

## GENERAL CONDITIONS

### ARTICLE 1 - GENERAL PROVISIONS

#### 1.1 DEFINITIONS:

1.1.1 Architect/Engineer: The Architect/Engineer ("A/E") is the consultant engaged by Drew to prepare the design and perform certain contract administration functions in accordance with the provisions of its contract with Drew.

1.1.2 Bulletin: A document, issued by Drew prior to the opening of bids, which supplements, revises or modifies the bid document(s).

1.1.3 Change in the Work: A change in the Project and the Contract Documents, including, but not limited to, an increase or decrease in the Work, an acceleration or extension of time for the performance of the Work.

1.1.4 Change Order: A written order, directing or authorizing a Change in the Work executed by Drew and agreed to by the Contractor (except in the case of unilateral change orders executed by DREW) that includes all adjustments to work, compensation and/or time warranted by the Change in the Work.

1.1.5 Code Official: the individual licensed by the NJ Department of Community Affairs authorized to enforce the NJ Uniform Construction Code (UCC) and approve or reject the Work for NJ UCC compliance.

1.1.6 Construction Management Firm or "CMF": A person or firm that may be engaged by Drew to assist DREW in the administration of its contracts.

1.1.7 Contract: The entire and integrated agreement between the Contractor and Drew encompassing all of the Contract Documents.

1.1.8 Contract Documents: The executed form of Contract, General Conditions, Supplementary Conditions, Supplementary Instructions, Bulletins, plans, specifications, instructions to bidders, addenda, responses to requests for information, Price Proposal, Change Orders, other amendments, including construction change directives, and all exhibits, appendices and documents attached to or referenced in any of the foregoing materials.

1.1.9 Contract Limit Lines: The lines shown on the Contract Drawings that define the boundaries of the Project, and beyond which no construction work or activities may be performed by the Contractor unless otherwise noted on the drawings or specifications.

1.1.10 Contractor: The business entity with whom Drew enters a contract for the performance of the construction of a construction Project by the terms set forth in the Contract Documents.

1.1.11 Contract Price: The sum Drewd in the Contract, as it may be adjusted in accordance with the Contract Documents, that represents the total amount payable by Drew to the Contractor for performance of the Work.

1.1.12 Day: A calendar day, unless otherwise designated.

1.1.13 Director: The person authorized by Drew to administer the design, engineering and construction of all Drew's buildings and facilities. The Director is the contracting officer representing Drew personally

or through authorized representatives in all relationships with Contractors, consultants and Architects/Engineers. This includes designees or an authorized administrative contracting officer acting within the limits of his or her authority. The Director or his or her duly authorized representative is the interpreter of the conditions of this contract and the judge of its performance.

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1.1.15 Final Acceptance and Completion: The date following receipt and acceptance by DREW of all administrative and close-out documents. Following acceptance, Drew will issue a Certificate of Final Acceptance and Completion for the Project.

1.1.16 Generally Accepted Accounting Principles: The common set of accounting principles, standards and procedures that companies use to compile their financial statements. Accounting records must identify all labor and material costs and expenses, whether they are direct or indirect. The identity must include at least the Project number for direct expenses and/or account number for indirect expenses.

1.1.17 NJUCC or Code: The New Jersey Uniform Construction Code which governs the permit and approval process for construction projects.

1.1.18 Notice: A written directive or communication given by DREW to the Contractor to act or perform work or carry out some other contractual obligation, or a written communication to be served by the Contractor upon Drew. A notice served on the Contractor will 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 regular mail, e-mail, delivery by courier, or registered or certified mail, or facsimile to the Contractor's business address cited in the Contract documents.

1.1.19 Notice to Proceed: The written communication issued by Drew to the Contractor directing the Contractor to begin the Work. The contract calendar day duration period will commence on the effective date noted.

1.1.20 Project: The term for the entire public works engagement. It includes the design, construction work and all administrative aspects required to fully complete the engagement.

1.1.21 Punch List: The list of incomplete or defective Work, compiled by DREW and/or its authorized representative, which remains to be completed after achievement of Substantial Completion.

1.1.22 Schedule: The time tracking mechanism that establishes the Project's allotted time requirements for completion as more specifically described in Article 6 of these General Conditions. When the construction activity items of the schedule have a monetary value associated with them, the schedule is referred to as a "costed" or "cost-loaded" schedule.

1.1.23 Site: The geographical location of the facility or property at which the Work under the Contract is to be performed.

1.1.24 Owner: DREW University.

1.1.25 Subcontractor: The business entity that enters into an agreement with the Contractor for the performance of work or materials under this Contract. Also refers to any agreement between a Subcontractor and any of lower tier Subcontractors. Such an agreement creates no relationship, legal or otherwise, between Drew and the Subcontractor(s) and/or lower tier Subcontractor(s).

1.1.26 Substantial Completion: The date when all essential requirements of the Contract Documents have been satisfied so that the purpose of the Contract Documents is accomplished, as determined by Drew including training of staff by the Contractor on all equipment, and resulting in the issuance of a temporary Certificate of Occupancy, a permanent Certificate of Occupancy or a permanent Certificate of Acceptance and when the Work and the facility can be safely occupied and used in accordance with its intended purpose. DREW may condition issuance of a Certificate of Substantial Completion upon satisfactory receipt of critical documents.

1.1.27 Unit Schedule Breakdown: 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, labor or equipment, and the prices associated with each of them.

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1.1.29 Work: All construction, supervision, labor, material and equipment necessary to complete the obligations under the Contract including Operation and Maintenance Manuals, Punch List completion, and As-Built Documents.

### 1.2 CONTRACT DOCUMENTS TO BE PROVIDED BY DREW

Upon Contract award, Drew will make available to the Contractor for reproduction copies of the drawings and specifications, and any additional instructions by means of supplemental contract documents as otherwise necessary for the proper execution of the Work, unless otherwise provided in the Contract Documents.

### 1.3 INTENT OF THE CONTRACT

1.3.1 The drawings, specifications and all of the Contract Documents are intended to require the Contractor to provide for everything necessary to accomplish the proper and complete finishing of all work. For the Project, the Contractor shall perform all of the obligations and work identified in the Contract Documents, regardless of the manner in which it is divided among the trades or the order in which it appears in the Contract Documents. 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 and/or furnished by the Contractor. The Contractor shall include any incidental materials and/or Work not indicated in the drawings and/or the specifications which are nevertheless necessary for the development of the Project and are reasonably inferable from the contract documents and industry practice. The Contractor shall perform all such work and furnish all such materials as if particularly delineated or described in the contract documents as part of the bid proposal.

1.3.2 The Contractor acknowledges that in preparing its bid, the Contractor had the obligation to raise any reasonably observable errors, omissions, ambiguities or discrepancies and request an interpretation of the alleged errors, omissions, ambiguities or discrepancies. If the Contractor failed to do so, it will have waived all rights to a Change Order or claim and the Contractor will be responsible to complete the Work as required, consistent with the intent of the Contract Documents as interpreted by Drew, without additional compensation.

1.3.3 No interpretation of the meaning of the plans, specifications or other Contract Documents provided prior to bid submission shall be binding upon Drew for any purpose unless issued in a Bulletin.

1.3.4 The Contractor shall abide by and comply with the intent and meaning of the Contract Documents taken as a whole, and shall not take advantage of any error or omission, should any exist. Should the Contractor become aware of the existence of any error, omission or discrepancy, the Contractor shall immediately notify Drew and the Architect/Engineer of any such errors, omissions, ambiguities or discrepancies and seek correction or interpretation thereof prior to commencement of the Work at issue. The Architect/Engineer shall issue a written interpretation. The Contractor shall do no work outside of the Contract Documents, unless written authorization to proceed from Drew is received by the Contractor.

1.3.5 Each and every provision required by law to be inserted in the Contract Documents is 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 may be modified to provide for such insertion or correction.

1.3.6 The order of precedence pertaining to interpretation of Contract Documents is as follows:

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

1.3.7 Where there may be a conflict in the Contract Documents not resolvable by application of the provisions of this Article, then the more expensive labor, materials, or equipment shall be assumed to be required and shall be provided by the Contractor.

1.3.8 On all work, it shall be the responsibility of the Contractor, by personal inspection of the existing building, facility, plant or utility systems, to ascertain the accuracy of any information given. This shall be the case, whether or not such information is indicated on the drawings, included in the specifications, or shown in any other documentation that is available. The Contractor shall have an affirmative duty to make reasonable inquiry for all available information. The Contractor shall include the costs of all material and labor required to complete the Work based on inspection and reasonably observable conditions.

#### 1.4 WORKDAYS

Regular working hours will be defined in the Contract Documents. Changes thereto may be granted with written approval of Drew representative. Any work required to be performed after regular working

hours or on Saturdays, Sundays, or legal holidays as specially set forth in the Contract documents, as may be reasonably required and consistent with contractual obligations, shall be performed at the amount set forth in the Contractor's bid without additional expense to Drew. The Contractor shall obtain written approval of Drew representative for performance of work after regular working hours or on non-regular workdays at least forty-eight (48) hours prior to the commencement of overtime, unless such overtime work is caused by an emergency. If the Contractor seeks such approval for the overtime work, same shall be performed at no additional cost to Drew except in the event of an emergency, at which time, Drew, in its sole discretion, shall determine if the submitted overtime is compensable.

## 1.5 ASSIGNMENTS

The Contractor shall not assign all or any part of this Contract without the written consent of the Director. Money due (or to become due) the Contractor hereunder shall not be assigned for any purpose whatsoever without the written consent of the Director.

## 1.6 SALES TAX

1.6.1 Materials, supplies or services for exclusive use in the construction of structures or buildings or otherwise improving, altering or repairing all Drew-owned property are exempt from State of New Jersey sales tax.

1.6.2 Purchases or rentals of equipment are not exempt from any tax under Drew Sales Tax Act.

## **ARTICLE 2 - OWNER/DREW**

### 2.1 DREW'S REPRESENTATION

Drew will be represented on the Project by DREW's designated representative(s).

DREW's designated representative(s) have only those duties that are required of the Owner under this Contract.

### 2.2 RIGHT TO PERFORM WORK

Drew 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 performing any work or installing any apparatus or carrying on any construction not included in the Contract Documents, or for any other reasonable purpose.

Drew shall have the right to defer the beginning of Work or to suspend the whole or any part of the Work whenever, in the sole discretion of Drew, it may be necessary or expedient for Drew to do so.

### 2.3 MEANS AND METHODS

Drew will not be responsible for, nor have control or charge of construction means, methods, techniques, sequences of procedures, or safety precautions and programs in connection with the Work. Drew will not be responsible for, nor have control or charge of, the acts or omissions of the Contractor, Subcontractors, or any of their agents or employees, or any other person performing any of the Work.

## **ARTICLE 3 - ARCHITECT/ENGINEER**

### **3.1 DUTIES AND RESPONSIBILITIES**

3.1.1 The Architect/Engineer ("A/E") is the consultant engaged by Drew to prepare the design and perform certain contract administration functions in accordance with the provisions of its contract with Drew.

### **3.2 PROGRESS MEETINGS**

The Architect/Engineer will attend, chair and issue record minutes of bi-weekly job progress meetings.

### **3.3 SITE OBSERVATIONS**

3.3.1 The Architect/Engineer will monitor the execution and progress of the Work. The Architect/Engineer will at all times be provided access to the Work. The Contractor shall provide facilities for such access so as to enable the Architect/Engineer to perform its functions.

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

### **3.4 SHOP DRAWINGS AND SUBMITTALS AND INVOICES**

As more specifically described in Article 4, the Architect/Engineer will review, approve or take other appropriate action relating to Contractor's submittals, including shop drawings, product data and samples, and as-built drawings, to assure conformance with the requirements of the Contract. 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.

### **3.5 PAYMENT APPROVALS**

3.5.1 The Architect/Engineer is responsible for the timely review of all invoices submitted by the Contractor. The Architect/Engineer shall inform the Contractor of any deficiencies therein. When the payment voucher is deemed accurate, the Architect/Engineer shall recommend approval of Contractor invoices.

3.5.2 The Architect/Engineer will review and recommend approval of Contractor closeout documentation in conjunction with the final application for payment.

## **ARTICLE 4 - THE CONTRACTOR**

### **4.1 REVIEW OF THE CONTRACT DOCUMENTS AND FIELD CONDITIONS**

4.1.1 The Contractor has the duty to thoroughly examine and be familiar with all of the Contract Documents and the Project site. The Contractor shall investigate and accurately determine the nature

and location of the Work, the current building equipment and systems, labor and material conditions, and all matters which may in any way affect the Work or its performance.

4.1.2 The Contractor shall be deemed to have verified all reasonably observable conditions outside the Contract limit lines to determine whether any conflict exists with the Work that the Contractor is required to perform under the Contract. This includes but is not limited to a check on elevations, utility connections and other site data. If a condition changed from the time of the bid to the time of the issuance of the Notice to Proceed, the Contractor shall notify the Architect/Engineer immediately. The Contractor shall immediately report any conflicts prior to the bid proposal due date or waive any claim for additional compensation arising from such conflict.

4.1.3 During the progress of the Work, the Contractor shall immediately report in writing any alleged error, inconsistency, ambiguity or omission in the Contract Documents to DREW. The Contractor shall not continue with any work that is affected by such alleged error, inconsistency, ambiguity or omission until Drew has had the opportunity to respond. Any error, inconsistency, ambiguity or omission shall be addressed pursuant to appropriate procedures set forth in these General Conditions.

4.1.4 Following notification of an alleged error, inconsistency, ambiguity or omission, Drew may issue supplemental instructions for the proper execution of the Work. The Contractor shall do no work without proper supplemental instructions. In giving such supplemental instructions, Drew will have the right to direct the Contractor to make minor changes in the Work without payment of additional monies. This provision is not intended to infringe upon or limit Drew's authority to otherwise direct changes in the Work, described elsewhere in these general conditions.

4.1.5 Where certain work is shown in complete detail, but not repeated in similar detail in other areas of the drawings, or if there is an indication of continuation with the remainder being shown only in outlines, the Work shown in detail shall be understood to be required in other like portions of the Project.

4.1.6 Unless otherwise directed in writing by Drew, the Contractor shall perform no portion of the Work without appropriate approvals as may be applicable and required by the Contract Documents.

4.1.7 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for all labor, equipment, materials, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for the proper execution, protection, and completion of the Work.

## 4.2 INSURANCE

The Contractor shall secure and maintain in force, for the term of the Contract, insurance coverage provided in Section 13.4. The Contractor shall provide Drew with current certificates of insurance for all coverage and renewals thereof which must contain a provision that the insurance provided in the certificate shall not be canceled for any reason except after thirty (30) calendar day's written notice to Drew. If cancellation occurs, the Contractor shall immediately procure new coverage, not allowing any lapse of coverage to occur.

