a result of worker usage will be charged to the Contractor.

6.5. Temporary Drives and Walks

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

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

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

6.6. Temporary Water

6.6.1. The Contractor, shall provide, protect and maintain an adequate valve water supply in a convenient location for the use of all Subcontractors 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. All costs in providing water other than the cost of the water itself will be borne by the Contractor. Electrical service and hookups will be provided by the Contractor and all costs for this electrical Work will be borne by him. Should pumps be installed in connection with this water supply, electrical connections will be provided and paid for by the Contractor.

6.6.2 Temporary water will not be provided by the University.

6.6.3. The Contractor shall install his temporary and/or permanent water lines to the boiler room and heating equipment in sufficient time to make available for supplying water for testing and operation of the heating system when needed to supply heat on the Project.

6.6.4. The Contractor is responsible to protect all water lines from damage or freezing, be they permanent or temporary. Should water connections be made to an existing line, the Contractor shall provide a positive shut-off valve at his cost and expense.

6.6.5. If the Contractor fails to carry out his responsibility in supplying the water, as set forth herein, he shall be held responsible for such failure, and the University shall have the right to take such action as he deems proper for the protection and conduct of the Work and may deduct the cost involved in so doing from any sums due the Contractor.

6.7. Temporary Light and Power

6.7.1. 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 (3) phase unless single phase is deemed sufficient by the A/E. Temporary light and power installation, wiring, and miscellaneous electrical hardware must meet the National Electric Code (NEC). All electrical work shall be performed by a licensed electrician in the State of New Jersey. When the Contract calls for three-phase permanent service, the Contractor shall install same within a reasonable time. Electrical characteristics shall be provided to meet all temporary light and power reasonably required as herein and hereinafter specified or as included under Supplementary General Conditions. The Contractor shall provide the necessary distributing facilities and meter, and shall pay the cost of running temporary services from the nearest utility company power pole or an alternative on campus power source. All costs for temporary light and power shall be included in the Contractor's bid.

6.7.2. The Contractor shall extend the service into the building and shall provide receptacles and lighting as described hereinafter, and one (1) 5 H.P. 208 V, or 220 or 230 volts power outlet for each building and separate power outlets as required for the proper conduct of this Work. Power outlets shall be fed independently of the temporary lighting system. Where service of a type other than herein mentioned is required, the Contractor requiring same shall install and pay all costs of such special services. The size and incoming service and main

distribution switch and panel shall be sized as any service by NEC requirements.

6.7.3. The Contractor shall provide double sockets at a maximum of thirty (30) feet on centers in large areas. One socket shall contain a 150 Watt lamp, and the other socket shall be a grounding type to accept a receptacle plug for small single phase loads to be used for short periods of time. The Contractor shall provide double sockets of the type described above in all individual rooms, one (1) double socket for each 500 square feet or fraction thereof of room area (for example: a room 30' by 30' is equal to 900 square feet and would require two (2) double sockets).

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

6.7.5. The Contractor shall pay for the cost service for operation of elevator equipment during construction as well for permanent installation.

6.7.6. The Contractor shall provide and pay for all maintenance, servicing, operating and supervision of the service and distribution facilities. He shall also connect, maintain and service any electrical equipment installed by the Heating Subcontractor or which may be necessary for maintaining heat whenever heat is required in the building whether from the temporary or permanent system.

6.7.7. If the Contractor fails to carry out his responsibility in the supplying of uninterrupted light and power or other utility as set forth herein, he shall be held responsible for such failure, and the University shall have the right to take such action as it deems proper for the protection and conduct of the Work and shall deduct the costs involved from the amount due the Contractor at fault.

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

6.7.9. The Contractor shall observe the requirements of the Federal Occupational Safety and Health Act of 1970 with regard to temporary light and power, and all other aspects of the work.

6.8. Electric Welding Equipment, Terrazzo Grinders, Pipe Threading Equipment, Floor Sanders

The Contractor shall provide at all required locations two (2) outlets - 208, 220, 230

volts 60 cycle-Three-Phase (single phase if three-phase is not available) 7 1/2 H.P. maximum capacity for using the referenced equipment. Should any Subcontractor desire additional outlets or services of a greater capacity or of different characteristics or for any other power equipment, the Contractor shall install said outlets and wiring and pay for all costs involved.

6.9. Temporary Heat

6.9.1. Prior to the building being enclosed by walls and roof, if the outside temperatures shall fall below 40 degrees F at any time during the day or night, and heat is required for work in progress or for its protection, the Contractor shall furnish, at his own expense, acceptable means to provide sufficient temporary heat to maintain a temperature of not less than 45 degrees F.

6.9.2. Heating of field office, storage spaces, concrete and masonry materials and working area heating, as required, shall be provided by the Contractor at his expense. Field offices shall be heated to a minimum 68 degrees F and shall be air conditioned in the summer.

6.9.3. As soon as the University determines that the building, or a major unit thereof, is "Generally Enclosed" by walls and roof, the responsibility for supplying working area heat shall rest with the Contractor. 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 acceptable means to maintain a temperature of not less than 45 degrees F within the enclosed area of the building at all times, and shall remove when no longer required. Contractor will be held responsible for providing temporary heat and for damages, as a result of freeze-ups, for a period which shall extend sixty (60) days beyond the date on which the University determines that the building is temporarily enclosed (without the use of temporary enclosures or Materials except in circumstances having the prior written approval of the University). Contractor shall remove soot, smudges, and other deposits from walls, ceilings, and all 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. He shall not do any finish Work, until the areas are properly cleaned. The Contractor shall provide, and make arrangements, at his expense, for the supervision of the heating equipment at all times using the permanent heating system, which obligation shall start sixty (60) days after the acknowledged permanent enclosure of the building, or buildings, as confirmed by the University. The Contractor's base bid price shall therefore include the cost of all equipment necessary for providing temporary heat as required under these Specifications. The Contractor shall furnish and pay for all fuel for heat required during the entire construction period.

6.9.4. The Contractor shall not assume that the permanent building heating system, or any part thereof will be available for furnishing temporary heat during the period for which temporary heat is the responsibility of the Contractor. The Contractor's base bid price shall therefore include the cost of all equipment necessary for providing temporary heat as required under these specifications.

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

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

6.9.7. The Contractor shall train at least two (2) dependable persons to oversee temporary heat operations.

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

6.9.9. On the sixtieth (60th) calendar day after the building, buildings or major unit thereof, is (are) permanently enclosed and the University has determined that heat is required for the proper execution of the construction Work; the Contractor shall provide the heat. A building, or major unit thereof, shall be considered "permanently enclosed" when (a) the exterior and enclosure Work including walls, windows, glazing, louvers, and doors have been permanently installed; (b) a permanent building roof has been completed and satisfactorily tested; (c) the permanent building roof drain system has been completed and made operational; (d) all building openings have been closed such that the

building is weather tight. Regardless of whether the boiler room is within the confines of the major unit or not, it must be enclosed and floor Contractor becomes responsible to supply heat.

6.9.10. When the building or major unit, including the boiler room area, is generally enclosed as herein defined and appropriate notice has been given, it shall be the obligation of the University to so acknowledge at a job conference, at the site. The minutes of the meeting shall contain acknowledgement. If the University's representative at the site and the Architect/Engineer concur that the building or major unit is properly generally enclosed, then as of the date of job conference at which notice was given, the supply of heat (including cost of fuel) and the payment of cost of repair of damage created by freeze ups shall become the responsibility and obligation of the Contractor. Confirmation of the time that such responsibility and obligation becomes effective shall be incorporated in the minutes of the job progress meetings, as prepared by the Architect/Engineer.

6.9.11. When the building or a major unit, including the boiler room area, is permanently enclosed as herein defined and appropriate notice has been given, it shall be the obligation of the University to so acknowledge at a job conference at the site. The minutes of the meeting shall contain such acknowledgement. If the University's representative at the site and the Architect/Engineer concur that the building or major unit is properly permanently enclosed, then on the sixtieth (60th) day from the date of job conference at which notice was given, the supply of heat (including cost of fuel) and the payment of cost of repair of damage created by freeze-ups shall become the responsibility and obligation of the Contractor. Confirmation of the time that such responsibility becomes effective shall be incorporated in the minutes of the job progress meetings, as prepared by the Architect/Engineer.

6.9.12. In case that permanent, heating system is not acceptable to the University or the Architect/Engineer, and therefore may not be used for providing temporary heat; the Contractor shall continue to provide temporary heat as may be ordered by the University.

6.9.13. The University reserves the right to permit the substitution of limited temporary enclosures in lieu of permanent construction for the attainment of a permanently tight building if such action is deemed by the Architect/Engineer to be in the best interest of the Project. This action will not be such as to create a future jeopardy to the environmental integrity of the building as construction proceeds.

6.9.14. On the sixtieth (60th) day after notice has been given and confirmed by the job progress meeting and minutes that the building or a major unit is

permanently enclosed, the Contractor shall operate the permanent heating system, if the system has been completed to the extent necessary to allow such use. The Contractor shall provide such heat to a minimum temperature of 45 degrees F, or such higher temperature, not to exceed 75 degrees F, as may be directed by the University for the proper conduct and protection of the Work. He shall do so until such time as his Work is completed and accepted, and he is relieved of this requirement by the University, in writing. Should the Contractor fail to meet his obligation, the University, at its discretion, will take any action it deems necessary to have the heating system operated. The Contractor shall, pay for and be responsible for the maintenance, operation and supervision of the permanent heating system, including cost of fuel, throughout the period that the heat is needed and until the University's final acceptance of the Work required by his Contract, regardless of Contract Completion Date.

6.9.15. When the permanent heating system provided by the Contractor is the source of the heat, the Contractor shall be responsible for paying for all water, electricity and fuel required for the operation of the permanent heating system until Beneficial Occupancy Acceptance of the Project by the University except for the cost of fuel during the test period, as previously provided. The Contractor shall install adequate controls and shall arrange, at his own cost, for making such temporary plumbing and electrical connections as required for the operation of the heating system. Should the heating system provided by the Contractor be designed for the tie-in to existing steam lines for source of heat, the University will provide steam for temporary heat through the Project permanent heating system after tie-in is completed.

