

# **Ramapo College of New Jersey**

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# ARTICLE I

## CONTRACT DOCUMENTS

### 1.1 Definitions

1.1.1 "Architect" or "Engineer" means the Architect or the Engineer (A/E) engaged by the College to act as an authorized representative of the Contracting Officer in regards to designing, supervising the construction of the referenced project and will provide general administration services as described in the A/E Agreement with the College.

1.1.2 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 "provided" as used herein shall be understood to mean "provided complete in place", that is "furnished and installed".

1.1.3 Bulletin or Addendum: "Addenda" are documents issued by the College prior to opening of bids which supplements, revises or modifies the solicitation documents furnished for bidding purposes. "Bulletins" are documents, issued by the College after the opening of bids which supplements, revises or modifies the construction documents.

1.1.4 Change Order Proposal: A proposal for equitable adjustment made by the Contractor in response to written direction by the Contracting Officer.

1.1.5 Claims: Differences between the College and the Contractor concerning extra work, alleged errors or omissions in the specifications or drawings, unreasonable delays, damages to work, informal suspensions or interferences by College Personnel and like matters.

1.1.6 College: Ramapo College of New Jersey.

1.1.7 Construction Manager / Construction Management Firm: One who acts as the College's authorized representative, without assuming any of the Architect/Engineer's contractual, statutory, or customary obligations, and will provide general administration and construction management services as described in the Construction Management Agreement with the College.

1.1.8 "Contract Documents" means this contract, together with any plans, drawings, specifications or other documents which are attached hereto or incorporated herein by reference, together with any such plans, drawings, specifications, schedules, or other documents which may be produced pursuant to this contract or derived therefrom and which are intended to bind the Contractor hereunder.

1.1.9 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.

1.1.10 Contract Line Item Number (CLIN): A specifically described unit of work for which a price is provided in the contract.

1.1.11 "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 in the performance of its functions. Whether referred to as "Contractor", "Prime Contractor", "Prime", "Separate Contractor", or Single Contractor, it shall be understood to mean Contractor. It does not include suppliers or materialmen.

1.1.12 Contracting Officer means the individual authorized, as an officer of the College, to administer the design, engineering and construction of all College Buildings and facilities. He is the Procuring Contracting Officer representing the College personally or through authorized representatives in all relationships with Contractors, Consultants and Architect/Engineers. This includes a duly appointed successor or an authorized Administrative Contracting Officer (ACO) acting within the limits of its authority.

The Contracting officer is the interpreter of the Conditions of the Contract and the judge of its performance. He shall not take arbitrary positions benefitting either the College or the Contractor, but shall use its powers under the Contract to enforce its faithful performance by both.

1.1.13 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 contracting officer is intended; and similarly the words "approved", "acceptable", "satisfactory" or words of like import shall mean "approved by", "acceptable to", or "satisfactory to" the contracting officer unless otherwise expressly stated.

1.1.14 DPMC: The "DPMC" is the acronym for the Division of Property Management and Construction, Department of Treasury, State of New Jersey.

1.1.15 Contractor: The Contractor means either the Contractor for General Construction whenever separate prime contractors are involved in a project or the sole Contractor if there are no other prime contractors involved.

1.1.16 "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.

1.1.17 "Plans" means any drawings or reproductions thereof pertaining to the details of the work contemplated by this contract.

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

1.1.19 RCNJ's Project Manager: A qualified individual authorized by the Contracting Officer to assist in the administration of a specific construction contract.

1.1.20 Contractor's Project Manager: A qualified individual authorized by the Contractor to assist in the administration of a specific construction contract.

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

1.1.22 The terms "Site", "Construction Site" or "Project Site" refer to the geographical area of the entire college campus at which the Work under the Contract is to be performed.

1.1.23 "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.

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1.1.24 The words "State", or "Agency of the State" as are used herein mean the State of New Jersey.

1.1.25 "Subcontractor" means the person or persons, partnership, or corporation 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.

1.1.26 Substantial Completion: The date the building or facility is operational or capable of serving its intended use even though the project is not complete. Substantial completion is achieved when the Department of Community Affairs issues a Temporary Certificate of Occupancy.

1.1.27 "Systems Assurance" shall mean the totality of all quality control and assurance requirements specified in the contract documents.

1.1.28 "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 and the prices associated therewith.

1.1.29 The term "Work" as used herein comprises all construction efforts required by the Contract Documents and includes all supervision, labor, material and equipment necessary to complete such construction.

## **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 performed by the Contractor as if described in both. Any incidental material, and/or work not specified in the Drawings and/or the Specifications which is, nevertheless, necessary for the true development thereof and reasonably inferable therefrom, the Contractor shall understand the same to be implied and required, and he shall perform all such Work and furnish all such materials as if particularly delineated or described therein at no additional cost to the College. Should there be an obvious error or omission in the Drawings or Specifications, it shall be the Contractor's responsibility to complete the Work as reasonably required at no additional cost to the College, consistent with the intent of such Drawings and Specifications as may be interpreted by the Contracting Officer or authorized representative.

1.2.2 Each Contractor shall abide by and comply with the true intent and meaning of the Drawings, the Specifications and other Contract Documents taken as a whole, and shall not avail 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 Contracting Officer and seek correction or interpretation thereof prior to commencement of affected Work. The Contracting Officer or authorized representative shall issue its written Interpretation with reasonable promptness. However, the Contractor shall make no claim against the College for expenses incurred or damages sustained on account of any error, discrepancy, omission or conflict in the Contract Documents.

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

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Subcontractors in any manner or to establish the extent of the work to be performed by any trade. The Contractor is solely responsible for allocation of the contracted work to each Subcontractor regardless if a trade designation is made in the Contract Documents.

1.2.5 The Contractor shall do no Work without proper Drawings and instructions unless authorization to proceed from the Contracting Officer or an authorized representative is received by the Contractor, in writing.

1.2.6 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.

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

- a. Executed Contract
- b. Addenda/Bulletin/Insurance
- c. General Conditions
- d. Specifications
- 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 College.

1.2.8 Where certain work is shown in complete detail, but not repeated in similar detail in other areas of the Drawings, or there is an indication of continuation, the remainder being only shown in outline, the work shown in detail shall be understood to be required in other like portions of the project at no additional cost to the College.

1.2.9 The Contractor shall not, at any time after the execution of its Contract, make any claims whatsoever based upon insufficient data or its incorrectly assumed conditions, nor shall he claim any misunderstandings with regard to the nature, conditions or character of the work to be done under the Contract and he shall assume all risks resulting from any changes in conditions not under the control of the College which may occur during the progress of the Work.

1.2.10 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 observable conditions.

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## **ARTICLE 2**

### **CONTRACTING OFFICER**

#### **2.1 Contracting Officer's Right to Stop the Work**

2.1.1 If the Contractor fails to correct defective Work or persistently fails to carry out the Work in accordance with the Contract Documents, the Contracting Officer or its authorized representative 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 shall not render the College liable for claims of any kinds.

#### **2.2 Contracting Officer's Right to Perform Work**

2.2.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within three calendar days after receipt of written notice from the Contracting Officer or its authorized representatives to commence and continue correction of such default or neglect with diligence and promptness, the Contracting Officer may, without prejudice to other remedies the Contracting Officer may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including College's expenses and compensation for the Construction Manager's and Architect's and their respective consultants' additional services made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the College. Should work be performed by the Contracting Officer under this article, the Contractor will have no cause to void any guarantee on materials or systems installed under this Contract.

#### **2.3 Contracting Officer's Right to Terminate**

2.3.1 If the Contractor is adjudged a bankrupt, or if he makes a general assignment for the benefit of its creditors, if a receiver is appointed on account of its insolvency, or if he persistently or repeatedly refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials so as to avoid or eliminate delays in the orderly progress of the Work in accordance with the approved schedule, or if he fails to make prompt payment to Subcontractors or for materials or labor, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or if he or any of its Subcontractors is guilty of a substantial violation of a provision of the Contract Documents, or otherwise defaults or neglects to carry out the Work in accordance with the Contract Documents, then the Contracting Officer may, without prejudice to any right or remedy, and after giving the Contractor and its Surety three (3) working days written notice to forthwith commence and continue correction of such default or neglect with diligence and promptness, terminate the employment of the Contractor by the issuance of a written notice to that effect to the Contractor and its Surety at any time subsequent to three (3) working days thereafter, should they, or either of them, fail to comply with the demands of the original three (3) day notice, above mentioned.

2.3.2 Upon such termination the Contracting Officer may take possession of the site and of all the materials, equipment, and tools on the site, and may finish the Work by whatever method he may deem expedient. In such case the Contractor shall not be entitled to receive any further payment until the Work is finished. The person or firm designated to carry out such work will be paid as authorized by the Contracting Officer, without entailing any personal liability upon the officers of the College issuing certificates or making such payment.

2.3.3 If the unpaid balance of the Contract Sum exceeds the cost of finishing the Work, including Liquidated Damages for delays and all consequential damages sustained by the College flowing from such breach of

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Contract, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor and/or its Surety shall pay the difference to the College, and this obligation shall survive the termination of the Contract.

2.3.4 If, within three (3) working days following receipt of Notice of Termination by the Contractor's Surety, the issuer of the Performance and Payment Bonds, the said Surety exercises its right to take over the Work and expeditiously commences to prosecute the same to completion, the Contracting Officer shall permit him to do so under the following terms and conditions:

- a. Evidence of the Surety's intention to take over and complete the Contract shall be in writing over the signature of an authorized representative and served upon the Contracting Officer within three (3) days after receipt by the Surety of Notice of Termination.
- b. The execution of a written Agreement between the College, by the Contracting Officer, and the Surety whereby the latter undertakes and assumes the obligation to complete the balance of the Work of its defaulting Contractor in accordance with the terms and conditions of the College Contractor Agreement, to be performed by a substituted Contractor satisfactory to the Contracting Officer, 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 hands of the College.
- 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 College with an additional Performance and Payment Bond 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 this Project be paid without delay, subject to allowance of a reasonable time within which to verify such claims by the Surety; and
- e. That the parties expressly understand and agree that this Agreement is without prejudice and is subject to such rights and remedies as either party (including the Contractor) may elect to assert after final completion and acceptance of the Work.

## **2.4 Review of Contractor Claims and Disputes**

2.4.1 Upon presentation by the Contractor of a request in writing, the Contracting Officer may review any decision or determination of the College or any authorized representative as to any claim, dispute or any other matter or question relating to the execution or progress of the Work or the interpretation of the Contract documents. Consistent with the intent of this contract, the Contracting Officer 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 College 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,

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## **2.5 College Representation**

2.5.1 The College will be represented by a Construction Manager and its staff or other designated representative. The Construction Manager or other designated representative will routinely conduct on-site observations, maintain logs of construction progress and problems encountered; approve Contractor's requisition for payments subject to final approval by the Contracting Officer; conduct job meetings; carry out liaison with the Architect/Engineer and the Contractor; prepare and submit reports on special problems associated with the job; evaluate and process Change Order Requests, and generally remain fully cognizant and be kept informed by the Contractor of every aspect of ongoing construction. The College's representatives, including the Construction Manager and its staff, have only those duties which are required of an College; responsibility for completion of this project, pursuant to the Contract Documents, remains with the Contractor.

## **2.6 Ownership and Use of Documents**

2.6.1 All Drawings, Specifications and copies thereof furnished by the Architect/Engineer are and shall remain the property of the College. They 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 the Architect/Engineer's copyright or other reserved rights.

**ARTICLE 3**  
**CONSTRUCTION MANAGER**  
**AND**  
**ARCHITECT / ENGINEER**

**3.1 Construction Manager and Architect / Engineer**

3.1.1 The College may engage a Construction Management firm (Construction Manager) to act as the College's authorized representative, without assuming any of the Architect/Engineer's contractual, statutory, or customary obligations. The Construction Manager will provide general administration and construction management services for the project; and act as a liaison between the College, the Architect/Engineer, and the Contractor.

