

REQUEST FOR PROPOSAL

DESCRIPTION: Construction Management Services
For Reconstruction of the GA-Level, 6th, 10th, and 11th Floor
School of Nursing – Stanley S. Bergen Jr. Building
and
Renovations to the Pediatric Dentistry & Special Care Treatment Suite
New Jersey Dental School

PROPOSAL NO: P12-061

ADVERTISED: February 29, 2012

DUE DATE: March 27, 2012

TIME: 2:00 P.M.

LOCATION: UMDNJ-PURCHASING DEPARTMENT
LIBERTY PLAZA
335 George Street, 2nd Floor
New Brunswick, New Jersey 08903

Important Note: Bidders should note that attendance at a mandatory pre-bid conference is required for this procurement. See Section 1.1 of this document for details. Failure to attend a mandatory event will result in the rejection of your proposal.

In accordance with the requirements of this proposal the undersigned offers and agrees, if their proposal is accepted, to furnish any and all services for which the parties are submitted in accordance with the attached conditions as specified in this proposal.

ADDRESS OF BIDDER

SIGNATURE AND TITLE OF
AUTHORIZED INDIVIDUAL

Title

UNIVERSITY OF MEDICINE AND DENTISTRY OF NEW JERSEY

Request for Proposal for
Construction Management Services
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RFP #P12-061

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Attachments:

- A Fee Proposal Form – Three Page Form - Project A & B
- B Agreement Between Owner and Construction Manager for GMP Where Construction Manager Holds Trade Contracts
- C General Conditions of the Contract for Construction with a Construction Manager with GMP
- D Agreement Between Owner and Architect with a Construction Manager
- E Department of Purchasing Services Requirements
- F Business Associate Agreement
- G Schematic Plans - Project A
- H Schematic Plans - Project B

1.0 KEY DATES AND NOTES

1.1 Mandatory Pre-Bid Conference

All prospective bidders to the Request For Proposal (RFP) are required to attend a mandatory Pre-Bid Conference scheduled for Friday, March 9, 2012 at 10:00 A.M. at the University of Medicine & Dentistry of New Jersey, Administrative Complex (ADMC) 30 Bergen Street Newark, New Jersey 07101, in the Emergency Operations Center (EOC) Conference room 201B.

Parking is limited in the area. Bidders are urged to allow adequate time to park and walk to the meeting. Limited public parking is available at meters on the street. Public parking is available, for a fee, at UMDNJ Parking Deck P3, at the corner of Bergen Street and Twelfth Avenue.

The Pre-Bid Conference will begin in the conference room with an overview of the projects and procedure. We will then conduct a walk-through of the School of Nursing spaces at the Bergen Building. We will next conduct a walk-through of the Dental School spaces for the Pediatrics Operatories. We will then reconvene to a conference room for a question period for each project.

1.2 Questions Deadline and Protocol

All questions and requests must be directed to the Purchasing Services Buyer, at the e-mail address indicated by 4:00 PM. Wednesday, March 14, 2012.

Questions must be submitted in writing, and questions should be directly tied to the RFP by the writer. Questions should be asked in consecutive order, following the organization of the RFP. Each question should begin by referencing the RFP page number and section number to which it relates. All questions and requests must be directed to the Department of Purchasing Services' Buyer. It is requested that bidders having long, complex or multiple part questions submit them in writing as far in advance of the mandatory Pre-Bid Conference as possible. This request is made so that answers can be prepared prior to the mandatory Pre-Bid Conference.

Short procedural inquiries may be accepted by telephone by the buyer, however, oral explanations or instructions given over the telephone shall not be binding upon the University. Bidders shall not contact any person within the University directly, in person, or by telephone, other than the assigned buyer, concerning this RFP.

In the event that it becomes necessary to clarify or revise this RFP, such clarification or revision will be by addendum. Any RFP addendum will be distributed as follows:

Since a mandatory Pre-Bid Conference has been scheduled for this procurement, any addendum issued before the mandatory Pre-Bid Conference will be distributed to all bidders who were sent the initial RFP. Any addendum issued at the time of or after the mandatory Pre-Bid Conference will be distributed only to those bidders represented and properly registered at the mandatory Pre-Bid Conference.

Any addendum to this RFP shall become part of this RFP and part of any contract resulting from this RFP.

1.3 RFP Submittal Deadline

The deadline for submittal of proposals is 2:00 P.M. Tuesday, March 27, 2012. UMDNJ Department of Purchasing Services must receive all proposals by 2:00 P.M. on Tuesday, March 27, 2012. All submissions must be delivered or mailed. Faxed or e-mailed responses will not be accepted.

1.4 UMDNJ – Contact Person

This RFP is issued by the UMDNJ, Department of Purchasing Services. The buyer noted in Section 1.3.1 is the sole point of contact between the bidder and the UMDNJ for purposes of this RFP.

Mr. John Belkewitch, Jr.
Telephone: (732) 235-9055
Fax: (732) 235-9058
E-Mail: belkewjo@umdnj.edu

DELIVERY ADDRESS:
University of Medicine and Dentistry of New Jersey
Department of Purchasing Services
Liberty Plaza
335 George Street, 2nd Floor
New Brunswick, New Jersey 08903

MAILING ADDRESS:
University of Medicine and Dentistry of New Jersey
Department of Purchasing Services
PO Box 2687
New Brunswick, New Jersey 08903-2687

Bidders shall not contact any member of Facilities Planning, Management, and Construction for information pertaining to this RFP.

1.5 Causes for Automatic Rejection of Proposals

- 1.5.1 Failure to sign submitted Proposals.
- 1.5.2 Failure to meet Proposal submission time and date requirements.
- 1.5.3 Failure to provide price information when required.
- 1.5.4 Failure to initial Price Alteration when applicable.
- 1.5.5 Failure to attend the mandatory Pre-Bid Conference.
- 1.5.6 MacBride Principles & Northern Ireland Act of 1989 Form.
- 1.5.7 Ownership Disclosure Form.

It is the responsibility of the bidder to identify and address any additional requirements or information needed to submit a proposal. No special consideration shall be given to any bidder because of the bidder's failure to be knowledgeable of all the requirements of the proposal after the Pre-Bid Conference.

1.6 Additional Information for Bidders

1.6.1 Bidder Responsibility

The bidder assumes sole responsibility for the complete effort required in this RFP. It is the responsibility of the bidder to identify and address any additional requirements or information needed to submit a proposal. No special consideration shall be given to any bidder because of the bidder's failure to be knowledgeable of all the requirements of the proposal after the Pre-Bid Conference. By submitting a proposal in response to this RFP, the bidder represents that it has satisfied itself, from its own investigation, of all the requirements of this RFP.

1.6.2 Cost Liability

UMDNJ assumes no responsibility and bears no liability for costs incurred by bidders in the preparation and submittal of proposals in response to this RFP.

1.6.3 Content of Bid Proposal

The entire content of every bid proposal becomes a public record. This is the case notwithstanding any statement to the contrary made by a bidder in its bid proposal. All bid proposals, as public records, are available for public inspection. Interested parties can make an appointment to inspect bid proposals received in response to this RFP with the buyer.

1.6.4 Price Alterations

Bid process must be typed or written in ink. Any price changes (including “white-outs”) must be initialed. Failure to initial price changes may preclude an award being made to the bidder.

1.6.5 Joint Venture

If a joint venture is submitting a bid, the agreement between the parties relating to such joint venture must be submitted with the joint venture’s proposal. Authorized signatories from each party comprising the joint venture must sign the bid proposal. A separate Ownership Disclosure Form, Affirmative Action Employee Information Report, MacBride Principles Certification, and, if applicable, foreign (out of State) corporate registration must be supplied for each party to the joint venture.

1.6.6 HIPAA Compliance

As a State Agency, New Jersey State regulations require that we obtain documentation regarding our vendor “HIPAA Compliance” status. In order to be in compliance and conduct business with your company for the procurements of goods and/or services, it will be necessary for your company to complete a Business Associate Agreement. This agreement involves the access to protected health information that is considered protected pursuant to federal, state and/or local laws and regulations in accordance with the privacy requirements of the “HIPAA” – Health Insurance Portability and Accountability Act of 1996. The requirement is a precondition of entering into a valid and binding contract.

1.6.7 Business Registration Notice

All New Jersey and out of State business organizations must obtain a Business Registration Certificate (BRC) from the Department of the Treasury, Division of Revenue, prior to conducting business with the State of New Jersey. Proof of valid business registration must be submitted by a bidder with its bid proposal. Failure to submit such valid business registration with a bid may render the bid materially non-responsive. The business registration form (Form NJ-REG) can be found online at: <http://www.state.nj.us/treasury/purchase/busreg.htm>

1.6.7.1 Definitions

“Affiliate” means any entity that (1) directly, indirectly, or constructively controls another entity, (2) is directly, indirectly, or constructively controlled by another entity, or (3) is subject to the control of a common entity. An entity controls another entity if it owns, directly or individually, more than 50% of the ownership in that entity.

“Business organization” means an individual, partnership, association, joint stock company, trust, corporation, or other legal business entity or successor thereof.

“Business registration” means a business registration certificate issued by the Department of the Treasury or such other form or verification that a contractor or subcontractor is registered with the Department of Treasury.

“Contractor” means a business organization that seeks to enter, or has entered into, a contract to provide goods or services with a contracting agency.

“Contracting agency” means the principal departments in the Executive Branch of the State Government, and any division, board, bureau, office, commission or other instrumentality within or created by such department, or any independent State authority, commission, instrumentality or agency, or any State college or university, any county college, or any local unit.

“Subcontractor” means any business organization that is not a contractor that knowingly provides goods or performs services for a contractor or another subcontractor in the fulfillment of a contract.

1.6.7.2 Requirements Regarding Business Registration Form

A contractor shall submit a copy of its business registration at the time of submission of its bid proposal in response to this RFP.

A subcontractor shall provide a copy of its business registration to any contractor who shall forward it to the contracting agency. No contract with a subcontractor shall be entered into by any contractor unless the subcontractor first provides proof of valid business registrations.

The contractor shall provide written notice to all subcontractors that they are required to submit a copy of their business registration to the contractor. The contractor shall maintain a list of the names of any subcontractors and their current addresses, updated as necessary during the course of the contract performance. The contractor shall submit to the contracting agency a copy of the list of

subcontractors, updated as necessary during the course of performance of the contract. The contractor shall submit a complete and accurate list of the subcontractors to the contracting agency before a request for final payment is made to the using agency.

The contractor and any subcontractor providing goods or performing services under the contract, and each of their affiliates, shall, during the term of the contract, collect and remit to the Director of the Division of Taxation in the Department of Treasury the use tax due pursuant to the “Sales and Use Tax Act, P.L. 1966, c. 30 (N.J.S.A. 54:32B-1 et seq.) on all their sales of tangible personal property delivered into the State.

1.6.8 Deficit Reduction Act

The University of Medicine and Dentistry (UMDNJ) is committed to the prevention and detection of any fraud, waste, and abuse within the University related to all health care programs, including Federal and State programs. To this end, UMDNJ maintains a vigorous compliance program geared in part to educating our community on the range of fraud and abuse laws, including the importance of submitting accurate claims and reports to the Federal and State governments. Our policies prohibit the knowing submission of a false claim for payment in relation to any health care program, including a Federal or State funded health care program. Such a submission is a violation of Federal and State law and can result in significant administrative and civil penalties under the Federal and State False Claims Acts.

To assist UMDNJ in meeting its legal and ethical obligations, any employee, contractor or agent who is aware of the preparation or submission of a false claim or report or reasonably suspects any other potential fraud, waste, or abuse in relation to a Federal or State funded health care program is required to report such information to his or her supervisor and UMDNJ’s Office of Ethics and Compliance. Any employee of UMDNJ who in good faith reports such information will be protected against retaliation for coming forward with such information both under UMDNJ’s internal compliance policies and procedures and United States and New Jersey law.

As an organization, UMDNJ obligates itself to investigate any such information swiftly and thoroughly through its internal compliance programs and mechanisms. Nonetheless, if an employee, contractor or agent believes that the organization’s response is deficient and unresponsive, the employee shall bring these concerns to UMDNJ’s Office of Ethics and Compliance. If such follow-up still does not trigger an investigation, after a reasonable period of time, the employee, contractor or agent has the ability to bring his/her concerns to the appropriate government agency under the relevant Federal and/or State laws.

This information shall be provided to all UMDNJ employees and all contractors and agents of UMDNJ.

1.6.9 Requirements of PL 2005, Chapter 51/ Executive Order 117 Vendor Certification and Disclosure of Political Contributions

In order to safeguard the integrity of State government procurement by imposing restrictions to insulate the award of State contracts from political contributions that pose the risk of improper influence, purchase of access, or the appearance thereof, Public Law 2005, c.51, was signed into law on March 22, 2005. On September 24, 2008, Governor Corzine issued Executive Order 117, which

is designed to enhance New Jersey's efforts to protect the integrity of procurement decisions and increase the public's confidence in procurement. The Executive Order builds upon the provisions of Chapter 51. Pursuant to the requirements of Public Law 2005, c.51, and Executive Order 117, all bidders should submit the Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions with their bid proposal. See Section 9 of this RFP for the certification form. The form and instructions for completion of the form may be found at http://.umdnj.edu/purchweb/employees/employ36_forms_policies.htm .

1.6.9.1 Definitions

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

a) Contribution – means a contribution reportable as a recipient under “The New Jersey Campaign Contributions and Expenditures Reporting Act.” P.L. 1973, c. 83 (C.10:44A-1 et seq.), and implementing regulations set forth at N.J.A.C. 19:25-7 and N.J.A.C. 19:25-10.1 et seq. Currently, contributions in excess of \$400 during a reporting period are deemed “reported” under these laws. As of January 1, 2005, that threshold will be reduced to contributions in excess of \$300.

b) Business Entity – means any natural or legal person, business corporation, professional services corporation, limited liability company, partnership, limited partnership, business trust, association or any other legal commercial entity organized under the laws of New Jersey or any other state or foreign jurisdiction. It also includes (i) all principals who own or control more than 10 percent of the stock in the case of a business entity that is a corporation for profit, as appropriate ; (ii) any subsidiaries directly or indirectly controlled by the business entity; (iii) any political organization organized under 26 U.S.C.A. 527 that is directly or indirectly controlled by the business entity, other than a candidate committee, election fund, or political party committee; and (iv) if a business entity is a natural person, that person's spouse or child, residing therewith.

1.6.9.2 Breach of Terms of Executive Order 134 Deemed Breach of Contract

It shall be a breach of terms of the contract for the Business Entity to (i) make or solicit a contribution in violation of this Order, (ii) knowingly conceal or misrepresent a contribution given or received; (iii) make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution; (iv) make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate or holder of the public office of Governor, or to any State or county party committee; (v) engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would or solicit any contribution, which if made or solicited by the business entity itself, would subject that entity to the restrictions of EO 134; (vi) fund contributions made by third parties, including consultants, attorneys, family members, and employee; (vii) engage in any exchange of contributions to circumvent the intent of EO 134; or (viii) directly or indirectly through or by any other person or means, do any act which would subject that entity to the restriction of EO 134.

1.6.9.3 Certification and Disclosure Requirements

The State shall not enter into a contract to procure from any Business Entity services or any material, supplies or equipment, where the value of the transaction exceeds \$17,500, if that Business Entity has solicited or made any contribution of money or pledge of contribution, including in-kind contributions to a candidate committee and/or election fund of any candidate for or holder of the public office of Governor, or to any State or county political party committee during certain specified time periods. Accordingly, the Business Entity shall submit with its bid proposal Executive Order 134 Certification(s) in the form set forth in Section 9.0, Form DPP.

a) 134-POFW, certifying that no contributions prohibited by Executive Order 134 have been made by the Business Entity. A separate Certification is required for each person or organization defined above as a Business Entity.

b) Prior to awarding any contract or agreement to any Business Entity, the Business Entity, the Business Entity proposed as the intended awardee of the contract shall report all contributions the Business Entity made during the preceding four years to any political organization organized under 26 U.S.C.527 if the Internal Revenue Code that also meets the definition of a “continuing political committee” within the mean of N.J.S.A. 19:44A-3(n) and N.J.A.C. 19:25-1.7, in the form of the Disclosure attached hereto in Section 9.0, Form DPP 134-DPC. A separate Disclosure is required for each person or organization defined above as a Business Entity. Upon receipt of a Notice of Intent to Award a Contract, the intended awardee shall submit to the Division, in care of the Purchase Bureau Buyer, the Disclosure(s) within five (5) business days of the State’s request.

Further, the Contractor is required, on a continuing basis, to report any contributions it makes during the term of the contract, and any extension(s) thereof, at the time any such contribution is made. A copy of the Continuing Disclosure of Political Contributions is attached hereto in Section 9.0, Form DPP 134-CD.

1.6.9.4 State Treasurer Review

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

1.6.10 New Jersey Election Law Enforcement Commission Requirement

The Contractor is advised of its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to N.J.S.A. 19:44A-20.13 (P.L. 2005, c.271, section 3) if the Contractor receives in excess of \$50,000 from a public entity in a calendar year. It is the Contractor's responsibility to determine if filing is necessary. Failure to so file can result in the imposition of financial penalties by ELEC. Additional information about this requirement is available from ELEC at 888-313-3532 or at www.elec.state.nj.us.

1.6.11 Federal and State Laws and Regulations Regarding Healthcare

The University is committed to compliance with all federal and state regulations regarding healthcare, including but not limited to licensing, Stark and anti-kickback laws, Medicare and Medicaid regulations. All services provided under this bid and the contract award under this bid must comply with all applicable laws. In addition, if a violation comes to the attention of either party, or any changes in the laws or regulations occurs which make the bid or contract entered into between the parties as a result of the bid, to be in violation of any applicable law, then the agreement shall be amended to address the violation or to comply with the change, or terminated if amending will not resolve the violation. The University shall have the option to amend the contract resulting from the RFP in order to comply with all applicable local, State and Federal laws, rules and regulation

1.6.12 Departure From Bid Specifications or Terms and Conditions

Notwithstanding the forgoing, a bidder's proposal may be deemed NON-COMPLIANT AND BE REJECTED and/or be found non-responsive if the change is a material departure from the bid specifications or the terms and conditions of this RFP. A material departure occurs when the change increases the likelihood that the waiver from compliance with the RFP is capable of giving the appearance of corruption or favoritism, or encouraging excessive spending or is likely to affect the amount or price of the bid or to influence any potential bidder to refrain from bidding or is capable of affecting the ability of the University to make a bid comparison, or is unacceptable to the University. The determination of material departure shall be in the sole discretion of the University.

1.6.13 Bidder's Right to Challenge a Contract Award

Except in cases of emergency, bidders have the right to protest a proposed contract award.

A bidder's protest must be submitted to the buyer of record with a copy to the Vice President of Supply Chain Management ("Vice President") within ten (10) days of receipt of notice to the bidder that it did not receive a contract award for its submitted bid proposal or notice that an award had been made to another bidder. The protest period may be shortened by the Vice President of Supply Chain Management. If the protest period is shortened or a protest period is not authorized due to emergency, all bidders will receive notice of the shortened protest period or emergency in the notice sent to bidder on the award of the contract.

Notices of contract award under this section may be faxed, e-mailed, sent by regular mail or by any other means, excluding telephonic communication, conducive to transmitting the notice. If notice is

sent by regular mail, the recipient is deemed to have received the notice three (3) days after mailing.

If a bidder files a protest to a contract award under this section, the bidder must set forth in writing with specificity the basis of the protest. At the time of the protest filing, the bidder must also submit all documentation supporting the basis of the protest. Failure to comply with these requirements may lead to rejection of the protest and UMDNJ award of the contract.

The protest will be reviewed and addressed with reasonable promptness. If deemed necessary by Vice President, a hearing may be held on the merits of the protest. In all cases, the Vice President will notify the bidder of the final determination on the protest.

1.6.14 Bonds

1.6.14.1 Bid Bond

A bid bond is not required as a part of this procurement.

1.6.14.2 Payment and Performance Bonds

The successful bidder will be required to submit Payment and Performance Bonds within five (5) days of execution of the Part B Agreement and as a condition of release of the Purchase Order associated with the Guaranteed Maximum Price (GMP). Each bond shall be in an amount equal to 100% (one hundred percent) of the Contract Sum. Cost of these bonds shall be within the GMP.

1.6.15 Definitions

The following definitions shall be part of any contract awarded or order placed as a result of this RFP:

1.6.15.1 General Definitions

“Addendum” – Written clarification or revision to this RFP issued by UMDNJ, Purchasing Services.

“Amendment” – A change in scope of work to be performed by the contractor. An amendment is not effective until it is signed by the Vice President for Finance and Treasurer or other authorized representative of the UMDNJ.

“Bidder” – An individual or business entity submitting a bid in response to this RFP.

“Contract” – This RFP, any addendum to this RFP, and the bidder’s proposal submitted in response to this RFP and UMDNJ’s Contract Term Sheet.

“Contractor” – The contractor is the bidder awarded a contract.

“Evaluation Committee” – A committee established to review and evaluate bid proposals submitted in response to this RFP and to recommend a contract award to the Vice President of Supply Chain Management.

“HIPAA” – Health Insurance Portability and Accountability Act of 1996.

“May” – Denotes that which is permissible, not mandatory.

“Project” – The undertaking of services that are the subject of this RFP.

“Request for Proposal (RFP)” – This document, which establishes the bidding and contract requirements and solicits proposals to meet the purchase needs as identified herein.

“Shall” or “Must” or “Will” – Denotes that which is a mandatory requirement. Failure to meet a mandatory requirement will result in the rejection of a bid proposal as materially non-responsive.

“Should” – Denotes that which is recommended, not mandatory.

“Subtasks” – Detailed activities that comprise the actual performance of a task.

“Task” – A discrete unit of work to be performed.

“UMDNJ” – The University of Medicine and Dentistry of New Jersey, or otherwise referred to as the “University.”

“University Holidays” – New Years Day, Martin Luther King Jr.’s Birthday, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving , Day after Thanksgiving, Christmas Day.

“Vice President” – The Vice President of Supply Chain Management.

1.6.15.2 Project Specific Definitions

“Part A Fee” – Preconstruction Services only (including the preparation of the Guaranteed Maximum Price (GMP)). Further defined in the attached Agreement (Attachment B).

“Part B Fee” – Percentage of the cost of the work only. Further defined in the attached Agreement (Attachment B).

2.0 PURPOSE AND INTENT

The University of Medicine and Dentistry of New Jersey (UMDNJ) invites independent proposals from qualified Construction Management firms to provide complete Construction Management services for two construction projects on the Newark Campus.

The University will award separate contracts for each of the two (2) projects described in this RFP. The University may award one or both contracts to a single bidder, at the University’s sole discretion, price and other factors considered. Construction Managers are encouraged to bid on both projects.

2.1 Purpose and Intent: Project A – School of Nursing

The University of Medicine and Dentistry of New Jersey (UMDNJ) invites proposals from qualified Construction Management firms to provide complete Construction Management services for the Reconstruction of the GA-Level, the 6th Floor, the 10th Floor, and the 11th Floor of the Stanley S. Bergen, Jr. Building (SSB) for the School of Nursing on the Newark Campus of UMDNJ.

The objective of this project is to demolish walls, reconfigure walls, install new equipment and systems, and upgrade utilities to create new classroom and support spaces on the GA-Level and on the 6th Floor; the modernization of the educational and support spaces on the 10th and 11th Floors. The spaces will consist of classrooms, multi-purpose rooms, computer labs, IT offices, and all associated support space including reception, conference rooms, toilets, office and administrative space for the teaching staff. Also included within the project are the required building operations and maintenance space, as well as space required for mechanical, electrical and plumbing equipment.

The School of Nursing project will be phased construction. The GA Level and the 6th Floor will be vacated for the first phase of construction. The second phase of construction will begin after the GA Level and the 6th Floor are completed and the 10th and 11th Floor occupants can be relocated to the GA Level and 6th Floor. Also note that the areas adjacent to the area of construction on the 10th and 11th Floors will be occupied during construction.

The project qualifies as a Reconstruction as defined in the New Jersey Uniform Construction Code.

The work will proceed under a Guaranteed Maximum Price Contract (GMP) where the Construction Manager holds the Trade Contracts. The Fixed Limit of Construction Cost (FLCC) for the GA-Level and 6th Floor portion of the project is estimated to be \$3.3 million dollars. The Fixed Limit of Construction Cost (FLCC) for the 10th and 11th Floor portion of the project is estimated to be \$900,000.00 dollars. Adherence to the University's approved budget is of extreme importance.

It is the intent of UMDNJ to engage an experienced, professional Construction Management (CM) firm, which shall provide all the expertise, experience, consultants, expert personnel, and all other resources necessary to successfully provide CM services associated with the project.

2.2 Purpose and Intent: Project B – New Jersey Dental School

The University of Medicine and Dentistry of New Jersey (UMDNJ) invites proposals from qualified Construction Management firms to provide complete Construction Management services for the Reconstruction of the existing Pediatric Dentistry Treatment Center on the C-Level south and the Reconstruction of the adjacent space for the relocation of the Special Care Treatment Center from the D-Level to the C-Level.

The goal of this reconstruction project is to renovate and efficiently consolidate both pediatric treatment centers. Both centers will be fit-out with the latest equipment and technology to provide appropriate space, per current operations, adjacent to one another and provide new state of the art spaces for patient care, academic, and research programs. The Reconstruction will provide increased accessibility within the Special Care Treatment Center. The shared service areas and adjacencies

will maximize the effectiveness of operation.

The work will proceed under a Guaranteed Maximum Price Contract (GMP) where the Construction Manager holds the Trade Contracts. The Fixed Limit of Construction Cost (FLCC) is estimated to be \$2.4 million dollars. Adherence to the University's approved budget is of extreme importance.

2.3 Purpose and Intent – Both Projects

The Construction Manager will, under terms of the "Part A" Agreement associated with this RFP, provide all consultation services, equipment, material and labor as required to coordinate, schedule and monitor the Interior Renovation Improvements from Schematic Design Phase to Construction Documents Phase.

The Construction Manager will, under the terms of the "Part B" Agreement associated with this RFP, provide all services, equipment, material and labor as required to perform the renovation work.

Bidders responding to this RFP must clearly demonstrate, through their written proposal and demonstrated experience on similar projects, the capacity, capability, and experience to successfully perform the required services described in this Request for Proposal.

The University expects that the selection of the bidder will be confirmed within THIRTY (30) calendar days from receipt of proposals. The bidder must commence work within FIVE (5) days of receipt of a written Notice to Proceed.

3.0 **BACKGROUND ON UMDNJ**

The University of Medicine and Dentistry of New Jersey (UMDNJ) is the state's university of the health sciences, with programs at five (5) main academic health center campuses in Newark, Piscataway, New Brunswick, Stratford, and Camden, and at educational and health care institutions in communities throughout the state.

UMDNJ is dedicated to the pursuit of excellence in:

- The undergraduate, graduate, postgraduate, and continuing education of health professionals and scientists;
- The conduct of basic biomedical, psychosocial, clinical, and public health research;
- Health promotion, disease prevention, and the delivery of health care; and
- Service to our host communities and the entire state.

UMDNJ seeks to advance the health sciences; to prepare future health professionals for leadership roles; to respond to academic, health personnel, and service delivery needs, while recognizing the diversity of our constituencies; to provide educational opportunities to New Jersey residents; and to improve the health and quality of life of the citizens of New Jersey and society at large.

UMDNJ offers a broad spectrum of health education programs, with more than 6,500 students enrolled in programs in medicine, dentistry, the biomedical sciences, and other health professions. The University owns and operates 65 buildings, with more than 7.7 million square feet of space.

UMDNJ was founded as the College of Medicine and Dentistry of New Jersey in 1970 by Act of the State Legislature (N.J.S.A. 18A: 64G-1 et seq). In 1981, it was granted University status in recognition of its growth and development as New Jersey's statewide health sciences systems.

3.1 Background on the School of Nursing

The University of Medicine and Dentistry of New Jersey-School of Nursing (UMDNJ-SN), established as academic programs in 1990, and reorganized as UMDNJ's seventh school in 1992, offers a comprehensive program of research, education, and educational mobility. Nursing degree programs at the Baccalaureate (BSN), Master's (MSN), Post-Master's Certificate (PMC) and Doctor of Nursing Practice (DNP) provide an articulated educational ladder for advanced education. The school also offers a joint Doctor of Philosophy (PhD) in Urban Systems (Urban Health specialization available). UMDNJ-SN also offers extensive continuing education opportunities for all healthcare professionals.

3.2 Background on the New Jersey Dental School

The New Jersey Dental School, Newark, has an enrollment of 340 students and awards 70 Doctor of Dental Medicine (D.M.D.) degrees each year. The New Jersey Dental School offers graduate dental educational specialty training in five (5) areas: Endodontics, Orthodontics, Pediatric Dentistry, Periodontics, and Advanced Education in General Dentistry. Hospital residencies are offered in General Practice Dentistry and in Oral and Maxillofacial Surgery (which leads to a Doctor of Medicine Degree). A fellowship is also available.

The Dental School also serves as a clinical training site for programs of UMDNJ – School of Health Related Professions in Dental Assisting and Dental Hygiene. Research activities in specialty areas continue to be pursued in space occupied outside the Dental School along with support services and lecture halls.

The mission of the New Jersey Dental School is the scientific exploration of factors that contribute to oral health and the dissemination and application of that knowledge toward the health and well-being of the community. This mission is accomplished through four (4) interrelated activities in a collegial environment: education, patient care, research, and community service. The proposed work of this project would involve the Pediatric Dentistry Treatment Center (Pediatric Dentistry) and the Special Care Treatment Center only.

Pediatric Dentistry is the practice of preventive and therapeutic oral health care for children from birth through adolescence. It also involves treatment of special patients beyond the age of adolescence who demonstrate physical and emotional problems.

In 1994, the NJDS founded the Special Care Treatment Center to meet the needs of citizens lacking access to dental services, geriatric patients, mentally, developmentally or physically disabled patients, psychiatric patients and medically complex patients, including those with HIV/AIDS and other chronic illnesses. Of the more than 5,300 patients who are registered for care at the Center, approximately half are diagnosed with mental retardation, and fifty percent have one or more significant medical diagnoses apart from mental retardation. Annually, more than 350 of the most complex of these patients receive dental treatment under general anesthesia. More than ninety

percent of the Center's patients are covered under Medicaid or a Medicaid HMO. Despite their degree of physical, mental or psychiatric disability or ability to pay for services rendered, no patient is ever turned away. Often referred by their local dentists or from other hospital-based dental programs, the Center's patients travel from all parts of New Jersey as well as from Pennsylvania, New York and Delaware. Many travel more than two hours each way for their appointments.

4.0 STANDARDS OF PERFORMANCE

4.1 Applicable Codes and Standards

All construction shall be completed consistent with requirements of the New Jersey Uniform Construction Code. All construction shall comply with requirements of FM Global. The CM shall identify other Codes, Standards, and Regulations that apply to the work, and shall ensure that any construction undertaken complies with the identified Codes, Standards, and Regulations. Services shall be completed and in constant review and compliance with, but not limited to, the following:

- 4.1.1 New Jersey Uniform Construction Code.
- 4.1.2 Department of Community Affairs (DCA) state building requirements.
- 4.1.3 UMDNJ FPMC Design & Construction Standards posted on the UMDNJ web site. (<http://www.umdj.edu/fpcweb/>)
- 4.1.4 New Jersey Higher Education Partnership for Sustainability (NJHEPS) High Performance Campus Design Guidelines posted on the NJHEPS web site. (<http://www.njheps.org/projects/greenbuildings.htm>)
- 4.1.5 Lexington Insurance and Chartis U.S. requirements.
- 4.1.6 Construction Management Firm shall identify other Codes and Standards that apply to the work, and shall ensure that any construction undertaken by the CM firm complies with the identified Codes and Standards.

All construction efforts shall be completed consistent with Infection Control Risk Assessment requirements (ICRA) as promulgated and enforced by the University, the UMDNJ Interior Air Quality (IAQ) guidelines as administered by EOHSS, the UMDNJ Interim Life Safety Measures (ILSM), and completion of the UMDNJ Construction Risk Assessment (CRA) forms.

4.2 Plan Review

Construction will be subject to review and approval by the Department of Community Affairs (DCA). DCA State Buildings Plan Review Unit (DCA/SBPR). Permits and inspections for construction will be issued by DCA State Buildings Unit. The CM will coordinate permits and inspections for the project.

4.3 Qualifications of Construction Management (CM) Firms

Construction Management Firms responding to this RFP must clearly demonstrate through their written proposal and demonstrated experience at similar projects as well as the capacity, capability and experience to successfully perform the required services described in this Request for Proposal. The bidder shall meet the following minimum qualifications:

4.3.1 Construction Management Firm shall have been in business under the same company name and federal Employee Identification Number for at least the past three (3) years.

4.3.2 Construction Management Firm shall have demonstrated experience in performing pre-construction and construction management services associated with Academic and Administrative construction projects. Construction Management Firm shall submit a minimum of three (3) references for the projects performed similar in size and scope. References must include owner name, contact person, address, phone number, brief project description and project value.

4.3.3 Supplier Diversity

As part of its Supplier Diversity Program encompassing small businesses, the University is committed to actively and affirmatively seek a diverse group of companies, including relationships with small, minority and women-owned businesses. The goal is to ensure that a twenty-five percent (25%) portion of the University's total purchases for construction, goods, equipment and services is placed with these businesses.

