Ramapo College of New Jersey

Phase II Housing Rehabilitation

General Conditions

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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 Request: A request for equitable adjustment made by the Contractor in response to written direction by the Contracting Officer pursuant to Article 14 "Changes to Contract."

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

1.1.16 "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.

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 all permanent installations are not in place. The determination as to the date of substantial completion shall be made pursuant to Article 10.4 of the General Conditions.

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 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 Contracting Officer will furnish to the Contractor one electronic copy of the Contract Documents.
1.2.6 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.

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

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

   a. Executed Contract
   b. Addenda/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.

1.2.9 Where certain of the 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.

1.2.10 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.

1.2.11 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.
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 Carry Out the Work

2.2.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-calendar day period 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 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, N.J.S.A. 59:13-1 et seq.

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.

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.

3.1.2 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.

3.1.3 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 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, but shall have the obligation to immediately inform the Contracting Officer of any inadequate performance on the project.

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 Contractor submittals. The Architect/Engineer, will review, approve or take other appropriate action relating to RCNJ Project No.: 09-270.1C
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.
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. He shall abide by the requirements of the State's Affirmative Action Program. He also shall be responsible to insure that all principles of Safety are carried out as further described in Article 12 herein.

4.2 New Jersey Prevailing Wage Act

4.2.1 Each Contractor or any Subcontractor shall comply with the New Jersey Prevailing Wage Act Laws of 1963, Chapter 150, 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 Prevailing Wage Rate as designed by the Commissioner of Labor and Industry 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 work.

4.3 Supervision and Construction Procedures

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

4.3.2 The Contractor shall employ a full-time competent Superintendent and necessary Foreman and assistants, who shall be in attendance on the Project site during the progress of the Work. The Superintendent shall represent the Contractor and all communications given to the Superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. The College reserves the right to require a change in any Contractor personnel if its performance, as judged by the Contracting Officer or its authorized representative, is deemed to be inadequate. Upon application, in writing to the Contracting Officer or its authorized representative, this requirement for full-time superintendent may be waived by the Contracting Officer should he determine that such staffing is not required by the College.

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

4.3.4 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.

4.3.5 If, due to a trade agreement, standby personnel are required to supervise equipment installation 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.
4.3.6 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.

4.4 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, 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.

4.4.4 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.

4.4.5 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-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 construction permits and inspections by New Jersey Department of Community Affairs.

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 with the regulations of the State Department of Environmental Protection.
The College will pay for all New Jersey Department of Community Affairs code inspection; however, it is the Contractor’s responsibility to request inspections as required to continue progress of the Work in accordance with the construction schedule.

Consistent with Subparagraph 4.4.4, 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.


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.

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, Cleaning and Final Clean Up

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.

The Contractor shall at all times during the Progress of the Work keep the premises and the job site free from the accumulation of all refuse, rubbish, scrap materials and debris caused by its operations, to the end that at all times the premises and site shall present a neat, orderly and workmanlike appearance. This is to be accomplished as frequently as is necessary by the removal of such material, debris, etc. from the site and the College’s premises. Loading, cartage, hauling and dumping will be at the Contractor’s expenses.

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

Should the Contractor not promptly and properly discharge its obligation relating to 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.

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 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. Clean exterior and interior metal surfaces, including doors and window frames and hardware, of oil stains, dust, dirt, paint and the like, polish where applicable and leave without fingerprints or blemishes; and

g. Restoration of all landscaping, roadway and walkways to pre-existing condition. Damage to trees and plantings shall be repaired in the next planting season, and such shall be guaranteed for one year from date of repair and/or replanting.

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.

4.7 Interruptions to Existing Services

4.7.1 All connections to existing services shall be scheduled and coordinated in advance with the College and done 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.

4.8 Non-Regular Working Hours and Workdays

4.8.1 Regular working hours shall be 7:00 a.m. to 3:30 p.m., Monday through Friday. Changes thereto may be granted with written approval of the 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.

4.9 Record Documents

4.9.1 The Contractor shall maintain at the site for the College one copy of the Drawings, Specifications, Addenda, 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 available to the Architect and 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 During construction, the Contractor shall keep an accurate record of all deviations, between work

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as shown on drawings and that which is actually installed. Particular attention is directed to invert elevations, locations of underground lines, change orders, etc. The Contractor shall during the course of the project, mark these drawings with colored pencils. All buried utilities outside the building shall be located by a metes and bounds survey performed by a licensed surveyor who shall certify as to its accuracy. These marked-up drawings and surveys shall be made available to the Contracting Officer at any time during the progress of the work, upon its request. These shall include the drawings of principal sub-contractors as well.

4.9.3 In instances where sepias, shop drawings and/or erection drawings, of a scale larger than the Contract Drawings, are prepared by a Contractor, such drawings and sepias will be accepted in lieu of marked-up Contract Drawings.

4.9.4 The Contractor shall submit the “as-built” documents to the Architect/Engineer, whether altered or not, with a certification as to the accuracy of the information thereon at the time of contract completion before release of retainage will be made to the Contractor. After acceptance by the Architect/Engineer, the Contractor will furnish two (2) sets of all “as-built” documentation.

4.9.5 The Contractor shall keep one set of DCA approved drawings on the project site at all times. These drawings shall be made available to the DCA Inspectors at any time during the progress of the work, upon their request. At the completion of the project, the Contractor shall furnish these drawings to the College.

4.10 Shop Drawings, Product Data, Samples, and Coordination Drawings

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 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 and of the Contract Documents.
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.

4.10.8 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. 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.

4.10.9 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.

4.10.10 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 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.

4.10.11 Submittal Schedules shall be prepared and incorporated into the Contractor’s Construction Schedule. The Contractor shall include the following considerations when preparing the submittal schedule so that approved products are at the project site ready for installation in accordance with the time established in the Contractor’s Construction Schedule to avoid delays.

a) Time frame when the item is needed at the Project.
b) Time necessary to produce the product.
c) Lead time required to prepare the submittal.
d) Time required for the Contractor to review, approve, sign and date the submittal.
e) Time for the Construction Manager, the Architect and his Engineer to review the submittal.
f) The number of Subcontractor’s affected by the information contained in the submittal.
g) Time necessary to correct and resubmit if original submittal is not approved.
h) Submittal of all color samples within adequate time for review, selection and coordination with other products requiring earlier installation and/or longer lead times for ordering.
i) Grouping of related submittals for coordination.

