

PROJECT MANUAL
for
NEW ENTRANCE RAMPS
at the
HAMMONTON MIDDLE SCHOOL
for the
HAMMONTON BOARD OF
EDUCATION

Prepared by:

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SECTION A –
INSTRUCTIONS TO BIDDERS



AIA® Document A701™ – 1997

Instructions to Bidders

for the following PROJECT:

(Name and location or address)

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

THE OWNER:

(Name, legal status and address)

THE ARCHITECT:

(Name, legal status and address)

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ARTICLE 1 DEFINITIONS

§ 1.1 Bidding Documents include the Bidding Requirements and the proposed Contract Documents. The Bidding Requirements consist of the Advertisement or Invitation to Bid, Instructions to Bidders, Supplementary Instructions to Bidders, the bid form, and other sample bidding and contract forms. The proposed Contract Documents consist of the form of Agreement between the Owner and Contractor, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications and all Addenda issued prior to execution of the Contract.

§ 1.2 Definitions set forth in the General Conditions of the Contract for Construction, AIA Document A201™, or in other Contract Documents are applicable to the Bidding Documents.

§ 1.3 Addenda are written or graphic instruments issued by the Architect prior to the execution of the Contract which modify or interpret the Bidding Documents by additions, deletions, clarifications or corrections.

§ 1.4 A Bid is a complete and properly executed proposal to do the Work for the sums stipulated therein, submitted in accordance with the Bidding Documents.

§ 1.5 The Base Bid is the sum stated in the Bid for which the Bidder offers to perform the Work described in the Bidding Documents as the base, to which Work may be added or from which Work may be deleted for sums stated in Alternate Bids.

§ 1.6 An Alternate Bid (or Alternate) is an amount stated in the Bid to be added to or deducted from the amount of the Base Bid if the corresponding change in the Work, as described in the Bidding Documents, is accepted.

§ 1.7 A Unit Price is an amount stated in the Bid as a price per unit of measurement for materials, equipment or services or a portion of the Work as described in the Bidding Documents.

§ 1.8 A Bidder is a person or entity who submits a Bid and who meets the requirements set forth in the Bidding Documents.

§ 1.9 A Sub-bidder is a person or entity who submits a bid to a Bidder for materials, equipment or labor for a portion of the Work.

ARTICLE 2 BIDDER'S REPRESENTATIONS

§ 2.1 The Bidder by making a Bid represents that:

§ 2.1.1 The Bidder has read and understands the Bidding Documents or Contract Documents, to the extent that such documentation relates to the Work for which the Bid is submitted, and for other portions of the Project, if any, being bid concurrently or presently under construction.

§ 2.1.2 The Bid is made in compliance with the Bidding Documents.

§ 2.1.3 The Bidder has visited the site, become familiar with local conditions under which the Work is to be performed and has correlated the Bidder's personal observations with the requirements of the proposed Contract Documents.

§ 2.1.4 The Bid is based upon the materials, equipment and systems required by the Bidding Documents without exception.

ARTICLE 3 BIDDING DOCUMENTS

§ 3.1 Copies

§ 3.1.1 Bidders may obtain complete sets of the Bidding Documents from the issuing office designated in the Advertisement or Invitation to Bid in the number and for the deposit sum, if any, stated therein. The deposit will be refunded to Bidders who submit a bona fide Bid and return the Bidding Documents in good condition within ten days after receipt of Bids. The cost of replacement of missing or damaged documents will be deducted from the deposit. A Bidder receiving a Contract award may retain the Bidding Documents and the Bidder's deposit will be refunded.

§ 3.1.2 Bidding Documents will not be issued directly to Sub-bidders unless specifically offered in the Advertisement or Invitation to Bid, or in supplementary instructions to bidders.

§ 3.1.3 Bidders shall use complete sets of Bidding Documents in preparing Bids; neither the Owner nor Architect assumes responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.

§ 3.1.4 The Owner and Architect may make copies of the Bidding Documents available on the above terms for the purpose of obtaining Bids on the Work. No license or grant of use is conferred by issuance of copies of the Bidding Documents.

§ 3.2 Interpretation or Correction of Bidding Documents

§ 3.2.1 The Bidder shall carefully study and compare the Bidding Documents with each other, and with other work being bid concurrently or presently under construction to the extent that it relates to the Work for which the Bid is submitted, shall examine the site and local conditions, and shall at once report to the Architect errors, inconsistencies or ambiguities discovered.

§ 3.2.2 Bidders and Sub-bidders requiring clarification or interpretation of the Bidding Documents shall make a written request which shall reach the Architect at least seven days prior to the date for receipt of Bids.

§ 3.2.3 Interpretations, corrections and changes of the Bidding Documents will be made by Addendum. Interpretations, corrections and changes of the Bidding Documents made in any other manner will not be binding, and Bidders shall not rely upon them.

§ 3.3 Substitutions

§ 3.3.1 The materials, products and equipment described in the Bidding Documents establish a standard of required function, dimension, appearance and quality to be met by any proposed substitution.

§ 3.3.2 No substitution will be considered prior to receipt of Bids unless written request for approval has been received by the Architect at least ten days prior to the date for receipt of Bids. Such requests shall include the name of the material or equipment for which it is to be substituted and a complete description of the proposed substitution including drawings, performance and test data, and other information necessary for an evaluation. A statement setting forth changes in other materials, equipment or other portions of the Work, including changes in the work of other contracts that incorporation of the proposed substitution would require, shall be included. The burden of proof of the merit of the proposed substitution is upon the proposer. The Architect's decision of approval or disapproval of a proposed substitution shall be final.

§ 3.3.3 If the Architect approves a proposed substitution prior to receipt of Bids, such approval will be set forth in an Addendum. Bidders shall not rely upon approvals made in any other manner.

§ 3.3.4 No substitutions will be considered after the Contract award unless specifically provided for in the Contract Documents.

§ 3.4 Addenda

§ 3.4.1 Addenda will be transmitted to all who are known by the issuing office to have received a complete set of Bidding Documents.

§ 3.4.2 Copies of Addenda will be made available for inspection wherever Bidding Documents are on file for that purpose.

§ 3.4.3 Addenda will be issued no later than four days prior to the date for receipt of Bids except an Addendum withdrawing the request for Bids or one which includes postponement of the date for receipt of Bids.

§ 3.4.4 Each Bidder shall ascertain prior to submitting a Bid that the Bidder has received all Addenda issued, and the Bidder shall acknowledge their receipt in the Bid.

ARTICLE 4 BIDDING PROCEDURES

§ 4.1 Preparation of Bids

§ 4.1.1 Bids shall be submitted on the forms included with the Bidding Documents.

§ 4.1.2 All blanks on the bid form shall be legibly executed in a non-erasable medium.

§ 4.1.3 Sums shall be expressed in both words and figures. In case of discrepancy, the amount written in words shall govern.

§ 4.1.4 Interlineations, alterations and erasures must be initialed by the signer of the Bid.

§ 4.1.5 All requested Alternates shall be bid. If no change in the Base Bid is required, enter "No Change."

§ 4.1.6 Where two or more Bids for designated portions of the Work have been requested, the Bidder may, without forfeiture of the bid security, state the Bidder's refusal to accept award of less than the combination of Bids stipulated by the Bidder. The Bidder shall make no additional stipulations on the bid form nor qualify the Bid in any other manner.

§ 4.1.7 Each copy of the Bid shall state the legal name of the Bidder and the nature of legal form of the Bidder. The Bidder shall provide evidence of legal authority to perform within the jurisdiction of the Work. Each copy shall be signed by the person or persons legally authorized to bind the Bidder to a contract. A Bid by a corporation shall further give the state of incorporation and have the corporate seal affixed. A Bid submitted by an agent shall have a current power of attorney attached certifying the agent's authority to bind the Bidder.

§ 4.2 Bid Security

§ 4.2.1 Each Bid shall be accompanied by a bid security in the form and amount required if so stipulated in the Instructions to Bidders. The Bidder pledges to enter into a Contract with the Owner on the terms stated in the Bid and will, if required, furnish bonds covering the faithful performance of the Contract and payment of all obligations arising thereunder. Should the Bidder refuse to enter into such Contract or fail to furnish such bonds if required, the amount of the bid security shall be forfeited to the Owner as liquidated damages, not as a penalty. The amount of the bid security shall not be forfeited to the Owner in the event the Owner fails to comply with Section 6.2.

§ 4.2.2 If a surety bond is required, it shall be written on AIA Document A310™, Bid Bond, unless otherwise provided in the Bidding Documents, and the attorney-in-fact who executes the bond on behalf of the surety shall affix to the bond a certified and current copy of the power of attorney.

§ 4.2.3 The Owner will have the right to retain the bid security of Bidders to whom an award is being considered until either (a) the Contract has been executed and bonds, if required, have been furnished, or (b) the specified time has elapsed so that Bids may be withdrawn or (c) all Bids have been rejected.

§ 4.3 Submission of Bids

§ 4.3.1 All copies of the Bid, the bid security, if any, and any other documents required to be submitted with the Bid shall be enclosed in a sealed opaque envelope. The envelope shall be addressed to the party receiving the Bids and shall be identified with the Project name, the Bidder's name and address and, if applicable, the designated portion of the Work for which the Bid is submitted. If the Bid is sent by mail, the sealed envelope shall be enclosed in a separate mailing envelope with the notation "SEALED BID ENCLOSED" on the face thereof.

§ 4.3.2 Bids shall be deposited at the designated location prior to the time and date for receipt of Bids. Bids received after the time and date for receipt of Bids will be returned unopened.

§ 4.3.3 The Bidder shall assume full responsibility for timely delivery at the location designated for receipt of Bids.

§ 4.3.4 Oral, telephonic, telegraphic, facsimile or other electronically transmitted bids will not be considered.

§ 4.4 Modification or Withdrawal of Bid

§ 4.4.1 A Bid may not be modified, withdrawn or canceled by the Bidder during the stipulated time period following the time and date designated for the receipt of Bids, and each Bidder so agrees in submitting a Bid.

§ 4.4.2 Prior to the time and date designated for receipt of Bids, a Bid submitted may be modified or withdrawn by notice to the party receiving Bids at the place designated for receipt of Bids. Such notice shall be in writing over the signature of the Bidder. Written confirmation over the signature of the Bidder shall be received, and date- and time-stamped by the receiving party on or before the date and time set for receipt of Bids. A change shall be so worded as not to reveal the amount of the original Bid.

§ 4.4.3 Withdrawn Bids may be resubmitted up to the date and time designated for the receipt of Bids provided that they are then fully in conformance with these Instructions to Bidders.

§ 4.4.4 Bid security, if required, shall be in an amount sufficient for the Bid as resubmitted.

ARTICLE 5 CONSIDERATION OF BIDS

§ 5.1 Opening of Bids

At the discretion of the Owner, if stipulated in the Advertisement or Invitation to Bid, the properly identified Bids received on time will be publicly opened and will be read aloud. An abstract of the Bids may be made available to Bidders.

§ 5.2 Rejection of Bids

The Owner shall have the right to reject any or all Bids. A Bid not accompanied by a required bid security or by other data required by the Bidding Documents, or a Bid which is in any way incomplete or irregular is subject to rejection.

§ 5.3 Acceptance of Bid (Award)

§ 5.3.1 It is the intent of the Owner to award a Contract to the lowest qualified Bidder provided the Bid has been submitted in accordance with the requirements of the Bidding Documents and does not exceed the funds available. The Owner shall have the right to waive informalities and irregularities in a Bid received and to accept the Bid which, in the Owner's judgment, is in the Owner's own best interests.

§ 5.3.2 The Owner shall have the right to accept Alternates in any order or combination, unless otherwise specifically provided in the Bidding Documents, and to determine the low Bidder on the basis of the sum of the Base Bid and Alternates accepted.

ARTICLE 6 POST-BID INFORMATION

§ 6.1 Contractor's Qualification Statement

Bidders to whom award of a Contract is under consideration shall submit to the Architect, upon request, a properly executed AIA Document A305™, Contractor's Qualification Statement, unless such a Statement has been previously required and submitted as a prerequisite to the issuance of Bidding Documents.

§ 6.2 Owner's Financial Capability

The Owner shall, at the request of the Bidder to whom award of a Contract is under consideration and no later than seven days prior to the expiration of the time for withdrawal of Bids, furnish to the Bidder reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. Unless such reasonable evidence is furnished, the Bidder will not be required to execute the Agreement between the Owner and Contractor.

§ 6.3 Submittals

§ 6.3.1 The Bidder shall, as soon as practicable or as stipulated in the Bidding Documents, after notification of selection for the award of a Contract, furnish to the Owner through the Architect in writing:

- .1 a designation of the Work to be performed with the Bidder's own forces;
- .2 names of the manufacturers, products, and the suppliers of principal items or systems of materials and equipment proposed for the Work; and
- .3 names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for the principal portions of the Work.

§ 6.3.2 The Bidder will be required to establish to the satisfaction of the Architect and Owner the reliability and responsibility of the persons or entities proposed to furnish and perform the Work described in the Bidding Documents.

§ 6.3.3 Prior to the execution of the Contract, the Architect will notify the Bidder in writing if either the Owner or Architect, after due investigation, has reasonable objection to a person or entity proposed by the Bidder. If the Owner or Architect has reasonable objection to a proposed person or entity, the Bidder may, at the Bidder's option, (1) withdraw the Bid or (2) submit an acceptable substitute person or entity with an adjustment in the Base Bid or Alternate Bid to cover the difference in cost occasioned by such substitution. The Owner may accept the adjusted bid price or disqualify the Bidder. In the event of either withdrawal or disqualification, bid security will not be forfeited.

§ 6.3.4 Persons and entities proposed by the Bidder and to whom the Owner and Architect have made no reasonable objection must be used on the Work for which they were proposed and shall not be changed except with the written consent of the Owner and Architect.

ARTICLE 7 PERFORMANCE BOND AND PAYMENT BOND

§ 7.1 Bond Requirements

§ 7.1.1 If stipulated in the Bidding Documents, the Bidder shall furnish bonds covering the faithful performance of the Contract and payment of all obligations arising thereunder. Bonds may be secured through the Bidder's usual sources.