Construction Management Firms responding to this RFP must comply with applicable law, regulations, and/or Executive Order in effect at time of submission of a Work Plan and Fee Proposal. At the time of release of this RFP, Executive Order 151 is in effect, and Construction Management companies must comply with requirements of this Order.

5.0 DESCRIPTION OF PROPOSED WORK

The University of Medicine and Dentistry of New Jersey (UMDNJ) invites independent proposals from qualified Construction Management Firms to provide complete Construction Management services for two construction projects on the Newark Campus.

5.1 Description of Work: Project A - for School of Nursing

Complete Construction Management services for the Reconstruction of the GA-Level, the 6th Floor, the 10th Floor, and the 11th Floor of the Stanley S. Bergen, Jr. Building (SSB) for the School of Nursing on the Newark campus of UMDNJ.

The objective of this project is to demolish walls, reconfigure walls, install new equipment and systems, and upgrade utilities to create new classroom and support spaces on the GA-Level and on the 6th Floor, the modernization of the educational and support spaces on the 10th and 11th Floors. The spaces will consist of classrooms, multi-purpose rooms, computer labs, IT offices, and all associated support space including reception, conference rooms, toilets, office and administrative space for the teaching staff. Also included within the project are the required building operations and maintenance space, as well as space required for mechanical, electrical and plumbing equipment.

The School of Nursing project will be phased construction. The GA Level and the 6th Floor will be vacated for the first phase of construction. The second phase of construction will begin after the GA Level and the 6th Floor are completed and the 10th and 11th Floor occupants can be relocated to the GA Level and 6th Floor. Also note that the areas adjacent to the area of construction on the 10th and

11th Floors will be occupied during construction.

The project qualifies as a Reconstruction as defined in the New Jersey Uniform Construction Code.

5.2 Description of Work: Project B – New Jersey Dental School

The work will consist of renovations on select areas of the C-Level south of the Dental School building on the Newark campus. The renovated space will provide functional and aesthetic upgrades to the Pediatric Dentistry practice that will include the Special Care practice, and satisfy their goals of expansion to meet the expanding clientele. The Reconstruction will provide increased accessibility within the Special Care Treatment Center. The shared service areas will maximize the effectiveness of operation.

The proposed project area is primarily enclosed within currently existing walls, the impact to surrounding occupied areas shall be minimized. The existing infrastructure will be improved through rehabilitating the existing and correcting previously non-compliant work. There are no proposed changes in the use of other existing spaces beyond the immediate scope of this proposed project. The area surrounding the area of work will continue to be used by the public during the duration of the project. The A/E will provide appropriate phasing and logistics in the construction documents. The CM's approach must recognize and facilitate development of the Project in such a phased manner, as required.

Functional improvements will include additions to electrical, fire protection, lighting, HVAC, and ATC. New/additional E/M/P/FP systems, as required, are to be included in the project scope. CM must recognize that the investigation of existing conditions and utilities immediately adjacent to and below the existing space will require efforts by the CM in establishing a construction plan. Off-hour work may be required to investigate existing conditions.

CM is to coordinate the installation of furniture and equipment, purchased by UMDNJ, with the providers.

UMDNJ will contract for materials testing as required to confirm the presence or absence of hazardous materials if so required. UMDNJ will be responsible for the abatement of hazardous materials through contracts with appropriate contractors if so required. UMDNJ may also elect to obtain the services of a Commissioning Agent.

5.3 Description of Work: Both Projects

It is the intent of UMDNJ to engage an experienced, professional Construction Management (CM) Firm, which shall provide all the expertise, experience, consultants, expert personnel, and all other resources necessary to successfully provide CM services associated with the project.

The Construction Manager shall coordinate, schedule, monitor and construct the Project in the most efficient and cost-effective manner possible. Construction Manager shall consider and obtain the efficiencies offered by the economies of the Project.

UMDNJ anticipates that the construction efforts undertaken by the Construction Manager must address the complexities of this project. Complexities include investigation of existing conditions, demolition, pre-construction services including validation of the schematic design, design development, code review, construction cost estimates and compliance with applicable regulations and codes affecting construction in a research facility, phasing and scheduling and construction operations in an occupied campus. The complexities of the project dictate that the bidder demonstrates successful experience on other projects of similar scope and difficulty for both design and implementation.

6.0 SCOPE OF SERVICES

6.1. Delivery Method/Form of Agreement

The work will proceed under the terms of an “Owner and Construction Manager for Guaranteed Maximum Price Where Construction Manager Holds the Trade Contracts” Agreement, consistent with the terms and conditions of the form of Agreement attached to this RFP as Attachment B. UMDNJ will issue a separate Agreement for each Project.

The Construction Manager (CM) will, under terms of the “Part A” Agreement associated with this RFP, provide all pre-construction consultation services, equipment, material and labor as required to coordinate, schedule and monitor the project from Schematic Design Phase through Construction Documents Phase. Part A duties and services include, but are not limited to, performing investigation of existing conditions, those pre-construction consultation services required to advise the Owner during the Schematic Design, Design Development and Construction Documents phases of the project, to schedule the project efficiently for all phases and to oversee the design of the project so that the most efficient use of materials and methods will be employed to provide the highest quality of construction at the least cost. The CM will also, under Part A of the Contract, develop a Guaranteed Maximum Price (GMP) for the project.

The CM will, under the terms of the “Part B” Agreement associated with this RFP, provide all services, equipment, material, and labor as required to perform demolition, and construction work. The Construction Phase Work, under the “Part B” Agreement, will proceed under a Guaranteed Maximum Price Contract where the CM holds Trade Contracts. Part B duties and services include all those required for the CM to organize and direct the investigation of existing conditions, demolition and construction of the project. The CM shall hold the Trade Contracts and the CM shall assume the risk and responsibilities of completing the project within the approved GMP and schedule.

6.2. Required Services- General

The general services associated with the two projects include, but are not limited to, the following for each Project:

- 6.2.1 Provision of a detailed project work plan showing major milestones for the Project. Milestones include, but are not limited to, Project Kick-Off Meeting, meetings with the

Project Team, investigation of existing conditions, remediation if required, abatement if required, pre-construction, construction documents, submission of construction permit application, submission of construction cost estimates at the completion of each design phase, phasing of the construction process, and similar critical milestones. The schedule shall indicate regular project meetings, which will be held at least bi-weekly or more frequently if required during design phases.

- 6.2.2 Meeting with representatives of the various departments involved, and preparation of meeting minutes for each meeting in the event that the Architect is not present.
- 6.2.3 Services not specifically listed but required for successful completion of the Construction Management work.
- 6.2.4 The CM is responsible to collect red line as built drawings from each trade involved with this project and to transmit those as built drawings to the A/E firm at substantial completion of each construction phase. The A/E firm will copy the redline drawings to new clean AutoCAD electronic files. The CM will transmit any additional changes made during punch list and close out to the A/E firm at completion of close out phase.

6.3 Required Services - Design / Pre-Construction

The design / pre-construction services associated with the two projects include, but are not limited to, the following for each Project:

- 6.3.1 During the Pre-Construction Phase, the Construction Manager will be required to perform Investigation services as required by the project on behalf of UMDNJ. These costs should be included in the values presented in the fee proposal forms.
- 6.3.2 Investigation. The investigation services required by the Project include, but are not limited to, the following:
 - 6.3.2.1 UMDNJ makes no representation regarding the environmental conditions of the project site. The Construction Manager will be fully responsible for investigation and remediation of environmental conditions existing or subsequently discovered on the site. The Construction Manager will be required to indemnify UMDNJ with respect to any liability arising from the environmental conditions.
- 6.3.3 Provision of full scope pre-construction services for the Interior Renovation Project, including all equipment, material, and labor as required to coordinate, schedule and monitor the project from the Schematic Design Phase through the Construction Documents Phase. Pre-construction duties and services include, but are not limited to, performing investigation of existing conditions, those pre-construction consultation services required to advise the Owner during the Schematic Design, Design Development, and Construction Documents phases of the project to schedule the project efficiently for all phases and to observe the design of the project so that the most efficient use of materials and methods will be employed to provide the highest quality of construction at the least cost.
- 6.3.4 Provision of full scope pre-construction services for the Interior Renovation Project including review of record construction documents and field investigation of existing conditions with particular attention to existing and renovated utility coordination.
- 6.3.5 Develop Guaranteed Maximum Price (GMP) documents, as described in the Agreement.

- 6.3.6 Provision of Phasing Plans, Logistic Drawings/Narrative and Impact Drawings describing anticipated effects of construction on adjacent occupied areas of the SSB building. A Master Schedule for these items must be presented to the University for approval prior to beginning any work. Project Schedule shall reflect a multi-phase construction process, so that areas will be fully functional while other areas are under construction.
- 6.3.7 Provision of Phasing Plans, Logistic Drawings/Narrative and Impact Drawings describing anticipated requirements of protection of adjacent occupied areas of the SSB building during and after completion of each phase of reconstruction and renovation.
- 6.3.8 Completion of the UMDNJ EOHSS Infection Control Risk Assessment (ICRA) forms.
- 6.3.9 Completion of the UMDNJ Construction Risk Assessment (CRA) forms.
- 6.3.10 Preparation of documents, assistance to FPMC, attendance at meetings, submission of reports and other services related to application for and release of the Construction Permit and Certificates of Approval or Occupancy.

6.4 Required Services - Construction

The construction services associated with the two projects include, but are not limited to, the following for each Project:

- 6.4.1 Adherence to the UMDNJ Interim Life Safety Measures (ILSM).
- 6.4.2 Adherence to the UMDNJ Indoor Air Quality Program (IAQ) as administered by EOHSS.
- 6.4.3 Required Services- Demolition.
The demolition services associated with the project include, but are not limited to, the following:
 - 6.4. .2 Coordinate with University departments to complete disconnection and reconnection of all services.
 - 6.4. .3 Provide traffic control, pest and rodent control, temporary fences and or barriers, dust control, OSHA safety measures and appropriate security associated with the demolition work.
 - 6.4. .4 Remove all demolition debris off the site and legally dispose of all the debris.
- 6.4.4 Project Management, including, but not limited to:
 - 6.4.5.1 Coordination among related parties, including but not limited to:
 - Member(s) of the University's Department of Facilities Planning, Management, and Construction.
 - Member(s) of the University's Department of Physical Plant.
 - Member(s) of the University's Department of EOHSS.
 - Member(s) of the University's Department of Information Systems & Technology (IS&T).
 - Member(s) of the University's Department of Public Safety.
 - Members of the Commissioning Consultant.
 - Construction Manager.
 - Architect.
 - Engineer.
 - Members of the UMDNJ NJDS Administration, and staff.
 - Members of the UMDNJ School of Nursing Administration and staff.
 - 6.4.5.2 Preparation of monthly reports and schedules.

- 6.4.5 Assistance with solicitation of Proposals for project-related services if requested by the University.
- 6.4.6 Review of studies, designs, drawings, and specifications.
- 6.4.7 Review and assessment of existing building, site and systems.
- 6.4.8 Cost Estimating at the end of the Schematic Design and the Design Development Phases.
- 6.4.9 Schedule Review and Control:
All schedules, correspondence, reports, specifications and budgets shall be in Microsoft Office 2007 format (MS Project 2007, Word, and Excel).
- 6.4.10 Constructability Review.
- 6.4.11 Utility Investigations.
- 6.4.12 Long-Lead Procurement- Identification of long-lead items and preparation of timetable for purchase with coordination as required to expedite the procurement and installation of long-lead equipment, materials and supplies.
- 6.4.13 Construction Phasing, including requirements for temporary facilities. Project Schedule shall reflect the multi-phase construction process appropriate to the project, which shall also be reflected in the construction documents. Areas of construction shall be arranged so that each phase area will be fully functional while other areas are under construction.
- 6.4.14 Interior Air Quality, CM shall meet all provisions for Interior Air Quality control as directed by EOHSS for the protection of the surrounding areas.
- 6.4.15 Construction Risk Assessment, CM shall complete all Construction Risk Assessment forms prior to the start of construction.
- 6.4.16 Coordination and implementation of the Interim Life Safety Measures (ILSM), including the Project Safety Board, and maintenance of alternate site exit pathways.
- 6.4.17 Development of Guaranteed Maximum Price.
- 6.4.18 Provision of all labor and materials required for performance of the construction work.
- 6.4.19 Cost Tracking and Control.
- 6.4.20 Development of Cost Control Strategies.
- 6.4.21 Claims Management and Prevention.
- 6.4.22 MBE/WBE/SBE Participation Monitoring.
- 6.4.23 Coordination for all required Permits, Inspections, as well as implementation of Quality Control, and Quality Assurance.
- 6.4.24 Change Order Evaluation.
- 6.4.25 Review of Shop Drawings and other Submittals.
- 6.4.26 Project Close-out and Turnover.
- 6.4.27 Project Start-Up and Testing.
- 6.4.28 Inspections for Substantial Completion and Final Completion.
- 6.4.29 Labor Relations Reviews.
- 6.4.30 Safety Program Reviews, Implementations, and Enforcement.
- 6.4.31 Coordination of fixed furniture and equipment installation.
- 6.4.32 Coordination with UMDNJ regarding FF&E and Room Signage scheduling, numbering and installation.
- 6.4.33 Telecommunications- Coordination of Information Services & Technology systems with UMDNJ requirements, to ensure that the University's requirements are satisfied.
- 6.4.34 Cost Consultation- Provision of accurate analyses of the cost of all construction contemplated for the project over the course of the Contract, with immediate notice to UMDNJ if the estimated construction cost is in excess of the budget.

- 6.4.35 Preparation and periodic update of projects schedules, which will include construction schedules, including two construction phases in the fully occupied and fully functioning building, and project activity information provided by Owner (MS Project 2003 format).
- 6.4.36 Coordination of the project with FPMC to develop an orderly, controlled construction effort in a fully occupied and operating University building and campus.
- 6.4.37 Coordination of the project as required to meet schedules and deadlines; towards this end the Construction Manager shall have a strong expertise in engineering, budgeting, cost estimating, scheduling, purchasing, quality control, management, and labor relations.
- 6.4.38 Coordination of the project as required to ensure proper delivery, tie-ins, and installation of all Owner-furnished items, including furniture and equipment.
- 6.4.39 Maintenance of financial and cost accounting records for all costs applied to the project.
- 6.4.40 Supervision of all construction work with experienced personnel in the home office and on the project site.
- 6.4.41 Continuous review of drawings, specifications, schedules and other critical information.
- 6.4.42 The CM is responsible to collect red line as built drawings from each trade involved with this project and to transmit those as built drawings to the A/E firm at substantial completion of each construction phase. The A/E firm will copy the redline drawings to new clean AutoCAD electronic files. The CM will transmit any additional changes made during punch list and close out to the A/E firm at completion of close out phase.
- 6.4.43 Commissioning - Full cooperation with independent commissioning agent retained by the University.
- 6.4.44 The CM is responsible to submit Certified Payroll and Manning Reports with each invoice.
- 6.4.45 Meetings - Meeting with FPMC, various University departments involved and representatives of the Design Team on at least a Bi-weekly basis during the Construction Phase. Separate meetings for each Project.

6.5 Required Services- Related Information

- 6.5.1 Leadership in Energy & Environmental Design – UMDNJ supports LEED efforts in the construction within the University. As such, UMDNJ expects the successful bidder to provide input and recommendations that support the inclusion of LEED within the project.
- 6.5.2 Time, when stated as a number of days, shall be calendar days including Saturdays, Sundays and holidays.
- 6.5.3 All documents will be provided in an electronic format compatible with the processes and objectives of the Facilities Planning, Management, and Construction. This includes, but is not limited to, the use of AutoCAD as appropriate within the various steps in the construction process.

6.6 Relationship of This Section to Agreement

Note that the above list of activity supplements, but does not supersede or replace requirements of the executed Agreement.

6.7 Forms

Copies of all forms required by various sections of this RFP, except for the Fee Proposal Form, should be included with each copy of the written proposal and technical information.

6.7.1 Ownership Disclosure Form

In the event the CM is a corporation or partnership, the CM must complete the attached Ownership Disclosure Form. A complete Ownership Disclosure Form must be received accompanying the bid. Failure to do so will preclude the award of the contract to the non-compliant CM.

Failure to submit the Certificate(s) with the Bid Proposal shall be cause for automatic rejection of the bid proposal.”

6.7.2 MacBride Principles Certification

The bidder must complete the attached MacBride Principles Certification N.J.S.A. 52:18A-89.8 and Northern Ireland Act of 1989, evidencing compliance with the MacBride Principles. Failure to do so may result in the award of the contract to another bidder.

Failure to submit the Certificate(s) with the Bid Proposal shall be cause for automatic rejection of the bid proposal.”

6.7.3 Business Associate Agreement

The bidder should complete the attached Business Associate Agreement, involving the access to protected health information that is considered protected pursuant to federal, state and/or local laws and regulations in accordance with the privacy requirements of the “HIPAA” – Health Insurance Portability and Accountability Act of 1996. The requirement is a precondition of entering into a valid and binding contract.

6.7.4 Requirements of PL 2005, Chapter 51/ Executive Order 117 Vendor Certification and Disclosure of Political Contributions (Formerly Executive Order 134)

In order to safeguard the integrity of State government procurement by imposing restrictions to insulate the award of State contracts from political contributions that pose the risk of improper influence, purchase of access, or the appearance thereof, Public Law 2005, c.51, was signed into law on March 22, 2005. On September 24, 2008, Governor Corzine issued Executive Order 117, which is designed to enhance New Jersey’s efforts to protect the integrity of procurement decisions and increase the public’s confidence in procurement. The Executive Order builds upon the provisions of Chapter 51. Pursuant to the requirements of Public Law 2005, c.51, and Executive Order 117, all bidders should submit the Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions with their bid proposal. The form and instructions for completion of the form may be found at:

http://umdnj.edu/purchweb/employees/employ36_forms_policies.htm .

6.7.5 Affirmative Action

The bidder must complete the Affirmative Action Employees Information Report (AA-201), or, in the alternative, supply either a New Jersey Affirmative Action Certificate, or evidence that the bidder is operating under a Federally approved or sanctioned affirmative action program. The requirement is a precondition of entering into a valid and binding contract.

6.7.6 Fee Proposal

A completed Fee Proposal Form (Attachment A) shall be submitted in a sealed envelope separate from the written proposal described in Section 7.0.

7.0 **TECHNICAL REQUIREMENTS FOR PROPOSAL PREPARATION AND SUBMITTAL**

7.1 **Qualifications**

All bidders must submit a formal written presentation of qualifications of the firm including:

- 7.1.1 Listing and resumes of officers, directors, or partners of the firm.
- 7.1.2 A description of the current level of the firm's activity and the remaining resources available for this project.
- 7.1.3 A description of recent relevant projects designed and constructed (or that have been designed and are under construction) by the firm.
- 7.1.4 A list of clients served and the individuals who can be contacted as references for each of the above projects.

7.2 **Proposal and Work Plan**

All bidders must submit a formal written proposal and work plan that:

- 7.2.1 Explicitly demonstrates the expertise required for the remediation, abatement, demolition, public improvements, design, management, and construction of the project.
- 7.2.2 Describes the methodology which will be used in structuring the Project Team.
- 7.2.3 The Work Plan must describe in detail the bidder's approach to the short-deadlined schematic design phase of the project.
- 7.2.4 Includes a work plan to be used for managing the project including a detailed GANTT chart describing proposed schedule for the project.
- 7.2.5 Includes a proposed organizational chart with the names and titles of the key personnel to be assigned to the project.
- 7.2.6 Includes resumes for key personnel described in the proposed organizational chart.
- 7.2.7 Includes all information required by Section 4.3 of this RFP.
- 7.2.8 Complies with the requirements of Section 7.3, 7.4, and 7.5 of this RFP.
- 7.2.9 Includes all information the bidder may feel is appropriate or necessary and not specified herein, including a copy of the bidder's most recent brochure.
- 7.2.10 Separate Proposal and Work Plan must be submitted for each Project showing distinct project teams.

7.3 **Format of Submittals**

Bidders should assemble the written proposal in sections that correlate to the items described in Section 7.1 and 7.2 of the RFP. Sections shall be separated by tabbed dividers and clearly labeled to correspond with the individual sub-section numbers of Section 7.1 and 7.2 (e.g. Tabs will be labeled 7.1.1, 7.1.2, 7.1.3, etc.).

7.4 Quantity of Submittals

Bidders are required to submit one (1) original and four (4) copies of their written proposal and any attachments that are part of the proposal. A separate submittal is required for each Project. Bidders are encouraged to submit an electronic copy of their proposal.

7.5 Forms

Copies of all forms required by Section 6.8 of this RFP should be included with each copy of the written proposal and technical information.

7.6 Fee Information

Bidders should not include any fee information with the technical information required by Section 7.1 and 7.2. A completed Fee Proposal Form (Attachment A) shall be submitted in a sealed envelope separate from the technical information.

7.7 Requirements of RFP Not Satisfied

The bidder is instructed to clearly identify any requirement of this RFP that the bidder cannot satisfy.

8.0 SCHEDULE

The University expects that the selection of the Construction Manager will be confirmed within thirty (30) calendar days from receipt of proposals.

9.0 PROPOSAL EVALUATION

The award will be made based on price and other factors.

9.1 Initial Evaluation

Bidders will initially be evaluated on their proposal's creativity, technical merit, project organization and prior experience in design and administration of similar projects.

- 9.1.1 Qualifications of key personnel on projects of a similar nature.
- 9.1.2 Qualifications and abilities of either the firm's in-house staff or sub-consultants typically utilized.
- 9.1.3 Stability of the firm as evidenced by financial statement, longevity of current ownership and insurances held.
- 9.1.4 Evidence of the firm's successful past performance and ability to complete similar projects on schedule and within budget and without substantive disputes.
- 9.1.5 The firm's narrative responses to questions asked, overall proposal organization and accuracy, responsiveness and quality.

9.2 Fee Proposal Consideration

After a review of materials received from bidders, it is the intent of the University to select a "short list" of three (3) to five (5) firms. The fee proposals of only those firms on the "short list" will be opened and considered. Oral presentations or interviews may be required of the short-listed firms.

10.0 FORM OF AGREEMENT

The University's Agreement is attached to and made part of this RFP (Attachment B). It is incumbent upon the bidder to carefully review and read the Agreement with its terms and conditions.

By submitting a response to this RFP, the bidder hereby agrees to the terms and conditions of the contract, and further agrees to sign the Agreement as issued, without objection, modification, or exclusion, should this bidder be selected by UMDNJ.

11.0 DEPARTMENT OF PURCHASING SERVICES REQUIREMENTS

UMDNJ Department of Purchasing Services has established requirements with which all bidders submitting proposals must comply. Refer to Attachment F of this RFP for detailed requirements. It is incumbent upon the bidder to carefully review and read each Agreement and Form with its terms and conditions.

12.0 INSURANCE

The successful bidder will need to maintain insurance coverage per requirements set forth in Attachment B.

Request for Proposal for
Construction Management Services
For Reconstruction of the GA-Level, 6th, 10th, and 11th Floor
School of Nursing – Stanley S. Bergen Jr. Building
and
Renovations to the Pediatric Dentistry & Special Care Treatment Suite
New Jersey Dental School
RFP #P12-061

ATTACHMENT A - 1

FEE PROPOSAL THREE PAGE FORM – PAGE 1 OF 3

Fees for Construction Management services - **Phase 1 School of Nursing GA-Level and 6th Floor:**

The Construction Management fee is defined in the attached Agreement (Attachment B).

PART A LUMP SUM FEE \$ _____

In words _____ Dollars and _____ cents

PART B FEE (Percentage of the Cost of the Work) _____%

In words _____percent

Please provide as Attachment A.1 a listing of the numbers and dates of all Addenda received.

Please provide as Attachment A.2 a schedule of standard hourly billing rates for employees, consultants, subcontractors, etc. which can be used for the calculation of fees for any additional services requested and authorized by the Owner. Hourly billing rates submitted shall remain constant over the life of the Contract; they shall not be subject to escalation or adjustment.

The Construction Manager will be required to complete the performance requirements of the work as intended. All costs and scope of work as outlined in the proposal shall represent the entire scope of work for this Project and no additional compensation shall be sought by the Construction Manager for completion of basic services.

Firm Name: _____

Address: _____

City, State, Zip Code: _____

Contact Person Name: _____

Contact Person Title: _____

Telephone: _____ Fax: _____

E-mail Address: _____

Signature: _____ Date Signed: _____

Request for Proposal for
Construction Management Services
For Reconstruction of the GA-Level, 6th, 10th, and 11th Floor
School of Nursing – Stanley S. Bergen Jr. Building
and
Renovations to the Pediatric Dentistry & Special Care Treatment Suite
New Jersey Dental School
RFP #P12-061

ATTACHMENT A - 1

FEE PROPOSAL THREE PAGE FORM – PAGE 2 OF 3

Fees for Construction Management services - **Phase II School of Nursing 10th and 11th Floors:**

The Construction Management fee is defined in the attached Agreement (Attachment B).

PART A LUMP SUM FEE \$ _____

In words _____ Dollars and _____ cents

PART B FEE (Percentage of the Cost of the Work) _____%

In words _____ percent

Please provide as Attachment A.1 a listing of the numbers and dates of all Addenda received.

Please provide as Attachment A.2 a schedule of standard hourly billing rates for employees, consultants, subcontractors, etc. which can be used for the calculation of fees for any additional services requested and authorized by the Owner. Hourly billing rates submitted shall remain constant over the life of the Contract; they shall not be subject to escalation or adjustment.

The Construction Manager will be required to complete the performance requirements of the work as intended. All costs and scope of work as outlined in the proposal shall represent the entire scope of work for this Project and no additional compensation shall be sought by the Construction Manager for completion of basic services.

Firm Name: _____

Address: _____

City, State, Zip Code: _____

Contact Person Name: _____

Contact Person Title: _____

Telephone: _____ Fax: _____

E-mail Address: _____

Signature: _____ Date Signed: _____

Request for Proposal for
Construction Management Services
For Reconstruction of the GA-Level, 6th, 10th, and 11th Floor
School of Nursing – Stanley S. Bergen Jr. Building
and
Renovations to the Pediatric Dentistry & Special Care Treatment Suite
New Jersey Dental School
RFP #P12-061

ATTACHMENT A - 2

FEE PROPOSAL THREE PAGE FORM – PAGE 3 OF 3

Fees for Construction Management services - **Pediatric Dentistry & Special Care Treatment:**

The Construction Management fee is defined in the attached Agreement (Attachment B.

PART A LUMP SUM FEE \$ _____

In words _____ Dollars and _____ cents

PART B FEE (Percentage of the Cost of the Work) _____%

In words _____ percent

Please provide as Attachment A.1 a listing of the numbers and dates of all Addenda received.

Please provide as Attachment A.2 a schedule of standard hourly billing rates for employees, consultants, subcontractors, etc. which can be used for the calculation of fees for any additional services requested and authorized by the Owner. Hourly billing rates submitted shall remain constant over the life of the Contract; they shall not be subject to escalation or adjustment.

The Construction Manager will be required to complete the performance requirements of the work as intended. All costs and scope of work as outlined in the proposal shall represent the entire scope of work for this Project and no additional compensation shall be sought by the Construction Manager for completion of basic services.

Firm Name: _____

Address: _____

City, State, Zip Code: _____

Contact Person Name: _____

Contact Person Title: _____

Telephone: _____ Fax: _____

E-mail Address: _____

Signature: _____ Date Signed: _____

Request for Proposal for
Construction Management Services
For Reconstruction of the GA-Level, 6th, 10th, and 11th Floor
School of Nursing – Stanley S. Bergen Jr. Building
and
Renovations to the Pediatric Dentistry & Special Care Treatment Suite
New Jersey Dental School

RFP #P12-061

ATTACHMENT B

AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER
FOR GMP
WHERE CONSTRUCTION MANAGER HOLDS TRADE CONTRACTS

The "Agreement Between Owner and Construction Manager for GMP Where Construction Manager Holds Trade Contracts" is enclosed following this page.

AGREEMENT
BETWEEN
OWNER AND CONSTRUCTION MANAGER FOR
GUARANTEED MAXIMUM PRICE WHERE CONSTRUCTION MANAGER
HOLDS THE TRADE CONTRACTS
PART A

OWNER: UNIVERSITY OF MEDICINE & DENTISTRY
OF NEW JERSEY
SUITE 1214
65 BERGEN STREET
UNIVERSITY HEIGHTS
NEWARK, NJ 07107-3001

CONSTRUCTION MANAGER: _____

PROJECT: _____

ARCHITECT: _____

AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER FOR
GMP WHERE CONSTRUCTION MANAGER HOLDS TRADE CONTRACTS

PART A

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AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER FOR
GMP WHERE CONSTRUCTION MANAGER HOLDS TRADE CONTRACTS

PART A

CONSULTATION SERVICES

This Agreement, made this _____ day of _____, 2012, is by and between University of Medicine & Dentistry of New Jersey ("Owner"), a public instrumentality and agency of the State of New Jersey and _____, ("Construction Manager"), a corporation authorized to conduct business in the State of New Jersey with offices at _____.

I. BACKGROUND AND INTENT OF PART A.

1.1 Owner intends to

_____ ("Project"),
according to plans and specifications to be prepared by

("Architect").

1.2 Construction Manager agrees to provide design consultation services and advise to Owner and Architect during the Feasibility Study Phase, Schematic Design Phase, Design Development Phase and Construction Documentation Phase of the Project, as defined in the Agreement Between Architect and Owner, to monitor Project costs and to keep costs within established limits; to schedule the Project efficiently for all Phases so that the Project will be completed at the earliest possible date; and, to review the design of the Project so that the most efficient use of materials and methods will be employed to provide the highest quality of construction at the least cost.

1.3 Owner reserves the right to terminate this Agreement at the end of any of the Phases described in Section 1.2 above. Construction Manager shall not be entitled to any additional compensation in the event that the Owner takes such action.

2. CONSTRUCTION MANAGER'S DUTIES

2.1 Review of Studies, Designs, Plans and Specifications.

2.1.1 Construction Manager shall review all studies, designs, plans and specifications during all Phases, shall provide information about the existing building, including its current condition and actual construction and systems, and about the suitability of the site, foundations, systems and materials selected, the availability of labor, time requirements for procurement and installation, construction and relative costs of materials for the proposed Project and shall provide recommendations for economies as appropriate.

2.1.2 Construction Manager's technical consultation to Architect or other professional consultants shall not abrogate the design responsibility of those consultants. Construction Manager may make recommendations based upon the cost of a particular design or material selection and actual field conditions; however, if such recommendations are accepted for incorporation into the Project design, their suitability with regard to building operations, structural stability and life safety shall be the responsibility of the Architect.

2.2 Technical Proposals.

2.2.1 Construction Manager shall participate with Owner and Architect in the preparation of performance specifications and request for technical proposals for the procurement and installation of building system components and for the procurement of long-lead-time equipment and material. Construction Manager shall issue requests for technical proposals to qualified sources, receive such proposals and assist in their evaluation. Construction Manager shall formally advertise requests for procurement, if required, by assembling the required Contract Documents and issuing Invitations to Bid.

2.3 Long-Lead Procurement.

2.3.1 Construction Manager shall identify, recommend for purchase and expedite the procurement of equipment, materials and supplies which require long lead time.

2.4 Cost Consultation.

2.4.1 Construction Manager shall provide accurate analyses of the cost of all systems and construction contemplated for the Project over the course of this Agreement. Construction Manager shall prepare preliminary estimates of the cost of the Work and all required materials and final cost estimates for early procurement of long lead time items and for all out-of-sequence construction work. Construction Manager shall notify Owner if the estimated

construction cost is in excess of the Project budget or the design precludes meeting the completion schedule.

2.5 Construction Documents.

2.5.1 Construction Manager shall review bid packages, plans, specifications and schedules for the Project to eliminate possible conflict and overlap of jurisdiction between separate contractors.

2.5.2 Construction Manager shall make recommendations to Owner regarding the division of work under separate contracts to effect economy and permit the optimum phasing of procurement and construction, considering such factors as the type and scope of Work, time of performance, availability of labor and materials, community relations, factory versus on-site production costs, shipping costs and size limitations, building code restrictions and other limiting factors.

2.6 Job Site Facilities.

2.6.1 Construction Manager shall review the specifications to insure that it provides for all temporary facilities necessary for contractors to perform the Work and for all of the job site facilities necessary for the management, supervision and inspection of construction.

2.7 Management Control System.

2.7.1 Construction Manager shall implement a management control system (MCS) during the design and construction of the Project for use in achieving the objectives of the Project in a timely, economical and acceptable manner. To this end, the MCS shall facilitate planning, organizing, scheduling, budgeting, reporting of construction progress, accounting, identifying variances and problems and making and implementing decisions and taking corrective action. The data provided by MCS shall be timely, accurate and useful in making decisions at all levels. Construction Manager shall provide the services, facilities, equipment and staff necessary to implement the MCS.

2.7.2 Using the MCS, Construction Manager shall provide, over the course of this Agreement, the following for the review and approval of Owner, and which shall become part of the Feasibility Study and the Construction Documents:

2.7.2.1 A preliminary construction phasing plan.

2.7.2.2 A preliminary construction schedule.

2.7.2.3 A final construction phasing plan.

2.7.2.4 A final construction schedule that integrates the various

components into one complete and realistic schedule.

2.7.2.5 An occupancy schedule prepared in conjunction with Owner and Architect.

2.7.3 If Part B of this Agreement is executed, Construction Manager shall use the MCS during construction to:

2.7.3.1 Periodically tabulate the cost of proposed changes in the Work, compare this current working estimate with the approved budget and identify possible Project cost savings.