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 2nd submission due to the Contractor’s failure to adhere to the contract documents and/or Architect/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.

4.10.16 The Contractor shall prepare and submit coordination Drawings based on appropriate information from each subcontractor, where close and careful coordination is required for installation of products and materials fabricated off-site by separate entities, and where limited space availability necessitates maximum utilization of space for efficient installation of different components.

4.10.17 The Contractor is responsible to fully coordinate all areas of work with others. This coordination is to be formalized in a set of coordination drawings signed off by all necessary trades and submitted to the Architect. This process is to define areas of conflict which can be resolved prior to the start of material / equipment fabrication. The conflicts are to be brought to the Architect’s immediate attention in writing for resolution. Should a conflict arise after review and resolution of these conflicts, the Contractor will bear all costs necessary to resolve further discovered conflicts once work has commenced.

4.11 Miscellaneous Drawings and Charts

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 The Contractor shall prepare a complete set of typewritten control valve and circuit location diagrams, charts, diagrams and lists under frame glass in appropriate designated equipment rooms, as directed. The Contractor shall also furnish one-line diagrams, as well as such color coding of piping and wiring and identifying charges as specified or required. This information to be framed under glass and installed where directed.

4.12 Cutting and Patching
4.12.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

4.12.2 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.

4.12.3 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.

4.12.4 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.

4.12.5 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 inspection or testing services. The Contractor shall contact the Testing Agency acquired by the College for required tests and inspections and shall notify the Construction Manager of all upcoming tests and inspections scheduled with the Testing Agency.

4.13.2 The College will provide copies of inspection and test reports performed by the Testing Agency.

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 made necessary by such failures. These costs shall include all re-inspection and tests by the Testing Agency.

4.14 Equipment-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 Manufactured products of the United States, whenever available, shall be used in this Work.

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Wherever practicable, preference shall be given at all times to material and equipment manufactured or produced in the State of New Jersey, where such preference is reasonable and will best serve the interest of the College.

4.14.5 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.

4.15 Substitutions

4.15.1 In the event a Contractor should propose a substitution for the specified equipment or materials, it shall be its responsibility to submit proof of equality, and to provide and pay for any tests which may be required by the Contracting Officer in order to evaluate such proposed substitution prior to the submission of the bid proposal.

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

   a. Identifying information shall be fully and completely furnished.
   b. Note whether the item is included in Specifications; in which case, identify the Specification paragraph and section;
   c. Attach data indicating in detail whether and how the substitution differs, if at all, from the article specified.
   d. If the proposed substitution involves a change in the scope of the Work, the Contractor undertakes and agrees to be responsible for any and all added costs thereby involved by reason of the change in the Work.
   e. An agreement by the Contractor to submit proof of equality and to have such tests performed at its own expense as may be required by the Contracting Officer or the Architect/Engineer for approval; and
   f. No Contractor shall base its bid on substitutions. Bids shall be based solely on Plans and Specifications of the subject project.
   g. Credit proposal for the proposed equipment or material substitution. Since substitutions are made because of cost savings, the College is entitled to a reasonable credit should the substitution be approved. Substitutions will not be reviewed unless there is a cost savings to the College.

4.16 Soil Borings

4.16.1 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 and the College shall have no responsibility or liability should the data provided prove to be incorrect or unrepresentative.

4.17 Protection of Contractor's Property
4.17.1 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.

4.18 Patents

4.18.1 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.

4.18.2 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.

4.18.3 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 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.

4.19 Right to Audit

4.19.1 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 three (3) 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.

4.19.2 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.

4.19.3 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.

4.19.4 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.
4.20 Photographs

4.20.1 With each monthly application for payment until the exterior is completed, the General Contractor shall submit progress photographs of the building in duplicate to the Contracting Officer or its Representative, taken from the same points each month. The photographs shall be provided in both hard copy and digital formats (on CD).

4.20.2 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 and digital formats (on CD).

4.21 Guarantee

4.21.1 Neither the Final Certification of 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. 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 activated for use during construction, all equipment warranties must extend for the time periods required in these Specifications starting as of the date of occupancy or final acceptance (whichever is the earliest) of the Project by the 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 building acceptance of the College.

4.21.5 During the eleventh (11th) 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 one (1) 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.

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 8.8 shall not be limited in any way as to the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under Worker's or Workman's Compensation Acts, Disability Benefit Acts, or other Employee Benefit Acts.

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 and in that event, the culpable party agrees to pay all costs and expenses incurred by the damaged Contractor(s) or Architect/Engineer due to any such delays and/or damages whether by settlement, compromise or arbitration and the injured Contractor or Architect/Engineer shall have a right of redress enforcement in court directly against the culpable party. In addition the culpable party further agrees to defend, indemnify and save harmless the College from all such claims and damages. Nothing contained in this Paragraph shall be construed to relieve the culpable Contractor or Architect/Engineer from any liability or damage sustained on account of such acts, errors or omissions.

4.23.3 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.

4.23.4 Should a 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. He shall employ and pay for the services of a competent and licensed New Jersey Engineer or Land Surveyor (who shall be approved by the 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 certified by the Surveyor as the Work progresses.

4.24.2 The Engineer or 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. He shall establish a single permanent Bench Mark as directed to which all three (3) coordinates of dimensional control shall be referred. He shall verify all 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 Inspection of Roadway Subgrades

4.25.1 The Contractor shall notify the Construction Manager forty-eight (48) hours prior to the anticipated completion of all roadway subgrade work. If compaction soils tests are required, these tests will be done by soils testing laboratories through the College. The Contractor shall not proceed with base course until the results of the compaction tests are determined and upgrade approved by the Construction Manager.