3.1.2 The Construction Management Firm is responsible for providing construction management services, as described in the Construction Management Agreement, for all contracts entered into by the College, including those relative to the construction and monitoring of the CPM Scheduling of the Project and all of its parts. The Construction Management Firm shall become fully familiar with the contractual obligations of all entities doing work on the Project and all relevant Project documentation, including the design documents prepared by the Architect/Engineer, in order to confirm that the Contractor completes the Project in accordance with its contractual obligations and the College's objectives for cost, time, and quality.

3.1.3 When the College provides a Construction Manager, the role of the Architect/Engineer is that of Consultant to the College and will provide general administration services for the project.

3.1.4 When the College does not provide a Construction Manager, the role of the Architect/Engineer is to provide general administration and construction management services for the project.

**3.2 Administration of the Contract**

3.2.1 The Architect/Engineer and the Construction Manager will provide administration of the Contract, as hereinafter described.

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

3.2.3 The Construction Manager and/or the Architect/Engineer will not be responsible for, nor will they have control or charge of, construction means, methods, techniques, sequences of procedures, or enforcement of safety precautions and programs in connection with the Work. The Construction Manager and/or the Architect/Engineer will not be responsible for, nor have control or charge over, the acts or omissions of the Contractor, Subcontractors, or any of their agents or employees, or any other person performing any of the Work.

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

3.2.5 The Construction Manager shall record, track, and if required, set procedures for the processing of

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Contractor submittals. 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.

3.2.6 Both the Architect/Engineer and the Construction Manager will periodically review the Contractor's as built drawings to insure that these are current.

### **3.3 Substantial and Final Completion Inspections**

3.3.1 The Construction Manager and the Architect/Engineer will conduct inspections, accompanied by the Contractor and Contracting Officer's authorized representatives, to determine the dates of Substantial and Final Completion, will receive and forward to the Contracting Officer for its 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.

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## **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 the Contract Documents, including but not limited to, the complete set of Drawings and Specifications of the entire project; that he has carefully examined the site and that from its 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 reasonably observable conditions outside the Contract Limit Lines to determine whether any conflict exists with the work he is required to perform under the Contract. This includes a check on elevations, utility connections and other site data. As a result of such examination and investigation, the Contractor warrants and represents that he fully understands the intent and purposes of the Contract Documents and its obligations there under and that he accepts responsibility for and is prepared to execute and fulfill completely, by its construction work, the intent of the Contract, without exception and without reservation, at the price and within the timeframe 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 Construction Manager upon discovery and shall do no work thereafter which may be affected by such error until the College has had the opportunity to respond and clarify the work it wants performed in view of this information. Wherever any error, inconsistency or omission appears, it shall be disposed of pursuant to appropriate procedures set forth elsewhere herein.

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

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

4.1.5 The Contractor shall at all times enforce strict discipline and good order among its employees and shall not employ any unfit person or anyone not skilled in the task assigned to him.

4.1.6 The Contractor shall be obligated to pay the prevailing wage rates as required by the State of New Jersey. The Contractor shall abide by the requirements of the State's Affirmative Action Program. The Contractor also shall be responsible to insure that all principles of Safety are carried out through project completion.

#### **4.2 New Jersey Prevailing Wage Act**

4.2.1 Each Contractor or any Subcontractor shall comply with the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 and all amendments thereto as this Act is hereby made a part of every Contract entered into on behalf of the College except those contracts which are not within the contemplation of the Act. Provisions of the Act include:

- a. All workmen employed in the performances of every Contract in which the Contract Sum is in excess of \$2,000 and Work to which the College is a party, shall be paid not less than the

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Prevailing Wage Rate as designed by the Commissioner of the Department of Labor and Workforce Development or its duly authorized representative.

- (1) Each Contractor and Subcontractor performing public work for the College 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 them to pay workmen their wages.
  - (2) The Contractor's signature on the proposal is its guarantee that neither it, nor any Subcontractor, is currently listed by, or on record with, the Commissioner as one who has failed to pay the Prevailing Wages according to the Prevailing Wage Act.
- b. 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 College is a party, has been paid a rate of wages less than the Prevailing Wage required to be paid by such Contract, the Contracting Officer of the College may terminate the Contractor's or Subcontractor's right to proceed with the work, or such part of the work as to which there has been a failure to pay required wages and may otherwise prosecute the work to completion.
- c. Nothing contained in the Prevailing Wage Act shall prohibit the payment of more than the prevailing wage rate to any workman employed on a public works project.

#### **4.3 Supervision**

4.3.1 The Contractor shall supervise and direct the Work using its best skill and attention. The Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract.

4.3.2 The Contractor shall employ full-time competent English speaking Project Manager, Superintendent, and assistants who shall be in attendance on the Project site at all times during the progress of the Work. The Project Manager and Superintendent shall represent the Contractor and provide all authorizations on behalf of the Contractor.

4.3.3 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Construction Manager, the name and qualifications of a proposed project manager and superintendent. The Construction Manager may reply in writing stating (1) whether the College, the Construction Manager, or the Architect has reasonable objection to the proposed superintendent or (2) that any of them require additional time to review.

4.3.4 The Contractor shall not employ a proposed project manager and/or superintendent to whom the College, Construction Manager or Architect has made reasonable and timely objection. The Contractor shall not change the project manager and/or superintendent without the College's consent, which shall not unreasonably be withheld or delayed. At anytime during the project, the College through the Construction Manager may require replacement of the Contractor's project manager and/or superintendent the performance, as judged by the Contracting Officer or its authorized representative, is deemed to be inadequate.

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4.3.5 Each Contractor shall employ qualified competent craftsmen in their respective lines of work.

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

4.3.7 Should the Contractor not have staff onsite to oversee construction operations, the Construction Manager will have the authority to shut the site down and have all workers removed from site.

#### **4.4 Responsibility for the Work**

4.4.1 The Contractor shall be responsible to the Contracting Officer for the acts and omissions of its employees, subcontractors and their agents and employees which injure, damage or delay such other contractors in the performance of their Work. This responsibility is not limited by the applicable provisions stated elsewhere herein, but is in conjunction with, and related thereto.

4.4.2 The Contractor shall be responsible for all damage or destruction caused directly or indirectly by its operations, to all parts of the Work, both temporary and permanent, and to all adjoining property.

4.4.3 The Contractor shall be responsible for costs related to all work when existing conditions are altered without approval from the College and not in accordance with the construction documents.

4.4.4 The Contractor shall, at its 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 College, the Contractor's obligation to protect its finished Work shall cease simultaneously with the occupancy of the portion or portions of the structure.

4.4.5 The Contractor shall be responsible for all costs related to additional design services, testing, inspections, and fees for Work incorrectly installed which requires modification or corrective work.

4.4.6 The Contractor shall defend, protect, indemnify and save harmless the College and its authorized representatives from all claims, fines, penalties, suits, actions, damages and costs of every name and description arising out of, or resulting from, the performance of its Work under this Contract. This responsibility is not limited by the provisions of other indemnification provisions included elsewhere herein.

4.4.7 In order to protect the lives and health of its employees, the Contractor shall comply with all applicable statutes and pertinent provisions of the "Manual of Accident Prevention in Construction" issued by the Associated General Contractors of America, Inc., and shall maintain an accurate record of all cases of death, occupational disease, and injury requiring medical attention or causing loss of time from work, arising out of and in the course of employment on work under the Contract. The Contractor alone shall be responsible for the safety, efficiency, and adequacy of its plant, appliances and methods, and for any damage or injury which may result from its failure or its improper construction, maintenance or operation.

#### **4.5 Permits, Laws, and Regulations**

4.5.1 The Contractor shall secure and pay for all permits, governmental fees, and licenses necessary for the proper execution and completion of the Work and which are legally required at the time of receipt of bids except for

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construction permits and inspections by New Jersey Department of Community Affairs in which the College will make payment for these fees.

4.5.2 All work defined in this Contract is to be done in accordance with the New Jersey Uniform Construction Code. No work requiring inspections and approval of construction code officials is to be covered or enclosed prior to inspection and approval by appropriate code enforcement officials.

4.5.3 The Work under this Contract is exempt from local 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 its activities with municipal and/or highway authorities having appropriate jurisdiction.

4.5.4 Soil conservation measures are to be in accordance with County Soil Conservation District requirements.

4.5.5 All sewage disposal work shall conform to the regulations of the State Department of Environmental Protection.

4.5.6 The Contractor is responsible to notify the Construction Manager to request code inspections as required to continue progress of the Work in accordance with the construction schedule. The Construction Manager will verify and confirm if the Work is ready for inspection prior to the scheduling of the code inspector. If the work is not ready, the inspection will not be scheduled.

4.5.7 The Contractor shall be responsible for and save harmless the College and its authorized representatives from all fines, penalties or loss incurred for, or by reason of, the violation of any ordinance or regulation or law of the State while the said Work is in process of construction.

4.5.8 The Contractors shall comply with the Federal Occupational Safety and Health Act of 1970 and all of the rules and regulations promulgated there under and NJ Worker and Community Right to Know Act (PL1983 c. 315 N.J.S.A. 34:5A-1, et seq.).

4.5.9 As a result of a finding, by an appropriate Finder of Fact, that a Contractor caused a substantial violation of a State, local or federal statute or regulation on said project, the College may declare the Contractor to be in default.

4.5.10 Prior to the start of any crane equipment operations, each Contractor shall make all necessary applications and obtain all required permits from the Federal Aviation Administration (F.A.A.). The Sequence of operations, timing and methods of conducting the work shall be approved by the F.A.A. to the extent that it relates to their jurisdiction.

#### **4.6 Storage, Daily Cleaning, Final Clean Up and Touchup**

4.6.1 The Contractor shall confine its apparatus, the storage of its equipment, tools and materials, and its 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 College, or as ordered by the Contracting Officer or its authorized representative, and shall not unreasonably encumber the site or the premises with its materials, tools and equipment. At no times shall the Contractor use existing occupied spaces as storage.

4.6.2 The Contractor shall at all times during the Progress of the Work keep the premises and the job site

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free from the accumulation of all refuse, rubbish, scrap materials and debris caused by its operations, to the end that at all times the premises and site shall present a neat, orderly and workmanlike appearance. This is to be accomplished by having each floor broom swept at the end of each work day. Loading, cartage, hauling and dumping will be at the Contractor's expenses.

4.6.3 At the completion of the Work, the Contractor shall remove all its tools, construction equipment, machinery, temporary staging, formwork, shoring, bracing, protective enclosures, scaffolding, stairs, chutes, ramps, runways, hoisting equipment, elevators, derricks, cranes, etc. from the Project Site.

4.6.4 Should the Contractor not promptly and properly discharge its obligation relating to daily cleaning and final clean up, the College 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.

4.6.5 The Contractor's responsibilities in final clean up include:

- a. Removal of all debris and rubbish resulting from or relating to its work. Rubbish shall not be thrown from building openings above the ground floor unless contained within chutes;
- b. Removal of 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, ceilings, wall coverings, and equipment surfaces;
- d. Removal of spots, paint and soil from resilient, glaze and unglazed masonry and ceramic flooring and wall work;
- e. Removal of temporary floor protections, clean, wash or otherwise treat and/or polish, as directed, all finished floors;
- f. Vacuum all carpet areas;
- g. Cleanout all casework and wipe down countertop surfaces;
- h. Wipe down interior of elevator so it is free of finger prints and dust;
- i. Remove plastic and wipe down all light fixtures, receptacle and device cover plates;
- j. Polishing of all College furnished furniture;
- k. 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;
- l. Wash down and clean exterior curtain wall metal and glazing;

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- m. Wash down and clean roofing so to remove excess adhesive, dirt, and rust stains;
- n. Wash down of all exterior improvements including pavers, concrete, asphalt, benches, etc.; and
- o. 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 at no additional cost to the College.

4.6.6 The Contractor must perform final cleaning prior to occupancy inspections by the governing authorities and another final clean prior to occupancy by the College.