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

6.9.17. Valves, traps and other parts of the heating system (except air filters), which are permanently installed by the Contractor and used for supplying heat during the construction period, need not be replaced, provided that the system was in acceptable condition prior to its use and was properly maintained. The system including ducts shall be properly cleaned and adjusted to operate after the

permanent system is in use. Seven (7) calendar days prior to acceptance by the University of the heating system as substantially complete, the Contractor shall replace disposable filters with clean filters of the type specified and turn over spare sets of filters with clean filters of the type specified to the University and as directed by the University.

6.9.18. If plastering or parging or finishing of any surface is necessary to enable the Contractor to install the heating system in a manner to permit its use for supplying heat during the construction period, the finishing, plastering and parging of such surfaces shall be done sufficiently in advance so as not to delay the installation of the permanent system.

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

6.10. Temporary Enclosures

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

6.11. Temporary Construction Fence & Signage

The Contractor shall be responsible for installing and maintaining a six (6) foot high temporary chain link fence with mesh screening for privacy, posts spaced at six (6) feet (maximum), and top rail to enclose the area around the job site. The Contractor shall be responsible for posting appropriate signage restricting access into the job site. Contractor shall provide gates at location where required for access to the enclosed area. Gates shall be of chain link construction, cross-braced, hung on heavy strap hinges, and shall be furnished with suitable hasps and padlocks. Contractor shall remove fence upon completion of the Work, or at such time before final completion as directed by University.

ARTICLE 7 - SUBCONTRACTORS

7.1. Definition

Subcontractor means the person or persons, partnership, corporation or other entity that enters into a Contract with the Contractor for the performance of Work under this Contract, or the Subcontractors of any tier of such individuals or corporations.

7.2. Contractor-Subcontractor Relationship

7.2.1. The Contractor shall, within thirty (30) days after award of the Contract, notify the University through the Architect/Engineer, in writing, of the names of Subcontractors, other than those required to be listed in the Bid, proposed to perform the principal parts of the Work and of such others as the University may direct, and shall not employ any Subcontractor without prior written approval of the University, or any that the University may, within reasonable time, reject. Failure of the University to reply within fifteen (15) days of receipt of such names shall constitute notice of approval.

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

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

7.2.4. The Contractor acknowledges his full responsibility to the University for the acts and omissions of his Subcontractors, and of persons and firms directly or indirectly employed by them, equally to the extent that he is responsible for the acts and omissions of persons and firms directly or indirectly employed by him. The Contractor further acknowledges that he remains fully responsible for the proper performance of his Contract irrespective of whether Work is performed by his own forces or any Subcontractor engaged by him.

7.2.5. Nothing contained in the Contract Documents shall create any Contractual relationship between any Subcontractor and the University.

7.2.6. By an appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations

and responsibilities which the Contractor, by these Contract Documents, assumes toward the University.

Where appropriate, the Contractor shall require each Subcontractor to enter into a similar agreement with his Subcontractors.

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

7.3 New Jersey Business Registration Certificate

Prior to the award of the Contract, all named Subcontractors of the Contractor must provide the Contractor with a copy of a current and valid Business Registration Certificate. Prior to commencement of Work on the Project, all other Subcontractors of the Contractor must provide the Contractor with a copy of a current and valid Business Registration Certificate. The Contractor must forward the Business Registration Certificates of all Subcontractors to the University's Purchasing Department prior to any Subcontractor starting Work under the Contract.

7.4 Public Works Contractor Registration Act

Contractor must provide to the University's Purchasing Department a copy of a current and valid Public Works Registration Certificate for Contractor and any named Subcontractors of the Contractor prior to award of the Contract. After the award of the Contract, all other Subcontractors of the Contractor must provide the Contractor with a copy of a current and valid Public Works Registration Certificate prior to the commencement of Work on the Project. The Contractor must forward the Public Works Registration Certificates of all Subcontractors to the University's Purchasing Department prior to any Subcontractor starting Work under the Contract.

ARTICLE 8 - RELATIONSHIP BETWEEN UNIVERSITY AND THE CONTRACTOR

8.1. University's Right to Perform Work

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

8.1.2. The Contractor shall examine all Work or materials installed by all Subcontractors, the installation of which shall be the full responsibility of the Contractor, and should the same be imperfect, incorrect or insecure, the Contractor shall immediately make provisions to rectify same at his own expense.

8.2. Mutual Responsibility

8.2.1. The Contractor shall afford the University and, if hired by the University, other separate contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work. Each contractor shall coordinate his work with adjacent work and with other trades, so that no portion of the Work is delayed or not properly undertaken due to such lack of coordination.

8.2.2. The Contractor shall layout and install his Work at such time or times and in such manner as to facilitate the general progress of the Project.

8.2.3. If, based on a written report by the contractor regarding another contractor or a written report of a contractor regarding the contractor or upon notification from the Architect/Engineer, the University is of the opinion that a contractor on this Project is failing to coordinate his Work with the Work of such Contractor or others or is delaying the Project, he may issue such directions to the delinquent Contractor(s) as the situation may require including an order to accelerate as provided in Section 8.5 herein. The University, however, shall not be liable for any damages suffered by any contractor by reason of another contractor's default, delinquency or timing of performance; it being understood that the University does not assume responsibility for the acts or omission of any contractor.

8.2.4 Before completion of the Work contemplated herein, should it be deemed necessary by the University to do any Work whatsoever, in or about the building or structure, other than as provided for in the Contract Documents, the Contractor shall fully cooperate with such other individual or firm as the

University may employ to do such Work, so that such additional Work may be performed without unreasonable interference. The Contractor shall afford said other individual or firm all reasonable facilities for doing such Work. Other than an Extension of Time, the Contractor shall make no claim to the University, as a result of such Work as is contemplated herein.

8.2.5. The University, or the Architect/Engineer, shall at all times have access to the Work whether it is in preparation or in progress, and the Contractor shall provide proper facilities for such access and for inspection. The University reserves the right, at its option, to employ the services of a professional consultant to evaluate any phase of the Work it may deem to be in the best interest of the University but no evaluation performed shall in any way relieve the Contractor of his responsibilities under the Contract. The Contractor shall cooperate with the consultants and provide access to the Work and facilities for inspection. Should any portion of the Work or material be found deficient or defective, the Contractor will pay the applicable fee of such consultant and be responsible for replacing the deficient or defective Work as required by the provisions stated elsewhere herein.

8.2.6. Any costs caused by defective or ill-timed Work shall be borne by the party responsible therefore.

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

8.2.8. Should the Contractor sustain any damage through any act or omission of any other contractor having a contract with the University, or through any act or omission of a subcontractor of any such contractor, or through any act or omission of the Architect/Engineer, the Contractor shall have no claims against the University for such damage, but shall have a right of action to recover such damages from the causing party or parties, in accordance with Subsection 8.4.2, which is included in the Contract with all other such contractors and the Architect/Engineer.

8.3. Substantial Completion

8.3.1. At the request of the University or the Architect/Engineer, Contractor and the University representative shall make a joint inspection of the Work, and if all parties determine that the Work is substantially completed, the University shall

give Notice of Substantial Completion for Beneficial Use. Such notice shall also establish a reasonable time within which the Contractor shall complete site restoration, landscaping Work, final cleanup, replace and correct unacceptable Work. Further, such certification shall in no way relieve the Contractor of any contractual obligation or in any way relieve the Contractor from responsibility to promptly complete punch list Work. If, however, the joint inspection discloses that the Work is not substantially completed to the Architect/Engineers and University's satisfaction, the Architect/Engineer will give the Contractor the necessary instructions for completion of the Work and correction of same, and the Contractor shall immediately comply with, and execute such instructions. Upon completion and correction of the Work, the Contractor shall notify the Architect/Engineer and the University, and another inspection will be made.

8.3.2. Standard Guarantee period for equipment, workmanship and materials shall commence on the date of acknowledgement of Notice of Substantial Completion for Beneficial Use of the Project or portions thereof so certified or from the time of completion and acceptance of equipment, Work or materials in question, whichever is later, unless specified to the contrary as a condition of partial acceptance.

8.3.3 Use and possession prior to completion: The University shall have the right to take possession of or use any completed or partially completed part of the Work. Prior to such possession or use, the University shall furnish the Contractor an itemized list of Work remaining to be performed or corrected on such portion of the Project as are to be possessed or used by the University, provided that failure to list any item of Work shall not be deemed an acceptance of any Work under the Contract. While the University has such possession or use, the Contractor, notwithstanding any provision to the contrary in the Contract, shall be relieved of the responsibility for the loss or damage to the Work resulting from University possession or use. If such prior possession or use by the University delays the progress of the Work or causes additional expense to the Contractor, an equitable adjustment in the Contract time of completion shall be the sole relief available to the Contractor.

8.4. Contractor's Claims for Damages

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

8.4.2. Should the Contractor or Architect/Engineer having, or who shall hereafter have, a Contract with the University, by his own acts, errors or

omissions, damage or unnecessarily delay the Work of the Owner, Architect/Engineer or other contractors by not properly cooperating with them or by not affording them reasonable and sufficient opportunity or facility to perform Work as may be specified, by reason of which act, error or omission of the said Contractor, the Architect/Engineer or any other contractor shall sustain damages, including delay, during the progress of the Work hereunder, then and in that event, the culpable party agrees to pay all costs and expenses incurred by the Contractor(s) or Architect/Engineer due to any such delays and/or damages whether by settlement, compromise or arbitration and the injured Contractor(s) or Architect/Engineer shall have a right of redress enforcement in court directly against the culpable party. In addition, the culpable party further agrees to defend, indemnify and save harmless the University from all such claims and damages. Nothing contained in this paragraph shall be construed to relieve the culpable Contractor or Architect/Engineer from any liability or damage sustained on account of such acts, errors or omissions.

8.4.3. The University shall not be liable to any contractor for any damages or extra costs caused by any acts or omissions as specified in this paragraph and the Contractor's exclusive remedy shall be against the culpable party.

8.5. University's Right to Accelerate

The University may order and direct the Contractor responsible for delay to accelerate that Contractor's Work at any particular place or places by increasing his forces, working overtime and/or on Saturdays, Sundays and holidays as may be required to either enable others to carry on with their Work, or meet Project milestones and Work Complete on Dates in accordance with the Project Progress Schedule. The Cost of such acceleration efforts shall be borne entirely by the responsible Contractor and shall not be billed to the University.