§ 7.1.2 If the furnishing of such bonds is stipulated in the Bidding Documents, the cost shall be included in the Bid. If the furnishing of such bonds is required after receipt of bids and before execution of the Contract, the cost of such bonds shall be added to the Bid in determining the Contract Sum.

§ 7.1.3 If the Owner requires that bonds be secured from other than the Bidder's usual sources, changes in cost will be adjusted as provided in the Contract Documents.

§ 7.2 Time of Delivery and Form of Bonds

§ 7.2.1 The Bidder shall deliver the required bonds to the Owner not later than three days following the date of execution of the Contract. If the Work is to be commenced prior thereto in response to a letter of intent, the Bidder shall, prior to commencement of the Work, submit evidence satisfactory to the Owner that such bonds will be furnished and delivered in accordance with this Section 7.2.1.

§ 7.2.2 Unless otherwise provided, the bonds shall be written on AIA Document A312™, Performance Bond and Payment Bond. Both bonds shall be written in the amount of the Contract Sum.

§ 7.2.3 The bonds shall be dated on or after the date of the Contract.

§ 7.2.4 The Bidder shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney.

ARTICLE 8 FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR

Unless otherwise required in the Bidding Documents, the Agreement for the Work will be written on AIA Document A101™, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum.

I. SUBMISSION OF BIDS

- A. Hammonton Board of Education, Atlantic County, New Jersey (hereinafter referred to as "OWNER") invites sealed bids pursuant to the Notice to Bidders.
- B. Sealed bids will be received by the designated representative at the time and place stated in the Notice to Bidders, and at such time and place will be publicly opened and read aloud.
- C. The bid proposal form shall be submitted, in a sealed envelope: (1) addressed to the OWNER, (2) bearing the name and address of the bidder written on the face of the envelope, and (3) clearly marked "BID" with the contract title and/or bid # being bid.
- D. It is the bidder's responsibility to see that bids are presented to the OWNER on the hour and at the place designated. Bids may be hand delivered or mailed; however, the OWNER disclaims any responsibility for bids forwarded by regular or overnight mail. If the bid is sent by overnight mail, the designation in section C, above, must also appear on the outside of the delivery company envelope. Bids received after the designated time and date will be returned unopened.
- E. Sealed bids forwarded to the OWNER before the time of opening of bids may be withdrawn upon written application of the bidder who shall be required to produce evidence showing that the individual is or represents the principal or principals involved in the bid. Once bids have been opened, they must remain firm for a period of sixty (60) calendar days.
- F. All prices and amounts must be Printed in ink or preferably typewritten. Bids containing any conditions, omissions, unexplained erasures or alterations, items not called for in the bid proposal form, attachment of additive information not required by the specifications, or irregularities of any kind, may be rejected by the OWNER. Any changes, white-outs, strike-outs, etc. on the proposal page must be initialed in ink by the person responsible for signing the bid.
- G. Each bid proposal form must give the full business address of the bidder and be signed by an unauthorized representative. Bids by partnerships must furnish the full name of all partners and must be signed in the partnership name by one of the members of the partnership or by an authorized representative, followed by the signature and designation of the person signing. Bids by corporations must be signed in the legal name of the corporation, followed by the name of the State in which incorporated and must contain the signature and designation of the president, secretary or other person authorized to bind the corporation in the matter. Bids by a sole proprietor must be signed by the proprietor. When requested, satisfactory evidence of the authority of the officer signing shall be furnished.

- H. Bidders should be aware of the following statutes that represent "Truth in Contracting" Laws:
- N.J.S.A. 2C:21-34, et seq. governs false claims and representations by bidders. It is a serious crime for the bidder to knowingly submit a false claim and/or knowingly make material misrepresentation.
 - N.J.S.A. 2C:27-10 provides that a person commits a crime if said person offers a benefit to a public servant for an official act performed or to be performed by a public servant, which is a violation of official duty.
 - N.J.S.A. 2C:27-11 provides that a bidder commits a crime if said person, directly or indirectly, confers or agrees to confer any benefit not allowed by law to a public servant.
 - Bidder should consult the statutes or legal counsel for further information.
- I. Bidders must insert prices for furnishing all of the materials and/or labor required by these specifications. Prices shall net, including any charges for packing, crating, containers, etc. **All transportation charges shall be fully prepaid by the contractor F.O.B. destination and placement at locations specified by the OWNER.** As specified, placement may require inside deliveries. No additional charges will be allowed for any transportation costs resulting from partial shipments made at the contractor's convenience.
- J. The vendor shall guarantee any or all materials and services supplied under these specifications. Defective or inferior items shall be replaced at the expense of the vendor. In case of rejected materials, the vendor will be responsible for return freight charges.
- K. The vendor/contractor is required to fill out all the vendor information on page 1 completely. Additionally an e-mail address will be provided and remain active during the entire course of the purchase of materials, service or contract.

II. BID SECURITY

The following provisions if indicated by an (X), shall be applicable to this bid and be made a part of the bidding documents:

- A. X BID GUARANTEE (Bond or Certified Check)

Bidder shall submit with the bid a certified check, cashier's check or bid bond in the amount of ten percent (10%) of the total price bid, but not in excess of \$20,000, payable unconditionally to the OWNER. When submitting a Bid Bond, it shall contain Power of Attorney for full amount of Bid Bond from a surety company authorized to do business in the State of New Jersey and acceptable to the OWNER. The check or bond of the unsuccessful bidder(s) shall be returned as prescribed by law. The check or bond of the bidder to whom the contract is awarded shall be retained until a contract is executed and the required performance bond or other security is submitted. The check or bond of the successful bidder shall be forfeited if the bidder fails to enter into a contract pursuant to N.J.S.A. 40A:11-21.

F. Indemnification:

Bidders shall indemnify and hold harmless the owner from all claims, suites or actions, and damages or costs of every name and description to which the owner may be subjected or put by reason of injury to the person or property of another, or the property of the owner, resulting from negligent acts or omissions on the part of the contractor, the contractor's agents, servants or subcontractors in the delivery of goods and services, or in the performance of the work under the contract.

VI. PREPARATION OF BIDS

- A. The OWNER is exempt from any local, state or federal sales, use of excise tax.
- B. Estimated Quantities (Open-End Contracts)

The OWNER has attempted to identify the item(s) and the estimated amounts of each item bid to cover its requirements; however, past experience shows that the amount ordered may be different that that submitted for bidding. The right is reserved to decrease or increase the quantities specified in the specifications pursuant to **N.J.A.C. 5:30-11.2 and 11.10. NO MINIMUM PURCHASE IS IMPLIED OR GUARANTEED.**

- C. Contractor shall be responsible for obtaining any applicable permits or licenses from any government entity that has jurisdiction to require the same. All bids submitted shall have included this cost.
- D. Bidders shall insert prices for furnishing goods and services required by these specifications. Prices shall be net, including any charges for packing, crating, containers, etc. All transportation charges shall be fully prepaid by the contractor, F.O.B. destination and placement at locations specified by the owner. As specified, placement requires inside deliveries. No additional charges will be allowed for any transportation costs resulting from partial shipments made for the contractor's convenience.

VII. STATUTORY AND OTHER REQUIREMENTS

A. MANDATORY AFFIRMATIVE ACTION CERTIFICATON

No firm may be issued a contract unless it complies with the affirmative action provisions of N.J.S.A. 10:5-31 et seq. and N.J.A.C. 17:27-1 et seq. The following information summarizes the full, required regulatory text, which is included as Exhibit "A" of this bid specification.

1. Goods and Services (including professional services) contracts.

Each contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three (3) documents.

**NJDOL'S PREVAILING WAGE RATES
NOW AVAILABLE ON-LINE 24 HOURS A DAY
SEVEN DAYS A WEEK**

TRENTON, October 9, 2002 - Commissioner Albert G. Kroll, of the New Jersey Department of Labor, announced today the Department has developed an on-line service that makes it easier and faster for school boards, municipalities and other public entities to obtain prevailing wage rates required in public works construction project contracts.

The new Web service enables public bodies to access and download the wage information they need to comply with New Jersey's Prevailing Wage Act for public works projects.

"The Department of Labor's On-line Prevailing Wage Rate System enables public entities to download the latest wage rates required when preparing a public works contract," said Kroll. "This is another way that State government is making the process efficient, with a system that makes information available 24 hours a day, seven days a week and is updated weekly. Our partners no longer have to complete a written request and wait for a response. We are cutting through the red tape."

Commissioner Kroll stated, "Public bodies are encouraged to check out our on-line system by going to the New Jersey Department of Labor website at, www.nj.gov/labor click on Legal, then on Official Prevailing Wage/Public Contracts, then Wage Rates Determinations."

Public employers can call Bob Gaines at 609-984-9392 for answers to their questions or for help in using the system.

D. STOCKHOLDER DISCLOSURE

N.J.S.A. 52:25-24.2 provides that no corporation or partnership shall be awarded any contract for the performance of any work or the furnishing of any goods and services, unless, prior to the receipt of the bid or accompanying the bid of said corporation or partnership, bidders shall submit a statement setting forth the names and addresses of all stockholders in the corporation or partnership who own ten percent or more of its stock of any class, or of all individual partners in the partnership who own a ten percent or greater interest therein. The included Statement of Ownership shall be completed and attached to the bid proposal. This requirement applies to all forms of corporations and partnerships, including, but not limited to, limited partnerships, limited liability corporations, limited liability partnerships and Subchapter S Corporations. Failure to submit a stockholder disclosure document shall result in rejection of the bid.

E. THE NEW JERSEY WORKERS AND COMMUNITY RIGHT TO KNOW ACT

The manufacturer or supplier of chemical substances or mixtures shall label them in accordance with the N.J. Worker and Community Right to Know Law (N.J.S.A. 34:5A-1 et seq., and N.J.A.C. 8:59-2 et seq.). Containers that the law and rules require to be labeled shall show the Chemical Abstracts Service number of all the components and the chemical name. Further, all applicable Material Safety Data Sheets (MSDS) – hazardous substance fact sheet – must be furnished.

F. NON-COLLUSION AFFIDAVIT

The Non-Collusion Affidavit, which is part of these specifications, shall be properly executed and submitted with the bid proposal.

G. NO MATERIAL CHANGE OF CIRCUMSTANCES

The Affidavit shall be properly executed and submitted with the bid proposal.

H. PAY TO PLAY

Starting in January, 2007, business entities are advised of their responsibility to file an annual disclosure statement of political contributions with the New Jersey Election Law Enforcement Commission (ELEC) pursuant to N.J.S.A. 19:44A-20.27 if they receive contracts in excess of \$50,000.00 from public entities in a calendar year.

Business entities are responsible for determining if filing is necessary. Additional information on this requirement is available from ELEC at 888-313-3532 or at www.elec.state.nj.us.

I. THE PUBLIC WORKS CONTRACTOR REGISTRATION ACT

N.J.S.A. 34:11-56.48 et seq. requires that a general or prime contractor and any listed subcontractors named in the contractor's bid proposal shall possess a certificate *at the time the bid proposal is submitted*. After bid proposals are received and prior to award of contract, the successful contractor shall submit a copy of the contractor's certification along with those of all listed subcontractors. All non-listed subcontractors and lower tier sub-contractors shall be registered prior to starting work on the project. It is the general contractor's responsibility that all non-listed sub-contractors at any tier have their certificate prior to starting work on the job.

Under the law a "contractor" is "a person, partnership, association, joint stock company, trust, corporation or other legal business entity or successor thereof who enters into a contract" which is subject to the provisions of the New Jersey Prevailing Wage Act [N.J.S.A. 34:11-56.25 et seq.] It applies to contractors based in New Jersey or in another State.

The law defines "public works projects" as contracts for "public work" as defined in the Prevailing Wage Statute [N.J.S.A. 34:11-56.26(5)]. The term means:

- "Construction, reconstruction, demolition, alteration, or repair work, or maintenance work, including painting and decorating, done under contract and paid for in whole or in part out of the funds of a public body, except work performed under a rehabilitation program."
- "Public work" shall also mean construction, reconstruction, demolition, alteration, or repair work, done on any property or premises, whether or not the work is paid for from public funds..."

- “Maintenance work” means the repair of existing facilities when the size, type or extent of such facilities is not thereby changed or increased. While “maintenance” includes painting and decorating and is covered under the law, it does not include work such as routine landscape maintenance or janitorial services.

To register, a contractor must provide the State Department of Labor with a full and accurately completed application form. The form is available online at www.state.nj.us/labor/lasse/lspubcon.html.

N.J.S.A. 34:11-56.55 specifically prohibits accepting applications for registration as a substitute for a certificate of registration.

J. NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY

18A:7G-33 Process for prequalification of contractors.

The development authority shall establish a process for the prequalification of contractors that desire to bid on school facilities projects. A contractor shall not be permitted to bid on such a school facilities project unless the contractor has been prequalified pursuant to P.L.2000, c.72(C.18A:7G-1 et al.). The prequalification process shall apply to general contractors, construction managers, and contractors including those in the following areas:

- (1) Plumbing and gas fitting and all work and materials kindred thereto;
- (2) Steam and hot water heating and ventilating apparatus, steam power plants and all work and materials kindred thereto;
- (3) Electrical work; and
- (4) Structural steel and miscellaneous iron work and materials.

The prequalification process established by the New Jersey Schools Construction Corporation pursuant to the provisions of P.L.2000, c.72 (C.18A:7G-1 et al.) shall remain in full force and effect unless subsequently revised by the development authority following the enactment of P.L.2007, c.137 (C.52:18A-235 et al.). L.2000, c.72, s.59; amended 2007, c.137, s.38.

18A:7G-34 Prequalification process, submission requirements.