## 4.3 PERMITS, LAWS, AND REGULATIONS

4.3.1 Drew shall obtain and pay for the construction permits and inspections (building, plumbing, electrical, elevator and fire), required by the Department of Community Affairs (DCA). When permits are issued by DCA, the appropriate licensed Contractors and/or Subcontractors shall be required to fill out the Contractor section of the Sub-Code Technical Section and sign and affix their raised seal thereto.

4.3.2 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for all other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work, and which are legally required at the time of receipt of bids.

4.3.3 All work must be done in accordance with the NJUCC. No work requiring inspections and approval by construction NJUCC code officials is to be covered or enclosed prior to inspection and approval by the appropriate NJUCC enforcement officials.

4.3.4 The Work performed pursuant to this Contract is exempt from local ordinances, codes and regulations as related to the building and the Site on which it is located, except in certain limited circumstances, where construction could adversely affect adjacent property, public sidewalks and/or streets. In those instances, the Contractor shall coordinate its activities with municipal and/or highway authorities having appropriate jurisdiction.

4.3.5 Immediately upon receipt of the contract award documents from Drew, the Contractor shall notify all utility companies involved regarding utility services required for completion of the Work. Such notification shall be in addition to any notification requirements imposed by law, including, without limitation, the Underground Facility Protection Act, N.J.S.A. 48:2-73, et seq.

4.3.6 The Contractor shall perform all soil conservation measures in accordance with County Soil Conservation District requirements.

4.3.7 The Contractor shall perform all sewage disposal work in conformance with the regulations of Drew's Department of Environmental Protection.

4.3.8 The Contractor shall be responsible for obtaining timely NJUCC inspections of the Work from the applicable Drew agency. The Contractor shall request such inspections through DREW authorized representatives allowing for sufficient notice to enable NJUCC inspections to be scheduled without delay to the Work.

4.3.9 Consistent with section 4.4 of these General Conditions, the Contractor shall be responsible for its own actions and protect, defend and indemnify Drew from all fines, penalties or loss incurred for, or by reason of, the violation of any municipal ordinance or regulation or law of Drew while the said work is in progress.

4.3.10 The Contractor shall comply with the Federal Occupational Safety and Health Act of 1970 and all of the rules and regulations promulgated there under.

4.3.11 If the Contractor causes a substantial violation of a Drew, local or federal statute or regulation on the Project, DREW may declare the Contractor to be in default, and/or terminate the Contract.

4.3.12 Prior to the start of any crane equipment operations, the Contractor shall make all necessary applications and obtain all required permits from the Federal Aviation Administration (F.A.A.). When



the F.A.A. has jurisdiction, the sequence of operations, timing and methods of conducting the Work shall be approved by the F.A.A.

4.3.13 The Contractor will establish an approved Silica Health and Safety Program when tasks generating crystalline silica dust are being performed. This program shall include engineering, work practice, and respiratory protection controls to reduce worker exposure to airborne respirable crystalline dust to levels that are as low as reasonably achievable. When tasks are performed that generate airborne crystalline dust, the Contractor will minimize worker exposure to dust by one, or a combination of the following methods: 1) dust suppression with water, 2) local exhaust ventilation to a high-efficiency dust collector, and/or 3) appropriate respiratory protection devices. The Contractor shall provide a trained, competent person, as defined by OSHA 29 CFR 1926, on site at all times to implement the Silica Health and Safety Program when tasks generating crystalline silica dust are being performed.

#### 4.4 RESPONSIBILITY FOR THE WORK

4.4.1 The Contractor shall be responsible to Drew and to any separate Contractors and/or consultants including, without limitation, the Architect/Engineer, for the acts, errors and omissions of its employees, Subcontractors and their agents and employees that injure, damage or delay such other Contractors and/or consultants in the performance of their work.

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 and keep the same protected until the Project (or identifiable portions thereof, that are declared as substantially complete and being used) is completed and accepted.

4.4.4 The Contractor shall be responsible for safety and for any damage or injury which may result from the Contractor's failure or improper construction, maintenance or operation.

4.4.5 In order to protect the lives and health of its employees, the Contractor shall comply with all applicable statutes and regulations and pertinent provisions of the "Manual of Accident Prevention in Construction" issued by the Associated General Contractors of America, Inc. and shall maintain accurate records 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. If a conflict should exist with the requirements of the Federal Occupational Safety and Health Act of 1970, then the most stringent statute or pertinent provision shall apply.

#### 4.5 INDEMNIFICATION

4.5.1 The Contractor shall assume all risk of and responsibility for, and agrees to protect, defend and indemnify Drew University, its agents, and its employees, from and against, any and all claims, demands, suits, actions, recoveries, judgment and costs of expenses in connection therewith on account of the loss of life, property, injury or damage to the person, body or property of any person or persons whatsoever, resulting from the Contractor's performance on the Project or through the use of any improper or defective machinery, implements or appliances, 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 Contract.

4.5.2 In any and all claims against Drew or any of its agents or employees, any employees of the Contractor or Subcontractor or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this section shall not be limited in any way as to the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under worker's compensation acts, disability benefit acts, or other employee benefit acts.

#### 4.6 SUPERVISION

4.6.1 The Contractor shall attentively supervise and direct the Work. The Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract.

4.6.2 The Contractor shall employ a full-time competent superintendent and necessary foremen 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 binding upon the Contractor. Drew reserves the right to require a change in superintendent if the superintendent's performance, as judged by Drew, is deemed to be inadequate. Upon application in writing, and if deemed appropriate and expressly approved by Drew, the requirement for a full-time superintendent may be waived. If such a waiver is permitted, the Contractor shall employ a full-time competent foreman who shall be in attendance on the site during the progress of work and shall represent the Contractor, and all communications given to the foreman shall be binding upon the Contractor. The Contractor shall not employ persons unfit or unskilled in the assigned area of work.

4.6.3 The Contractor shall ensure that its Subcontractors shall likewise have competent superintendents in charge of their respective portions of the Work at all times. Upon application in writing, and if deemed appropriate and expressly approved by Drew, the requirement for a full-time superintendent may be waived. If such a waiver is permitted, the Subcontractor shall employ a full-time competent foreman who shall be in attendance on the site during the progress of work and shall represent the subcontractor, and all communications given to the foreman shall be binding upon the subcontractor. The Subcontractor shall not employ persons unfit or unskilled in the assigned area of work. If it becomes 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.

4.6.4 The Contractor shall employ qualified competent craftsmen in their respective lines of work. Drew may require evidence that all employees have received sufficient training to execute the Work.

4.6.5 If, due to a trade agreement or project labor agreement, standby personnel are required to supervise equipment installation or for any other purpose during the normal working hours of other trades, the Contractor normally required to provide the standby services shall be deemed to have evaluated and included the costs thereof in its bid price and shall provide said services without additional charge.

4.6.6 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.

#### 4.7 SHOP DRAWINGS AND OTHER SUBMITTALS

4.7.1 The Contractor shall, within two weeks of the Notice to Proceed, submit to the Architect/Engineer, shop drawings and sample submission schedule for approval, which shall be used as a basis for complying with the overall progress schedule. The Contractor shall obtain, from its Subcontractor(s), all submittals including shop drawings, details, and schedules. The Contractor shall review the submittals for completeness and conformity with the Contract Documents, and shall stamp the submittals "approved". The Contractor shall to the Architect/Engineer promptly forward two copies of each submittals in reproducible form to the Architect/Engineer, so as to cause no delay in its own work or that of any other contractor Drew Project number and the drawing and specification references shall be written or typed on all submissions. Failure to comply with these instructions will be sufficient reason to return the drawing to the Contractor without approval and any resulting delay in the Project shall be the sole responsibility of the Contractor.

4.7.2. The Architect/Engineer will review shop drawings and other submittals with reasonable promptness. The Contractor shall promptly make any corrections, if required by the Architect/Engineer, and resubmit a reproducible copy for approval. Within five (5) working days of final approval, the Contractor shall send the Architect/Engineer a minimum of seven (7) prints of the finally approved shop drawings as well as seven (7) copies of all catalog cuts.

4.7.3 The Contractor shall prepare original shop drawings, and not simply copy the Contract Drawings for submission as shop drawings. All shop drawing sizes shall be in multiples of 9" x 12" (e.g., 18" x 24", 24" x 27", 24" x 36", etc.) as approved by the Architect/Engineer.

4.7.4 Any deviations or changes from the requirements of the Contract Documents, must be approved by the Architect/Engineer. A Contractor seeking approval for any deviations or changes must: a) make a written request for the proposed change; b) provide to the Architect/Engineer a detailed narrative description of the proposed change; c) highlight on the applicable drawing the proposed change; and d) furnish a detailed description of all potential impacts on the schedule and project budget.

#### 4.7.5 Substitutions

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

4.7.5.2 In the event that a Contractor proposes a substitution to the specified equipment or materials, it shall be the Contractor's responsibility to submit proof of equality and to provide and pay for any tests which may be required by Drew in order to evaluate the proposal. If there is a substantial cost savings between the substitution and the specified equipment or material, the difference will be returned to Drew in the form of a credit Change Order.

4.7.5.3 The application for the approval of a substitution must be submitted on Drew form within 10 days of Notice to Proceed. Further, the submission shall include the following requirements:

- a. A Full and complete identification information;

- b. The identification of the paragraph and section of the specifications for which the substitution is proposed. The attachment of data indicating in detail whether and how the equipment or material differs, if at all, from the article specified;
- d. A detailed explanation of any effect the proposed substitution will have on the scope of the Work and a certification that the Contractor agrees to be responsible for any and all resulting added costs to its Work and to any additional costs incurred by the Architect/Engineer in time, labor and/or redesign of the Contract Documents;
- e. The submission of documents that demonstrate proof of equality, along with an agreement to have such tests performed at the Contractor's own expense as may be required for approval by Drew and/or the Architect/Engineer. The Contractor shall be responsible for the cost of reviews by the Architect/Engineer of subsequent submissions of additional information.

4.7.5.4 Contractor shall not assume approved of a substitution that may have been approved on previous Projects. Bids shall be based solely on plans and specifications of this Project.

4.7.5.5 The Contractor shall not proceed with the purchase or installation of a substitution without the written approval of DREW. Any such installation may result in the assessment of costs for its removal at the Contractor's expense, and/or other damages and/or termination of the Contract for default.

#### 4.7.6 Additional Submissions

4.7.6.1 Samples: The Contractor shall furnish, for approval, all required samples. Such samples shall be submitted in accordance with the shop drawing and sample submittal schedule. All work must be installed in accordance with approved samples.

4.7.6.2 Utility Service Connections: With respect to plumbing, fire-protection, HVAC, electrical and other machinery and mechanical equipment items requiring utility service connections, the Contractor must submit the respective shop drawings with the manufacturer's certified rough-in drawings, indicating accurate locations and sizes of all service utility connections.

4.7.6.3 Sleeve and Opening Drawings: Prior to installing service utilities or other piping, through structural elements of the building, the Contractor shall prepare and submit, for approval by the Architect/Engineer, accurate dimensional drawings indicating the positions and sizes of all sleeves and openings required to accommodate the Work and installation of the Contractor's piping, equipment, etc. All such drawings must contain reference to the established dimensional grid of the building. Such drawings must be submitted in accordance with the approved shop drawing and sample submission schedule.

4.7.6.4 Control Valve and Circuit Location Charts and Diagrams: For all plumbing, fire protection, HVAC and electrical work, the Contractor shall prepare a complete set of inked or typewritten control valve and circuit location diagrams, charts and lists identifying and locating all such items, and shall place the charts, diagrams and lists under frame glass in designated equipment rooms. The Contractor shall also furnish one line diagrams, as well as such color-coding of piping, wiring and other necessary identifications as specified or required. This information is to be framed under glass and displayed where directed.

4.7.6.5 Coordination Drawings: The Contractor shall create and update a complete, composite set of Coordination Drawings. The purpose of these drawings is to identify coordination and interference problems prior to installation. Coordination Drawings are required for all equipment rooms, above ceiling spaces, shared chases, and other areas where the Work of two or more trades is to be installed. The drawings shall be drawn to a scale not smaller than 1/4"=1'-0" (30"x42" sheet size) and shall show clearly in both plan and elevation that all Work can be installed without interference. At a minimum these drawings shall indicate:

- a. The interrelationship of equipment and systems;
- b. Required installation sequences;
- c. Equipment foundations and pads, equipment, piping, conduits, racks, ductwork, insulation, panels, control centers, sprinkler and fire protection systems etc. and required clearances.

The Contractor shall prepare the coordination drawings based on the submitted shop drawings and Contract Documents. The Contractor shall prepare, submit and receive approvals for the Coordination Drawings before any sleeves or inserts are set, any floor openings are core drilled, or any equipment, equipment foundations, or related work is installed. The cost of preparing approved Coordination Drawings shall be included in the Contractor's price. DREW may require the Contractor to identify Coordination Drawings as an item within the Schedule of Values, and incorporate them into in the Project schedule.

#### 4.8 AS-BUILT DRAWINGS

4.8.1 The Contractor and each Subcontractor shall maintain on the Project Site at all times one set of drawings to be marked "AS-BUILT." DREW has the right to rely on accuracy of the "as-built" drawings provided by the Contractor. During the course of the Project, the Contractor shall mark these drawings with colored pencils to reflect any changes, as well as the dimension and the location of all pipe runs, conduits, traps, sprinkler and fire protection lines, footing depths or any other information not already shown on the drawings or differing therefrom. All buried utilities outside the building shall be located by a survey performed by a licensed surveyor who shall certify as to its accuracy. These marked-up drawings and surveys shall remain current and shall be made available to DREW or Architect/Engineer at all times during the progress of the Work.

4.8.2 In instances where shop drawings and/or erection drawings, of a scale larger than the Contract Drawings, are prepared by the Contractor, such drawings may be acceptable "as-built" drawings provided they are updated. A master sheet of the same dimensions as the Contract Drawings shall be prepared by the Contractor that shall indicate, sheet by sheet, a cross-reference to all shop drawings pertaining to that drawing.

4.8.3 The Contractor shall submit the "as-built" documents to the Architect/Engineer with a certification as to the accuracy of the information thereon at the time of Contract completion and before final payment will be made to the Contractor. After acceptance by the Architect/Engineer, the Contractor will furnish two sets of all shop drawings used for "as-built" documentation.

4.8.4 All "as-built" drawings as submitted by Contractors shall be dated and labeled "AS-BUILT" above the title block. This information shall be checked, edited and certified by the Architect/Engineer, who will then transpose such information from the Contractor's "as-built" drawings to the original drawings. Where shop drawings have been used by the Contractor for "as-built" documentation, the master sheet providing cross reference information, as described in section 4.8.2, shall be included in the set of "as-built" drawings furnished to DREW.

#### 4.9 EXCAVATIONS, CUTTING AND PATCHING

4.9.1 Soil borings, test pits or other subsurface information may be secured by an independent Contractor retained by Drew prior to design and construction of the Project and, if obtained, may be included in the Contract Documents for the Contractor's use. The Contractor assumes full responsibility for interpretation of said information.