8.6. Time of Completion-Delay-Liquidated Damages

8.6.1. In the event of the failure of the Contractor to complete the said Work within the time(s) required in the Contract Documents, the Contractor shall be liable to the University in the sum of two thousand dollars (\$2,000.00) per day, for each and every calendar day that the said Work shall be and remains uncompleted, which said sum shall be treated as liquidated damages and not a penalty, for the loss to the University of the use of premises in a completed state of construction, alteration or repair, as the case may be; and for added administrative and inspection costs to the University on account of the delay; provided, however, that the liquidated damages provided for herein shall be in addition to other consequential losses or damages that the University may incur by reason of such delay, such as, but not limited to, added costs of the Project

and the costs of furnishing temporary services, if any. Any such items for which the Contractor is liable may be deducted by the University from any monies due or to become due to the Contractor.

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

8.6.3. The Contractor agrees that said Work shall be prosecuted regularly, diligently, and uninterruptedly at such rate of progress as will insure full completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and the University that the time for the completion of the Work herein is a reasonable time for the completion of the same, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality. If the Contractor shall neglect, fail or refuse to complete the Work within the time herein specified, or any proper extension thereof granted by the University, then the Contractor does hereby agree, as a part consideration for the awarding of this Contract, to pay the University the amount specified in Subsection 8.6.1 above, not as a penalty but as liquidated damages for such breach of Contract as hereinafter set forth, for each and every calendar day that the Contractor may be held in default after the stipulated date in the Contract for completing the Work.

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

8.6.5. Time is of the essence as to all time frames stated in the Contract Documents; therefore, all time frames shall be strictly enforced; and where under the Contract additional time is allowed for completion of any Work the new time limit fixed by such extension is likewise of the essence.

8.6.6. The Contractor shall not be charged with liquidated damages, or any excess cost when the University determines that the Contractor is without fault and the Contractor's reasons for the time extension are acceptable to the University; provided further, that the Contractor shall not be charged with liquidated damages or any excess cost when the delay in the completion of the Work is due:

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

8.6.7. The Contractor shall, within five (5) days from the beginning of such delay, unless the University shall grant a further period of time prior to the date of final settlement of the Contract, notify the University in writing, of the causes of the delay. The University shall first ascertain the facts and the extent of the delay and shall notify the Contractor within a reasonable time whether good cause has been shown to warrant the granting of such extension.

8.7. No Damages for Delay

8.7.1. The University shall have the right to defer the beginning or to suspend the whole or any part of the Work herein contracted to be done whenever deemed necessary or expedient by the University to do so. If the Contractor be delayed in the completion of the Work by act, neglect or default of the University, or the Architect/Engineer, or of any other contractor employed by the University upon the Work, or by change order in the Work, or by strikes, lockouts, fire, unusual delay by common carriers, unavoidable casualties, or any case beyond the Contractor's control, or by any cause which the University shall decide to justify the delay, then for all such delays and suspensions the Contractor shall be allowed one day in addition to the time herein stated for each and every day of such delay so caused in the completion of the Work as specified in Section 8.6, the same to be determined by the University, and a similar allowance of extra time will be made for such other delays as the University may find to have been caused by the University. No such extension shall be made for anyone or more of such delays unless within five (5) days after the beginning of such delay a written request for additional time shall be filed with the University. Apart from extension of time, no payment or allowance of any kind shall be made to the Contractor as compensation for damages on account of hindrance or delay from any cause in the progress of the Work, whether such delay is avoidable or unavoidable.

8.7.2. The Contractor shall not be entitled to any damages or extra compensation from the University on account of any Work performed by the University or any other contractor or the Architect/Engineer or any other party, or by reasons of any delays whatsoever, whether caused by the University or any other party, including but not limited to the delays mentioned in this Contract.

8.8. Defense and Indemnification

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

8.8.2. In any and all claims against the University, or the Architect/Engineer or any of their agents or employees by any employees of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Section 8.8 shall not be limited in any way as to the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under Worker's or Workman's Compensation Acts, Disability Benefit Acts, or other Employee Benefit Acts.

8.9. Contract Time - Notice to Proceed

8.9.1. Contract time shall commence on the date of receipt, by the Contractor of a written Notice to Proceed, issued by the University. Notice to proceed shall be promptly issued by the University after receipt and acceptance, by the Contracting Officer/Director, of properly executed Contract Documents including performance and payment bonds. The Contractor agrees that Contract site Work shall commence no later than five (5) business days after receipt of the notice to proceed unless otherwise noted in the Supplemental Conditions.

Provided the Contract is not terminated due to the Contractor's delay in providing the necessary performance or payment bonds to the University, the Contracting Officer may reduce the time to complete the Work as specified in

the Contract to reflect such delay.

8.9.3. The Contractor shall perform no Work under this Contract until the required evidence of financial responsibility and bonds have been furnished. Thereafter, work at other than the Contract site may be undertaken at the Contractor's risk. The Contractor shall perform no Work at the Contract site except pursuant to a Notice to Proceed given by the University.

8.9.4. Notice to Proceed may be issued by the University at its convenience. Any right of the Contractor to an adjustment because of a delay in issuing a Notice to Proceed shall be determined in accordance with Section 17.1 entitled "University's Right to Stop Work."

ARTICLE 9 - CONSTRUCTION PROGRESS

9.1. Construction Progress Schedule (CPM) by Contractor

9.1.1 Critical Path Method:

a. The Project shall be monitored by a detailed, cost loaded Critical Path Method scheduling system. This system shall be the basis for the evaluation of the Contractor's performance and for progress payments to the Contractor.

b. The Contractor shall provide all scheduling services as detailed in these General Conditions and Specifications Section 01311.

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

9.1.2 Contractors Scheduling Responsibility

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

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

9.1.2.3 Seasonal weather conditions shall be considered in the planning and scheduling of work which is influenced by high or low ambient temperatures, so that contract work is completed within the allotted contract time. In addition, appropriate allowances shall be made for anticipated time losses due to normal rain and snow conditions by

statistically expanding the estimated time duration for weather sensitive activities.

9.1.3 Contractor's Adherence to Schedule

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

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

9.1.4 Monthly Schedule/Coordination Meetings:

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

9.1.4.2 The Contractor shall bring updated CPM schedule

information for discussion at the schedule/coordination meeting. This information shall include:

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

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

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

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

9.1.5 Responsibility for Completion

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

- a. Increase construction manpower in such trades and numbers as

will substantially eliminate, in the judgment of the University, the backlog of work;

b. Increase the number of working hours per shift, shifts per working days, working days per week, or the amount of construction equipment, or any combination of the foregoing sufficient to substantially eliminate, in the judgment of the University, the backlog of work; and/or

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

9.1.6 Adjustment of Contract Completion Time

9.1.6.1 The contract completion time or times will be adjusted only for causes specified in this Contract. In the event the Contractor requests an extension of the Contract Completion Date, he shall furnish such justification and supporting evidence as the University requires to evaluate the Contractor's request. The University shall then make his finding of fact and advise the Contractor in writing thereof. If the Contracting Officer finds that the Contractor is entitled to any extension of the contract completion date under the provisions of this Contract, the determination as to the total number of days extended shall be based upon the currently approved calendar-dated project schedule and on all data relevant to the extension. Such data will be included in the next updating of the schedule.

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

(1) A total project time extension if delays which are determined to be beyond the control of the Contractor affect the main project critical path shown on the project CPM schedule thereby directly extending the final project completion date.

(2) A concurrent project time extension in those instances where it is found that specific delays beyond the control of the Contractor would have affected the final project completion date were it not for overriding delays due to other causes. If a concurrent project time extension is approved, it will be for additional time beyond that which, according to the University's analysis, would be attributable to the Contractor. A concurrent project time extension will also excuse the Contractor from responsibility for any penalty for the period of time extension.

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

- (1) Float time shown on the project CPM schedule is not for the exclusive use of either the Contractor or the University. It is agreed that float time is available for use by all parties to facilitate the effective use of available resources and to minimize the impact of problems or Change Orders which may arise during construction. The Contractor specifically agrees that float time may be used by the University or its Representatives or Consultants in conjunction with their review of activities or to resolve project problems. The Contractor agrees that there will be no basis for a project time extension as a result of any project problem, Change Order or delay which only results in the loss of available positive float time on the project CPM schedule. The Contractor further agrees that there will be no basis for a claim for cost escalation for any activity which is completed on or before its initially required late end date as shown on the initially approved project CPM schedule, regardless of the justifiability of any delaying factors which might have resulted in elimination of float time which was originally available for the activity. Float time shown on the project CPM schedule shall not be used arbitrarily by the Contractor in a manner which, in the opinion of the University, unnecessarily delays any activity from proceeding in a way which is detrimental to the interests of the University. If the Contractor refuses to perform work which is available to him, the Contracting Officer may, regardless of the float time shown to be available for the work, consider the Contractor to be in violation of the Contract requirements. In such instances, the University may, without prejudice to any right or remedy, and after giving the Contractor and his surety three (3) working days written notice to forthwith commence and continue with the work with diligence and promptness, terminate the employment of the Contractor by the issuance of a written notice to that effect to the Contractor and his surety at any time subsequent to three (3) working days thereafter, should they, or either of them, fail to comply with the directive of the original three (3) day notice mentioned above.
- (2) The Contractor agrees that no time extension will be granted for time lost due to normal seasonal weather conditions. In order to qualify for consideration for a time extension due to adverse weather conditions, it must be shown that the weather conditions during a

given quarterly period (summer, fall, winter, spring) were more severe than the previous five year average for the project geographical area and, in addition, that these weather conditions critically impacted the final project completion date by delaying the performance of work on the main project critical path. If abnormal weather losses can be shown to have affected the project critical path, a non-compensable time extension will be considered for that portion of the proven weather related delays which exceeded the normal weather losses which should have been anticipated for the quarterly period in question.

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

- (3) In order for a given issue (i.e., delay, change order, etc.) to be considered as a basis for a total project time extension, it must meet both of the following criteria:
 - (a) It must be totally beyond the control of the Contractor and due to no direct or indirect fault of the Contractor; and
 - (b) It must result in a direct delay to work on the main project critical path.
- (4) The Contractor acknowledges and agrees that actual delays to activities which, according to project CPM schedule, do not directly affect the main project critical path do not have any effect on the contract completion date or dates and will not be the basis for a change thereto.
- (5) Concurrent delays are defined as two (2) or more delays or areas of work slippage which are totally independent of one another and which, if considered individually, would each affect the final project completion date according to the project CPM schedule. Where the University determines that concurrent delays exist the Contractor acknowledges and agrees that the following criteria will be used to evaluate time extension:
 - (a) If the current project CPM schedule shows two (2) or more concurrent delays, with one (1) analyzed to be the responsibility of the University and the other analyzed to be the responsibility of the

Contractor, a non-compensable time extension will only be considered if the excusable delay affects the main project critical path and if this delay is shown by a greater amount than the other concurrent delays when their impacts are independently considered. In this event, a compensable time extension will only be considered for that portion of time by which the excusable delay exceeds all concurrent non University-caused delays. For example, if an excusable impact delays the project by 100 days and concurrent contract caused slippage independently delays the final completion date by 90 days, a time extension will only be considered for a maximum of ten (10) days, provided the excusable delay is on the project critical path.