4.26 Maintenance of Construction Access Routes

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

4.27 Project Sign

4.27.1 The Contractor shall erect and maintain one (1) sign at the Project Site. Paintings shall be done by a professional sign painter, with two (2) coats of exterior paint, colors, letter face and layout as shown. No other signs will be permitted at the Site unless otherwise authorized by the Contracting Officer. Upon completion of the Project, and when directed by the Construction Manager or the College, the Contractor shall remove the sign.

4.28 Maintenance Bond

4.28.1 Prior to final inspection and acceptance of the work by the Contracting Officer and its authorized representatives, the Contractor shall furnish a one year maintenance guarantee in the amount of five percent (5%) of the final total contract cost, in the form of a certified check or a maintenance bond for the same amount guaranteeing faithful compliance with the guarantee noted above.

4.29 Use of Premises

4.29.1 The Contractor shall limit his use of the premises to construction activities in areas indicated.

4.29.2 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.

4.29.3 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. Schedule deliveries to minimize impact to College operations.

4.29.4 Maintain the existing building in a weather tight condition throughout the construction period. Repair damage caused by constructions operations. Take all precautions necessary to protect the building during the construction period.
4.30  Operation and Maintenance Manuals

4.30.1 Prepare instructions and data by personnel experienced in maintenance and operation of described products. Final payment will not be processed until submitted and approved. A total of (3) copies and an electronic version on CD are to be submitted.

4.30.2 Prepare data in the form of an instructional manual.

4.30.3 Binders are to be commercial quality, 8-1/2 x 11 inch three ring binders with durable plastic covers. When multiple binders are used, correlate data into related consistent groupings.

1. Identify each binder with typed or printed title “Operation and Maintenance Instructions”, identify the project, identify subject matter of contents.

2. Provide tabbed dividers for each separate product and system, with typed description of product and major component parts of equipment.

3. Arrange content by systems under section numbers and sequence table of contents of the project manuals.

4. Manuals are to include the following information:
   a) Subcontractor and suppliers names, addresses, and phone numbers
   b) Significant design data
   c) List of equipment
   d) Parts list for each component
   e) Operating instructions
   f) Maintenance instructions for equipment and systems
   g) Maintenance instructions for special finishes, included recommended cleaning methods and materials, and special precautions identifying detrimental agents
   h) Shop drawings and product data
   i) Air and water balancing reports
   j) Photocopies of warranties and bonds

4.31  Demonstration and Training

4.31.1 Demonstrate operation and maintenance of equipment and systems to the College’s personnel two weeks prior to the date of substantial completion. Allow for two (2) full day training sessions for all of the equipment and systems installed.

4.31.2 Demonstrate start-up, operation, control, adjustment, trouble shooting, servicing, maintenance, and shutdown of each item of equipment at agreed time, at designated location.

4.31.3 For equipment and systems requiring seasonal operation, perform demonstration for other season within six months.

4.31.4 Provide qualified person who is knowledgeable about the equipment and system to perform the demonstration and instruction to the College’s personnel.

4.31.5 Utilize operation and maintenance manuals as basis for instruction. Review contents of manual with the College’s personnel in detail to explain all aspects of operation and maintenance.

4.31.6 The demonstration and maintenance instruction is to be video taped by the Contractor with three copies being provided to the College.
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 its designate.

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.

ARTICLE 6

PROJECT SPECIFIC CONDITIONS

6.1 Existing Finishes and Furniture

6.1.1 The Contractor is to protect all finishes in the building by all means necessary to prevent damage. At a minimum, all floors and doors are to be protected at all times from contractor mobilization onsite through substantial completion. Wall finishes can be protected area to area when work is being performed. The Contractor will not be permitted to work in an area unless protection is installed and approved by the Construction Manager.

6.1.2 The Contractor is to protect all existing furniture and equipment by all means necessary to prevent damage. All furniture and equipment will remain in the building during the construction period. The Contractor may consolidate furniture and equipment as necessary to continue the work effectively. All furniture and equipment shall be moved back into place prior to Substantial Completion.

6.1.3 The Contractor is responsible for damages caused by the Contractor and all Subcontractors to existing finishes, furniture and equipment as proven by the Construction Manager. The Contractor will be allowed to repair such damages at his cost as accepted by the Construction Manager, but if repairs cannot be made satisfactorily, the Contractor will be responsible for replacement costs.

6.1.4 The Contractor is responsible to maintain temporary environment controls within the building relative to temperature and humidity so not to damage finishes, furniture and equipment.

6.2 Storage of Materials and Equipment

6.2.1 The Contractor will be permitted to store storage trailers containing materials and equipment on campus in a lot designated by the Construction Manager until such time the equipment and material is needed onsite. The Contractor is to include all costs related to double handling for all major equipment and materials since a project requirement is to have all of these components onsite prior to field work commencement.

6.3 Working Hours

6.3.1 Working hours when the buildings are vacant shall be 7:00 am to 3:30 pm. When the buildings are occupied, after August 17, 2012, working hours shall be 8:30 am to 5:00 pm.
ARTICLE 7

TEMPORARY FACILITIES, UTILITIES AND SERVICES

7.1 Field Offices

7.1.1 Each Contractor will provide, on Site, and maintain during the Project 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. The Field Office may be removed upon enclosure of a Building at that time directed by the Construction Manager; contents and operations will be transferred to the interior of the Project Building by the General Contractor and said offices shall be maintained by the General Contractor until Final Acceptance of the Project.

7.1.2 The Contractor shall provide its own telephones, telephone service, and internet service.

7.2 Storage Sheds, Tool Sheds, Shops, Employees Sheds

7.2.1 The Contractor will 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.

7.3.2 All construction / contractor vehicles parked on campus must display a valid parking permit.

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 (reasonable steps must be taken by the Contractor to enforce this rule).

7.4.4 Toilet facilities within campus buildings are strictly off limits. Any worker observed violating this article shall be warned once, and removed from site after the next violation.