2.7.3.2 Provide documentation of all changes made in the schedule and budget so that complete accountability between the original and the current approved schedule and budget is maintained.

2.7.4 The MCS, when fully implemented, shall provide reports necessary for effective control of the overall construction program. Reports shall be provided to the levels of management in detail consistent with their respective requirements and responsibilities.

2.8 Preparation of the Guaranteed Maximum Price.

2.8.1 At the appropriate time, as established by the Architect and Owner, Construction Manager shall prepare an itemized Guaranteed Maximum Price ("GMP") for the entire Project, clearly summarizing the cost of each component of the Work as it will be packaged and bid and the amount of contingency funds. This GMP shall be the sum of:

2.8.1.1 The estimate of the Cost of the Work, as defined in Article 9 of Part B of this Agreement, to be performed and the materials to be purchased, including the cost of general conditions, reimbursables, contingency sums, permits, fees, patents, copyrights, royalties, performance and payment bonds and all other items necessary to construct the Project.

2.8.1.2 Construction Manager's Fixed Fee.

2.8.2 Construction Manager shall submit the GMP to Owner within thirty (30) days after receiving the request for a GMP. Construction Manager shall also provide an itemized list entitled Owner's Responsibilities which shall contain all responsibilities not provided by Construction Manager, which are necessary to complete the Project, which are not included in the GMP and which the Owner is expected to provide to complete the Project.

2.8.3 Owner shall accept or reject said GMP which will be valid for ninety (90) days after submission to the Owner, during which period the offered GMP may not be withdrawn or modified. If Owner does not accept the GMP within this

period, this Agreement shall terminate.

3. CONSTRUCTION MANAGER'S COMPENSATION.

3.1 Owner shall pay Construction Manager, as total compensation for services described in Article 2 of this Agreement, the Fixed Fee of _____ (\$_____).

3.2 Payment of the Fee shall be made as follows:

3.2.1 Twenty percent (20%) upon completion of the Feasibility Study;

3.2.2 Twenty percent (20%) upon completion of the Schematic Design Phase;

3.2.3 Twenty percent (20%) upon completion of the Design Development Phase;

3.2.4 Twenty percent (20%) upon completion of the Construction Documentation Phase; and

3.2.5 Twenty percent (20%) upon delivery to Owner of the itemized GMP described in Article 2.8.

3.3 DELETED

4. EXECUTION OF PART B OF THIS AGREEMENT.

4.1 Upon Owner's acceptance of the GMP described in Article 2.8, Construction Manager agrees to enter into Part B of this Agreement, attached hereto as Exhibit A.

4.2 Construction Manager at all times shall be deemed and independent contractor engaged by Owner. Construction Manager shall perform its tasks and duties consistent with such status and shall make no claim or demand for any right or privilege, including but not limited to workmen's compensation, disability benefits, accident or health insurance, unemployment insurance, FICA or retirement plan benefits accorded an officer or employee of Owner.

5. ASSIGNMENT AND TERMINATION.

5.1 Owner may, at any time, for any reason, terminate this Agreement by giving Construction Manager fifteen (15) days written notice of such termination and paying Construction Manager for all services rendered to date of termination, such payment to be based upon the nearest level of completion specified in Paragraph 3.2. Prior to such payment, Construction Manager shall furnish to Owner

a release of all claims. Construction Manager shall not be entitled to any damages for early termination of this Agreement.

5.2 This Agreement shall not be assigned by Construction Manager without the prior written consent of Owner.

6. PROJECT MANAGER.

6.1 Any notices to Owner should be addressed to:

Senior Vice President for Finance
University of Medicine and
Dentistry of New Jersey
65 Bergen Street - Suite 1438
Newark, New Jersey 07107-3001

With copy to:

Facilities Planning, Management, and Construction
University of Medicine and
Dentistry of New Jersey
30 Bergen Street - ADMC 301
Newark, New Jersey 07107-3000

Any notices to Construction Manager should be addressed to:

7. INSURANCE.

7.1 Insurance The Construction Manager shall assume all responsibility for its actions and those of anyone else working for it while engaged in any activity connected with this contract. The Construction Manager shall carry sufficient insurance to protect Construction Manager and Owner from any property damage or bodily injury claims arising out of the contracted work. Except for Workers Compensation Insurance, the Owner shall be an additional named insured. Evidence of current insurance coverage shall be provided in the form of a Certificate of Insurance which shall be submitted upon the delivery of this Agreement signed by the Construction Manager. Construction Manager shall maintain the following insurances:

(1) Workers Compensation Insurance as required by the applicable

laws of the State of New Jersey and Employer's Liability Insurance as required by applicable State and Federal law.

(2) Comprehensive General Liability Policy as broad as the standard coverage from currently in use in the State of New Jersey which shall not be circumscribed by any endorsements limiting the breadth of coverage. The policy shall include an endorsement (broad form), for contractual liability and completed operations and shall include the Owner as an additional insured. Limits of liability shall not be less than \$1,000,000.00 per person and \$3,000,000.00 per occurrence for bodily injury and not less than \$500,000.00 occurrence for bodily injury and not less than \$500,000.00 per occurrence for property damage liability.

(3) Comprehensive Automobile Liability Policy covering owned, non-owned and hired vehicles with minimum limits of \$100,000.00 per person and \$300,000.00 per occurrence for bodily injury liability and \$250,000.00 per occurrence for property damage liability.

All required insurance coverage's must be in effect no later than 12:01 A.M. at the start of the day of the Agreement and remain in effect for the duration of the Agreement, including any extension.

8. INDEMNIFICATION.

8.1 Construction Manager shall defend, indemnify, protect and save harmless the Owner and its agents, servants, employees and representatives from and against any and all suits, claims, demands, awards, losses or damages of whatsoever kind or nature arising out of any act, error or omission of the Construction Manager, its agents, servants, employees and retainees, in the performance of services under this Agreement, including, but not limited to, reasonable expenditures for the costs of investigation, hiring of expert witnesses, court costs counsel fees, settlements, judgments or awards. The obligations of the Construction Manager under this paragraph shall not extend to the liability of the Architect, the Architect's consultants or agents and employees of any of them arising out of (i) the preparation or approval of maps, drawings, opinion, reports, surveys, Change Orders, designs or specifications, or (ii) the giving of or failure to give directions or instructions by the Architect, the Architect's consultants or agents and employees of any of them provided such giving or failure to give is the primary cause of the injury or damage.

8.2 Construction Manager agrees and understands that the Attorney General of the State of New Jersey represents the Owner and will participate in any action involving the Owner which relates to the subject matter of the claim indemnified by the Construction Manager under this section and nothing contained herein shall be construed to prevent such participation; and, provided further that the Attorney General of new Jersey shall retain sole control, of the defense of any such claim and negotiations for its settlement or

compromise to the extent that the Attorney General solely and exclusively determines that such claim implicates the public policy of the State of New Jersey including, without limitation, the constitutionality, the validity of statutory administrative or decisional law, the appropriateness of State action or the propriety of the conduct of State officers, employees of agents.

8.3 Construction Manager shall be liable to the Owner for any reasonable cost incurred by the Owner to correct or modify any work by the Construction Manager that is found to be defective or not in accordance with the provisions of this Agreement as a result of negligent act, error or omission on the part of the Construction Manager, its agents, servants or employees. The Construction Manager shall be given reasonable opportunity to correct any deficiencies. Furthermore, the Construction Manager agrees that the provisions of this indemnification shall in no way limit the Construction Manager's obligations assumed in this Agreement, nor preclude the Owner from taking any other actions available under any other provisions of this Agreement or otherwise at law or in equity. This indemnification obligation is not limited by, but is in addition to the insurance obligations contained in this Agreement.

8.4 The Construction Manager's obligation to defend, indemnify and hold harmless hereunder shall survive the termination and term of this Agreement.

8.5 The Construction Manager shall give prompt notice to the Owner of all losses, damages or injuries to persons or property of the Owner, the Construction Manager or third persons in any way related to this Agreement or for which a claim might be made against the Owner and shall promptly report to the Owner all such claims of which the Construction Manager has notice, whether relating to matters insurance or uninsured. No settlement or payment of any claim for loss, injury or damage or other matter as to which the Owner may be made in a manner which may leave Owner at risk of any future liability for the claim, loss, injury or damage for which a settlement or payment is made.

9. ADDITIONAL TERMS.

9.1 Entire Agreement The parties agree that they are not relying upon any promises, understanding, warranties, circumstances, conduct, negotiations, expectations, representations or agreements, oral or written express or implied, other than those expressly set forth herein; that this Agreement is a complete integration and constitutes the entire agreement of the parties with respect to the subject matter hereof; that no amendments or other modifications of this Agreement shall be valid unless in writing and signed by an authorized officer of each party hereto; that this entire Agreement has been bargained for and negotiated; and the parties have read, understood and approved this Agreement in its entirety.

9.2 Governing Law This Agreement shall be governed by the laws of the State of New Jersey, including the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq. and New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq. and any cause of action between the parties shall have jurisdiction and venue only in the courts of the State of New Jersey in and of the County of Essex.

The Construction Manager, by entering into this Agreement, consents and submits to the exclusive jurisdiction of the Courts of New Jersey over any action at law, in equity or other proceeding that may arise out of this Agreement, and the Construction Manager agrees, during the period of performance and of warranty, to maintain within the State of New Jersey and agent to accept service of legal process on its behalf. The Construction Manager expressly waives trial by jury on any and all disputes and claims arising out of this Agreement whether by or against the Construction Manager or Owner.

9.3 Non Discrimination The provisions of Section 202 of Executive Order 11246 and Section 60-1.4, and 60-1.7, 60-1.8 of Chapter 60 of 41 Code of Federal Regulations, as amended, prohibiting discrimination against any employee or applicant for employment because of race, color, religion, sex, or national origin; Section 60-741.4 of Chapter 60 of 41 Code of Federal Regulations, as amended prohibiting discrimination against any employee or applicant for employment because of physical or mental handicap; and Section 60-250.4 of Chapter 60 of 41 Code of Federal Regulations, as amended, providing for employment of disabled veterans and veterans of the Vietnam era, and the federal laws prohibiting discrimination against any employee because of a disability are hereby incorporated by reference to the same extent and with the same force and effect as if set forth herein in full.

9.4 Non Collusion Both parties agree that no fee, commission, compensation, gift or gratuity was paid or received in regards to the solicitation of this Agreement, in contravention to N.J.S.A. 52:13D-13 et seq. Construction Manager warrants and represents that it has not and shall not violate any provision under said law in the procurement or performance of this Agreement.

In addition, the provisions of paragraph 3(a) through 3(f), of New Jersey Executive Order No. 189 (1988), prohibiting conflicts of interest on the part of vendors providing services to state agencies, are hereby incorporated by reference to the same extent and with same force and effect as if set forth herein in full.

9.5 Interpretation This Agreement has been negotiated between the parties. Accordingly no provision of this Agreement shall be construed more harshly against one party by reason of such party being deemed the "author" of the Agreement.

9.6 Auditing Upon Owner's request Construction Manager shall permit Owner to inspect and audit all data and records of the

Construction Manager relating to its performance and that of its subconsultants and designees, if any, under this Agreement from the effective date hereof through and until the expiration of ten (10) years after completion of and final payment to the Construction Manager for all services performed pursuant to this Agreement. Construction Manager's failure to maintain or produce such records shall preclude the recovery by Construction Manager or any claim for costs under the Agreement. The Construction Manager further agrees to include in all its subcontracts hereunder a provision to the effect that the subconsultant agrees that Owner, and any of its duly authorized representatives, shall, until the expiration of ten (10) years after final payment to the Construction Manager under the subcontract, have access to and the right to examine any books, documents and other records related to the subconsultant's performance under the subcontract and the failure to maintain or produce such records shall preclude the recovery of any claim for such costs. The scope of inspection shall be limited to this project.

If the Owner undertakes an audit of accounting records and such audit results in a finding of excessive profit due to improper statement of hourly rates, overhead, time required or other estimated cost of data upon which the contract was negotiated, the owner has the authority to reduce the stipulated fee to an amount considered commensurate with the actual scope of work or to seek repayment of any excessive amounts already paid by Owner.

9.7 Mandatory Affirmative Action Language - Procurement, Professional and Service Contracts, P.L. 1975, C.127 (N.J.A.C. 17:27)

The Construction Manager ("Contractor") agrees and certifies that all subcontracts negotiated by the Contractor shall include the following paragraphs required by the Law against Discrimination, P.L. 1975, C.127 and which also pertain to the Contractor and its consultants.

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

- (i) The Contractor or subcontractor, where applicable, will not discriminate against any employees or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. The Contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment without regard to their age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. Such action shall include but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for

training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the public agency compliance officer setting forth provisions of this nondiscrimination clause.

- (ii) 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, sex, affectional or sexual orientation.
- (iii) The Contractor or Subcontractor, where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of the Contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (iv) The Contractor or Subcontractor, where applicable, agrees to comply with any regulations promulgated by the treasurer pursuant to P.L. 1975, C.127, as amended and supplemented from time to time.
- (v) The Contractor or Subcontractor agrees to attempt in good faith to employ minority and female workers consistent with the applicable county employment goals prescribed by N.J.A.C. 17:27-5.2 promulgated by the treasurer pursuant to P.L. 1975, C.127, as amended and supplemented from time to time or in accordance with a binding determination of the applicable county employment goals determined by the affirmative action officer pursuant to N.J.A.C. 17:27-5.2 promulgated by the treasurer pursuant to P.L. 1975, C127, as amended and supplemented from time to time.
- (vi) The Contractor or Subcontractor agrees to inform in writing all appropriate recruitment agencies in the area, including 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, sex, affectional or sexual orientation, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.
- (vii) The Contractor or Subcontractor agrees to revise any of its testing procedures, if necessary to assure 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 laws and applicable federal court decisions.

- (viii) The Contractor or Subcontractor agrees to revise 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, sex, affectional or sexual orientation, and conform with the applicable employment goals, consistent with the statutes and court decisions of the State of New Jersey, and applicable federal law and applicable federal court decisions.
- (ix) The Contractor and it's Subcontractors shall furnish such reports or other documents to the Affirmative Action Office as may be request by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Affirmative Action office for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code (N.J.A.C. 17:25) .

Provisions (iv), (v), (vi), (vii) and (viii) are not required for subcontractors with four (4) or fewer employees or a contractor or subcontractor who has presented evidence of a Federally approved or sanctioned Affirmative Action Program.

9.8 Independent Contractor Construction Manager shall remain an independent contractor for the term of this Agreement. Nothing contained herein shall be construed to make the Construction Manager an employee of the University. Construction Manager warrants that it is capable of providing the services contemplated herein, by trained and licensing.

9.9 Non Waiver The failure of either party to insist on strict performance of any of the provisions of this Agreement shall not be construed as a waiver of any other default whether or not of the same or similar nature.

9.10 Limitation of Liability The liability of the Construction Manager to the Owner for any negligent act, error, or omission or wrongful conduct shall be determined in accordance with the provisions of the laws of the State of New Jersey. The terms and conditions of this Agreement are not intended to increase or limit such liability.

9.11 Third Party Beneficiaries Nothing in this Agreement shall be construed to give any rights or benefits under this Agreement to anyone other than the Owner or Construction Manager.

9.12 Successors and Assigns Construction Manager and University bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and the partners, successors, assigns and legal representatives of such other party with respect to all covenants to this Agreement.

9.13 Assignment This Agreement contemplates personal services by the Construction Manager. Construction Manager shall, therefore, not assign, subcontract or transfer its corporate interest herein without the written approval of the University.

9.14 Publicity Publicity and/or public announcements pertaining to the Project shall be cleared by the University in writing prior to release.

9.15 Severability If any provision in this Agreement is held invalid, void or unenforceable by a court of competent jurisdiction or by operation of any applicable law, and if it shall not reasonably appear to have been so material that without it the Agreement would not have been made by the parties, the remaining clauses or provisions shall nevertheless continue in full force and effect, without being impaired or invalidated.

9.16 Provision Deemed Inserted Each and every provision of law and clause required by law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is incorrectly inserted, then upon notice by either party, this Agreement shall forthwith be physically amended to make such insertion.

IN WITNESS WHEREOF, Construction Manager has caused this Agreement to be executed by its duly authorized representative and Owner hereto has caused this Agreement to be executed by its duly authorized representative.

CONSTRUCTION MANAGER

OWNER

UNIVERSITY OF MEDICINE AND
DENTISTRY OF NEW JERSEY

By: _____
as its

By: _____
Denise Mulkern
Senior Vice President for
Finance

Date: _____

Date: _____

Exhibit A

AGREEMENT

BETWEEN

OWNER AND CONSTRUCTION MANAGER FOR
GUARANTEED MAXIMUM PRICE WHERE CONSTRUCTION MANAGER
HOLDS THE TRADE CONTRACTS

PART B

OWNER: UNIVERSITY OF MEDICINE & DENTISTRY
OF NEW JERSEY
SUITE 1214
65 BERGEN STREET
UNIVERSITY HEIGHTS
NEWARK, NJ 07107-3001

CONSTRUCTION MANAGER: _____

PROJECT: _____

ARCHITECT: _____

AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER FOR
GMP WHERE CONSTRUCTION MANAGER HOLDS TRADE CONTRACTS

PART B

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AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER FOR
GMP WHERE CONSTRUCTION MANAGER HOLDS TRADE CONTRACTS

PART B

This Agreement, made this _____ day of _____ 2012, is by and between University of Medicine & Dentistry of New Jersey ("Owner"), a public instrumentality and agency of the State of New Jersey and _____, located at _____

("Construction Manager"), corporation authorized to conduct business in the State of New Jersey with offices at

In consideration of the covenants and promises herein contained, Owner and Construction Manager agree as follows:

1. BACKGROUND AND INTENT.

1.1 Owner intends to

to which end Owner has previously executed Part A of this Agreement with Construction Manager, under which Construction Manager provided consultation services, including the preparation of the Guaranteed Maximum Price ("GMP") which has been accepted by Owner.

Construction Manager now agrees that he shall organize and direct the construction of the Project and shall assume the risk and responsibilities of completing the Project within the GMP and the schedule.

1.2 Upon receipt of Notice to Proceed with Part B of this Agreement from Owner, Construction Manager shall accept immediate assignment of and shall administer those contracts for which acceptable bids were obtained, if any, under Part A of this Agreement.

2. CONTRACT DOCUMENTS.

2.1 The Contract Documents, which constitute the entire Agreement between Owner and Construction Manager, are as follows:

2.1.1 This Agreement, Standard Form of Agreement between Owner and Construction Manager Part B, _____ pages, dated _____

2.1.2 Standard Form of Agreement between Owner and Construction Manager, Part A, pages, dated .

- 2.1.3 General Conditions of the Contract for Construction, with a Construction Manager Exhibit A.
- 2.1.4 Drawings: listed in Exhibit B
- 2.1.5 The Specifications: dated _____
- 2.1.6 The Addenda: Not Applicable
- 2.1.7 Special Conditions

3. THE ARCHITECT

3.1 The Architect for this Project is: _____
_____.

4. THE WORK.

4.1 Construction Manager shall perform all Work required by the Contract Documents for the _____

as defined in the specifications and drawings by the _____
_____ the Architect dated _____.

4.2 The term 'Work' shall mean a fully operable, code compliant building as defined by the Owner, as outlined by the one hundred percent (100%) completed construction documents.

5. CONSTRUCTION MANAGER'S RESPONSIBILITY.

5.1 Construction Manager accepts the relationship of trust and confidence established between Owner and Construction Manager by this Agreement. Construction Manager covenants with Owner to furnish its best skill, judgment and business administration and to cooperate with the Architect in furthering the interests of Owner.

Construction Manager agrees to furnish at all times an adequate supply of workmen and materials and to perform the Work in the best and soundest way and in the most expeditious and economical manner consistent with the interest of Owner.

6. CONSTRUCTION MANAGER'S PERFORMANCE SCHEDULE.

6.1 Time of performance is the essence of the Contract. Construction Manager agrees to commence Work within thirty (30) calendar days after receipt of the acceptance of the GMP by the

Owner and to complete the Work within _____
(____) calendar days after receipt of the acceptance of the GMP by the Owner and required permits are available, and in place. No Work shall be commenced until Construction Manager has delivered its executed Waiver of Liens as well as the insurance certificates and surety bonds and Affirmative Action Form AA201 referred to herein. Construction Manager acknowledges and agrees to the liquidated damages for delay as described in the General Conditions, Article 8.

7. COST OF THE WORK AND GUARANTEED MAXIMUM PRICE.

7.1 Owner agrees to reimburse Construction Manager for the Cost of Work as defined in Article 9. Such reimbursement shall be in addition to Construction Manager's Fee stipulated in Article 8.

7.2 The maximum cost to Owner for the Work including the Cost of the Work and Construction Manager's Fee, is guaranteed by Construction Manager not to exceed the sum of _____
DOLLARS (\$_____).

This Guaranteed Maximum Price ("the Contract Sum") shall have the same meaning and components as defined in Part A of this Agreement, may be increased or decreased for Changes in the Work as provided in the General Conditions or elsewhere in the Contract Documents.

7.3 The "Savings," defined as the difference between the Guaranteed Maximum Price and the sum of the actual total Cost of the Work, plus the Construction Manager's Fee stipulated in Article 8, if any, shall be shared by the Owner and Construction Manager in the ratio of 75% to Owner and 25% to Construction Manager.

7.4 Should the Cost of the Work plus Construction Manager's Fee exceed the Guaranteed Maximum Price, as adjusted in accordance with Article 7 of the General Conditions, Owner shall be responsible to pay Construction Manager only the adjusted Guaranteed Maximum Price. The entire excess Cost of the Work over the adjusted Guaranteed Maximum Price shall be the sole responsibility of, and shall be paid by Construction Manager.

8. CONSTRUCTION MANAGER'S FEE.

8.1 Owner agrees to pay Construction Manager as compensation for its services a fee of _____
DOLLARS (\$_____)
which is included in the Contract Sum above, including Part B of the Agreement to be paid in accordance with Article 8, ratably as construction progresses and at the time as Progress Payments are made for construction.

8.2 For additive Changes in the Work, which increase the

Guaranteed Maximum Price, Construction Manager shall be paid two and ninety-five hundredths percent (2.95%) of the cost of the Change ordered and accepted in writing by Owner, together with the cost of the Change. Construction Manager's Fee shall remain unchanged due to deductive changes in the Work. For additive changes to trade contractor or supplier contracts, the contractor or supplier shall be allowed a maximum mark-up of ten percent (10%) for overhead and five percent (5%) for profit on the additional Cost of the Work or materials covered by his agreement with Construction Manager.

8.3 Construction Manager shall be paid ninety percent (90%) of each prorated portion of the Construction Manager's Fee with each Progress Payment, the ten percent (10%) balance of each prorated portion to be retained by Owner and paid at the time of Final Payment.

9. COSTS TO BE REIMBURSED.

9.1 The term "Cost of the Work", i.e., costs to be reimbursed, shall mean the cost necessarily incurred in the proper performance of the Work and paid by Construction Manager. Such costs shall be at rates not higher than the standard paid in the locality of the Work except with prior written consent of Owner and shall include the following items:

9.1.1 Wages paid for labor in the direct employ of Construction Manager in the performance of the Work under applicable collective bargaining agreements or under a salary or wage schedule agreed upon by Owner and Construction Manager and including such welfare or other benefits, if any, as may be payable with respect thereto.

9.1.2 Salaries of Construction Manager's personnel when stationed at the Field Office in whatever capacity employed and the portion of salaries of other personnel when engaged at shops or on the road in expediting the production or transportation of materials or equipment, provided the use of such personnel and the wage rate of such personnel have received the prior written approval of Owner.

9.1.3 Cost of contributions including healthcare, pension and other customary benefits, assessments or taxes for such items as unemployment compensation and F.I.C.A., insofar as such costs are based on wages, salaries or other remuneration paid to employees of Construction Manager included in the Cost of the Work.

9.1.4 The proportion of reasonable transportation, traveling and hotel expenses of Construction Manager or of his officers or employees incurred in the discharge of duties connected with the Work, provided the incurrence of such expenses has received the prior written consent of Owner.

9.1.5 Cost, including transportation, of materials, supplies and equipment incorporated into the Work.

9.1.6 Payments made by Construction Manager to trade contractors for Work performed pursuant to contracts under this Agreement or for materials suitably stored at the job site or Owner-approved off-site locations (provided said materials are reasonably necessary for the ordinary course of the Work and for which payments have not been received to date). Notwithstanding, the foregoing, payment shall not be made for any materials not actually incorporated into the Work unless specifically authorized by Owner in writing. Owner may condition such authorization upon, among other things, satisfaction of the following conditions:

9.1.6.1 The materials and/or equipment in question must be delivered to the place of storage in new condition, free from any liens, security interests or title retention agreements and suitably stored and protected from the elements or other damage or loss.

9.1.6.2 Title to all such materials and equipment shall, upon payment by Owner, pass to Owner free of liens, security interests and encumbrances and Construction Manager's or the trade contractor's invoice for payment shall constitute a representation and warranty that title has passed as aforesaid. Notwithstanding the foregoing, the risk of loss of all such materials which are not incorporated into the Work shall remain and be the sole responsibility of Construction Manager.

The Construction Manager shall insure the Owner against any and all such losses of stored materials at the job site or at Owner-approved off-site locations by providing the Owner with an insurance policy covering the costs of all stored material, and naming the Owner as an additional insured.

9.1.7 Cost, including transportation, of all materials, supplies, equipment, temporary facilities and hand tools not owned by workmen, which are consumed in the performance of the Work; cost less salvage value, as determined by Owner, of such items used but not consumed which remain the property of Construction Manager, and rental charge of Construction Manager-owned equipment at seventy percent (70%) of the rates in the current Associated Equipment Distributors List.

9.1.8 Rental charges of all necessary machinery and equipment, exclusive of hand tools, not owned by Construction Manager, used at the site of the Work at rental charges consistent with those prevailing in the area, which shall be promptly returned to minimize rental charges.

9.1.9 Costs incurred in the administration of the General

Conditions of the Contract, not including labor and material used to construct the Project or resulting, in permanent part of the total facility but including:

9.1.9.1 Temporary heat, water, electricity, telephone and toilets.

9.1.9.2 Temporary fence, sidewalk, bridges, roadways and elevators.

9.1.9.3 Approved field office and its related costs, equipment and furnishings.

9.1.9.4 Safety barricades, construction signs and watchmen.

9.1.9.5 Trucking, cleaning and refuse disposal.

9.1.9.6 Messenger service.

9.1.9.7 First aid station.

9.1.10 Cost of premiums for all bonds and insurance which Construction Manager is required by this Agreement to purchase and maintain.

9.1.11 Fees for building and similar permits required for the performance of the Work.

9.1.12 Costs incurred due to an emergency affecting the safety of persons and property.

9.1.13 Deposits lost for causes other than Construction Manager's negligence or fault, or the negligence or fault of any trade contractor.

9.1.14 Losses and expenses, including settlements made with the written consent and approval of Owner, not compensated by insurance or otherwise, sustained by Construction Manager in connection with the Work, provided that they have resulted from causes other than the fault or neglect of Construction Manager or any trade contractors or their respective employees or agents and provided that no such losses and expenses shall be included in the Cost of the Work for the purpose of determining Construction Manager's Fee; however, if such loss requires reconstruction and Construction Manager is placed in charge thereof, he shall be paid for his services a Fee proportionate to that stated in Paragraph 8.1.

9.1.15 Minor expenses such as telegrams, long distance telephone calls, telephone service at site, expressage and similar petty cash items in connection with the Work.

9.1.16 Cost of removal of all debris.

9.1.17 Cost of removing and replacing unsuitable soils, excluding hazardous materials.

9.1.18 Legal fees, costs and expenses associated with trade contractor disputes which arise out of the trade contractor's obligations under the Contract Documents, and provided that such disputes are not the result of the negligence or breach of contract by the Construction Manager, and that Owner shall not be obligated to pay or incur any fees, costs or expenses in defense of the Construction Manager.

9.1.19 Cost for testing and inspection which Construction Manager is required to perform under this Agreement.

9.1.20 Other costs incurred in the performance of the Work not listed in Sections 9.1.1 to 9.1.19, only if and to the extent approved in advance in writing by the Owner.

10. COSTS NOT TO BE REIMBURSED.

10.1 The term "Cost of the Work", i.e., Costs to be Reimbursed shall not include any of the following items:

10.1.1 Salaries or other compensation of Construction Manager's officers, executives, general managers, estimators, auditors, accountants, purchasing and contracting agents and other employees at Construction Manager's principal office and branch offices, except as expressly included in Article 9.

10.1.2 Expenses of Construction Manager's principal and branch offices including the field office, except as may be expressly included in Article 9.

10.1.3 Any part of Construction Manager's capital expenses, including interest on Construction Manager's capital, employed for the Work.

10.1.4 Overhead and General expenses of any kind, except as may be expressly included in Article 9.

10.1.5 Costs due to the fault or neglect of Construction Manager and trade contractors anyone directly or indirectly employed by any one of them or for whose act any of them may be responsible or liable, including, but not limited to the correction of defective Work, disposal of materials and equipment wrongly supplied and making good any damage to property.

10.1.6 The cost of any item not specifically and expressly included in the items in Article 9.

10.1.7 Costs in excess of the Guaranteed Maximum Price as defined in Article 7.

10.1.8 Incentive compensation, bonuses or other benefits over and above the normal wages to be reimbursed pursuant to Article 9.

10.1.9 The cost of repairs and preventive maintenance to any leased equipment or Construction Manager-owned equipment.

10.1.10 Any costs expended by Construction Manager without Owner's prior approval or consent where such approval or consent is required.

11. RETAINAGE.

11.1 Until such time as the Cost of the Work completed (excluding stored materials) for any line item on the approved Schedule of Values reaches fifty percent (50%) there shall be a retainage by Owner and the amount paid by Owner in accordance with the Contract Documents shall be equal to ninety percent (90%) of the Cost of the Work completed and in place and materials suitably stored at the job site or Owner-approved off-site locations to date.

11.2 When the Cost of the Work completed (excluding stored materials) for a line item on the approved Schedule of Values reaches fifty percent (50%) of the approved Value, the trade contractor may submit to Construction Manager and Owner a written request, including, where applicable, a consent of Surety to such request, that no additional retainage be held by Owner. Upon approval of the request by Owner and Construction Manager, the amount to be paid said trade contractor for each subsequent Application for Payment shall be equal to one hundred percent (100%) of the value of the Work performed in the period covered by that Application, provided satisfactory progress has been made in said Work.

11.3 Upon completion of the Project in accordance with the Contract Documents, Construction Manager shall receive the balance of retainage with the Final Payment. Upon satisfactory completion of the Work in accordance with the Contract Documents, as determined by the Architect and Owner, under a specific trade contract substantially in advance of completion of the Project or under special circumstances, the retainage on that Contract may be paid in full, with approval of Owner, prior to the completion of the Project, provided that, where applicable, a consent of Surety to such payment is furnished by the trade contractor and the trade contractor complies with the other requirements for receipt of Final Payment.

11.4 No retainage shall be held by Owner for Construction Manager's reimbursable and General Condition items unless such retainage is due to a dispute regarding the amount owed.

11.5 Retainage on Construction Manager's Fee shall be in

accordance with Paragraph 8.3.

12. PAYMENTS.

12.1 On the first day of the month, Construction Manager shall deliver to Owner and Architect an Application for Payment. AIA Form G702, showing in complete detail all monies paid out or costs incurred by Construction Manager on account of the Cost of the Work through the twenty-fifth (25th) day of the preceding month. Such Application for Payment shall be accompanied by Construction Manager's certification, under oath and in a form provided by Owner, that it has paid for all of the Work, materials and services performed and provided through the date of the last payment to Construction Manager, subject to applicable trade contract retainage and by such evidence of payment as Owner may require. Subject to the requirements of this Agreement and the further terms of the Contract, Owner shall pay Construction Manager on or before 20 working days after delivery of the Application for Payment to Owner, the amount applicable to the work performed as provided in Articles 8 and 9.

13. COST ACCOUNTING.

13.1 Upon presentation by Construction Manager of an Application for Payment which indicates fifty percent (50%) completion of the Work, a cost accounting of the Project as of the date of the particular Application for Payment will be prepared promptly by Construction Manager. Said cost accounting shall be completed to the satisfaction of Owner prior to the submission of the next Application for Payment. If payment to Construction Manager has exceeded all actual costs determined by the accounting, the excess shall be credited to Owner on the next Application. Additional cost accounting of the Project may be requested of Construction Manager at any time and from time to time in writing by Owner. Each cost accounting shall be made as of the date of any Application for Payment as designated by Owner and shall be completed to the satisfaction of Owner within thirty (30) days after such request. If payments to Construction Manager have exceeded all actual costs determined by that accounting, the excess shall be credited to Owner on the next Application.

13.2 Construction Manager shall check all materials, equipment and labor entering into the Work and shall keep such full and detailed accounts as may be necessary for proper financial management under this Agreement in a system that is satisfactory to Owner. Construction Manager and all trade contractors shall keep detailed records (including accounts, vouchers, receipts, invoices, correspondence, memoranda, drawings and similar data) of all services performed and costs incurred under this Agreement, shall retain such records for a five-year period following the date of final completion and shall permit such records to be examined and

copies by Owner and by the Secretary of the U.S. Department of Health and Human Services, the Comptroller General, the U.S. Department of Energy and any of their duly authorized representatives. Construction Manager and all trade contractors shall also permit examination and copying by any of Owner's lenders and by regulatory and health insurance authorities and reimbursement agents, if such third parties require such examination and/or copying as a condition of advancing funds to or reimbursing Owner or granting permits or approvals to Owner. All such examinations and copying shall be upon such reasonable terms and conditions as Owner may impose and shall be at no cost to Construction Manager. The provisions set forth above shall be included in all trade contracts and purchase orders with a contract price of \$10,000.00 or more.