- a. The prequalification process shall include a requirement that the contractor proposing to submit bids on a school facilities project submit a statement under oath on a form designated by the development authority. The form shall fully describe and establish the financial ability, responsibility, plant and equipment, organization, ownership, relationships and prior experience of the prospective bidder and any other pertinent and material facts as may be deemed necessary by the development authority. The submission shall include:

- (1) A certified, audited financial statement or compilation of financial statements or other documentation of financial status acceptable to the development authority;
- (2) Proof of any contractor or trade license required by law for any trade or specialty area in which the contractor is seeking prequalification and a statement as to whether any contractor or trade license has been revoked;
- (3) A statement as to bonding capacity, which shall be from a surety authorized to issue bid, performance and payment bonds in the State of New Jersey in accordance with N.J.S.2A:44-143 through N.J.S.2A:44-147 to the contractor, and shall indicate aggregate bonding limits;
- (4) A list of the names and titles of all individuals who own 10% or more of any class of stock in the corporation or are a 10% or more partners in the firm. If any of the aforementioned stockholders or partners is itself a corporation, or a partnership, that entity shall also provide the information specified herein;
- (5) Disclosure of any judgments, convictions or criminal indictments for any conduct constituting a crime under local, State or federal law;
- (6) Disclosure of any unsatisfied judgments, injunctions or liens obtained by a governmental agency including, but not limited to, judgments based on taxes owed and fines and penalties assessed by any government agency;
- (7) Disclosure of any determination for violations of federal, State or local laws, rules or regulations, including health laws, unemployment insurance or workers' compensation coverage or claim requirements, the "Employee Retirement Income Security Act of 1974" (Pub.L.93-406, U.S.C.s. 1001 et seq.), security laws, environmental laws, safety laws, licensing laws, tax laws and antitrust laws;
- (8) Disclosure of any federal, State or local debarments, non-responsibility findings or denials of prequalification;
- (9) Disclosure of any bankruptcy filings or proceedings;
- (10) A statement as to past performance, which shall give an accurate and complete record of work completed in the past five (5) years by the contractor giving the names of the projects, type of work, location, contract price, bid and final contract amount paid and the names of the owner and of the architect or engineer in charge for the owner. This statement shall also disclose any labor problems experienced, any failure to complete a contract on schedule, any penalties, judgments, orders liens imposed by reason of any contract undertaken within the five (5) year period and whether the contractor has been defaulted for cause on any project as determined by an un-appealed or non-appealable decision. This statement shall also indicate the status of any litigation pending against the potential bidder. The contractor shall be required to attach to this

statement all performance evaluations in his possession for any work performed by the contractor on any public or private projects;

(11) A statement as to organization, which shall demonstrate the adequacy of such organization to undertake a school facilities project. This statement shall include the resumes of the management and professional staff;

(12) A statement setting forth the contractor's equipment inventory and technical resources; and

(13) A statement on staffing capabilities, including labor sources, staffing plans, turnover rates, and any use of registered apprenticeship programs and journeyman training programs.

b. After the receipt of the submission provided for in subsection a. of this section, the development authority may verify information provided in the contractor's submission, including applicable license and certificate requirements, federal or State debarments and violations of law. The development authority may also conduct random inquiries or surveys of the contractor's prior customers.

c. Based upon the submission provided for in subsection a. of this section the development authority shall assign a contractor the following classification and limits for the purpose of determining the types of projects for which a contractor is entitled to bid:

- (1) A trade or work classification; and
- (2) An aggregate rating limit.

To effectuate these requirements of the prequalification process, the development authority shall develop rules and regulations for assigning classifications and aggregate limits.

d. The classification shall be made and an immediate notice thereof shall be sent to the contractor by registered or certified mail or other legally valid methods.

e. The development authority shall establish procedures to permit contractors to challenge a classification made pursuant to this section.

f. The prequalification submission shall include an affidavit which acknowledges receipt of information regarding the appropriate Federal Bureau of Apprenticeship and Training Apprenticeship Laws and regulations as adopted by the State and information regarding the county apprenticeship coordinators and the Federal Bureau of Apprenticeship and Training.

g. The development authority shall maintain a registry of all contractors pre-qualified to bid on school facilities projects. The registry shall include the classification of the bidder and aggregate building limit.

L.2000, c.72, s.60; amended 2007, c.137, s.39.

18A:7G-35 Validity of contractor's prequalification classification.

a. A contractor's prequalification classification shall be valid for twenty four (24) months. A contractor shall be reclassified after the twenty four (24) month period in order to remain eligible to bid on school facilities projects.

b. Any material changes relevant to the prequalification process shall be reported by the contractor to the development authority in writing within ten (10) days. Based on the information provided, the development authority may change the classification or revoke prequalification for cause.

L.2000, c.72, s.61; amended 2007, c.137, s.40.

18A:7G-36 Mandatory uniform performance evaluation of contractors.

a. A mandatory uniform performance evaluation shall be conducted on all school facilities projects undertaken by the development authority. The evaluation shall, at a minimum, include cost, schedule adherence and quality.

b. A contractor shall be notified of a performance evaluation. The contractor shall be afforded an opportunity to respond to an adverse evaluation.

c. The contractor performance evaluations shall be utilized in reviewing bid submissions.

L.2000, c.72, s.62; amended 2007, c.137, s.41.

d. Contracts shall contain provisions that the Development Authority shall have the right to establish and maintain a consultant and contractor performance evaluation policy and procedure. The performance of any consultant and contractor engaged by the District for the School Facilities Project shall be evaluated by the District. This evaluation, among other things, the consultant's and contractor's ability to deliver and complete the School Facilities Project within the specified time frame and budget established by the District and consistent with the requirements of the Contract.

e. The Development Authority, the New Jersey State Police, the Department, the DCA and the DOL and their duly authorized Agents may at their discretion and cost, investigate, audit, examine and inspect the activities, document, work product arising from audits, records and accounts of the District and all other parties involved with the School Facility Project.

18A:7G-37 Submission of sworn contractor certification; requirements.

- a. A pre qualified contractor seeking to bid school facilities projects, and any subcontractors required to be named under P.L.2000, c.72 (C.18A:7G-1 et al.) shall, as a condition of bidding, submit a sworn contractor certification regarding qualifications and credentials.
- b. In the contractor certification form, a principal owner or officer of the company shall certify that the firm has the following qualifications and credentials:
 - (1) A current, valid certificate of registration issued pursuant to "The Public Works Contractor Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.), a copy of which shall be attached to the certification form, if applicable;
 - (2) A current, valid "Certificate of Authority to perform work in New Jersey" issued by the Department of the Treasury, a copy of which shall be attached to the certification form;
 - (3) Any current, valid contractor or trade license required under applicable New Jersey law for any trade or specialty area in which the firm seeks to perform work, a copy of which shall be attached to the certification;
 - (4) During the term of construction of the school facilities project, the contractor will have in place a suitable quality control and quality insurance program and an appropriate safety and health plan.
- c. The contractor certification form shall further require that a principal owner or officer of the company certify that, at the time that the firm is bidding a project, the amount of its bid proposal and the value of all of its outstanding incomplete contracts does not exceed the firm's existing aggregate rating limit.
L.2000, c.72, s.63.

Public Agency Guidelines for Administering EEO in Public Contracts

All Public Agencies that award contracts to vendors (goods, services and professional service) and/or construction contractors are required to comply with N.J.S.A. 10:5-31 et seq. and its implementing regulations at N.J.A.C. 17:27-1.1 et seq. The Division of Public Contracts Equal Employment Opportunity Compliance (hereafter referred to as "Division") is responsible for ensuring compliance with the statute and regulations. As such, the Division monitors the labor workforce utilized on all public construction projects as well as the labor workforce employed by goods, services and professional service vendors that receive public funds.

In addition, as the law and regulations pertain to Public Agencies, Division representatives periodically review Public Agency contracting processes to ensure that they are complying with EEO/AA requirements. The result of such review will be a determination that the agency

is performing its statutory functions in a "Satisfactory" or "Unsatisfactory" manner. If the result is "Satisfactory" the agency need only maintain its compliance. If the result is "Unsatisfactory" the agency may be required to make corrections to its processes and schedule an additional review with Division representatives to ensure that all corrections have been completed. An unsatisfactory review may result in the issuance of sanctions or referral to the Attorney General for appropriate enforcement action in cases of continued non-compliance.

Public agencies shall comply with the following requirements set forth at N.J.A.C. 17:27-3.2 in order to ensure equal employment opportunity in public contracting:

Comply with any regulations promulgated by the Division with respect to their obligations to assist with equal employment opportunity and affirmative action compliance and enforcement efforts.

Cooperate fully with the Division in the establishment and implementation of guidelines for determining whether a construction contractor or vendor has failed to provide equal employment opportunity in the hiring of minorities and women on public contracts;

Include mandatory equal employment opportunity and affirmative action language in its advertisements, bids specifications and contracts;

Include in each contract the State's intent to carry out its responsibilities requiring equal employment opportunity and affirmative action by vendors and construction contractors, the vendor and contractor's obligations under the law and related regulations, and the consequences of the failure to do so.

Provide vendors and construction contractors with documentation describing the relevant law and rules and, as requested, copies of same.

Provide to the Division any information which indicates that a construction contractor or goods and services vendor is not in compliance with equal employment opportunity requirements and fully cooperate in any Division investigation of such entity's compliance with these requirements;

Provide the Division with such other information as it shall request and as shall be necessary to enable the Division to fulfill its mission;

VIII. METHOD OF CONTRACT AWARD

- a. The length of the contract shall be stated in the technical specifications. Pursuant to requirements of N.J.A.C. 5:30-5.1 et seq., any contract resulting from this bid shall be subject to the availability and appropriation of sufficient funds annually. Please see Section X, Termination of Contract, Sub-section E, for additional information.
- b. If the award is to be made on the basis of a base bid only, it shall be made to that responsible bidder submitting the lowest base bid.

- c. If the award is to be made on the basis of a combination of a base bid with selected options, it shall be made to that responsible bidder submitting the lowest net bid.
- d. The owner may also elect to award the contract on the basis of unit prices.

The New Jersey Schools Development (SDA) solicits proposals from Contractors for various school projects throughout the State of New Jersey.

All contractors are advised that this "School Facilities Project" contract shall contain provisions that the N.J.S.D.A. shall have the right to establish and maintain a "consultant and contractor performance evaluation policy and procedure." The project shall be evaluated by the district. This evaluation shall consider, among other things, the consultants' and contractors' ability to deliver and complete "school facilities project" within the specified time frame and budget established by the district and consistent with the requirements of the contract.

- e. Contracts awarded by the District in connection with the School Facilities Project shall state that the contracts are assignable to the Development Authority.
- f. The Contractor Certification and Consent must be completed upon award of the contract and submitted to the District.

K. BUSINESS REGISTRATION OF PUBLIC CONTRACTORS

All government contracting units in New Jersey have received new responsibilities under the recently enacted P.L. 2004, c.57. Starting September 1, all business organizations that do business with a local contracting agency are required to be registered with the State and provide proof of that registration to the contracting agency before the contracting agency may enter into a contract with the business.

The purpose of contractor registration (which is separate from requirements of the Public Works Contractor Registration Act) is to ensure that all businesses and their subsidiaries receiving government contracts pay appropriate sales and use, and other taxes. While sales and use taxes are not paid on government contracts, the requirement to register to obtain government contracts obligates them to comply with the law on non-government contracts. Businesses, particularly out-of-state businesses, competing with New Jersey based businesses often do not pay the required taxes. Thus, unregistered businesses take unfair advantage of New Jersey businesses and deprive the State of its rightfully due taxes.

The State began requiring all State vendors to provide proof of registration before receiving a State contract. This new law expands this practice to the following government contracting agencies:

1. Contracting units as defined in the Local Public Contracts Law
2. Boards of education as defined in the Public School Contracts Law
3. Private firms that have entered into a contract with a public entity to provide water supply services pursuant to N.J.S.A. 58:26-19

4. A private firm or public authority that has entered into a contract with a public entity to perform wastewater treatment services pursuant to N.J.S.A. 58:27-19.

The law is administered by the Division of Taxation which has issued "Instructions" to guide contracting agencies in the application of the law. These Instructions will eventually be supplanted by formal rules. The Instructions, and rules when issued, elaborate and interpret the law and provide direction and guidance for contracting agencies and contractors to meet their requirements under the law. Contracting agencies should immediately review the Instructions and modify their procedures to bring them into compliance.

The Division of Local Government Services is assisting the Division of Taxation in providing resources to communicate guidance and interpretations as questions arise. The Division's Local Procurement website will have a "Frequently Asked Questions" page and local officials who have enrolled in the Local Procurement role in GovConnect can take advantage of GovConnect's discussion forums and document libraries to share experiences and information. DLGS staff will monitor the discussion forums and participate in discussions as necessary. Local procurement staff that want to join the role should e-mail a request to join to njcooperative.purchasing@treas.state.nj.us and be sure to include their title and agency.

Summary of Contracting Agency Requirements

The law affects all business organizations that do business with the agency, and in some cases, subcontractors to those organizations. This includes firms providing professional services.

Contracts awarded after September 1, 2004 must comply with the law. Contracts awarded prior to September 1 are not affected, even if fulfilled after that date.

A contract includes a formal contract awarded by a public bid, a purchase order, or other mechanism.

Contracts that are less than 15% (quote threshold) of the local unit's bid threshold are not covered by the law.

"Proof of registration" means a copy of the organization's "Business Registration Certificate" issued by the Division of Revenue. A sample is included in this notice. No other form can be substituted; it must be this form.

The law does not cover contracts with non-profit organizations and other government agencies.

Vendors that refuse to register and obtain a Business Registration Certificate cannot receive a contract in excess of 15% of the agency's bid threshold.

If the agency has a sole source contract – where there is only one supplier of the goods or services needed, and that vendor refuses register, the contracting agency should contact the Division of Taxation for review and guidance.

A subcontractor is a business organization that "knowingly" supplies goods or services to a contractor in fulfillment of a contracting agency contract. In this case, "knowingly" means the subcontractor had

affirmative and clear knowledge that the specific goods or services being provided are for the contracting agency.

All bidders must submit a copy of their proof of registration with bids.

The bidder must include the proofs of all named or listed subcontractors in a construction bid as part of the bid submission.

Failure to submit proof of registration is considered a mandatory rejection of bids (a non-waivable defect). This covers construction work as well as non-construction bids. N.J.S.A. 40A:11-23.2 adds business registration to the mandatory list of documents submitted in a construction bid.

Proof of registration for non-bid contracts (i.e., purchase orders under the bid threshold) must be received before the contract is issued.

For non-bid contracts only, if proof has been filed through a previous contract, the contracting agency may waive resubmission.

Proof should be kept with bid documents; non-bid proof documents should be filed in a separate alphabetical file.

Individuals (non-employees) must also obtain a certificate and submit it in order to receive a contract. A simplified form to file is available and is included with this Notice.