4.9.2 The Contractor shall be responsible for furnishing and setting of sleeves, built-in items, anchors, inserts, and other necessary materials for its work and for all cutting, fitting, closing in, patching, finishing, or adjusting of its work in new and/or existing construction, as required for the completed installation.

4.9.3 Approval in writing from Drew and the Architect/Engineer must first be obtained by the Contractor before cutting or boring through any roof, floor beams, floor construction or structural members.

#### 4.10 TESTING

4.10.1 The Contractor shall notify Drew in writing of all work required to be inspected or tested. The notice shall be provided no later than five working days prior to the scheduled inspection or test. The Contractor shall bear all costs of such inspections or tests, except for Code inspections as stated in section 4.3 of this document.

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

4.10.3 DREW shall have the authority to direct in writing that special or additional inspections or tests be performed. The Contractor shall comply and give notice as detailed above.

4.10.4 In the event such special or additional inspections or testing reveal a failure of the Work to comply with the terms and conditions of the Contract, the Contractor shall bear all costs thereof, including all costs incurred by Drew made necessary by such failures.

4.10.5 The Contractor shall utilize inspection or testing from those firms/entities prequalified by DREW. Failure to use a firm/entity pre-qualified by DREW shall be grounds for rejection of the inspection or test as non-conforming.

4.10.6 All submittals of inspections, test reports or requests for approval shall be accompanied by a certification signed by the Contractor, attesting to: the Contractor's knowledge of the submittal; acceptance of its findings; acknowledgment that material testing meets the required standards; and a certification of the report's representation of the facts. Failure to provide the written certification shall be grounds for rejection of the submittal.

4.10.7 The Contractor shall ensure that a copy of the inspection report is transmitted directly to the Architect/Engineer and Drew. The Contractor shall ensure that it includes in all of its subcontracts and purchase orders for inspection and testing, the requirement for the inspection or testing firm/entity to submit a copy of the report directly to Drew representative. The Contractor shall ensure that all such reports are submitted within fourteen (14) calendar days of the test or inspection.

4.10.8 In addition to tests performed by the Contractor, Drew reserves the right to engage an independent testing agency or firm to perform testing inspections. The Contractor shall provide full access, provide samples, and cooperate fully with this testing agency.

4.10.9 Testing requirements for real property installed equipment (RPIE) to be furnished by the Contractor, when such testing is required by Code, Contract, or the manufacturer, shall be performed by a testing laboratory pre-qualified by DREW, or in the absence of such, by the manufacturer or its authorized representative. The Contractor shall provide five working days' notice to Drew representative, to allow sufficient opportunity to witness the test.

4.10.10 DREW may order that any part of the Work be re-examined by Drew, and if so ordered, the Contractor shall open or uncover such work for re-inspection by Drew. If such work is found to be in accordance with the Contract, Drew shall pay the cost of re-inspection; however, if such work is not found to be in accordance with the Contract, the Contractor shall be responsible for the cost of re-inspection and replacement of any defective or non-conforming work.

#### 4.11 EQUIPMENT AND MATERIALS

4.11.1 The Contractor warrants 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 installed in conformance with the Contract Documents. All work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective and rejected by Drew or the Architect/Engineer. If required by the Architect/Engineer or DREW, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty shall be in addition to but not in lieu of any other warranty or guarantee provided for in the Contract.

4.11.2 The Contractor shall submit to the Architect/Engineer an original and six copies of the request for approval of materials on the form provided by DREW for approval. Each item of material listed shall be marked "As Specified", "Substitution" or "Unspecified" as appropriate.

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

4.11.4 The Contractor shall furnish and pay for all necessary transportation, storage, scaffolding, centering, forms, water, labor, tools, light and power and mechanical appliances and all other means,

materials and supplies for properly executing the Work under this Contract, unless expressly specified otherwise in the Contract Documents. The Contractor shall have its representatives at the Site to accept delivered materials. Drew agencies employees and/or representatives will not accept materials, nor will Drew agency employees and/or representatives be responsible for damage, theft, or disappearance of the Contractor's materials, equipment, tools, or other property.

4.11.5 Products manufactured in the United States shall be used in this work, whenever available. Wherever practicable, preference shall be given at all times to material and equipment manufactured or produced in State of New Jersey, where such preference is reasonable and will best serve the interest of Drew.

4.11.6 No materials, equipment, or supplies for the Work shall be purchased by the Contractor subject to any lien or encumbrance or other agreement by which an interest is retained by the seller. This clause shall be a condition included in all agreements between the Contractor and its Subcontractors. The Contractor warrants, by signing its invoice, that it has good and sufficient title to all such material, equipment and supplies used by it in the Work, free from all liens, claims or encumbrances.

#### 4.12 TEMPORARY FACILITIES

The Contractor shall be responsible for providing for its own storage areas, employee vehicular parking and staging areas, excavation borrow/spoils designated areas, commercial canteen areas, and all other areas necessary for use by the Contractor. The Contractor shall locate these areas to suit Project requirements, subject to DREW approval.

4.12.1 Field Offices - The Contractor will provide and maintain during the contract duration an on-Site suitable weather-tight insulated field office conveniently located, and shall maintain therein a complete set of Contract Documents including plans, specifications, CPM network diagrams, Change Orders, logs and other details and Project correspondence. Subject to Drew's written approval and at a date designated by DREW, the field office may be removed upon enclosure of the building and space may be allocated for field offices within the building. The contents and operations will be transferred to the interior of the Project building by the Contractor, and said office(s) shall be maintained by the Contractor until final acceptance or until Drew approves its removal. The Contractor will be responsible to obtain and pay for all permits required for the Contractor's field offices.

4.12.2 Telephones - The Contractor shall provide its own telephones. Drew will be responsible only for the cost of calls made by Drew employees, if there is a documented cost for same.

4.12.3 Storage - The Contractor will provide and maintain, for its own use suitable and safe temporary storage, tool shops, and employees' sheds for proper protection, storage work and shelter. The Contractor shall maintain these structures properly and remove the structures at the completion of work. The Contractor shall be responsible to maintain these facilities and the areas around the facilities in a clear and clean manner. The Contractor shall be responsible for correcting defects and damage caused by such use. Rooms in buildings at the Project Site may be used as shops and storerooms, conditioned upon written approval from DREW.

4.12.4 Toilet Facilities



- a. The Contractor shall provide and pay for suitable temporary toilets at an approved location on the Site and prior to the start of any field work. The toilet facilities shall comply with federal, State and local laws and regulations. The Contractor will be responsible for maintenance, removal and relocation as described hereinafter.
- b. The Contractor shall provide a temporary toilet and/or indoor toilet connected to water and sewer to accommodate the meeting room and the Architect/Engineer's office, as well as Drew office.
- c. Toilets shall be serviced by a qualified and experienced firm authorized to maintain services.
- d. Each portable toilet facility shall be maintained in a neat and clean condition and serviced at least twice a week, including the removal of waste matter, sterilizing, recharging tank, refilling tissue holders, and thoroughly cleaning and scrubbing entire interior.
- e. Toilet facilities in a multiple-story building shall be located on no less than every other floor, unless otherwise directed in writing.
- f. Toilet service shall be relocated inside the building and connected to water and sewer as the progress of the Work will allow.
- g. When temporary toilets are connected to water and sewer lines, precautions shall be taken to prevent freezing.
- h. The Contractor shall remove the temporary toilet units from the Work Site at the completion of the Work, or when so directed by Drew or the Architect/Engineer.
- i. Workers are not to use the finished bathroom and toilet facilities in the Project buildings. Reasonable steps must be taken by the Contractor to enforce this rule.

#### 4.12.5 Access, Roads and Walks

- a. The Contractor shall be responsible for providing and maintaining unobstructed traffic lanes on the designated construction access routes shown on the Contract Drawings or as reasonably required so as to perform the Work. The Contractor shall provide and maintain all reasonably required safety devices. The Contractor shall provide any necessary additional materials, grading and compaction, and shall remove snow and debris as necessary to provide and maintain the access roadbed and pedestrian ways in serviceable condition.
- b. The Contractor shall be responsible for constructing and maintaining all roadways, drives and parking areas within or proximate to the Site free and clear of debris, gravel, mud, snow, ice, or any other Site materials, by ensuring that all reasonably necessary measures are taken to prevent such materials from being deposited on such surfaces. This includes, as may be appropriate, the cleaning of vehicle wheels and/or other necessary maintenance, prior to exit from the Construction Site. Should such surface require cleaning, the Contractor will clean these surfaces without additional cost to Drew. The Contractor will be held accountable for any

citations, fines, or penalties imposed on Drew for failing to comply with local rules and regulations related to Site and off-Site maintenance.

c. The Contractor shall not commence final construction of permanent driveways, parking areas or walks without the written approval of Drew. The Contractor shall provide additional materials and labor for maintaining and reworking the sub-grade prior to completion of the Work, to ensure improvements conform fully to the specifications.

d. The Contractor shall obtain written permission from Drew for the use of any existing driveways or parking areas not specifically designated for such use in the Contract Documents. If permission is granted, the Contractor shall maintain such driveways and areas in good condition during the construction period, and at the completion of the Project, shall leave them in the same or better condition as at the start of the Work. Conditions before use shall be carefully photographed and documented by the Contractor.

#### 4.12.6 Light and Power

a. The Contractor shall extend electrical service to the building or buildings at locations approved by Drew. Temporary electrical service shall be independent of the existing permanent service. Initial temporary service shall be three phase or single phase as indicated in the Contract Documents. The Contractor is responsible to investigate and verify the appropriateness and availability of electrical service with the local utility company prior to the bid date. The Contractor's bid shall be deemed to include all costs associated with providing this power. Temporary light and power installations, wiring, and miscellaneous electrical hardware must meet the electrical Code and will be inspected by NJUCC officials. The Contractor shall provide the necessary distributing facilities and a meter, and shall pay the cost of running temporary services from the nearest utility company power pole. All costs shall be included in the Contractor's bid.

b. In the event that a water well is the source of water supply for the Project, the extension of electrical service shall include the necessary wiring of sufficient capacity to the location of the well for the operation of the well pump. Where service of a type other than herein mentioned is required, the Contractor requiring it shall install and pay all costs of such special service. The size and incoming service and main distribution switch and panel shall be sized as any service by NEC requirements.

c. The Contractor shall provide all electrical service for the operation of elevator equipment during construction.

d. The Contractor shall pay for the cost of all electric energy used on distribution lines installed.

e. The Contractor shall provide and pay for all maintenance, servicing, operation and supervision of the service and distribution facilities.

f. If the Contractor fails to carry out its responsibility in the supplying uninterrupted light and power as set forth herein, the Contractor shall be held responsible for such failure, and Drew shall have the right to take such action as is deemed proper for the protection and

conduct of the Work. Any costs associated with DREW obtaining or supplying light and power shall be deducted from any payment due to the Contractor.

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

#### 4.12.7 Temporary Enclosures

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

#### 4.12.8 Temporary Heating, Ventilation and Air Conditioning

a. Prior to Enclosure - Prior to the building being enclosed by walls and roof, if the outside temperatures falls below 45 degrees Fahrenheit ("F") at any time during the day or night, and heat is required for work in progress or for its protection or curing, the Contractor shall furnish, at its expense, acceptable means to provide sufficient temporary heat to maintain a temperature required by the Work being performed but in no case less than 45 degrees F.

#### b. Generally Enclosed

(1) For the purposes of establishing the beginning of the Contractor's obligation to provide temporary heat, a building or major unit thereof shall be considered generally enclosed when (a) the exterior walls have been erected, (b) a temporary roof or permanent roof is installed and in a watertight condition, and (c) temporary or permanent doors are hung and window openings are closed with either permanent or temporary weathertight enclosures. A major unit of buildings as referred to herein shall be: (a) an entire separate structure, or (b) a fully enclosed wing which shall have a floor area equal to at least 50% (fifty percent) of the total floor area of the Project.

(2) As soon as Drew determines that the building, or a major unit thereof, is "generally enclosed" by walls and roof, and when the outside temperature falls below 55 degrees F. at any time during the day or night, the Contractor shall furnish sufficient heat by the use and maintenance of LP gas heaters or other acceptable means to maintain a temperature of not less than 55 degrees F. within the enclosed area of the building at all times, and shall remove such heaters when no longer required. The Contractor will be held responsible for providing temporary heat and for all damages resulting from freeze-ups, for the duration of the Project from the time the building is generally enclosed to final acceptance and occupancy. The Contractor shall remove soot, smudges, and other deposits from walls, ceilings, and all exposed surfaces which are the result of the use of heating equipment, including the permanent heating system, during the period of its use for supplying heat. The Contractor shall not do any finish work until the areas are properly cleaned. The Contractor shall provide or arrange, at its own expense, supervision of the heating equipment at all times prior to providing heat, using the permanent heating system. This obligation shall commence immediately after the acknowledged permanent enclosure of the building or buildings, as confirmed by

Drew. The Contractor shall furnish and pay for all fuel for heat required during the period when the building is generally or permanently enclosed.

(3) The Contractor shall not assume that the permanent heating system or any part thereof will be available for furnishing of temporary heat during the period for which temporary heat is required. The Contractor's base bid price shall therefore include the cost of all equipment necessary for providing temporary heat as required by the Contract Documents. The Contractor may use the permanent heating system, with written approval from DREW. Such use however does not cause to commence the equipment's warranties and guarantees. The equipment's warranties and guarantees shall not commence to run until Drew takes beneficial use of the Project and facility for the purposes intended.

(4) All heating equipment shall be NFPA-approved and connected to approved flues to the atmosphere. Heaters shall be approved by a recognized testing laboratory and must be equipped with a positive shutoff safety valve.

(5) Storage of gas cylinders within the building will not be permitted at any time.

(6) The Contractor shall provide fire extinguishers on each floor where heaters are used, and the areas must be adequately ventilated.

c. Permanent Enclosure

(1) When the building enclosure has been confirmed by the Architect/Engineer has been completed in accordance with the Contract Documents, and to the satisfaction of DREW, it shall be considered permanently enclosed. The Architect/Engineer will also confirm in the job meeting minutes that the building, or a major unit thereof, is permanently enclosed.

(2) The Contractor shall install adequate controls to make such temporary connection as required for the operation of the HVAC system.

Should the heating system be designed for the tie-in to existing steam lines for resource of heat, Drew will provide steam for temporary heat through the Project permanent heating system, at no cost to the Contractor, after the tie-in is completed by the Contractor.

(3) When the building enclosure has been confirmed by the A/E as completed, the Contractor may request permission to operate the permanent HVAC system to meet its temporary HVAC obligation. The Contractor shall maintain a minimum temperature of 55 degrees F., or a higher temperature, not to exceed 75 degrees F., as may be directed by the Contract Documents for the proper conduct and protection of the Work. The Contractor shall do so until such time as its work is completed and accepted and the Contractor is relieved of this requirement in writing by DREW. The Contractor shall pay for and be responsible for the maintenance in accordance with the manufacturer's recommendations, operation and supervision of the HVAC system, including the cost of

all water, electricity, and fuel, until Drew assumes beneficial occupancy/use of the Project.