13.3 During this Agreement and for a period of five years succeeding the final completion, Owner shall have the right to employ, at his own expense, an independent accounting firm to examine Construction Manager's books, records, accounts and files for the purpose of cost accounting. Any discrepancy between accounting by the Owner's accounting firm and the Contractor's accounting shall be resolved by the parties. Owner shall be entitled to reimbursement for any over payment to the Construction Manager. In the event that the parties cannot reconcile the accountings, the parties shall choose an accounting firm to conduct a final accounting which will be binding on both parties. The parties shall each pay half of the fees for such an accounting. In the event that the parties cannot agree on a firm, then each party shall select an accounting firm and those two parties shall select a third accounting firm to conduct the accounting. The Owner's accounting firm and/or the independent accounting firm shall only have the right to review costs and records associated with this Project.

14. AWARD OF TRADE CONTRACTS.

14.1 Construction Manager shall conduct, with the Architect, pre-bid conferences to inform prospective bidders of requirements and answer questions concerning those requirements.

14.2 Construction Manager shall obtain bids for each trade contract from an appropriate number of qualified bidders so as to obtain the most reasonable price for acceptable work. The Contracts shall be competitively bid.

14.2.1 Construction Manager shall submit each of the recommended trade contracts to Owner for review and approval. Owner shall have the right to reject a trade contract if, in its sole discretion:

a) the contract was not obtained in compliance with a competitive bid;

b) the contract is not the lowest bid; or if not the lowest bids, there is not a justification acceptable to the Owner for contracting for a higher price; or

c) the contract is not within the GMP.

14.3 If the low bid for any bid package exceeds Construction Manager's budget line item price, one of the following procedures, with Owner's approval, shall be followed:

14.3.1 Construction Manager may reject all bids and issue a revised invitation to bid.

14.3.2 Construction Manager may negotiate with the low bidder to reduce the price of the bid package to a cost not exceeding the budget line item price.

14.3.3 Construction Manager may recommend award of a contract to the low bidder for a price exceeding the budget line item so long as the GMP is not exceeded.

14.4 With the Owner's approval, the Construction Manager may perform work on the Project himself, provided such work is performed on a cost of the work basis, for the amount of the budget line item price as a not to exceed cost. The Construction Manager shall be allowed a maximum mark-up of eight percent (8%) for overhead and profit on the Cost of the Work.

14.5 Construction Manager shall submit for approval by Owner, a standard form of Trade Contractor Agreement that it intends to use for each trade contractor and shall not deviate from this form without the written consent of Owner.

14.6 Owner shall be responsible for approving awards of all trade contracts after evaluation of bids and recommendation by Construction Manager and Architect. After approval is granted, Construction Manager shall award and enter into the separate contracts as required to provide all labor and materials for construction of the Project, including those parts of the Work which have been bid under Part A of the Agreement, and shall file a copy of each Agreement with Owner, prior to the commencement of that portion of the Work.

14.7 Each trade contract awarded and executed by Construction Manager shall be a separate Agreement awarded on the basis of competitive bids or negotiation if bidding is impractical. The relationship of Construction Manager to the trade contractor is the same as that of a general contractor to a subcontractor.

15. SURETY BONDS.

15.1 Construction Manager shall provide a separate Performance

Bond and a Labor and Material Payment Bond. The surety bond or bonds shall be executed by a surety company satisfactory to the Owner and qualified to do business in the State of New Jersey, and shall in each case be in an amount not less than one hundred percent (100%) of the Guaranteed Maximum Price. Such bonds shall conform to the requirements of N.J.S.A. 2A:44-143 et seq.

16. INSURANCE.

16.1 The Construction Manager, at its sole expense shall provide and maintain at least the insurance required herein so as to protect the Owner and Construction Manager from claims which may arise out of or result from the Construction Manager's operations under the Contract, whether such operations be by the Construction Manager or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Construction Manager shall provide the insurance in accordance with the terms and conditions contained herein and in Article 11 of the General Conditions.

16.2 The insurance required hereunder shall be written for not less than limits of liability specified in the Contract Documents including Paragraph 16.3 or required by law, whichever coverage is greater. Coverage, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment unless coverage is specifically required to be maintained after final payment.

16.3 The Construction Manager must provide and maintain insurance coverage amount, and limits not less than the higher of applicable Federal or State requirements pertaining to insurance for liability for damage imposed by law. The types and limits of insurance which Construction Manager is required to carry are as follows:

- .1** Workers Compensation Insurance as required by applicable Federal, State, or other laws including Employer's Liability.

The Owner shall have the right to terminate the Agreement for cause, if the Construction Manager shall fail to secure compensation and disability benefits coverage for the benefit of and keep insured during the life of the Work appearing in the Contract Documents, such employees in accordance with the provisions of the Worker's Compensation Law(s).

- .2** Comprehensive General Liability, written as broad as the standard coverage form currently in use in the State of New Jersey which shall not be circumscribed by any endorsements limiting the breath of coverage, including

Contractor's Liability; Independent Contractor's Liability; Contractual Liability including Defense; Completed Operations and Products Liability all on the occurrence basis with Personal Injury Coverage and broad Form Property Damage. Remove the XCU exclusion relating to Explosion, Collapse and Underground Property Damage. Completed Operations Liability shall be kept in force for at least five (5) years after the date of final completion. Limits of liability shall not be less than combined single limits of \$10,000,000, or higher limits if required by Owner.

- .3 Construction Manager shall provide for Builders Risk Insurance covering the interests of Construction Manager and Owner for all operations and services and materials provided pursuant to the Agreement excepting coverage of the building structure.
- .4 Comprehensive Automobile Liability on an occurrence basis covering owned, non-ownership and hired car coverage as well as owned vehicles not less than combined single limits of \$1,000,000.
- .5 Umbrella Policy shall be kept in force for at least five (5) years after the date of final payment.

16.4 If any of the foregoing insurance coverage are required to remain in force after final payment an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment. Information concerning reduction of coverage shall be furnished by the Construction Manager with reasonable promptness in accordance with the Construction Manager's information and belief.

16.5 The Construction Manager shall require subcontractors to provide Comprehensive General Liability, Comprehensive Automobile Liability, and Workers' Compensation Insurance with the same minimum limits.

16.6 Except for Workers' Compensation Insurance, the Construction Manager's insurance policies required under this Article shall name the Owner and its designated representative as additional insureds. The "University of Medicine and Dentistry of New Jersey, its officers and employees" shall be named as additional insureds.

16.7 The Construction Manager shall not commence the Work until it has obtained and provided a confirming certificate of insurance to the Owner naming Owner as certificate holder.

16.8 The Construction Manager shall not allow any Subcontractor to commence work on its subcontract until the insurance required has been obtained and confirmed to Owner.

17. CONSTRUCTION MANAGER'S DUTIES.

17.1 Construction Manager's Organization

17.1.1 Construction Manager shall provide to Owner an outline of its organization, including lines of authority required to complete the Project. A list of key personnel to be used on this Project shall be approved by Owner and shall be attached to this Agreement as Exhibit "C". No substitution of any key personnel shall be made by Construction Manager without the prior written consent of Owner.

A request for substitution shall include a detailed justification of the change and the qualifications of any proposed replacement.

17.1.2 The services called for in this Agreement shall be performed by Construction Manager's own staff, unless otherwise authorized in writing by Owner. Owner's approval of the use of services of any person or firm by Construction Manager shall not be construed as constituting an Agreement between Owner and any such person or firm.

17.1.3 Construction Manager shall perform all services under this Agreement in a competent and efficient manner. Owner may require Construction Manager to remove from the Work any employee Owner deems incompetent, careless or otherwise objectionable and to replace any such employees with suitable personnel acceptable to the Owner.

17.1.4 Construction Manager shall prepare and distribute a field operation manual to facilitate the administration of this Agreement. The manual shall include the following data:

- 17.1.4.1** Directory of Personnel with home telephone numbers
- 17.1.4.2** Correspondence Format
- 17.1.4.3** Report and Record Forms
- 17.1.4.4** Inspection Procedures
- 17.1.4.5** Shop Drawing Submission Identification Log
- 17.1.4.6** Shop Drawing Submission Procedures
- 17.1.4.7** Testing Laboratories Procedures
- 17.1.4.8** Contract Change Procedures and Change Order Request Log
- 17.1.4.9** Extension of Time Procedures
- 17.1.4.10** Progress Payment Forms and Procedures
- 17.1.4.11** Final Acceptance Procedures
- 17.1.4.12** Additional Instructions
- 17.1.4.13** Emergency Procedures
- 17.1.4.14** Safety and Loss Prevention Programs
- 17.1.4.15** Claim Avoidance Program and Procedures

17.2 Construction Manager shall conduct preconstruction conferences with successful bidders and shall schedule and conduct

regular Project progress meetings to be attended by the trade contractors and representatives of Owner and Architect to discuss procedures, progress, problems, schedule and equal employment opportunity. Construction Manager shall prepare and distribute minutes of such meetings to those in attendance.

17.3 Construction Manager shall review and refine construction cost estimates as construction proceeds to incorporate approved changes in the Project and in the Cost of the Work. Construction Manager shall advise Owner (or his representative) and Architect whenever construction costs differ from the costs set forth in the itemized Guaranteed Maximum Price.

17.4 Construction Manager shall establish and implement procedures for identifying all required submittals, shop drawings, catalogues and samples and for expediting the processing and approval of these submittals, shop drawings, catalogues and samples and for expediting, the processing, scheduling and delivery of materials.

17.5 Supervision of Trade Contractors.

17.5.1 Construction Manager shall maintain a competent full-time supervisory staff at the job site for the coordination, inspection and direction of the Work of the trade contractors. He shall determine the adequacy of the trade contractors' personnel and equipment and the availability of necessary materials and supplies, and shall take appropriate corrective action to maintain the Project schedule.

17.5.2 Construction Manager shall prepare an initial punch list at the time of substantial completion of the Work and shall participate with Owner and Architect in Project inspections at intervals of completion as well as in the Final Inspection, to insure that the materials furnished and work performed are in accordance with the Contract Documents. Architect or Owner shall have the authority and duty to reject work which does not conform to the Contract requirements. If interpretation of the meaning or intent of the Contract Documents is required, Construction Manager shall consult with Architect, obtain the interpretation in writing and transmit same to the appropriate trade contractor. The Owner shall be the final interpreter and the Owner's decision shall be binding on all parties.

17.5.3 The Construction Manager shall perform the Work in a prompt and diligent manner, shall commence the several parts thereof at such time, and shall proceed therewith in such order, as the Owner's Project Manager may direct, and shall finish the several parts and the whole of said Work at such items as will, in conjunction with the work of other trades engaged thereon, insure the uninterrupted progress of the entire Work. If, in the opinion of the Owner, the Construction Manager or any trade contractor or

subcontractor is not proceeding, with all due diligence to perform any part of his work, thereby impeding the progress of the Work, the Owner may direct the Construction Manager or the trade contractor or Subcontractor to perform such Work during, overtime hours, and such overtime Work shall be performed, as so directed, without any additional charge to the Owner.

17.5.4 The Construction Manager hereby waives any claims for damages due to delay in the progress of the Work, whether caused by the Owner, Architect, Materialman, or supplier. Should the Construction Manager be unreasonably delayed by the Owner, the Architect, or any of their agents, the Construction Manager shall be compensated for actual cost incurred as a result of the delay and the GMP shall be increased accordingly.

17.5.5 Any portion of the Work, which by its nature, requires its performance at times of day other than normal work hours of the trades involved, shall be performed by the Construction Manager accordingly and he shall bear the extra cost of such work. Owner will not pay extra charges for work performed at overtime rates of pay unless written directive to this effect is given by the Owner, including acknowledgment of the overtime rates, in instances when a more rapid performance of the Work is desired. Overtime charges agreed to by Owner will be paid at net additional cost without any increase in the Construction Manager's or trade contractor's fee or profit.

17.5.6 Construction Manager and all trade contractors shall perform the Work in a manner which will not in any manner interfere with or become intrusive upon the normal everyday business operations of the Owner. Construction Manager Work and the Work of all Subcontractors shall be scheduled so as to not cause interruptions in the operation or activities of the Owner.

17.5.7 Whenever used in this Agreement or the Construction Documents, the term "Subcontractor" shall include trade contractors, subcontractors, sub-subcontractors, suppliers, materialmen and laborers.

17.6 Construction Manager shall review the safety program of each of the trade contractors and shall prepare and submit to Owner a recommended comprehensive safety program which complies with the Occupational Safety and Health Act of 1970. Performance of such service shall not relieve the trade contractors of their respective responsibility for the safety of persons or property or from compliance with all applicable statutes, rules, regulations and orders. Construction Manager shall monitor compliance of the contractors with their contractual safety requirements and shall prepare a report of deficiencies. Construction Manager shall take necessary action to correct any and all deficiencies. Construction Manager shall be responsible for the safety and loss prevention programs.

17.7 Construction Manager shall administer a Labor Relations program. Any and all labor disputes with the trades shall be promptly and expeditiously resolved by the Construction Manager to the best of the Construction Manager's ability.

17.8 Job Site Records.

17.8.1 Construction Manager shall maintain at the job site, on a current basis, records of all contracts, shop drawings, samples, purchases, subcontracts, materials, equipment, applicable handbooks, Federal, commercial and technical standards and specifications and any other documents which arise out of this Agreement. These records shall be delivered to Owner prior to Final Payment.

17.8.2 Construction Manager shall maintain, in accordance with established procedures, cost accounting records of portions of the Work being performed on a time and material, unit cost, or similar basis, once these methods and procedures are approved by Owner.

17.8.3 Construction Manager shall record, accurately and in detail, on a daily basis, the progress of the Project during all stages of construction, shall allow Owner and Architect to review such records at any time and shall submit the records to Owner upon completion of the Project. He shall submit to Owner monthly written progress reports which include information concerning the work of each of the trade contractors, the percentage of completion and the number and dollar amount of Change Orders, along with Change Order Request Logs, Change Order Logs and Trade Contract Supplement Logs.

17.8.4 Construction Manager shall maintain at the jobs site copies of the Critical Path Schedule, reflecting current conditions and shall provide copies of same to Owner along with monthly reports of deviations from the schedule, the cause thereof and the corrective actions that have been taken or will be taken by Construction Manager to maintain the schedule.

17.8.5 Construction Manager shall maintain at the job site a current marked-up set of working drawing prints and specifications to facilitate the preparation of as-built drawings to be furnished to the Owner by the Construction Manager as a condition of final payment.

17.8.6 Construction Manager shall maintain at the job site and shall furnish to Owner and Architect certified surveys and records, in duplicate, of building and approach lines, elevations of bottoms of footings, floor levels and approaches, certified building location survey, structured steel plumbness survey and building wall plumbness survey.

17.9 Changes in the Work.

17.9.1 Construction Manager shall provide the Architect with all information, including costs, pertinent to each Change Order.

17.9.2 Construction Manager shall insure that all authorized changes in the Work are completed properly.

17.10 Construction Manager shall review and process all Applications for Progress Payment from the trade contractors and shall make recommendations for approval of the Applications to Owner. Upon receipt of payment, Construction Manager shall pay the trade contractors in accordance with Article 12. All trade contractor Application for Process Payment shall accompany the Construction Manager's Application for Payment.

17.11 Construction Manager and Owner shall coordinate the delivery of equipment furnished by Owner and to be installed by Construction Manager, with the general Project Schedule. Construction Manager shall receive materials and equipment purchased by Owner and to be installed by Construction Manager in connection with the Project. Owner shall provide, storage and protection of these materials and equipment until they are installed. Construction Manager shall also provide access to building, storage and protection of all Owner furnished and installed equipment. Construction Manager shall allow Owner or Owner's installers to install furniture, fixtures and equipment at Owner's convenience. The Owner acknowledges the need to coordinate the labor and installation of equipment on the Project and will not permit any of its contractors or installers to be disruptive to the progress of the Work. Construction Manager will assist the Owner in the installation of his furnishings and equipment, and shall make every effort to accommodate the overall Project Schedule. However Construction Manager shall not be liable for labor disputes with contractors beyond the direct control of the Construction Manager.

17.12 Project Closeout.

17.12.1 Construction Manager shall identify all items of Work to be completed or corrected to conform to the Contract Documents ("Punch List") at the time of substantial completion of each phase of the Work.

17.12.2 Construction Manager shall recommend, to Owner, the amount of payment to be withheld from each trade contractor until Final Completion of each phase of the Work.

17.12.3 Construction Manager shall secure the consent of his surety and those of his trade contractors for a reduction in retainage and for the remittance of Final Payment(s). The Construction Manager shall deliver a Certificate of Occupancy to the Owner before any final payments are made.

17.12.4 Construction Manager shall transmit to Project Manager all warranties, affidavits, receipts, releases, waivers or bonds indemnifying Owner against liens in the form required by Owner.

17.12.5 Construction Manager shall consult with and make recommendations to Owner in connection with the inadequate performance of materials, systems and equipment prior to final payments and during any warranty period; shall assist Owner in the inspection of the Work prior to final payments and to the expiration of the warranty period to ascertain the adequacy of the performance of materials, systems and equipment; shall document defects or deficiencies discovered by Owner during the warranty period; and shall prepare instructions for the correction of noted defects. The Owner may require the Construction Manager to post a Maintenance and Guarantee Bond to cover any defects or deficiencies in materials, systems and equipment prior to making final payments.

17.13 The Construction Manager will promptly and expeditiously resolve any and all labor disputes. Any expense relating to the resolution of a dispute shall be part of the Cost of the Work, to the extent that the dispute is not the fault of the Construction Manager.

18. WAIVER OF LIENS.

18.1 Construction Manager and every trade contractor, Subcontractor or Materialman who provides labor, materials or services in connection with the Work, shall waive its right to the benefit of a Mechanic's Lien and/or Stop Notice, and its right to file a Mechanic's Notice of Intention against Owner's interest in the building, improvements and real property owned by Owner, in connection with or arising out of the Work to be performed under the Contract Documents. By executing this Contract, the Construction Manager, for itself and for all trade contractors, Subcontractors and Materialmen to whom Construction Manager subcontracts any portion of the Work, does hereby waive its and their right to file a Mechanic's Notice of Intention, and to assert a Mechanic's Lien and/or Stop Notice against Owner for any labor, materials or services provided in connection with the Work.

18.2 In the event that Construction Manager or any trade contractor, Subcontractor or Materialman violates this provision by filing a Mechanic's Notice of Intention or Lien Claim or Stop Notice or any other instrument or document purporting to constitute or create, or in fact creating a lien or encumbrance against Owner or Owner's property, such filing and such lien shall be null and void and of no force and effect. Construction Manager shall promptly discharge of record, at Construction Manager's sole cost and expense, any such instrument, or document whether filed by Construction Manager, or any trade contractor, Subcontractor or

Materialman, and regardless of the status of payments on the job. If, after three (3) days written notice to the Construction Manager or to any trade contractor, Subcontractor or Materialman to discharge a Notice of Intention or Mechanic's Lien or Stop Notice filed by such person, such person has not discharged such lien or encumbrance, as a result of which Owner incurs expense, including attorney's fees and/or costs (collectively "expenses") in connection with the bonding, or discharge of such Notice of Intention, Mechanic's Lien or Stop Notice, the Construction Manager shall be liable to Owner for such expenses, and Owner shall have the right to terminate this Contract.

18.3 Construction Manager shall include this provision in all Contracts, subcontracts, or purchase orders between Construction Manager and his trade contractors, materialmen and suppliers. Even if not included in such agreements, however, this provision shall apply to and bind any and all trade contractors, sub-subcontractors, suppliers and materialmen of Construction Manager.

19. VALIDITY.

19.1 In the event that one or more of the provisions contained in the Contract is found, for any reason, to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of the Contract and the Contract shall be construed as if such invalid, illegal or unenforceable provision never had been contained in the Contract.

20. DISCOUNTS, REBATES AND REFUNDS.

20.1 All cash discounts shall accrue to Construction Manager unless Owner deposits funds with Construction Manager with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and all returns from the sale of surplus materials and equipment shall accrue to Owner and Construction Manager shall make provisions so that they can be secured.

21. ASSIGNMENT.

21.1 Neither this Contract nor any interest herein shall be assigned or transferred by Construction Manager except with the prior written approval of the Owner.

22. NOTICE/PROJECT MANAGER.

22.1 Any notices to Owner should be addressed to:

Senior Vice President for Finance
University of Medicine and Dentistry of New Jersey
65 Bergen Street - Suite 1438
Newark, New Jersey 07107-3001

with copies to:

Facilities Planning, Management, and Construction
University of Medicine and Dentistry of New Jersey
30 Bergen Street - ADMC 301
Newark, New Jersey 07107-3000

Notices to Construction Manager shall be addressed to:

23. TERMINATION FOR CONVENIENCE

23.1 The Owner reserves the right to terminate this Agreement upon thirty (30) days notice without cause. In the event the Agreement is so terminated the Construction Manager shall be entitled to payment for all work performed to the date of termination, and for terminating the work. Construction Manager shall be entitled to any costs involved in the early termination of the Work and trade contracts. However, Construction Manager shall not be entitled to the cost of any damages due to termination.

24. AUDITING

24.1 Upon Owner's request Construction Manager shall permit Owner to inspect and audit all data and records of the Construction Manager relating to its performance and that of its subconsultants and designees, if any, under this Agreement from the effective date hereof through and until the expiration of ten (10) years after completion of and final payment to the Construction Manager for all services performed pursuant to this Agreement. Construction Manager's failure to maintain or produce such records shall preclude the recovery by Construction Manager of any claim for costs under the Agreement. The Construction Manager further agrees to include in all its subcontracts hereunder a provision to the effect that the subconsultant agrees that Owner, and any of its duly authorized representatives, shall, until the expiration of ten

(10) years after final payment to the Construction Manager under the subcontract, have access to and the right to examine any books, documents and other records related to the subconsultant's performance under the subcontract and the failure to maintain or produce such records shall preclude the recovery of any claim for such costs.

If the Owner undertakes an audit of accounting records and such audit results in a finding of excessive profit due to improper statement of hourly rates, overhead, time required or other estimated cost of data upon which the contract was negotiated, the Owner has the authority to reduce the stipulated fee to an amount considered commensurate with the actual scope of work or to seek repayment of any excessive amounts already paid by Owner.

25. INDEMNIFICATION

25.1 To the fullest extent permitted by law, the Construction Manager shall defend, indemnify and hold harmless the Owner and Architect and their respective agents and employees from and against any and all claims, damages (excluding property damage to the Work itself), losses, expenses and liabilities, including but not limited to attorney's fees, to the extent arising out of or resulting from the willful or negligent acts or omissions of the Construction Manager, trade contractors and subcontractors and their respective agents and employees and any other persons performing any work on the Project provided that such claim, damage, loss or expense, liability is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including loss of use resulting therefrom or to breaches of contractual obligations or torts. The indemnification provided by the Construction Manager under this Article shall not extend to the liability of the Architect, its agents or employees, arising out of the Architect's preparation of the plans, specifications, reports, designs, drawings, or the giving of or failure to give directions or instructions by the Architect, his agents or employees.

25.2 Notwithstanding any provisions cited within Article 25, Construction Manager's indemnification and hold harmless does not extend to work associated with asbestos removal or site remediation for the removal of fuel tanks, provided that Construction Manager's subcontractor providing any such asbestos or site remediation work, agrees to defend, indemnify and hold harmless the Owner.

25.3 Construction Manager agrees and understands that the Attorney General of the State of New Jersey represents the Owner and will participate in any action involving the Owner which relates to the subject matter of the claim indemnified by the Construction Manager under this section and nothing contained herein shall be construed to prevent such participation; and, provided further that the Attorney General of New Jersey shall retain sole control, of the

defense of any such claim and negotiations for its settlement or compromise to the extent that the Attorney General solely and exclusively determines that such claim implicates the public policy of the State of New Jersey including, without limitation, the constitutionality, the validity of statutory administrative or decisional law, the appropriateness of State action or the propriety of the conduct of State officers, employees of agents.

25.4 Construction Manager shall be liable to the Owner for any reasonable costs incurred by the Owner to correct or modify any work by the Construction Manager that is found to be defective or not in accordance with the provisions of this Agreement as a result of negligent act, error or omission on the part of the Construction Manager, its agents, servants or employees. The Construction Manager shall be given reasonable opportunity to correct any deficiencies. Furthermore, the Construction Manager agrees that the provisions of this indemnification shall in no way limit the Construction Manager's obligations assumed in this Agreement, nor preclude the Owner from taking any other actions available under any other provisions of this Agreement or otherwise at law or in equity. This indemnification obligation is not limited by, but is in addition to the insurance obligations contained in this Agreement.

25.5 The Construction Manager's obligation to defend, indemnify and hold harmless hereunder shall survive the termination and term of this Agreement.

25.6 The Construction Manager shall give prompt notice to the Owner of all losses, damages or injuries to persons or property of the Owner, the Construction Manager or third persons in any way related to this Agreement or for which a claim might be made against the Owner and shall promptly report to the Owner all such claims of which the Construction Manager has notice, whether relating to matters insurance or uninsured. No settlement or payment of any claim for loss, injury or damage or other matter as to which the Owner may be made in a manner which may leave Owner at risk of any future liability for the claim, loss, injury or damage for which a settlement or payment is made.

25.7 The above provisions shall be included in any subcontracts or purchase orders issued or entered into by Construction Manager for any portion of the Work required under the Contract Documents. All trade contractors, Materialmen and Suppliers shall agree to be bound to the Construction Manager by the terms of the Construction Manager's Contract Documents with the Owner, a copy of said Contract Documents being available for inspection at the office of the Construction Manager; and they shall further agree that all obligations, conditions and requirements imposed or to be imposed upon the Construction Manager by the said Contract Documents shall be performed by them to the extent applicable to the work subcontracted or purchased from them by Construction Manager; and they shall assume toward the Construction Manager all the

obligations and responsibilities that the Construction Manager, by the said Contract Documents, has assumed or will assume toward the Owner with respect to such Work.

26. MISCELLANEOUS PROVISIONS.

26.1 Definitions Terms used in this Agreement which are defined in the General Conditions of the Contract shall have the meanings designated in those Conditions.

26.2 Non Discrimination The provisions of Section 202 of Executive Order 11246 and Section 60-1.4., and 60-1.7, 60-1.8 of Chapter 60 of 41 Code of Federal Regulations, as amended, prohibiting discrimination against any employees or applicant for employment because of race, color, religion, sex, or national origin; Section 60-741.4 of Chapter 60 of 41 Code of Federal Regulation, as amended prohibiting discrimination against any employee or applicant for employment because of physical or mental handicap; and Section 60-250.4 of Chapter 60 of 41 Code of Federal Regulations, as amended providing for employment of disabled veterans and veterans of the Vietnam era, and the federal laws prohibiting discrimination against any employee because of a disability are hereby incorporated by reference in the same extent and with the same force and effect as if set forth herein in full.

In addition the provision of N.J.S.A. 10:5-31 through 10:5-40, prohibiting discrimination and requiring affirmative action on the part of vendors providing services to state agencies, are hereby incorporated by reference to the same extent and with the same force and effect as if set forth herein in full.

26.3 Non Collusion Both parties agree that no fee, commission, compensation, gift or gratuity was paid or received in regards to the solicitation of this Agreement, in contravention to N.J.S.A. 52:13D-13 et seq. Construction Manager warrants and represents that it has not and shall not violate any provision under said law in the procurement or performance of the Agreement.

In addition, the provisions of paragraph 3(a) through 3(f), of New Jersey Executive Order No. 189 (1988), prohibiting conflicts of interest on the part of vendors providing services to state agencies, are hereby incorporated by reference to the same extent and with same force and effect as if set forth herein in full.

26.4 Entire Agreement The parties agree that they are not relying upon any promises, understanding, warranties, circumstances, conduct, negotiations, expectations, representations or agreements, oral or written express or implied, other than those expressly set forth herein; that this Agreement is a complete integration and constitutes the entire agreement of the parties with respect to the subject matter hereof; that no amendments or other modifications of this Agreement shall be valid unless in writing and signed by an authorized officer of each party hereto; that this entire Agreement

has been bargained for and negotiated; and the parties have read, understood and approved this Agreement in its entirety.

26.5 Governing Law This Agreement shall be governed by the laws of the State of New Jersey, including the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq. and New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq. and any cause of action between the parties shall have jurisdiction and venue only in the courts of the State of New Jersey in and of the County of Essex.

The Construction Manager, by entering into this Agreement, consents and submits to the exclusive jurisdiction of the Courts of New Jersey over any action at law, in equity or other proceeding that may arise out of this Agreement, and the Construction Manager agrees, during the period of performance and of warranty, to maintain within the State of New Jersey and agent to accept service of legal process on its behalf. The Construction Manager expressly waives trial by jury on any and all disputes and claims arising out of this Agreement whether by or against the Construction Manager or Owner.

26.6 Interpretation This Agreement has been negotiated between the parties. Accordingly no provision of this Agreement shall be construed more harshly against one party by reason of such party being deemed the "author" of the Agreement.

26.7 Independent Contractor Construction Manager shall remain an independent contractor for the term of this Agreement. Nothing contained herein shall be construed to make the Construction Manager an employee of the University. Construction Manager warrants that it is capable of providing the services contemplated herein, by trained and licensing.

26.8 Non Waiver The failure of either party to insist on strict performance of any of the provisions of this Agreement shall not be construed as a waiver of any other default whether or not of the same or similar nature.

26.9 Limitation of Liability The liability of the Construction Manager to the Owner for any negligent act, error, or omission or wrongful conduct shall be determined in accordance with the provisions of the laws of the State of New Jersey. The terms and conditions of this Agreement are not intended to increase or limit such liability.

26.10 Third Party Beneficiaries Nothing in this Agreement shall be construed to give any rights or benefits under this Agreement to anyone other than the Owner or Construction Manager.

26.11 Successors and Assigns Construction Manager and University bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and the

partners, successors, assigns and legal representatives of such other party with respect to all covenants to this Agreement.

26.12 Assignment This Agreement contemplates personal services by the Construction Manager. Construction Manager shall, therefore, not assign, subcontract or transfer its corporate interest herein without the written approval of the University.

26.13 Publicity Publicity and/or public announcements pertaining to the Project shall be cleared by the University in writing prior to release.

26.14 Severability If any provision in this Agreement is held invalid, void or unenforceable by a court of competent jurisdiction or by operation of any applicable law, and if it shall not reasonably appear to have been so material that without it the Agreement would not have been made by the parties, the remaining clauses or provisions shall nevertheless continue in full force and effect, without being impaired or invalidated.

26.15 Provision Deemed Inserted Each and every provision of law and clause required by law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is incorrectly inserted, then upon notice by either party, this Agreement shall forthwith be physically amended to make such insertion.

IN WITNESS WHEREOF, Construction Manager has caused this Agreement to be executed by his duly authorized representative and Owner hereto has caused this Agreement to be executed by its duly authorized representative.

CONSTRUCTION MANAGER

OWNER
UNIVERSITY OF MEDICINE AND
DENTISTRY OF NEW JERSEY

By: _____
as its

By: _____
Denise Mulkern
Senior Vice President for
Finance

Date: _____

Date: _____

owner/cm/gmp
c/kw/9/17/98

Request for Proposal for
Construction Management Services
For Reconstruction of the GA-Level, 6th, 10th, and 11th Floor
School of Nursing – Stanley S. Bergen Jr. Building
and
Renovations to the Pediatric Dentistry & Special Care Treatment Suite
New Jersey Dental School

RFP #P12-061

ATTACHMENT C

GENERAL CONDITIONS FOR THE CONTRACT FOR CONSTRUCTION
WITH ARCHITECT AND CONSTRUCTION MANAGER WITH GMP

For Construction with a Construction Manager who holds the Trade Contracts

The General Conditions listed above are enclosed following this page.

**GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION
WITH ARCHITECT AND CONSTRUCTION MANAGER WITH GMP**

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**GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION
WITH ARCHITECT AND CONSTRUCTION MANAGER WITH A GMP**

ARTICLE 1

GENERAL PROVISIONS

1.1 BASIC DEFINITIONS: As used in the Contract Documents (as herein defined), the following terms shall have the following meanings:

1.1.1 "acceptable", "necessary", "proper", "satisfactory", "sufficient" or similar expressions shall mean acceptable, necessary, proper, satisfactory, or sufficient in the sole judgment of the Architect and/or Owner.

1.1.2 "Agreement" shall mean the Agreement between the Owner and Construction Manager.

1.1.3 "approved" or "approval" or words of like import shall mean the written approval of the Owner and/or Architect.

1.1.4 "Architect" shall mean the person, or the entity consisting of persons, lawfully licensed to practice architecture as identified in the Agreement and referred to throughout the Contract Documents as if singular in number. The term "Architect" shall mean the Architect or the Architect's authorized representative(s).

1.1.5 "Claim" shall mean a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of the terms in the Contract Documents, payment of money, extension of time or other relief with respect to the terms of the Contract Documents and includes other disputes and matters in question between the Owner and Construction Manager arising out of or relating to the Contract Documents.