The law requires subcontractors at all levels (tiers) to provide proof of registration to their (sub) contractors until they reach the direct contractor. The contractor has the obligation to obtain these certificates and file them with contracting agency prior to receiving final payment. Please keep in mind the “knowingly” provision of the definition of a subcontractor.

If there are no subcontractors on a job, the contractor must certify to that effect.

A contractor that fails or fraudulently submits forms, is subject to civil penalties. Further, a contracting unit that fails to include the proper language in its bid documents could find bid awards challenged in court for failing to comply.

Business Registration Certificates

The State Division of Revenue issues Business Registration Certificates. There is no cost to file, and renewal is unnecessary, though changes to information must be submitted.

Filing is quick, uncomplicated and can be done online.

The answers to many questions concerning the law will be found in the Instructions or on the web site. If answers cannot be found there, e-mail them to taxation@tax.state.nj.us or lpcl@dca.state.nj.us.

L. PROOF OF BUSINESS REGISTRATION

N.J.S.A. 52:32-44 requires that each bidder (contractor) submit proof of business registration with the bid proposal. Proof of registration shall be a copy of the bidder's Business Registration Certification (BRC). A BRC is obtained from the New Jersey Division of Revenue. Information on obtaining a BRC is available on the internet at www.nj.gov/njbgs or by phone at (609) 292-1730. N.J.S.A. 52:32-44 imposes the following requirements on contractors and all subcontractors that knowingly provide goods or perform services for a contractor fulfilling this contract:

- (1) The contractor shall provide written notice to its subcontractors and suppliers to submit proof of business registration to the contractor;
- (2) Prior to receipt of final payment from a contracting agency, a contractor must submit to the contracting agency an accurate list of all subcontractors or attest that none was used;
- (3) During the term of this contract, the contractor and its affiliates shall collect and remit, and shall notify all subcontractors and their affiliates that they must collect and remit to the Director, New Jersey Division of Taxation, the use tax due pursuant to the Sales and Use Tax Act, (N.J.S.A. 54:32B-1 et seq.) on all sales of tangible personal property delivered into this State.

A Contractor, subcontractor or supplier who fails to provide proof of business registration or provides false business registration information shall be liable to a penalty of \$25.00 for each day of violation, not to exceed \$50,000.00 for each business registration not properly provided or maintained under a contract with a contracting agency. Information on the law and its requirements is available by calling (609) 292-1730.

Table of Web Links

Page	Shortcut text	Internet Address
2	Instructions	www.nj.gov/dca/lgs/lpcl/busregis/bus_reg_instruc_4.doc
2	Local Procurement website	www.nj.gov/dca/lgs/lpcl/index.shtml
2	njcooperative.purchasing@treas.state.nj.us	mailto: njcooperative.purchasing@treas.state.nj.us
4	can be done online	www.nj.gov/treasury/revenue/busregcert.htm
4	DLGS	www.nj.gov/dca/lgs/lpcl/index.shtml
4	(enrollment required)	mailto:njcooperative.purchasing@treas.state.nj.us
4	taxation@tax.state.nj.us	mailto: taxation@tax.state.nj.us
4	lpcl@dca.state.nj.us	Mailto: lpcl@dca.state.nj.us
4	Local Procurement website	www.nj.gov/dca/lgs/lpcl/index.shtml
4	This Notice	www.nj.gov/dca/lgs/lfns/04lfns/2004_17.doc
4	Sample Business Registration	www.nj.gov/dca/lgs/lpcl/busregis/nj_bus_reg_cert_sample1.gif
4	Instructions	www.nj.gov/dca/lgs/lpcl/busregis/bus_reg_instruc_4.doc
4	P.L. 2004, c. 57	www.nj.gov/dca/lgs/lpcl/index.shtml
4	Flyer	www.nj.gov/dca/lgs/lpcl/busregis/reg_&_proof.doc
4	application for individual certification	www.nj.gov/dca/lgs/lpcl/busregis/nj-reg-a.pdf

g. METHODS OF AWARD

- A. All contracts shall be for 12 consecutive months unless otherwise noted in technical or supplemental specifications.
- B. The OWNER may award the work on the basis of the Base Bid, combined with such Alternates as selected, until a net amount is reached which is within the funds available.
- C. If the award is to be made on the basis of Base Bids only, it will be made to that responsible bidder whose Base Bid, therefore, is the lowest. If the award is to be made on the basis of a combination of a Base Bid with Options, it will be made to that responsible bidder whose net bid on such combination is the lowest.
- D. The OWNER may also elect to award the work on the basis of line items or unit prices, whichever results in the lowest total amount.
- E. The successful bidder will not assign any interest in this contract and shall not transfer any interest in the same without the prior written consent of the OWNER.

h. REJECTION OF BIDS

Bids may be rejected for any of the following reasons:

- A. All bids pursuant to N.J.S.A. 40A:11-13.2;
- B. If more than one bid is received from an individual, firm or partnership, corporation or association under the same name;
- C. Multiple bids from an agent representing competing bidders;
- D. The bid is inappropriately unbalanced;
- E. The bidder is determined to possess, pursuant to N.J.S.A. 40A:11-4b, Prior Negative Experience; or
- F. If the successful bidder fails to enter into a contract within twenty one (21) days, Sundays and holidays excepted, or as otherwise agreed upon by the parties to the contract. In this case at its option, the owner may accept the bid of the next lowest responsible bidder. (N.J.S.A. 40A:11-24b)

i. TERMINATION OF CONTRACT

- A. If, through any cause, the contractor shall fail to fulfill in a timely and proper manner obligations under the contract or if the contractor shall violate any of the requirements of the contract, the owner shall there upon have the right to terminate the contract by giving written notice to the contractor of such termination and specifying the effective

date of termination. Such termination shall relieve the owner of any obligations for balances to the contractor of any sum or sums set forth in the contract. Owner will pay only for goods and services accepted prior to termination.

- B. Notwithstanding the above, the contractor shall not be relieved of liability to the owner for damages sustained by the owner by virtue of any breach of the contract by the contractor and the owner may withhold any payments to the contractor for the purpose of compensation until such time as the exact amount of the damage due the owner from the contractor is determined.
- C. The contractor agrees to indemnify and hold the owner harmless from any liability to subcontractor/suppliers concerning payment for work performed or goods supplied arising out of the lawful termination of the contract by the owner under this provision.
- D. In case of default by the contractor, the owner may procure the goods or services from other sources and hold the contractor responsible for any excess cost.
- E. Continuation of the terms of the contract beyond the fiscal year is contingent on availability of funds in the following year's budget. In the event of unavailability of such funds, the owner reserves the right to cancel the contract.
- F. ACQUISITION, MERGER, SALE AND/OR TRANSFER OF BUSINESS, ETC.

It is understood by all parties that if, during the life of the contract, the contractor disposes of his/her business concern by acquisition, merger, sale and/or transfer or by any means convey his/her interest(s) to another party, all obligations are transferred to that new party. In this event, the new owner(s) will be required to submit all documentation/legal instruments that were required in the original bid/contract. Any change shall be approved by the owner.

- G. The contractor will not assign any interest in the contract and shall not transfer any interest in the same without the prior written consent of the owner.
- H. The owner may terminate the contract for convenience by providing sixty (60) calendar days advanced notice to the contractor.

XI. PAYMENT

- A. No payment will be made unless duly authorized by the Owner's authorized representative and accompanied by proper documentation.
- B. Payment will be made in accordance with the Owner's policy and procedures.

XII. SEPARATE SEALED BIDS

- A. Separate sealed bids will be received for the following:

New Entrance Ramps at the
Hammonton Middle School

Hammonton Board of Education
566 Old Forks Road
Hammonton, New Jersey 08037

- B. All bids will be submitted on one standard proposal form provided by the Hammonton Board of Education, Architect or Engineer (or an exact duplicate) and shall be in one sealed envelope from each Contractor with the name of the Contractor and division of work bid upon marked on the outside.
- C. Refer to each division of the specifications and drawings and state amount of add or deduct from the base bid for the alternate listed there.

XIII. BIDDING DOCUMENTS

- 1. One complete set of Bidding Documents will be made available to each invited bidder. There will be a refundable deposit of Fifty (\$50.00) Dollars.
- 2. Bidding Documents for this project will be available in office of:

Wayne A. Neville, AIA
430 Commerce Lane, Suite C
West Berlin, NJ 08091
856-767-7667

XIV. PRE-BID MEETING

There will **not** be a pre-bid meeting for this project.

XV. SUBCONTRACTS

The Board of Education will recognize only the successful bidder for the proper execution of the entire work under the Contract. No subcontractor will perform any work without prior written notification to and approval by the Board of Education. Approval of the subcontractor by the Board in no way relieves the Contractor from full responsibility for fulfilling all conditions of the Contract.

XVI. BILLING

Billing is to be completed by the 25th of the month and in the office of the Facility Manager or upon shipment or completion of services rendered. The billing is to be accompanied by a

Board of Education affidavit, which must be signed and then submitted, to the Office of the Facility Manager.

XVII. PRE-QUALIFICATION (Construction Bids only in excess of \$20,000)

At the time of submitting bids for construction work, the bidder must be pre-qualified by the Department of the Treasury, Division of Building and Construction as required by N.J.S.A. 18A:18-8 through 18A:18-18 as qualified to bid on the public work to which the bid related, and there must be included with the bid an affidavit of the bidder stating the type and amount of work for which the bidder has been so qualified, and that there has been no material adverse change in qualification information, the amount of uncompleted work under contract, and the date of qualification.

A Form of Affidavit for such purposes can be obtained by the bidder from the Department of the Treasury, Division of Building and Construction, Pre-Qualification Section, Trenton, New Jersey.

XVIII. EMAIL

The Owner requires each Prime Contractor to maintain an operating e-mail address during the entire course of this project.

**SECTION B –
STANDARD BID DOCUMENT
REFERENCE**

FORM OF BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned _____

as Principal and _____ as Surety, are hereby held and firmly bound unto

_____ in the penal sum of _____
for payment of which, well and truly to be made we hereby jointly and severally bind ourselves, our heirs, executors,
administrators, successors and assigns.

Signed this _____ day of _____, 20____; the condition of the above obligation is such that

whereas the Principal has submitted to _____ a certain bid,
attached hereto, and made a part hereof to enter into a contract in writing for the

NOW THEREFORE,

- a. If said bid shall be rejected, or in the alternate
- b. If said bid shall be accepted and the Principal shall execute and deliver a contract in the Form of Contract, attached hereto (properly completed in accordance with said bid); and shall furnish a bond for his faithful performance of said contract and for payment of all persons performing labor or furnishing materials in connection therewith, and shall in all other respects perform the agreement created by the acceptance of said bid.

Then this obligation shall be void, otherwise the same shall remain in force and effect, it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its bond shall be in no way impaired or affected by any extension of the time within which the Principal may accept such bid; and said Surety does hereby waive notice of such extension.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals and in such of them as are corporations have caused their corporate seals to be hereto affixed these presents to be signed by their proper officers, the day and year first set forth above.

Principal (LS)

Surety

By

NON-COLLUSION AFFIDAVIT

STATE OF NEW JERSEY)

COUNTY OF _____)

SS

Name of Project

I, _____ of the City of _____
in the County of _____ and State
of _____ of full age, being duly sworn according to law on my oath depose and say that:

I am _____

of the firm of _____
the bidder making the Proposal for the above named Project, and that I executed the said Proposal with full authority to do so; that said bidder has not, directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free, competitive bidding in connection with the above named project; and that all statements contained in said Proposal and in this affidavit are true and correct, and made with full knowledge that the Owner relies upon the truth of the statements contained in said Proposal and in the statements contained in this affidavit in awarding the contract for the said project.

I further warrant that no person or selling agency has been employed or retained to solicit or secure such contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by

Name of Contractor

in accordance with N.J.S.A. 52:34-15.

Subscribed and sworn to
before me this ____ day
of _____ 20____.

Also type or print name of
Affiant under signature

Notary Public of

My Commission expires _____ 20____

REQUIRED EVIDENCE
AFFIRMATIVE ACTION REGULATIONS
P.O. 1975, C. 127 (N.J.A.C. 17:27)

If awarded a contract, all procurement and service contractors will be required to comply with the requirements of P.L. 1975, C. 127, (N.J.A.C. 17:27). Within seven (7) days after receipt of the notification of intent to award the contract or receipt of the contract, whichever is sooner, the contractor should present one of the following to the Purchasing Agent:

1. A photocopy of a valid letter from the U.S. Department of Labor that the contractor has an existing federally-approved or sanctioned Affirmative Action Plan (good for one year from the date of the letter).
OR
2. A photocopy of approved Certificate of Employee Information Report.
OR
3. An Affirmative Action Employee Information Report (Form AA302).
OR
4. All successful construction contractors must submit within three days of the signing of the contract an Initial Project Manning Report (AA201) for any contract award that meets or exceeds the Public Agency bidding threshold (available upon request).

NO FIRM MAY BE ISSUED A CONTRACT UNLESS IT COMPLIES WITH THE
AFFIRMATIVE ACTION REGULATIONS OF P.L.1975, C.127.

The following questions must be answered by all bidders:

1. Do you have a federally approved or sanctioned Affirmative Action Program?

YES _____ NO _____
If yes, please submit a copy of such approval.

2. Do you have a Certificate of Employee Information Report Approval?

YES _____ NO _____
If yes, please submit a copy of such certificate.

The undersigned contractor certifies that he is aware of the commitment to comply with the requirements of P.L.1975, c.127 and agrees to furnish the required documentation pursuant to the law.

COMPANY: _____ SIGNATURE: _____

TITLE: _____ NAME: _____

Note: A contractor's bid must be rejected as non-responsive if a contractor fails to comply with requirements of P.L.1975, c.127, within the time frame.

AFFIRMATIVE ACTION ACKNOWLEDGMENT

I, _____, of the City of _____,

in the County of _____, and State of _____,

of full age, state that the Bidder acknowledges receipt of Regulations promulgated pursuant to P.L. 1975, Chapter C 127, effective July 23, 1975, as amended and supplemented, known as Affirmative Action Against Discrimination, which will be a condition of the Contract on this Project.