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

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

ARTICLE 10 - PAYMENTS

10.1. Payment to Contractor

The University shall pay the Contractor the Contract Price as hereinafter provided, as such price may be adjusted from time to time to account for change orders. All payments made under this Contract shall be in accordance with the Prompt Payment Act, N.J.S.A. 2A:30A-1 et seq., including without limitation the alternative dispute resolution requirements for claim disputes and the thirty (30) day payment terms.

10.1.1. The University will make progress payments monthly as the Work proceeds, or at more frequent intervals as determined by the University, on estimates approved by the University. Unless otherwise directed, the Contractor shall furnish a Schedule of Amounts for Contract Payments (Unit Schedule breakdown) of the total Contract price showing the amount included therein for each principal category of the Work, in such detail as requested, to provide a basis for determining progress payments. The schedule, as approved, shall be used only as a basis for the Contractor's estimates for progress payments and approval by the University does not constitute acceptance of the allocability and allowability of costs to a specific element of Work. The Contractor is cautioned that no payment request shall be approved until the Unit Schedule breakdown has been approved in writing, by the Director or his authorized representative.

10.1.2. In the preparation of estimates, the Director, at his discretion, may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations other than the site may also be taken into consideration if (1) such consideration is specifically authorized by the Contract and (2) the Contractor furnishes a Form entitled Prime Contractors Summary of Stored Materials, and Agreement and Bill of Sale Certification for Stored Materials, respectively. Contractor shall also provide the required insurance for stored materials.

10.1.3. In making such progress payments for Work, the University will retain two percent (2%) of the approved Invoice of Payment until final acceptance and completion of all Work covered by the Contract. All material and Work covered by progress 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 the care and protection of all materials and Work upon which payments have been made or the restoration of any damaged Work, or as waiving the rights of the University to require the fulfillment of all of the terms and conditions of the Contract.

10.1.4. If Performance or Payment Bonds are required under this Contract, the

University shall pay to the Contractor the total premium paid by the Contractor to obtain the bonds. This payment shall be paid at one time to the Contractor together with the first progress payment otherwise due after the Contractor has (1) furnished the bonds (including coinsurance and reinsurance agreements, where applicable), (2) furnished evidence of full payment to the surety company, and (3) submitted a request for such payment. The payment by the University of the bond premiums to the Contractor shall not be made as increments of the individual progress payments and shall not be in addition to the Contract price.

10.1.5. Upon completion and acceptance of all Work, the amount due the Contractor under this Contract shall be paid upon satisfactory completion, by the Contractor, of all Contract close out requirements, completion of a University audit on the Contract the University with a release of claims against the University, arising by virtue of this Contract, other than claims in stated amounts as maybe specifically excepted by the Contractor from the release.

10.1.6. Upon satisfying the above conditions the Contractor shall submit a properly executed invoice for final payment to the University Controller who shall date stamp the invoice. This action by the University Controller shall constitute receipt of a properly executed State Invoice.

10.1.7. If for any reason, the Contractor refuses final payment, the Project shall be closed out by the University unilaterally processing a Final Acceptance Certificate. All residual funds will be held in escrow by the University until all claims of the University and all Subcontractors, suppliers, vendors, etc., are satisfied.

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

10.1.9. Recommendation for Approval of a Requisition for payment will constitute a representation by the Architect/Engineer to the University, based on his inspections at the site and data contained in the Requisition for Payment, that the Work has progressed to the point indicated; that, to the best of his knowledge, information and belief, the quality of the Work is in accordance with

the Contract Documents; and that the Contractor is entitled to payment in the amount certified.

10.1.10. If any corporation licensed to do business in New Jersey shall be or become delinquent in the payment of taxes due that State, unless under an active appeal process, the University may withhold monies due the said corporation for the purpose of assuring the payment to the State of such taxes.

10.1.11. Prior to any payment invoice being submitted to the University, the Contractor shall complete, execute and submit to the University a W-9 Request for Taxpayer Identification Number and Certificate form.

10.2. Invoices

10.2.1. An invoice is a written request for payment under the Contract for supplies delivered or for service rendered. In order to be proper, an invoice must include as applicable the following information:

(a) Total Amount - Payee Name and Address-Department/Agency - Payee Declaration - Payee Reference Number - Payee Identification Number.

(b) Contract Number - Contractor's Name - Period of the Estimate - Estimate Number Completion date - Date - Number of Sheets - Item Number - Item Description - Contract Totals: Quantity/Unit/Unit Price/Amount- This period: Quantity/Amount – To Date: Quantity/Amount - Certification by payee-Certification of completion signed by Architect/Engineer Representative. Approval for payment signed by the Director.

Amount Retained - Previous Payments Requests - Total Deductions - Amount Due Contractor.

(c) Certification by Contractor that all Subcontractors vendors, suppliers, etc. have been paid in accordance with Project progress and previous payment requisition.

(d) Certified Payrolls and Monthly Project Manning Reports.

All invoices are to be sent to the University's authorized representative at the address provided at the Pre-Construction Conference. Upon the University's receipt of an invoice, the time frames for prompt payment within thirty (30) calendar days shall commence. The Billing invoice

shall be deemed approved and certified twenty (20) days after the University receives it, unless the University provides Contractor, before the end of the twenty (20) day period, a written statement of the amount withheld and, the reason for withholding payment.

10.2.2. Invoices shall include any other information or documentation required by other provisions of the Contract.

10.2.3 Invoices shall be prepared and submitted in original plus two (2) copies unless otherwise specified.

10.2.4 For purposes of determining if interest begins to accrue under the State's Prompt Payment Act:

(a) A proper invoice will be deemed to have been received when it is actually received by the University's office designated in the Pre-Construction Conference for Receipt of Invoices and Acceptance of the supplies delivered or services rendered has occurred;

(b) Payment shall be considered due on the date which is thirty (30) calendar days from the University's receipt of the billing invoice unless, the University provides the Contractor within twenty (20) days after receipt of the invoice, a written statement of the amount withheld and the reason for withholding payment.

(c) Payment terms (e.g. "net 20") offered by the Contractor will not be deemed a "required payment date"; and

(d) The following periods of time will not be included:

(1) After receipt of an improper invoice and prior to notice of any defect or impropriety, but not to exceed twenty (20) calendar days; and

(2) Between the date of a notice of any defect or impropriety and the date a proper invoice is received. When the notice is in writing, it shall be considered made on the date shown on the notice.

10.3. Interest

10.3.1. Interest shall be paid on the amount due the Contractor pursuant to a properly executed State invoice (see Section 10.2. above) if the required

payment is not made on or before the required payment date.

10.3.2 The required payment date shall be thirty (30) calendar days from the University's receipt of the billing invoice unless the University provides Contractor within twenty (20) days after receipt of the invoice, a written statement of the amount withheld and the reason for withholding payment.

10.3.3 Interest on amounts due shall be paid to the Contractor for the period beginning on the day after the required payment date and ending on the date on which the check for payment is drawn. The interest shall be paid at a rate which the State Treasurer shall specify as applicable on the 30th day after the enactment of the New Jersey Prompt Payment Act and by the 30th day after the end of each fiscal year thereafter.

10.3.4. In determining the interest rate, the State Treasurer shall take into consideration current private commercial rates of interest for new loans maturing in approximately five (5) years. The State Treasurer shall publish the rate.

10.3.5. No interest charge as required by this provision shall become a debt of the University until it exceeds \$5.00.

10.3.6. Interest may be paid by separate payment to the Contractor; but shall be paid within thirty (30) calendar days of payment of the original invoice.

10.3.7. The State Treasurer shall have the right to waive the interest payment for delinquencies due to circumstances beyond the control of the University (or other State or University representatives involved in the processing of Contractor invoices) including but not limited to strikes and natural disasters, and for Contracts entered into prior to the effective date of the law.

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

10.3.9. Withholding Payment for Non-Delivery of Data:

(a) If technical data such as "As-Built" drawings, reports, spare parts lists, repair parts lists, or the like, or instruction books (including operational and maintenance manuals), or any part thereof, are not delivered within the time specified by this Contract or are deficient upon delivery, the University shall at its discretion, withhold from each invoice

a percentage in addition to any other retainage required by the Contract or the Contract price in accordance with the following table.

When total Contract Price is: Percentage to be withheld is:

| | |
|--------------------------|-----|
| Less than \$250,000 | 10% |
| \$250,000 to \$1,000,000 | 5% |
| Over \$1,000,000 | 2% |

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

ARTICLE 11 - UNCOVERING AND CORRECTION OF WORK

11.1. Uncovering of Work

11.1.1. If any portion of the Work is covered prior to inspection conducted by the University or Architect/Engineer, especially Work specifically required by the Contract Documents to be inspected, it shall be uncovered for observation. Uncovering and replacement of covering shall be at the installation Contractor's expense. The Contractor is obligated to advise the University or the Architect/Engineer of all Work scheduled to be covered which is reasonably subject to prior inspection before actual covering.

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

11.2. Correction of Work

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

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

11.2.3. If the Contractor fails to correct defective or non-conforming Work in a timely manner, the University may make arrangements for such correction by others and charge the cost of so doing to the Contractor and/or his Sureties.

11.2.4 If the Contractor does not proceed with the correction of such defective

or nonconforming Work within a reasonable time fixed by written notice from the University or the Architect/Engineer, the University may remove it and may store the materials or equipment at the expense of the Contractor. If the Contractor does not pay for the cost of such removal and storage within ten (10) days thereafter, the University may upon ten (10) days additional written notice sell such material and equipment at auction or at private sale and shall account for the net proceeds thereof, after deducting all of the costs which are the responsibility of the Contractor, including compensation for the Architect/Engineer's additional services, if any. If such proceeds of sale do not

cover all costs which the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate credit Change Order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor and/or his Surety shall pay the difference to the University.