1.1.6 "Concealed" shall mean hidden from sight as in chases, furred spaces, shafts, hung ceilings or embedded in construction.

1.1.7 "Contract Documents" are as defined in the Agreement.

1.1.8 "Contract Limit Lines" shall mean the lines shown on the Drawings surrounding the Work, beyond which no Work is required, or activity permitted (except for necessary movement of material or personnel) unless shown or specified otherwise.

1.1.9 "Construction Manager" shall mean the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as singular in number. "Construction Manager" shall mean the Construction Manager or the Construction Manager's authorized representative(s). Whenever the term "Construction Manager" is modified in any way, such as, without limit, "this contractor", "plumbing contractor", "electrical contractor", the modified term shall be deemed to refer to the trade involved with the Work mentioned, but such meaning does not relieve the Construction Manager from its responsibility for all Work, whether or not such Work is sublet.

1.1.10 "Day(s)" shall mean calendar day(s) unless otherwise indicated.

1.1.11 "Drawings" shall mean and refer collectively to the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams and any amendments or supplemental documents that may be issued by the Architect and accepted by the Owner. The Drawings, constituting integral parts of the Contract Documents, serve as the bidding and working drawings (construction drawings) and indicate the arrangement of materials and completed physical spaces desired by the Owner.

1.1.12 "equal" or "equivalent" or words of like import shall mean being the same in value, measure, force, effect or significance and corresponding in position or function, subject to the approval of the Architect and/or Owner.

1.1.13 "Modification" shall mean (1) a written amendment to the Agreement 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.

1.1.14 "Owner" shall mean the University of Medicine and Dentistry of New Jersey, a public instrumentality and agency of the State of New Jersey, as identified in the Agreement. The term Owner means the Owner or the Owner's authorized representative(s).

1.1.15 "Project" shall mean 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 or by separate contractors.

1.1.16 "Project Manual" shall mean the volume that is usually assembled for the Work, which may include the Request for Bid and the bid requirements contained therein, the General Conditions, Supplementary General Conditions, Specifications and any addendum or Modifications to such documents.

1.1.17 "Site" shall mean the area on which the Project is to be constructed under the Contract Documents and such other areas as may be designated by Owner for access thereto and for the storage of the Construction Manager's materials and equipment.

1.1.18 "Specifications" shall mean the written requirements for materials, equipment, furniture, furnishings, products, execution, construction systems, standards and workmanship for the Work and performance of related service, together with any amendments issued by the Architect and accepted by the Owner. The Specifications, constituting integral parts of the Contract Documents, serve as the bidding, purchasing and installation specifications and indicate the type and quality of materials, equipment, etc., as well as the quality of workmanship.

1.1.19 "Subcontractor" shall mean a person or entity who has a direct contract with the Construction Manager to perform a portion of the Work under the Contract Documents or the subcontractors of any tier of such person or entity. 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.

1.1.20 "Work" shall mean the construction and services required by the Contract Documents, whether completed or partially completed, and includes all labor, materials, supplies, equipment, tools, management, supervision, overhead, profit and services provided or to be provided by the Construction Manager to fulfill the Construction Manager's obligations under the Contract Documents. The Work may constitute the whole or a part of the Project.

1.1.21 "Project Schedule" shall mean the time frame for the total construction of the Work within which the Project shall be completed, beginning with the execution of the Agreement and ending upon final payment to the Construction Manager. The Project Schedule shall include a Critical Path.

1.2 EXECUTION, CORRELATION AND INTENT OF CONTRACT DOCUMENTS

1.2.1 Execution of the Agreement by the Construction Manager is a representation that the Construction Manager has (1) visited and accepted the Site, (2) become familiar with local conditions under which the Work is to be performed, (3) correlated personal investigations with requirements of the Contract Documents and (4) determined that the Contract Documents are sufficient to enable the Construction Manager to construct the Work and to achieve substantial completion by the date set forth in the Agreement.

1.2.1.1 The Construction Manager and each subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation (1) the location, condition, layout and nature of the Site and surrounding areas, (2) generally prevailing climatic conditions, (3) anticipated labor supply and costs, (4) availability and cost of materials, tools and equipment and (5) other similar issues. The Owner assumes no responsibility or liability for the physical condition or safety of the Site or any improvements located on the Site. The Owner shall not be required to make any adjustment in either the Contract Sum or Contract Time in connection with any failure by the Construction Manager or any subcontractor to comply with the requirements of this paragraph 1.2.1.1.

1.2.2 Where existing field conditions are visible (e.g. accessible by observation and investigation, including crawl spaces, attics, over ceiling spaces, etc., but excluding excavation) the Construction Manager and all his Subcontractors shall be held to have verified such conditions and to have accounted for same whether or not they are accurately indicated in the Contract Documents. Where existing field conditions are not visible (i.e. below grade) and existing items are indicated on the Drawings, such items shall be considered as being shown schematically only and shall not relieve the Construction Manager from making further investigations.

1.2.3 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Construction Manager. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. Any omissions from the Contract Documents which are necessary or required to carry out the intent of the Contract Documents, or which are customarily performed with regard to the Work, shall not relieve the Construction Manager from performing such omitted details or Work, but shall be deemed to be understood by the Construction Manager as being implied and required by the Contract Documents and Construction Manager shall be obligated to perform all such Work or omitted details as if specifically delineated or described in the Contract Documents.

1.2.3.1 In the event that the Construction Manager discovers any error, omission or conflict as to the intent of the Contract Documents with regard to the proper execution and completion of the Work, the Construction Manager shall immediately notify the Owner and the Architect and seek correction or interpretation thereof prior to starting the affected Work. The Architect, in consultation with the Owner, will then make such corrections and interpretations in accordance with, and as may be deemed necessary for fulfilling, the intent of the Contract Documents. Construction Manager shall make no claim against Owner for expenses incurred or damages sustained as a result of such error, omission or conflict in the Contract Documents.

1.2.4 The Drawings and Specifications are intended to agree and be mutually explanatory and shall be accepted and used as a whole and not separately. If any item be omitted from the Drawings and be included in the Specifications, or visa-versa, the Construction Manager shall execute the Work as if the item were shown and contained in both. It is the Construction Manager's responsibility to examine the Drawings and Specifications to ascertain the full scope of the Work appearing in the Contract Documents including, but not limited to, connections, supports and installation of equipment furnished by other trades or contractors.

1.2.4.1 Organization of the Specifications into divisions, sections and articles and the arrangement of Drawings shall not control the Construction Manager in dividing the Work among Subcontractors or in establishing the extent of the Work to be performed by any trade. Subcontractors shall be familiar with all applicable sections of these Contract Documents. The Specifications are generally divided into trade sections in accordance with the Construction Specifications Institute Uniform System for Construction Specifications for purposes of convenience and easy reference and no attempt has been made in the Specifications to segregate Work to be performed by any trade or subcontract under any one section or part thereof. The manner in which the Specifications are organized or arranged shall not operate to make either the Owner or Architect arbiters establishing limits to contracts or subcontracts between the Construction Manager or any Subcontractors. The Construction Manager is responsible for allotting the work of Subcontractors at its own discretion, regardless of the grouping in the Specifications. It shall be the Construction Manager's responsibility to determine definitively with each Subcontractor the portions of the Work which each will be required to perform.

1.2.4.2 It is the intent of the Contract Documents that the Work included under each section of the Specifications shall cover manufacture, fabrication, delivery, installation and make operational and/or erections, together with all incidentals thereto, unless otherwise noted or specified. The Construction Manager understands and agrees that when a "Work Included" paragraph is made a part of the Specifications, it is intended to be general and in no way limits or qualifies the requirements appearing in the other Contract Documents.

1.2.4.3 For interpretive purposes, Specifications are primarily intended to establish products and conditions of Work and quality of materials and of workmanship and Drawings are primarily intended to indicate locations, arrangements and assemblies of the parts of the systems.

1.2.4.4 Drawings of all trades, such as general construction (referred to as "architectural"), structural, plumbing, fire protection, furniture, fixtures, and equipment drawings, mechanical, plumbing, site, HVAC and electrical, complement each other and no Drawings are to be considered complete for any trade without reference to all other Drawings.

1.2.4.5 From time to time as the Work progresses, the Owner reserves the right to direct the

Architect to change the design as shown or any specified details, to amplify Drawings, to add explanatory Specifications and to furnish additional Drawings and Specifications without additional cost to Owner and any such supplementary Specification or Drawing shall be deemed as being included as part of the Contract Document to which it relates. If, in the opinion of the Construction Manager, the Contract Documents as so modified show additional Work or Work of a more expensive character than that shown or implied by the Contract Documents in their form at the time of execution of the Agreement, it shall be the duty of the Construction Manager to so notify the Architect within ten (10) Days from the date that the supplementary document is issued by the Architect or Construction Manager shall be forever barred from pursuing such claim.

1.2.5 Titles of articles, divisions and paragraphs in the Contract Documents are introduced merely for convenience and reference only and in no way define and/or limit the scope and content of the Contract Documents, or in any way affect their provisions. No responsibility, either direct or implied, is assumed by the Owner for omission or duplication by the Construction Manager or its Subcontractors due to real or alleged error in the arrangement or the material in the Contract Documents.

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

1.2.7 Each and every provision required by law to be inserted in the Contract Documents shall be deemed to have been inserted therein and the Contract Documents shall be enforced as if the provision were included. If any such provision has been omitted or has not been correctly inserted, then upon application of either party, the Contract Documents shall be physically amended to provide for such insertion or correction at no additional cost to the Owner.

1.2.8 In the event of any inconsistency or conflict in the terms of the Contract Documents, the terms shall govern and be given preference in the following order with the highest first:

- .1** Modifications or supplementary agreements issued after execution of the Agreement;
- .2** Addenda;
- .3** Agreement;
- .4** Request for Bid, except for Specifications and Drawings;
- .5** Supplementary General Conditions, including Division 1 of the Specifications;
- .6** General Conditions;
- .7** Specifications, except Division 1; and
- .8** Drawings, in the following order of precedence:
 - (a) written words or notes on Drawings

- (b) schedules
- (c) large scale details
- (d) small scale details
- (e) computed or figured dimensions
- (f) scaled dimensions.

1.2.9 Where there may be a conflict in the Specifications, Drawings or other Contract Documents not resolvable by application of the provisions of paragraph 1.2.8: (1) the more expensive labor, materials or equipment shall be deemed to be required and shall be provided by the Construction Manager, unless the Owner otherwise agrees in writing or the Construction Manager shall have asked for and obtained a decision in writing from the Owner, before submission of the Construction Manager's bid, as to which shall govern; and (2) descriptions of the Work in general terms, but not in complete detail, shall be deemed to mean that the best general construction practice is to prevail and only materials and workmanship of first quality shall be used and provided by the Construction Manager.

1.2.10 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.

1.2.11 Construction Manager acknowledges that Owner must comply with the requirements of the State of New Jersey and all local and county agencies having jurisdiction thereof in order to obtain economic benefits essential to the Project. Construction Manager agrees to use its best efforts to assist Owner in documenting compliance with such requirements, and shall furnish materials, information, and data and execute documents and take other reasonable action requested by Owner to satisfy administrative obligations. In connection with the Work, Construction Manager shall also cooperate with informational requests of pertinent agencies such as the State Historic Preservation Office, the United States Department of Interior, and the United States Internal Revenue Service.

1.3 OWNERSHIP AND USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

1.3.1 The Drawings, Specifications and other documents prepared by the Architect are instruments of the Architect's service through which the Work to be executed by the Construction Manager is described. The Construction Manager may retain one contract record set. Neither the Construction Manager nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect, and unless otherwise indicated the Architect shall be deemed the author of them and will retain all common law, statutory and other reserved rights, in addition to the copyright. All copies of them, except the Construction Manager's record set, shall be returned or suitably accounted for to the Architect, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Architect, and copies thereof furnished to the Construction Manager, are for use solely with respect to this Project. They are not to be used by the Construction Manager or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner and Architect. The Construction Manager, Subcontractors, Sub-subcontractors and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the

Drawings, Specifications and other documents prepared by the Architect appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this license shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect. 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 copyright or other reserved rights.

1.3.2 The Construction Manager shall perform no Work without first having the Drawings and Specifications approved by the Owner.

1.4 CONFIDENTIALITY

1.4.1 Construction Manager hereby warrants and represents that Construction Manager shall not knowingly or negligently communicate or disclose at any time to any person or entity any information in connection with the Work or the Building, except (i) with Owner's prior written consent; (ii) as necessary to perform the Work, provided Owner receives prior notice of such necessity; or (iii) as may be required by law. Any authorized communication or disclosure shall be limited strictly to the extent of such authorization. If any person or entity seeks confidential information from Construction Manager regarding the Work or the Building, Construction Manager shall promptly notify Owner. All records and documents in connection with the Work and the Building are hereby considered proprietary materials and are confidential information. Construction Manager shall cause any Subcontractors, material suppliers, consultants, or any other person or entity performing any portion of the Work to warrant and represent the items set forth in this paragraph. The representations and warranties contained in this Paragraph 1.4.1 shall survive the complete performance of the Work or earlier termination of the Contract.

1.4.2 The Construction Manager, at any time upon the request of the Owner, shall immediately return and surrender to the Owner all copies of any materials, records, notices, memoranda, recordings, drawings, specifications and mock-ups and any other documents furnished by the Owner or the Architect to the Construction Manager.

ARTICLE 2

OWNER

2.1 REPRESENTATION, INFORMATION AND SERVICES

2.1.1 The Owner may designate a Project Manager to represent it in contractual, technical and administrative matters with the Construction Manager. The Project Manager shall have the authority to stop the Construction Manager's Work whenever such stoppage may reasonably be necessary to insure the proper execution of the Work. The Owner's stoppage of the Work of the Construction Manager shall not render the Owner liable for claims of any kind including, without limitations, claims for money damages, either by the affected Construction Manager or by any other Construction Manager or Subcontractor or material supplier or anyone else performing work for the Construction Manager.

2.1.2 The Owner will assign its own technical assistants to conduct on-site observations of the Work

as a basis for determining the progress and conformance of Work, materials and equipment with the Contract Documents. These assistants may also receive and maintain custody of samples, guarantees, and manuals furnished by the Construction Manager; assist in reviewing Construction Manager's requisitions for payment and in providing liaison between the Construction Manager and the Architect. The presence of and/or observations of these personnel shall not relieve the Construction Manager, or the Architect of any of their respective responsibilities under the Contract Documents.

2.1.3 The Owner or Architect shall furnish, if available, surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. If not available, the Construction Manager shall perform its own investigations and provide the needed information.

2.1.4 The Owner will furnish the Construction Manager with the Owner's tax exempt memorandum. The Owner is a tax exempt organization under applicable Federal and State Laws and Regulations relating to tax exempt organizations.

2.1.4.1 In view of the foregoing, Construction Manager shall not include in the Contract Sum, any amount for applicable Federal and/or State sales or use taxes.

2.1.5 The Construction Manager will be furnished free of charge one (1) review print and one (1) sepia, or mylar, copy of Contract Drawings and one (1) printed copy of the Project Manual as defined in the Contract Documents. Additional prints and copies will be furnished at the cost of reproduction, postage and handling.

2.1.6 The foregoing are in addition to other duties, rights and responsibilities of the Owner enumerated herein and especially those in respect to Article 6 (Construction by Owner or by Separate Construction Managers), Article 9 (Payments and Completion) and Article 11 (Insurance and Bonds).

2.2 OWNER'S USE OF PREMISES AND EQUIPMENT

2.2.1 The Owner reserves the right, upon written notice to the Construction Manager, to occupy any portion of the Work prior to Substantial Completion in accordance with Paragraph 9.9.

2.2.2 The Owner shall have the right to operate any and all equipment as soon as, and as long as, it is in operating condition whether or not such equipment has been accepted as complete and satisfactory, except that this shall not be construed to permit operation of any equipment which may be materially damaged by such operation before any required alterations or repairs have been completed. Any such repairs or alterations required of the Construction Manager shall be made by the Construction Manager at such times as directed by the Architect or Owner. Further, repairs or alterations shall be made in such a manner and at such time as will cause the minimum interruption in the use of the premises and equipment by the Owner as decided by the Owner.

2.2.3 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Construction Manager defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the

Owner to commence and continue correction of any default or neglect with diligence and promptness, the Owner may correct such deficiencies without prejudice to other remedies the Owner may have. In such case an appropriate backcharge Change Order shall be issued deducting from payments then or thereafter due the Construction Manager the cost of correcting such deficiencies including compensation for the Architect's and Owner's additional services and expenses made necessary by such default, neglect or failure. If payments then or thereafter due the Construction Manager are not sufficient to cover such amounts, the Construction Manager shall pay the difference to the Owner.

2.2.4 EXTENT OF OWNER RIGHTS

2.2.4.1 The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any other rights of the Owner granted in the Contract Documents, at law or in equity.

2.2.4.2 In no event shall the Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the Owner in the Contract Documents.

ARTICLE 3

CONSTRUCTION MANAGER

3.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONSTRUCTION MANAGER

3.1.1 The Construction Manager has the duty and warrants and represents that prior to submitting its bid and entering into the Agreement, the Construction Manager: (1) has thoroughly examined and is familiar with all of the Contract Documents, including, but not limited to, the complete set of Drawings and Specifications of the Project and any connections, utilities, underground construction, supports or work, materials or equipment that is to be furnished by the Construction Manager, other trades or contractors; and (2) has carefully examined and inspected the Site and any existing improvements and has satisfied itself as to the conditions thereof and the nature and location of the Work, the current local equipment, labor and material conditions and all other matters that may affect the Work or its performance. The Construction Manager is responsible for checking and verifying observable conditions outside the Contract Limit Lines to determine whether any conflict exists with the Work Construction Manager is required to perform under the Contract Documents, including, without limitation, a check on elevations, utility connections and other Site data. The Construction Manager warrants and represents that it has verified field conditions and dimensions by taking its own measurements at the Site as well as any other measurements, all as necessary to verify the Contract Documents and the proper lay out of the Work. As a result of such examinations, the Construction Manager warrants and represents that, except as to any reported errors, inconsistencies or omissions, and to concealed or unknown conditions defined in Paragraph 1.1.6, the Contract Documents are sufficiently complete and detailed for the Construction Manager to (1) perform the Work required to produce the results intended by the Contract Documents and (2) comply with all requirements of the Contract Documents and it fully understands the intent and purposes of the

Contract Documents and its obligations thereunder and that the Construction Manager accepts responsibility for, and is prepared to execute and completely fulfill, the intent of the Contract Documents, without exception or reservation, at the agreed contract sum and Construction Manager understands that no increase shall be permitted.

3.1.2 Errors, inconsistencies and omissions discovered by the Construction Manager in the Contract Documents or that affect the layout of the Work shall be immediately reported to the Architect and the Owner by the Construction Manager and Construction Manager shall halt all affected Work until such discrepancies have been corrected. The Architect, in consultation with the Owner, will then make such corrections and interpretations in accordance with, and as may be deemed necessary for fulfilling, the intent of the Contract Documents. No Work shall be commenced by the Construction Manager until the error, inconsistency or omission is verified and resolved to the satisfaction of the Owner. Construction Manager will not be entitled to any compensation, expenses or damages for the correction of errors, inconsistencies or omissions that could have been avoided by its obligation to examine the Contract Documents, Site or by the minor adjusting of size or location of various items for proper fit.

3.1.2.1 If with the knowledge of such error, inconsistency or omission and prior to correction thereof by the Owner, the Construction Manager proceeds with any construction affected thereby, the Construction Manager shall do so at its own risk and the Work so done shall not be considered as Work done under and in accordance with the Contract Documents, unless and until approved and accepted by the Architect and Owner.

3.1.3 The Construction Manager shall perform the Work in accordance with the Contract Documents and submittals approved pursuant to paragraph 3.11 and no deviations therefrom shall be performed without approved Change Orders, Construction Change Directives, approved shop drawings, approved coordination drawings or samples or other approvals as may be applicable and required by the Contract Documents.

3.1.4 During the progress of the Work, the Construction Manager may propose modifications to the Contract Documents, which modifications may be accepted in accordance with Article 7 Changes in the Work.

3.2 PRECONSTRUCTION CONFERENCE

3.2.1 A conference will be held before starting any Work under the Agreement, at which time the Construction Manager and its superintendent shall meet with the Architect and the Owner for the purpose of approving the list of Subcontractors, and developing mutual understanding with respect to construction schedules and procedures for prosecution of the Work. At this meeting any detailed requirements of the Drawings and Specifications which are not understood will be clarified. The Owner will establish a mutual time and place of the meeting and notify the Construction Manager thereof. The Owner may require at its discretion additional meetings with or without the Construction Manager's major Subcontractors.

3.3 SUPERVISION, SUPERINTENDENCE AND CONSTRUCTION PROCEDURES

3.3.1 The Construction Manager shall supervise and direct the Work, using the Construction Manager's best skill and attention. The Construction Manager shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for

coordinating all portions of the Work.

3.3.2 The Construction Manager shall designate in writing a competent full-time resident Project Superintendent to supervise and direct the Work, a competent Project Manager to provide project and administrative management and a competent Project Engineer who will assist the Project Superintendent. None of these personnel shall be replaced without written notice to and approval by the Owner. The superintendent shall be the Construction Manager's representative at the site and shall have authority to act on behalf of the Construction Manager. All communications given to the superintendent shall be as binding as if given to the Construction Manager. The Construction Manager shall provide a management chart and a list of personnel comprising the superintending staff and their areas of responsibility. All references herein to the superintendent shall be taken to mean the Construction Manager's superintendent staff. Should the Owner for any reason feel a different superintendent is beneficial to the work, at the Owner's request, the Construction Manager shall assign a different superintendent to the Project. The Construction Manager shall indicate to the Owner which of its staff is the Safety Engineer on the Project.

3.3.2.1 The Project Superintendent shall, during the performance of the Work, remain on the Project site not less than eight hours per day, five days per week until termination of the Contract, unless the job is suspended or work stopped by the Owner. The Project Superintendent shall not be employed or used on any other project during the course of the Work. The Project Superintendent shall also be on site at all times that work is being performed including overtime and weekends.

3.3.2.2 The Construction Manager shall not remove the Project Superintendent from the Site, without concurrence of the Architect or Owner until all of the punchlist items have been completed to the satisfaction of the Architect or Owner.

3.3.3 The Construction Manager shall submit a job organization chart, for the approval by the Owner, identifying the personnel it intends to assign to the Project to the Owner within seven (7) days after the Construction Manager has executed the Agreement. The Construction Manager shall also furnish the Owner in writing the names, addresses and office, home, mobile, pagers, etc. telephone numbers of the members of its organization and subcontractors' organizations who can be contacted in the event of an after-hours emergency at the Project site. The Owner shall do the same for the Construction Manager.

3.3.4 The Construction Manager shall keep a daily log of the progress of the Work and make it accessible to the Architect and the Owner and their representatives at all times.

3.3.5 The Construction Manager shall arrange for and attend project meetings with the Owner's representatives, Architect and such other persons the Owner may from time to time wish to have present including subcontractors and material suppliers. Attendance at project meetings shall include key personnel on the job, including the Construction Manager and Subcontractors, or other persons in charge of or involved in various phases of the Work.

3.3.6 The Construction Manager shall be responsible to the Owner for acts and omissions of the Construction Manager, its employees and agents, Subcontractors, suppliers and their agents and employees, and any entity or other persons performing or involved in portions of the Work.

3.3.7 Construction Manager shall notify Owner and Architect if long lead items should be required so as to not impede timely progression of the Work or the Project Schedule.

3.3.8 The Construction Manager shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Owner or Architect in the administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Construction Manager.

3.3.9 The Construction Manager shall be responsible for inspection of portions of Work already performed under this Contract to determine that such portions are in proper condition to receive subsequent Work.

3.3.10 The Construction Manager shall purchase, manage the logistic operations, assemble, produce, supervise and manage all labor, materials, equipment, plant, supplies, appliances, services and processes necessary to fulfill the Work.

3.3.11 The Construction Manager has full and sole responsibility for the execution of the work, including, but not limited to:

- .1 construction methods;
- .2 safety and Safety Programs;
- .3 compliance with drawings and specifications;
- .4 good order and discipline; no unfit or unskilled person shall be employed for the work assigned;
- .5 adherence to schedule;
- .6 provision of adequate work force;
- .7 adequacy of plant, appliance and methods, and for any damage which may result from their failure or their improper construction, maintenance or operation;
- .8 the implementation of a quality control system that will insure that all work meets the requirements and standards of the specifications; and
- .9 the Project Superintendent shall be supplemented a field force sufficient to supervise, manage, check, control and expedite the Work.

3.3.11.1 Construction Manager shall review any specified construction or installation procedure (including those recommended by any product manufacturer). Construction Manager shall advise the Owner:

- .1 if the specified procedure deviates from acceptable construction practice;
- .2 if following the procedure will affect any warranties; or
- .3 of any objections which Construction Manager may have to the procedure.

3.3.12 Construction Manager shall establish and implement procedures for identifying all required submittals, shop drawings, catalogues and samples for expediting the processing and approval of these submittals, shop drawings, catalogues and samples and for expediting, the processing, scheduling and delivery of materials.

3.3.13 Construction Manager shall administer a Labor Relations program. Any and all labor disputes with the trades shall be promptly and expeditiously resolved by the Construction Manager to the best of the Construction Manager's ability.

3.3.14 Construction Manager shall maintain at the job site:

- .1** on a current basis, records of all contracts, shop drawings, samples, purchases, subcontracts, materials, equipment, applicable handbooks, Federal, commercial and technical standards and specifications and any other documents which arise out of this Agreement. These records shall be delivered to Owner prior to Final Payment;
- .2** copies of the Critical Path Schedule, reflecting current conditions and shall provide copies of same to Owner along with monthly reports of deviations from the schedule, the cause thereof and the corrective actions that have been taken or will be taken by Construction Manager to maintain the schedule;
- .3** a current marked-up set of working drawing prints and specifications to facilitate the preparation of as-built drawings to be furnished to the Owner by the Construction Manager as a condition of final payment; and
- .4** certified surveys and records, in duplicate, of building and approach lines, elevations of bottoms of footings, floor levels and approaches, certified building location survey, structured steel plumbness survey and building wall plumbness survey, which shall be delivered to the Owner prior to final payment.

3.4 LABOR AND MATERIALS

3.4.1 Unless otherwise provided in the Contract Documents, the Construction Manager shall provide and pay for all labor, materials, equipment, supplies, 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 The Construction Manager shall enforce strict discipline and good order among the Construction Manager's employees, Subcontractors, and other persons carrying out the Contract. The Construction Manager shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

3.4.3 The Construction Manager shall immediately remove from the Work, whenever requested to do so by the Architect or Owner, any person who is considered by the Architect or Owner to be

incompetent or disposed to be disorderly, or who for any reason is not satisfactory to the Architect or Owner, and that person shall not again be employed on the Work without the consent of the Architect or Owner.

3.4.4 The Construction Manager shall only employ labor on the Project or in connection with the Work capable of working harmoniously with all trades, crafts and any other individuals associated with the Project. The Construction Manager shall also take whatever action is necessary to minimize the likelihood of any strike, work stoppage or other labor disturbance.

3.4.5 If the Work is to be performed by trade unions, the Construction Manager shall make all necessary arrangements to reconcile, without delay, damage or cost to the Owner and without recourse to the Architect or the Owner, any conflict between the Contract Documents and any agreements or regulations of any kind at any time in force among members or councils which regulate or distinguish what activities shall not be included in the work of any particular trade.

3.4.6 In case the progress of the Work is affected by any undue delay in furnishing or installing any items or materials or equipment required under the Contract Documents because of such conflict involving any such labor agreement or regulation, the Owner may require that other material or equipment of equal kind and quality be provided pursuant to a Change Order or Construction Change Directive.

3.4.7 Whenever a product is specified in accordance with a Federal Specification, an ASTM Standard, an American National Standards Institute Specification, or other association standard, the Construction Manager shall present an affidavit from the manufacturer when requested by the Owner or Architect or required in the Specifications, certifying that the product complies with the particular Standard or Specification. When requested by the Owner, Architect or specified, support test data shall be submitted to substantiate compliance.

3.4.8 Whenever a product is specified or shown by describing proprietary items, model numbers, catalog numbers, manufacturer, trade names, or similar reference, no substitutions may be made unless accepted by the Owner prior to execution of the Contract or if accepted as a change in the Work in accordance with Paragraphs 3.4.9 and 3.4.10. When two or more products are shown or specified, the Construction Manager has the option to use either of those products shown or specified.

3.4.9 If, after execution of the Contract and prior to submittal of applicable shop drawings and/or coordination drawings, the Construction Manager desires to submit an alternate product or method in lieu of what has been specified or shown in the Contract Documents, the Construction Manager may do so in writing and setting forth the following:

- .1** full explanation of the proposed substitution and submittal of all supporting data including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation of the substitution;
- .2** reasons the substitution is advantageous and necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable;

- .3 the reduction in the Contract Sum, in the event the substitution is acceptable;
- .4 the reduction in the time of completion of the Contract and the construction schedule in the event the substitution is acceptable; and
- .5 an affidavit stating that (1) the proposed substitution conforms and meets all the requirements of the pertinent Specifications and the requirements shown on the Drawings and (2) the Construction Manager accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by the Architect. Proposals for substitutions shall be submitted in triplicate to the Owner in sufficient time to avoid any delay of the Project Schedule and to allow the Architect no less than ten (10) working days for review. No substitutions will be considered or allowed without the Construction Manager's submittal of complete substantiating data and information as stated hereinbefore.

3.4.10 Substitutions and alternates may be rejected without explanation and will be considered only under one or more of the following conditions as determined by the Owner or Architect:

- .1 required for compliance with interpretation of code requirements or insurance regulations in existence;
- .2 unavailability of specified products, through no fault of the Construction Manager;
- .3 subsequent information disclosing inability of specified products to perform properly or to fit in designated space;
- .4 manufacturer/fabricator refuses to certify or guarantee performance of specified product as required; and
- .5 when in the judgment of the Owner or the Architect, that a substitution would be substantially to the Owner's best interests, in terms of cost, time, or other consideration.

3.4.11 The Construction Manager accepts assignment of, and liability for, all purchase orders and other agreements for procurement of materials and equipment that are identified as part of the Contract Documents. The Construction Manager shall be responsible for such pre-purchased items, if any, as if the Construction Manager were the original purchaser. The Contract Sum includes, without limitation, all costs and expenses in connection with delivery, storage, insurance, installation and testing of items covered in any assigned purchase orders or agreements. All warranty and correction of the Work obligations under the Contract Documents shall also apply to any pre-purchased items, unless the Contract Documents specifically provide otherwise.

3.5 WARRANTY

3.5.1 The Construction Manager warrants to the Owner and Architect that materials, supplies, furnishings and equipment furnished under the Contract will be of good quality and new, unless otherwise required or permitted by the Contract Documents; that the Work will be free from defects not inherent in the quality required or permitted; that the Work will conform with the requirements

of the Contract Documents and that the Project Work complies with all applicable governmental codes, laws and regulations. Work not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective. The Construction Manager's warranty excludes remedy for damage or defect caused by Owner's abuse, modifications not executed by the Construction Manager, Owner's improper or insufficient maintenance, Owner's improper operation, or normal wear and tear under normal usage. If required by the Owner or Architect, the Construction Manager shall furnish satisfactory evidence as to the kind and quality of materials, supplies, furnishings and equipment.

3.5.2 The Construction Manager agrees to assign to the Owner at the time of final completion of the Work, any and all manufacturer's warranties relating to materials, supplies and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties.

3.5.3 If Construction Manager uses any portion of the Work or Owner's other property prior to the date of Substantial Completion of the entire Work, such items shall be restored to their condition existing immediately prior to such use, or as otherwise specified in the Contract Documents. Construction Manager's warranty and agreement to correct defective Work shall specifically include Construction Manager's obligations under this paragraph.

3.6 TAXES

3.6.1 The Construction Manager shall pay sales, consumer, use and similar taxes for the Work or portions thereof provided by the Construction Manager which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. The Owner is exempt from certain sales and use taxes and will provide to the Construction Manager evidence of such exemption for the Construction Manager's use in purchasing materials and equipment for this Project.

3.7 PERMITS, FEES, AND NOTICES

3.7.1 The Owner shall secure and pay for the building permit issued by the Department of Community Affairs of the State of New Jersey ("DCA") and any other agency with jurisdiction over this Project. The Construction Manager shall submit all subcode technical sections to the DCA and shall coordinate with DCA to obtain all required inspections.

3.7.1.1 The Construction Manager shall also secure and pay for all other permits, governmental or municipal fees, licenses and inspections necessary for the proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required at the time bids are received. Typical permit and/or fee obligations of the Construction Manager shall include, but not necessarily be limited to, street openings, curb cuts, utility tie-ins to municipal or county suppliers, fire department tie-in (water and alarms), shade tree/landscape ordinances, and construction sign permits.

3.7.2 The Construction Manager shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders and all other requirements of public authorities bearing on performance of the Work.

3.7.3 It is not the Construction Manager's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations unless such laws, statutes, ordinances, building codes, and rules and regulations bear upon the performance of the Work. However, if the Construction Manager observes that portions of the Contract Documents are at variance therewith, the Construction Manager shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate modification. If the Construction Manager performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Architect and Owner, the Construction Manager shall assume full responsibility for such Work and shall bear the attributable costs, including but not limited to fines, penalties and costs to repair or replace the non-conforming Work.