7.5 Temporary Drives and Walks

7.5.1 The Contractor shall be responsible for keeping all roadways, drives and parking areas within or proximate to the site free and clear of debris, gravel, mud, or any other site materials by insuring that all measures reasonably necessary are taken to prevent such materials from being deposited on such surfaces including, as may be appropriate, the cleaning of vehicle wheels, etc. prior to their leaving the construction site. Should such surface require cleaning, the Contractor will clean these surfaces without additional cost to the College. The Contractor RCNJ Project No.: 09-270.1C
will be held accountable for any citations, fines, or penalties imposed on the College for failing to comply with local rules and regulations.

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

7.5.3 The General Construction 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. He shall maintain such driveways and areas in good condition during the construction period, and, at completion of the project, shall leave them in the same condition as at the start of the Work. Conditions before use should be carefully photographed or documented by the Contractor.

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

7.6 Temporary Water

7.6.1 The Contractor shall provide, protect and maintain an adequate valved water supply in a convenient location 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 Contractor. Electrical Service and hookups will be provided by the Contractor, and all costs for this electrical work will be borne by him.

7.6.2 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 he may require for proper conduct of its Work.

7.6.3 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.

7.7 Temporary Light and Power

7.7.1 The Contractor shall extend electrical service to the building or buildings at locations approved by the Contracting Officer or its authorized representative; temporary electrical service shall be independent of the existing permanent service. Initial temporary service shall be three (3) phase or single phase depending upon closest availability to the project. 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 meter, and shall pay the cost of running temporary services from the nearest utility company power pole. All costs shall be included in its bid.

7.7.2 The Contractor shall pay for the cost of all electric energy used on distribution lines installed by the Contractor until the project is accepted by the College.
The Contractor shall provide and pay for all maintenance, servicing, operating and supervision of the service and distribution facilities. He shall also connect, maintain and service any electrical equipment installed by the Contractor which may be necessary for maintaining heat/cooling whenever heat/cooling is required in the building whether from the temporary or permanent system.

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

**7.8 Temporary Heat, Cooling and Dehumidification**

7.8.1 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.

7.8.2 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.

7.8.3 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 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.

7.8.4 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.

7.8.5 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 Owner. All systems shall be cleaned and filters changed prior to acceptance by the Owner.

**7.9 Temporary Enclosures and Partitions**

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

7.9.2 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.

**7.10 Temporary Utility Capping**

7.10.1 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.
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 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.

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.
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. Notice to proceed shall be promptly issued by the College after receipt and acceptance, by the Contracting Officer, of properly executed contract documents including performance and payment bonds. The Contractor agrees that contract site work shall commence no later than ten (10) calendar days after receipt of the notice to proceed.

9.1.2 Provided the contract is not terminated pursuant to the paragraph contained within the Instructions to Bidders, entitled "Contract and Bonds", if in the opinion of the Contracting Officer, the Contractor's delay in furnishing financial responsibility and performance or payment bonds causes a delay in the issuance of the Notice to Proceed, the time to complete the work as specified in the contract may be reduced to reflect such delay.

9.1.3 The Contractor shall perform no work under this contract until the required evidence of financial responsibility and bonds have been furnished. Thereafter, work at other than the contract site may be undertaken. The Contractor shall perform no work at the contract site except pursuant to a Notice to Proceed given by the Contracting Officer.

9.1.4 Notice to Proceed may be issued by the College at its convenience. Any right of the Contractor to an adjustment because of a delay in issuing a Notice to Proceed shall be determined in accordance with the Article entitled "Contracting Officer's Right to Stop Work."

9.2 Critical Path Method Scheduling

9.2.1 The Contractor shall be responsible for preparing and furnishing to the Contracting Officer through the Construction Manager, thirty (30) calendar days after the issuance of the Notice to Proceed, a coordinated Critical Path Method baseline schedule.

9.2.2 The Critical Path Method schedule based upon the Contractor's logic and time estimates shall indicate, in suitable detail for display, all significant features of the Work, including the placing of orders and anticipated delivery dates for critical items, submissions and approvals of Shop Drawings, all work activities to be performed by each Subcontractor and the beginning and time durations thereof and the dates of substantial and final completion of the various branches of the Work.

9.2.3 The Contractor shall furnish sufficient labor, construction plant and equipment to insure the prosecution of the Work in accordance with the Critical Path Method schedule. If the latest completion time for any significant job does not come within the time allowed by the Schedule, the sequence of jobs and/or the time for performance of jobs shall be revised by the Contractor through concurrent operations, additional manpower, additional shifts, overtime, etc., until it is assured that the Contract Completion Date will be met. No additional charges to the College will be allowed for overtime, additional manpower, equipment, additional shifts, etc., (except as may be provided elsewhere in the Contract) if such expediting procedures or measures are necessary to meet the agreed completion date.

9.2.4 The Contractor agrees that he will make no claim for, and have no right to, additional payment or extension of time for completion of the Work, or any other concession because of any misinterpretation or misunderstanding on its part of the Critical Path Method schedule, or because of any failure on its part to fully acquaint himself with all conditions relating to the Schedule and the manner in which it will be used on the Project or to perform its contract in accordance with the schedule.

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9.2.5 Within ten (10) calendar days after receipt of the initial Critical Path Method schedule, the College's representative shall meet with the Contractor for joint review, correction, or adjustment of the proposed plan and schedule. Within ten (10) calendar days after the joint review, the Contractor will revise the Critical Path Method schedule in accordance with agreement reached during the joint review and shall submit one (1) hard copy and one (1) electronic copy to the College. The resubmission will be reviewed by the College and, if found to be as previously agreed upon, will be approved. An approved copy of each will be returned to the Contractor. The Contractor shall approve the schedule at that time provided, however, if any Contractor objects to the schedule to be adopted, he shall, within ten (10) days, state its objections in writing to the Contracting Officer, specifying its precise position of the schedule to which he objects and the reasons therefore and identifying the basis of its objection. The Contractor will be deemed to have accepted the schedule as adequate, proper and binding in all respects and shall not raise objections to the schedule except to the extent as required in this article. The Contractor will then meet with the College Representative to develop a contractually compliant schedule which removes all of the Contractor's objections. The Contractor will revise the Critical Path Method schedule in accordance with the agreements reached during this final review and shall submit one (1) hard copy and one (1) electronic copy to the College. The resubmission will be reviewed by the College and if found to be as previously agreed upon, will be approved. An approved copy of each will be returned to the Contractor. Approval will be without reservation and the Contractor will be deemed to have accepted the schedule as adequate, proper and binding in all respects and shall not raise objections to the schedule.