Signature

Print or type name

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE

N.J.S.A. 10:5-31 et seq. (P.L. 1975, C.127)

N.J.A.C. 17:27

GOODS, PROFESSIONAL SERVICE AND GENERAL SERVICE CONTRACTS

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

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

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

The contractor or subcontractor, will send to each labor union with which it has a collective bargaining agreement a notice, to be provided by the agency contracting officer advising the labor union of the contractor's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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

The contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.

The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

In conforming with the applicable employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three (3) documents:

Letter of Federal Affirmative Action Plan Approval

Certificate of Employee Information Report

Employee Information Report Form AA302 (electronically provided by the Division and distributed to the public agency through the Division's website at www.state.nj.us/treasury/contract_compliance)

The contractor and its subcontractors shall furnish such reports or other documents to the Division of Public Contracts Equal Employment Opportunity Compliance as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Public Contracts Equal Employment Opportunity Compliance for conducting a compliance investigation pursuant to **Subchapter 10 of the Administrative Code at N.J.A.C. 17:27.**

MANDATORY AFFIRMATIVE ACTION LANGUAGE

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE
N.J.S.A. 10:5-31 et seq. (P.L. 1975, C.127)
CONSTRUCTION CONTRACTS
N.J.A.C. 17:27

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

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, up-grading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

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

The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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

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

- A. If the contractor or subcontractor has a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor shall, within three business days of the contract award, seek assurances from the union that it will cooperative with the contractor or subcontractor as is fulfills its affirmative action obligations under this contract and in accordance with the rules promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as supplemented and amended from time to time and the Americans with Disabilities Act. If the contractor or subcontractor is unable to obtain said assurances from the construction trade union at least five business days prior to the commencement of construction work, the contractor or subcontractor agrees to afford equal employment opportunities minority and women workers directly, consistent with this chapter. If the contractor's or subcontractor's prior experience with a construction trade union, regardless of whether the union has provided said assurances, indicates a significant minority and women workers consistent with affording equal employment opportunities as specified in this chapter, the contract or subcontractor agrees to be prepared to provide such opportunities to minority and women workers directly, consistent with this chapter, by complying with the hiring or scheduling procedures prescribed under (B) below; and the contractor or subcontractor further agrees to take said action immediately if it determines that the union is not referring minority and women workers consistent with the equal employment opportunity goals set forth in this chapter.

B. If good faith efforts to meet targeted employment goals have not or cannot be met for each construction trade by adhering to the procedures of (A) above, or if the contractor does not have a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor agrees to take the following actions:

1. To notify the public agency compliance officer, the Division, and minority and women referral organizations listed by the Division pursuant to N.J.S.A. 17:27-5.3, of its workforce needs, and request referral of minority and women workers;
2. To notify any minority and women workers who have been listed with it as awaiting available vacancies;
3. Prior to commencement of work, to request that the local construction trade union refer minority and women workers to fill job openings, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade;
4. To leave standing requests for additional referral to minority and women workers with the local construction trade union, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade, the State Training and Employment Service and other approved referral sources in the area;
5. If it is necessary to lay off some of the workers in a given trade on the construction site, layoffs shall be conducted in compliance with the equal employment opportunity and non-discrimination standards set forth in this regulation, as well as with applicable Federal and State court decisions;
6. To adhere to the following procedure when minority and women workers apply or are referred to the contractor or subcontractor:
 - (i) The contractor or subcontractor shall interview the referred minority or women worker.
 - (ii) If said individuals have never previously received any document or certification signifying a level of qualification lower than that required in order to perform the work of the construction trade, the contractor or subcontractor shall in good faith determine the qualifications of such individuals. The contractor or subcontractor shall hire or schedule those individuals who satisfy appropriate qualification standards in conformity with the equal employment opportunity and non-discrimination principles set forth in this chapter. However, a contractor or subcontractor shall determine that the individual at least possesses the requisite skills, and experience recognized by a union, apprentice program or a referral agency, provided the referral agency is acceptable to the Division. If necessary the contractor or subcontractor shall hire or schedule minority and women workers who qualify as trainees pursuant to these rules. All of the requirements, however, are limited by the provisions of (C) below.
 - (iii) The name of any interested women or minority individual shall be maintained on a waiting list, and shall be considered for employment as described in (i) above, whenever vacancies occur. At the request of the Division, the contractor or subcontractor shall provide evidence of its good faith efforts to employ women and minorities from the list to fill vacancies.
 - (iv) If, for any reason, said contractor or subcontractor determines that a minority individual or a woman is not qualified or if the individual qualifies as an advanced trainee or apprentice, the contractor or subcontractor shall inform the individual in writing of the reasons for the determination, maintain a copy of the determination in its files, and send a copy to the public agency compliance officer and to the Division.
7. To keep a complete and accurate record of all requests made for the referral of workers in any trade covered by the contract, on forms made available by the Division upon request.

C. The contractor or subcontractor agrees that nothing contained in (B) above shall preclude the contractor or subcontractor from complying with the union hiring hall or apprenticeship policies in any applicable collective bargaining agreement or union hiring hall arrangement, and, where required by custom or agreement, it shall send journeymen and trainees to the union for referral, or to the apprenticeship program for admission, pursuant to such agreement or arrangement. However, where the practices of a union or apprenticeship program will result in the exclusion of minorities and women or the failure

to refer minorities and women consistent with the targeted county employment goal, the contractor or subcontractor shall consider for employment persons referred pursuant to (B) above without regard to such agreement or arrangement; provided further, however, that the contractor or subcontractor shall not be required to employ women and minority advanced trainees and trainees in numbers which result in the employment of advanced trainees and trainees as a percentage of the total workforce for the construction trade, which percentage significantly exceeds the apprentice to journey worker ratio specified in the applicable collective bargaining agreement, or in the absence of a collective bargaining agreement, exceeds the ratio established by practice in the area for said construction trade. Also, the contractor or subcontractor agrees that, in implementing the procedures of (B) above, it shall, where applicable, employ minority and women workers residing within the geographical jurisdiction of the union.

After notification of award, but prior to signing a construction contract, the contractor shall submit to the public agency compliance officer and the Division an initial project workforce report (Form AA 201) electronically provided to the public agency by the Division, through its website, for distribution to and completion by the contractor, in accordance with N.J.S.A. 17:27-7. The contractor also agrees to submit a copy of the Monthly Project Workforce Report once a month thereafter for the duration of this contract to the Division and to the public agency compliance officer.

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

- D.** The contractor and its subcontractors shall furnish such reports or other documents to the Division of Public Contracts Equal Employment Opportunity Compliance as may be requested by the Division from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Public Contracts Equal Employment Opportunity Compliance for conducting a compliance investigation pursuant to **Subchapter 10 of the Administrative Code (N.J.S.A. 17:27).**

AMERICANS WITH DISABILITIES ACT OF 1990
Equal Opportunity for Individuals with Disability

The CONTRACTOR and the OWNER do hereby agree that the provisions of Title II of the Americans With Disabilities Act of 1990 (the "ACT") (42 U.S.C. S12101 et seq.), which prohibits discrimination on the basis of disability by public entities in all services, programs, and activities provided or made available by public entities, and the rules and regulations promulgated pursuant thereto, are made a part of this contract. In providing any aid, benefit, or service on behalf of the OWNER pursuant to this contract, the CONTRACTOR agrees that the performance shall be strict compliance with the Act. In the event that the Contractor, its agents, servants, employees, or subcontractors violate or are alleged to have violated the Act during the performance of this contract, the CONTRACTOR shall defend the OWNER in any action or administrative proceeding commenced pursuant to this Act. The Contractor shall indemnify, protect, and save harmless the OWNER, its agents, servants, and employees from and against any and all suits, claims, losses, demands, or damages, of whatever kind of nature arising out of or claimed to arise out of the alleged violation. The CONTRACTOR shall, at its own expense, appear, defend, and pay any and all charges for legal services and any and all costs and other expenses arising from such action or administrative proceeding or incurred in connection therewith. In any and all complaints brought pursuant to the OWNER grievance procedure, the CONTRACTOR agrees to abide by any decision of the OWNER which is rendered pursuant to said grievance procedure. If any action or administrative proceeding results in an award of damage against the OWNER or if the OWNER incurs any expense to cure a violation of the ADA which has been brought pursuant to its grievance procedure, the CONTRACTOR shall satisfy and discharge the same at its own expense.

The owner shall, as soon as practicable after a claim has been made against it, give written notice thereof to the CONTRACTOR along with full and complete particulars of the claim. If any action or administrative proceedings is brought against the OWNER or any of its agents, servants, and employees, the OWNER shall expeditiously forward or have forwarded to the CONTRACTOR every demand, complaint, notice, summons, pleading, or other process received by the OWNER or its representatives.

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

It is further agreed and understood that the OWNER assumes no obligation to indemnify or save harmless the CONTRACTOR, its agents, servants, employees and subcontractors for any claim which may arise out of their performance of this agreement. Furthermore, the CONTRACTOR expressly understands and agrees that the provisions of this indemnification clause shall in no way limit the CONTRACTOR'S obligations assumed in this Agreement, nor shall they be construed to relieve the CONTRACTOR from any liability, nor preclude the OWNER from taking any other actions available to it under any other provisions of the Agreement or otherwise at law.

STOCKHOLDER DISCLOSURE CERTIFICATION

☐

I certify that the list below contains the names and home addresses of all Stockholders holding 10% or more of the issued and outstanding stock of the Undersigned.

☐

I certify that no one stockholder owns 10% or more of the issued and outstanding stock of the undersigned.

☐

Partnership

☐

Corporation

☐

Sole
Proprietorship

PLEASE CHECK APPROPRIATE BOXES ABOVE AND SIGN BELOW

Stockholders:

Name: _____

Home Address: _____

Name: _____

Home Address: _____

Name: _____

Home Address: _____

Name: _____

Home Address: _____

Name: _____

Home Address: _____

Name: _____

Home Address: _____

THIS STATEMENT MUST BE INCLUDED WITH BID SUBMISSION.

Subscribed and sworn before me

This ____ day of _____, 20__

(Notary Public)

(Affiant)

(Print name & title of affiant)

My Commission expires:

(Corporate Seal)

NO MATERIAL CHANGE OF CIRCUMSTANCES AFFIDAVIT

I, _____ being of full age and under oath depose and say:

1. I am a(n) owner, partner, shareholder or officer of the company set forth below and am duly authorized to execute this affidavit on its behalf.
2. At statement as to the financial ability, adequacy of plant and equipment, organization and prior experience of the bidder, as required by N.J.S.A. 18A:18A-28 has been submitted to the Department of Treasury within the last six (6) months preceding the date of opening of bids for this contract.
3. I certify, as required by N.J.S.A. 18A:18A-32 that there has been no material adverse change in the qualification except:

_____.

SEAL

TITLE

COMPANY

Sworn to and subscribed before
me this _____ day of

_____ 20 _____.

Notary Public

BUILDING AGREEMENT

THIS AGREEMENT, made the _____ day of _____, Two Thousand _____,

BETWEEN _____,

_____,

party of the first part (hereinafter called the Owner), AND _____,

_____,

party of the second part (hereinafter called the Contractor).

WITNESSETH: 1. The Contractor does hereby covenant, promise and agree to and with the Owner, that he, the Contractor, shall and will for the consideration hereinafter mentioned, provide all materials and PERFORM ALL _____

_____,

in a good and workmanlike manner in accordance with the drawings and specifications for the work entitled:

prepared by Wayne A. Neville, A.I.A., Registered Architect, which drawings and specifications are, and hereby acknowledged by both parties as part of this contract; said work to be performed within the time stated below and under the direction of said Architect to be testified by a writing or certificate under the hand of said Architect, to be paid for as hereinafter specified.

2. The Contractor agrees that all work under this Contract shall be completed on
or before _____.

3. The Owner does hereby covenant, promise and agree to and with the Contractor, that he, the Owner, shall and will in consideration of the covenants and agreements herein contained being strictly performed and kept by the Contractor as specified, pay or cause to be paid unto the Contractor the sum of _____

_____.

LAWFUL MONEY OF THE UNITED STATES OF AMERICA in progress installments in the following manner: On or about the _____ day of the month a progress payment equivalent to _____ of the value of the labor and materials incorporated in the work and of the value of the materials on premises as hereinbefore set forth, up to the _____ day of that month, shall be paid to the Contractor, less the aggregate of the previous payments, which values shall be shown on a certificate of payment issued and signed by Wayne A. Neville, A.I.A. No progress payment shall signify the Architect's written approval and the Certificate of Substantial Completion shall constitute the final certificate issued upon the substantial completion of the work.

4. Drawings and specifications are incorporated herein by reference and hereby acknowledged by both parties as part of this contract.

5. Except for emergency items that are determined by the architect, NO alterations or extra work shall be done without a written order from the owner, lawfully approved at a public meeting, approved by the architect, with an express written agreement in writing as to the cost.

6. Certificate of Liability Insurance shall include and reflect the addition of the Board, its agents, representatives and Board Members as additional insureds.

7. Any claim arising out of or related to the contract except those specifically waived shall, after decision by the architect or 30 days after submission of the claim to the architect, be subject to be heard by a Court of competent jurisdiction. Prior to submitting or filing a claim in a Court of competent jurisdiction, the parties shall endeavor to resolve disputes by mediation the parties may further agree to informally mediate any dispute under the contract first by bringing such dispute to the chief school administrator and the Board as well as a person authorized to act on behalf of the contractor. If such mediation is not successful, then either party may exercise any and all of its legal rights and remedies. Any mediation conducted shall be confidential and no statement made in mediation may be used in any subsequent proceeding.

8. The Owner shall not, in any manner, be answerable to or accountable for any loss or damage that shall or may happen to the said work or any part or parts thereof respectively, or for any of the materials or other things used and employed in finishing and completing same other than fire loss, malicious mischief and vandalism.

9. The Owner will insure the building in the joint names and interest of himself and the contractors against loss or damage by fire in such sums as may from time to time be agreed upon with the contractors to cover work and materials used in the building and on the premises, the policies to be made payable to Owner and Contractor, as their interest may appear.

10. The covenants, agreements and stipulations herein contained shall extend to and bind the respective heirs, executors, administrators, successors, and assigns of the parties hereto; and whenever the singular masculine pronoun is used herein, it shall be construed as applying to its antecedent whether plural, feminine or neuter whenever the circumstances require it so to be construed.

11. Before the final payment is made to the Contractor, he shall furnish the Owner with the release by the surety company (Statement of Surety Company).