3.7.3.1 The requirements of subparagraph 3.7.3 do not waive the Construction Manager's responsibility of complying with the requirements of the Contract Documents when such requirements exceed those of any laws, ordinances, rules, regulations and orders of any public authority bearing on the work.

3.7.4 Prior to application for final payment, the Construction Manager shall furnish a written certification that the work is completed in conformance with the Contract Documents.

3.7.5 The Construction Manager shall cooperate in obtaining from governing authorities a Certificate of Occupancy, or other applicable document, which will permit occupancy and use by the Owner of the completed Work appearing in the Agreement, for the use intended, in strict conformance with applicable jurisdictional and governing rules, regulations and codes.

3.7.6 Copies of any and all permits, licenses and certificates shall be delivered to the Owner as soon as they are obtained. Along with the request for final payment, the Construction Manager shall deliver the originals of such permits, licenses and certificates to the Owner.

3.8 ALLOWANCES

3.8.1 The Construction Manager 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 Construction Manager shall not be required to employ persons or entities against which the Construction Manager makes reasonable objection.

3.8.2 Unless otherwise provided in the Contract Documents:

- .1** materials and equipment under an allowance shall be selected with reasonable promptness by the Owner;
- .2** allowances shall cover the cost to the Construction Manager of materials and equipment delivered at the Site and all required taxes, less applicable trade discounts;
- .3** Construction Manager'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 and not in the

allowances;

- .4 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 subparagraph 3.8.2.2 and (2) changes in Construction Manager's cost under subparagraph 3.8.2.3.

3.9 CONSTRUCTION MANAGER'S CONSTRUCTION SCHEDULES

3.9.1 The Construction Manager, promptly after execution of the Agreement, shall prepare and submit for the Owner's and Architect's information the Construction Manager's construction schedule for the Work. The schedule shall not exceed time limits defined in 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.

3.9.2 The Construction Manager shall prepare and keep current, for the Architect's and Owner's approval, a schedule of submittals including, but not limited to shop drawings and coordination drawings which is coordinated with the Construction Manager's construction schedule and allows the Architect and Owner reasonable time to review submittals.

3.9.3 The Construction Manager shall conform to the most recently approved schedule.

3.9.4 The construction schedule shall be in a detailed precedence-style critical path method (CPM) or Primavera-compatible format satisfactory to the Owner which shall also: (1) provide a graphic representation of all activities and events, including ordering of major equipment and materials, that will occur during performance of the Work; (2) identify each phase of construction and occupancy; and (3) set forth milestone dates and all other dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents. Data output provided to the Owner shall include a Detailed Schedule Report sorted by Total Float/Early Start and another sorted by Early Start/Total Float. The Construction Manager shall also provide an Activity/Predecessor Report sorted by Activity Code. Upon review and acceptance by the Owner of the data submitted, the construction schedule shall be deemed part of the Contract Documents. If not accepted, the construction schedule shall be promptly revised by the Construction Manager in accordance with the recommendations of the Owner and re-submitted for acceptance before Construction Manager submits any Applications for Payment. The Construction Manager shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner of any delays or potential delays. The accepted construction schedule shall be updated to reflect actual progress (sometimes referred to in these General Conditions as progress reports) as set forth in Paragraph 3.9.1 or at a frequency specified by the Owner. In the event any progress report indicates any delays, the Construction Manager shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time, any Milestone Date or the Contract Sum (as defined in Article 9) unless any such adjustment is agreed to by the Owner and authorized pursuant to Change Order or Construction Change Directive.

3.9.5 In the event the Owner determines that the performance of the Work, as of a Milestone Date,

has not progressed or reached the level of completion required by the Contract Documents, the Owner shall have the right to order the Construction Manager to take corrective measures necessary to expedite the progress of construction, including, without limitation, (1) working additional shifts or overtime, (2) supplying additional manpower, equipment, and facilities and (3) other similar measures (hereinafter referred to collectively as Extraordinary Measures). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Construction Manager's compliance with the construction schedule.

- .1 The Construction Manager shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner under or pursuant to this Paragraph 3.9.5.
- .2 The Owner may exercise the rights furnished the Owner under or pursuant to this Paragraph 3.9.5 as frequently as the Owner deems necessary to ensure that the Construction Manager's performance of the Work will comply with any Milestone Date or completion date set forth in the Contract Documents.

3.9.6 The Owner shall have the right to direct a postponement or rescheduling of any date or time for the performance of any part of the Work that may interfere with the operation of the Owner's premises or any tenants or invitees thereof. The Construction Manager shall, upon the Owner's request reschedule any portion of the Work affecting operation of the premises during hours when the premises are not in operation. Any postponement, rescheduling or performance of the Work under this Paragraph 3.9.6 may be grounds for an extension of the Contract Time, if permitted under Paragraph 8.3.1, and an equitable adjustment in the Contract Sum if: (1) the performance of the Work was properly scheduled by the Construction Manager in compliance with the requirements of the Contract Documents and (2) such rescheduling or postponement is required for the convenience of the Owner.

3.10 DOCUMENTS AND SAMPLES AT THE SITE

3.10.1 The Construction Manager shall maintain at the Site for the Owner one record copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record changes and selections made during construction, and in addition approved Shop Drawings, Coordination Drawings, Product Data, Samples and similar required submittals. These shall be available to the Owner and Architect and shall be delivered to the Owner upon completion of the Work.

3.10.2 Construction Manager shall maintain at the Site, and shall make available to Owner and Architect, one record copy of the Drawings (the "Record Drawings") in good order. The Record Drawings shall be prepared and updated during the prosecution of the Work by the Construction Manager. The prints for Record Drawing use will be a set of blackline prints of the revised Construction Documents supplied to the Construction Manager by the Architect within fifteen (15) days after contract award. Production of these prints is the responsibility of the Construction Manager. Construction Manager shall maintain said set in good condition and shall use colored pencils to mark up said set with "record information" in a legible manner to show: (i) deviations from the Drawings made during construction; (ii) details in the Work not previously shown; (iii) changes to existing conditions or existing conditions found to differ from those shown on any

existing drawings: (iv) the actual installed position of equipment, piping, conduits, light switches, electric fixtures, circuiting, ducts, dampers, access panels, control valves, drains, openings and stub-outs; and (v) such other information as either Owner or Architect may reasonably request. Record Drawings status shall be discussed at each regular project meeting. At the completion of the Work, Construction Manager shall deliver all Record Drawings to Architect. Final payment and any retainage shall not be due and owing to Construction Manager until the final Record Drawings marked by Construction Manager as required above are delivered to Architect.

3.10.3 Changes, whether resulting from formal Change Orders, Construction Change Directives or other Modifications issued shall be recorded on this set of drawings including changes in sizes, grades, location and dimensions and all other deviations from the original Contract Drawings, whether resulting from job conditions encountered or from any other cause. Locations and principal dimensions of concealed Work shall be recorded.

3.10.4 Construction Manager shall comply with the Specifications, Section 01700 Project Closeout for final disposition of these record documents and for alternate methods of submitting record documents to the Owner through the Architect.

3.10.5 During the course of the Work the Construction Manager shall permit inspection of record documents by the Architect and the Owner.

3.11 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

3.11.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Construction Manager or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work in explicit detail.

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

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

3.11.4 Coordination Drawings are composite Shop Drawings which illustrate given items or elements in their entire construction context. These drawings define the item's or element's relationship to adjoining work by bringing together all relevant data available, which may include product configuration and clearances, conditions in the existing or as-built environment, and information derived from other trades' Shop Drawings as well as the documents provided by all design disciplines.

3.11.5 Shop Drawings, Product Data, Samples, Coordination Drawings and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Construction Manager proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Architect is subject to the limitations of Subparagraph 4.2.7.

3.11.6 The Construction Manager shall review, approve and submit to the Architect with copy to the

Owner for review and approval by Architect, Shop Drawings, Coordination Drawings, Product Data Samples and similar submittals required by the Contract Documents 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. Submittals made by the Construction Manager which are not required by the Contract Documents may be returned without action.

3.11.7 The Construction Manager shall perform no portion of the Work requiring submittal and review of Shop Drawings, Coordination Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect or Owner. Such Work shall be in accordance with approved submittals.

3.11.8 By approving and submitting Shop Drawings, Coordination Drawings, Product Data, Samples and similar submittals, the Construction Manager represents that the Construction Manager has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

3.11.9 The Construction Manager shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's or Owner's approval of Shop Drawings, Project Data, Samples or similar submittals unless the Construction Manager has specifically informed the Architect and Owner in writing of such deviation at the time of submittal and the Architect and Owner have given written approval to the specific deviation. The Construction Manager shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Coordination Drawings, Samples or similar submittals by the Architect's or Owner's approval thereof.

3.11.10 The Construction Manager shall direct specific attention, in writing or on resubmitted Shop Drawings, Coordination Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect or Owner on previous submittals.

3.11.11 Informational submittals upon which the Architect or Owner is not expected to take responsive action may be so identified in the Contract Documents.

3.11.12 When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the Construction Manager shall provide the person or party providing the certification with full information on the relevant performance requirements and on the materials, systems, or equipment that are expected to operate at the Project site. The certification shall be based on performance under the operating conditions generally prevailing or expected at the Project site. The Architect shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

3.11.13 All shop drawings for any architectural, structural, mechanical (including HVAC, plumbing and fire protection) or electrical work must be submitted for approval to the Architect with copy to the Owner. The Construction Manager represents and warrants that all shop drawings shall be prepared by persons and entities possessing expertise and experience in the trade for which the shop drawing is prepared and, if required by the Architect or applicable law, by a licensed engineer.

3.11.14 Construction Manager shall mark all submittals with the relevant specification section and

drawing number so that the Architect and Owner can identify the submittal.

3.12 USE OF SITE

3.12.1 The Construction Manager shall confine operations at the Site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the Site with materials or equipment.

3.12.2 The Architect has established the Contract Limit Lines shown on the Drawings. The Construction Manager shall confine his operations within these limits, unless upon written request and reply, a variance is agreed to by the Owner. In all cases of agreed to variances, the Construction Manager remains under an absolute duty to defend, indemnify, save and hold harmless the Owner from responsibility, liability, damage or trespass on or over property outside the Contract Limit Lines by the Construction Manager, or by any of his employees, subcontractors or their employees or others for whose actions the Construction Managers is or may be liable.

3.12.3 The Construction Manager shall determine the most advantageous method of gaining access to the Site for Construction Manager's personnel and for the delivery or disposal of equipment and materials; which method shall be subject to the approval of the Owner. The Construction Manager shall construct requisite temporary roads including shoring, shall maintain access onto the Site and shall provide offices, scaffolding, parking, overhead protection, material and equipment storage, etc., as and where approved by Owner within the Contract Limit Lines, at Construction Manager's own cost and expense. Construction Manager shall not close or obstruct walkways, passageways or stairways unless adequate alternate means are provided and approved by the Owner. Demolition and/or removal products shall not be stored or placed in passageways, stairs or other means of ingress and egress.

3.12.4 Prior to the commencement of any Work, Construction Manager shall prepare, and secure from the Architect and Owner their approval of, a program for the performance of the Work, including working methods, staging of the Work, and schedules, which shall (1) provide adequate plant and facilities; (2) promote orderly and expeditious progress of the Work; (3) allow for the safe and continuous operations of the Owner, without interruption of service or change in regular schedules of operation; and (4) insure completion of the Work within the time specified in the Agreement. No extension of time or additional allowance will be made due to limitations on the hours that the Work can be performed as provided in paragraph 3.12.5 herein or as may be limited by law or other operational requirements of the Owner.

3.12.5 Construction Manager acknowledges that Owner's facilities are in use and will be in continuous operation during the performance of the Work and Construction Manager agrees that all Work shall be conducted in the most expeditious manner possible, with minimal interference of access to Owner's property, buildings, operations and adjacent buildings and property. In order to minimize such interference, except in the case of emergencies or as otherwise agreed in writing by the Owner, no Work shall be performed by the Construction Manager until it has satisfied the following conditions:

- .1** no existing Owner facilities, utilities, equipment, plumbing, steam, service lines, telephones, computer lines, alarm communications, ventilating or air conditioning plant or equipment, service plant or equipment, mechanical

pipings installations and connections, patient support, therapy, diagnostic or other patient related equipment, etc. shall be interrupted, removed or otherwise disturbed without the specific direction and approval of the Architect after identification and clearance by the Owner. The working around, shutting off and/or turning on of electric current in live circuits or working plumbing and mechanical piping, water, medical gases or vacuum lines, steam service lines, plant, equipment, etc, of Owner shall be done under the supervision of the Owner and the Construction Manager. Whenever such Work is contemplated, Construction Manager shall submit to the Architect and Owner a written request for scheduling such Work five (5) working days prior to the date on which the proposed Work is to be performed. The Architect and Owner shall approve such request, unless the Owner determines that its operations or employees are unable to accommodate the proposed date. The Architect will notify the Construction Manager if a change in the proposed date is required;

- .2 except as approved in writing by Owner or in the case of an emergency, no Work shall be performed on Saturdays, Sundays or legal holidays observed by the Owner or at such hours of the day or night to which the Owner may reasonably object;
- .3 Construction Manager shall obtain written approval and determine if there are any special requirements of the Owner prior to the handling and removal of materials, placing of lights, use of scaffolding and other structures, performance of Work after normal hours; and
- .4 Construction Manager shall maintain necessary and clean access for Owner's operations at all times of the day and night and shall exercise the utmost care in locating detours and otherwise providing for vehicular and pedestrian traffic.

3.12.6 All Work to be performed shall be confined to its immediate area of operations and Construction Manager shall not utilize any other area which will interfere with the operations of the Owner.

3.12.7 The Construction Manager shall provide full and free access for the Architect and the Owner and/or their representatives to inspect any of the manufacturing, preparation, receipt, delivery, installation or construction of the Project. Work done while the Architect or Owner have been denied access may be automatically rejected.

3.12.8 The Construction Manager shall not open up Work to the prejudice of Work already started. Construction Manager shall be liable for any and all damages sustained to existing construction, work in place, facilities, utilities, services and equipment, resulting from its completing the Work in accordance with the Contract Documents.

3.12.9 The Construction Manager shall be solely responsible for the performance of the Work in a manner which shall not create objectionable noise, disruption of the Owner, its business and operation, its fire and security alarm communications, utilities, signals, and services, encumbrance of

the Owner, loss of services, operational delays, or any other unnecessary inconvenience or nuisance to the Owner.

3.13 CUTTING AND PATCHING

3.13.1 The Construction Manager and each subcontractor shall be responsible for their own cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.

3.13.2 The Construction Manager 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 Construction Manager 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 Construction Manager shall not unreasonably withhold from the Owner or a separate contractor the Construction Manager's consent to cutting or otherwise altering the Work. The Construction Manager shall not cut, patch, damage or alter installed Work, or Owner's existing work and improvements, without the consent of the Architect and the Owner. Only trade persons skilled and experienced in their trade and cutting and patching shall perform such Work.

3.13.3 Any cost to the Owner or Construction Manager caused by defective or ill-timed Work shall be borne by the Construction Manager.

3.13.4 Construction Manager acknowledges that the Work may involve renovation and alteration of existing improvements and, therefore, cutting and patching of the Work is essential for the Project to be successfully completed. Construction Manager shall perform any cutting, altering, patching, and fitting of the Work necessary for the Work and the existing improvements to be fully integrated and to present the visual appearance of an entire, completed, and unified project. In performing any Work which requires cutting, fixing, or patching, Construction Manager shall protect and preserve the visual appearance and aesthetics of the Project to the reasonable satisfaction of both Owner and Architect.

3.14 CLEANING UP

3.14.1 The Construction Manager shall keep the Site and surrounding area free from all debris, waste materials or rubbish. At the completion of each work day the Construction Manager shall containerize and/or dispose of all waste materials and rubbish. At completion of the Work the Construction Manager shall remove from and about the Project all debris, waste materials, rubbish, the Construction Manager's tools, construction equipment, machinery and surplus materials.

3.14.2 The Construction Manager shall remove all debris from the Site on a daily basis or as directed by Owner. No debris shall be buried on the Site.

3.14.3 If the Construction Manager fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Construction Manager and either deducted from any payments due or to be paid to the Construction Manager or reimbursed to the Owner by Construction Manager.

3.15 ACCESS TO WORK

3.15.1 The Construction Manager shall provide the Owner and Architect and their designated representatives and invitees safe access to the Work in preparation and progress wherever located. Representatives of jurisdictional State Agencies shall have access at all times to the Work, wherever it is in preparation or progress, and the Construction Manager shall provide proper facilities and safety provisions for such access and inspection.

3.16 ROYALTIES AND PATENTS

3.16.1 The Construction Manager shall defend, indemnify and hold harmless the Owner and its officers, agents, servants and employees, and the Architect from liability of any nature or kind, including cost and expense for, or on account of, any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the Work, including its use by the Owner, unless otherwise specifically stipulated in the Contract Documents.

3.16.2 License and/or royalty fees for the use of a process which is authorized by the Owner of the Project must be reasonable, and paid to the holder of the patent, or the authorized licensee, directly by the Owner and not by or through the Construction Manager.

3.16.3 If any design, device or material covered by letters, patent or copyright is utilized in the Work, the Construction Manager shall provide for such use by suitable agreement with the owner of such patented or copyrighted design, device or material. It is mutually agreed and understood that, without exception, the Contract Sum shall include all royalties or costs arising from the use of such design, device or materials, in any way involved in the Work. The Construction Manager and/or the sureties shall defend, indemnify and save harmless the Owner of the Project and the Architect from any and all claims for infringement by reason of the use of such patented or copyrighted design, device or materials or any trademark or copyright in connection with work agreed to be performed under the Contract Documents, and shall indemnify the Owner for any cost, expense or damage which it may be obligated to pay by reason of such infringement at any time during the prosecution of the Work or after completion of the work on the Site.

3.17 INDEMNIFICATION

3.17.1 To the fullest extent permitted by law, the Construction Manager shall defend, indemnify and hold harmless the Owner, its servants, agents and employees from and against any and all claims, damages, losses and expenses of any kind or nature, including but not limited to attorneys' fees, costs of investigation, hiring of expert witnesses, court costs and any settlement, judgment or award arising out of or resulting from performance of the Work, but only to the extent caused in whole or in part by negligent or willful acts, errors or omissions of the Construction Manager, 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 Owner. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist for Owner.

3.17.2 The Construction Manager agrees and understands that the Attorney General of the State of New Jersey represents the Owner and will participate in any action involving the Owner which relates to the subject matter of the claim indemnified by the Construction Manager under this Paragraph 3.17 and nothing contained herein shall be construed to prevent such participation; and

provided further that the Attorney General of New Jersey shall retain sole control, at the Construction Manager's sole expense, of the defense of any such claim and negotiations for its settlement or compromise to the extent that the Attorney General solely and exclusively determines that such claim implicates the public policy of the State of New Jersey including, without limitation, the constitutionality, the validity of statutory administrative or decisional law, the appropriateness of State action or the propriety of the conduct of State officers, employees or agents.

3.17.3 In claims against any person or entity indemnified under this Paragraph 3.17 by an employee of the Construction Manager, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph 3.17 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Construction Manager or a Subcontractor under worker' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

3.17.4 The indemnification provided hereunder shall in no way limit the obligations of the Construction Manager under the Contract Documents, nor preclude the Owner from taking any other actions available under any other provisions of the Contract Documents or otherwise at law or equity.

3.17.5 The Construction Manager's obligation to defend, indemnify and hold harmless the Owner hereunder shall survive the termination of this Agreement.

3.18 REPORTS

3.18.1 Construction Manager shall furnish daily reports to Architect and Owner in such form as Architect and Owner may require, of the location and occupation upon the Work of its crews with the number of men in each, and such other information regarding Work as may be requested by Architect and Owner.

3.19 PUBLICITY

3.19.1 The Construction Manager shall not divulge information concerning this project to anyone without the Owner's prior written consent. The Construction Manager shall obtain a similar agreement from firms, subcontractors, suppliers and others employed by the Construction Manager. The Owner reserves the right to release all information as well as to time its release, form and content. This requirement shall survive the expiration of the contract.

ARTICLE 4

ADMINISTRATION OF THE CONTRACT

4.1 ARCHITECT

4.1.1 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 notification by the Owner. The Owner shall notify the Construction Manager of any such change.

4.1.2 In case of termination of employment of the Architect, the Owner shall appoint an architect whose status under the Contract Documents shall be that of the former architect.

4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT

4.2.1 Unless otherwise directed by the Owner, the Architect will provide administration of the Contract as described in the Contract Documents, and will be the Owner's representative (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the correction period described in Paragraph 12.2. The Architect will advise and consult with the Owner. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified by written instrument in accordance with other provisions of the Contract Documents. Nothing contained in this Agreement shall limit the obligation of the Architect under its separate agreement with the Owner.

4.2.2 The Architect will visit the Site at intervals appropriate to the stage of construction to become familiar with the progress and quality of the completed Work and to determine if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents. On the basis of on-Site observations as an Architect, the Architect will keep the Owner informed of progress of the Work, and will guard the Owner against defects and deficiencies in the Work.

4.2.3 The Architect will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Construction Manager's responsibility as provided in Paragraph 3.3. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Construction Manager, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work but the Architect shall have the obligation to immediately inform the Owner of any deficient Work.

4.2.4 Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Construction Manager shall endeavor to communicate through the Architect. 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 Construction Manager. Communications with separate contractors shall be as directed by the Owner.

4.2.4.1 Instructions, orders and/or requests from the Owner to the Construction Manager relating to interpretations of the Contract Drawings and the Specifications or the quality and quantity of materials will generally be transmitted to the Construction Manager through the Architect.

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

4.2.6 The Architect, in consultation with the Owner, will have authority to reject Work which does not conform to the Contract Documents. Whenever, in its reasonable opinion, the Architect considers it necessary or advisable to ensure the proper implementation of the intent of the Contract Documents, the Architect, in consultation with the Owner, will have authority to require special

inspection or testing of the Work in accordance with Subparagraph 13.5.2 whether or not such Work be then fabricated, installed or completed. However, neither the Architect's authority to act in consultation with the Owner, under this Subparagraph 4.2.6, nor any decision made by the Architect in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the Architect or Owner to the Construction Manager, any subcontractor, any of their agents or employees, or any other person performing any of the Work.

4.2.7 The Architect will review and approve or take other appropriate action upon the Construction Manager's submittals such as Shop Drawings, Coordination Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design requirements expressed in the Contract Documents. The Architect's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Construction Manager or separate contractors. 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 Construction Manager as required by the Contract Documents. The Architect's review of the Construction Manager's submittals shall not relieve the Construction Manager of the obligations under Article 3. 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 for the Owner's approval and Construction Change Directives, and may authorize minor changes in the Work as provided in Article 7.

4.2.9 The Architect will conduct inspections, accompanied by the Construction Manager and Owner, to determine the date or dates of Substantial Completion and the date of Final Completion, will receive and forward to the Owner for the Owner's review and records written warranties and related documents required by the Contract Documents and assembled by the Construction Manager, and will issue a Final Application for Payment upon compliance with the requirements of the Contract Documents.

4.2.10 If the Owner and Architect agree, the Architect may provide one or more Project Representatives acceptable to the Owner to assist the Architect in carrying out its responsibilities at the site. The duties, responsibilities and limitations of authority of any such Project Representative shall be as set forth in the Contract Documents.

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

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.

4.2.12.1 Notwithstanding the foregoing, the Owner may overrule the interpretations or decisions of the Architect.

4.3 CLAIMS AND DISPUTES

4.3.1 DECISION OF ARCHITECT

Claims, including those alleging an error or omission by the Architect, shall be referred initially to the Architect for action as provided in Paragraph 4.4. A decision by the Architect, as provided in Subparagraph 4.4.4, shall be required as a condition precedent to litigation of a Claim between the Construction Manager and Owner as to all such matters arising prior to the date final payment is due, regardless of (1) whether such matters relate to execution and progress of the Work or (2) the extent to which the Work has been completed. The decision by the Architect in response to a Claim shall not be a condition precedent to litigation in the event (1) the position of Architect is vacant, (2) the Architect has not taken any preliminary action as required under subparagraph 4.4.1, (3) the Architect has failed to render a final written decision under Subparagraph 4.4.4 within thirty (30) days after the Claim is made, (4) forty-five (45) days have passed after the Claim has been referred to the Architect or (5) the Claim relates to a lien or other encumbrance.

4.3.2 NOTICE OF AND TIME LIMITS ON CLAIMS

Claims by either party must be made within fourteen (14) Days after occurrence of the event giving rise to such Claim or within fourteen (14) Days after the date on which claimant has knowledge or should reasonably have knowledge of the circumstances giving rise to the Claim, whichever is later. Claims must be made by written notice, which shall be delivered to the Architect and the party against whom the claim is made within the stated fourteen (14) Day time period. An additional Claim related to, but made after the initial Claim has been implemented by Change Order will not be considered unless submitted within the time limits stated herein; provided, however, that the claimant shall use its best efforts to furnish the Owner, as expeditiously as possible, with notice of any Claim including, without limitation, those in connection with concealed or unknown conditions, once such claim is recognized, and shall cooperate with the Owner and/or Architect and the party against whom the Claim is made in any effort to mitigate the alleged or potential damages, delay or other adverse consequences arising out of the condition which is the cause of such a Claim.

4.3.2.1 Claims may also be reserved in writing within the time limits set forth in this Paragraph 4.3. If a Claim is reserved, the Resolution of Claims and Disputes procedures described in Paragraph 4.4 shall not commence until a written notice from the claimant is received by the Owner. Any notice of Claim or reservation of Claim must clearly identify the alleged cause and the nature of the Claim and include data and information then available to the claimant that will facilitate prompt verification and evaluation of the Claim.

4.3.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim including litigation, unless otherwise agreed by Owner and Construction Manager in writing, the Construction Manager shall proceed diligently with performance of the Work and the Owner shall continue to make payments of undisputed amounts in accordance with the Contract Documents.

4.3.4 CLAIMS FOR CONCEALED OR UNKNOWN CONDITIONS

If conditions are encountered at the Site which are (1) subsurface or otherwise concealed physical

conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which 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 and which could not have been discovered through diligent Site investigation, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than seven (7) Days after first observance of the conditions. The Architect will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Construction Manager's cost of, or time required for, performance of any part of the Work, will recommend to the Owner 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 or were not concealed or unknown, and that no change in the terms of the Contract is justified, the Architect shall so notify the Owner and Construction Manager in writing, stating the reasons. Claims by the Construction Manager in opposition to such determination must be made within seven (7) Days after the Architect has given notice of its decision. No adjustment in the Contract Time or Contract Sum shall be permitted, however, in connection with a concealed or unknown condition which does not differ materially from those conditions disclosed or which reasonably should have been disclosed by the Construction Manager's (1) prior inspections, tests, reviews and preconstruction services for the Project, or (2) inspections, tests, reviews, and preconstruction services which the Construction Manager had the opportunity to make or should have performed in connection with the Project.

4.3.5 CLAIMS FOR ADDITIONAL COST

If the Construction Manager wishes to make Claim for an increase in the Contract Sum, a claim shall be filed as provided in paragraph 4.3.2. In no event shall the Construction Manager stop executing the Work of the Claim or any other Work of the Project. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Paragraph 10.3. If the Construction Manager believes that the Contract Sum should be increased for reasons including but not limited to (1) a written interpretation from the Architect or Owner, (2) an order by the Owner to stop the Work where the Construction Manager was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, the Claim shall state the reason for which Construction Manager believes additional compensation is due, the nature of the costs involved and supporting documentation to substantiate Construction Manager's claim.

4.3.6 CLAIMS FOR ADDITIONAL TIME

4.3.6.1 If the Construction Manager wishes to make Claim for an increase in the Contract Time, written notice shall be given as provided in paragraph 4.3.2. The Construction Manager'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.

4.3.6.2 The Owner will consider a Claim for additional time due to adverse weather only if the adverse weather conditions that occurred could be classified as Acts of God (e.g. tornados, hurricanes, blizzards, 100 years storms, etc.). Any Claim submitted shall state that the weather conditions could not have reasonably been anticipated and shall provide details concerning the impact on the scheduled construction.

4.3.7 INJURY OR DAMAGE TO PERSON OR PROPERTY

If Construction Manager or Owner suffers injury or damage to person or property because of an act or omission of the other party, or any of the other party's employees or agents, or of others for whose acts such party is legally liable, a Claim for such injury or damage, whether or not insured, shall be filed as provided in paragraph 4.3.2. The Claim shall provide sufficient detail to enable the other party to investigate the matter. If the Claim includes an increase in the Contract Sum or Contract Time, the Claim shall further comply with the requirements of paragraphs 4.3.5 or 4.3.6.

4.4 RESOLUTION OF CLAIMS AND DISPUTES

4.4.1 The Architect will review Claims and take one or more of the following preliminary actions within ten (10) days of receipt of a Claim: (1) request additional supporting data from the claimant, (2) request information or documentation from the party against whom the claim is asserted, (3) reject the Claim in whole or in part, stating reasons for rejection, (4) recommend approval of the Claim by the other party or (5) suggest a compromise. The Architect may also, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim.

4.4.2 If a Claim has been resolved, the Architect will prepare or obtain appropriate documentation.

4.4.3 If a Claim has not been resolved, the party making the Claim shall, within seven (7) Days after the Architect's preliminary response, take one or more of the following actions: (1) modify the initial Claim or (2) notify the Architect that the initial Claim stands or (3) notify the Architect that the suggested compromise is acceptable.

4.4.4 If a Claim has not been resolved after consideration of the claimants actions under paragraph 4.4.3, if any, and of further evidence presented by the parties pursuant to paragraph 4.4.1, if any, the Architect will render a final written decision within seven (7) Days. The Architect's final written decision will include any change in the Contract Sum or Contract Time or both. If there is a surety and there appears to be a possibility of a Construction Manager's default, the Architect may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

4.4.5 Should the Construction Manager disagree with the Architect's decision, the Construction Manager shall have the right to request an Owner's Determination by the Owner's Project Manager. This decision shall be issued within fourteen (14) calendar days from the date requested. Should the Construction Manager disagree with the Owner's Determination rendered by the Owner's Project Manager, the Construction Manager shall either (1) escalate the process by requesting an Owner's Determination from the Owner's Associate Vice President for Facilities Design and Construction, or (2) pursue litigation.

4.4.6 The Owner shall have the right to overrule any decision made by the Architect.

4.5 LEGAL RESOLUTION OF DISPUTES

4.5.1 If the parties to a dispute arising out of this Agreement, do not mutually agree as set forth in this Article 4, the parties agree to litigate the matter in a New Jersey Court of Law in Essex County.

4.5.2 No litigation, arising out of, or relating to such a dispute, shall include, by consolidation,

joinder or any other manner, the Owner when the Owner has no direct responsibility in the dispute or for the damages arising therefrom.

4.5.3 Nothing contained herein shall relieve said Construction Manager or Architect from any liability or damage resulting to the Owner on account of such dispute or damages.

ARTICLE 5

SUBCONTRACTORS

5.1 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.1.1 No later than fourteen (14) calendar days subsequent to the execution of the Agreement, the Construction Manager shall furnish the Architect and Owner in writing, with (1) the name, trade and subcontract amount for each Subcontractor and (2) the names of all persons or entities proposed as manufacturers of the products identified in the Specifications (including those who are to furnish materials or equipment fabricated to a special design) and, where applicable, the name of the installing Subcontractor. At the request of the Owner or Architect, Construction Manager shall furnish supplemental information that the Owner or Architect may require with regard to the qualifications, background and ability of such Subcontractor to perform the Work satisfactorily. The Architect or Owner will reply to the Construction Manager in writing stating whether or not the Owner or the Architect, after due investigation, has reasonable objection to any such proposed Subcontractor.

5.1.1.1 Construction Manager shall furnish any supplemental information requested by the Owner and Construction Manager shall be notified of Owner's objections to such manufacturer or installing Subcontractor, all as provided in subparagraph 5.1.1.

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

5.1.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Construction Manager, the Construction Manager shall propose another to whom the Owner or Architect has no reasonable objection. Under no circumstances will the Owner be obligated to increase the Contract Sum due to such substitution.

5.1.4 The Construction Manager shall make no substitution for any Subcontractor or any other person or entity previously selected and approved by the Owner, without written request to the Owner and receipt of its approval for such substitution.

5.1.5 Approval of a Subcontractor may be conditioned on (among other things) the furnishing, without expense to the Owner of a surety bond guaranteeing payment by the Subcontractor of claims of materialmen, Sub-subcontractors, workmen and other third persons arising out of the Subcontractor's performance of any part of the Work.

5.1.6 Owner's approval of any Subcontractor, shall under no circumstance operate to relieve the Construction Manager from its full obligations under the Contract Documents, or relieve the surety of its obligations under the Bonds, or imply approval of any equipment, materials or supplies. No subcontract, no approval of any Subcontractor and no act or omission of the Owner or the Architect shall create any rights in favor of such Subcontractor and against the Owner.

5.1.7 The Owner may reject any subcontract if the proposed Subcontractor fails to furnish a statement to the effect that said Subcontractor is acquainted with all of the provisions of Contract Documents and agrees thereto. Where appropriate, the Construction Manager shall require each Subcontractor to obtain similar statements from sub-subcontractors.