#### 4.12.10 Temporary Water

a. The Contractor shall provide, protect and maintain an adequate valved water supply. If the source of water supply is a well, provisions covering the supply water will include the installation of necessary power-driven pumping facilities. The well shall be protected against contamination. The water supply shall be tested periodically by the Contractor, and if necessary, shall be chlorinated and filtered. All costs of providing water will be paid for by the Contractor.

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

#### 4.12.11 Standby Personnel

If, pursuant to trade agreement to which the Contractor is a party, the Contractor is obligated, to employ standby personnel then the Contractor shall determine and include all such costs thereof in its bid proposal. The Contractor shall not, at any time, make a claim to Drew for costs relating to standby maintenance or standby supervision for electric motor-driven or other equipment.

#### 4.12.12 Dust Control

a. The Contractor 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 Architect/Engineer or DREW.

b. The Contractor shall provide and maintain Site dust control of Projects with on-Site construction as directed by the Architect/Engineer or DREW.

### 4.13 STORAGE AND SITE MAINTENANCE

4.13.1 The Contractor shall confine its apparatus, the storage of its equipment, tools and materials, and its operations and workers to areas permitted by law, ordinances, permits, and Contract as set forth in the Contract Documents, the rules and regulations of Drew, or as ordered by DREW. The Contractor shall not unreasonably encumber the Site or the premises with materials, tools and equipment.

4.13.2 The Contractor shall, at all times during the progress of the Work keep the premises and the job Site free from the accumulation of all refuse, rubbish, scrap materials and debris caused by its operations and/or the actions of its employees, Subcontractors and/or workers, to ensure 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 refuse, rubbish, scrap materials and debris from the Site and Drew's premises. Loading, cartage, hauling and dumping of same will be at the Contractor's expense.

4.13.3 At the completion of the Work, the Contractor shall remove all of its tools, construction equipment, machinery, temporary staging, false work, mock-ups, form work, shoring, bracing, protective enclosures, scaffolding, stairs, chutes, ramps, runways, hoisting equipment, elevators, derricks, cranes, and any other materials and equipment brought onto the Project Site.

4.13.4 Should the Contractor not promptly and properly discharge its obligation relating to Site maintenance and/or final clean up, Drew shall have the right to employ others and to charge the resulting cost to the Contractor after first having given the Contractor a three-working day written notice of such intent.

4.13.5 The Contractor's responsibilities for final clean up shall include:

- a. Removal of all debris and rubbish resulting from or relating to the Contractor's work. Rubbish shall not be thrown from building openings above the ground floor unless contained within chutes.
- b. Removal of stains from glass and mirrors. Glass shall be washed and polished inside and outside.
- c. Removal of marks, stains, fingerprints, soil, dust or dirt from painted, decorated or stained woodwork, plaster or plasterboard, metal acoustic tile and equipment surfaces.
- d. Removal of spots, paint and soil from resilient, glazed and unglazed masonry and ceramic flooring and wall work.
- e. Removal of temporary floor protections; and cleaning, washing or otherwise treating and/or polishing, as directed, all finished floors.
- f. Cleaning of exterior and interior metal surfaces, including doors, window frames and hardware, of oil stains, dust, dirt, paint, etc. Polishing and removal of fingerprints or blemishes from such surfaces shall be completed, as applicable.
- g. Restoration of all landscaping, roadways and walkways to preexisting condition. Damage to trees and plantings shall be repaired in the next planting season, and such shall be guaranteed for one year from the date of repair and/or replanting.

4.13.6 All construction equipment, materials and/or supplies of any kind, character or description, regardless of value, which remain on the job Site for more than 30 (thirty) calendar days from the date of the Certificate of Final Acceptance, shall become the property of Drew. Such construction equipment, materials and/or supplies will be disposed of in any manner Drew shall deem reasonable and proper. The cost of this disposal will be deducted from any sums due the Contractor. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to Drew.

#### 4.14 CUT-OVERS AND INTERRUPTIONS

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

#### 4.15 PROTECTION/SAFETY

4.15.1 Safety Precautions and Programs – The Contractor shall be responsible for initiating, maintaining and supervising all required safety precautions and programs in connection with the Work. The Contractor shall designate a responsible member of its organization at the Site whose duty shall be the prevention of accidents. This person shall be competent to review, implement and coordinate the safety programs being performed as required by Occupational Safety and Health Administration (OSHA) or any other agency having authority over safety on a Drew Construction Site.

#### 4.15.2 Protection of Persons

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

(1) Every employee on the Site and all other persons who may be affected thereby;

(2) 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 Subcontractor(s) or lower tier sub-Subcontractor(s); and

(3) Other property at the Site or adjacent thereto (whether owned by Drew or not), including but not limited to trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

b. 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.

c The Contractor shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards for safety and protection, including but not limited to rails, night-lights, aircraft warning lights, the posting of danger signs and other warnings against hazards, promulgating safety regulations, notifying Owners and users of adjacent utilities and other means of protection against accidental injury or damage to persons and property.

d. The Contractor shall not load or permit any part of the Work to be loaded so as to endanger the safety of the project, its employees, or any other person on the project Site.

e. 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, lower tier 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. These obligations are in addition to those stated elsewhere herein.

#### 4.15.3 Protection of Property

The Contractor shall have full responsibility to install, protect, and maintain all materials and supplies in proper condition whether in storage or off the site and to immediately repair and/or replace any such damage until Final Acceptance. The Contractor shall maintain an inventory of all materials and supplies for the Work at the Site, that are delivered to the site, or delivered to approved off-site storage facilities. Drew shall not be liable for any damage, theft or negligent injury to the Contractor's property.

#### 4.15.4 Hazardous Materials

- a. 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.
- b. The Contractor shall maintain all records, reports and files of the general storage and handling of hazardous materials as required by any and all federal, Drew and/or local regulatory agencies.

#### 4.16.5 Emergencies

In any emergency affecting the safety of persons or property, the Contractor shall act with diligence to prevent threatening injury, damage or loss. In such case, the Contractor shall immediately, but in no case, not more than 24-hours following the emergency, notify Drew and the Architect/Engineer of the action taken.

### 4.16 UNCOVERING AND CORRECTION OF WORK

#### 4.16.1 Uncovering of Work

- a. The Contractor is obligated to provide reasonable notice to Drew and/or the Architect/Engineer of all work scheduled to be covered, to permit DREW and the Architect/Engineer the opportunity to inspect the Work prior to actual covering. If any portion of the Work is covered prior to inspection by DREW or the Architect/Engineer, it shall be uncovered for observation. Uncovering and replacement of the covering shall be at the Contractor's expense.
- b. Drew and/or the Architect/Engineer may request any work be uncovered by the Contractor for inspection. 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 to the Contractor. If such work is found not to be in accordance with the Contract Documents, the Contractor shall pay all associated costs.

#### 4.16.2 Correction of Work

- a. The Contractor shall promptly correct all work rejected by DREW or the Architect/Engineer as defective or 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 costs of all consultant services including but not limited to the Architect/Engineer's additional services.

b. The Contractor shall remove from the site, at its own expense, all portions of the Work which are defective or non-conforming and which have not been corrected, unless removal is waived by DREW.

c. If the Contractor fails to correct defective or non-conforming work in a reasonable time fixed by written notice from DREW, then DREW may make arrangements for such correction by others and charge the cost of so doing to the Contractor.

d. If the Contractor does not proceed with the removal and correction of such defective or non-conforming work within a reasonable time, fixed by written notice from DREW or the Architect/Engineer, any materials or equipment shall become the property of DREW and DREW may remove and dispose the non-conforming work in any manner to best meet the interest of DREW. If such material is sold and the proceeds of the sale do not cover all costs which the Contractor should have borne and any additional cost incurred by DREW in the uncovering, removal, disposal and correction of non-conforming work, 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 shall pay the difference to DREW.

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

f. Notwithstanding other obligations within the Contract Documents, nothing contained herein shall be construed to establish a time or date limitation upon which DREW must discover non-conforming work.

#### 4.16.3 Acceptance of Non-Conforming Work

DREW may determine that the best interests of DREW will be served by accepting defective or non-conforming work instead of requiring its removal and correction. In such instance, DREW may, by any means available, exact an appropriate reduction in the Contract sum. Such adjustment shall be effected regardless of final payment having previously been made, and the Contractor and/or its surety shall be responsible for promptly remitting any funds due DREW as a result thereof.

#### 4.17 LAYOUT AND DIMENSIONAL CONTROL

4.17.1 The Contractor shall be responsible for locating and laying out the building and all of its parts on the site, in strict accordance with the Contract Documents, and shall accurately establish and maintain dimensional control. The Contractor shall employ and pay for the services of a competent and licensed New Jersey engineer or land surveyor who shall be pre-qualified by DREW to perform all layout work, and to test the level of excavations, footing base plates, columns, walls and floor and roof lines, and furnish to the Architect/Engineer, as the Work progresses, certifications that each of such levels is as required by the drawings. The plumb lines of walls, shall be tested and certified by the surveyor as the Work progresses.

4.17.2 The Contractor's engineer/surveyor, in the course of layout work either on the site or within any building, shall establish all points, lines, elevations, grades and bench marks for proper control and execution of the Work. The Contractor's engineer/surveyor shall establish a single permanent benchmark as set forth in the Contract Documents to which all three coordinates of dimensional control shall be referenced. The Contractor's engineer/surveyor shall verify all Owner-furnished survey data including but not limited to topographical and utility location points, lines, elevations, grades and benchmarks, and buildings. Should any discrepancies be found between information given on the Contract Documents and the actual site or field conditions, the Contractor shall notify DREW and the Architect/Engineer in writing of such discrepancy, and shall not proceed with any work affected until receipt of written instructions from Drew.

#### 4.18 PROJECT SIGN

The Contractor shall erect and maintain one sign at the Project Site, as set forth in the Contract Documents and located as directed by the Architect/Engineer. Painting shall be done by a professional sign painter, with two coats of exterior paint, colors, letter face and layout as shown. No other sign will be permitted at the site. Upon completion of the Project, and when directed by the Architect/Engineer or DREW, the Contractor shall remove the sign.

#### 4.19 SECURITY

4.19.1 The Contractor shall provide all locks, doors and security construction and personnel as required to secure the Project building throughout the period of construction.

4.19.2 The Contractor shall be responsible for the security of any temporary structures located on the premises outside of the building and/or any stored materials.

4.20 Intentionally left blank.

#### 4.21 PHOTOGRAPHS

4.21.1 The Contractor shall submit monthly progress photographs in duplicate to DREW, giving six (6) views of the Work with each application for payment until the Project is completed.

4.21.2 The photographs shall be 8" by 10" shall bear the date and time of the exposure, Drew Project number and title, the names of the Contractor and the name of the Architect/Engineer. All photographs shall also be submitted in digital format.

#### 4.22 REPAIR OF FINISHED SURFACES, APPLIED FINISHES, GLASS

4.22.1 The Contractor accepts sole responsibility for repair of uncontrolled dislodging, cracking, delaminating or peeling of finished surfaces such as concrete, pre-cast concrete, cast and natural stone, unit masonry, millwork, plaster, glass and applied finishes such as compound, paint, and special coatings, within the Contract Work and the limits of specified guarantee periods, regardless of the cause.

4.22.2 The Contractor shall be responsible for replacement of all broken glass, regardless of the cause. The Contractor shall replace all broken, scratched or otherwise damaged glass before the completion and acceptance of the Work. If breakage is caused by the Owner, the Contractor will be reimbursed for

the replacement costs. The Contractor shall wash all glass on both sides at completion, or when directed, removing all paint spots, stains, plaster, and other materials.

## **ARTICLE 5 - SUBCONTRACTORS**

### **5.1 SUBCONTRACTORS AND MATERIAL SUPPLIER APPROVALS**

5.1.1 Upon their execution, but not less than fourteen (14) calendar days prior to Subcontractor mobilization on the site, and/or Subcontractor billing, the Contractor shall forward to the Architect/Engineer on the form provided by DREW the names of all its Subcontractors and suppliers, of such others as Drew may direct, proposed to perform the principal parts of the Work. The Contractor shall forward the appropriate DREW form to the Architect/Engineer for approval.

5.1.2 If Drew has objection to any proposed or approved Subcontractor and/or material supplier, the Contractor shall substitute another Subcontractor and/or material supplier acceptable to DREW. Under no circumstances shall Drew be obligated for additional cost due to such substitution.

5.1.3 After the acceptance of bids, the Contractor shall make no substitution of any Subcontractor person or firm previously selected and approved, without prior written approval from the Architect/Engineer and DREW. A Contractor seeking to substitute a Subcontractor person or firm shall provide written request for substitution no less than fourteen (14) calendar days prior to the execution of Work by the Subcontractor or material supplier.

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

### **5.2 CONTRACTOR-SUBCONTRACTOR RELATIONSHIP**

5.2.1 The Contractor acknowledges its full responsibility to Drew for the acts and omissions of its Subcontractors and lower tier subcontractors, and of persons and firms either directly or indirectly employed by them, equally to the extent that the Contractor is responsible for the acts and omissions of persons and firms directly or indirectly employed by it. The Contractor acknowledges that it remains fully responsible for the proper performance of its Contract regardless of whether work is performed by the Contractor's own forces or by Subcontractors engaged by the Contractor.

5.2.2 Nothing contained in the Contract Documents shall create any contractual relationship between any Subcontractor and Drew. Further, no Subcontractor or material supplier shall be deemed an intended third party beneficiary under this Contract.

5.2.3 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.

5.2.4 The Contractor shall require, in its agreements with Subcontractors and as a condition of agreement, that each Subcontractor require in its agreement(s) with lower tier Subcontractors and Suppliers, that the Subcontractor understands that there is no contractual obligation of any kind between Drew and Subcontractor and the Subcontractor's sole recourse lies with the Contractor and/or

the surety, and not with Drew, that each Subcontractor and lower tier Subcontractor, bound by the terms of the Contract Documents for this Contract, and assume toward the Contractor all the obligations and responsibilities which the Contractor assumes, pursuant to the Contract Documents.

## **ARTICLE 6 - CONSTRUCTION PROGRESS SCHEDULE 6.1 GENERAL**

Drew may contract for the services of a Critical Path Method (CPM) scheduling consultant for Project planning, scheduling and cost control. If such has been arranged, then section 6.2 shall apply to the Contract between Drew and the Contractor. In the absence of a CPM consultant has been retained by Drew, then section 6.3 shall apply.