12. The Contractor hereby agrees to comply with all terms, provisions and determinations of the New Jersey Prevailing Wage Act of 1963 and the Articles contained herein insofar as it pertains to this project. The determination as published currently by the State Department of Education as they prevail in this locality are hereinafter attached.

13. The contracted party, its subcontractors may be debarred, suspended or disqualified from contracting and/or working on the School Facilities Project if found to have committed any of the acts listed in N.U.A.C. 38A-4.1.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

Attest:

OWNER:

By _____
President

In the Presence of:

_____ (L.S.)

Corporate Contractor

Attest:

Secretary

President

In the Presence of:

A Partnership

(L.S.)

(L.S.)

CONTRACT BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned _____
_____,
as principal, and _____,
A Corporation organized and existing under the laws of the State of _____
and duly authorized to do business in the State of New Jersey, as Surety, are held and firmly bound unto
the _____, in the penal sum of
_____ for payment of which well and truly and to
be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators,
successors and assigns. Signed this _____ day of _____, Two
Thousand and _____.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that whereas the above named Principal did on
the _____ day of _____, 20____, enter into a
Contract with _____

which said Contract is made a part of this bond the same as though set forth herein:

NOW, if the said _____ shall well and
faithfully do and perform the things agreed by _____

to be done and performed according to the terms of said Contract, or any changes or modifications therein made, as
there provided, and shall pay all lawful claims of subcontractors, materialmen, laborers, persons, firms or
corporations for labor performed, or materials, provisions, provender or other supplies, or teams, fuels, oils,
implements of machinery furnished, used or consumed in the carrying forward, performing or completing of said
contract: We agreeing and assenting that this undertaking shall be for the benefit of any subcontractor, materialmen,
laborer, person, firm or corporation having a just claim, as well as for the obligee herein, and completes all
requirements of the one-year guarantee; then this obligation shall be void. Otherwise, the same remains in full force
and effect, it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder
shall, in no event, exceed the penal amount of this obligation as herein stated. The said Surety hereby stipulates
and agrees that no modifications, omissions or additions in or to terms of said Contract or in or to the plans or
specifications therefore, shall in anywise affect the obligations of said Surety on its bond.

IN WITNESS WHEREOF, the said Principal and Surety have duly executed this bond under seal the day and year
above written.

Witness:

_____ By _____ (SEAL)
Principal-Individual

Facilities Project; the prices in the bid have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition; the prices have not been knowingly disclosed directly or indirectly by the Contractor to any other bidder, unless otherwise required by law; and no attempt has been made by the contractor to induce any other person or business entity to submit or not submit a bid for the purpose of restricting competition.

C. No Discrimination

The Contractor will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin ancestry, marital status, gender or sexual orientation and has complied and will continue to comply with all State and Federal laws and Executive Orders respecting non-discrimination.

D. Prevailing Wage, Contractor and Business Registration

If applicable, the Contractor has complied and will continue to comply with the New Jersey Contractor Registration Act, P.L. 1999, c. 238, the business registration and use tax requirements of N.J.S.A. 52:32-44 as amended by P.L. 2004, c. 57, and the New Jersey Prevailing Wage Act, P.L. 1963, c. 150, and all amendments thereto, with respect to the School Facilities Project, the District, the Development Authority, the Financing Authority or the State, except those contracts not within the contemplation of these Acts. The Consultant shall not hire any Subconsultant to perform any work on the School Facilities Project who is listed or is on record in the Office of the Commissioner, Department of Labor, as having failed to pay prevailing wages in accordance with the provisions of the New Jersey Prevailing Wage Act.

E. Prequalification

The Contractor certifies that the Contractor and the Subcontractors in the four branches listed in N.J.S.A. 18A-18 are prequalified by the Development Authority and that, since the latest prequalification application was filed by the Contractor with the Development Authority, there has been no change in any circumstance, condition or status that may adversely impact Contractor's prequalification with the Development Authority. The Contractor certifies that it will immediately report to the Development Authority any change in the information provided by the Contractor in its prequalification application currently on file with the Development Authority.

The Contractor certifies that it will immediately notify the Development Authority and the Bureau of Fiscal Oversight (PO Box 063, Trenton, NJ 08625) of any director, partner, officer, or employee of the Contractor, or of any shareholder owning 5% or more of the Contractor's stock, who:

1. Is the subject of investigation involving any violation of criminal law or other federal state, or local law or regulation by any governmental agency; or
2. Is arrested, indicted or named as an unindicted co-conspirator in any indictment or other accusatory instrument; or
3. Is convicted of any crime under state or federal law, or of any disorderly persons offense or misdemeanor involving a business related offense.

II. The undersigned hereby consents to the following:

A. Consent to Documents

The Contractor agrees and hereby consents to permit the Development Authority, the Financing Authority, the Department of Education, the Department of Community Affairs, other State agencies, the Bureau of Fiscal Oversight and their respective agents, representatives, consultants, subconsultants, contractors, subcontractors, and their agents and representatives (the "Project Team") access to ALL DOCUMENTS RELATED TO THE CONTRACT, including, but not limited to, the following:

1. Prequalifying information and work product.
2. All confidential memos and certifications required to be kept by any governmental agency, including, but not limited to, the Department of Community Affairs, the Department of Labor, the Department of Education, the Department of Environmental Protection, the Department of Treasury, the Division of Consumer Affairs, Licensing Boards, the Development Authority and the Financing Authority.
3. All documents required to be kept by the Contract, including, but not limited to, contracts, specifications, change orders, alternate submissions, approvals/rejections, unit prices, product data, time of performance schedules, construction photographs, quality control management and reports, value engineering information, up-to-date project accounting system, intermediate and final audits, as-built, close-out documentation.
4. All documents related to the approval process for the School Facilities Project, including, but not limited to, project siting, land acquisition, surveys, and real estate documents (deeds, leases, and title report, including searches for easements, mortgages, judgments, liens, unpaid taxes, water and sewer, and property description by metes and bounds).
5. All documents related to the payment, in connection with the Contract, of professionals, including but not limited to surveyors, title abstractor/company, lawyers, appraisers, soils engineers, bond counsel, underwriters, financial and investment advisors, trustees, official printers, bond insurers.

B. Right to Inspect and Audit

The Contractor agrees to allow the Project Team upon request, at all reasonable times, to inspect and copy any and all of the above-described documents to the extent such documents are in its possession, custody or subject to its control. The Consultant agrees to make the requested documents available for inspection and copying within the State of New Jersey regardless of the location of the documents. The Contractor hereby waives any objection it might otherwise raise permitting the Project Team, including the Bureau of Fiscal Oversight and its authorized representatives to investigate, examine and inspect all activities related to this contract pursuant to P.L. 2000, c. 72. The contractor further releases and holds harmless the Bureau of Fiscal Oversight and its authorized representatives, the Department Authority, the Financing Authority and the State of New Jersey.

All statements contained in the Contractor's bid/proposal and this Certification and Consent are true and correct; and all such statements have been made with full knowledge that the Development Authority, the Financing Authority and the State of New Jersey rely upon the truth of the statements contained in this Certification and Consent in providing payments to the District for the School Facilities Project pursuant to the Agreement.

Name of Principal: _____

Title: _____

Signature: _____

Sworn and subscribed to before me
this _____ day of _____, 20____

Notary Public of New Jersey
My Commission expires: _____, 20____

STATEMENT OF SURETY COMPANY

In accordance with the provisions of the contract dated _____,

Between _____
(Name and address of Owner)

The _____
(Name and address of Surety)

after careful examination of the books and records of said contractor, and after receipt of affidavit and releases satisfies this company that all claims for labor and materials have been satisfactorily settled, hereby approved of the final payment of said contractor

(Name of Contractor)

and by these presents witnesseth that payment to the contractor of the final estimates shall not relieve the surety company of any of its obligations to

the _____
(Name of Owner)

for _____
(Name of Project)

(Type of Work)

as set forth in the said surety company's bond number _____.

IN WITNESS WHEREOF, the said surety company has hereunto set its hand and seal this
_____ day of _____, 20_____.

Witness:

(Name of Surety)

By _____

STATE OF NEW JERSEY DEBARRED LIST AFFIDAVIT

STATE OF NEW JERSEY

I, _____, of the town of _____, County of _____

and the State of _____ full age, being duly sworn according to law on my oath depose
and say that:

I am the _____ an officer of the firm of _____

_____ the bidder making the proposal for the above named work, and that I executed
the said proposal with full authority to do so, that said bidder at the time of making of this bid is not
included on the State of New Jersey, State Treasurers List of Debarred, Suspended and Disqualified
Bidders, and that all statements contained in said proposal and in this affidavit are true and correct and
made with the full knowledge that the Hammonton Board of Education as the owner relies on the truth of
the statements contained in said proposal and in the statements contained in this affidavit in awarding the
contract for said work.

The undersigned further warrants that should the name of the firm making this bid appear on the State
Treasurers List of Debarred, Suspended and Disqualified Bidders at anytime prior to, and during the life of
this contract, including guarantee period, that the local unit shall be immediately so notified by the
signatory of this Eligibility Affidavit.

The undersigned understands that the firm making the bid as contractor is subject to disbarment,
suspension and/or disqualification in contracting with the State of New Jersey, if the contractor pursuant to
NJAC 7:1-5.2, commits any of the acts listed therein and as determined according to applicable law and
regulation.

(Name and Address of Company)

(Name and Title)

Subscribed and sworn before me this _____ Day of _____ 20_____.

Chapter 271
Political Contribution Disclosure Form
(Contracts that Exceed \$17,500.00)
Ref. N.J.S.A. 52:34-25

The undersigned, being authorized and knowledgeable of the circumstances, does hereby certify that _____ (Business Entity) has made the following reportable political contributions to any elected official, political candidate or any political committee as defined in N.J.S.A. 19:44-20.26 during the twelve (12) months preceding this award of contract:

Reportable Contribution

<u>Date of Contribution</u>	<u>Amount of Contribution</u>	<u>Name of Recipient Elected Official/ Committee/Candidate</u>	<u>Name of Contributor</u>

The Business Entity may attach additional pages if needed.

___ No Reportable Contributions (Please check if applicable.)

I certify that _____ (Business Entity) made no reportable contributions to any elected official, political candidate or any political committee as defined in N.J.S.A. 19:44-20.26.

Certification

I certify, that the information provided above is in full compliance with Public Law 2005 – Chapter 271.

Name of Authorized Agent _____

Signature _____ Title _____

Business Entity _____

Title of Bid _____ Bid No: _____

DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN

Solicitation Number: _____ Name of Company: _____

Pursuant to Public Law 2012, c.25, any person or entity that submits a bid or proposal or otherwise proposes to enter into or renew a contract must complete the certification below to attest, under penalty of perjury, that the person or entity or one of the person or entity's parents, subsidiaries, or affiliates, is not identified on a list created and maintained by the Department of the Treasury as a person or entity engaging investment activities in Iran. If the Director finds a person or entity to be in violation of the principles which are the subject of this law, s/he shall take action as may be appropriate and provided by law, rule or contract, including but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the party in default and seeking debarment or suspension of the person or entity.

I certify, pursuant to Public Law 2012, c.25, that the person or entity listed above for which I am authorized to bid/renew:

_____ **is not** providing goods or services of \$20,000,000 or more in the energy sector of Iran, including a person or entity that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas for the energy sector of Iran, AND

_____ **is not** a financial institution that extends \$20,000,000 or more in credit to another person or entity, for 45 days or more, if that person or entity will use the credit to provide goods or services in the energy sector in Iran.

In the event that a person or entity is unable to make the above certification because it or one of its parents, subsidiaries, or affiliates has engaged in the above-referenced activities, a detailed, accurate and precise description of the activities must be provided in part 2 below to the Board of Education under penalty of perjury. Failure to provide such will result in the proposal being rendered as non-responsive and appropriate penalties, fines and/or sanctions will be assessed as provided by law.

PART 2 – ONLY COMPLETE IF ENGAGING IN INVESTMENT ACTIVITIES IN IRAN

Part 2: Please provide further information related to investment activities in Iran.

You must provide a detailed, accurate and precise description of the activities of the bidding person/entity, or one of its parents, subsidiaries or affiliates, engaging in the investment activities in Iran outlined above by completing the box below.

Name: _____	Relation to Bidder/Offeror _____
Description of Activities _____	
Duration of Engagement _____	Anticipated Cessation Date _____
Bidder/Offeror Contact Name _____	Contact Phone Number _____

Certification: I, being duly sworn upon my oath, hereby represent and state that the foregoing information and any attachments thereto to the best of my knowledge are true and complete. I attest that I am authorized to execute this certification on behalf of the above-referenced person or entity. I acknowledge that the State of New Jersey is relying on the information contained herein and thereby acknowledge that I am under a continuing obligation from the date of this certification through the completion of any contracts with the State to notify the State in writing of any changes to the answers of information contained herein. I acknowledge that I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification, and if I do so, I recognize that I am subject to criminal prosecution under the law and that it will also constitute a material breach of my agreement(s) with the State of New Jersey and that the State at its option may declare any contract(s) resulting from this certification void and unenforceable.

Full Name (Print): _____ Signature _____

Title: _____ Date: _____

Name of Company: _____ City/State/Zip: _____

WAGE AND HOUR STATEMENT

The following statement addressed to the Owner shall be submitted by each Prime Contractor each month with his voucher for payment to the Architect for forwarding to the Owner.

The undersigned stated that all work done during the month of _____, 20_____,
for which this form is requesting payment of \$_____, against their contract with the
_____ Board of Education, has performed in accordance with the New
Jersey Statutes pertaining to wages and hours.

Signed _____

Title _____

Firm _____

ACKNOWLEDGMENT OF RECEIPT OF ADDENDA

The undersigned Bidder hereby acknowledges receipt of the following Addenda:

Addendum Number

Dated

Acknowledged for: _____
(Name of Bidder)

By: _____
(Signature of Authorized Representative)

Name: _____

Title: _____

EQUIPMENT CERTIFICATON

The undersigned Bidder hereby certifies as follows:

1. The number and type of _____ intended to be used to fulfill all requirements of the Contract Documents with respect to the _____ are listed Table 1 and 2 and attached hereto.