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

11.2.6 Nothing contained herein shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents.

11.3. Acceptance of Defective or Nonconforming Work

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

ARTICLE 12 - PROTECTION OF PERSONS AND PROPERTY

12.1. Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. He shall designate a responsible member of his organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's Superintendent, unless otherwise designated by the Contractor, in writing, to the University.

12.2. Safety of Persons and Property

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

- a. Every employee on the Work Site and all persons who may be affected thereby;
- b. All the Work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Contractor or any of his Subcontractors or Sub-Subcontractors; and
- c. Other property at the Site or adjacent thereto, including, but not necessarily limited to trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, equipment, furnishing & finishes, etc. not designated for removal, relocation or replacement in the course of construction.

12.2.2. The Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss.

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

12.2.4. When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the Work, the Contractor shall

exercise the utmost care, comply with all legal requirements and shall carry on such activities under the supervision of properly qualified personnel.

12.2.5. No Contractor shall load or permit any part of the Work to be loaded so as to endanger its safety.

12.2.6. The Contractor shall promptly remedy all damage or loss to any property caused in whole or in part by the Contractor, any of his Subcontractors, Sub-Subcontractors, or

anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable and for which the Contractor is responsible, except damage or loss attributable to the acts or omissions of the University or Architect/Engineer, or anyone directly or indirectly employed by either of them or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to his obligations stated elsewhere herein.

12.3. Emergencies

12.3.1. In any emergency affecting the safety of persons or property, the Contractor shall act with diligence, at his discretion, to prevent threatening injury, damage or loss. In such case, he shall immediately notify the University of the action taken and shall forthwith prepare and submit a detailed and documented request to the University for any additional compensation or extension of time claimed by the Contractor on account of emergency work.

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

ARTICLE 13 - INSURANCE AND INDEMNITY

13.1. Contractor Insurance Requirements

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 maintain 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 Worker's Compensation and Owners and Contractors Protective, shall name Kean University, the State of New Jersey, the New Jersey Educational Facilities Authority, and the Architect/Engineer as additional insureds.

13.1.1. Commercial General Liability

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 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.

13.1.2. Comprehensive Automobile Liability Insurance

Comprehensive Automobile Liability insurance covering owned, non-owned, and hired vehicles. The limits of liability shall not be less than a combined single limit of one million dollars (\$1,000,000) per occurrence.

13.1.3. Worker's Compensation and Employers Liability

Workers Compensation Insurance applicable to the laws of the State of New Jersey and other State or Federal jurisdictions required to protect the employees of the Contractor and any Subcontractor who will be engaged in the performance of this Contract. This insurance shall include Employers' Liability Protection with a limit of liability not less than one million dollars (\$1,000,000) bodily injury, each occurrence, one million dollars (\$1,000,000) disease, each employee, and one million (\$1,000,000) disease, aggregate limit. Including the employer's liability insurance under the umbrella insurance can satisfy the limit requirements.

13.1.4 Owners and Contractors' Protective Liability

The Contractor shall obtain and maintain a separate Owners and Contractors' 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 is to be named as additional insured. The policy shall be maintained in force for the term of the Project or one year, whichever is longer.

13.1.5. Excess Liability Insurance

Excess Liability insurance, 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 five million dollars (\$5,000,000) per occurrence, five million dollars (\$5,000,000) general aggregate, and five million dollars (\$5,000,000) products/completed operations.

13.1.6. The Contractor shall require all Subcontractors to comply with all of the insurance requirements described above. The Contractor is responsible for determining 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.

13.2. Insurance to be Carried by the University

13.2.1. The University shall provide insurance protection in the form of a Builders Risk Insurance in the amount of 100% of the insurable replacement value thereof including materials owned by the University, in place or to be used as part of the permanent construction including surplus materials.

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

13.2.3. The insurance procured by the University under this paragraph may provide for a deductible. The Contractor shall assume the responsibility for any deductible for any builder's risk loss it may make claim for under this policy.

13.2.4. The Contractor shall immediately notify the University, in writing and take any other appropriate steps as may be required under the standard Builders' Risk Insurance Policy in effect in the event of any loss. Prior to the acceptance of the building by the University, the Contractor shall, at the University's option, replace and repair the damaged Work as originally provided in the drawings and specifications at no additional compensation to that provided in the original Contract.

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

13.2.6. The Contractor shall not include any cost for Builders Risk insurance premiums as described herein. However, this provision shall not relieve the Contractor from his obligation to complete the Project, according the Plans and Specifications, covered by the Contract, and the Contractor and their Surety shall be obligated to full performance of the Contractor's undertaking.

ARTICLE 14 - CHANGES IN THE WORK

14.1. Changes to Contract

The University may, at any time, by written order designated or indicated to be a change order, make any change in the Work within the general scope of the Contract, including but not limited to, changes:

- (1) In the Specifications (including Drawings and Designs);
- (2) In the method or manner of performance of the Work;
- (3) In the University furnished facilities, equipment, materials; services, or site; or
- (4) Directing acceleration in the performance of the Work, except for reasons indicated under Section 8.5.

14.2. Processing of Contractor Requests for Equitable Adjustment

14.2.1. The Contractor agrees to prepare and submit an original and two (2) copies, within twenty (20) calendar days of encountering any condition he considers a change or upon receiving official notice of a proposed change or written direction to proceed with a change, a form entitled "Change Order Request and Authorization" to the Director or to his designated representative.

14.2.2. Request for time extensions shall be prepared and submitted, within the time specified in Subsection 14.2.1, on a form entitled "Change Order Request and Authorization-Time Change Only." An original and two (2) copies of the form shall be submitted to the Director or his designated representative. All requests for time extensions must be accompanied by copies of the current (approved) progress schedule and copies of the revised, (proposed) progress schedule detailing the incorporation of the changed Work and the effects of such incorporation on progress. Failure to provide the schedule data shall be grounds for rejection of the request.

14.2.3 Notwithstanding any other Article of this Contract, any time extensions for changes in the Work depend upon the extent, if any, by which the changes cause delay in the completion of the various elements of construction. The Contract modification making such time extension, will provide for an extension of Contract completion date only for those specific elements so delayed and will not alter the Contract completion dates for other portions of the Work. This Contract modification may further provide for an equitable readjustment of liquidated damages pursuant to the new completion schedule.

14.2.4 The Contractor, in connection with any request he makes for an equitable

adjustment, shall furnish a price breakdown, itemized as required by the University. Unless otherwise directed, the breakdown shall cover all Work involved in the change whether such Work was deducted, added or changed.

The breakdown shall be in sufficient detail to permit an analysis of all material, labor, equipment, subcontracts, and overhead costs, as well as profit. Any amount proposed for subcontracts shall be supported by a similar price breakdown. In addition, if the request includes a time extension, a justification (see Subsection 14.2.2 above) therefore, shall also be furnished. The request, together with the price breakdown and time extension justification, shall be furnished by the date specified.

14.2.5. If any change under this Article causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the Work under this Contract, whether or not changed by any such order, an equitable adjustment shall be made in the Contract price or delivery schedule or both and the Contract modified in writing accordingly.

14.2.6. The following rates shall apply in computing indirect costs and profit for the negotiation of equitable adjustments, under all provisions of this Contract which provide for such adjustments that do not exceed \$25,000.00. Hence, if the Contract time is increased as a result of a change, the resulting change in the Contract amount will include the indirect impact cost of extended performance computed in accordance with the terms of this Article, and no further consideration of such costs arising from the specific modification will be given. The percentages for overhead and profit shall be negotiated and may vary according to the nature, extent and complexity of the Work involved. The percentages shall be applied to the net cost or credit. In any event the percentages shall not exceed the following:

Overhead will be the sum of:

- (a) 10% of direct labor costs

NOTE: For the purpose of this Article, the term "direct labor" shall include all foremen, equipment operation. The term "direct labor costs" shall consist of the Contract or actual payroll rate of wage per hour and fringe benefits paid for each and every hour that such employees are actually engaged in the performance of the Work.

- (b) 10% of direct material costs

NOTE: For the purpose of this article, the term "direct material costs"

shall consist of the actual costs of the materials including applicable tax and transportation charges.

For rented equipment, and hourly rental rate will be used which will be determined by using the monthly rental rates taken from the current edition of the Rental Rate Blue Book for Construction Equipment and dividing it by 176. An allowance will be made for operating costs for each and every hour the equipment is actually operating in accordance with the rates listed in the aforesaid Rental Book. The Contractor will be allowed only 65% of the rental rate on Contractor owned equipment.

Bond premiums, insurance, payroll taxes, and travel subsistence, if applicable, will be allowed at actual cost for the equitable adjustment allowed.

The Contractor's profit on the Subcontractor's Work will be 5% of Subcontractor's cost. Subcontractor indirect costs will be computed in the same manner as for the Contractor. The Contractor agrees to incorporate this Article in each of his subcontracts.

A profit of 5% where profit is allowable by the terms of the applicable Contract provision shall be added to the Contractor's total cost for the equitable adjustment allowed. Indirect costs will not be duplicated in direct costs.

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

14.2.7. In order to avoid delays in the progress of Work or when in the best interest of the University, the Director, at his discretion, may direct the Contractor, in writing, to proceed with a change without a prior agreement on costs. Such direction shall be in the form of a no-priced change order or letter of direction. If the Contractor intends to assert a request for an equitable adjustment under this Article, he must do so to the Director or his designated representative in sufficient detail and in accordance with this Article, within twenty (20) calendar days after receipt of a no-priced change order or letter of direction.

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

14.2.9. In order to avoid delays in the progress of Work, the Director, at his discretion, may order a Contractor to proceed even in the absence of a formal

Change Order. Contractor shall submit a follow-up Change Order request within twenty (20) calendar days from the date of authorization to proceed with the changed Work. The cost of such Work shall then be evaluated by the University on the basis of the reasonable expenditures and savings for those performing the Work.

14.2.10. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the Section 17.6. of this Contract entitled “Review of Contractual Claims and Disputes”. However, nothing in this Article shall excuse the Contractor from proceeding with the Contract as changed.