4.6.7 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 College to the Contractor, shall become the absolute property of the College. It will be disposed of in any manner the College shall deem reasonable and proper.

4.6.8 The Contractor is responsible for final wall touchup just prior to College occupancy but after College furnished equipment and furniture move-in at no additional cost to the College. Touchup shall be performed for all imperfections and/or damaged caused by College move-in operations with equipment and furniture. Touchup shall include spackling and painting as required.

#### **4.7 Interruptions to Existing Services**

4.7.1 The Contractor shall make no utility shutdowns nor tie-ins which affect the operations of the utility system of any adjacent building or campus facility without requesting in writing the College's permission for shut down no less (14) calendar days prior to the proposed shut down. Utility shut downs shall occur at a time convenient to the College so as not to unreasonably interfere with its operations which means weekends, holidays, or after business hours. The Contractor is to include costs in the bid proposal for all premium hour costs related to these connections. Contractor shall assume the highest premium labor rate for this work in preparation of the bid.

4.7.2 When the existing fire alarm system requires shut down, The Contractor must provide (72) hours notice to the Construction Manager or the shut down cannot be scheduled. The Contractor shall be responsible for providing a fire watch in accordance with the College's requirements during this shut down. Although the College will be responsible for scheduling the shut down through their service company (United Fire), the Contractor shall be responsible for all costs related to shut down.

#### **4.8 Working Hours and Standby Personnel**

4.8.1 Regular working hours shall be 7:00 a.m. to 3:30 p.m., Monday through Friday unless otherwise noted in the bid documents. Changes thereto may be granted with written approval of the Contracting Officer. Any work required to be performed after regular working hours or on Saturdays, Sundays, or Legal Holidays as may be reasonably required consistent with contractual obligations, shall be performed without additional expense to the College. Contractor shall obtain approval of the Contracting Officer 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.

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

#### **4.9 Record Documents**

4.9.1 The Contractor shall maintain at the site for the College one copy of the Drawings, Specifications, Addenda, Bulletins, Architectural Supplemental Instructions, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These documents shall be delivered to the Construction Manager for submittal to the College upon completion of the Work as a record of the Work as constructed.

4.9.2 The Construction Manager will keep one set of DCA approved drawings on the project site at all times. These drawings shall be made available to the DCA Inspectors and the Contractor at any time during the progress of the work, upon their request. If the Contractor wishes to maintain a copy of these approved drawings, the cost of reproduction shall be the Contractors responsibility.

#### **4.10 Shop Drawings, Product Data, and Samples**

4.10.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work. 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 27"; 24" x 36" etc) or as approved by the Architect/Engineer.

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

4.10.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

4.10.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Informational submittals upon which the Construction Manager and Architect are not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Construction Manager or Architect without action.

4.10.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect/Engineer Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the Project submittal schedule approved by the Construction Manager and Architect, or in the absence of an approved Project submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work.

4.10.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the College, Construction Manager, and Architect, that the Contractor has (1) reviewed and approved

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them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work, the Contract Documents, and all adjacent work including other trades. The Architect/Engineer and Construction Manager are not responsible for such coordination during the submittal review process.

4.10.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been reviewed and approved by the Architect, unless directed otherwise by the College

4.10.8 The Contractor will be responsible to ensure that all subcontractors maintain a set of current Contract Documents and approved submittals in the field. The College will have the authority to stop work of a subcontractor if it is observed that the Work is being completed from outdated Contract Documents or unapproved submittals.

4.10.9 The Work shall be in accordance with approved submittals. The Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Construction Manager and Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof. The Architect's notation of "no exception taken" or "approved as noted" or similar language shall not be construed as authorizing any deviations from the Contract Documents. Should a deviation not be clearly identified in the submittal and the submittal is approved by the Architect and/or Engineer and the work is put in place, the Contractor will be responsible to remove, replace, and/or correct the work in place at no additional cost to the College to adhere to the contract documents.

4.10.10 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Construction Manager and Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

4.10.11 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the College and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The College and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the College and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. The Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given

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and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

4.10.12 Submittals shall contain a Contractor's stamp of approval, signed and dated by the submitting Contractor, prior to submission to the Architect/Engineer. Such stamp of approval by the Contractor shall be confirmation that he has determined and verified materials, field measurements and field construction criteria related thereto, and has checked and coordinated the information contained within such submittals. The Contractor shall also note in writing to the Architect/Engineer, all deviations to the Contract Documents. Submittals will not be reviewed by the Architect/Engineer unless they contain such a stamp containing the words "Reviewed and Approved" accompanied by the Contractor's signature and date.

4.10.13 The Architect's review is for conformance with the Design Concept and Contract Documents. Markings or comments shall not be construed as relieving the Contractor from compliance with the Contract Documents. No departures there from, are to be considered as authorizing extra work. The Contractor remains responsible for materials, dimensions, details and accuracy for confirming and correlating all quantities and dimensions, for selecting fabrication process for techniques of assembly, for performing this work in a safe manner, and of coordinating this work with that of all other trades.

4.10.14 The Contractor will have only two (2) opportunities to receive approval of any submittal without consequence. If an approval is not received by the second submission due to the Contractor's failure to adhere to the contract documents and/or Architect's/Engineer's review comments, the Contractor will be responsible for costs incurred by The College to review each submission thereafter until an approval is received.

4.10.15 Schedule delays that may result from the rejection of submittals for non-conformance to the contract documents are the responsibility of the Contractor to recover.

#### **4.11 Coordination Drawings**

4.11.1 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 positions and sizes of all sleeves and openings required to accommodate its work and installation of its piping, equipment, etc. and all with reference to the established dimensional grid of the Building. Such Drawings must be submitted in sufficient time to allow proper coordination with reinforcing steel Shop Drawings, openings in precast concrete members, and proper placing in the Field.

4.11.2 Before construction work commences and before submitting shop drawings for sleeves, piping, ductwork, etc., the Contractor shall require that the installers/ subcontractors for all trades submit Coordination Drawings.

4.11.3 The Contractor shall manage the process so that each trade/subcontractor provides all required information in a timely manner. Coordination Drawings may be completed on a phased basis so as not to delay the overall project schedule. The CPM Schedule specified elsewhere shall be amended to include the submission of Coordination Drawings. The same shall demonstrate how the Contractor intends to integrate the submission of Coordination Drawings to suit the overall project schedule.

4.11.4 Coordination Drawings shall show the resolution of trade conflicts in congested areas prior to submission of shop drawings and actual installation. The Drawings shall coordinate the placement and location of ductwork, fittings, light fixtures, cable trays, fire alarm devices, sprinklers, air terminals, hangers, supports and other ceiling mounted items shown and specified with each other, and other building elements such as ceilings, structural

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work, case work, equipment, doors, manufacturer's recommended maintenance clearances, code required clearances and visibility sightlines (NEC, etc.), access doors and other contract work.

4.11.5 In public and occupied areas without scheduled finish ceilings, appearance is a major coordination factor. Reposition proposed locations of work after Coordination Drawing review. Provide adjustments to the exact size, location and offsets of ducts, pipes, and conduit to achieve reasonable appearance objectives. Provide these adjustments as part of the Contract or notify the Architect immediately as to why the adjustment cannot be made.

4.11.6 The medium and format of the Coordination Drawings shall be as follows:

- (1) The Contractor shall use CADD software to create the Coordination Drawings.
- (2) Each MEP Division trade shall be assigned a layer to create the detailing work of each section or division of the Specifications requiring coordination. The Contractor shall insure that the layer assigned to one trade cannot be modified by another trade, and that the final product clearly differentiates which trade is responsible for the respective information shown. The latter may occur through the use of colors or other distinct graphic methods.
- (3) The final product shall be in the form drawings drawn at a scale not less than 3/8 inch per foot for the entire building. Mechanical and Electrical equipment rooms shall be drawn separately at a scale not less than 1/2 inch per foot and be submitted with the drawings of the entire building. At conflicts between the trades, provide details, elevations, sections or three dimensional views of similar or larger scale as may be required to provide a clear three dimensional resolution of the conflict.

4.11.7 The Coordination Drawings shall be prepared as follows:

- (1) The Contractor shall prepare the base floor plan(s) in the medium chosen.
- (2) The HVAC trade installer shall prepare the first layer of the Coordination Drawings showing all ductwork, and all pertinent heating piping and equipment. This plan may be a copy of the required ductwork shop drawings.
- (3) The Contractor shall provide electronic or transparent copies to all the other trades/subcontractors.
- (4) The Plumbing, Fire Protection, Controls and other non electrical trades shall show all their piping, equipment, valves, fittings and other specified appurtenances.
- (5) The Electrical, Fire Alarm, and other electrical trades shall show all systems and equipment, including transformers, panels, terminals, devices, detectors, lighting fixtures, cable trays, outlets, and conduits and raceways 1" or larger. Cable tray layout shall include appropriate clearances to motors, ballasts, and other sources of electromagnetic interference.
- (6) The Contractor shall review the Drawings and indicate areas of Architectural, Equipment, Structural and other conflicts and obstacles and coordinate locations of rated and exterior walls to assure their continuity and closure as specified. The Contractor determines that

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all work can be installed without interference. In the case of unresolved interference, the Contractor shall notify the Architect. The Architect will then suggest to the Contractor as to how to revise the Drawings to eliminate interference. The Contractor shall then have the trade(s) revise their respective Drawings to eliminate interference.

- (7) Fabrication and installation of work in a given bay or area shall not proceed until the Contractor has made all trades agree on the exact arrangements for each bay or area. If a given trade proceeds prior to resolving conflicts, then, if necessary, that trade shall change its work at no extra cost in order to permit the other trades to proceed with a coordinated installation. Coordination approval may be given by the Contractor for a bay or area only after site meetings involving all trades have occurred.
- (8) In the event of conflict areas without ductwork, each respective trade in conflict shall prepare coordination drawings showing the suggested final arrangements for review.

4.11.8 Coordination Drawings are intended for use by the respective trades during construction and shall not be construed as replacing either the shop drawings specified in the technical specifications or Record Drawings.

4.11.9 Submit Coordination Drawings for review in the same manner as specified for shop drawings. The Architect's review of Coordination Drawings shall not relieve the Contractor from his responsibilities for coordinating the work with the work of all trades involved on the Project. The Architect's review shall not authorize any extra cost, omission and/or deviation from the requirements of the Contract Documents. Any costs arising from errors and omissions in the Coordination Drawings shall be borne by the Contractor.

4.11.10 Provide three hard copies and electronic files (Adobe .pdf and CADD) of the Final Coordination Drawing at the completion of the work. All copies shall become the property of the College.

#### **4.12 Demolition, Cutting and Patching**

4.12.1 The Contractor shall be responsible for demolition, cutting, fitting, patching, and/or reconstruction required to complete the Work or to make its parts fit together properly regardless if not shown on the demolition plans or other contract drawings. All areas requiring cutting, fitting, patching, and/or reconstruction shall be restored to the condition existing prior to the demolition, cutting, fitting, patching, and/or reconstruction, unless otherwise required by the Contract Documents.

4.12.2 The Contractor shall make new Work fit existing work and/or existing conditions at Contractor's cost and expense. Changes in the Work attributable to varying field and/or existing conditions which represent a minor difference from those indicated on the drawings or can be reasonably predicted or expected to be encountered shall be provided and accomplished at no cost to the College.

4.12.3 Except as otherwise provided, Contractor shall do all cutting, drilling, removal, cleaning, servicing, repairing, reroofing, patching, re-hanging, and restoration that may be required in connection with the work. Contractor shall pay for the restoration of existing conditions and work of others damaged by his actions. Contractor shall be responsible for maintaining all existing warranties.

4.12.4 Replace, fit, patch and repair material and surfaces cut or damaged by methods and with materials required to restore surfaces to original conditions and in conformance with manufacturer's requirements in such a manner as not to void or compromise any warranties required or newly existing.