Note: If the Bidder owns or controls all the necessary equipment required, complete Paragraph 2 below. If the Bidder does not own or control all the necessary equipment required, complete Paragraph 3 below.

2. The bidder owns or controls all the necessary equipment shown in Table 1 and required to accomplish the work described in the Contract Documents during the Contract Term.

Name of Bidder: _____ By: _____
(signature)

Name: _____ Title: _____

3. The Bidder does not own or control all the necessary equipment required to accomplish the Work described in the Contract Documents during the Contract Term. The equipment actually owned or controlled by the Bidder is identified in Table 1.

The remaining equipment required to perform the Work described is noted in Table 2 together with the certification of the owner or person in control of such equipment.

Name of Bidder: _____ By: _____
(signature)

Name: _____ Title: _____

EQUIPMENT CERTIFICATION
EQUIPMENT OWNED
AND CONTROLLED BY BIDDER

Type of Equipment
(Vehicle, Pump, Etc.)
Age

Number

Make

Equipment
Model

(Attach additional sheets if necessary)

EQUIPMENT CERTIFICATION
EQUIPMENT NOT OWNED
BUT CONTROLLED BY BIDDER

This is to certify that I, the undersigned, own or control the equipment required and noted below and definitively grant the Bidder named below the control of said equipment during such time as may be required for that portion of the Work described in the Contract Documents for which said equipment is necessary for the term of the contract.

(Name of Bidder)

(Name of Owner or Controller)

Name of Bidder: _____

By: _____
(Signature)

Name: _____

Title: _____

Type of Equipment
(Vehicle, Pump, Etc.)

Number

Make

Equipment
Model

Age

SECTION C –

Standard General Conditions of the Construction Contract

AIA® Document A201™ – 2007

General Conditions of the Contract for Construction

for the following PROJECT:
(Name and location or address)

THE OWNER:
(Name, legal status and address)

THE ARCHITECT:
(Name, legal status and address)

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as “all” and “any” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 Ownership and Use of Drawings, Specifications and Other Instruments of Service

§ 1.5.1 The Architect and the Architect’s consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect’s or Architect’s consultants’ reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect’s consultants.

§ 1.6 Transmission of Data in Digital Form

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner’s approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term “Owner” means the Owner or the Owner’s authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic’s lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner’s interest therein.

§ 2.2 Information and Services Required of the Owner

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner’s obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner’s ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.3 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the

information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 Labor and Materials

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

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 Warranty

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

- 2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- 3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 Contractor's Construction Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 Documents and Samples at the Site

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

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

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

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

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

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

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 Cutting and Patching

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

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications Facilitating Contract Administration

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be

issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 Subcontractual Relations

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in

the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as

may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

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

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

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

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

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

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

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after

the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

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

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

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

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will

promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of

the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Liability Insurance

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall

be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.2 Owner's Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.3 Property Insurance

§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 Boiler and Machinery Insurance

The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.3.3 Loss of Use Insurance

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

§ 11.3.7 Waivers of Subrogation

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

§ 11.4 Performance Bond and Payment Bond

§ 11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 Correction of Work

§ 12.2.1 Before or After Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 Written Notice

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 13.4 Rights and Remedies

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

§ 13.5 Tests and Inspections

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.6 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

§ 13.7 Time Limits on Claims

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.2 Notice of Claims

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3 Continuing Contract Performance

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 Claims for Additional Time

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§ 15.1.6 Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from

the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 Arbitration

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.

SUPPLEMENTARY GENERAL CONDITIONS

The General Conditions of the Contract for the Construction of Buildings, Standard Form of the American Institute of Architects, AIA-A-201-2007 Edition, hereinbefore attached as Pages 1 to 44 inclusive, is hereby supplemented, amended or changed for this project as follows:

ARTICLE 1 – GENERAL PROVISIONS

- 1.2 Correlation and Intent of the Contract Documents
- 1.2.1 Add the following: Failure to Execute Contract - Failure to comply with any of the requirements of these specifications; to execute the contract within ten (10) days after formal notification or to furnish security as required, shall be just cause for the annulment of the award. In the event of such annulment of the award, the amount of the proposal guarantee shall become the property of the Owner, not as a penalty, but as liquidated damages. Award may be to the next qualified bidder or the work re-advertised or handled as the Owner may elect.
- 1.2.6 Source of Supply and Quality of Materials - Wherever on the plans or in the detailed specifications, a particular brand or make of material, device or equipment is shown or specified, such material, device or equipment is to be regarded merely as a standard. Any other brand or make, which in the opinion of the Architect is equal to that specified, will be accepted conditional to Architect's written approval to the Contractor's written request for submission. Such requests shall be made through the Contractor, not from the supplier or subcontractor.

ARTICLE 3 - CONTRACTOR

- 3.1 General
- 3.1.1 Add the following at the end of this Article: Whenever the words "General Contractor" are used, it shall mean the "Contractor for General Construction." Whenever the word "Contractors" is used, it shall mean each and every Contractor engaged on the building. On multiple contract work, the word "Contractor" shall refer to a Prime Contractor (i.e., one who signs a direct contract with the Owner).
- 3.2.2 Add the following at the end of this article: Every prime contractor shall refer to drawings for the other disciplines of work to determine his responsibility relative to providing services for other contractors.
- 3.3 Supervision and Construction Procedures:
- 3.3.2 Add the following: There shall be no drinking of alcoholic beverages, etc. allowed on the premises. No person shall be allowed to remain on the job site under the obvious influence of alcohol or the like.
- 3.3.4 Measurements - Field: Before ordering any material or doing any work, each Contractor or subcontractor shall verify all measurements at the building and shall be responsible for the correctness of same. No extra charge or compensation will be allowed on account of difference between actual dimensions and the measurements indicated on the drawings; any difference which may be found, shall be submitted to the Architect for consideration and clarification before proceeding with the work.

- 3.3.5 Laying Out of the Building: General Construction Contractor shall employ an experienced and competent professional land surveyor, cause him to establish a permanent bench or benches to which easy access may be had during the progress of the work to determine all lines and grades for the work and to verify same from time to time during the progress of the work. This Contractor shall use the land surveyor to determine the building lines and the exact location of the building.
- 3.6 Taxes (Add to this Article):
- 3.6.1 New Jersey Sales Tax: Contractors and subcontractors purchasing materials to be used on public schools will not be subject to New Jersey Sales Tax. Contractor shall file for an exemption certificate from the State of New Jersey.
- 3.7 Permits, fees, notices and compliance with laws.
- 3.7.1 Add the following: Pertaining to public school projects in the State of New Jersey, all Prime Contractors shall be responsible to obtain any building permit, plumbing permit or electrical permit, as required for the erection or alteration of any public school building as per New Jersey Public Law, 1985, Chapter 409, Amendment of The Uniform Construction Code, approved January 13, 1986, Reading: "No erection or alteration of any public building or part thereof, by a county, municipality or any agency or instrumentality thereof, shall be subject to any fee, including any surcharge or training fee, imposed by any department or agency of state government pursuant to any law, rule or regulation". All Contractors shall fill out all permit documents required by state, county or municipalities required for construction. All Contractors shall schedule all municipal or other agency inspections required for approvals.
- 3.8 Allowances
- 3.8.3 Surplus from allowances may be used by the Contractor, when approved in writing by the Architect, for labor and materials required for extra work. No additional overhead or profit shall be allowed on monies spent out of this "General Allowance."
- 3.9 Superintendent
- 3.9.1 Add the following: The Contractor for General Construction shall be charged with the duty of coordinating the work of the several Contractors involved. He shall advise them when the work at the site will be ready for their installations and cooperate with each to expedite the work.
- 3.10 Contractor's Construction Schedule:
- 3.10.2 Within ten (10) calendar days after the award of the contract, a Progress Schedule shall be submitted by the General Contractor, after conference with all other Contractors, and shall be a detailed construction Progress Schedule and shall be prepared in the form of a bar diagram drawn to a suitable scale to indicate both estimated and actual progress at any one time of each division of the work and part thereof.
- 3.10.4 After the Progress Schedule has been submitted to the Architect and has been approved, the General and other Contractors shall furnish sufficient forces, construction plant and equipment to insure the prosecution and completion of the work in accordance with the approved Progress Schedule.

- 3.10.5 The General Contractor shall indicate on the Progress Schedule Diagram, the rate of progress of all Contractors and shall promptly deliver to the Architect, two (2) black and white prints of the same, whenever requested by the Owner or Architect.
- 3.12 Shop Drawings, Product Data and Samples
- 3.12.6 Add the following: In reviewing shop drawings, the Architect assumes no responsibility for quantities or for dimensional errors that may be present in the drawings. Final responsibility for dimensional correctness of or quantity count of any items or assemblies to be installed in the building shall belong to the Contractor providing and installing same. Architect assumes no responsibility of field dimensions.
- 3.12.11 Right to Know Labelling - All containers, including shipping cartons, shall bear a label indicating the chemical names(s) and Chemical Abstracts Service number(s) of all hazardous substances in the container, and all other substances which are among the five most predominant substances in the container, or their trade secret registry number(s). (N.J.A.C. 8:59-5). "Container" means a receptacle used to hold a liquid, solid or gaseous substance such as bottles, bags, barrels, boxes, can cylinders, drums and shipping cartons. (N.J.A.C. 8:59-1.3).
- 3.14 Cutting and Patching
- 3.14.2 Add: Consult the various divisions for specific requirements. Generally all Prime Contractors shall either erect their work ahead of the General Contractor or shall provide, reasonably, in advance of a set of shop drawings, indicating the required location and sizes of all openings, sleeves and chaises required. The General Contractor shall place all sleeves, anchors and bearing plates supplied to him according to these drawings. In areas of renovations, the individual Prime Contractors shall do all cutting and patching as required by their individual trades.

ARTICLE 4 - ARCHITECT

- 4.2 Administration of the Contract
- 4.2.2 Add: The Architect will not be expected to expedite the work for the Contractors.
- 4.2.3 Add: If a full-time Project Representative is provided by the Architect or the Owner, he shall be guided and limited in his authorities, duties and responsibilities by the articles set forth in A.I.A. Document B-352 (latest edition) "Duties, Responsibilities and Limitations of Authority of Full-Time Project Representative".

ARTICLE 6 - CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

- 6.1 Owner's Right to Perform Work and To Award Separate Contracts
- 6.1.3 Delete the words "and of each separate Contractor."

ARTICLE 7 - CHANGES IN THE WORK

- 7.2 Change Orders
- 7.2.1.4 Overhead and profit are hereby fixed at ten percent (10%) each.
- 7.3 Construction Change Directives
- 7.3.7.6 Overhead and profit are hereby fixed at ten percent (10%) each.

ARTICLE 13 - MISCELLANEOUS PROVISIONS

13.1 Governing Laws

13.1.2 Add the following: Attention is called to the following state laws which apply to public work in the State of New Jersey.

CHAPTER 9, TITLE 34, Revised Statutes, providing that the citizens of the State of New Jersey who have resided in the state not less than one (1) year be given preference in employment on public works. Contractors shall employ local labor to the extent that qualified employees are available.

CHAPTER 10, TITLE 34, Revised Statutes, providing in the contract for establishment of an eight-hour working day for labourers, workmen and mechanics.

CHAPTER 150, LAWS OF 1963, The New Jersey Prevailing Wage Act stipulation of minimum prevailing wage applies to all public projects as they apply in this locality. See Wage Rate Statement which is on file with the Secretary of the Board of Education or the local governing body, where applicable.

CHAPTER 2, TITLE 10, Revised Statutes, the Contractor as a condition of the contract, shall and hereby does agree that the following shall be part of the contract.

That no Contractor or subcontractor, nor any person on his behalf, shall discriminate against any employee hired for the performance of work under this contract on account of race, creed, color, sex make or model.

That there may be deducted from the amount payable to the Contractor by the Owner, a penalty of Five Dollars (\$5.00) for each person for each calendar day during which such person is discriminated against in violation of the provisions of the contract.

CHAPTER 15, TITLE 40 and CHAPTERS 32 and 33, TITLE 52, Revised Statutes, whereby the Contractor, as a condition of the contract, shall and hereby does agree, that in the performance of the project, only domestic materials and manufactured and farm products of the United States will be used whenever available.

If a subcontractor or sub-subcontractor has performed in accordance with the provisions of his contract with the General Contractor or subcontractor and the work has been accepted by the Owner or General Contractor, as applicable, and the parties have not otherwise agreed in writing, the Contractor shall pay to his subcontractor and the subcontractor shall pay to his sub-subcontractor within 10 calendar days of the receipt of each periodic payment, final payment or receipt of retainage monies, the full amount received for the work of the subcontractor or sub-subcontractor based on the work completed or the services rendered under the applicable contract. In the case of ongoing work on the same project for which partial payments are made, the amount of money owed for work already completed shall only be payable if the subcontractor or sub-subcontractor is performing to the satisfaction of the Contractor or subcontractor, as applicable.

If a payment due pursuant to the provisions of this section is not made in a timely manner, the delinquent party shall be liable for the amount of money owed under the contract, plus interest at a rate equal to the prime rate plus 1%. Interest on amounts due pursuant to this section shall be paid to the subcontractor or sub-subcontractor for the period beginning on the day after the required payment date and ending on the day on which the check for payment has been drawn.

This act shall take effect immediately and shall be applicable to all contracts to improve real property entered into on or after the effective date.

13.5 Tests and Inspections

13.5.1 Add: Testing shall be monitored by or performed by a licensed testing laboratory under a general allowance for testing as provided for in the division of this specification entitled "Testing" under General Construction.

13.6 Interest

13.6.1 Delete and substitute in lieu of: Any monies authorized by the Architect not paid within 35 days of that time noted in the Agreement, shall bear interest at the rate of 6% from that date of payment established in the Agreement.

ARTICLE 14 - TERMINATION OF THE CONTRACT

14.2 Termination By The Owner: Add:

14.2.5 The expense of finishing the work shall include compensation for additional architectural, at \$150.00 per man per hour, managerial and administrative services, including legal charges, as well as any additional financial expense incurred. The expenses incurred by the Owner as herein provided and the damage incurred through Contractor's default, shall be certified by the Architect, whose certificate thereof shall be conclusive. A strike of over twenty (20) working days shall be cause for termination of contract under these conditions. "Strikes" in this instance shall mean local-type jurisdictional or "wild-cat" strikes and not union-wide contract connected strikes.