9.2.6 Once every month, or more often if required by the College, the Contractor shall meet with College's Representative and provide the updated Critical Path Method schedule which shall clarify all of the following:

1. Approved Changes in activity sequencing;

2. Changes in activity durations for unstarted or partially completed activities where agreed upon;

3. The effect to the network of any delays in any activities in progress and/or the impact of known delays which are expected to affect future work;

4. The effect of Contractor Modifications (activity durations, logic and cost estimates) to the network;

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

6. Changes to milestones, due dates, and the overall Contract Completion Date which have been agreed upon by the College since the last revision of the CPM Schedule.

9.2.7 The CPM schedule shall accurately reflect the manner in which the Contractor intends to proceed with the project and shall incorporate the impact of all delays and Change Orders as soon as these factors can be defined. All changes made to the schedule shall be subject to approval by the College prior to inclusion in the CPM schedule. If unapproved Contractor logic and time durations are used, the Contractor agrees that any time which is projected to be lost on the project as a result of these schedule changes will be considered the responsibility of the Contractor until a final agreement has been made or a final decision rendered by the College regarding the manner in which the Change Order work is to be reflected on the schedule. When this final decision has been made by the College, the Contractor shall revise the CPM schedule in
accordance with such decision and issue a final analysis of the effect of the change on the project. If the Contractor desires to revise the logic of the approved CPM schedule so as to reflect a sequence of construction which differed from that originally agreed to, he must first obtain the approval of the College.

9.2.8 In addition to the foregoing, once each month the Contractor will provide a narrative report to the College. The narrative report will include a description of the amount of progress during the last month in terms of completed activities in the plan currently in effect, a description of problem areas, current and anticipated delaying factors and their estimated impact on the performance of other activities and completion dates, and recommendations on corrective action for the Contractor. Within seven (7) days after receipt of this report, the Contractor shall submit to the College, in writing, an explanation of corrective action taken or proposed. The Contracting Officer, after reviewing the written submissions, shall make a decision binding on all parties.

9.2.9 The monthly submission of the computer-produced calendar-dated schedule shall be an integral part and basic element of the estimate upon which progress payments shall be made pursuant to the provisions of "Payment", Article 10 of these General Conditions. The Contractor shall be entitled to progress payments only upon receipt by the College of an updated CPM schedule.

9.2.10 The Contractor agrees that whenever it becomes apparent from the current monthly schedule that any Contract Completion Date will not be met, he will take some or all of the following actions at no additional cost to the College:

1. Increase construction manpower in such trades and numbers as will substantially eliminate, in the judgment of the Contracting Officer, the backlog of work;

2. Increase the number of working hours per shift, shifts per working day, working days per week, or the amount of construction equipment, or any combination of the foregoing sufficiently to substantially eliminate, in the judgment of the Contracting Officer, the backlog of work; and/or

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

9.3 Adjustment of Contractor Completion Time

9.3.1 The Contract completion time or times will be adjusted only for causes specified in this Contract. In the event a Contractor requests an extension of any Contract Completion Date, he shall furnish such justification and supporting evidence that the College or the Architect/Engineer 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.

9.3.2 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.

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

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

(3) In order for a given issue (i.e., delay, Change Order, etc.) to be
considered as a basis for a total project time extension, it must meet
both of the following criteria:

(a) It must be totally beyond the Control of the Contractor and
due to no direct or indirect fault of the Contractor; and

(b) It must result in a direct delay to work on the main project
critical path.

(4) The Contractor acknowledges and agrees that actual delays to
activities which, according to 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.
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.

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.

9.4 No Damage for Delay

9.4.1 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 ten (10) days after the beginning of such delay a written request for additional time shall be filed with the Contracting Officer. Apart from extension of time, no payment or allowance of any kind shall be made to the Contractor as compensation for damages on account of hindrance or delay from any cause in the progress of the work, whether such delay is beyond the Contractor's control.

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

9.5 Time of Completion-Delay-Liquidated Damages

9.5.1 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 incomplete building in the sum of twenty five hundred dollars ($2,500.00) dollars for each and every 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.
9.5.2 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.

9.5.3 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.

9.5.4 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.

9.5.5 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.

9.5.6 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, strikes, 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.

9.5.7 The Contractor shall, within five (5) 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 five (5) days from the beginning of such delay, the Contractor will not be entitled to an extension of time.

9.6 **Contracting Officer’s Right to Accelerate**
9.6.1 The Contracting Officer may order and direct the Contractor responsible for a delay or as may be apparent as a result of its observation of the work, to accelerate that Contractor's Work at any particular place or places by increasing its forces, working overtime and/or on Saturdays, Sundays and holidays as may be required to enable to carry on with their Work in accordance with the Project Progress Schedule. The Cost of such acceleration efforts shall be borne entirely by the Contractor.
ARTICLE 10
PAYMENTS AND COMPLETION

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 determined by the Contracting Officer, on estimates approved by the Contracting Officer. Unless otherwise directed, the Contractor shall furnish Schedule of Amounts for Contract Payments, (Unit Schedule breakdown) of the total contract price showing the amount included therein for each principal category of the work, in such detail as requested, to provide a basis for determining progress payments. The schedule, as approved, shall be used only as a basis for the Contractor's estimates for progress payments and approval by the 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 Unit Schedule Breakdown has been approved in writing, by the Contracting Officer or its authorized representative.