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4.12.5 Prior to cutting and demolition work, the Contractor shall survey and locate utilities, structural elements and hazards using locator/detection equipment. Promptly submit a written report to the Architect describing the nature and extent of any conflicts with the intended function or design of the work. Do not proceed with work until such conflicts are resolved.

4.12.6 All drilling and patching for expansion bolts, hangers and other supports shall be done only after approval of Architect.

#### **4.13 Tests and Inspections**

4.13.1 The College shall acquire and pay for material inspection or testing services. The Contractor shall contact the Construction Manager (72) hours in advance of all upcoming tests and inspections required.

4.13.2 The College will provide copies of inspection and test reports performed by the testing agency to the Contractor and code inspectors.

4.13.3 In the event that 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 incurred by the College for all re-inspection and tests by the testing agency.

#### **4.14 Equipment and Material**

4.14.1 The Contractor warrants to the Contracting Officer that all materials and equipment furnished under the Contract will be new, unless otherwise specified, and that all Work will be of good quality, free from faults, defects, and in conformance with Contract Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective and rejected by the Contracting Officer or its authorized representatives. If required by the Architect/Engineer, the Construction Manager, or the Contracting Officer, 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.

4.14.2 Each 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.

4.14.3 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 its firm at the site to accept delivered materials. The College will not be held responsible for damage, theft, or disappearance of Contractor's property.

4.14.4 Pursuant to N.J.S.A. 52:33-2, only domestic materials shall be acquired or used for the Work, unless, upon the Contractor's written request to use non-domestic materials, the Contracting Officer shall determine that the use of a specific domestic material would be inconsistent with the public interest, or the cost would be unreasonable, or that domestic materials of the class or kind required are not mined, produced or manufactured, as the case may be, in the United States in commercial quantities and of a satisfactory quality,

4.14.5 Pursuant to N.J.S.A. 52:33-3, the Contractor and all subcontractors shall use only domestic materials in the performance of the Work; but if the Contracting Officer or other public officer authorized by law to

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make this Contract shall find that in respect to some particular domestic materials it is impracticable to make such requirement or that it would unreasonably increase the cost, an exception shall be noted in the Specifications as to that particular material, and a public record made by the College of the findings which justified the exception.

4.14.6 Pursuant to N.J.S.A. 52:33-4, if the Contracting Officer or other public officer having jurisdiction shall find, after written notice to the Contractor and subcontractor or materialman (as applicable) and an opportunity for the contractor to be heard, that in the performance of this Contract there has been a failure to comply with these "Buy American" provisions contained in the Contract, the public officer shall make public his finding, including therein the name of the Contractor obligated under such Contract, and no other contract for the construction, alteration or repair of any public work in this state shall be awarded to such contractor, or to any partnership, association or corporation associated or affiliated therewith, within a period of three years after such finding is made public.

4.14.7 No materials, equipment or supplies for the Work shall be purchased by the Contractor or any Subcontractor subject to any lien or encumbrance or other agreement by which an interest is retained by the Seller. The Contractor warrants, by signing its 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.

4.14.8 The College shall not be limited to only standard colors for all materials and equipment. The Contractor shall include all costs in the bid proposal related to premium and/or custom colors for all materials and equipment.

#### **4.15 Soil Borings**

4.15.1 Soil borings or test pits or other subsurface information may be secured by an independent contractor for the College prior to design and construction of a project and may be included in the contract documents for the Contractors use. The Contractor assumes full responsibility for interpretation of said borings.

#### **4.16 Protection of Contractor's Property**

4.16.1 The Contractor shall adequately secure and protect its own tools, equipment, materials and supplies. The College assumes no liability for any damage, theft or negligent injury to the Contractor's property.

#### **4.17 Patents**

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

4.17.2 License and/or Royalty Fees for the use of a process which is authorized by the College must be reasonable, and paid to the holder of the patent, or its authorized licensee, directly by the College and not by or through the Contractor.

4.17.3 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 College 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 its

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Sureties shall indemnify and save harmless the College 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 College 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.

#### **4.18 Right to Audit**

4.18.1 The College reserves the right to audit the records of the Contractor in connection with all matters related to this contract. The Contractor agrees to maintain its 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 be direct or indirect. The identity must include at least the project number for direct expenses and/or account number for indirect expenses. All charges must be supported by appropriate documentation, including, but not limited to cancelled checks. Such records shall be made available to the New Jersey Office of the State Comptroller upon request.

4.18.2 The Contractor shall develop, maintain and make available to the Contracting Officer on request such schedule of quantities and costs, progress schedules, daily construction reports, 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 Supplier costs, all payment records and all records showing all costs incurred in labor and personnel of any kind, records and other data as the College may request concerning work performed or to be performed under this Contract.

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

4.18.4 The Contractor acknowledges and agrees that the Contractor's obligation to establish, maintain and make available records and the College's right to audit as delineated herein, shall extend to actual costs incurred by subcontractors in performing work required under the contract or any supplemental agreement thereto. The contractor shall require in all subcontracts that the Subcontractor establish, maintain and make available to the College all records as defined and delineated herein relating to all work performed under the subcontractors including work performed by a Sub-Subcontractor.

#### **4.19 Photographs**

4.19.1 Photographs shall be taken on a daily basis representing work in progress. The photographs shall be submitted with each application for payment and shall be provided in both hard copy (two color copies) and digital formats (on CD). Photographs must be date stamped.

#### **4.20 Daily Reports**

4.20.1 The Contractor shall maintain and submit each daily report to the Construction Manager on the following day. Failure to provide the daily reports in a timely manner will cause the Construction Manager to withhold payment. Daily reports shall include, at a minimum, the following:

- a. daily weather conditions and any material impact on the Work caused thereby;
- b. the Contractor's personnel onsite;

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- c. all Subcontractors working each day and the number of employees of each onsite;
- d. all equipment onsite;
- e. all materials and equipment delivered to the site;
- f. the Work accomplished each day;
- g. any material equipment failures or breakdowns;
- h. any accidents or unsafe conditions;
- i. any inspections performed

#### **4.21 Warranties and Guarantees**

4.21.1 Neither the final payment, nor any provision in the Contract Documents, nor partial or entire occupancy of the premises by the College 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 College will give notice of observed defects with reasonable promptness.

4.21.2 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 or workmanship and to pay for the value of repair of any damage to other work resulting there from for a period of one (1) year from date of project acceptance. The form of this guarantee shall be a maintenance bond in the amount of 100% of the final contract amount. All guarantees, bonds, etc., required by the Specifications shall be in writing in requisite legal form, and delivered to the Contracting Officer at the time of submission of requisition for final payment. All Subcontractor's guarantees, bonds, etc., shall be underwritten by the Contractor, who shall obtain and deliver same to the Contracting Officer before the Work shall be deemed finished and accepted.

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

4.21.4 It is anticipated that certain permanent equipment will have to be activated during construction of the project to support construction operations. This would particularly be the case with respect to elevators and those portions of the permanent electrical and heating/cooling systems which might be required to provide temporary power and heat/cooling for interior finish operations. Regardless of when equipment is delivered to the site and activated for use during construction, all equipment warranties must extend for the time periods required in these Specifications starting as of the date of Substantial Completion or final acceptance (whichever is the earliest) of the Project by the College. The Contractor shall include in their base bids all costs necessary to provide extended warranties as necessary for any equipment which may be activated prior to final acceptance of the College.

4.21.5 During the eleventh (11<sup>th</sup>) month after date of Substantial Completion, the Contractor shall meet with the College on a day mutually agreed upon and determine whether all conditions related to guarantees have been satisfied in accordance with the Contract. Should any defects appear at this time, they are to be remedied by the Contractor prior to the expiration of the General Guarantee. Any guarantees which are in effect for more than two (2) year after the date of Substantial Completion shall continue under conditions of the Contract. Nothing contained in this Paragraph shall release the Contractor from his obligations under his General Guarantees.

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#### **4.22 Indemnification**

4.22.1 The Contractor shall assume all risk of and responsibility for, and agrees to indemnify, defend and save harmless the College, its employees, and its agents 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 the negligence of the Contractor or through any improper or defective machinery, implements or appliances used by the Contractor in the project, or through any act or omission on the part of the Contractor or its agents, employees or servants, which shall arise from or result directly or indirectly from the work and/or materials supplied under this contract. This indemnification obligation is not limited by, but is in addition to, the insurance obligations contained in this agreement.

4.22.2 In any and all claims against the College, the Construction Manager, 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 4.22 shall not be limited in any way as to the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under Worker's or Workman's Compensations Acts, Disability Benefit Acts, or other Employee Benefit Acts.

#### **4.23 Contractor's Claims for Damages**

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

4.23.2 Should any contractor or Architect/Engineer having, or who shall hereafter have, a contract with the College, by its own acts, errors or omissions, damage or unnecessarily delay the Work of the College, Architect/Engineer, or other contractors by not properly cooperating with them, or by not affording them reasonably sufficient opportunity or facility to perform Work as may be specified, by reason of which act, error or omission of the said contractor, the Architect/Engineer or any other contractor shall sustain damages, including delay damages, during the progress of the Work hereunder, then the injured contractor or Architect/Engineer shall have a right of action in court to recover such damages directly from the culpable party. The College 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. . 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.

4.23.3 Should the Contractor sustain any damage through any act or omission of any other contractor having a contract with the College, 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 College for such damage, but shall have a right of action to recover such damages from the causing party or parties.

#### **4.24 Layout, Dimensional Control and Verification, Surveyor's Certification**

4.24.1 The Contractor shall be responsible for locating and laying out the Building of all of its parts of the site, in strict accordance with the Drawings, and shall accurately establish and maintain dimensional control. The Contractor shall employ and pay for the services of a competent and licensed New Jersey Engineer or Land Surveyor (who shall be approved by the College), 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 Construction Manager, as the Work progresses, certificates that each of such levels is as required by the Drawings. The plumb lines of walls, etc., shall be tested and

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certified by the Surveyor as the Work progresses.

4.24.2 The surveyor, in its 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. The surveyor shall establish a single permanent bench mark as directed to which all three (3) coordinates of dimensional control shall be referred. The surveyor shall verify all College 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 Construction Manager of such discrepancy, and shall not proceed with any Work affected until receipt of written instructions from the Construction Manager.

#### **4.25 Project Sign**

4.25.1 NOT USED

#### **4.26 Use of Premises**

4.26.1 The Contractor shall be limited to only areas under renovation and construction at all times. Contractor shall provide access to the College, Architect, Construction Manager, and other contractors performing work for the College.

4.26.2 Confine operations to areas within contract limits indicated. Portions of the site beyond areas in which construction operations are indicated are not to be disturbed. Should areas outside the contract limits be disturbed, it shall be the Contractor's responsibility to restore the area back to original conditions prior to disturbance.

4.26.3 Keep corridors and stairwells serving the premises clear at all times. Schedule deliveries to minimize space and time requirements for storage of materials and equipment on site.

4.26.4 Keep driveways and entrances serving the premises clear. Parking spaces outside of the construction area are to be available at all times to the College. Do not use these areas for parking or storage of materials.

4.26.5 The Contractor shall repair all damages caused by constructions operations. Take all precautions necessary to protect the building during the construction period.

#### **4.27 Roads and Walkways**

4.27.1 The Contractor shall be responsible for keeping all roadways, drives, parking areas, and walkways around 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 College. The Contractor will be held accountable for any citations, fines, or penalties imposed on the College for failing to comply with local rules and regulations.

4.27.2 The Contractor shall obtain permission, in writing, from the Construction Manager before using any existing driveways or parking areas not specifically designated for such use in the Contract Documents for construction purposes. The Contractor 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.

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4.27.3 The Contractor shall be responsible for providing and maintaining unobstructed traffic lanes on the designated construction access routes either shown on the Contract Documents or reasonably required so as to perform the Work and shall provide and maintain all reasonably required safety devices. The Contractor 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.