ARTICLE 16 - SUPPLEMENTARY PROVISIONS

16.1 TEMPORARY OFFICES - Each Contractor shall provide his own office on the premises and remove same when directed. The General Contractor shall have installed a pay telephone until the completion of the project. The General Contractor shall also make available the office and telephone for the Architect's representative and allow space for use by a testing laboratory when on-site control is required.

16.2 JOB SITE MEETINGS - Regularly stated job site meetings shall be held as determined by the Architect. Each Contractor or his authorized representative who shall be authorized to speak for and/or make decisions for the Contractor shall attend.

16.4 SANITATION: The General Contractor shall provide and maintain in clean working order at all times, portable enclosed latrines in the quantity to accommodate all workmen on the job.

16.5 TIME OF COMPLETION - The time of Substantial Completion of the contract or contracts shall be 6 weeks, the length of time will start from the awarding of contracts. Refer to Article 8 in the General Conditions and Supplementary General Conditions. Time is of the essence.

16.6 LIQUIDATED DAMAGES:

(a) Should any Prime Contractor fail to substantially complete the work included under his contract, the Owner may retain \$100.00 per calendar day for each and every day the entire work under his contract remains in default after the stipulated

time of completion. This sum shall be agreed upon in the contract not as a penalty, but as liquidated and ascertained damages and shall represent a fair approximation of the additional expenses of the Owner because of noncompletion by the original date. Refer to Article 8 in the General Conditions.

(b) A deduction shall be made from the contract price by the Owner for any wages paid by the Owner to any inspector or inspectors necessarily employed by the Owner on the work for any number of days in excess of the number allowed in the specifications. (See Time of Completion.)

16.7

NEW JERSEY SAFETY CODE:

The General Contractor shall be responsible for the New Jersey Construction Safety Code Requirements, Articles 3.14 and 3.15 which deal with responsibility for project safety, daily inspections and filing of reports.

Further information may be obtained from the Department of Labor and Industry, Bureau of Engineering and Safety, John Fitch Plaza, Trenton, New Jersey.

**SECTION D –
Specifications
and/or
Listings
and/or
Drawings**

DIVISION I - SECTION "A"

DEMOLITION

SCOPE:

Work under this section shall include all materials, labor, equipment and services necessary to remove and dispose of materials as noted on the plans and to provide all temporary bracing which may be required by the conditions.

WORK INCLUDED:

Demolition shall consist of saw cutting and removal of existing concrete walks where new extended concrete platforms and new concrete ramps are being installed.

Remove sections of existing concrete curbs and walks where new depressed curbs are being installed.

Demolition shall include, but not limited to, the items outlined above, as required for the installation of new finishes and materials as indicated on plans, schedules and as specified herein.

All debris and trash shall be removed from the site at regular intervals in order to maintain a clean work area. Dumpster unit shall be placed in appropriate secure area, far enough from building to prevent damage to the building from fire in the dumpster.

PROTECTION:

The Contractor shall at all times protect surrounding areas with heavy protective curtains to contain dust from the demolition area.

All debris and trash shall be cleaned immediately upon completion in areas of demolition and hauled away from the site so that there is no accumulation outside of the building.

DIVISION I - SECTION "B"

CONCRETE - PLAIN AND REINFORCED

WORK INCLUDED:

This section shall include the furnishing of all labor and materials to complete all plain and reinforced concrete slab, ramps, walks and depressed curbs with vapor barrier.

PORTLAND CEMENT:

The brand of Portland Cement to be used in the work shall be "Allentown" Portland Cement or equal.

Portland Cement shall conform to the "Standard Specifications and Test for Portland Cement," Serial Designation C-150, latest edition of the American Society for Testing Materials.

High, early-strength cement must meet the requirements of the ASTM Specifications, Serial Designation C-150, latest edition. This shall be used from November 15 to March 15.

All concrete to use following admixtures when approved by Architect:

Air Entrainment: "GARD-AIR" by Garden State Wholesale, Inc., Camden, New Jersey or equal - ASTM C-231.

Water Reducer: RAYMIX - "A" by Garden State Wholesale, Inc., Camden, New Jersey or equal - ASTM C-494A.

Retarding Densifier: RAYMIX - "R" by Garden State Wholesale, Inc., Camden, New Jersey - ASTM C-494D.

CONCRETE:

All concrete used on this job shall be central-mixed concrete or transit-mixed concrete and shall be 4000 p.s.i. All concrete exposed to freezing and thawing shall be 4000 p.s.i. at 28 days, air entrained. The design and control of the product must be under the supervision of a professional engineer registered in the State of New Jersey and employed directly by the concrete producer. All concrete is to be installed in accordance with the "Building Code Requirements for Reinforced Concrete", ACI 318, latest edition, as published by the American Concrete Institute. The concrete must meet all requirements of ASTM for central or transit mixing and delivery and shall attain a minimum of 3500 or 4000 lb. ultimate 28-day strength as follows:

<u>Min. Cement Content</u>	<u>Slump Range</u>	<u>Air Content</u>	<u>Max. Water/Cement Ratio</u>
6.0 sacks/cu. yd. (3500 psi)	3 to 5 inches	4 to 6%	0.50
6.5 sacks/cu. yd. (4000 psi)	3 to 5 inches	4 to 6%	0.50

Delivery tickets shall be furnished upon request.

Coarse aggregate shall be crushed, diabase trap rock or washed gravel and meet current ASTM C-33 specifications for quality and gradation.

Fine aggregate for concrete shall be clean, washed, bank sand and shall meet current ASTM C-33 specifications for quality and gradation.

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Water shall be clean, fresh and free from oils, acids and injurious amount of alkalies or organic matter (potable).

All concrete work to be in accordance with the latest Codes and specifications of the American Concrete Institute and the Concrete Reinforcing Steel Institute and recommendations of the Portland Cement Association.

TRANSPORTATION:

Concrete shall be handled from the mixer to the place of final deposit by methods which will prevent the separation or loss of the ingredients and to avoid re-handling or partial hardening.

PLACING CONCRETE:

Concrete shall be used directly after mixing to prevent separation of the concrete. Concrete shall be chuted or trucks shall not permit more than 3' of free fall. It shall be tamped to encase all reinforcing steel and to fill all noticeable voids or stone pockets. Vibration shall be used, if necessary, and always on concrete having less than 3" slump.

DEPOSITING IN COLD WEATHER:

When depositing concrete in freezing or near-freezing temperature, the concrete shall have a temperature of at least 50°F. but not more than 70°F. All aggregates should be heated 24 hours a day not to exceed 150°F. Minimum working temperatures shall be 32°F. and rising.

The concrete shall be maintained at a temperature of at least 50°F. for not less than 72 hours where normal Portland Cement is used, or 24 hours where high early-strength cement is used, after placing. When necessary, concrete materials shall be heated before mixing. Admixtures containing salt or other chemicals shall not be relied upon for the prevention of freezing. No frozen material or materials containing ice shall be used. No concrete shall be placed on frozen earth.

FORMS:

Provide all forms for concrete work for both plain and reinforced which must be accurately and substantially made. All necessary anchors and ties must be set in proper position at the time forms are set. Also, all necessary chases or openings must be properly framed in and the entire work of centering must be done.

SOLID GROUND:

All foundations shall rest on solid ground. Remove all water, mud or other deleterious material from trenches, forms and contact with concrete. In no case shall footings or walls be built on made earth and no footings shall be laid until bottom of trench has been tamped, examined and approved. The Architect shall be notified at least 24 hours prior to pouring footings for his inspection.

REINFORCEMENT:

Reinforcing shall be made to meet the standard ASTM Specifications A-305 and A-615, latest edition, Grade 40. Deformed bars to be used throughout. The reinforcing steel is to be wired together to properly locate it and hold it securely in place.

The steel is to be properly placed and then inspected by the Architect, who is to be notified before concrete is placed.

Rods shall be turned around corners and intersections at least 12" or as directed and shall be lapped 40 diameters and wired at splices. Provide diagonal rods at corners of openings in slabs. Provide metal

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spacers, chairs, ties and other devices needed for proper spacing and support of reinforcing. All lapping of reinforcing shall be as ACI 318.

Reinforcing welded wire mesh shall be new stock in accordance with Standard Specifications ASTM, designation A-185, latest edition.

Slab on-grade reinforcing mesh shall be 6"x6" - #10 wire installed in the middle of all slabs. All slab reinforcing to be lifted to dimension shown on slab detail on plans when pour is made. See special mat reinforcing details on plans.

SETTING IN ANCHORS, SLEEVES, ETC.:

This Contractor shall insert sleeves for railings in conformance with the approved railing shop drawings.

WALKS AND CURBS:

All exterior walks and curbs to have one 3/8" pre-moulded bituminous expansion joint at intervals of 20 feet. Walks shall also have construction joints at alternate intervals of 20 feet. Bituminous filler shall be 1/4" below finish surface. Curbs are to have a float finish; walks shall have a float finish followed by brushing with a wet soft-hair brush across the direction of the walk. Do not backfill under curbs; they must rest on unmade ground. All fill under sidewalks must be tamped. Reinforce walks, curbs and steps as detailed. The Contractor has the option to saw cut construction joints as described above after pouring. A pattern of scored lines will be determined later by Architect.

DETECTABLE WARNINGS:

Where shown on plans, and as detailed, detectable warnings to be installed with cast-in-place concrete to be finished using Patterned Concrete Industries, Inc., Tactile Warning Mats. All concrete used in area of warnings to be provided with "Lithchrome" color hardener by L. M. Scofield Co., at rate as recommended by manufacturer. Color to be #A-33, Classic Grey, throughout concrete. Submit equal manufacturers to Architect for substitution as outlined in this project manual.

All installations to be by a Patterned Concrete Contractor who has been licensed and trained by Patterned Concrete Industries, Inc., PO Box 691015, Tulsa, OK, 74169, (919)437-6494.

MISCELLANEOUS:

Under all concrete slab and ramps place a 6 mil. Visqueen vapor-barrier membrane prior to pour. Provide and install 18" deep crushed stone base under new slabs and ramps.

DIVISION I - SECTION "C"

MISCELLANEOUS METALS

WORK INCLUDED:

General Contractor to furnish labor and materials indicated or specified herein to complete work under this section.

MATERIAL AND INSTALLATIONS:

Manufacturer's specifications for items included under this division shall hereby be made part of this division to the same extent as if herein stated in full.

Insofar as possible, execute fittings, construction, fabrication or work ready for delivery and erection prior to delivery to the site.

VERIFICATION OF CONDITIONS:

Verify measurements in the field as required for shop-fabricated work to fit building conditions.

SAMPLES AND SHOP DRAWINGS:

Submit samples and shop drawings of fabricated and manufactured articles.

RAILINGS:

Aluminum pipe rails, where indicated on the floor plans and exterior, shall be 1-1/2" diameter aluminum pipe with 204-R1 clear satin anodized finish complete with all fittings, floor sleeves, brackets and accessories as required. Fabrication shall be fully welded and ground smooth.

Handrails - Shall be designed and constructed for a concentrated load of 200 pounds applied at any point and in any direction and shall also be designed and constructed for a uniform load of 50 pounds per foot applied in any direction.

WORKMANSHIP:

All miters, splices and saw cuts shall be accurately joined to assure hairline joint gaps. Cuts shall be straight and free of any burrs or nicks. Miter cuts shall be smoothed after joining. Posts and pickets shall be equally spaced to exact dimensions of all railing sections. Cast-in anchors and post-hole blockouts shall be furnished under this heading, but shall be set in place by General Contractor.

INSTALLATION:

All materials shall be plumb, square, level and shall be anchored securely. All miters and field cuts shall be smoothed after joining. General Contractor shall be responsible to provide adequate structural supports for anchoring.

SHOP DRAWINGS:

Shop drawing shall be prepared and submitted for approval showing in detail all materials to be furnished. Samples of railing sections and material finishes to be submitted for Architect's approval.

CLEANING AND PROTECTION:

Upon completion of installation, the Railing Contractor shall clean all work for inspection and approval; however, after installation, the General Contractor shall be responsible for protecting the railings during the balance of construction. Aluminum shall be cleaned with plain water containing a mild soap or detergent or white gasoline, kerosene or distillate. No abrasive agent shall be used.

DIVISION I - SECTION "D"

PAINTING

SCOPE:

At edge of new concrete slabs, paint complete riser and 6" onto flat edge of slab around exposed edges.

The Painting Contractor shall examine specifications of other trades and finish all surfaces unfinished by them. All closets finished to match rooms.

MATERIALS: (VOC Compliance)

As of January 1, 2005, all contractors (New Jersey and other regulated Northeast US States) must use OTC compliant coatings in their fieldwork. All manufacturer coating selections listed in specification schedule are OTC compliant. For more VOC-OTC information, please visit: www.otcdir.org.

EPA Control Technique Guideline (CTG) Sources Reasonably Available Control Technology (RACT) limits Group II categories.

The allowable limit for lead content is 0.06% of the weight of the dried film.

All materials shall be new and of the best professional grade of paints, oils, thinners and varnishes as manufactured by M.A. Bruder, Con-Lux, DuPont, Glidden or Sherwin-Williams; to be delivered to the job in original containers with seals unbroken and labels intact.

All mixing and reduction shall be done in accordance with manufacturer's instruction.

All painting, varnishing or staining shall follow "Color Schedule" as approved by the Architect.

PREPARATION:

Painting Contractor shall not proceed where surfaces are not in condition to receive specified coating. The Painting Contractor shall correct failures or defects resulting from work applied under improper conditions unless proper authorization to proceed has been issued over written protest of this contractor. Refer to all manufacturers written product data and MSDS pages regarding all surface preparation, application, safety-precaution, specification and all other recommendations pertaining to the intended substrate to be painted and before any priming and painting applications.

FINISHING SCHEDULE:

Materials indicated are manufactured by Sherwin-Williams Co (S-W) to indicate quality and material type. Furnish proof of equality if requested.

Exterior-Parking Lot Marking

One Coat: S-W Hotline Fast Dry Latex Traffic Marking Paint TM2152/53
Lines to be Yellow

DIVISION I - SECTION "E"

SPECIAL PROVISIONS

SCOPE:

It must be noted that the new exterior concrete ramps must seal off from use until the railings have been completely installed.