### **6.2 CONSTRUCTION PROGRESS SCHEDULE (CRITICAL PATH METHOD -- CPM CONSULTANT RETAINED BY DREW)**

#### **6.2.1 Critical Path Method**

- a. The Project will be monitored by a detailed critical path method scheduling system. This system shall be the basis for the evaluation of the Contractor's performance and for progress payments to the Contractor.
- b. The Contractor shall provide all the information necessary for the CPM consultant employed by DREW to develop a CPM network plan demonstrating complete fulfillment of all construction Contract requirements and, as necessary, for the CPM consultant to maintain an accurate CPM schedule throughout the Project. The Contractor, in consultation with the CPM consultant, will establish construction logic and activity time duration consistent with Contract documents and Project requirements. The CPM consultant will establish the level of detail to be reflected on the CPM schedule. The Contractor shall utilize the schedule in planning, coordinating and performing the Work, including all activities of Subcontractors, equipment vendors and material suppliers.
- c. The Contractor agrees that the CPM consultant's Project network schedule is the designated plan for completion of all work in the allotted time, and the Contractor will assume full responsibility for the execution of the Work as shown. The Contractor shall indicate formal acceptance of the schedule by signing the final initial (baseline) network diagrams and computer schedule listing.
- d. The Contractor shall furnish sufficient labor and construction equipment to ensure the execution of the Work in accordance with the approved CPM progress schedule. If, in the opinion of DREW, a Contractor falls behind the CPM progress schedule, the Contractor shall take any and all such steps as may be necessary to bring its work into compliance with the CPM progress schedule. DREW may require the Contractor to increase the number of shifts, days of work and/or the amount of construction labor, plant and equipment, all without additional cost to Drew.
- e. The Contractor shall make no claim for, and have no right to, additional payment or extension of time for completion of the Work, or any other concession because of any misinterpretation or misunderstanding on the Contractor's part of the CPM progress schedule, the Contractor's failure to attend the pre-bid conference, or because of any failure on the Contractor's part to become fully acquainted with all conditions relating to the CPM progress schedule and the manner in which it will be used on the Project, or because of any Subcontractor's failure to properly participate in the development of a CPM progress schedule or to perform the Contract in accordance with the CPM progress schedule.

## 6.2.2 Initial Submittal

a. To the extent necessary for the CPM consultant to reflect in the network diagrams the plan for completion of this Contract, the Contractor shall meet with and assist the CPM consultant and furnish, within ten (10) calendar days after award of this Contract, all necessary information for the preparation of the CPM progress schedule. This information shall include, but not necessarily be limited to, a logical sequencing of work operations, activity time estimates, intended crew flow, activity costs and estimated manpower requirements for each activity.

(1) The network diagram shall show the sequence and interdependence of activities required for the Project. In preparing the network diagram, the Contractor shall assist the CPM consultant by breaking up the Work into activities of a duration of no longer than ten (10) working days each, except as to non-construction activities (such as procurement of materials, delivery of equipment and concrete curing) and any other activities for which the CPM consultant may approve the showing of longer duration. The diagram shall show not only the activities for actual construction but also such activities as the Contractor's submittal of shop drawings, templates and equipment, material fabrication, delivery of equipment and material, substantial completion, final completion, punch list and closeout, and the delivery of Owner-furnished equipment, if applicable. The Contractor shall provide activity durations to the CPM consultant for each activity on the diagram.

(2) If requested by the CPM consultant, the Contractor shall furnish any information needed to justify the reasonableness of activity time duration. Such information shall include, but not be limited to, estimated activity manpower, unit quantities, and production rates.

(3) Failure by either the Contractor or the CPM consultant to include any element of work required for the performance of the Contract shall not excuse the Contractor from completing all work required within any applicable date, notwithstanding DREW approval of the network diagrams.

(4) The CPM consultant will establish the level of detail to be reflected in the CPM system.

(5) Seasonal weather conditions shall be considered in the planning and scheduling of all work influenced by high or low ambient temperatures for the completion of all Contract work within the allotted Contract duration. In addition, appropriate allowances shall be made for anticipated time losses due to normal rain and snow conditions based on the previous five year average for that geographical area, by statistically expanding the estimated time duration for weather-sensitive activities, to ensure that the required completion date is achieved.

b. The Contractor shall be prepared to meet as many times as necessary with the CPM consultant to develop the information required for the timely development of the progress CPM schedule.

c. The Contractor shall furnish a breakdown of its total Contract price by assigning dollar values to each applicable network activity, coded for the Contractor and each Subcontractor, which cumulatively equals the total Contract amount. Upon acceptance by DREW, the values will be used as a basis for determining progress payments. Progress payments to the Contractor shall be dependent upon final acceptance by DREW of the cost-loaded progress CPM schedule.

d. Accompanying the network diagram and computer scheduling listing, the CPM consultant will furnish a computer-generated cost requisition listing, which will provide a separate tabulation of each activity shown on the CPM schedule in order of bid item or trade responsibility code as agreed to by DREW. This listing will show, for each activity, the Contractor and each Subcontractor, the estimated dollar value of Work in place for totally or partially completed activities, including subtotals by bid items and grand totals for the entire Project. The cost requisition listing will also contain monthly activities reflecting the cost of Project overhead and administrative expenses, and activities reflecting the monthly cost of administering Project General Conditions.

#### 6.2.3 Review and Approval:

a. After receipt of the initial network diagram, computer-produced schedule and cost requisition listing, DREW representative shall meet with the Contractor and CPM consultant for joint review, correction, or adjustment of the proposed plan and progress CPM schedule to evaluate the cost values assigned to each activity. Within ten (10) calendar days after the joint review, the CPM consultant will revise the network diagram and/or computer-produced schedule in accordance with agreements reached during the joint review, and shall submit two (2) copies each of the revised network diagram, computer-produced schedule and cost requisition listing to DREW. The revised schedule documents will be reviewed by DREW and, if found to be as agreed upon, will be approved. A copy of each will be returned to the CPM consultant for distribution and the CPM consultant shall forward same to the Contractor by email and/or overnight mail. The Contractor shall review these documents and shall indicate acceptance by signing the schedule documents. If the Contractor objects to the schedule documents, the Contractor shall forward these objections in writing to DREW within ten (10) calendar days of the date of receipt of same or be deemed to have accepted the schedule documents. Objections shall include the precise activities of the schedule to which the Contractor objects and identify the basis of the objection. The Contractor will then meet with DREW representative and the CPM consultant to review the Contractor's objections. The CPM consultant may revise the network diagram and the computer-produced schedule in accordance with the agreements reached during this final review and shall submit two (2) copies each of the revised network diagram, computer-produced schedule and cost requisition listing to DREW. The re-submission will be reviewed by DREW and, if found to be as agreed upon, will be approved and a copy of each will be returned to the CPM consultant for distribution and the CPM consultant shall forward same to the Contractor by email and/or overnight mail. The Contractor shall review these schedule documents to ensure that that the documents reflect all changes agreed upon, accept and sign. The Contractor shall indicate its acceptance by signing the scheduling documents, computer-produced schedule and cost requisition. 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 further objections to the schedule.

b. After the network diagrams and computer-produced schedule have been signed by the Contractor, the CPM consultant shall forward to the Contractor and DREW one set of copies of the network diagrams and computer-produced schedule. The network diagram and the computer-produced schedule with approved signatures shall constitute the Project work schedule until subsequently revised in accordance with the requirements of this section.

#### 6.2.4 Progress Reporting and Changes:

a. Once every month, or more often if required by DREW, the Contractor shall meet with the CPM consultant and DREW's representative(s) and provide the information necessary for the CPM consultant to prepare and submit to DREW a revised (updated) network diagram and computer-generated schedule listing showing:

- (1) Approved changes in activity sequencing;
- (2) Changes in activity duration for activities not started or partially completed where agreed upon;
- (3) The effect on 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 duration, 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 purposes 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 DREW since the last revision of the CPM schedule.

b. 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, Change Orders and change events as soon as these factors can be defined. All changes made to the schedule shall be subject to approval by DREW prior to inclusion in the CPM schedule. If DREW representative and the Contractor are unable to agree as to the amount of time to be allowed for Change Order work, or the manner in which the Work is to be reflected on the network diagram, the CPM consultant will reflect the logic and time duration furnished by the Contractor for the Change Order work pending final DREW decision. If non-approved 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 DREW regarding the manner in which the Change Order work is to be reflected on the schedule. When



this final decision has been made by DREW, the CPM consultant shall revise the CPM schedule in accordance with such decision and issue a final analysis of the effect of the change on the Project.

c. If the Contractor desires to revise the logic of the approved progress CPM schedule to reflect a sequence of construction that differs from that to which was previously agreed, the Contractor must first obtain the approval of DREW.

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

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

(3) In addition to the foregoing, once each month the Contractor will receive a narrative report prepared by the CPM consultant. The narrative report will include a description of the amount of progress made 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 the estimated impacts the delays have on the performance of other activities and completion dates, and recommendations on corrective action for the Contractor. Within seven (7) calendar days after receipt of this report, the Contractor shall submit to DREW a written explanation of corrective action taken or proposed. DREW, after reviewing the written submission, may take appropriate action.

#### 6.2.5 Payments to Contractor

a. The monthly submission of the computer-produced calendar-dated schedule shall be an integral part and basic element of the estimate upon which progress payments shall be made pursuant to the provisions of Article 9 of these General Conditions. The Contractor shall be entitled to progress payments only upon receipt by DREW of an updated computer-produced calendar-dated schedule and cost requisition listing.

b. Payments to the Contractor shall be based upon the results of the computer-generated cost requisition listing which shall be prepared in conjunction with each updating of the CPM system as described above. The Contractors shall provide sufficient documentation to confirm reported progress for any cost items appearing in the scheduling and requisition system.

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

#### 6.2.6 Biweekly Progress Meetings

a. Every two (2) weeks or as otherwise directed by DREW, the Contractor shall attend a coordination and CPM scheduling meeting on the job site. At this meeting, the Contractor shall provide detailed information regarding the Work schedule to be performed during the upcoming two weeks to permit the CPM consultant to prepare schedules for the subsequent two week period. Biweekly scheduling by the Contractor shall be in accordance with the priorities and degree of concurrent work required by the official CPM schedule for the Project. The Contractor shall be prepared to explain any difference between the Contractor's biweekly schedules and the priorities required by the latest updating of the official CPM schedule.

b. At the biweekly scheduling meeting, the CPM consultant shall review the schedule for the preceding two (2) weeks, and the Contractor shall report the progress actually achieved for each activity which was scheduled to be performed during the two weeks, including the actual dates on which the Work was performed. The Contractor agrees that this information shall constitute the official historical record of Project progress.

c. At each biweekly scheduling meeting, the Contractor shall document any current delays to work operations. In addition, the Contractor shall provide any available information regarding any potential delays.

(1) Following the biweekly scheduling meeting, the CPM consultant will issue to the Contractor a two-week look-ahead schedule as developed at the meeting that shall constitute the construction schedule for the coming two weeks. The CPM consultant will also issue a narrative biweekly progress analysis documenting progress achieved during the preceding two weeks and analyze delays reported to constitute current or anticipated impacts to timely construction.

(2) The Contractor shall be represented at the biweekly scheduling meeting by its superintendent, who shall have complete authority to provide the information required for the development of the next two (2) weeks schedule, which includes documentation of past progress and documentation of delays. The Contractor's representatives shall also be authorized to commit to the implementation of corrective action planned to overcome delaying conditions.

#### 6.2.7 Responsibility for Completion

a. The Contractor agrees that, when it becomes apparent from the current project CPM schedule that any Contract completion date will not be met, the Contractor will take any or all of the following actions, as required, at no additional cost to Drew:

- (1) Increase construction manpower.
- (2) Increase the number of working hours per shift, shifts per working days, working days per week, or the amount of construction equipment, or any combination of the above; and/or
- (3) Reschedule activities to achieve maximum practical concurrence.

#### 6.2.8 Adjustment of Contract Completion Date

a. The Contract completion dates will not be adjusted except under the specific and limited conditions set forth in the Contract Documents. In the event that the Contractor requests an extension of any Contract completion date, the Contractor shall furnish a justification of such extension and provide any and all supporting evidence that DREW requires to evaluate the Contractor's request. DREW shall either approve, in whole or in part, or reject the Contractor's request and will advise the Contractor in writing of its decision. If DREW 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 calendar days extension permitted shall be based upon the currently approved Project CPM schedule and on all data relevant to the extension request. Such data will be included in the next updating of the CPM schedule.

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

- (1) Float time shown on the Project CPM schedule is not for the exclusive use of either the Contractor or DREW. It is agreed that float time is available for use by all performing Work on the Project, including the Contractor, other contractors, subcontractor, lower tier subcontractors, and suppliers to facilitate the effective use of available resources and to minimize the impact of problems of Change Orders which may arise during construction. The Contractor specifically agrees that float time may be used by DREW or its representatives or consultants in conjunction with the 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 Project CPM schedule, regardless of the justifiability or any delaying factors which might have resulted in the elimination of float which was originally available for the activity. If the Contractor refuses to perform work that is available to it, DREW may consider, the Contractor to be in breach of the Contract, regardless of the float shown to be available for the Work. In such instances, DREW may, without prejudice to any other right or remedy, declare the Contractor to be in default and terminate the employment of the Contractor pursuant to Article 12 of the General Conditions.

(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 by clear and convincing evidence that the weather conditions during a given quarterly period (summer, fall, winter, spring) were more severe than the previous five-year (5) average for the Project geographical area, and 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 normal weather losses that should have been anticipated for the quarterly period in question.

(3) No time extensions will be considered for any weather conditions that do not affect work on the Project critical path as set forth on the current Project CPM schedule. 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.

(4) In order for a given cause (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.

(5) The Contractor acknowledges and agrees that actual delays to activities that, according to the Project CPM schedule, do not directly affect the main Project critical path and do not have any effect on the Contract completion date or dates, will not be the basis for a change therein.

(6) Concurrent delays are defined as two or more delays or areas of work slippage that are totally independent of one another and which, if considered individually, would each affect the final Project completion date according to the Project CPM schedule. Where the CPM consultant determines that concurrent delays exist, the Contractor acknowledges and agrees that the following criteria will be used to evaluate time extension:

(a) If the current Project CPM schedule shows two (2) or more concurrent delays, with one analyzed to be the responsibility of DREW and the other analyzed to be the responsibility of the Contractor, a non-compensable time extension will be considered only if the excusable delay affects the main Project critical path and this delay is shown to be a greater amount than the other concurrent delays when the impacts of the concurrent delays are independently considered. In this event, a compensable time extension will be considered only for that portion of time by which the excusable delay exceeds all concurrent non-DREW caused delays. For example, if an excusable impact delays the Project

by one-hundred (100) calendar days and concurrent contract-caused slippage independently delays the final completion date by ninety (90) calendar days, a time extension will only be considered for a maximum of ten (10) calendar days, provided the excusable delay is on the project critical path.

(b) If the CPM schedule shows concurrent delays with some excusable delays and some the fault of the Contractor, and if the Contractor-caused delays are analyzed to be the main determining 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 may, however, be considered for that portion of the total Project slippage which is shown on the CPM schedule to be totally attributable to excusable delays.