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## **ARTICLE 5 SUBCONTRACTORS**

### **5.1 Contractor-Subcontractor Relationship**

5.1.1 The Contractor shall, within thirty (30) days after award of the Contract, notify the Contracting Officer through the Construction Manager, 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 Contracting Officer may direct, and shall not employ any Subcontractor without prior written approval of the Contracting Officer, or any that the Contracting Officer may, within a reasonable time, reject.

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

5.1.3 The Contractor shall make no substitution for any Subcontractor, person or firm previously selected and approved, without written notification to the Contracting Officer and receipt of its written approval for such substitution.

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

5.1.5 Nothing contained in the Contract Documents shall create any contractual relationship between any Subcontractor and the College.

5.1.6 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 Documents, assumes toward the College. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreement with its Sub-subcontractors.

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

5.1.8 Contractor shall not permit its Subcontractor to subcontract work without the express written approval of the Contracting Officer or designated representatives.

5.1.9 The Contractor and all Subcontractors, agree that, in the employment of both skilled and unskilled labor, preference shall be given to residents of the State of New Jersey, if such labor force is available.

5.1.10 Approval by the Contracting Officer or its authorized representatives of a Subcontractor or material supplier shall not relieve the Contractor or the Subcontractor or material supplier of the responsibility of complying with all provisions of the Contract Documents. The approval of a Subcontractor does not imply approval of any material, equipment or supplies.

5.1.11 Nothing contained in the Contract Documents shall require the Contractor to submit subcontractor

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change order proposals to the College for review if rejected by the Contractor.



## **ARTICLE 6**

### **SPECIAL REQUIREMENTS**

#### **6.1 Construction Access Limitations**

6.1.1 Contractor is only permitted in the designated construction areas and is not permitted to walk the building or to use building bathrooms. Contractor is to provide a temporary bathroom facility for its own use and placed at a location approved by the Construction Manager.

#### **6.2 Equipment/Material Loading and Debris Removal**

6.2.1 Material and equipment loading/unloading can only occur between the hours of 6:00 am and 8:00 am, Monday through Friday, and/or anytime on the weekends. No vehicles are permitted in the front or back of the buildings after 8:00 am, Monday through Friday.

6.2.2 Dumpsters cannot be located within 15' of a building when left overnight. The Contractor shall install dumpsters within this limit, but the dumpsters must be moved to meet this requirement before the Contractor leaves the site for the day.

6.2.3 All debris removal from the building will be done from a chute or equipment. Unauthorized debris removal will require immediate shut down of the operation.

#### **6.3 Exterior Overhead Protection**

6.3.1 The Contractor shall install overhead protection at all building entrances/exits regardless if they are in the construction site or not. The overhead protection shall extend 5' on each side of the door opening and extend 10' away from the opening. Contractor is to maintain this protection throughout construction.

#### **6.4 Contractor and Subcontractor Identification**

6.4.1 The Contractor shall employ an identification program for all workers onsite. Acceptable means of identification can be badges, company shirts, or identification clearly marked on hard hats. The Contractor must enforce this daily or it may result in workers being removed from the site.

#### **6.5 Campus Dining Facilities**

6.5.1 The campus dining facilities are off limits to the Contractor and subcontractors. The College does allow food carting services on campus for construction projects.

#### **6.6 No Smoking**

6.6.1 There is NO SMOKING permitted in existing buildings or in new construction areas. Smoking areas are to be within the site, but not immediately adjacent to buildings.

#### **6.7 Contractor Parking**

6.7.1 Contractor parking will only be allowed in general parking lot D-3 and in general parking lot across from the campus (near the tennis courts and ball fields). Parking at the buildings is prohibited.

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6.7.2 The Contractor shall provide the necessary means to transport workers from the lots to the site if needed.

6.7.3 The Contractor shall provide garbage cans at all areas and be responsible for cleanup of these areas.

6.7.4 The Contractor shall be responsible for daily enforcement of these parking requirements. The College will provide parking passes to be distributed to all workers for the project. If the Contractor fails to enforce these parking requirements, the College will provide campus security at each parking lot on campus to prevent unauthorized parking of construction workers. The cost of these provisions will be deducted from the Contractors contract amount through a change order.

## **6.8 Live Site Web Camera System**

6.8.1 NOT USED

## **6.9 Elevator Use for the College**

6.9.1 NOT USED

## **6.10 Utility Survey Prior to Excavation and Cutting**

6.10.1 Prior to saw cutting any concrete floor, Contractor shall infrared scan proposed areas to identify any utilities under or in the slab. Identified utilities are to be marked and reviewed with the Construction Manager prior to any saw cutting.

## **6.11 Building Enclosure**

6.11.1 The Contractor shall maintain the buildings in a weather tight condition throughout the construction period. The Contractor shall take all precautions necessary to protect the building during the construction period. This shall include the following, but not limited to temporary exterior enclosures, temporary roofing, temporary doors / windows, etc. At no point will the existing building be left susceptible to weather conditions at the end of a workday regardless of the forecast. The use of temporary tarps for this requirement will not be permitted.

## **6.12 Commissioning**

6.12.1 NOT USED

## **6.13 Hot Work Permits**

6.13.1 The Contractor will be required to file hot work permits for all hot work performed in an existing College building. The Construction Manager will provide the necessary forms for use by the Contractor. All hot work will not be permitted until hot work permits are approved by the College.

## **6.14 Excess and Stored Soil**

6.14.1 The Contractor is responsible to remove from the College all excess soil not used for the Work. Removal shall also include any boulders uncovered and in the footprint of the building and/or utilities.

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6.15.2 The Contractor is responsible to maintain the integrity of stored soil onsite for use for the Work. If the Construction Manager deems that adequate protection was not provided which causes the soil to be rejected by the testing agency, the Contractor shall be required to remove all soil and import soil as required to complete the Work at no cost to the College.

## **6.16 Concrete Slabs**

6.16.1 The Contractor shall provide a floor levelness survey of all new concrete slabs placed by a licensed surveyor. Should the survey confirm that areas do not meet industry tolerances, the Contractor will be required to apply self leveling materials to bring the areas to industry tolerances prior to partition construction. This survey shall be completed immediately after placement of the slabs and provided within two (2) working days after the survey.

## **ARTICLE 7**

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## **TEMPORARY FACILITIES, UTILITIES AND SERVICES**

### **7.1 Field Offices**

7.1.1 The Contractor shall provide and maintain during construction a suitable weather-tight insulated field office conveniently located for reception and continuous use and shall maintain therein a complete set of Contract Documents including plans, specifications, CPM network diagrams, change orders, logs and other details and correspondence.

7.1.2 The Contractor shall be responsible to provide utilities to the trailer including power, sanitary, and telecommunications. The College will make available phone and data service, but the Contractor must install all equipment and wiring. If the Contractor elects to use the College's phone system, the Contractor shall reimburse the College for phone charges.

7.1.3 The Contractor is responsible for filing and paying for all required permit applications with the Department of Community Affairs for the office trailers and utilities.

### **7.2 Storage Sheds, Tool Sheds, Shops, Employees Sheds**

7.2.1 The Contractor shall provide and maintain, for its own use, and as each deems 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. Rooms in the building may be used as shops and storerooms, with the approval of the Construction Manager. The Contractor making use of these areas shall be responsible for correcting defects and damage caused by such use and for keeping these areas clear and clean.

### **7.3 Site Logistics**

7.3.1 The Contractor shall be responsible for providing for its own requirements within the contract limit lines. The Contractor shall locate these areas, to suit project requirements, with the Construction Manager's concurrence.

### **7.4 Temporary Toilet Facilities**

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

7.4.2 Remove units from Site at completion of Work, when so directed.

7.4.3 Workmen are not to use the finished bathroom and toilet facilities in the project buildings. If the Construction Manager observes this to be a constant reoccurrence, offenders will be removed from site. In addition, the Contractor will be required to provide temporary facilities on each floor.

### **7.5 Temporary Water**

7.5.1 The Contractor shall provide, protect and maintain an adequate valved water supplies for use on the project during the period of construction, either by means of the permanent water supply line, or by the installation of a temporary water supply line. All costs in providing water other than the cost of the water itself, will be borne by the

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Contractor.

7.5.2 Temporary water will be provided by the College at no charge to the Contractor, provided and to the extent it may be existing and available at the site immediately prior to commencement of and during construction. It is the obligation of the Contractor requiring temporary facilities to investigate and make specific arrangements with the College for such facilities and to include in its proposal the cost of any additional facilities the Contractor may require for proper conduct of its Work.

7.5.3 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 its cost and expense.

## **7.6 Temporary Light and Power**

7.6.1 The Contractor shall extend electrical service to the building or buildings from locations approved by the College or its authorized representative. Temporary electrical service shall be independent of the existing permanent service. Temporary light and power installations, wiring, and miscellaneous electrical hardware must meet the Electric Code. Electrical characteristics shall be provided to meet all temporary light and power reasonably required as herein and hereinafter specified. The Contractor shall provide the necessary distributing facilities and shall pay the cost of running temporary services from the nearest utility company power pole. All costs shall be included in its bid.

7.6.2 The College will provide electric to the Contractor for temporary use if existing service is available on campus. If service is not available and service needs to be provided by the local utility company, the Contractor is responsible for all costs billed by the local utility company.

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

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

7.6.5 The Contractor shall install occupancy sensors on all temporary lighting.

## **7.7 Temporary Heat, Cooling and Dehumidification**

7.7.1 The Contractor shall provide, protect, and maintain all measures to provide temporary heating, cooling, and/or dehumidification so that the work can progress without delay.

7.7.2 The Contractor shall not assume that the permanent building heating, cooling, and/or dehumidification system or any part thereof will be available for furnishing temporary heat, cooling, or dehumidification. The Contractor's base bid price shall therefore include the cost of all equipment necessary for providing temporary heat, cooling, and/or dehumidification as required under these specifications and guidelines required by material manufacturers.

7.7.3 All heating equipment shall be NFPA approved and connected to approved 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

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recognized testing laboratory and must be equipped with a positive shut-off safety valve. Cylinders and heaters shall stand at least 6 feet apart and be connected with two (2) braid neoprene hoses that will withstand 250 psi test pressure.

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

7.7.5 If the permanent building heating, cooling, and/or dehumidification system or any part thereof is available for use to provide service during construction and use is approved by the Construction Manager, the system shall be maintained by the Contractor until turnover of the systems to the College. All systems shall be cleaned and filters changed prior to acceptance by the College.

## **7.8 Temporary Enclosures and Partitions**

7.8.1 Whenever necessary, in order to maintain proper temperatures or weather tight conditions 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 doors shall be provided at door openings.

7.8.2 The Contractor, at its expense, shall provide and maintain necessary temporary dust proof partitions around areas of work in any existing building or in new building areas as directed by the Construction Manager.

## **7.9 Temporary Utility Capping**

7.9.1 Cap all incomplete lines, ducts, conduits, openings, etc., until ready for final connection, after which they shall be thoroughly cleaned and left unobstructed. Failure to perform this capping will result in the Contractor flushing and/or cleaning the material at the Contractors expense as directed by the Construction Manager.

## **7.10 Temporary Construction Fencing**

7.10.1 The Contractor shall install 8' high construction fencing with privacy screening around the construction site or as detailed elsewhere in the Contract Documents. The construction fencing shall be installed with driven posts into the ground. Existing utilities are to be surveyed prior to the Work.

7.10.2 The Contractor shall establish all pedestrian and vehicle entrances/exits as required by the Contractor located by the Contractor prior to installing fence posts.

7.10.3 The Contractor shall maintain the construction fencing daily which includes replacement of damaged fencing and privacy screening when necessary or directed by the Construction Manager.

7.10.4 The site shall be secured at the end of each workday. Copies of padlock keys shall be provided to the Construction Manager and campus security.

## **7.11 Dumpsters**

7.11.1 Dumpsters cannot be placed within 15' of the building at any time. Contractor shall make provisions in their bid for costs related to equipment or scaffolding for dumpster chutes.