5.1.8 Construction Manager shall be fully responsible to the Owner for the acts and omissions of its Subcontractors and all persons or entities directly or indirectly employed by such Subcontractors, equally to the extent that Construction Manager is responsible for the acts and omissions of persons and entities employed directly or indirectly by Construction Manager. No approval of any Subcontractor, shall under any circumstances operate to relieve the Construction Manager from its full obligations under the Contract Documents, nor the surety of its obligations under the Bonds; no subcontract, no approval of any Subcontractor and no act or omission of the Owner or the Architect shall create any rights in favor of such Subcontractor and against the Owner.

5.2 SUBCONTRACTUAL RELATIONS

5.2.1 By appropriate agreement, written where legally required for validity, the Construction Manager shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Construction Manager by terms of the Contract Documents, and to assume toward the Construction Manager all the obligations and responsibilities which the Construction Manager, by the Contract Documents, assumes toward the Owner and Architect and other separate contractors. Each Subcontractor 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 subcontractor agreement, the benefit of all rights, remedies and redress against the Construction Manager that the Construction Manager, by the Contract Documents, has against the Owner. Each Subcontractor agreement shall further provide that the agreement shall be assigned to the Owner at the same price as the agreement with the Construction Manager, at the option of the Owner, in the event that the right of the Construction Manager to proceed with the Work under its agreement with the Owner is terminated in whole or in part. Where appropriate, the Construction Manager shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Construction Manager 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. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed sub-subcontractors.

5.2.2 Construction Manager shall require each Subcontractor to (1) inspect surfaces and job conditions before beginning work at Site, and (2) accept or cite necessary corrections in surfaces or job conditions at Site.

5.2.3 All subcontracts shall be in written form and shall specifically provide that the Owner is an

intended third party beneficiary of such subcontract. At the Owner's request, copies of any and all executed subcontracts shall be given to the Owner by the Construction Manager.

5.2.4 Construction Manager shall be fully responsible to the Owner for the acts and omissions of its Subcontractors and all persons or entities directly or indirectly employed by such Subcontractors, equally to the extent that Construction Manager is responsible for the acts and omissions of persons and entities employed directly or indirectly by Construction Manager.

5.3 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

5.3.1 Each subcontract agreement for a portion of the Work shall state that it may be assigned by the Construction Manager to the Owner provided that:

- .1** assignment is effective only after termination of the Contract by the Owner for cause or convenience pursuant to Paragraphs 14.2 and 14.4 and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor in writing; and
- .2** assignment is subject to the prior rights of the surety, if any, obligated under the bonds relating to the Contract.

5.3.2 Each subcontract shall specifically provide that the Owner shall only be responsible to the Subcontractor for those obligations of the Construction Manager that accrue subsequent to the Owner's exercise of any rights under this conditional assignment.

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. The Construction Manager cannot claim that delay or additional cost is involved because of such action by the Owner.

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 Separate 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 Construction Manager, who shall cooperate with them. The Construction Manager shall participate with other separate contractors and the Owner in

reviewing their construction schedules when directed to do so. The Construction Manager shall not make any revisions to the construction schedule and Contract Sum after Owner exercises its right. The construction schedules then in force shall constitute the schedules to be used by the Construction Manager, separate contractors and the Owner until subsequently revised.

6.2 MUTUAL RESPONSIBILITY

6.2.1 The Construction Manager shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their work and shall connect and coordinate its work with adjacent work and with other trades, include Construction Manager's construction and operations with theirs as required by the Contract Documents so that no portion of the Work is delayed or not properly performed.

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

6.2.3 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefore. Owner shall not be liable for any damages suffered by any contractor by reason of another Construction Manager's default, delinquency or timing of performance; it being understood that Owner has no liability for the acts, omissions or errors of any separate contractor.

6.2.4 The Construction Manager shall promptly remedy damage wrongfully caused by the Construction Manager to completed or partially completed construction or to property of the Owner or separate contractors as provided in Subparagraph 10.2.5.

6.2.5 Claims and other disputes and matters in question between the Construction Manager and a separate contractor shall be subject to the provisions of Paragraph 4.3 provided the separate contractor has reciprocal obligations.

6.2.6 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Construction Manager in Paragraph 3.13.

6.3 OWNER'S RIGHT TO CLEAN UP

6.3.1 If a dispute arises among the Construction Manager, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the Site and surrounding area free from waste materials, debris and rubbish as described in Paragraph 3.14, the Owner may clean up and allocate the cost among those responsible as the Owner determines to be just.

ARTICLE 7

CHANGES IN THE WORK

7.1 CHANGES

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 between the Owner and Construction Manager; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Construction Manager.

7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Construction Manager shall proceed promptly, unless otherwise provided in the Change Order or Construction Change Directive. Except as permitted in Paragraph 7.3 and Paragraph 9.7.2, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that the Owner has been unjustly enriched by any alteration or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents.

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

7.2 CHANGE ORDERS

7.2.1 A Change Order is a written instrument submitted by the Construction Manager, prepared by the Architect and approved by the Owner, stating agreement upon all of the following:

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

7.2.2 Methods used in determining adjustments to the Contract Sum shall be as set forth in Subparagraph 7.3.3.

7.2.2.1 Neither the Owner nor the Construction Manager shall be obligated to inform, or obtain consent of, any surety for the Construction Manager's performance (or for payments to be made by the Construction Manager) as to any Change Order, and no Change Order shall relieve any such

surety of its obligations. It is the Construction Manager's obligation to ensure that the surety waives any and all objections to any change in the Work. Notwithstanding the foregoing, in the event that the Change Order exceeds fifteen (15%) percent of the Contract Sum, Owner reserves its right to require Construction Manager to obtain the Consent of Surety, and an increase in the bond.

7.2.2.2 The terms and conditions relating to proposed Change Orders may be negotiated with the Construction Manager. If the Construction Manager signifies its acceptance of such terms and conditions by executing a supplementary agreement, and if such supplementary agreement is approved and executed by the Owner, payment in accordance with the provisions as to compensation and adjustments in the Contract Time therein set forth constitute full compensation and a mutually acceptable time adjustment for all Work included therein or required thereby. The Construction Manager agrees that a proposed supplementary agreement which is not approved by the Owner or which is rejected by the Construction Manager shall have no effect and that neither will attempt to use it in any litigation which may result from the Agreement. An executed Change Order is a final Contract Document and the Construction Manager cannot make additional Claim for any Work in that Change Order.

7.2.2.3 No Claim for additional compensation shall be made by the Construction Manager because of any such alteration, deviation, addition to, or omission from the Work required by the Contract Documents, by reason of any variation between approximate quantities appearing in the Contract Documents and the quantities of Work as done, by reason of extra work, by reason of the elimination of any alternate items, or by reason of changes in the character or extent of Work except as allowed in this Article.

7.2.2.4 No Claim by the Construction Manager for additional compensation or extension of time within the scope of this Article will be allowed if asserted after final acceptance of the Work appearing in the Contract Documents.

7.2.2.5 Agreement on any Change Order shall constitute a final settlement of all items covered therein, subject to performance thereof and payment therefore pursuant to the terms of the Contract Documents. In the event a Change Order increases the Contract Sum, Construction Manager shall include the Work covered by such Change Order in Applications for Payment as if such Work was originally part of the Contract Documents.

7.2.2.6 It is understood and agreed that minor changes and refinement detailing will be accomplished from time to time with respect to the Contract Drawings and Specifications. No adjustment in the Construction Manager's Contract Sum, or time required for performance of any part of the Work, will be made unless such minor changes, refinement or detailing results in changes in scope, quality, function, and/or intent of the Contract Documents not reasonably inferable or anticipatable by a contractor of the Construction Manager's experience and expertise.

7.2.2.7 The Work shall be performed in accordance with the true intent and meaning of the Contract Documents without any further expense or additional time of any nature whatsoever to the Owner other than the consideration named in this Article 7.

7.2.2.8 The Owner reserves the right, at any time during the progress of the Work, to alter the Contract Drawings or Specifications or omit any portion of the Work as it may deem reasonably necessary for the Owner's interest; making allowances for additions and deductions, with

compensation made in accordance with the Contract Documents, for this work without constituting grounds for any Claim by the Construction Manager for allowance for damages or for loss of anticipated profits, or for any variations between the approximate quantities and the actual quantities of the Work as done.

7.3 CONSTRUCTION CHANGE DIRECTIVES

7.3.1 A Construction Change Directive is a written order prepared by the Architect and approved by the Owner, directing a change in the Work or any other change within the scope of the Contract Documents and stating a proposed basis for 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 to keep the Work and the Project moving forward to completion.

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 at Owner's discretion:

- .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 Subparagraph 7.3.6.

7.3.4 Upon receipt of a Construction Change Directive, the Construction Manager shall promptly proceed with and prosecute diligently the change in the Work involved and advise the Architect of the Construction Manager'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. The Work of a Construction Change Directive signed by the Owner is a directive to the Construction Manager to immediately proceed with the Work.

7.3.5 A Construction Change Directive signed by the Construction Manager indicates the agreement of the Construction Manager 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.

7.3.6 If the Construction Manager does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be initially determined by the Architect or Owner 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, a reasonable allowance for overhead and profit. In such case, and also under subparagraph 7.3.3.3, the Construction Manager 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 Subparagraph 7.3.6 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' or workmen's 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 Construction Manager or others; Unless otherwise established in the Contract, (1) the rental value of the Construction Manager's own equipment shall be not more than 80 percent of the rates in the current edition of "Compilation of Rental Rates for Construction Equipment" prepared by Associated Equipment Distributors, Oak Brook;
- .4 costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work, if applicable;
- .5 additional costs of supervision and field office personnel directly attributable to the change;
- .6 a reasonable sum for overhead, no greater than ten percent (10%) and profit, no greater than five (5%) of the cost of items .1 to .5 above; and
- .7 Construction Manager fee equal to two and ninety-five hundredths percent (2.95%) of the cost of items .1 to .6 above.

7.3.7 Pending final determination of cost to the Owner, amounts not in dispute may be included in Applications for Payment. The amount of credit to be allowed by the Construction Manager to the Owner for a deletion or change which 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.

7.3.8 Overtime, when specifically authorized by the Owner and not as an Extraordinary Measure, shall be paid for by the Owner on the basis of premium payment only, plus the cost of insurance and taxes based on the premium payment period. Overhead and profit will not be paid by the Owner for overtime.

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 of the Agreement. The date of commencement shall not be postponed by the failure to act of the Construction Manager or of persons or entities for whom the Construction Manager is responsible.

8.1.3 The date of Substantial Completion of the Work or designated portion thereof is the date certified by both the Architect and Owner, in accordance with paragraph 9.8 herein, when construction is 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.

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 Construction Manager confirms that the Contract Time is a reasonable period for performing the Work. Whenever additional time is allowed under the Contract Documents for completion of the Work, the new time limit fixed by such extension shall be of the essence of this Agreement.

8.2.2 The Construction Manager 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 herein by Article 11 to be furnished by the Construction Manager. The date of commencement of the Work shall not be changed by the effective date of such insurance. The Construction Manager shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

8.2.3 The Construction Manager shall begin the Work on the date of commencement as defined in subparagraph 8.1.2. The Construction Manager shall carry the Work forward expeditiously with competent management and adequate forces and shall achieve Substantial Completion and Final Completion within the Contract Time.

8.2.4 If the Owner in writing directs the Construction Manager to work overtime to expedite the final completion of the work, at a time when Construction Manager is not in default in any of the provisions of the Contract Documents, Construction Manager agrees to work said overtime and Owner shall pay the Construction Manager only the Construction Manager's extra labor cost over the amount for regular time during the period of such overtime, including additional insurance and taxes incurred by the Construction Manager with respect thereto. Time slips covering said overtime must be submitted to Owner's designated representative for review and approval. No commission or fee is to be charged by or allowed to Construction Manager on account of overtime.

8.2.5 If Construction Manager shall, at any time, be behind in the Work, or if in the opinion of the Architect or Owner, Construction Manager is not prosecuting the Work diligently or maintaining the progress of the Work in accordance with the Project schedule or is otherwise delaying the progress of the Work necessary to complete the Project within the Contract Time and such delays are not justified as set forth in subparagraph 8.3.1, then, if directed in writing by the Owner or Architect, Construction Manager shall develop a corrective action plan to address the Project Schedule to meet

the substantial completion date, and shall take such action as shall be necessary (including increasing the size of the work force, expediting material shipments, working overtime, or other actions) to bring the general progress of the Work on the Project into line with the Progress Schedule, the cost and expense of overtime or additional measures shall be borne entirely by Construction Manager.

8.3 DELAYS AND EXTENSIONS OF TIME

8.3.1 If the Construction Manager is delayed at any time in 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 substantial changes ordered in the Work, or by fire, unavoidable casualties or other causes beyond the Construction Manager's control, or by delay authorized by the Owner, or by other causes which the Architect determines may justify delay and which were unforeseeable at the time the execution of this Agreement, then the Contract Time shall be extended by Change Order to the extent such delay will prevent the Construction Manager from achieving Substantial Completion within the Contract Time and if the performance of the Work is not, was not or would not have been delayed by any other cause for which the Construction Manager is not entitled to an extension in the Contract Time under the Contract Documents. The Construction Manager further acknowledges and agrees that adjustments in the Contract Time will be permitted for a delay only to the extent such delay (1) is not caused, or could not have been anticipated by the Construction Manager, (2) could not be limited or avoided by the Construction Manager's timely notice to the Owner of the delay and (3) is of a duration not less than one (1) day.

8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Paragraph 4.3; provided, however, that Construction Manager shall not be entitled to an extension of time hereunder unless it makes its claim within seventy-two (72) hours of the beginning of the delay and demonstrates to the satisfaction of the Architect and Owner that the delay could not have been foreseen or avoided and Construction Manager has used all available means to minimize the consequences of such delay.

8.3.3 Notwithstanding anything to the contrary contained anywhere else in the Contract Documents, including Section 6.2.3, 8.3.1 and 8.3.2, in no event shall the Construction Manager be entitled to additional payment or allowance of any kind as compensation for damages due to delays in the completion of the Work, regardless of the cause for such delay, including without limitation, any act, neglect or default of the Owner, Architect, Subcontractor or any other party involved in carrying out the Work, any changes in the Work, any labor dispute, fire, unusual delay in deliveries, unavoidable casualties or by causes beyond the Owner's and/or the Construction Manager's control or any suspension or other delay authorized by the Owner. The Construction Manager's sole claim for delay shall be for additional time. Any delay claim for time shall be determined from the Contract Time as stated in the Agreement, regardless of any accelerated schedule by the Construction Manager.

8.4 DAMAGES FOR CONSTRUCTION MANAGER DELAY IN COMPLETION

8.4.1 If the Construction Manager refuses or fails to complete the Work within the time or times specified in this Agreement or any authorized extension thereof, the actual damage to the Owner for the delay will be impossible to determine and in lieu thereof the Construction Manager shall pay to the Owner, as a reasonable forecast of loss to Owner and not as a penalty, fixed, agreed and liquidated damages for each day of delay of Substantial Completion, the amount of Two Thousand Dollars (\$2,000.00) per day, and the Construction Manager and its sureties shall be liable for the

amount thereof, provided, however, that the Owner reserves the right to terminate the right of the Construction Manager to proceed with the Work or such part or parts thereof as to which there has been delay, and to contract for completion by a third party contractor, charging against the Construction Manager and its sureties any excess cost occasioned the Owner thereby, together with liquidated damages accruing until such time as the Owner may reasonably receive the completed Project.

ARTICLE 9

PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

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

9.1.2 Each Application for Payment shall include such instruments, evidence, and materials as Owner and Architect shall require including, without limitation, such requisition forms, disbursement requests, indemnities (including evidence of All Risk physical damage insurance coverage on materials and equipment stored off-site), and undertakings as they may specify and an estimate of the total labor done and materials stored at the site (or other location approved in writing by Owner) or installed in the building, less costs for which payment has been made, and also less retainage. All Applications for Payment shall be made on and in compliance with a form acceptable to Owner.

9.1.3 The Maximum cost to Owner for the Work including the Cost of the Work and Construction Manager's Fee, is guaranteed by Construction Manager not to exceed the Guaranteed Maximum Price also called the Contract Sum, as may be increased or decreased for Changes in the Work as provided in the General Conditions or elsewhere in the Contract Documents.

9.1.4 The "Savings" (defined as the difference between the Guaranteed Maximum Price and the actual total Cost of the Work and the Construction Manager's fee), if any, shall be shared by the Owner and Construction Manager in the ratio of 75% to Owner and 25% to Construction Manager.

9.1.5 Should the Cost of the Work plus Construction Manager's Fee exceed the Guaranteed Maximum Price, as adjusted in accordance with Article 7 of the General Conditions, Owner shall be responsible to pay Construction Manager only the adjusted Guaranteed Maximum Price. The entire excess Cost of the Work over the adjusted Guaranteed Maximum Price shall be the sole responsibility of, and shall be paid by Construction Manager.

9.2 COSTS TO BE REIMBURSED

9.2.1 The term "Cost of the Work", i.e., costs to be reimbursed, shall mean the cost necessarily incurred in the proper performance of the Work and paid by Construction Manager. Such costs shall be at rates not higher than the standard paid in the locality of the Work except with prior written consent of Owner and shall include the items in Paragraphs 9.2.2 to 9.2.20.

9.2.2 Wages paid for labor in the direct employ of Construction Manager in the performance of the Work under applicable collective bargaining agreements or under a salary or wage schedule agreed upon by Owner and Construction Manager and including such welfare or other benefits, if any, as may be payable with respect thereto.

9.2.3 Salaries of Construction Manager's personnel when stationed at the Field Office in whatever capacity employed and the portion of salaries of other personnel when engaged at shops or on the road in expediting the production or transportation of materials or equipment, provided the use of such personnel and the wage rate of such personnel have received the prior written approval of Owner.

9.2.4 Cost of contributions including healthcare, pension and other customary benefits, assessments or taxes for such items as unemployment compensation and F.I.C.A., insofar as such costs are based on wages, salaries or other remuneration paid to employees of Construction Manager included in the Cost of the Work.

9.2.5 The proportion of reasonable transportation, traveling and hotel expenses of Construction Manager or of his officers or employees incurred in the discharge of duties connected with the Work, provided the incurrence of such expenses has received the prior written consent of Owner.

9.2.6 Cost, including transportation, of materials, supplies and equipment incorporated into the Work.

9.2.7 Payments made by Construction Manager to trade contractors for Work performed pursuant to contracts under this Agreement or for materials suitably stored at the job site or Owner-approved off-site locations (provided said materials are reasonably necessary for the ordinary course of the Work and for which payments have not been received to date). Notwithstanding, the foregoing, payment shall not be made for any materials not actually incorporated into the Work unless specifically authorized by Owner in writing. Owner may condition such authorization upon, among other things, satisfaction of the following conditions:

9.2.7.1 The materials and/or equipment in question must be delivered to the place of storage in new condition, free from any liens, security interests or title retention agreements and suitably stored and protected from the elements or other damage or loss.

9.2.7.2 Title to all such materials and equipment shall, upon payment by Owner, pass to Owner free of liens, security interests and encumbrances and Construction Manager's or the trade contractor's invoice for payment shall constitute a representation and warranty that title has passed as aforesaid. Notwithstanding the foregoing, the risk of loss of all such materials which are not incorporated into the Work shall remain and be the sole responsibility of Construction Manager. The Construction Manager shall insure the Owner against any and all such losses of stored materials at the job site or at Owner-approved off-site locations by providing the Owner with an insurance policy covering the costs of stored material, and naming the Owner as an additional insured.

9.2.8 Cost, including transportation, of all materials, supplies, equipment, temporary facilities and hand tools not owned by workmen, which are consumed in the performance of the Work; cost less salvage value, as determined by Owner, of such items used but not consumed which remain the property of Construction Manager, and rental charge of Construction Manager-owned equipment at

seventy percent (70%) of the rates in the current Associated Equipment Distributors List.

9.2.9 Rental charges of all necessary machinery and equipment, exclusive of hand tools, not owned by Construction Manager, used at the site of the Work at rental charges consistent with those prevailing in the area, which shall be promptly returned to minimize rental charges.

9.2.10 Costs incurred in the administration of the General Conditions of the Contract, not including labor and material used to construct the Project or resulting, in permanent part of the total facility but including:

9.2.10.1 temporary heat, water, electricity, telephone and toilets;

9.2.10.2 temporary fence, sidewalk, bridges, roadways and elevators;

9.2.10.3 approved field office and its related costs, equipment and furnishings;

9.2.10.4 safety barricades, construction signs and watchmen;

9.2.10.5 trucking, cleaning and refuse disposal;

9.2.10.6 messenger service;

9.2.10.7 first aid station;

9.2.10.8 cost of premiums for all bonds and insurance which Construction Manager is required by this Agreement to purchase and maintain;

9.2.10.9 fees for building and similar permits required for the performance of the Work;

9.2.10.10 costs incurred due to an emergency affecting the safety of persons and property;

9.2.10.11 deposits lost for causes other than Construction Manager's negligence or fault, or the negligence or fault of any trade contractor;

9.2.10.12 losses and expenses, including settlements made with the written consent and approval of Owner, not compensated by insurance or otherwise, sustained by Construction Manager in connection with the Work, provided that they have resulted from causes other than the fault or neglect of Construction Manager or any trade contractors or their respective employees or agents and provided that no such losses and expenses shall be included in the Cost of the Work for the purpose of determining Construction Manager's Fee; however, if such loss requires reconstruction and Construction Manager is placed in charge thereof, he shall be paid for his services a Fee proportionate to that stated in Paragraph 8.1;

9.2.10.13 minor expenses such as telegrams, long distance telephone calls, telephone service at site, expressage and similar petty cash items in connection with the Work;

9.2.10.14 cost of removal of all debris;

9.2.10.15 legal fees, costs and expenses associated with trade contractor disputes which arise out of the trade contractor's obligations under the Contract Documents, and provided that such disputes are not the result of negligence or breach of contract by the Construction Manager, and that Owner shall not be obligated to pay or incur any fees, costs or expenses in defense of the Construction Manager;

9.2.10.16 cost for testing and inspection which Construction Manager is required to perform under this Agreement; and

9.2.10.17 other cost incurred in the performance of the Work not listed in Sections 9.2.1 to 9.2.18, only if and to the extent approved in advance in writing by the Owner.

9.3 COSTS NOT TO BE REIMBURSED

9.3.1 The term "Cost of the Work" shall not include any of the items in Paragraphs 9.3.2 to 9.3.11.

9.3.2 Salaries or other compensation of Construction Manager's officers, executives, general managers, estimators, auditors, accountants, purchasing and contracting agents and other employees at Construction Manager's principal office and branch offices, except as expressly included in Paragraph 9.2.

9.3.3 Expenses of Construction Manager's principal and branch offices including the field office, except as may be expressly included in Paragraph 9.2.

9.3.4 Any part of Construction Manager's capital expenses, including interest on Construction Manager's capital, employed for the Work.

9.3.5 Overhead and General expenses of any kind, except as may be expressly included in Paragraph 9.2.

9.3.6 Costs due to the fault or neglect of Construction Manager and trade contractors anyone directly or indirectly employed by any one of them or for whose act any of them may be responsible or liable, including, but not limited to the correction of defective Work, disposal of materials and equipment wrongly supplied and making good any damage to property.

9.3.7 The cost of any item not specifically and expressly included in the items in Paragraph 9.2.

9.3.8 Costs in excess of the Guaranteed Maximum Price as defined in Paragraph 9.1.

9.3.9 Incentive compensation, bonuses or other benefits over and above the normal wages to be reimbursed pursuant to Paragraph 9.2.

9.3.10 The cost of repairs and preventive maintenance to any leased equipment or Construction Manager-owned equipment.

9.3.11 Any costs expended by Construction Manager without Owner's prior approval or consent where such approval or consent is required.

9.4 SCHEDULE OF VALUES

9.4.1 Thirty (30) Days before the first Application for Payment is submitted, the Construction Manager shall submit to the Architect and Owner a Schedule Of Values which allocates the Contract Sum to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Architect and Owner may require. This Schedule, as approved by the Architect and Owner, shall be used as a basis for reviewing the Construction Manager's Applications for Payment and such approval shall not constitute acceptance of the allocability of costs to a specific portion of the Work. No Application for Payment shall be approved until a Schedule Of Values has been approved by the Owner and Architect in writing.

9.4.2 The Construction Manager shall prepare a trade payment breakdown for the Work for which the Construction Manager and each of its Subcontractors is responsible, such breakdown being submitted on a uniform standardized form approved by the Owner. The form shall include detailed information sufficient to exhibit areas, floors and/or sections of the Work, and/or by convenient units and shall be updated as required by the Owner as necessary to reflect; (1) description of Work (listing labor and material separately); (2) total value; (3) percent of the Work completed to date; (4) value of Work completed to date; (5) percent of previous amount billed; (6) previous amount billed; (7) current percent completed; and (8) value of Work completed to date. Any trade breakdown which fails to include sufficient detail; is unbalanced or exhibits "front-end loading" of the value of the Work shall be rejected. If trade breakdown had been initially approved and subsequently used, but later found improper for any reason, sufficient funds shall be withheld from future Applications for Payment to ensure an adequate reserve (exclusive of normal retainage) to complete the Work.

9.5 APPLICATIONS FOR PAYMENT

9.5.1 At least forty five (45) Days before the date established for each progress payment or such other time period as may be determined by the Owner, the Construction Manager shall submit to the Architect an itemized Application for Payment for Work completed in accordance with the Contract Documents and for operations completed in accordance with the Schedule Of Values. Such application shall be notarized, if required, and shall be accompanied by such supporting details and documentation to substantiate the Construction Manager's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage if provided for elsewhere in the Contract Documents.

9.5.1.1 Such Applications for Payment may include requests for payment on undisputed amounts that relate to changes in the Work which have been properly authorized by Change Orders.

9.5.1.2 Such Applications for Payment shall not include requests for payment of amounts the Construction Manager does not intend to pay to a Subcontractor or material supplier because of a dispute or other reason.

9.5.1.3 Each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Architect and Owner:

- .1** a current Construction Manager's lien waiver and duly executed and acknowledged sworn statement showing all Subcontractors and material suppliers with whom the Construction Manager has entered into subcontracts, the amount of each such subcontract, the amount requested for any

Subcontractor and material suppliers in the requested Application for Payment and the amount to be paid to the Construction Manager from such Application for Payment, together with similar sworn statements from all such Subcontractors and material suppliers;

- .2 duly executed waivers of mechanics' and material suppliers' liens from all Subcontractors and, when establishing payment or satisfaction of payment of all amounts requested by the Construction Manager on behalf of such entities or persons in any previous Application for Payment; and
- .3 all information and materials required to comply with the requirements of the Contract Documents or reasonably requested by the Owner.

9.5.1.4 Until the date of Substantial Completion, the Owner shall pay ninety percent (90%) of the amount due the Construction Manager on account of Application for Payment provided that when the Construction Manager's Work is fifty percent (50%) complete and thereafter, if the manner of completion and progress of such Work is and remains satisfactory to the Owner, the Owner shall, at its sole discretion, upon request by the Construction Manager, pay in full that portion of subsequent Application for Payment relating to the Construction Manager's Work. The full contract retainage may be reinstated in respect to the Construction Manager's Work if the manner of completion of such Work or its progress does not remain satisfactory to the Owner for any reason. Any release or reinstatement of a portion of the Construction Manager's retention prior to final acceptance of the Work and payment therefore, shall be at the sole discretion of the Owner.

9.5.1.5 Application for Payment shall not be made more than once a month and at a time to be agreed upon by the Construction Manager and Owner.

9.5.1.6 As the Work progresses in accordance with the Contract Documents and in a manner that is satisfactory to the Owner, the Owner hereby agrees to make payments to the Construction Manager therefore, based upon the Contract Sum and approved Schedule Of Values, as follows. The Architect will once in each month and on such day as the Owner may fix, make an estimate of the quantity of Work done and of material which has actually been put in place or incorporated into the construction or stored on or off the site in accordance with the terms and conditions of the Contract Documents during the preceding month, and compute the value thereof and recommend to the Owner the amount to be paid to the Construction Manager. No monthly estimate will be rendered unless the value of the Work done equals five percent (5%) percent of the Contract Sum or One Thousand Dollars (\$1,000), whichever is less.

9.5.2 If approved in advance by the Owner, payments may be made for 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 Construction Manager with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment and otherwise protect the Owner's interest, and shall include applicable insurance, storage and transportation to the site for such materials and equipment stored off the site. Construction Manager shall also comply with the following specific requirements:

- .1 the aggregate cost of materials stored off site shall not exceed Five Thousand Dollars (\$5,000) at any time without written approval of the Owner;
- .2 title to such materials shall be vested in the Owner, as evidenced by documentation satisfactory in form and substance to the Owner, including, without limitation, recorded financing statements, UCC filings and UCC searches;
- .3 with each Application for Payment, the Construction Manager shall submit to the Owner a written list identifying each location where materials are stored off the Project site and the value of materials at each location. The Construction Manager shall procure insurance satisfactory to the Owner for materials stored off the Project site in an amount not less than the total value thereof. The Construction Manager shall be responsible for theft or pilferage of any materials or equipment stored by the Construction Manager at an off-site location;
- .4 the consent of any surety shall be obtained to the extent required prior to payment for any materials stored off the Project site;
- .5 representatives of the Owner shall have the right to make inspections of the storage areas at any time; and
- .6 such materials shall be (1) protected from diversion, destruction, theft and damage to the satisfaction of the Owner, (2) specifically marked for use on the Project, and (3) segregated from other materials at the storage facility.

9.5.3 The Construction Manager 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 Construction Manager 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 be free and clear of liens, claims, security interests or encumbrances in favor of the Construction Manager, Subcontractors, materials suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

9.5.3.1 The Construction Manager further expressly undertakes to defend the Owner and any other Indemnitees, at the Construction Manager's sole expense, against any actions, lawsuits or proceedings brought against Owner and any Indemnitees as a result of liens filed against the Work, the improvements or any portion of the property of the Owner or Indemnitees for payments due by the Construction Manager (referred to collectively as liens in this Paragraph 9.5.3). The Construction Manager hereby agrees to indemnify and hold the Owner and Indemnitees harmless against any such liens or claims of lien and agrees to pay any judgment or lien resulting from any such actions, lawsuits or proceedings.

9.5.3.2 The Owner at its sole discretion may release any payments withheld due to a lien or claim of lien if the Construction Manager obtains security acceptable to the Owner of a lien bond which is: (1) issued by a surety acceptable to the Owner; (2) in form and substance satisfactory to the Owner; and (3) in an amount not less than One Hundred Fifty percent (150%) of such lien claim.

By posting a lien bond or other acceptable security, however, the Construction Manager shall not be relieved of any responsibilities or obligations under this Paragraph 9.5, including, without limitation, the duty to defend and indemnify the Owner and Indemnitees. The cost of any premiums incurred in connection with such bonds and security shall be the responsibility of the Construction Manager and shall not be part of, or cause any adjustment to, the Contract Sum.

9.5.3.3 The Construction Manager agrees to waive any right which it may have to assert a mechanic's or other lien against the Project site and any improvements thereon, including, without limit, the Work itself. Furthermore, the Construction Manager will cause a similar provision, waiving any right to a mechanic's or other lien against the property, to be included in all contracts with its Subcontractors, any sub-subcontractors and all contracts with material suppliers.

9.5.3.4 Notwithstanding the foregoing, the Owner reserves the right to settle any disputed mechanic's or materialmen's lien claim by payments to the lien claimant or by such other means as the Owner, in the Owner's sole discretion, determines is the most economical or advantageous method of settling the dispute. The Construction Manager shall promptly reimburse the Owner, upon demand, for any payments so made.

9.5.4 Concurrent with the first Application for Payment, the Construction Manager shall submit a quarterly Cash Flow Projection for the Project which delineates the expected monthly Application for Payment amounts for the duration of the Project. This projection shall be updated and resubmitted with each subsequent Application for Payment.

9.5.5 Any Application for Payment which is based on a pending claim for additional compensation may be certified by the Architect, but subject to the Owner's approval, to the extent the Architect determines that the payments yet to be made under the Contract together with any retainage are sufficient to protect the Owner.

9.6 CERTIFICATES FOR PAYMENT

9.6.1 If the Construction Manager has made Application for Payment as above, the Architect will, within ten (10) Days after such Application is received, either issue to the Owner, with a copy to the Construction Manager, a Certificate for Payment for ninety percent (90%) of the amount of the Application for Payment, less any other amounts permitted to be withheld under the Contract Documents, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding certification, whether in whole or in part, as provided herein in subparagraph 9.7.1.

9.6.2 Nothing herein shall be construed as requiring the Architect to certify such Applications or to reduce the retainage. Certifications and payments, including those pursuant to a pending claim, shall be tentative and conditional and it shall not be necessary for the Architect to make any statement to this effect.

9.6.3 The provisions for payment, withholding, retainage and Certificates for Payment are solely for the benefit of the Owner and no other party (including sureties of the Construction Manager) shall have any claim for negligence or other action against the Owner, the Architect or anyone acting on behalf of either of them for waiving or misapplying these provisions.

9.6.4 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based upon the Architect's inspections at the site and data contained in the Application

for Payment, that the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents and the Construction Manager is entitled to payment in the amount certified. By issuing a Certificate for Payment, however, the Architect shall not be deemed to represent that it has reviewed the construction means, methods, techniques, sequences or procedures or that it has made any examination to ascertain how and for what purpose the Construction Manager has used the monies previously paid on account of the Contract Sum. By issuing a Certificate for Payment, the Architect shall not thereby be deemed to represent that it has made exhaustive or continuous on-site inspections to check the quality or quantity of the Work or that it has made any examination to ascertain how or for what purpose the Construction Manager has used the monies previously paid on account of the Contract Sum.