10.1.2 In the preparation of estimates, the Contracting Officer, at its discretion, may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations other than the site may also be taken into consideration if (1) such consideration is specifically authorized by the contract and (2) the Contractor furnishes a Form entitled Summary of Stored Materials, and Agreement and Bill of Sale Certification for Stored Materials, respectively.

10.1.3 In making such progress payments for Work, the College will retain 10% of the approved Invoice of Payment until final acceptance and completion of all Work covered by the Contract. All material and work covered by progress payments made shall thereupon become the sole property of the 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.

10.1.4 If performance or 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.

10.1.5 Upon completion and acceptance of all work, the amount due the Contractor under this contract shall be paid upon satisfactory completion, by the Contractor, of all contract close-out requirements, completion of a 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 stated amounts as may be specifically excepted by the Contractor from the release.

10.1.6 Upon satisfying the above conditions the Contractor shall submit a properly executed invoice for final payment to the College.

10.1.7 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.

10.1.8 In addition to other warranties required by provisions of the Contract and Specifications, the Contractor warrants that title to all Work, materials and equipment covered by an Application for Payment will pass to the 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.

10.1.9 Recommendation for Approval of a Requisition 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 Requisition 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 recommending approval of requisition 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.

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

10.1.11 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.

10.1.12 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.

10.1.13 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.

10.1.14 The Contracting Officer or its authorized representatives may withhold a Certificate for Payment or Project Certificate for Payment 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, 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 a Certificate for Payment or a Project Certificate 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 a Certificate for Payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a Certificate for Payment or Project Certificate for 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.

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

10.1.16 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.

10.1.17 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.

10.1.18 Withholding Payment for Non-Delivery of Data:

(a) If technical data such as "As Built" drawings, reports, spare parts lists, repair parts lists, or the like, or instructions books (including operational and maintenance manuals), or any part thereof, are not delivered within the time specified by this contract or are deficient upon delivery, the Contracting Officer shall at its discretion, withhold from each invoice a percentage (in addition to any other retainage required by the Contract) or the contract price in accordance with the following table.

<table>
<thead>
<tr>
<th>When total contract price is</th>
<th>Percentage to be withheld is</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than $250,000</td>
<td>5% of total contract</td>
</tr>
<tr>
<td>$250,000 to $1,000,000</td>
<td>2% of total contract</td>
</tr>
<tr>
<td>Over $1,000,000</td>
<td>1% of total contract</td>
</tr>
</tbody>
</table>

(b) 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 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.

(c) Separate line items based on corresponding percentage representing the above data shall be included in the schedule of values as follows:
   - As-Built Drawings
   - Closeout Documents

10.2 Application for Payments

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

   (a) Total Amount - Payee Name and Address - Department/Agency -
RCNJ Project No.: 09-270.1C - 45 -
Payee Declaration - Payee Reference Number - Payee Identification Number.

(b) Contract Number - Contractor's Name - Period of this Estimate - Estimate Number - Completion Date - Date - Number of Sheets - Item Number - Item Description - Contract Totals: Quantity/Unit/Unit Price/Amount - This Period: Quantity/Amount - To Date: Quantity/ Amount - Certification by payee - Certification of completion signed by A/E Representative. Approved for payment signed by the Contracting Officer.

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

All invoices are to be sent to the College's authorized representative at the address provided at the Pre-Construction Conference. Receipt shall start the prompt payment clock unless returned to the Contractor for correction within thirty (30) calendar days after receipt. Ref. 10.2.4(d) below.

10.2.2 Any other information or documentation required by other provisions of the Contract.

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

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

(a) A proper invoice will be deemed to have been received when it is received by the office designated in the Pre-Construction Conference for receipt of invoices and acceptance of the supplies delivered or services rendered has occurred;

(b) Payment shall be considered made on the date on which a check for such payment is dated;

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

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

(1) After receipt of an improper invoice and prior to notice of any defect or impropriety, but not to exceed thirty (30) calendar days; and

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

10.3 Interest

10.3.1 Interest shall be paid on the amount due the Contractor pursuant to a properly executed State invoice (Ref. General Condition 10.2.0 "Invoices") if the required payment is not made on or before the required payment date.

10.3.2 The required payment date shall be sixty (60) calendar days from the receipt of a properly executed State invoice or sixty (60) calendar days from receipt of supplies or services, whichever is later.

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

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

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

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

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

10.3.8 Nothing in this provision nor the New Jersey Prompt Payment Act shall be construed as permitting the accrual of 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 seq., as provided in N.J.S.A. 59:13-8.

10.4 Substantial Completion

10.4.1 At the request of the College, the Construction Manager, the Architect/Engineer, Contractor and the College representative shall make a joint inspection of the Work, and if all determine that the Work is substantially completed, the College shall give Notice of Substantial Completion for Beneficial Use. Such certification shall in no way relieve the Contractor of any contractual obligation or in any way relieve the Contractor from responsibility to promptly complete punch list work.

10.4.2 Standard Guarantee period for equipment, workmanship and materials shall commence on the date of acknowledgement of substantial completion of the project or portions thereof so certified or from the time of completion and acceptance of equipment, work or materials in question, whichever is later, unless specified to the contrary as a condition of partial acceptance.

10.5 Use and Possession Prior to Completion (Beneficial Occupancy)

10.5.1 The College shall have the right to take possession of or use any completed or partially completed part of the work. Prior to such possession or use, the Contracting Officer shall furnish the Contractor an itemized list of work remaining to be performed or corrected on such portions of the project as are to be possessed or used by the College, provided that failure to list any item of work shall not be deemed an acceptance of any work under the contract. While the College has such possession or use, the Contractor, notwithstanding the provisions of the Article of this contract entitled "Permits - Laws - Regulations", shall be relieved of the responsibility for the loss or damage to the work resulting from College possession or use. If such prior possession or use by the College delays the progress of the work or causes additional expense to the Contractor an equitable adjustment in the contract time of completion will be made and the contract shall be modified in writing accordingly.

10.6 Final Completion and Final Payment

10.6.1 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 RCNJ Project No.: 09-270.1C
Contracting Officer will promptly issue a final Certificate for Payment or Project Certificate 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 Certificate is due and payable.