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## **ARTICLE 8**

### **RELATIONSHIP BETWEEN THE CONTRACTOR AND OTHER COLLEGE CONTRACTORS**

#### **8.1 College's Right to Perform Work**

8.1.1 The College 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 other contractors, the installation of which may affect the Work in its Contract, and should the same be imperfect, incorrect or insecure, he shall notify the Contracting Officer immediately in order that the same be rectified.

#### **8.2 Mutual Responsibility**

8.2.1 The Contractor shall afford the Contracting Officer and other contractors under contract with the College reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work. Each contractor shall coordinate its Work with adjacent Work and with other trades, so that no portion of the Work is delayed or not properly undertaken due to such lack or failure of cooperation.

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

8.2.3 The College 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 College does not assume responsibility for the acts or omission of any contractors.

8.2.4 Before completion of the Work contemplated herein, should it be deemed necessary by the College 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 College 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 should the work impact the critical path of the project, the Contractor shall make no claim for additional costs to the College, as a result of such Work as is contemplated herein.

8.2.5 The Contracting Officer, or its authorized representative, 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 Contracting Officer reserves the right, at its option, to employ the services of a professional consultant to evaluate any phase of the Work he may deem to be in the best interest of the College but no evaluation performed shall in any way relieve the Contractor of its responsibilities under the contract. The Contractor shall cooperate with the consultants and provide access to the Work and facilities for inspection. Should any portion of the Work or material be found deficient or defective, the Contractor will pay the applicable fees of such consultant and be responsible for replacing the deficient or defective Work as required by the provisions stated elsewhere herein.

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

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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 Construction Manager and the Contracting Officer, or shall reimburse the Contractor whose Work he has destroyed, damaged or disturbed for the expense of replacing such Work.

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## **ARTICLE 9**

### **TIME**

#### **9.1 Notice to Proceed**

9.1.1 Contract time shall commence on the date of receipt by the Contractor of a written Notice to Proceed issued by the Contracting Officer. The Contractor agrees that contract administration will commence immediately and site work will commence no later than fourteen (14) calendar days after receipt of the Notice to Proceed. Once the proper contract documents are provided by the Contractor and contract award meeting conducted, the formal Contract will be executed by the College.

#### **9.2 Adjustment of Contractor Completion Time**

9.2.1 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 any Contract Completion Date, the Contractor shall furnish such justification and supporting evidence that the College or the Construction Manager requires to evaluate the Contractor's request. The Contracting Officer shall then make its finding of fact and advise the Contractor in writing thereof. If the Contracting Officer finds that the Contractor is entitled to any extension of any Contract Completion Date under the provisions of this Contract, the determination as to the total number of days extension shall be based upon the currently approved computer-produced calendar-dated schedule and on all data relevant to the extension. Such data will be included in the next updating of the schedule.

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

- (1) A total project time extension may be issued if delays which are determined to be beyond the control of the Contractor affect the main project critical path shown on the CPM Schedule thereby directly extending the final project completion date.
- (2) A concurrent project time extension may be issued 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 issued, it will over that time which, according to the CPM Consultant's analysis, would have been lost due to the specific issues cited, if no other delays had occurred. A concurrent project time extension will also excuse the Contractor from responsibility for liquidated damages for the period of time extension.

9.2.3 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 CPM schedule is not for the exclusive use of either the Contractor or the College. 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

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which may arise during construction. The Contractor specifically agrees that float time may be used by the College or its Representatives or Consultants in conjunction with their review 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 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 initial approved CPM schedule, regardless of the justifiability or any delaying factors which might have resulted in elimination of float which was originally available for the activity. If the Contractor refuses to perform work which is available to them, the Contracting Officer may, regardless of the float shown to be available for the work, consider the Contractor to be in violation of the Contract Documents. In such instances, the Contracting Officer may, without prejudice to any right or remedy, and after giving the Contractor and its 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 its 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 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. .

- (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

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critical path.

- (4) The Contractor acknowledges and agrees that actual delays to activities which, according to the computer-produced calendar-dated 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 therein.
- (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 CPM schedule.

Where the College 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 CPM schedule shows two (2) or more concurrent delays, with one (1) analyzed to be the responsibility of the College and the other analyzed to be the responsibility of the Contractor, a 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 time extension will only be considered for that portion of time by which the excusable delay exceeds all concurrent non-College 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 CPM Schedule shows concurrent delays with some excusable delays and some the fault of the Contractor, and if the Contractor-caused delays are analyzed to be the main determination impact to the main 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 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 must be specifically identified with all applicable impact dates.

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### **9.3 Delays - Damages Against the College - Limitations**

9.3.1 The College shall have the right to defer the beginning or to suspend the whole or any part of the Work herein contracted to be done whenever, in the opinion of the Contracting Officer, it may be necessary or expedient for the College to do so. And if the Contractor be delayed in the completion of the Work by act, neglect or default of the College, or the Architect/Engineer, or of any other Contractor employed by the College upon the work, or by change orders 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 Contracting Officer shall decide to justify the delay, then for all such delays and suspensions the Contractor shall be allowed one day addition to the time herein stated for each and every day of such delay so caused in the completion of the work, the same to be determined by the Contracting Officer, and a similar allowance of extra time will be made for such other delays as the Contracting Officer may find to have been caused by the College. No such extension shall be made for any one or more of such delays unless within three (3) working days after the beginning of such delay a written request for additional time shall be filed with the Contracting Officer. .

9.3.2 The Contractor may not assert claims against the College for extra compensation by reason of any delays in its work resulting from acts or omissions of any third parties irrespective of extensions granted under the contract, including but not limited to delays caused by third parties such as the project architect, other contractors, utilities and governmental authorities.

9.3.3 The College shall only be required to pay additional compensation for delays caused by the College itself, and only to the extent required by N.J.S.A. 2A:58B-3 (delayed performance caused by the College's own negligence, bad faith, active interference or other tortious conduct, but not for reasons contemplated by the parties and not for the negligence of others including others under contract with the College on the theory that such negligence should be imputed to the College). The College shall not be liable for any period of delay when there is a concurrent delay for which it is not responsible.

9.3.4 When the Contractor is entitled to extra compensation for delay under the contract and general conditions, it can only assert claims for extra costs at the job site, and may not assert claims for extra costs for home office expenses, home office overhead, lost profit or consequential losses. Any additional compensation under this paragraph shall also be subject to the provisions in the contract and general conditions regarding claims, and the provisions in the contract and general conditions regarding the maintenance and availability of cost records.

### **9.4 Liquidated Damages**

9.4.1 In the event of the failure of the Contractor to complete the said work within the time stated in its proposal, the Contractor shall be liable to the College for EACH Substantial Completion milestone missed in the sum of twenty five hundred dollars (\$2,500.00) dollars for each and every calendar day that the said work shall be and remain uncompleted, which said sum shall be treated as liquidated damages and not a penalty, for the loss to the College 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 College 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 College may incur by reason of such delay, such as, but not limited to, added costs of the project and the cost of furnishing temporary services, if any. Any such items for which the Contractor is liable may be deducted by the College from any monies due or to become due to the Contractor.

9.4.2 It is hereby understood and mutually agreed by and between the Contractor and the College 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.

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9.4.3 The Contractor agrees that said work shall be prosecuted regularly, diligently, and uninterruptedly at such rate of progress as will insure full completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and the College 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 Contracting Officer, then the Contractor does hereby agree, as a part consideration for the awarding of this Contract, to pay the College the amount specified in paragraph 9.4.1 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.

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

9.4.5 It is further agreed that Time is Of the Essence of each and every portion of this contract and of the specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the Contract an additional time is allowed for the completion of any Work the new time limit fixed by such extension should be of the essence of this Contract.

9.4.6 The Contractor shall not be charged with liquidated damages, or any excess cost when the College determines that the Contractor is without fault and the Contractor's reasons for the time extension are acceptable to the College; 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:

- (1) To any preference, priority or allocation order duly issued by the Government.
- (2) 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 College, acts of another Contractor in the performance of the Contract with the College which acts are contrary to the terms of such Contract, fires, floods, epidemics, quarantine restrictions, freight embargoes and severe weather; or
- (3) To any delays of Subcontractors or suppliers occasioned by any of the causes specified in sub-sections a. and b. of this article.

9.4.7 The Contractor shall, within three (3) working days from the beginning of such delay, unless the Contracting Officer shall grant a further period of time prior to the date of final settlement of the Contract, notify the College in writing, of the causes of the delay. The Contracting Officer shall first ascertain the facts and the extent of the delay and shall notify the Contractor within a reasonable time that good cause has been shown to warrant the granting of such extension. Should the Contractor fail to notify the College within the three (3) working days from the beginning of such delay, the Contractor will not be entitled to an extension of time.

## **9.5 Contracting Officer's Right to Accelerate**

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9.5.1 The Contracting Officer may order and direct the Contractor to accelerate the Work at any particular place or places by increasing its forces, working overtime and/or on Saturdays, Sundays and holidays as may be required to complete certain Project areas and/or complete in advance of the Substantial Completion dates. The Cost of such acceleration efforts shall be paid by the College.

## **9.6 Substantial Completion**

9.6.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the College can occupy or utilize the Work for its intended use.

9.6.2 When the Work or designated portion thereof is deemed substantially complete by the Architect and Construction Manager, the Architect will prepare a Certificate of Substantial Completion, which shall state the Architect's recommended date of Substantial Completion, together with the Architect's recommended division of responsibilities, if any, of the College, Contractor, Architect, and Construction Manager, for security, maintenance, heat, utilities, damage to the Work and insurance. The Architect, Construction Manager, and the College will jointly review the Certificate of Substantial Completion prepared by the Architect and agree on the date of Substantial Completion. Warranties required by the Contract Documents shall not commence on the date of Substantial Completion, but instead will commence upon final acceptance by the College.

9.6.3 The Certificate of Substantial Completion shall be submitted to the College and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the College shall make a partial payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

9.6.4 Upon final acceptance, a final inspection will be made by the materials manufacturer's representative, the Contractor, the Construction Manager, and the Architect. No payment will be authorized for work done until such inspection has been made, and all work is found to have been performed in accordance with the specifications and to the satisfaction of the College.

## **ARTICLE 10**

### **PAYMENTS**

#### **10.1 Contractor Payments from the College**

10.1.1 The College will make progress payments monthly as the work proceeds, or at more frequent intervals as approved by the College. The College will endeavor to approve payment twenty (20) calendar days after receipt of a fully executed application for payment with all required attachments as required in the Contract Documents, and provide to the Contractor a written statement of the amount withheld and the reason for withholding payment, before the end of the 20-day period,. The College shall pay the amount approved and due to the Contractor for each progress payment not more than 30 calendar days after the billing date.

10.1.2 The Contractor shall furnish schedule of values in accordance with the Contract requirements. The schedule of values, as approved, shall be used as a basis for the Contractor's estimates for progress payments. Approval by the Contracting Officer does not constitute acceptance of the allocability and allowability of costs to a specific element of work. The Contractor is cautioned that no payment requests shall be approved until the schedule of values has been approved in writing, by the Contracting Officer or its authorized representative.

10.1.3 In the preparation of applications for payment, the Contracting Officer, at its discretion, may authorize payment for material and equipment stored onsite. Material delivered to the Contractor at locations other than the site will not be approved for payment.

10.1.4 The College will not approve advance payments if requested by subcontractors or suppliers. Any advance payments required by subcontractors or suppliers shall be made by the Contractor and not passed onto the College.

10.1.5 In making such progress payments for Work, the College will retain 2% of the approved completed and stored to date amount and shall be deposited in an interest bearing account with a bank; and shall be released and paid to the contractor within 45 days of final acceptance of the project by the College as per PL. 2013, c. 147. If the Contractor elects to provide a retainage bond in the amount of 2% of the total contract value, the 2% retainage will not be retained by the College. All material and work covered by progress payments made shall thereupon become the sole property of the College, 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 right of the College to require the fulfillment of all of the terms and conditions of the Contract.