(c) If a time extension request is being made for concurrent delays which did not affect the Project critical path, this must be clearly Drewd 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.

### 6.3 CONSTRUCTION PROGRESS SCHEDULING PROVIDED BY THE CONTRACTOR

6.3.1 The Project shall be completed within the specified number of calendar days from the effective date of the Notice to Proceed.

6.3.2 The Contractor shall be responsible for preparing and furnishing to DREW through the Architect/Engineer before the first Contract requisition date, but in no event later than 30 (thirty) days after the effective date of the Notice to Proceed, a coordinated combined progress schedule that incorporates the progress schedules of the Contractors and all Subcontractors engaged on the Project. The schedule shall be in the form of a network diagram or other recognized graphic critical path progress schedule format that indicates, among other things, predecessor and successor activities, and major and intermediate milestones, in sufficient detail to satisfy Drew. (See also section 6.3.4 below.) The Contractor's initial invoice will not be processed by Drew until and unless such a single coordinated progress schedule has been submitted to and approved by Drew. Thereafter, the Contractor shall submit an updated coordinated progress schedule on a monthly basis. Receipt and approval of the updates will be a mandatory condition to payment.

6.3.3 Once each month, or more often if required by Drew, the Contractor shall meet with the Architect/Engineer and Drew representative to gather the information necessary for the Contractor's preparation of the revised/updated computer generated scheduling reports.

6.3.4 The progress schedule, based upon the logic and time estimates, shall indicate in suitable detail for display, all significant features of the Work of the Contractor and each Subcontractor, including but not limited to, the placing of orders, manufacturing durations, anticipated delivery dates for critical and long-lead items, submissions and approvals of shop drawings, construction activities, all work activities to be performed by the Contractor and its Subcontractors, the beginning and time duration thereof, and

the dates of all milestones, substantial and final completion of the various elements of the Work, including punch list and close-out. Reports shall be in booklets, indexed and separated as categorized below. Each activity listed on the Schedule shall include, as a minimum, the following:

- a. The activity description;
- b. The trade (A/E, Owner, GC, Electrical, Plumbing, HVAC);
- c. The duration in calendar days;
- d. The Early Start date;
- e. The Late Start Date;
- f. The Early Finish date;
- g. The Late Finish date;
- h. The Total Float

6.3.5 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 by clear and convincing evidence that the weather conditions during a given quarterly period (summer, fall, winter, spring) were more severe than the previous five-year (5) average for the Project geographical area, and that these weather conditions critically impacted the final Project completion date by delaying the performance of work. If abnormal weather losses can be shown to have impacted the Project completion date, a non-compensable time extension will be considered for that portion of the proven weather-related delays, which exceeded normal weather losses that should have been anticipated for the quarterly period in question.

6.3.6 Immediately upon approval by DREW, the Contractor shall prepare and distribute four copies of the progress schedule to Drew plus two copies to the Architect/Engineer. Each monthly updated coordinated schedule shall be signed and dated by the Contractor.

6.3.7 The Contractor shall furnish sufficient labor and construction plant and equipment to ensure the execution of the Work in accordance with the approved progress schedule. If any updated completion time or date for any activity does not conform to the durations or milestones shown in the approved progress schedule, the sequence of activities and/or the time for performance of activities shall be updated on the progress schedule to be approved by Drew and cured by the Contractor by any means, including performing concurrent operations, additional manpower, additional shifts, and overtime. No additional charges to Drew will be allowed the Contractor for overtime, additional manpower, equipment, additional shifts, etc. (except as may be provided elsewhere in the Contract), if such expediting procedures or measures are necessary to meet the Contract completion date.

6.3.8 The progress schedule shall show:

- a. Recommended Changes in activity sequencing;
- b. Changes in activity duration for activities not started or partially completed, where agreed upon;

- c. The effect on the network of the modifications (activity duration, Predecessors and Successors);
- d. Changes for the purposes of regaining lost time or improving progress, and;
- e. Changes to milestones, due dates, and the overall Contract completion date, which have been agreed upon by Drew's project manager since the last revision of the progress schedule.

6.3.9 The progress schedule shall accurately reflect the manner in which the Contractor intends to proceed with the Project and shall immediately incorporate and reflect the impact of all delays and change orders. All changes made to the schedule shall be subject to approval by Drew.

6.3.10 Drew will not authorize or approve any claims for additional payment or extension of time for completion of the Work, or any other concession because of any alleged misinterpretation or misunderstanding on the Contractor's part of the Project schedule, the Contractor's failure to attend the pre-bid conference, because of any failure on the Contractor's part to become fully acquainted with all conditions relating to the Project schedule and the manner in which it will be used on the Project, or because of any other failure by the Contractor to properly participate in the development of a progress schedule or to perform the Contract in accordance with the progress schedule.

## **ARTICLE 7 - TIME OF COMPLETION**

### **7.1 CONTRACT DURATION/NOTICE TO PROCEED**

7.1.1 Contract duration shall commence on the effective date set forth on the written Notice to Proceed. The Notice to Proceed will be issued by Drew after Drew's receipt and acceptance of properly executed Contract Documents, including performance and payment bonds, proof of insurance and permit technical information submitted by the Contractor and/or Subcontractors. The Contractor shall not be entitled to delay, disruption, acceleration or any other claims arising from a deferred issuance of the Notice to Proceed.

7.1.2 The Contractor shall perform no work at the Contract Site prior to the issuance of the Notice to Proceed.

### **7.2 SUBSTANTIAL COMPLETION**

7.2.1 At the request of the Contractor, the Architect/Engineer or Drew, the Contractor and Drew representative may make a joint inspection of the Work for the purpose of determining if the Work is substantially completed in accordance with the definition provided in Article 1. If DREW, in its sole discretion, finds that the Work is substantially complete, then Drew will issue a written Notice of Substantial Completion for Beneficial Use. Such Notice shall in no way relieve the Contractor of any contractual obligation(s) or relieve the Contractor from responsibility to promptly complete all remaining Contract Work including, but not limited to, punch list items.

7.2.2 The standard guarantee period for equipment, workmanship and materials shall commence on the date DREW issues the Notification of Substantial Completion for Beneficial Use, or from the time of completion and acceptance of equipment, work or materials in question, whichever is later.

7.2.3 In the event that the Project is completed in phases or stages, and/or in the event that Drew takes possession of any part of the Work pursuant to Section 7.4 of these General Conditions, no part of the Project shall be deemed substantially complete for purposes of the New Jersey Statute of Repose, N.J.S.A. 2A:14-1.1, prior to the issuance of a formal Notice of Substantial Completion for Beneficial Use for the all of the Work.

### **7.3 FINAL COMPLETION**

7.3.1 Final completion of the Contract shall occur when:

- a. Drew and the Architect/Engineer have determined that the punch list has been completed;
- b. The Contractor has complied with the Contract Document's closeout requirements;
- c. The Contractor has submitted all Contract deliverables as required by the Contract Documents including but not limited to the following: "as-built" documents, operating and maintenance manuals, attic stock, parts lists, repair source lists, training and certificates; and
- d. The Contractor has submitted all warranties, guarantees and/or maintenance bonds required under the Contract.



#### 7.4 PARTIAL OCCUPANCY FOR USE

7.4.1 Use and possession prior to completion: Drew shall have the right to take possession or use of any completed or partially completed part of the Project. Said possession or use shall not be deemed acceptance of the Work performed on the Project.

7.4.2 Prior to such possession or use, Drew shall furnish the Contractor with an itemized list of Work remaining to be performed or corrected on such portions of the Project that are to be possessed or used by Drew. Failure by Drew to list any item of work shall not be deemed an acceptance of any Work under the Contract.

7.4.3 The Contractor shall not be entitled to recovery of money damages for any delays, disruptions or inefficiencies caused by such partial occupancy.

#### 7.5 DELAY, DISRUPTION AND INTERFERENCE

7.5.1 Delay - Time Extension. If the Contractor's work is delayed, disrupted or interfered with by act, neglect or default of any party, including Drew, the Architect/Engineer, or by strikes, lockouts, fire, unusual delay by common carriers, natural disasters, or by any cause for which the Contractor is not responsible; then for all such delays and suspensions, the Contractor shall be allowed one (1) calendar day addition to the time herein stated for each and every calendar day of such delay so caused in the completion of the Work as specified above, the same to be determined by Drew. No such extension shall be granted for any delay unless, within ten (10) calendar days after the beginning of such delay, a written request for additional time shall be filed with Drew.

##### 7.5.2 Contractor's Damages for Delay, Disruption or Interference

The Contractor shall not be entitled to recovery of money damages from Drew caused by delay, disruption or interference with the Contractor's Work except as expressly provided under section 7.5.2 of these General Conditions paragraph. The Contractor expressly agrees that the Contractor's remedy for delay, disruption or interference shall be limited to an extension of time only and that there shall be no recovery of money damages by the Contractor for any delay, disruption or interference with the Contractor's work attributable to any cause whatsoever (other than Drew's negligence, bad faith, active interference or other tortious conduct). The Contractor expressly agrees that it shall not be entitled to recover damages due to delay, disruption or interference caused by any of the following:

- a. Delayed execution of the contract or any of the causes referenced in paragraph 7.5.2;
- b. Any act or omission by any party other than Drew, including, but not limited to, the Architect-Engineer, any other Contractor or Subcontractor, any CPM or other consultant retained by Drew, any construction manager retained by Drew, any agency or instrumentality of the federal government or of any local governmental entity or any utility (e.g., gas, electric, telephone, cable);
- c. Any act or omission of any agency or instrumentality of Drew.
- d. Weather;

- e. Subsurface conditions of any type including, without limitation rock and underground utilities, whether or not such conditions were reasonably ascertainable to the Contractor at the time of bidding;
- f. Use of all or any portion the Project premises prior to completion of the Work to the extent that such use is permitted under the terms of the Contract; g. Delay in obtaining any permit or approval;
- h. Delay caused by the issuance of any court order, injunction or restraining order;
- i. Any delay which does not entitle the Contractor to an extension of the Contract Completion Time under Section 6.2.8 of these General Conditions; or
- j. Delay attributable to any other cause, other than a cause for which Drew is legally restricted from enforcing a contractual "no damage for delay" clause or any other provision of law restricting or barring the enforcement of such clauses.

In interpreting this provision, the negligence or other wrongful conduct of others, including, without limitation, the Architect/Engineer, the CPM consultant, any construction management firm and any other firm or person retained by Drew shall not be imputed to Drew. Further, to the extent that the Contractor is entitled to recover monetary damages for delay under this Contract, such recovery shall be limited to actual direct costs incurred on account of the delay, and shall not include profit or other markup on such costs, home office overhead calculated under the Eichleay formula or any other kind of consequential or indirect cost or damage, including but not limited to any alleged cost or damage under the total cost method, the modified total cost method, or productivity factors (costs for inefficiency based on industry productivity factors such as those provided by the Mechanical Contractors Association of America (MCAA) Factors Affecting Labor Productivity).

7.5.3 In the event of the failure of the Contractor to complete its work within the time stated in its Contract, the Contractor shall be liable to Drew in the sum as set forth as liquidated damages at 1/20th of 1% of the base contract amount per calendar day for each and every calendar day that the Contractor fails to attain contract completion of the work. This sum shall be treated as liquidated damages to compensate for the loss to Drew of the use of premises in a completed state of construction, alteration or repair, and for added administrative and inspection costs to Drew on account of the delay; provided, however, that the said liquidated damages shall be in addition to other compensatory or consequential losses or damages that Drew 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 sums for which the Contractor is liable may be deducted by Drew from any moneys due or to become due to the Contractor.

7.5.4 It is hereby understood and mutually agreed by and between the Contractor and Drew that the start date in the Notice to Proceed, the dates of all required intermediate milestones, and the times for substantial and final completion, as specified in the Contract Documents, are essential conditions of this Contract.

7.5.5 The Contractor agrees that said work shall be executed diligently, at such rate of progress as will ensure full completion of the Work within the time specified. It is expressly understood and agreed, by

and between the Contractor and Drew, that the time for the completion of the Work herein is a reasonable time, taking into consideration the average climactic range and usual industry conditions prevailing in this locality. If the said Contractor shall neglect, fail or refuse to complete the Work within the time herein specified, or any proper extension thereof granted by Drew, then the Contractor does hereby agree, as a part of the consideration for the awarding of its Contract, to pay Drew the amount specified in section 7.5.3 above, as liquidated damages for loss of use of the Project as hereinafter set forth, for each and every calendar day that the Contractor may have exceeded the stipulated date in the Contract for substantially completing the Work.

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

## **ARTICLE 8 - CLOSE-OUT**

### **8.1 CLOSE-OUT PROCEDURES/FINAL PAYMENT**

As part of the final completion procedures described in Article 7 and the requirements for payment as described in Article 9, the Contractor must complete all of the Close-out procedures as follows:

- a. Submit the "as-built" record documents as described in Article 4;
- b. Submit all operating and maintenance manuals, parts lists, repair source parts, and certificates as defined in 8.2 below;
- c. Provide the necessary training for operating systems and equipment as defined in 8.3 below; and
- d. Submit all guarantees as defined in 8.4 below.

### **8.2 OPERATIONS, EQUIPMENT AND MAINTENANCE MANUALS**

8.2.1 The Contractor shall provide six (6) copies of all operating, equipment and maintenance manuals, and applicable warranties, as identified and described in the Contract Documents. The operating, equipment and maintenance manuals and warranties, including contact personnel, addresses and telephone numbers, must include a complete description of all systems and equipment and the method of operating and maintaining the equipment. These manuals must be submitted to the Architect/Engineer for review and approval at the earliest date possible following substantial completion, but in all cases prior to final acceptance. Included within the manuals shall be a list of names, addresses and telephone numbers of all the Subcontractors involved in the installations and of firms capable of performing services for each mechanical item.

8.2.2 As a pre-condition to the Final acceptance of a facility for beneficial use, the Contractor shall provide a "throw-away" copy of operations and maintenance manuals to allow the Drew staff to operate the equipment prior to receiving the hard bound copies required by this Contract.

### **8.3 TRAINING**

The Contractor shall provide formal instruction for DREW-designated personnel, addressing the operation and maintenance of the facilities and all installed equipment for each operating system or major item of equipment or as otherwise specified. The operations and maintenance manuals shall be used as training materials. Unless otherwise accepted by Drew, training course format shall be split equally between classroom instruction and field exercise. All classroom instruction may be videotaped by Drew. Classroom instruction may be supported by professionally made videotapes. If used, a copy of each professional video that was utilized shall be provided to Drew at no cost for future training and reference.

#### 8.4 GUARANTEE

8.4.1 The issuance of a final certificate for payment and/or partial or complete occupancy of the premises shall not be deemed an acceptance of Work not completed in accordance with the Contract Documents. The issuance of a final certificate for payment and/or partial or complete occupancy of the premises shall not relieve the Contractor or its surety of liability with respect to any express or implied warranties or responsibility for faulty materials or workmanship.