10.6.2 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 liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the College. If a Subcontractor refuses to furnish a release or waiver required by the College, the Contractor may furnish a bond satisfactory to the College to indemnify the College against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the College all money that the College may be compelled to pay in discharging such lien, including all costs and reasonable attorneys’ fees.

10.6.3 After the final punch list is sent to the Contractor, he shall complete all work within thirty (30) calendar days from the date of the list. This shall include all unfinished work, testing, adjusting, balancing and regulating all systems; providing all test reports instructions to College; maintenance manuals; certificates of approval, as-built and completion of all required forms.
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, 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, 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 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, 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) days thereafter, the Contracting Officer may upon ten (10) days additional written notice sell such material and equipment at auction or at private sale and shall account for the net proceeds thereof, after deducting all of the costs which are the responsibility of the Contractor, including compensation for the Architect/Engineer's additional services, if any. If such proceeds of sale do not cover all costs which the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate credit Change Order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor and/or its Surety shall pay the difference to the College.

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 Contracting Officer determines that the best interests of the College will be served by accepting defective or nonconforming Work, he 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 be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. He 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 Construction Manager.

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, notifying Colleges and users of adjacent utilities, and other means of protection against accidental injury, or damage to persons and property.

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.

12.2.8 Asbestos – For work involving existing facilities, structures, or buildings, the College has performed campus wide tests for asbestos. The College has performed removal of asbestos materials in identified areas and to the best of the College’s knowledge there are no such hazardous materials in the existing scope of the project. Should the Contractor encounter materials suspected as asbestos or polychlorinated biphenyl (PCB), the Contractor shall immediately suspend work in that location and notify the Contracting Officer, The Architect/Engineer, and the Construction Manager.

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.
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.

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 Optional Insurance Program Election

13.2.1 The College may elect to implement an “College Controlled Insurance Program” or “(OCIP)” during the construction of this project. The purpose of the OCIP is to provide coverage and adequate limits of insurance and claims management for Contractor and all enrolled subcontractors of any tier.

13.2.2 No Contractors Difference-in-Conditions” coverage will be reimbursed by The College.

13.2.3 An OCIP is a risk management tool whereby The College, purchases “Project Specific” insurance on behalf of the Contractor and subcontractors of any tier for their activities that occur on the project site only. No off-site exposures are covered under the OCIP program. In turn, The College requires Contractor and each subcontractor of any tier to identify the cost of their insurance for each bid and submit an Insurance Deduction for that coverage. Once approved, and accepted, the Contractor and subcontractors of any tier will be required to remove this amount from their bids and or contracts. Upon the The College’s approval, the Contractor and/or respective subcontractor will be enrolled in the OCIP.

13.3 Insurance to be carried by The College

13.3.1 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.

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

13.3.3 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.

13.3.4 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.

13.3.5 All losses will be adjusted with, and payable to, the College.

13.3.6 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.
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 specifications (including drawings and designs);
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.

14.2.2 The Contractor, in connection with any request he makes for an equitable adjustment, shall furnish a price breakdown, itemized as required by the Contracting Officer. 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, subcontract, and overhead costs, as well as profit. Any amount proposed for subcontracts shall be supported by a similar price breakdown. In addition, if the request includes a time extension, a justification shall also be furnished. The request, together with the price breakdown and time extension justification, shall be furnished by the date specified. 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 any change under this Article causes an increase or decrease in the Contractor’s cost of, or the time required for, the performance of any part of the work under this contract, whether or not changed by any such order, an equitable adjustment shall be made in the contract price or delivery schedule or both and the contract modified in writing within three (3) days of discovery of the change. If a change is submitted for work performed without prior notification, the College is not responsible for the cost of the change since the avoidance of such costs was not afforded to the College.

14.2.4 Contractor change order requests are to be submitted for approval by the College and shall include the following components:

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. Costs for operation will only be approved for actual operation for the approved change in work. For verification of the rate charged, the Contractor shall furnish a comparable rental rate from a vendor.

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.
   b. Labor burden shall only include social security and medicare taxes, federal unemployment taxes, state unemployment taxes, and workman’s compensation.
   c. Fringe costs shall only include, if applicable, welfare, pension, annuity, and education/training benefits. Costs such as small tools, vacation, etc. are considered overhead costs.

4. Indirect Costs – Included are costs which are neither direct construction material, equipment, or labor costs. Allowable indirect costs are for document reproduction of drawings only, 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. Subcontracted Work – All subcontracted work shall be itemized similar to items 1 through 4 above. The Contractor agrees to incorporate this provision in each of its subcontracts. A maximum Subcontractor markup of 10% (overhead and profit included) shall be applied to their total direct material, equipment, labor, and indirect costs. The 10% markup shall apply to deleted work as well. Subcontractor breakdowns are to be provided for billing verification.

6. Markup – A markup of 5% shall be applied to the subtotal of items 1 through 5. This markup shall cover overhead costs such as dumpsters, office personal, project managers, field superintendents, mailing, reproduction, safety, temporary utilities, company vehicles and mileage, etc. and profit. Costs not defined in items 1 through 5 are considered overhead. The 5% markup shall apply to deleted work as well.

7. Bond and Insurance Premiums – A maximum of 1% shall be applied to the subtotal of items 1 through 6 above.

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

14.2.5 When there is an agreement on equitable adjustment of the contract sum and time, the Construction Manager will prepare a Change Order which will formally adjust the contract sum and/or milestone dates.

14.2.6 The Contracting Officer in order to avoid delays in the progress of work or when in the best interest of the College, at its discretion, may direct the Contractor, in writing, to proceed with a change without a prior agreement on costs or when the work is disputed to be within the contract. Such direction shall be in the form of a letter of direction. If the Contractor intends to assert a request for an equitable adjustment under this Article, he must do so to the Contracting Officer or, if instructed, to its designated Construction Manager in sufficient detail and in accordance with this Article, within seven (7) calendar days after receipt of the letter of direction.