----- END OF ARTICLE 14 -----

ARTICLE 15 - ASSIGNMENT OF ANTITRUST CLAIM(S)

15.1. Assignment of Antitrust Claim(s)

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

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

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

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

ARTICLE 16 - AFFIRMATIVE ACTION REQUIREMENTS

16.1. Policy Statement

It has long been the policy of the University to promote equal employment opportunity by prohibiting discrimination in employment and requiring affirmative action in performance of contracts funded by the University. This policy has been reinforced and expanded by acts of the Legislature. The statute, New Jersey Public Law 1975, Chapter 172, provides that no public works contractor may be awarded any contract nor may any monies be paid until the prospective contractor has agreed to contract performance which complies with the approved Affirmative Action Plan. The law applies to each political subdivision and agency of the state and includes procurement and service contracts as well as construction contracts. This Article was prepared to explain the affirmative action requirements and procedures for public agencies awarding contracts and contractors bidding on contracts. To assure effective implementation of the affirmative action law while allowing the business operation of a government to proceed efficiently, these regulations are designed to minimize administrative paperwork, and delays.

16.2. Compliance with Anti-Discrimination Laws

The Contractor agrees not to discriminate in employment and agrees to abide by all anti-discrimination laws including those contained within N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4, N.J.S.A.10:5-1 et seq., N.J.S.A.10:5-31 through 10:5-38, and all rules and regulations issued there under.

16.3. Exhibit B/ Mandatory Language

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

a. The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, 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, up- grading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The

contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

b. The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

c. 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.

d. 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.

e. 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. 17:27-7.2; provided, however, that the Dept. of 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:

1. If the contractor or subcontractor has a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor shall, within three 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 this chapter. 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.

2. 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:
 - a) 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;
 - b) To notify any minority and women workers who have been listed with it as awaiting available vacancies;
 - c) 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;
 - d) 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
- e) 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;
 - f) To adhere to the following procedure when minority and women workers apply or are referred to the contractor or subcontractor:
 - i. The contractor 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 (3) 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.
- g) To keep a complete and accurate record of all requests made for the referral of workers in any trade covered by the contract, on forms made available by the Dept. of LWD, Construction EEO Monitoring Program and submitted promptly to the Dept. of LWD, Construction EEO Monitoring Program upon request.
3. 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 AA 201) 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 Division and to the 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.

4. 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 Subchapter 10 of the Administrative Code (N.J.A.C. 17:27).

16.4. Forms AA-201 & AA-202/Additional Procedures

All construction Contracts over \$11,100.00 require both an initial and monthly update of the minority and female distribution of the Contractor's employees. The Contractor must also include this information for employees of each Subcontractor.

After notification of Contract award, but prior to signing the Agreement for

Construction Services, the successful Contractor shall process the Initial Project Workforce Report (Form AA-201). After having submitted this from to the New Jersey Department of the Treasury, Division of Contract Compliance & EEO in Public Contracts, PO Box 209, Trenton, N.J 08625-0209, the Contractor will be given the pink monthly follow-up form, Monthly Project Workforce Report-Construction (Form AA-202). The Contractor shall submit two (2) copies of the form to the Division of Contract Compliance & EEO in Public Contracts at the above address.

An information copy is required to be sent to the "Public Agency" which, in this case, is Kean University of New Jersey along with proof of the submissions required above. Invoices will not be processed unless these items are attached to the Contractor's invoice.

16.5. Additional Mandatory Construction Contract Language For State Agencies, Independent Authorities, Colleges and Universities Only

Executive Order No. 151 (Corzine, August 28, 2009) and P.L. 2009, Chapter 335 include provisions which require all state agencies, independent authorities and colleges and universities to include additional mandatory equal employment and affirmative action language in its construction contracts. It is important to note that this language is in addition to and does not replace the mandatory contract language and good faith efforts requirements for construction contracts required by N.J.A.C. 17:27-3.6, 3.7 and 3.8, also known as Exhibit B. The additional mandatory equal employment and affirmative action language is as follows:

It is the policy of the Kean University that its contracts should create a workforce that reflects the diversity of the State of New Jersey. Therefore, contractors engaged by the Kean 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 Kean 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 Kean 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:

1. 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>;

2. 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;
3. The Contractor shall actively solicit and shall provide the Kean University with proof of solicitations for employment, including but not limited to advertisements in general circulation media, professional service publications and electronic media; and
4. The Contractor shall provide evidence of efforts described at 2 above to the Kean University no less frequently than once every 12 months.
5. The Contractor shall comply with the requirements set forth at N.J.A.C. 17:27.

To ensure successful implementation of the Executive Order and Law, state agencies, independent authorities and colleges and universities must forward an Initial Project Workforce Report (AA 201) for any projects funded with ARRA money to the Dept. of LWD, Construction EEO Monitoring Program immediately upon notification of award but prior to execution of the contract.

16.6 Americans with Disabilities Act

The Contractor must comply with all provisions of the Americans with Disabilities Act (ADA), P.L. 101-336, in accordance with 42 U.S.C. 12101 et seq.

ARTICLE 17 - WORK STOPPAGE; DEFAULT; TERMINATION & DISPUTES

17.1. University's Right to Stop the Work

If the Contractor fails to correct defective Work or persistently fails to carry out the Work in accordance with the Contract Documents, the University may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated. Stoppage of the Work of the Contractor, however, shall not render the University liable for claims of any kinds, including delays sustained by the Contractor as the result of the stoppage of the Work of another contractor.

17.2. Default by Contractor

17.2.1 The Contractor shall be in default under this Contract upon occurrence of any one or more of the following events or conditions (an Event of Default):

- (a) The Contractor fails either (i) to promptly begin the Work under the Contract Documents; or (ii) to prosecute the Work in accordance with the Project Schedule; or
- (b) The Contractor fails to perform the Work in accordance with the Contract Documents, including conforming to applicable standards in constructing the Project; the Contractor refuses to remove and replace rejected materials or unacceptable Work; or
- (c) The Contractor discontinues the prosecution of the Work (exclusive of Work stoppage) (i) due to stoppage by the University, or (ii) due to and during the continuance of a Force Majeure Event or suspension by the University; or
- (d) The Contractor fails to resume performance of Work which has been suspended or stopped, within a reasonable time after receipt of notice from the University to do so or (if applicable) after cessation of the event preventing performance; or
- (e) The Contractor shall have become insolvent, or generally does not pay its debts as they become due, or admits in writing its inability to pay its debts or makes an assignment for the benefit of creditors; or
- (f) Insolvency, receivership, reorganization or bankruptcy proceedings are commenced by or against the Contractor; or

(g) Any representation of warranty made by the Contractor in its bid documents, the Contract Documents or any certificate, schedule, instrument or other document delivered by the Contractor pursuant to the Contract Documents or law shall have been materially false or misleading when made; or

(h) The Contractor breaches any material term or condition of the Contract Documents; or

(i) The Contractor shall have assigned or transferred the Contract Documents or any right or interest herein or any major interest in the Contractor shall have been assigned or transferred without the University's prior written consent; or

(j) The Contractor fails to discharge or obtain a stay of any judgment or order for the payment of money arising out of the prosecution of the Work (provided that for purposes hereof, posting of a bond in the amount of 124% of such judgment or order shall be deemed an effective stay); or

(k) The Contractor fails to comply with Contract requirements regarding prevailing wage payments, equal employment opportunity or affirmative action requirements; or

(l) The Contractor shall have failed, absent a valid dispute, to make payment when due for labor, equipment or materials in accordance with its agreements with subcontractors and applicable law; or

(m) The Contractor shall have failed to comply with any applicable statute or regulation or failed to reasonably comply with the instructions of the University, consistent with the Contract Documents; or

(n) The Contractor fails, for any other reason whatsoever, to carry out the Work in an acceptable manner or to fully comply with all requirements of the Contract.

17.2.2 Upon the occurrence of an Event of Default, the University may issue a written Notice of Default to the Contractor and its Surety, giving each party ten (10) business days notice to commence and complete correction of such default with diligence and promptness. In the case of an emergency, the University shall have the right to shorten the ten (10) day cure period by so specifying in the Notice of Default.

17.3. Remedies for Event of Default by Contractor/Termination for Cause

17.3.1 If any breach described in Section 17.2 is not subject to cure or is not cured within the period (if any) specified in the Notice of Default, the University may notify the Contractor and Surety of its Intent to Terminate the Contract for Cause pursuant to this Section and notify the Contractor to discontinue the Work. The Notice of Termination for Cause shall be in writing and given to the Contractor and Surety. The Notice of Termination for Cause will terminate the Contractor's right to proceed with any items of Work, except as specified in the Notice. Such Work will include punch list items and all Work necessary to ensure the safety of the public, to properly secure existing Work already constructed or partially constructed, and to secure each Project site. The Work so noticed and ordered shall be performed in accordance with the Contract Documents.

17.3.2. If, after five (5) business days following receipt of the Notice of Termination for Cause by the Contractor's Surety, the issuer of the Performance and Payment Bonds, the said surety exercises its right to take over the Work, the University shall permit him/her to do so under the following terms and conditions:

- a. Evidence of the Surety's intention to take over and complete the Contract shall be in writing over the signature of an authorized representative and served upon the University within five (5) business days after receipt by the Surety of the Notice of Termination;
- b. The execution of a written agreement between the University and the Surety whereby the latter undertakes and assumes the obligation to complete the balance of the Work of its defaulting Contractor in accordance with the terms and conditions of the University-Contractor Contract including fulfillment of the Project schedule and date of completion, to be performed by a substituted Contractor satisfactory to the University at the Surety's sole cost and expense, and providing for payments to the Surety or to the Substituted Contractor of unpaid Contract balances, if any, then in the hands of the University;
- c. The said Agreement shall also expressly provide that the Surety shall not be relieved thereby from any of its obligations under the Performance and Payment bonds and that it furnish the University with an additional Performance and Payment bonds to secure the faithful performance of the substituted Contractor;

d. That all current obligations for labor and materials incurred and outstanding by the defaulting Contractor on the Project are paid without delay, subject to Allowance of a reasonable time within which to verify such claims by the Surety.

17.3.3. The University may appropriate any or all materials and equipment on the Project Site as may be suitable and acceptable and may, in its sole discretion, direct the Surety to complete the Project or may enter into an agreement for the completion of each Project, according to the terms and provisions of this Contract, with another contractor or the Surety, or use such other methods as may be required for the completion of each Project, including completion of the Work by the University.

17.3.4. The Contractor and the Surety shall not be relieved of liability for continuing liquidated damages on account of a breach or default by the Contractor or by the University's declaration of an Event of Default or issuance of a Notice of Termination for Cause or by any other action taken by the University under this Section.