8.4.2 The Contractor shall guarantee and warrant, in writing, the Work performed and all materials furnished under this Contract against defects in materials and/or workmanship. The Contractor shall be responsible for the value or repair of any damage to other Work or to the building premises resulting from the performance of the Contract.

8.4.3 The Contractor is responsible for the above-stated obligations for a period of one (1) year from the date established in 7.2.2 above. All guarantees, including bonds and registrations, required by the Contract Documents shall be in writing and delivered to Drew with submission of the invoice for final payment.

8.4.4 The Contractor shall, at its own expense and without cost to Drew, promptly after receipt of written notice thereof, make good any defects in materials or workmanship which may develop during stipulated guarantee periods, as well as any damage to other Work caused by such defects or by repairs. Any other defects in materials or workmanship not 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.

8.4.5 Pursuant to the Contract Documents, certain permanent equipment, including elevators and HVAC systems, will have to be activated during construction of the Project to support construction operations. Despite any early activation during the construction of the Project, any and all equipment warranties must extend for the time periods required in the Contract Documents, starting at the date set forth in paragraph 7.2.2.

8.4.5 It is expressly acknowledged and agreed that the express and implied warranties and guarantees to which Drew is entitled as well as all warranty and guarantee bonds issued by any surety, shall be in addition to and not in lieu of Drew's right to seek recourse against the Contractor and the Contractor's surety for defective work.

## **ARTICLE 9 - PAYMENTS**

### **9.1 INVOICES**

9.1.1 The Contractor shall submit the completed request for payment on a monthly basis for all properly completed billable work to Drew Project representative and at the address identified at the pre-construction conference.

9.1.2 One (1) original and one (1) copy of the request for payment packets shall be prepared and submitted unless otherwise specified.

9.1.3 No request for payment shall be deemed to be formally submitted and received for payment until all dollar amounts and completion percentages for each line item in the invoice has been determined and agreed upon by Drew and the Contractor.

### **9.2 Intentionally left blank**

### **9.3 SCHEDULE OF VALUES AND FINAL PAYMENT**

9.3.1 Unless otherwise directed, the Contractor shall furnish a schedule of amounts for Contract payments (Unit Schedule Breakdown,) of the total Contract price, showing the amount included therein for each principal category of the Work and for each Contractor and Subcontractor, 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 Drew 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 Drew.

9.3.2 Drew will make progress payments monthly as the Work proceeds based upon the Unit Schedule Breakdown.

9.3.2 All material and Work paid pursuant to progress payments shall thereupon become the sole property of Drew. This provision shall not be construed as relieving the Contractor from the sole responsibility for the protection of all material and Work upon which payments have been made for the restoration of any damaged work, or as waiving the right of Drew to require the fulfillment of all of the terms and conditions of the Contract.

9.3.3 Following completion and acceptance of all work, the amount due the Contractor under this Contract shall be paid only upon satisfactory completion, by the Contractor, of all Contract close-out requirements, completion of a Drew audit on all Contract values and payments, and after the Contractor has furnished Drew with a release of claims against Drew, arising by virtue of this Contract, other than claims in stated amounts as may be specifically excepted by the Contractor from the release.

9.3.4 If for any reason the Contractor refuses final payment, the Project may be closed out by Drew by the processing of a Final Contract Acceptance certification. The lack of such certificate shall not toll the limitations period applicable to Contractor claims against Drew.

9.3.5 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 Drew free and clear of all liens, claims, security interests or encumbrances, either

upon incorporation into the construction or upon receipt of payment to the Contractor, whichever occurs first. 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 for the restoration of any damaged work, or as a waiver by Drew of its rights to require fulfillment of all terms of the Contract.

9.3.6 By recommending approval of any invoice, the Architect/Engineer shall not be deemed to represent that it has made exhaustive or continuous on-Site inspections to check the quality or quantity of the Work, or that it has reviewed the construction means, methods, techniques, sequences or procedures, or that it has made any examination to ascertain how and for what purpose the Contractor has used the moneys previously paid. The payment of an invoice does not constitute an acceptance of the Work. Drew reserves the right to further inspect the Work and to withhold retainage and any additional funds required to pay for any corrective action for non-conforming work.

9.3.7 If any corporation licensed to do business in New Jersey shall be or become delinquent in the payment of taxes, assessments or fees due Drew, unless under an active appeal process or any final judgment in Drew's favor against the Contractor, Drew may, in accordance law withhold moneys due the said corporation for the purpose of assuring the payment to Drew of such taxes, assessments, fees or judgment.

#### 9.4 CERTIFICATION OF PAYMENTS TO SUBCONTRACTOR

The Contractor shall submit a Certification of Prime Contractors form and a Certification of Subcontractor form for each Subcontractor identified in the Unit Schedule Breakdown, as part of the submission for each invoiced progress payment.

#### 9.5 STORED MATERIALS

9.5.1 Unless specifically allowed in the Contract Documents, all materials and equipment must be delivered and installed or stored on the Site prior to payment for such material or equipment.

9.5.2 Drew may at its discretion allow payment for equipment stored off Site provided that the following has occurred:

- a. Drew has approved the Contractor's written request;
- b. The equipment has been properly stored in an approved location;
- c. The Contractor has established the Owner's title to the specific equipment;
- d. The Contractor has provided sufficient proof of insurance for the materials, equipment and the storage facility;
- e. The Contractor has submitted a release of liens on said stored equipment;
- f. The Contractor has submitted a statement agreeing to assume all costs for storage of material and equipment off Site, including, if required by Drew, the cost of storing such material and equipment in a bonded warehouse; and

#### 9.6 ALLOWANCES

9.6.1 The Contractor shall include in its bid all allowances as may be set forth in the Contract Documents. The Contractor shall purchase the "allowed materials" as directed by Drew on the basis of the lowest acceptable quote from at least three competitive offers or as a negotiated cost subject to DREW approval. If the actual cost of the "allowed materials" is more or less than the stipulated allowance, the Contract price may be adjusted accordingly. The adjustment in Contract price shall be made on the basis of the actual purchase cost without additional charges for overhead, profit, bond premium or any other incidental expenses. The cost of installation of the "allowed materials," unless otherwise specified, is to be included as the responsibility of the Contractor in whose Contract the allowance is included, and the Contractor installing such "allowed materials" shall not be entitled to additional payment for such installation.

9.6.2 Unless otherwise provided in the Contract Documents:

- a. These allowances shall cover the Contractor's true costs, including credit for any trade discount, of the materials and equipment required by the allowance, delivered at the Site, including all applicable taxes;
- b. The Contractor's costs for unloading and handling, labor, installation costs, overhead, profit and other expenses reasonably required in connection with such allowance items shall be included in the Contract sum and not as part of the allowances.

## 9.7 RETAINAGE

9.7.1 In making progress payments for Contract work completed, Drew will retain up to five (5) percent (5%) of the approved invoice amount until final acceptance and completion of all work covered by the Contract.

9.7.2 The Contractor may, after 50% (fifty percent) of the Contract work is in place, and if the Work is proceeding on schedule, apply for a reduction in the amount retained by Drew for the duration of the Contract. Such application must be in writing and accompanied by documentation granting formal consent of surety to the reduction in retainage request. If Drew determines that the Contractor's performance has been satisfactory and that the reduction is warranted and appropriate, Drew may, with the next progress payment, release any portion of the accumulated retainage in excess of five percent (5%) of the Work in place and retain an amount equal to two percent (2%) of the Work in place for the duration of the Contract. If progress of the Work is not maintained in accordance with the approved schedule, Drew may elect to re-institute retainage of five percent (5%) of the Work in place for the duration of the Contract.

9.7.3 Withholding Payment for Non-Delivery of Data:

- a. If technical data such as "as-built" drawings, reports, spare parts lists, repair parts lists, or instruction books (including additional and maintenance manuals), or any part thereof, are not delivered within the time specified by this Contract or are deficient upon delivery, Drew has the discretion to withhold from each invoice a percentage (in addition to any other retainage required by the Contract) of the Contract price in accordance with the following table:

When total contract price is: Percentage to be withheld is:

Less than \$1,000,000.	5.0%
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Over \$1,000,000

2.0%

b. The withholding of any sums pursuant to this article shall not be construed as, or constitute in any manner, a waiver by Drew of the Contractor's obligation to furnish the data required under this Contract. In the event the Contractor fails to furnish these items, Drew 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.

## 9.8 MISCELLANEOUS

9.8.1 Disputes regarding nonpayment of a Contractor's invoice under this Article 9 may be submitted to non-binding Alternative Dispute Resolution (ADR) upon mutual agreement of Drew and the Contractor. In such event, Drew and the Contractor shall share equally the fees and expenses of the selected mediator, arbitrator, umpire or other ADR neutral.

9.8.2 A Contractor not paid sums due under an approved invoice within thirty (30) days of the billing date may suspend performance without penalty for breach of contract, but only after providing Drew with seven (7) days written notice of non-payment, and only in the event that Drew fails to furnish the Contractor, within that seven-day period, a written statement of the amount withheld and the reasons for the withholding. Nothing herein shall be construed to excuse the Contractor's nonperformance, or to limit Drew's rights and remedies relating to such non-performance, with regard to any monies withheld from the Contractor upon the proper notice provided under this Article 9, or with regard to any Contractor claim disputed by Drew.



## **ARTICLE 10 - CHANGES IN THE WORK**

### **10.1 CHANGES IN THE WORK**

10.1.1 Drew may at any time, issue a written Change Order which shall direct a change in the Work within the general scope of the Contract, including, but not limited to, changes:

- a. In the plans and/or specifications;
- b. In the method or manner of performance of the Work;
- c. In Drew-furnished facilities, equipment, materials, services, or site; or directing acceleration in the performance of the Work; and/or d. In the time for the completion of the Work.

#### **10.1.2 Change Orders**

10.1.2.1 The Contractor agrees to prepare and submit, within ten (10) calendar days of encountering any conditions it considers a change, or upon receiving official notice of a proposed change or written direction to proceed with a change, a current DREW form entitled "Contractor Change Order Request," to Drew. The Contractor shall submit an original of the form. Failure to submit a timely form may be grounds for rejection of the request for Change Order, at Drew's discretion.

10.1.2.2 All requests for Contract time extensions must be submitted in accordance with the requirements set forth in Articles 6 and 7, accompanied by copies of the current approved progress schedule and copies of a proposed progress schedule detailing the incorporation of the changed work and the effects of such incorporation on progress. Failure to provide all required information shall be grounds for rejection of the request.

10.1.2.3 DREW will only consider a contract duration extension Change Order request arising from changes in the Work, if that change is proven by the Contractor to have caused a delay in the completion of the Project. When the Contract duration is increased as a result of a change, the resulting change in Contract amount will include the costs of extended performance, computed in accordance with the terms of this Section, and no further consideration of such costs arising from the specific modification will be given.

10.1.2.4 Every Change Order request submitted by the Contractor shall furnish a price breakdown, which shall cover all work involved in the change whether such work was deleted, added or changed and shall be in sufficient detail to permit an analysis of all material, labor, equipment, subcontract, overhead costs and profit. Any amount proposed for subcontracts shall be supported by an equally detailed breakdown. In addition, if the request includes a time extension, a justification (see section 10.1.4.) shall also be furnished. The request, together with the price breakdown and time extension justification, shall be furnished by the date specified by Drew.

10.1.2.5 The following rates shall apply in computing overhead (indirect costs) and profit for Change Orders that do not exceed \$25,000. The percentages shall be applicable for deleted work as well as additional work. When a change consists of both added and deleted work, the applicable percentages shall be applied to the net cost or credit. In any event, the percentages shall not exceed the following:

- a. Overhead will be the sum of:
- (1) fifteen percent (15%) of direct labor costs. NOTE: For the purpose of this article, the term "direct labor" shall include all foremen (identified by name and not included in the Project as the full-time superintendent or full time foreman as required elsewhere in the contract documents), equipment operators and skilled, semi-skilled and common laborers directly assigned to the specified operation. The term "direct labor costs" shall consist of the Contract or actual payroll rate of wage per hour and fringe benefits paid for each and every hour that such employees are actually engaged in the performance of the Work.
  - (2) fifteen percent (15%) of direct material costs. NOTE: For the purpose of this article, the term "direct material costs" shall consist of the actual costs of the materials including applicable tax and transportation charges.
- b. For rented equipment, an hourly rental rate will be used which will be determined based upon the monthly rental rates in the current edition of the Rental Rate Blue Book for Construction Equipment (Rental Book) and dividing it by 176. An allowance will be made for operating costs for each and every hour the equipment is actually operating in accordance with the rates listed in the Rental Book. The Contractor will be allowed only 65% (sixty-five percent) of the rental rate on Contractor-owned equipment.
- c. Bond premiums and payroll taxes, if applicable, will be allowed at actual cost. The Contractor shall submit from the surety to DREW a letter for the bond premiums.
- d. The Contractor's profit on Subcontractor's work will be six percent (6%) of the Subcontractor's costs. Subcontractor indirect costs will be computed in the same manner as for the Contractor. The Contractor agrees to incorporate this article in each of its subcontracts. NOTE: When more than one tier of Subcontractor exists, for the purpose of markups, they shall be treated as one Subcontractor.
- e. A profit of six percent (6%), where profit is allowable by the terms of the applicable Contract provision, shall be added to the Contractor's total cost. Indirect costs shall not be duplicated in direct costs.

10.1.2.6 For Change Orders in excess of \$25,000 the maximum allowable percentages of 15% overhead and 6% profit applies unless negotiated lower based upon the nature, extent and complexity of the Work involved.

10.1.2.7 Drew, in order to avoid delays in the progress of work or when in the best interests of Drew, has the discretion to direct the Contractor, in writing, to proceed with work claimed by the Contractor to be extra work, and/or to accelerate its work without a prior agreement on entitlement or costs. Such direction shall be in the form of a Letter of Direction. The Contractor may submit a claim for evaluation by DREW, for costs or for time on account of such work and/or acceleration on the form entitled "Contractor Change Order Request," completed in sufficient detail and in accordance with this article within ten (10) calendar days after receipt of the Letter of Direction. Nothing in this article shall excuse the Contractor from proceeding with the Work identified in the Letter of Direction and all other Contract

Work. Issuance of a Letter of Direction under this article shall not be intended nor construed as an admission or acknowledgment by Drew that the Contractor is entitled to additional compensation and/or time on account of such Work and/or acceleration.

#### 10.2 ACCELERATION

Drew may order and direct the Contractor to accelerate its Work at any location(s) by increasing its forces, working overtime and/or working on Saturdays, Sundays, and holidays. If acceleration is required by Drew, and not due to any delays on the part of the Contractor, the Contractor will be reimbursed for additional costs.