10.1.6 If performance and payment bonds are required under this contract, the College shall pay to the Contractor the total premiums 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, when applicable), (2) furnished evidence of full payment to the surety company, and (3) submitted a request for such payment. The payment by the College 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.

10.1.7 Upon substantial completion and acceptance of all work, the amount due the Contractor under this contract, including retainage, shall be paid upon satisfactory completion, by the Contractor, of all contract close-out requirements, completion of a College audit on all contract values and payments, and after the Contractor shall have furnished the College with a release of claims against the College, arising by virtue of this contract, other than claims in

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stated amounts as may be specifically excepted by the Contractor from the release.

10.1.8 If, for any reason, the Contractor refuses final payment, the project shall be closed out by the College unilaterally processing a Final Acceptance Certificate. All residual funds will be held in escrow by the College until all claims of the College and all Contractors are satisfied.

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

10.1.10 Approval of the Contractor's application for payment will constitute a representation by the Construction Manager to the Contracting Officer, based on its inspections at the site and data contained in the application for payment, that the Work has progressed to the point indicated; that, to the best of its knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents; and that the Contractor is entitled to payment in the amount certified. By approval of the application for payment, however the Construction Manager shall not thereby be deemed to represent that he has made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, or that he has reviewed the construction means, methods, techniques, sequences or procedures, or that he has made any examination to ascertain how and for what purpose the Contractor has used the monies previously paid on account of the Contract Sum.

10.1.11 Pursuant to N.J.S.A. 54:49-19, and notwithstanding any provision of the law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of State government, is entitled to payment for those goods or services at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to setoff that taxpayer's or shareholder's share of the payment due the taxpayer, partnership, or S corporation. The amount set off shall not allow for the deduction of any expenses or other deductions which might be attributable to the taxpayer, partner or shareholder subject to set-off under this act.

10.1.12 The Director of the Division of Taxation shall give notice to the set-off to the taxpayer and provide an opportunity for a hearing within thirty (30) days of such notice under the procedures for protests established under R.S. 54:49-18. No requests for conference, protest, or subsequent appeal to the Tax Court from any protest under this section shall stay the collection of the indebtedness. Interest that may be payable by the State, pursuant to P.L. 1987, c.184 (c.52:32-32 et seq.), to the taxpayer shall be stayed.

10.1.13 The Contractor shall pay each Subcontractor, no later than seven calendar days after receipt of payment from the College the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

10.1.14 The Contracting Officer will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the College, Construction Manager and Architect on account of portions of the Work done by such Subcontractor.

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10.1.15 The Contracting Officer has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the College to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven calendar days, the College shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the College, Construction Manager nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law.

10.1.16 The Contracting Officer or its authorized representatives may withhold payments in whole or in part, to the extent reasonably necessary to protect the College, if in the Contracting Officer's or its authorized representatives opinion the representations to the College required by the Contract Documents cannot be made. If the Contracting Officer or its authorized representatives are unable to certify payment in the amount of the application for payment, the Construction Manager will notify the Contractor and The College. If the Contractor, Construction Manager and Architect cannot agree on a revised amount, the Contracting Officer or its authorized representatives will promptly issue an application for payment for the amount for which the Contracting Officer or its authorized representatives are able to make such representations to the College. The Contracting Officer or its authorized representatives may also withhold payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a payment previously issued, to such extent as may be necessary in the Contractor Officer's or authorized representatives opinion to protect the College from loss for which the Contractor is responsible, including loss resulting from the acts and omissions because of

- (1) defective Work not remedied;
- (2) third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the College is provided by the Contractor;
- (3) failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- (4) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- (5) damage to the College or a separate contractor;
- (6) reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- (7) repeated failure to carry out the Work in accordance with the Contract Documents.

When the above reasons for withholding certification are removed, payments will be made for amounts previously withheld.

10.1.17 The Contracting Officer or its authorized representatives may reduce line items previously approved and paid should it be found that the work represented as complete is rejected or not complete. Held retainage will not serve for these discoveries.

10.1.18 If the Contracting Officer withholds certification for payment under this article, the College may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered.

10.1.19 If closeout requirements are not delivered within the time specified by this contract or are deficient upon delivery, the Contracting Officer, at its discretion, will withhold from each invoice a percentage (in addition to any other retainage required by the Contract) or the contract price in accordance with the table below. The withholding of any sums pursuant to this Article shall not be construed as, or constitute in any manner, a waiver by the College of the Contractor's obligation to furnish the data required under this contract. In the event the Contractor fails to furnish these

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items, the College 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.

<u>When total contract amount is</u>	<u>Percentage to be withheld is</u>
Less than \$250,000.....	5% of total contract
\$250,000 to \$1,000,000.....	2% of total contract
Over \$1,000,000.....	1/2% of total contract

**10.2 Final Application for Payment**

10.2.1 Upon completion of the Work, the Contractor shall forward to the Contracting Officer a written notice that the Work is ready for final inspection and acceptance and shall also forward to the Contracting Officer a final Contractor’s Application for Payment. Upon receipt, the Contracting Officer and its authorized representatives will evaluate the completion of Work of the Contractor and then forward the notice and Application, with recommendations, to the Architect who will promptly make such inspection. When the Architect, finds the Work acceptable under the Contract Documents and the Contract fully performed, the Contracting Officer will promptly issue a final application for payment stating that to the best of their knowledge, information and belief, and on the basis of their on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Application for Payment is due and payable.

10.2.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Contracting Officer (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the College or the College’s property might be responsible or encumbered (less amounts withheld by the College) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days’ prior written notice has been given to the College, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the College, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of any and all claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the College.

**10.3 Interest**

10.3.1 Interest shall be paid on the amount due the Contractor pursuant to a properly executed State invoice if a required payment is not made by the College by 30 calendar days after the billing date as provided in Section 10.1.1 above...

10.3.2 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 equal to the prime rate plus 1%, pursuant to the New Jersey Prompt Payment Act, N.J.S.A. 2A:30A-2(c).

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

10.3.4 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.

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10.3.5 The State Treasurer shall have the right to waive the interest payment for delinquencies due to circumstances beyond the control of the Contracting Officer (or other State or College representatives involved in the processing of contractor invoices) including but not limited to strikes and natural disasters.,

10.3.6 Nothing in this provision nor the New Jersey Prompt Payment Act shall be construed as permitting the accrual of prejudgment interest in the case of a disputed contract for which a notice of claim has been filed pursuant to N.J.S.A. 59:13-1 et reg., except as provided in N.J.S.A. 59:13-8.

#### **10.4 Payment Disputes - Claims Against the College**

10.4.1 All claims by the Contractor against the College arising under this Contract shall be governed by the N.J. Contractual Liability Act, N.J.S.A. 59:13-1 et seq., including the notice of claims provisions therein (see N.J.S.A. 59:13-5).

10.4.2 Where a timely notice of claim has been submitted to the College by the Contractor pursuant to N.J.S.A. 59:13-5, the College and the Contractor agree to submit the dispute to a mutually agreed upon mediator for mediation as provided by N.J.S.A. 2A:23C-2, with the mediator's fees to be shared equally among the mediation parties. This alternative dispute resolution process is adopted by the College and the Contractor in compliance with the N.J. Prompt Payment Act, N.J.S.A 2A:30A-2(f).

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## **ARTICLE 11**

### **UNCOVERING AND CONSTRUCTION OF WORK**

#### **11.1 Uncovering of Work**

11.1.1 If any portion of the Work is covered prior to inspection conducted by the Contracting Officer, the Architect/Engineer, governing authorities, material testing agencies, or the Construction Manager, 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 Contracting Officer or the Construction Manager 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 Contracting Officer, the Architect/Engineer, or the Construction Manager 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 College. 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 College, in which event the Contracting Officer 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 Contracting Officer, the Architect/Engineer, governing authorities, material testing agencies, or the Construction Manager 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 but not limited to, 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 Contracting Officer.

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

11.2.4 If the Contractor does not proceed with the correction of such defective or nonconforming work within a reasonable time, fixed by written notice from the Contracting Officer, the Architect/Engineer, governing authorities, material testing agencies, or the Construction Manager, the Contracting Officer 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) working days thereafter, the Contracting Officer may upon ten (10) working 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 its Surety shall pay the difference to the College.

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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**

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

## **ARTICLE 12**

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

#### **12.1 Safety Precautions and Programs**

12.1.1 The Contractor shall submit a site specific safety program to the Construction Manager within (21) calendar days of the issuance of the Notice to Proceed. The program, which shall include details commensurate with the Work to be performed, must clearly describe the Contractor's commitments for meeting its obligations to provide a safe and healthy construction site for all construction workers, and its obligations to protect vendors, and visitors. The program shall reference OSHA standards, and any other rules or regulations applicable to the Project, including state and local requirements.

12.1.2 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. The Contractor shall designate a responsible member of its 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 College and the Construction Manager. In addition, the Contractor at its cost shall have an independent safety inspection firm perform inspections on a bi-weekly basis. All inspection reports and safety violations shall be provided to the College.

#### **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 and all other 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 its Subcontractors or Sub-subcontractors; and
- c. Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

12.2.2 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 All workers on the project site are to wear hard hats and safety glasses, no exceptions. A worker will be given one (1) warning for a violation of this requirement. Should the same worker be observed again violating this requirement, the Contractor will be required to remove the worker from site permanently.

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

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12.2.5 When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the Work, the contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.

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

12.2.7 The Contractor shall promptly remedy all damage or loss to any property caused in whole or in part by the Contractor, any of its 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 College 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 its 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 its discretion, to prevent threatening injury, damage or loss. In such case, he shall immediately notify the Contracting Officer, through the Construction Manager, of the action taken.

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## ARTICLE 13

### INSURANCE AND INDEMNITY

#### 13.1 Contractor Insurance Requirements

13.1.1 The Contractor shall secure and maintain in force for the term of the Contract, insurance coverage provided herein. All insurance coverage is subject to the approval of the College and shall be issued by an insurance company authorized to do business in the State of New Jersey and which maintains an A.M. Best rating of A- (VII) or better. The Contractor shall provide the College 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 College and ten (10) days written notice for non-payment of premium. All insurance required herein shall contain a waiver of subrogation in favor of the College. The CGL insurance required herein, including independent contractors, products/completed operations, contractual and professional liabilities, shall name Ramapo College of New Jersey, the State of New Jersey, the New Jersey Educational Facilities Authority, the Architect/Engineer and Construction Manager as additionally insured.

13.1.2 Commercial General Liability insurance written on an occurrence form including independent contractor liability, products/completed operations liability, contractual liability, covering but not limited to the liability assumed under the indemnification provisions of this contract. Coverage for bodily injury and property damage claims arising out of the professional acts of the general contractor and subcontractors shall also be included. The policy shall not include any endorsement that restricts or reduces coverage as provided by the ISO CG0001 form without the approval of the College. The minimum limits of liability shall not be less than a combined single limit of two million dollars (\$2,000,000) 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.

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

13.1.4 Worker's Compensation Insurance applicable to the laws of the State of New Jersey and other State or Federal jurisdiction required to protect the employees of the Contractor and any Subcontractor who will be engaged in the performance of this Contract. The certificate must so indicate that no proprietor, partner, executive officer or member is excluded. This insurance shall include Employers' Liability Protection with a limit of liability not less than one million dollars (\$1,000,000) bodily injury, each occurrence, one million dollars (\$1,000,000) disease, each employee, and one million dollars (\$1,000,000) disease, aggregate limit. Including the employer's liability insurance under the umbrella insurance can satisfy the limit requirements.

13.1.5 The Contractor shall obtain and maintain a separate Colleges and Contractor's Protective Liability Insurance Policy for the same limits of liability as specified for the Commercial General Liability Insurance in the name of the College, the State of New Jersey and the New Jersey Educational Facilities Authority. The Architect/Engineer, and the Construction Manager are to be the named as additional insured. The policy shall be maintained in force for the term of the Project or one year, whichever is longer.