17.3.5. All costs and charges incurred by the University, together with the cost of completing the Work, will be deducted from any monies due or that may become due the Contractor and the Surety. If such expense exceeds the sum that would be available from such monies, then the Contractor and the Surety shall be liable and shall pay to the University the amount of such excess. This obligation shall survive the termination of the Contract.

17.3.6. The rights and remedies of the University are in addition to any other rights and remedies provided by law or equity or provided under the Contract or the Performance Bond.

17.3.7. When the University issues a Notice of Termination for Cause, all completed items of Work as of that date will be paid for at the contract price. All completed items of Work of that date will be paid in conformity with the payment provisions herein, except that the Contractor will be paid 100% of the estimate submitted by the Contractor and approved by the University. Payment for new items of Work, if any will be made either at agreed prices or on a time and materials basis, as provided within the Contract Documents. Materials obtained by the Contractor for the Work that have not yet been incorporated therein may, at the option of the University, be purchased from the Contractor at actual cost delivered to a prescribed location or otherwise disposed of as mutually agreed.

17.3.8. If, after a Notice of Termination for Cause is issued under the provisions

of this Article, it is determined, for any reason, that the Contractor was not in default, the rights and obligations of the parties are the same as if a Notice of Termination for Convenience had been issued pursuant to Section 17.4 below. If the University's default and termination of the Contractor pursuant to the provisions of this Article is found by a court to be legally unjustified, the Contract will be treated as if terminated for convenience pursuant to Section 17.4 and such termination will be compensated for in accordance with the provisions of that Article.

17.4. Termination of Contract for Convenience

17.4.1. The University may, in its sole discretion, by written Notice of Termination for Convenience, terminate the Contract or any portion thereof for its own convenience, or after determining that, for reasons beyond the Contractor's control, the Contractor is unable to proceed with or complete the Work as contracted for, or that termination is in the public interest, The Order of Termination for Convenience shall specify the items of Work that shall be completed prior to the Termination.

17.4.2. The Contractor shall complete all items of Work specified in the Notice of Termination for Convenience. Such Work shall include, but not limited to, all Work necessary to ensure the safety of the public, to properly secure fully constructed and partially constructed Work, and to secure the Project Site. The Work so ordered shall be performed in accordance with the Contract Documents and may include items of Work not in the original Contract.

17.4.3. The Contract shall be considered substantially complete upon completion and acceptance of all items of Work specified in the Notice of Termination for Convenience, except punch list items. After completion of the punch list items and provisions of all documents required by the Contract, the Contract shall terminate upon the issuance of final payment.

17.4.4. The University reserves the right to declare in default a Contractor who fails to perform all of the items of Work set forth in a Notice of Termination for Convenience.

17.4.5. When the University orders Termination of the Contract for Convenience, all completed items of Work of that date will be paid in conformity with the payment provisions, except that the Contractor will be paid 100% of the estimate submitted by the Contractor and approved by the University. Payment for new items of Work, if any, will be made either at agreed prices or on a time and materials basis, as per the Contract Documents.

17.4.6. Materials obtained by the Contractor for the Work that has not been

incorporated therein may, at the option of the University, be purchased from the Contractor at actual cost delivered to a prescribed location or otherwise deposited of as mutually agreed.

17.4.7. Within sixty (60) days of the effective termination date, the Contractor shall submit to the University claims for any costs that were incurred but that are not subject to payment pursuant to subsection 17.4.6. above, or any other provision of the Contract. Such claims may include such cost items as reasonable mobilization efforts, overhead expenses attributable to the terminated Project, Subcontractor costs not otherwise paid for, and actual idle labor costs if Work is stopped in advance of the termination date, and any guaranteed payments. Claims shall not be made for costs that are otherwise prohibited herein or for anticipated profits on Work that is not performed.

17.5. When the University Terminates the Contract for Convenience or for Cause Pursuant to this Article:

17.5.1. The Contractor shall make cost records available to the extent necessary to determine the validity and amount of each item for which he seeks compensation.

17.5.2. The Contractor shall not be relieved of its contractual responsibilities for the Work completed, nor shall the Surety be relieved of its obligations for any just claim arising out of the Work performed.

17.5.3. The Contractor shall, if so directed by the University, remove promptly any or all of its equipment and supplies from each Project Site or other property of the State. If the Contractor fails to remove the equipment and supplies as directed, the University may remove such equipment and supplies at the expense of the Contractor.

17.6. Review of Contractor Claims and Disputes

Upon presentation by the Contractor of a request in writing, the University may review any decision or determination of the Contracting Officer, the University or the Architect/Engineer to any claim, dispute or any other matter or question relating to the execution or progress of the Work or the interpretation of the Contract Documents. Consistent with the intent of this Contract, the University may schedule a conference for the purpose of settling or resolving such claims, disputes or other matters. Where such a conference is conducted, the Contractor shall be afforded the opportunity to be heard on the matter in question. Following review of the Contractor's request, the University and the Contractor may settle or resolve the disputed matter, provided however that any such settlement or resolution shall be

subject to all requirements imposed by law including, where applicable, the New Jersey Contractual Liability Act, N.J.S.A 59:13-1 et seq.

17.7. University's Right to Carry out a Portion of the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract, and fails within ten (10) business days after receipt of written notice from the University to commence and/or complete correction of such default or neglect with acceptable diligence and promptness, the University may, without prejudice to any other remedy the University may have, correct such deficiencies. The University will, in such case issue an appropriate change order deducting from the payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for additional cost which may be incurred by the Architect/Engineer for additional services required by such default, neglect or failure on the part of the Contractor. If such amount is greater than the payments then or thereafter due, the Contractor shall pay the difference to the University.

17.8. Termination for a Lack of Sufficiency of Funds

The University's obligations under this Contract are contingent upon the availability of appropriated funds from which payment for Contract purposes can be made. No legal liability on the part of the University for payment of any money shall arise unless and until funds are made available through appropriations from the New Jersey State Legislature or proceeds from capital project funding. In the event that the University has insufficient funds from which payment for Contract purposes can be made to the Contractor, it may terminate the Contract upon thirty (30) days prior written notice to the Contractor.

III. SUPPLEMENTAL CONDITIONS

ARTICLE 1 – PROJECT SCOPE

1.1 Project Scope of Work

Kean University seeks experienced, qualified bidders for our Miron Student Center Addition Project.

The project involves a building addition of approx. 1,675 square feet for the Greek Lounge and the Miron Student Center Business Offices. The project also involves renovation of approx. 2,784 square feet of the existing Greek Lounge and the Miron Student Center Business Offices. The scope of work will include but not limited to the following elements: Sitework, footings and foundations, concrete, masonry, framing, exterior metal panels, roofing, interior finishes, casework, mechanical, electrical, plumbing, and fire protection.

All interested parties who have enrolled in the site by paying the \$25.00 fee will be given instructions to access the site by Close of Business (C.O.B.) on 1/22/19.

ARTICLE 2 – PROJECT SCHEDULE/LOGISTICS/SAFETY

2.1 Key Dates:

- Pre-Bid Conference – 10:30 a.m. / **January 22, 2019** in the Miron Student Center, Room #226
- Deadline for Inquiries and Substitutions – 12:00 p.m. / **February 4, 2019**
- Public Bid Opening – 2:00 p.m. / **February 21, 2019**
- Project will be considered substantially complete when Kean University gains full use and control of the new project with all required inspections passed favorably. Architects acceptance of same as detailed in the bid documents must also be achieved prior to the substantial completion deadline date.
- Notice to Proceed – On or about **March 27, 2019**
- Final Completion Deadline - no more than 240 calendar days from official Notice to Proceed date *ie: if Notice to Proceed occurs on March 27, 2019, the Final Completion deadline date will be November 22, 2019.*
- Substantial Completion date will be no more than **50** days prior to the Final Completion date; *in this case October 3, 2019.*

NOTE: Schedule provides ample time allotment for long lead items & permit acquisition, etc.

Substantial Completion must be achieved no more than **50** calendar days before the deadline date of Final Completion. The period in between Substantial & Final Completion is for punchlist, turnover, training and certifications, etc.

- In case of any discrepancy with the Contract Documents the dates listed **DIRECTLY ABOVE** supersede and take precedence.
- Where discrepancies may exist between the A/E's drawings and specifications/reports, or between the A/E's documents and those provided by Kean University, the document or language deemed most beneficial to Kean University shall take precedence.

2.2 Coordination: Construction Schedule & Logistics

A. **SUBMITTAL & PERMIT APPLICATION** process to commence immediately upon issuance of Notice to Proceed with priority given to any/all long lead items.

- A. Contractor to submit CMP Construction Schedule with Milestones
- B. Contractor to submit Submittal Schedule with Milestones
 - 1) IDENTIFY Any/All Long Lead SUBMITTAL Items and procure in manner that works with CMP Construction Schedule
- C. Contractor to submit Schedule of Values
- D. All required Permit Applications

B. **SCHEDULE** : The successful Bidder will coordinate with Kean University Office of Facilities & Campus Planning (KUFPC) to submit a **DETAILED Work Schedule** to the Architect, for Architects's approval. The **DETAILED Work Schedule** with key **Milestone dates**, must include, but is not limited to the items below. All dates in the **DETAILED Work Schedule** MUST logically work towards Substantial & Final Completion dates in accordance with Completion Deadline dates listed above in Section 2.1.