14.2.7 If an agreement cannot be reached on a lump sum change order request, the Contracting Officer may direct the Contractor, in writing, to proceed with the change on a “time and material” basis, not to exceed the RCNJ Project No.: 09-270.1C
amount proposed in the change order request. The entire scope of the change must be completed at no additional
cost to the College regardless if the actual cost exceeds the proposed amount.

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

14.2.9 Failure to agree to any adjustment shall be a dispute concerning a question of fact within the
meaning of the Article of this contract entitled "Contracting Officer Hearing." However, nothing in this Article
shall excuse the Contractor from proceeding with the contract as changed.

14.2.10 Contractor must submit a request for contract adjustment on the provided form by the
Construction Manager at the project kick-off meeting. Request’s not on the required form will be returned without
action.
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.
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 Language

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

a. The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, gender, affectional or sexual orientation. The contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment without regard to their age, race, creed, color, national origin, ancestry, marital status or sex. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this non-discrimination 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 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 Public Agency Compliance Officer, advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time.
When hiring workers in each construction trade, the contractor or subcontractor agrees to attempt in good faith to employ minority and female workers in each construction trade consistent with the applicable employment goal prescribed by N.J.A.C. 17:27-7.3; provided, however, that the Affirmative Action Office may, in its discretion, exempt a contractor or subcontractor from compliance with the good faith procedures prescribed by (A), (B) and (C) below as long as the Affirmative Action Office is satisfied that the contractor is scheduling workers provided by a union which provides evidence, in accordance with standards prescribed by the Affirmative Action Office, that its percentage of active “card carrying” members who are minority and female workers is equal to or greater than the applicable employment goal prescribed by N.J.A.C. 17:27-7.3, promulgated by the Treasurer pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time. The contractor or subcontractor agrees that a good faith effort shall include compliance with the following procedures:

(A) If the contractor or subcontractor has a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor shall, within three (3) 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 P.L. 1975, c. 127, 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 (5) days prior to the commencement of construction work, the contractor or subcontractor agrees to attempt to hire minority and female workers consistent with the applicable employment goal. If the contractor's or subcontractor's prior experience with a construction trade union, regardless of whether the union has provided said assurances indicates a significant possibility that the trade union will not refer sufficient minority and female workers consistent with the applicable employment goal, the contractor or subcontractor agrees to be prepared to hire minority and female workers directly consistent with the applicable employment goal, by complying with the hiring procedures prescribed under (C) below; and the contractor or subcontractor further agrees to take said action immediately if it determines or is so notified by the Affirmative Action Office that the union is not referring minority and female workers consistent with the applicable employment goal.

(B) If the scheduling of a workforce consistent with the employment goal has not or cannot be achieved for each construction trade by adhering to the procedures of (b) above; or if the contractor does not have a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor agrees to take the following actions consistent with the applicable county employment goals:

(1) To notify the Public Agency Compliance Officer, Affirmative Action Office, and at least one approved minority referral organization of its manpower needs; and request referral of minority and female workers;
(2) To notify any minority and female workers who have been listed with it as awaiting available vacancies;

(3) Prior to commencement of work, to request the local construction trade union, if the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade, to refer minority and female workers to fill job openings;

(4) To leave standing requests for additional referral of minority and female workers with the local construction trade union, if the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade, the State Training and Employment Service and other approved referral sources in the area until such time as the workforce is consistent with the employment goal;

(5) If it is necessary to lay off some of the workers in a given trade on the construction site, to assure, consistent with the applicable State and Federal statutes and court decisions, that sufficient minority and female employees remain on the site consistent with the employment goal; and to employ any minority and female workers so laid off by the contractor on any other construction site in the area on which its workforce composition is not consistent with an employment goal established pursuant to rules implementing P.L. 1975, c. 127;

(6) To adhere to the following procedure when minority and female workers apply or are referred to the contractor or subcontractor:

(i) If said individuals have never previously received any document or certification signifying a level of qualification lower than that required, the contractor or subcontractor shall determine the qualifications of such individuals and if the contractor's or subcontractor's workforce in each construction trade is not consistent with the applicable employment goal, it shall employ such persons which satisfy appropriate qualification standards; provided however, that a contractor or subcontractor shall determine that the individual at least possesses the skills and experience recognized by any worker skills and experience classification determination which may have been made by a union, apprentice program or a referral agency, provided the referral agency is acceptable to the Affirmative Action Office and provided further, that, if necessary, the contractor or subcontractor shall hire minority and female workers who qualify as trainees pursuant to these rules. All of these requirements, however, are limited by the provisions of paragraph (D) below.
(ii) If the contractor's or subcontractor's workforce is consistent with the applicable employment goal, the name of said female or minority group individual shall be maintained on a waiting list for the first consideration, in the event the contractor's or subcontractor's workforce is no longer consistent with the applicable employment goal.

(iii) If, for any reason, said contractor or subcontractor determines that a minority individual or a female is not qualified or if the individual qualifies as an advanced trainee or apprentice, the contractor or subcontractor shall inform the individual in writing with the reasons for the determination, maintain a copy in its files, and send a copy to the Affirmative Action Office.

(7) To keep a complete and accurate record of all requests made for the referral of workers in any trade covered by the contract, on forms made available by the Affirmative Action Office and submitted promptly to that office upon request.

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

(D) The contractor agrees to complete an Initial Project Manning Report on forms provided by the Affirmative Action Office or in the form prescribed by the Affirmative Action Office and submit a copy of said form at time of award of construction contract and to submit a copy of the Monthly Project Manning Report once a month thereafter
for the duration of this contract to the Affirmative Action Office 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 off-the-job programs for outreach and
training of minority and female trainees employed on the construction
projects.

(E) The contractor and its subcontractors shall furnish such
reports or other documents to the Affirmative Action Office
as may be requested by the office from time to time in order to
carry out the purposes of these regulations, and public
agencies shall furnish such information as may be requested
by the affirmative action office for conducting a compliance
investigation pursuant to Subchapter 10 of the Administrative
Code (NJAC 17:27).