13.1.6 Excess Liability, umbrella insurance form, applying excess of primary to the commercial general liability, commercial automobile liability and employer's liability insurance shall be provided with minimum limits of 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.

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13.1.7 The contractor shall require all subcontractors to comply with all of the insurance requirements described above. It is a contractor option to determine the amount of 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 College upon request.

13.1.8 The Contractor shall submit a separate declaration from the commercial general liability and excess umbrella insurance carriers specifically confirming that there are no exclusions within each policy for roofing replacement work.

## **13.2 Insurance to be carried by The College**

13.2.1 The College shall provide insurance protection in the form of a Builders Risk Insurance or similar Policy upon the structure for which the Work on this Contract is to be done. The structure will be insured for 100% of the insurable replacement value thereof including materials, owned by the College, in place or to be used as part of the permanent construction including surplus materials.

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

13.2.3 The insurance procured by the College 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 College, in writing and take any other appropriate steps as may be required under the standard Builder's Risk Insurance Policy in effect in the event of any loss. Prior to the acceptance of the building by the College, the Contractor shall, at the College'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 College.

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

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## **ARTICLE 14**

### **CHANGES IN THE WORK**

#### **14.1 Changes to Contract**

14.1.1 The Contracting Officer 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 Contract Documents;
- (2) In the method or manner of performance of the work;
- (3) In the College furnished facilities, equipment, materials, services, or site;  
or
- (4) Directing acceleration in the performance of the work.

#### **14.2 Processing of Contractor Requests for Equitable Adjustment**

14.2.1 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. The Contractor will not be permitted to submit a change order proposal with any language reserving the Contractor's right to submit additional costs or time impacts related to a change. Such language will void the change order proposal and will be returned to the Contractor without review.

14.2.2 The Contractor, in connection with any request for an equitable adjustment, shall furnish a price breakdown, itemized as required by the College. Unless otherwise directed, the breakdown shall cover all work involved in the change whether such work was deleted, added or changed. The breakdown shall be in sufficient detail to permit an analysis of all material, labor, equipment, indirect, and subcontractor costs. Any amount proposed for subcontracts shall be supported by a similar price breakdown. In addition, if the request includes a time extension, a justification shall also be furnished. The request, together with the price breakdown and time extension justification, shall be furnished by the date specified in the Contract Documents. It is the Contractor's responsibility to include all direct and indirect work related to a change in the request. If the Contractor fails to identify work in the request that is later discovered as a result of the change, the work will be completed at no additional cost to the College.

14.2.3 If a change order proposal is submitted without a schedule extension request and documentation justifying the request, the College will consider the change in work to not have a schedule impact. The Contractor will not have a right to request adjustment of the Contract time after a change order has been executed by the College for the work.

14.2.4 If a change is submitted for work performed without prior notification to the College, the College is not responsible for the cost of the change since the avoidance of such costs was not afforded to the College.

14.2.5 Contractor change order requests are to be submitted on the provided form for approval by the College and shall include the following components:

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1. Direct Materials – Direct material costs shall consist of actual cost of materials purchased by the Contractor. Contractors are to list all materials with quantities and unit prices along with bill of sale from the applicable vendor.
2. Direct Equipment – Rental and operating costs for equipment only, either rented or owned, by the Contractor. The equipment shall be listed with quantity of hours and hourly rate. For verification of the rate charged, the Contractor shall furnish a comparable rental rate from a vendor should the equipment be owned by the Contractor. Costs for operation will only be approved for actual operation for the approved change in work regardless on the time the equipment is onsite.
3. Direct Labor – The term direct labor shall include working foremen (non-working foremen are considered overhead), journeymen, apprentices, equipment operators, and/or laborers directly assigned to the approved change in work by the Contractor. The total hourly rate shall be calculated and include only the following:
  - a. Base hourly rate consistent with the requirements of the New Jersey Prevailing Wage Act law or local union hourly rates if the Contractor is union. If union, the Contractor must provide the local union bi-laws for confirmation of the hourly rate.
  - b. Labor burden shall only include social security and Medicare taxes, federal unemployment taxes, state unemployment taxes, and workman's compensation.
  - c. Fringe costs consistent with the requirements of the New Jersey Prevailing Wage Act law or local union. Fringe costs shall only include, if applicable, welfare, pension, annuity, and education/training benefits. Costs such as travel, small tools, vacation, consumables, as built, etc. are considered overhead costs. If union, the Contractor must provide the local union bi-laws for confirmation of fringe costs.
4. Indirect Costs – Included are costs which are neither direct construction material, equipment, and labor costs. Allowable indirect costs are for engineering if applicable, premium freight charges if approved by the College, and permits. No other indirect costs will be considered. Copies of invoices are to be provided for billing verification.
5. Contractor Markup - A markup of 10% shall be applied to the subtotal of items 1 through 4. This markup shall cover profit and overhead/general condition costs such as dumpsters, office personnel, project managers, field superintendents, field office and consumables, mailing, misc. reproduction, safety, temporary utilities, company vehicles and mileage, etc. related to self performed work. Costs not defined in items 1 through 5 are considered overhead. The 10% markup shall apply to deleted work as well.
6. Subcontracted Work – All subcontracted work shall be itemized similar to items 1 through 4 above. A markup of 10% shall be applied to the work performed by the Subcontractor. This markup shall cover profit, insurances, bonding, and overhead costs such as dumpsters, office personnel, project managers, field superintendents, field office and consumables, mailing, misc. reproduction, safety, temporary utilities, company vehicles and mileage, etc. related to self performed work. Costs not defined in items 1 through 4 are considered overhead. The 10% markup shall apply to deleted work as well. The Contractor agrees to incorporate this provision in each of its subcontracts.
7. Contractor Markup on Subcontracted Work – A markup of 5% shall be applied to the subtotal of subcontracted work only. This markup shall cover profit, insurances, bonding, and overhead/general condition costs related to subcontracted work such as dumpsters, office

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personnel, project managers, field superintendents, field office and consumables, mailing, misc. reproduction, safety, temporary utilities, and company vehicles and mileage, etc. The 5% markup shall apply to deleted work as well.

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

14.2.6 Where material and/or equipment is made obsolete and was not made part of the construction as a result of a change, the College can either take possession of the excess material and/or equipment or direct the Contractor to take possession. If the College elects to take possession of the excess material and/or equipment, the College will pay for the material and/or equipment costs related to the change. If the College refuses to take possession of the excess material and/or equipment, the College will be entitled to a credit for the excess material and/or equipment returned to the Contractor and will not be responsible for any restocking charges.

14.2.7 The Contractor must review submitted subcontractor change order proposals prior to submission to the College and make any corrections necessary. When the Contractor fails to review change order proposals and submits the proposals to the College with obvious accounting errors or if the work is clearly defined in the Contract Documents, the Contractor will be responsible for all costs incurred by the College for review time by its professionals. Submission of a change order proposal that contains falsified information, altered documents, or identifies costs in excess of the actual cost shall constitute a breach of this Contract.

14.2.8 In the instance of a change resulting in a deduction in the contract amount, the amount shall be based on actual cost of such Work and not the amount represented in the contractor's schedule of values.

14.2.9 At no time will the College or designated representatives review submitted change order proposals with the Contractor's subcontractors. All change order proposals will be reviewed and negotiated between the College or Construction Manager and the Contractor. It is the responsibility of the Contractor to review and negotiate subcontractor change order proposals without the presence of the College or Construction Manager.

14.2.10 Upon completion of work as directed in a construction change directive, the Contractor has fourteen (14) calendar days to submit a change order proposal. Failure to submit a change order proposal within this time frame waives the Contractor's right to recover costs incurred.

### **14.3 Remedies for Disputed Change Order Proposals**

14.3.1 When the Contractor and the College cannot reach an agreement on the cost of a change, the College has the right to direct the Contractor to proceed with the change in work on a "Time and Material" basis not to exceed the Contractor's proposed cost. The Contractor agrees that all work related to the change will be completed on this basis and the Contractor is not entitled to any costs above and beyond the proposed amount.

14.3.2 When the Contractor and Construction Manager disagree on a Contractor claimed contract document error and/or omission, the Contractor can request a hearing with the Contracting Officer. However, the Work must proceed as directed by the College without any impact to the project schedule. Upon such request, the Contracting Officer has thirty (30) calendar days to schedule the hearing. At this hearing, the Contractor shall provide sufficient documentation to support the Contractor's position in order for the Contracting Officer to render a decision. The Contracting Officer has fourteen (14) calendar days to render a decision. The Contracting Officer's decision is final.

14.3.3 The Contractor's refusal to perform the Work related to a change or a directive shall constitute a breach of this Contract.

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## **ARTICLE 15**

### **ASSIGNMENT OF ANTITRUST CLAIM(S)**

#### **15.1 Assignment of Antitrust Claim(s)**

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

In connection with this agreement, 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 its 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 any payment under any such claim or cause of action is made to the Contractor, it shall promptly pay over to the College the aliquot share thereof, if any, assigned to the College hereunder.

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## ARTICLE 16

### AFFIRMATIVE ACTION REQUIREMENTS

#### 16.1 Policy Statement

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

#### 16.2 Mandatory Affirmative Action Requirements

16.2.1 N.J.S.A. 10:5-33 and N.J.A.C. 17:27-3.5 require that during the performance of this contract, the contractor must agree as follows:

a) The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, 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 take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the 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 where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

16.2.2 N.J.A.C. 17:27-3.8 requires all contractors and subcontractors, if any, to further agree as follows; .  
1) When hiring or scheduling workers in each construction trade, the contractor or subcontractor

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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 Division may, in its discretion, exempt a contractor or subcontractor from compliance with the good faith procedures prescribed by (a)1 and 2 below, as long as the Division is satisfied that the contractor or subcontractor is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the Division 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:

- i. 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. 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 to 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 procedures prescribed under (a)2 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)1 above, or if the contractor does not have a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor agrees to take the following actions:

- i. To notify the public agency compliance officer, the Division, 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;
- ii. To notify any minority and women workers who have been listed with it as awaiting available vacancies;
- iii. 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;
- iv. To leave standing requests for additional referral of 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;
- v. If it is necessary to lay off any 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 chapter, as well as with applicable Federal and State court decisions;
- vi. To adhere to the following procedure when minority and women workers apply or are referred

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to the contractor or subcontractor:

- (1) The contractor or subcontractor shall interview the referred minority or women worker.
- (2) 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 as recognized by a union, apprentice program or a referral agency, provided the referral agency is acceptable to the Division. If necessary, the contractor or subcontractor shall consider the recruitment and hiring or scheduling of minority and women workers who qualify as trainees pursuant to these rules. All of these requirements, however, are limited by the provisions of (a)3 below.
- (3) The name of any interested woman or minority individual shall be maintained on a waiting list, and shall be considered for employment as described in (a)2vi(2) above, whenever vacancies occur. At the request of the Division, the contractor or subcontractor shall provide evidence of its good faith efforts to employ women and minorities from the list to fill vacancies.
- (4) If, for any reason, a 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 Division.

vii. 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 Division and submitted promptly to the Division upon request.

3) The contractor or subcontractor agrees that nothing contained in (a)2 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 county employment goal, the contractor or subcontractor shall consider for employment persons referred pursuant to (a)2 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 workers ratio specified in the applicable collective bargaining agreement, or in the absence of a collective bargaining agreement, exceeds the ratio established by practice in the area for said construction trade. Also, the contractor or subcontractor agrees that, in implementing the procedures of (a)2 above, it shall, where applicable, employ minority and women workers residing within the geographical jurisdiction of the union.

4) After notification of award, but prior to signing a construction contract, the contractor shall submit to the public agency compliance officer and the Division an initial project workforce report (Form AA201) electronically provided to the public agency by the Division, 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

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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.

- 16.2.3           The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the State Treasurer pursuant to N.J.S.A. 10:5-33, as amended and supplemented from time to time.

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