## **ARTICLE 11 - CLAIMS AND DISPUTES**

### **11.1 CONTRACTOR CLAIMS**

11.1.1 Any claims made by a Contractor against Drew for damages, extra costs or any other claim made pursuant to the contract are governed by and subject to the applicable laws of the State of New Jersey, as well as all the provisions in this Contract.

11.1.2 Upon presentation by the Contractor of a request in writing, Drew may review any decision or determination of Drew or the Architect/Engineer as to any claim, dispute or any other matter in question relating to the execution or progress of the Work or the interpretation of the Contract Documents. Consistent with the intent of this Contract, Drew 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 and/or the Architect/Engineer shall be afforded the opportunity to be heard on the matter in question. Following review of the Contractor's request, Drew and the Contractor may settle or resolve the disputed matter, provided however that any such negotiations, conferences, settlement or resolution shall be subject to all requirements imposed by law. Drew's participation in any effort to negotiate, settle or resolve any such claim or dispute with the Contractor shall not operate to toll or extend the time limitations for notice or suit.

### **11.2 MUTUAL RIGHTS AND RESPONSIBILITIES OF ALL CONTRACTORS AND THE ARCHITECT/ENGINEER**

11.2.1 Any Contractor or the Architect/Engineer which by its own acts, errors or omissions, damages or unnecessarily delays the Work or otherwise causes damage to Drew, any other Contractor or the Architect/Engineer, shall be directly responsible to the aggrieved party or parties, for all costs and expenses incurred due to any such delays and/or damages whether by settlement, compromise or arbitration or judgment.

11.2.2 Any Contractor damaged by the actions of another Contractor or Architect/Engineer shall have a direct right to recovery against the party causing such damages, but shall not have a right to recover such damages against Drew.

11.2.3 In addition, the party responsible for causing such damages agrees to defend, indemnify and save harmless Drew from all such claims and damages. Nothing contained in this paragraph shall be construed to relieve the responsible party from any liability or damage sustained on account of such acts, errors or omissions.

11.2.4 Drew shall not be held vicariously liable to any Contractor for any damages or extra costs caused by any acts or omissions by another party including but not limited to actions of the Architect/Engineer as specified in the above paragraph. The Contractor's exclusive remedy shall be against the party directly responsible for causing such damages or extra costs.

## **ARTICLE 12 - TERMINATION/SUSPENSION**

### **12.1 SUSPENSION OF THE WORK / STOP WORK**

12.1.1 If the Contractor fails to correct defective work or persistently fails to carry out the Work in accordance with the Contract Documents, or if Drew determines that it is in the best interest of the

Project to do so, Drew may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated and Drew provides written notice to the Contractor that the stopped Work may resume.

12.1.2 Drew 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 Drew, it may be necessary or expedient for Drew to do so.

## 12.2 TERMINATION FOR CAUSE

12.2.1 If the Contractor persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials so as to avoid or eliminate delays in the orderly progress of the Work in accordance with the approved schedule; or if the Contractor fails to make prompt payment to any Subcontractor or for materials or labor; or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction; or if the Contractor is guilty of a material breach of a provision of the Contract Documents or otherwise fails to carry out the Work in accordance with the Contract Documents, then Drew may, without prejudice to any other right or remedy, and after giving the Contractor and its surety three (3) working days written Notice to forthwith address such breach and default 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, should the Contractor fail to comply with the demands of the original above mentioned Three Day Notice.

12.2.2 Upon such termination, Drew may take possession of the Site and of all the materials, equipment, and tools on the Site and of any materials stored off Site paid for by DREW, and may finish the Work by whatever method Drew may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Work is finished.

12.2.3 In the event of termination for default, the surety shall either complete the principal's work or finance the completion of the Work. The surety shall not have the right to do nothing. In the event of the surety's breach of its obligations to Drew, the surety shall be subject to all available damages under the law, including but not limited to debarment and the penalties imposed by New Jersey's Consumer Fraud Act.

12.2.4 Within seven (7) calendar days following receipt of Notice of Termination by the surety, the surety shall submit in writing its intention to satisfy its bond obligation to Drew as obligee, and to explain its plan to complete the Work, tender a completing Contractor or finance the completion of the Work.

12.2.5 If the surety elects to take over the Work and complete same or to tender a completing Contractor, it must furnish notice of its intent to do so in writing over the signature of an authorized representative and such notice shall be served upon Drew within seven (7) calendar days after service upon the surety of the Notice of Termination. This document shall identify the Contractor to perform this work.

12.2.6 If the surety elects to satisfy its bond obligation by financing the completion of the Work, in lieu of taking over same, the surety and Drew shall enter into an agreement, within thirty (30) days of the termination Notice, setting forth the details of the payments to be made by the surety. All current obligations for labor and materials incurred and outstanding by the defaulting Contractor on this Project

shall be paid by the surety without delay, subject to allowance of reasonable time to verify such claims by the surety.

12.2.7 If the surety fails to satisfy its bond obligations within the time frames established above, Drew may undertake the completion of the Project in any manner deemed appropriate. In that circumstance, the surety shall not be relieved of any of its payment and performance bond obligations.

12.2.8 If the unpaid balance of the Contract sum exceeds the cost of finishing the Work (including but not limited to liquidated damages for delays and all other remaining damages sustained by Drew originating from such breach of Contract), such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor and its surety shall be obligated to pay the difference to Drew promptly upon receipt of billing from Drew, and this obligation shall survive the termination of the Contract.

### 12.3 OWNER'S RIGHT TO COMPLETE THE WORK

12.3.1 Alternatively, should the Contractor fail or refuse to correct its breach and default after receiving the required notice as provided under Section 12.2 hereof, Drew, in lieu of terminating the Contractor's employment, may provide for the correction and completion of all remaining Work by other means, and deduct all costs associated with such correction and completion from any undisbursed balance of funds (including earned retainage) remaining under the Contract. Such deduction may be documented by issuance of one or more deductive change orders. DREW's correction or completion of Work under this paragraph shall not operate to waive, release or diminish the liability of the Contractor and its surety to Drew for any breach or default by the Contractor.

### 12.4 TERMINATION FOR CONVENIENCE

12.4.1 Drew may, at any time, terminate the Contract in whole or in any part for Drew's convenience and without cause when Drew in its sole discretion views termination to be in the university's interest.

12.4.2 Upon receipt of an order of Termination for Convenience, the Contractor shall not proceed with any item of work which is not specified in the Order of Termination. The Contractor shall complete all items of work specified in the termination order. Such work shall include punch list items and all work necessary to ensure the safety of the public, to properly secure existing work already constructed or partially constructed and to secure the Project Site. This work so ordered shall be performed in accordance with the Contract Documents, and may include items of work not in the original Contract. The Work performed shall be considered substantially complete upon completion and acceptance of all items of work specified in the Order, except punch list items. After completion of the punch list items and all documents required by the Contract, the Contract shall terminate upon issuance of a Final Certificate and payment. Drew reserves the right to declare in default a Contractor who fails to carry out the conditions set forth in an Order of Termination for Convenience.

12.4.3 When Drew orders termination of the Contract for Convenience, all completed items of work as of that date will be paid for at the Contract prices.

12.4.3.1 Payment for partially completed work will be paid for at agreed prices.

12.4.3.2 Payment for new items, if any, will be made either at agreed prices or in accordance with Article 10.

12.4.3.3 Materials obtained by the Contractor for the Work but which have not been incorporated therein may, at the option of Drew, be purchased from the Contractor at actual cost delivered to a prescribed location, or otherwise disposed of as mutually agreed.

12.4.4 Within sixty (60) days of the effective termination date, the Contractor shall submit claims for additional costs actually incurred, not covered above or elsewhere in the Contract. Such claims may include reasonable mobilization costs, overhead expenses attributable to the Work performed, Subcontractor costs not otherwise paid for, actual idle labor costs if Work is stopped in advance of the termination date. Drew will not compensate the Contractor for costs prohibited under provisions of the Contract and/or anticipated profits on work not performed.

12.4.5 If Drew terminates the Contractor for cause as provided under Article 12.2 of the General Conditions, and if a court of law subsequently determines such termination for cause to have been undertaken without lawful justification, then such termination shall be deemed a termination for convenience governed by this Article 12.4. In that event, recovery by the Contractor and/or the Contractor's surety shall be limited to those costs which are recoverable following a termination for convenience under this Article 12.4.

## **ARTICLE 13 – OTHER REQUIREMENTS**

### **13.1 PATENTS**

13.1.1 The Contractor shall hold and save Drew 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 non-patented design, devise, invention, process, article or appliance manufactured or used in the performance of the Contract, including its use by Drew, unless otherwise specifically stipulated in the Contract Documents.

13.1.2 License and/or royalty fees for the use design, devise, invention, process, article or appliance which is authorized by Drew must be reasonable, and paid to the holder of the patent or his or her authorized licensee directly by Drew and not by or through the Contractor.

13.1.3 If the Contractor uses any design, devise, invention, process, article or appliance covered by letters, patent or copyright, it shall provide for such use by suitable agreement with Drew 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, devise, invention, process, article or appliance in any way involved in the Work.

13.1.4 The Contractor and/or its surety shall indemnify and save harmless Drew from any and all claims for infringement by reason of the use of such patented or copyrighted devise, invention, process, article or appliance, or any trademark or copyright in connection with Work performed under this Contract, and shall defend and indemnify Drew for any cost, expense or damage which it may be obliged to pay by reason of such infringement at any time during the execution of the Work or after the completion of the Work. This section shall survive the termination of the Contract.

### **13.2 RIGHT TO AUDIT**

13.2.1 Drew reserves the right to audit the records of the Contractor in connection with all matters related to its Contract. The Contractor agrees to maintain its records in accordance with "Generally Accepted Accounting Principles," for a period of not less than five (5) years after receipt of final payment. All charges must be supported by appropriate documentation, including, but not limited to canceled checks. All records shall be made available to the New Jersey Office of Drew Comptroller or other Drew audit agency upon request and at no cost to Drew.

13.2.2 The Contractor shall maintain all documentation related to products, transactions or services under this contract for a period of five years from the date of final payment. Such records shall be made available to Drew or other Drew audit agency upon request and at no cost to Drew.

13.2.2 The Contractor shall develop, maintain and make available to Drew on request such schedule of quantities and costs, progress schedules, payrolls, reports, estimates, Change Orders, all original estimates, takeoffs and other bidding documents, all Subcontractor 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 Drew may request concerning work performed or to be performed under this Contract.

13.2.3 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 or payable by Drew except and to the extent that such actual costs are substantiated by records required to be maintained under these provisions.

13.2.4 The Contractor acknowledges and agrees that its obligation to establish, maintain and make available records and Drew's right to audit as delineated herein shall extend to actual costs incurred by Subcontractors in performing work required under the Contract Documents. The Contractor shall require in each subcontract that the Subcontractor establish, maintain and make available to Drew all records as defined and delineated herein, relating to all work performed under the Subcontractor including work performed by a sub-Subcontractor.

### 13.3 INSURANCE

#### 13.3.1 Insurance To Be Carried By The Contractor:

The Contractor shall obtain and maintain, at its expense and for the duration of the contract, minimum insurance coverage set forth below. By requiring such minimum insurance, Drew shall not be deemed or construed to have assessed the risk that may be applicable to the Contractor under this contract. The Contractor shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. The Contractor is not relieved of any liability or other obligations assumed or pursuant to the Contract by reason of its failure to obtain or maintain insurance in sufficient amounts, duration or types.

a Commercial General Liability:

(1) Commercial General Liability (CGL)-ISO occurrence form CG001 or a substitute form providing a minimum coverage of \$2,000,000 per occurrence for bodily injury



liability and \$2,000,000 per occurrence for property damage liability and shall cover liability arising from:

- Premises/Operations
- Independent Contractors
- Products/Completed Operations
- Personal and Advertising Injury
- Liability assumed under an insured contract (including defense cost assumed)

(2) Drew and NJ Educational Facilities Authority shall be included as an additional insured under the CGL using ISO additional insured endorsement CG 20 10 and CG 20 37 or a substitute providing equivalent coverage, which endorsement shall include coverage for Drew arising out of the completed operations of the contractor, and which coverage shall be maintained in effect for the benefit of Drew for a period of three (3) years following the completion of the work specified in section 7.3 of this contract. Additional Insured coverage as required in this subparagraph shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to Drew.

(3) The CGL general aggregate shall apply separately to this project using ISO CG 2503 form – designated construction projects(s) General Aggregate Limit.

(4) There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from explosion, collapse or underground property damage.

(5) If not included in the policy form the CGL policy must be endorsed with a separation of insureds (severability of interests) endorsement.

(6) CGL policy must provide or be endorsed (ISO form CG 24 04) to provide for waiver of subrogation.

**b Business Automobile Liability:**

(1) Contractor and subcontractors shall maintain business auto liability insurance and such insurance shall cover liability arising out of any auto (including owned, hired and non-owned autos).

(2) The limits of liability shall be not less than \$1,000,000 per occurrence for both bodily injury and property damage liability.

(3) Business Automobile coverage shall be written on ISO form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later additions of CA 00 01.

(4) If required by law, the business auto policy shall be endorsed to provide pollution liability coverage equivalent to that provided under the ISO pollution liability broadened coverage for covered autos form

(5) Waiver of Subrogation -- Contractor waives all rights against Drew for recovery of damages to the extent these damages are covered by the business auto liability insurance obtained by Contractor pursuant to Paragraph 2.0 of this Agreement.

c Workers Compensation: Workers Compensation Insurance applicable to the laws of Drew and other Drew or Federal jurisdiction is required to protect the employees of the Contractor or any Subcontractor who will be engaged in the performance of this Contract. This insurance shall include employers' liability protection with a limit of liability not less than \$500,000.

d Umbrella Liability: Contractor must maintain an Umbrella Liability Policy excess of the Commercial General Liability, Automobile Liability and Employer Liability coverage.

(1) The coverages of the umbrella policy must be as broad as the primary policies covered by this policy and include a "drop-down" provision if the primary coverage becomes impaired or exhausted.

#### 13.4 ASSIGNMENT OF ANTITRUST CLAIMS

13.4.1 The 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 Drew, for itself and on behalf of its political subdivisions, instrumentalities, and public agencies, 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 State of New Jersey, relating to the particular goods or services purchased or acquired by Drew pursuant to this Contract.

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

- a. The Contractor will take no action which will in any way diminish the value of the rights conveyed or assigned hereunder.
- b. The Contractor will advise the Attorney General of New Jersey and DREW:
  - (1) in advance of its intention to commence any action on its own behalf regarding any such claim or cause(s) of action; and/or
  - (2) immediately upon becoming aware of the fact that an action has been commenced on its behalf by some other person(s) of the tendency of such action.
- c. The Contractor 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 own behalf or becomes aware that such an action has been

filed on its behalf by another person. A copy of such Notice will be sent to the Attorney General of New Jersey and Drew.

13.4.3 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 Drew the allotted share thereof, if any, assigned to Drew hereunder.