A. Schedule Milestones (including but not limited to the following)

- A. SCHEDULES: CONSTRUCTION SCHEDULE; SCHEDULE OF VALUES, SUBMITTAL SCHEDULE
- B. SAFE WORK PLAN & LOGISTICS PLAN
- C. KICKOFF MEETING
- D. PERMIT APPLICATIONS BY CONTRACTOR – COORDINATE W/ A.O.R.
- E. SUBMITTALS - SHOP DRAWINGS
 - (i) LONG LEAD &/OR PERMIT DEPENDENT SHOPS (STRUCTURAL, FIRE, ELEVATOR, ETC.) TAKE PRIORITY
- F. SUB-CONTRACTOR/COMPETENT PERSON & CONTACT LIST
- G. SITE PREP – SELECTIVE DEMOLITION INCLUDING ABATEMENTS WHERE APPLICABLE
 - (i) PROVIDE FOR LAWFUL DISPOSAL OF ANY SITE ITEMS TO BE REMOVED FROM SITE AND PROVIDE ALL REQUIRED DOCUMENTATION FOR IMPORTED FILL MATERIALS
- H. SELECTIVE DEMOLITION INCLUDING ABATEMENTS WHERE APPLICABLE
- I. COORDINATED DRAWINGS ARE REQUIRED FOR ALL TRADES
- J. AS -BUILT DRAWINGS TO BE SUBMITTED REGULARLY AS PER THE GC'S
- K. UTILITY COORDINATIONS
- L. SITE WORK
- M. FOOTINGS/FOUNDATIONS
- N. SUPER STRUCTURE
- O. WEATHER TIGHT DATE
- P. MEP ROUGH INS
- Q. LAYOUT/FRAMING
- R. SHUTDOWNS-SWITCHOVERS/ROAD CLOSINGS AS APPROVED BY THE UNIVERSITY REQUIREMENTS FOR SUCH
- S. FINISHES
- T. TESTING OF SYSTEMS

- U. COMMISSIONING OF SYSTEMS
- V. PROGRESS INSPECTIONS
- W. COORDINATION OF OWNER WORK
- X. FINAL INSPECTIONS
- Y. TURNOVER/TRAINING
- Z. CLOSEOUT

C. **LOGISTICS/SAFE WORK PLAN** :The successful Bidder will coordinate with Kean University Office of Facilities & Campus Planning (KUFCP) to submit a DETAILED Safe Work Plan and Logistics Plan to the Architect and Owner for Architect’s approval. The DETAILED Safe Work Plan must include Pre-Planning &/or Job Hazard Analysis as required by OSHA, 3 business day notifications for shutdowns/road closings and incorporate any & all safety requirements required by the General Conditions to guarantee the safety of Project employees and the Kean Campus Community (students/teachers/staff) in addition to those items listed below.

- A. **Kean Campus Community Safety**: The successful Bidder will become familiar with the surrounding spaces of the campus and keep his work confined to that scope as defined by the Bid Documents and the approved Logistics Plan. Finished spaces and adjacent sites must be protected from dust, debris and damage while executing this Project. Roadways, corridors and adjacent buildings must remain open for use throughout the life of the Project.
- B. **Traffic Control/ Pedestrian Safety**: It will be the responsibility of the Contractor to ensure the safety of all pedestrian and vehicular traffic at all times both inside the building & outside the Project..
- C. **Job Hazard Analysis (J.H.A.)**:
 - i) J.H.A.’s/Pre-Plans as required by O.S.H.A. must also be submitted, including, but not limited to crane lifts and steel erection, demolition, abatement, site work/heavy equipment, etc.
- D. **PERMITS & CERTIFICATES**: Contractor assumes the responsibility of applying for, securing and complying with any and all permits required to perform the work under his/her Base Bid. The Contractor or issuing agency will calculate required permit fees. Upon verification of fee Kean University will arrange for payment of said permit and certificate fees.

ARTICLE 3 – ALLOWANCES

3.1 Definitions and Instructions:

Allowances have been established for items for which a cost cannot be estimated at this time, but will be required by the Contractor. Use the allowance only as directed by the University and only for the purpose outlined therein. The Lump Sum Price will be used to determine the low qualified bidder.

3.2 List of Allowances:

- 1) Allowance No.1. – Unforeseen Conditions
 - a) Description: This allowance will be used to cover costs associated with Unforeseen Conditions that may be encountered on the Project. The allowance is only to be used when approved and directed by the University.
 - b) Allowance Value No.1: Forty Thousand dollars (\$40,000.00)

ARTICLE 4 – ALTERNATES

4.1 SUMMARY– *REFER TO A/E ISSUED SPECIFICATION SECTION 01030-ALTERNATES AND ALTERNATE ASSOCIATED DRAWINGS.*

A. Section includes administrative and procedural requirements for Alternates.

1. Alternate Requirements:

- A Schedule of Alternates is included at the end of this Section **and is comprised of Deduct Alternates (as such term is defined in Section 4.2 below) to be priced for the entire project.** Each Alternate is defined using abbreviated language, recognizing that the Contract Documents define the requirements. Coordinate related work to ensure that work affected by each Alternate is complete and properly interfaced with Work of each selected Alternate.

2. Provide written proposals for each corresponding Deduct Alternate on the **KU-03 Bid Cost Form** for Owner's consideration. Each proposal amount shall include the entire cost of the Alternate portion of the Work, including overhead, profit, taxes, insurance, and other costs including cost of interfacing and coordinating the alternate with related and adjacent work.

3. Selection of Alternates: Selection of Alternates to be included in the Work will be at the sole discretion of the Owner. The Owner reserves the right to award the Contract upon basis of lump sum for the entire Work or upon basis of any base bid or Alternates or any combination of base bid or Alternates which may best serve the interests of the Owner.

4.2 DEFINITIONS

Alternate or Deduct Alternate: An amount proposed by Bidders and stated on the Bid Form for certain work defined in the bidding requirements that may be added to or deducted from the base bid amount if Owner decides to accept a corresponding change either in the amount of construction to be completed or in the products, materials, equipment, systems, or installation methods described in the Contract Documents.

1. The cost or credit for each Alternate is the net addition to or net deduction from the Contract Sum to incorporate the Alternate into the Work. No other adjustments are made to the Contract Sum.

4.3 PROCEDURES

A. Alternates may or may not be accepted by Owner, and the Owner may choose any and/or all Alternates in no particular order, as the Owner deems in the best interest of the Owner.

B. Materials added or deducted by the Alternate shall become part of and be governed by the provisions of the Basic Specifications sections for like materials and/or construction.

C. Coordination: Revise or adjust affected adjacent work as necessary to completely integrate Work of the Alternate into the Project.

1. Include as part of each Alternate, miscellaneous devices, accessory objects, and similar items incidental to or required for a complete installation, whether or not indicated as part of Alternate.

D. Notification: Immediately following award of the Contract, notify each party involved, in writing, of the status of each Alternate. Indicate if Alternates have been accepted, rejected, or deferred for later consideration. Include a complete description of negotiated revisions to Alternates.

E. Execute accepted Alternates under the same conditions as other Work of the Contract.

F. Alternate Prices are to be provided on the KU-03 Bid Cost Form.

4.4 SCHEDULE OF ALTERNATES *REFER ALSO TO SPECIFICATION 01030*

1. DEDUCT ALT-1 - State the cost difference to the Base Bid to remove interior storefront type IW1, IW2, and IW3 from the corridor wall and install partition type 1 as indicated in the Construction Documents – Drawing A2.1.
2. DEDUCT ALT- 2 - State the cost difference to the Base Bid to provide and install the exterior metal wall panel system over the existing masonry exterior wall as indicated on multiple drawings in the Construction Documents.
3. ADD ALT- 3 - State the cost difference to the Base Bid to provide and install all work associated with the Student Center Entry Canopy as indicated on multiple drawings in the Construction Documents.

ARTICLE 5 – PROCEDURES FOR HANDLING HAZARDOUS MATERIALS

5.1 Overview:

1. Refer to TECHNICAL SPECIFICATIONS FOR ASBESTOS ABATEMENT in Project Manual dated November 20, 2018..
2. All Hazardous Material removals are to be performed in compliance with any/all State and/or Federal regulations.
3. Any Hazardous Materials encountered on the project not previously identified at time of Bid shall also be performed in compliance with any/all State and/or Federal regulations.
 - a. If additional Hazardous Materials are encountered/suspected during the project, the contractor will immediately notify the Kean University Project Manager to begin evaluation.
4. When air monitoring/sampling is required it will be supplied by the University, the cost of which is not to be included in the contractors lump sum bid, for both known and unknown Hazardous Materials.

5.2 Universal Waste/Refrigerant Recycling:

1. Contractor to strip and stage in drums (owner provided) all Universal waste items. Drums to be disposed of by Owner.
 - a. Light bulbs & ballasts, both PCB- and non-PCB-containing must be collected in drums (owner provided) Drums to be disposed of by Owner.

ARTICLE 6 – SELECT TESTING & INSPECTION TO BE PERFORMED BY OWNER

6.1 Definitions and Instructions:

The University is electing to employ a third-party Testing and Inspection Agency to conduct all testing and inspection as required by the list(s) set forth in **Section 01400 - Statement of Special Inspections**.

1. The Contractor will be responsible for bearing the costs of all other Testing and Inspection services as required by the Specifications for this Project as detailed in Section 4.14 - Tests of the General Conditions or elsewhere in the Bid Documents. This definition supersedes any inconsistencies which may or may not exist in the Contract Documents. Contractor will be responsible for any & all testing required by the Project other than initial testing as required by list set forth in **Section 01400 - Statement of Special Inspections**.
2. For purposes of scheduling Testing and Inspections with the Owner's third party agency, the Contractor will notify the Owner and Agency in writing (preferably

by e-mail) at least 36 hours in advance of requested inspection (schedule requests must be made on 'business' work days; Monday through Friday excluding Federal Holidays).

3. For purposes of cancelling scheduled inspections with the Owner's third party testing agency the Contractor will notify the Owner and Agency in writing (preferably by e-mail) at least 24 hours in advance that he is cancelling a previously scheduled inspection . Contractor will bear the costs incurred for any cancelled inspection when 24 hours' notice is not given.
4. Contractor to bear all costs associated with re-testing and replacing of work if/when initial tests do not meet or exceed the specified tolerances and requirements.
5. The Contractor is required to keep readily available onsite all required approval items (*shop drawings, plans, specifications, submittals, sketches, concrete mixes, R.F.I.'s, etc.*) for use by the Owner's Testing and Inspection Agency.
6. The Owner's Testing and Inspection Agency will furnish the Contractor with copies of all inspection reports with the same frequency and fashion that they are dispensed to the Owner, typically :
 - a. Written reports on a daily basis
 - b. Laboratory reports as soon as they become available
 - c. Summary reports monthly

ARTICLE 7 – SITE DIRECTORY:

1. KEAN FRONT ENDS

- INSTRUCTIONS TO BIDDERS & GENERAL CONDITIONS/SUPPLEMENTAL CONDITIONS (IBGC/SC)
- KU BID FORMS DOCUMENTS PACKET
- ADVERTISEMENT FOR BIDS (as published)

2. DRAWING SET

3. PROJECT MANUAL

- TECHNICAL SPECIFICATIONS
- GEO-TECH REPORT
- ASBESTOS ABATEMENT SECTIONS

4. ADDENDUM 1 (when issued)