9.6.2.2 No payment will be made on any materials or equipment without documented evidence of the acceptability of such materials or equipment filed with the Architect. Such payment shall not be deemed to be an acceptance of such materials or equipment, and the Construction Manager shall be responsible for and shall deliver to the site and properly incorporate in the Work only those materials or equipment that comply with the Contract Documents.

9.6.2.3 All payments including the final, will be made for actual quantities of Work performed and the materials actually incorporated in the Work in accordance with the requirements contained in the Contract Documents.

9.6.2.4 Partial payments as determined by the Architect, and the resulting quantities involved shall be accepted as final, conclusive and binding upon the Construction Manager.

9.6.2.5 It is agreed that so long as the Construction Manager fails to comply with any lawful or proper direction concerning the Work or material given by the Owner, Architect or either of their representatives, the Construction Manager shall not be entitled to have any payment made, nor shall any payment be rendered on account of Work done or material furnished until such lawful or proper direction aforesaid has been fully and satisfactorily complied with by the Construction Manager. The Construction Manager in this event shall not stop prompt and diligent prosecution of the Work in accordance with the Project Schedule.

9.7 DECISIONS TO WITHHOLD CERTIFICATION

9.7.1 The Architect or Owner may decide not to certify payment and 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 or Owner's opinion the representations required by Subparagraph 9.6.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application for Payment, the Architect will notify the Construction Manager and Owner as provided in Subparagraph 9.6.1. If the Construction Manager 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 decide not to certify payment or, because of subsequently discovered evidence or subsequent observations, 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 because of:

- .1** defective Work not remedied;

- .2 third party claims filed or reasonable evidence indicating probable filing of such claims;
- .3 failure of the Construction Manager 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 another 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 failure to carry out the Work in accordance with the Contract Documents or any other default by the Construction Manager under the Contract Documents.

9.7.2 When the above reason(s) for withholding certification are removed, certification will be made for amounts previously withheld. The Owner shall not be deemed to be in default of the Contract by reason of withholding payment while any of the above grounds remain uncured, but the Construction Manager shall be deemed to be in default if it stops or slows down the Work.

9.7.3 Notwithstanding that a Certificate of Payment may have been issued by the Architect, the Owner shall have the right to withhold from payment the funds necessary to offset claims described in paragraph 9.7.1 and Owner may, at its option, act as agent for the Construction Manager in disbursing said funds directly to those parties and for those reasons described in Paragraph 9.7.1.1. The Owner shall render to the Construction Manager a proper accounting of all such disbursements, and the value of such disbursed funds shall be entered as payment under the Contract.

If the Construction Manager disputes any determination of the Owner with respect to any Application for Payment, the Construction Manager shall nevertheless continue to diligently prosecute the Work or be deemed to be in default.

9.7.4 Notwithstanding that a Certificate of Payment may have been issued by the Architect, Owner reserves the right to withhold payment of any monies due to the Construction Manager, under this Contract, if there shall be a default in any of the terms, covenants, and conditions to be performed on the part of the Construction Manager under any other contracts between the Owner and the Construction Manager; and to apply any monies that may become due to the Construction Manager hereunder against the Construction Manager under any other contract between Owner and Construction Manager. Owner may, at its option, in the event of such default in other such contract, declare a default to exist hereunder entitling Owner to all remedies provided herein or at law or in equity.

9.8 PROGRESS PAYMENTS

9.8.1 After the Architect has issued a Certificate for Payment and if the Owner approves such 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.

9.8.1.1 The Owner will make payments no later than thirty five (35) Days after the receipt of the approved Certificate for Payment from the Architect.

9.8.2 The Construction Manager shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Construction Manager on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Construction Manager on account of such Subcontractor's portion of the Work. The Construction Manager shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in similar manner.

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

9.8.4 Except as may otherwise be required by law, neither the Owner nor Architect shall have an obligation to pay or to see to the proper disposition of the monies paid by the Owner to the Construction Manager including the payment of money to a Subcontractor.

9.8.5 Payment to material suppliers shall be treated in a manner similar to that provided in Subparagraphs 9.8.2, 9.8.3 and 9.8.4.

9.8.6 No Certificate for Payment, nor any payment by the Owner, nor any partial or entire use or occupancy of the Project by the Owner, shall constitute an acceptance of the Work or materials or should be construed or relied upon as any indication that the Work or materials are in accordance with the Contract Documents, or that the amounts paid or certified therefore represent the correct cost or value of the Work or materials or that such amounts are in fact due the Construction Manager.

9.8.7 The Owner may at its sole discretion at any time after fifty percent (50%) of the Work has been completed and the Owner deems that satisfactory progress is being made, release any portion of the retained percentage to the Construction Manager upon submission by the Construction Manager, with respect to the portion of the Work completed, of such of the items as the Owner may request.

9.9 FAILURE OF PAYMENT

9.9.1 If the Architect does not issue a Certificate for Payment, through no fault of the Construction Manager, within twenty (20) Days after receipt of the Construction Manager's Application for Payment, or if the Owner does not pay the Construction Manager within ten (10) Days after the date established in the Contract Documents for the payment of the amount certified by the Architect for a reason other than which Owner is entitled to withhold payment under the Contract Documents, then the Construction Manager may, upon seven (7) 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

Construction Manager's reasonable actual costs of shut-down and start-up, which shall be accomplished as provided in Article 7.

9.9.2 If the Owner is entitled to reimbursement or payment from the Construction Manager under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Construction Manager fails to promptly make any payment due the Owner, or the Owner incurs any costs and expenses to cure any default of the Construction Manager or to correct defective Work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to: (1) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Construction Manager from the Owner, or (2) issue a written notice to the Construction Manager reducing the Contract Sum by an amount equal to that which the Owner is entitled.

9.10 SUBSTANTIAL COMPLETION

9.10.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use; provided, however that as a condition precedent to Substantial Completion, the Owner has received all Certificates Of Occupancy and any other permits, approvals, licenses and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Project.

9.10.2 When the Construction Manager considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Construction Manager shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected ("Punch List"). The Construction Manager shall proceed promptly to complete and correct items on the Punch List. Failure to include an item on such Punch List does not alter the responsibility of the Construction Manager to complete all Work in accordance with the Contract Documents. Upon receipt of the Construction Manager's Punch List, the Architect and Owner will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's and Owner's inspection discloses any item, whether or not included on the Construction Manager's Punch List, which is not in accordance with the requirements of the Contract Documents, the Construction Manager shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect or Owner. The Construction Manager shall then submit a request for another inspection by the Architect and Owner to determine Substantial Completion. When the Work or designated portion thereof is determined to be substantially complete, the Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Construction Manager for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Construction Manager shall finish all items on the Punch List accompanying the Certificate of Substantial Completion. 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. The Certificate of Substantial Completion shall be submitted to the Owner and Construction Manager for their written acceptance of responsibilities assigned to them in such Certificate which shall identify all non-conforming, defective and incomplete Work and shall establish a schedule of completion for all

items listed therein.

9.10.3 Upon Substantial Completion of the Work or designated portion thereof and upon application by the Construction Manager and certification by the Architect and Owner, the Owner shall make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof as provided in the Contract Documents. The payment shall be sufficient to increase the total payments to ninety five percent (95%) of the amount due, less twice the value of incomplete work and unsettled Claims.

9.11 PARTIAL OCCUPANCY OR USE

9.11.1 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 Construction Manager, provided such occupancy or use is consented to by the insurer as required under Paragraph 11.3 and authorized by public authorities having jurisdiction over the Work. In the event that the Owner desires to exercise such right of occupancy, the Construction Manager shall cooperate in making available for the Owner's use, building services, including, but not limited to, heating, ventilating, cooling, water, lighting and telephone and shall complete as soon as practicable any equipment required to furnish such services which is not ready for operation and use. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Construction Manager have accepted in writing the responsibilities assigned to each of them, including, but not limited to 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 Construction Manager considers a portion substantially complete, the Construction Manager shall prepare and submit a list to the Architect as provided under Subparagraph 9.10.2. Consent of the Construction Manager to partial occupancy or use shall not be unreasonably withheld. The state of the progress of the Work shall be determined by written agreement between the Owner and Construction Manager or, if no agreement is reached, by decision of the Owner.

9.11.2 In the event that the Owner desires to exercise the right to occupy, the Construction Manager shall cooperate in making available for the Owner's use, building services, including but not limited to, heating, ventilating, cooling, water, lighting and telephone and shall complete as soon as practicable any equipment required to furnish such services which is not ready for operation and use.

9.11.3 Immediately prior to such partial occupancy or use, the Owner, Construction Manager 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.

9.11.4 Unless otherwise agreed in writing, 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.

9.12 FINAL COMPLETION AND FINAL PAYMENT

9.12.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect and Owner will promptly make such inspection and, when the Architect and Owner find the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for

Payment stating that on the basis of the Architect's observations 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 Construction Manager and noted in the final Certificate of Payment is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Subparagraph 9.12.2 as precedent to the Construction Manager's being entitled to final payment have been fulfilled. All warranties and guarantees required under or pursuant to the Contract Documents shall be assembled and delivered by the Construction Manager to the Owner as part of the final Application for Payment. The final Certificate for Payment will not be issued by the Owner until all warranties and guarantees have been received and accepted.

9.12.2 Neither final payment nor any remaining retained percentage shall become due and no final Certificate of Payment shall be issued by the Architect until the Construction Manager 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 and that all Work has been performed in accordance with the Contract Documents; (2) a certificate evidencing that insurance required by the Contract Documents is to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner; (3) a certified statement that the Construction Manager 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; (5) a Certificate of Occupancy for the Work, if appropriate; and (6) 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 Construction Manager 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 Construction Manager 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. The Construction Manager shall also be required to forward to the Owner copies of appropriate Operation and Maintenance Manuals, keys, Record Drawings, attic storage, replacement parts and warranties, etc., as appropriate, before final payment is made.

9.12.3 If, after Substantial Completion of the Work, Final Completion thereof is materially delayed through no fault of the Construction Manager or by issuance of Change Orders affecting Final Completion, and the Architect so confirms, the Owner shall, upon application by the Construction Manager 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 Construction Manager 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.

9.12.4 Acceptance of final payment by the Construction Manager, 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.

9.12.5 Where the term "Final Completion" or "complete" is used, it shall mean that all Project areas are finished, all materials and equipment are in place, all adjustments and balancing have been done, all corrections and adjustments noted on pre-final and final inspections have been made, all Punch List items under subparagraph 9.10.2 are complete, all tests are made, the Construction Manager has vacated the Site taking all its tools, equipment, materials, debris, trash, etc., and all certificates, permits, reports and similar information have been filed or provided.

9.13 WAIVER OF LIENS

9.13.1 To the fullest extent permitted by applicable law, the Construction Manager hereby waives and releases any and all rights of mechanic's lien and similar rights of lien for payment for services, labor, equipment or materials furnished by the Construction Manager in performance of the Work and granted by law to persons supplying materials, equipment, services and other things of value to improve or modify land or structures thereon, which the Construction Manager may have against the Owner's premises or property belonging to the Owner or the Project site. The Construction Manager shall require each of his Subcontractors and materialmen, and any person or entity with whom they contract, to agree in writing to the waiver of any such lien rights as a condition to the granting of a contract, subcontract, or purchase order.

9.13.2 The Construction Manager shall at all times promptly pay for all services, materials, equipment, and labor used or furnished by the Construction Manager in the performance of the Work and shall at its expense keep the Owner's premises and all property belonging to the Owner and the Project site, free and clear of any and all of the above-mentioned liens and rights of lien arising out of services, labor, equipment or materials furnished by the Construction Manager or its employees, materialmen or Subcontractors in the performance of the Work. Such lien or claim, until it is removed, shall preclude any payment by Owner under this Agreement unless other security satisfactory to the Owner is provided by the Construction Manager in lieu of monies so withheld. If the Construction Manager fails to release and discharge any such claim or lien against the Owner's premises or property or the Project site after receipt of written notice from the Owner to remove such claim or lien, the Owner may take any further action it determines to be necessary to protect Owner's interests and the Construction Manager shall pay the Owner any and all costs and expense of the Owner in so doing, including reasonable attorney's fees incurred by the Owner.

9.14 COST ACCOUNTING

9.14.1 Upon presentation by Construction Manager of an Application for Payment which indicates fifty percent (50%) completion of the Work, a cost accounting of the Project as of the date of the date of the particular Application for Payment will be prepared promptly by Construction Manager. Said cost accounting shall be completed to the satisfaction of Owner prior to the submission of the next Application for Payment. If payment to Construction Manager has exceeded all actual costs determined by the accounting, the excess shall be credited to Owner on the next Application. Additional cost accounting of the Project may be requested of Construction Manager at any time and from time to time in writing by Owner. Each cost accounting shall be made as of the date of any Application for Payment as designated by Owner and shall be completed to the satisfaction of Owner within thirty (30) days after such request. If payments to Construction Manager have exceeded all actual costs determined by the accounting, the excess shall be credited to Owner on the next Application.

9.14.2 Construction Manager shall check all materials, equipment and labor entering into the Work and shall keep such full and detailed accounts as may be necessary for proper financial management under this Agreement in a system that is satisfactory to Owner. Construction Manager and all trade contractors shall keep detailed records (including accounts, vouchers, receipts, invoices, correspondence, memoranda, drawings and similar data) of all services performed and costs incurred under this Agreement, shall retain such records for a ten year period following the date of final completion and shall permit such records to be examined and copies by Owner and by the Secretary of the U.S. Department of Health and Human Services, the Comptroller General, the U.S. Department of Energy any other federal agency involved in the Project, and any of their duly authorized representatives. Construction Manager and all trade contractors shall also permit examination and copying by any of Owner's lenders and by regulatory and health insurance authorities and reimbursement agents, if such third parties require such examination and/or copying as a condition of advancing funds to or reimbursing Owner or granting permits or approvals to Owner. All such examinations and copying shall be upon such reasonable terms and conditions as Owner may impose and shall be at no cost to Construction Manager. The provisions set forth in this Paragraph 9.14 shall be included in all subcontracts, trade contracts and purchase orders with a contract price of \$10,000.00 or more.

9.14.3 During this Agreement and for a period of ten years succeeding the final completion, Owner shall have the right to employ, at his own expense, an independent accounting firm to examine Construction Manager's books, records, accounts and files for the purpose of cost accounting. Any discrepancy between accounting by the Owner's accounting firm and the Contractor's accounting shall be resolved by the parties. Owner shall be entitled to reimbursement for any over payment to the Construction Manager. In the event that the parties cannot reconcile the accountings, the parties shall choose an accounting firm to conduct a final accounting which will be binding on both parties. The parties shall each pay half of the fees for such an accounting. In the event that the parties cannot agree on a firm, then each party shall select an accounting firm and those two parties shall select a third accounting firm to conduct the accounting. The Owner's accounting firm and/or the independent accounting firm shall only have the right to review costs and records associated with this Project.

ARTICLE 10

PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

10.1.1 The Construction Manager shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract and for safe working conditions at the site. The Construction Manager shall be solely responsible for any safety violation or unsafe condition, and shall defend, indemnify and hold the Owner and Architect harmless from any penalty, fine or liability in connection therewith.

10.1.1.1 The Construction Manager shall develop and have in effect during the Work, a Health and Safety Program ("Program") for its employees and Subcontractors performing the Work, or any part thereof and the Construction Manager shall provide a copy of the Program to the Owner prior to

commencement of the Work which Program shall describe, but not be limited to:

- .1 personnel responsible for project safety including all subcontract personnel, including at least one on-site person;
- .2 provision of first aid facilities;
- .3 provision of safety for all personnel;
- .4 use of protective clothing and equipment;
- .5 conducting weekly "toolbox" safety talks and demonstrations and forwarding a copy of weekly minutes to the Architect;
- .6 distributing and posting of safety posters, warning and instructional material;
- .7 regular periodic meetings of assigned safety personnel from all trades;
- .8 provision of suitable and easily accessible fire-fighting equipment;
- .9 conducting a program of regular job safety inspections, which includes notation of hazards found and corrective measures taken;
- .10 description of enforcement of Project housekeeping;
- .11 program for equipment maintenance and safety inspection; and
- .12 provision of Project Safety Log for recording all project safety activities.

10.1.1.2 The Construction Manager shall review and revise said Program periodically. The Construction Manager shall be solely responsible for the compliance of its employees or Subcontractors with the Program. The Owner is not required to evaluate, audit or in any way implement the Program. The Construction Manager alone shall be responsible for the safety, efficiency, and adequacy of its plant, appliances, and methods, and for any damage which may result from improper construction, maintenance, or operation.

10.1.1.3 The Owner will have the right to require the Construction Manager to incorporate as part of the Construction Manager's Health and Safety Program, health and safety rules and regulations which the Owner may issue from time to time.

10.1.1.4 The Owner and Architect may report observed Program violations to the Construction Manager. The Construction Manager shall, after receipt of notice of any violation, immediately take corrective action. If the Construction Manager fails or refuses to take immediate corrective action, the Owner may issue an order stopping all or part of the Work until the Owner determines that satisfactory corrective action has been taken. No part of the time lost due to any such stop orders shall be made the subject of a claim against the Owner for extension of time or for excess costs or damages by the Construction Manager.

10.1.1.5 The treatment of injuries and/or illness sustained by the Construction Manager's employees and those of its Subcontractors shall be the responsibility of the Construction Manager and the

Construction Manager shall give the Owner notice of any such injuries within forty-eight (48) hours of such occurrence. The Construction Manager waives its rights to subrogation for any payments made to its employees or those of its Subcontractors.

10.1.1.7 The Construction Manager shall maintain an accurate record of all causes of death, occupational disease, and injury requiring medical attention or causing loss of time from work, arising out of the Work, which records shall be made available to the Owner upon request.

10.1.1.8 The Construction Manager shall not require any employee to work in surroundings or under conditions which are unsanitary, hazardous, or dangerous to his/her health or safety.

10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1 Construction Manager shall use its best efforts to provide for the safety and protection of the Building, all persons who may come in contact with the Work, and all real and personal property located in the Building and at or adjacent to the Project Site. Without limitation to the foregoing, Construction Manager shall, at Construction Manager's sole cost and expense, take precautions for the safety of, and shall provide 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 Construction Manager or the Construction Manager's Subcontractors or Sub-subcontractors; and
- .3** other property at the Site or adjacent thereto, including, but not limited to trees, shrubs, lawns, walks, pavements, roadways, structures, Owner's real and personal property, equipment, fixtures, utilities, etc. not designated for removal, relocation or replacement in the Performance of the Work.

10.2.2 The Construction Manager shall give all notices and comply with all applicable provisions of Federal, State and local safety and health laws, building codes and safety and health regulations in effect during the performance of the Work to prevent accidents or injuries to persons or property on or adjacent to the Site or related or adjoining areas where the Work is being performed. The Construction Manager agrees to conform to the provisions of the "Manual of Accident Prevention in Construction" published by Associated General Construction Managers of America, Inc., most recent edition. The Construction Manager agrees to conform to the requirements of the Occupational Safety and Health Act of 1970 (OSHA) and the Construction Safety Act of 1969, as amended, including standards and regulations that have been or will be promulgated by the governmental authorities which administer such acts. The Construction Manager agrees to defend, indemnify and hold harmless the Owner, the Architect, and their employees, consultants and representatives as a result of non-compliance of any Federal, State or local safety and health Laws or building codes. Should charges of violation of any of the above be issued to the Construction Manager in the course of the Work, a copy of each charge shall immediately be forwarded to the Owner and the Architect. The Construction Manager shall allow the Owner, at the Owner's option, to correct OSHA or State or

local violations and to irrevocably decide whether any contractor should, in case of a particular violation, abate, correct or contest the same, if the particular violation endangers the progress of the Work on or at the Site.

10.2.3 The Construction Manager shall erect and maintain, as required by existing conditions and performance of the Work, proper safeguards for safety and protection, including rails, toe guards, night lights, posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities. The Construction Manager shall also be responsible, at the Construction Manager's sole expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Construction Manager and any consequential damages shall be promptly paid by the Construction Manager.

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 Construction Manager shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

10.2.5 The Construction Manager shall promptly remedy at its own expense damage or loss to any property referred to in Paragraphs 10.2 caused in whole or in part by the Construction Manager, any Subcontractor, any Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, except damage or loss caused by the sole negligence of the Owner. The foregoing obligations of the Construction Manager are in addition to its obligations stated elsewhere in the Contract Documents.

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

10.2.7 The Construction Manager shall not load or permit any part of the Work or Site to be loaded so as to endanger its safety.

10.2.8 The Construction Manager shall take all necessary precautions to ensure against fire during construction including the following:

- .1** the Construction Manager shall have the duty to keep the area within the Contract Limit Lines orderly and clean and to promptly remove combustible rubbish from the Site;
- .2** the Construction Manager shall provide and maintain adequate fire protection in all areas of the Project. Construction Manager shall comply with all Federal, State and local laws, codes, regulations and ordinances relating to fire protection and safety;
- .3** the burning of trash and excess materials on the Site is prohibited and no fires for any purpose, including roofer's kettles or open flame devices or tools, shall be permitted on the Site without prior approval of the Architect and Owner;

- .4 when use or storage of explosives, combustible materials or other hazardous materials or equipment are necessary for the proper execution of the Work, Construction Manager shall exercise the utmost care and carry on such activities under the supervision of properly qualified personnel. Such materials or equipment shall be safely stored on the Site for a no longer period of time than is necessary for the execution of the Work and in such manner and in such location as approved by the Owner;
- .5 the Construction Manager shall provide initial and active fire lines and permanent (or temporary) fire hose cabinets and provide adequate fire extinguishers at all levels of the structure prior to beginning work of trades other than masonry and concrete trades. The Construction Manager shall maintain such equipment in working order throughout construction. The type, quality and location of this equipment shall be reasonable and adequate to suit the conditions and to comply with all Federal, State and local laws, codes and ordinances; and
- .6 the Construction Manager will institute the Factory Mutual Hot Work Permit Program on this Project. A Hot Work Permit is required for any operation involving flames or producing heat and/or sparks, including, but not limited to brazing, cutting, grinding, soldering, thawing pipes, torch applied roofing and welding. The Owner's Project Manager designates the Construction Manager's Superintendent to serve as Fire Safety Supervisor and administer the permit system. No hot work is permitted without authorization from the Fire Safety Supervisor, in the form of a signed Hot Work Permit. Permits shall be valid for a period not to exceed one day, beyond that a new permit must be obtained before hot work can continue.

10.2.9 The Construction Manager shall remove snow and ice as may be required for the protection of the Work against weather (including, but not limited to rain, winds, storms, snow, sleet, frost, cold or heat) so as to maintain all Work, materials, equipment, apparatus and fixtures free from injury or damage.

10.2.10 When required by law or for the safety of the Work, the Construction Manager shall shore up, brace, underpin, reshore and protect as necessary, foundations and other portions of new Work and existing structures which are in any way affected by the Work.

10.2.11 From the date of commencement to the completion and acceptance of the Work, the Construction Manager shall keep at his own expense, all parts of the Site free from accumulation of water, and to this end, shall supply, keep on Site, maintain and operate pumping and bailing equipment, such as pumps, containers, hose, piping, strainers, fuel, power, mops, brooms, buckets and appurtenances necessary therefore or incidental thereto.

10.2.12 No requirements of, or omission to require any precautions under the Contract Documents shall be deemed to limit or impair any responsibilities or obligations of the Construction Manager under or in connection with the Contract. The Construction Manager shall at all times maintain all necessary protection to safeguard the public and all persons engaged in the performance of the

Contract and shall take such precautions as will accomplish such end without undue interference with the public, or the operations of other contractors, or the Owner.

10.2.13 The Construction Manager shall continuously maintain adequate protection of all work from damage, vandalism and theft, and shall protect the Owner's property and adjacent property from damage arising in connection with the Work.

10.2.14 Whenever it is necessary to provide temporary paths of ingress or egress through the areas of the Work, such paths shall be provided by the Construction Manager with adequate artificial light, directional signs, overhead protection, clearances, fire protection, etc., and shall be constructed and maintained safe from fire, smoke and other physical dangers. The Construction Manager shall submit all proposed details of such paths to Architect for approval.

10.2.15 The Construction Manager shall provide all necessary barricades, lights, and other appropriate warning devices at all ditches, open excavation, and other areas of potential danger to personnel or public. All items shall comply with all local, State and Federal law, regulations codes and ordinances.

10.2.17 The Construction Manager shall provide temporary stairs to all levels of construction and maintain same until permanent stairs are set in use. All stairs shall be maintained open and clear at all times. The stair construction shall comply with all local, State and Federal laws, regulations codes and ordinances.

10.2.18 The Construction Manager shall provide and maintain in a safe condition all those items required for supporting or containing or transporting all persons involved in the Work, or incidental to its prosecution including inspectors, supervisors, Architect's and Owner's representatives, field testing personnel, etc. Such items shall include ladders, catwalks, safety railings, cages, suspension scaffolds, etc. All items and their proper use and implementation shall be in accordance with the requirements of local, State and Federal laws, regulations, codes and ordinances.

10.2.19 The Construction Manager shall protect all existing and new utility lines on or adjacent to the site and notify the Owner and all utility companies in advance when work is to be carried out near their lines.

10.2.20 When all or a portion of the Work is suspended for any reason, the Construction Manager shall securely fasten down all coverings and protect the Work, as necessary, from weather, theft or injury by any cause.

10.2.21 The Construction Manager, at its own expense, shall keep the Site free from accumulation of dirt debris, trash and rubbish and shall provide all equipment, material and labor necessary therefore.

10.2.22 The Construction Manager shall promptly report in writing to the Owner all accidents arising out of or in connection with the Work which cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner.

10.3 EMERGENCIES

10.3.1 In an emergency affecting safety of persons or property, the Construction Manager shall act with diligence, at the Construction Manager's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Construction Manager on account of an emergency shall be determined as provided in Paragraph 4.3 and Article 7.

10.4 PROJECT SAFETY PLAN

10.4.1 The Construction Manager shall submit to the Owner within thirty (30) Days of the date of Contract execution, a Project Safety Plan, which shall describe, but not be limited to, the following:

- .1 personnel responsible for project safety including all subcontract personnel;
- .2 provision of first aid facilities;
- .3 provision of safety for all personnel;
- .4 use of protective clothing and equipment;
- .5 conducting weekly "toolbox" safety talks and demonstrations and forwarding a copy of weekly minutes to the Architect;
- .6 distributing and posting of safety posters, warning and instructional material;
- .7 regular periodic meetings of assigned safety personnel from all trades;
- .8 provision of suitable and easily accessible fire-fighting equipment;
- .9 conducting a program of regular job safety inspections. Notation of hazards found and corrective measures taken;
- .10 description of enforcement of Project housekeeping;
- .11 program for equipment maintenance and safety inspection;
- .12 provision of Project Safety Log for recording all project safety activities; and
- .13 home, beeper, office, mobile telephone numbers of all Construction Manager's personnel involved in the Project.

10.5 SECURITY

10.5.1 Construction Manager hereby acknowledges that the nature of Owner's operations require strict security measures. Construction Manager, Subcontractors, and all Sub-Subcontractors, and anyone and any party for whom any of them may be liable shall cooperate with Owner's security personnel and shall comply with all security requirements of Owner's security personnel. Such requirements shall include, without limitation, delivering to Owner's security personnel, prior to the

commencement of the Work on each day, a list of all Construction Manager's, Subcontractors' and Sub-subcontractors' personnel who will be permitted access to the Project, the foregoing, however, shall not relieve Construction Manager of any obligation to provide a safe and secure work place for all parties entering the Project Site.

10.5.2 Owner reserves the right to bar access to any individual for reasonable security reasons. Furthermore, Owner reserves the right to limit the location of entries to the Project which may be used by Construction Manager, Subcontractors' Sub-subcontractors, or any party for whom any of them may be responsible.

10.5.3 The Construction Manager shall inform and ensure that all its' employees and the employees of all subcontractors park their vehicles in areas designated by the Owner when vehicles are on Owner's property and remove vehicles from areas which are restricted. The Owner shall have no obligation to provide parking for Construction Manager's employees. Construction Manager's temporary on-site facilities and areas for trailers, storage mobilization, staging, sanitary facilities, etc. shall also be located only in areas approved by the Owner.

ARTICLE 11

INSURANCE AND BONDS

11.1 CONSTRUCTION MANAGER'S LIABILITY INSURANCE

11.1.1 At Construction Manager's sole expense, it shall purchase and maintain at least the insurance required so as to protect the Owner and Construction Manager from claims which may arise out of or result from the Construction Manager's operations under the Contract, whether such operations be by the Construction Manager or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

11.1.2 The insurance required hereunder shall be written for not less than limits of liability specified in the Contract Documents including Paragraph 11.1.2.1 or required by law, whichever coverage is greater. Coverage, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment unless coverage is specifically required to be maintained after final payment.

11.1.2.1 The Construction Manager is responsible for seeing that insurance coverage amount, and limits reflect not less than the higher of applicable Federal or State requirements pertaining to insurance for liability for damage imposed by law. The types and limits of insurance which Construction Manager is required to carry are as follows:

- .1** Workers Compensation Insurance as required by applicable Federal, State, or other laws including Employer's Liability.

Statutory Requirements: The Owner shall have the right to terminate the Agreement for cause, if the Construction Manager shall fail to secure compensation and disability benefits coverage for the benefit of and keep insured during the life of the Work appearing in the Contract Documents,

such employees in accordance with the provisions of the Worker's Compensation Law(s).

- .2 Comprehensive General Liability, written as broad as the standard coverage form currently in use in the State of New Jersey which shall not be circumscribed by any endorsements limiting the breath of coverage, including Construction Manager's Liability; Independent Construction Manager's Liability; Contractual Liability including Defense; Completed Operations and Products Liability all on the occurrence basis with Personal Injury Coverage and broad Form Property Damage. Remove the XCU exclusion relating to Explosion, Collapse and Underground Property Damage. Completed Operations Liability shall be kept in force for at least five (5) years after the date of final completion. Limits of liability shall not be less than combined single limits of \$10,000,000, or higher limits if required by Owner.
- .3 Construction Manager shall provide for Builders Risk Insurance covering the interests of Construction Manager and Owner for all operations and services and materials provided pursuant to the Agreement excepting coverage of the building structure.
- .4 Comprehensive Automobile Liability on an occurrence basis covering owned, non-ownership and hired car coverage as well as owned vehicles not less than combined single limits of \$1,000,000.
- .5 Umbrella Policy shall be kept in force for at least 5 years after the date of final payment.

11.1.3 If any of the foregoing insurance coverage are required to remain in force after final payment an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by paragraph 9.10. Information concerning reduction of coverage shall be furnished by the Construction Manager with reasonable promptness in accordance with the Construction Manager's information and belief.

11.1.4 The Construction Manager shall require subcontractors to provide Comprehensive General Liability, Comprehensive Automobile Liability, and Workers' Compensation Insurance with the same minimum limits.

11.1.5 Except for Workers' Compensation Insurance, the Construction Manager's Insurance policies required under this Article shall name the Owner, and its designated representative and their designated representatives as additional insureds. The "University of Medicine and Dentistry of New Jersey, its officers and employees" shall be named as additional insureds.

11.1.6 The insurance required of the Construction Manager shall be written by a company, or companies, licensed to do business as insurance companies in the State of New Jersey at the time the policy is issued and with qualifications as to management and financial strength such that it is rated "A" as to management, and no less than "AAA" as to strength, by the latest edition of Best's Insurance Guide, published by Alfred M. Best Company, Inc., Oldwick, New Jersey 08858.

11.1.7 The Construction Manager shall not commence the Work until it has obtained and provided a

confirming certificate of insurance to the Owner naming Owner as certificate holder.

11.1.7.1 The Construction Manager shall not allow any Subcontractor to commence work on its subcontract until the insurance required has been obtained and confirmed to Owner.

11.1.8 Intentionally left blank

11.1.9 CONSTRUCTION MANAGER'S OBLIGATIONS

11.1.9.1 The Construction Manager shall not violate or knowingly permit to be violated any conditions of the policies of insurance required to be carried under the terms of this Article, and shall at all times satisfy the requirements of the insurance companies issuing them. The provisions of insurance and other requirements set forth above shall in no way release the Construction Manager from its liability and obligations for safety imposed upon it under this Agreement and to this end, the Construction Manager shall provide all necessary personnel and employee approved methods.

11.1.10 NOTICES, COSTS, LOSSES

11.1.10.1 Certificates of Insurance in form acceptable to the Owner shall be filed with the Owner prior to the commencement of the Work by Construction Manager. Policies of insurance that the Construction Manager is required to secure and maintain under the terms of this Agreement shall provide that the Owner is an additional insured and that the insurance company will notify the Owner at least sixty (60) days prior to the effective date of any cancellation, modification or non-renewal of such policies. Copies of policies, if any, and Certificates of Insurance submitted to the Owner shall be in form and content acceptable to the Owner.

11.1.11 Certificates from insurers shall state the name of the Project, Project or Contract Number, Owner and Construction Manager, and shall contain a separate express statement of compliance with each of the requirements set forth in this numbered Article. Upon request, the Construction Manager shall furnish the Owner with a certified copy of the provisions of each policy which establish premiums.

The Construction Manager shall furnish to the Owner copies of any endorsements that are subsequently issued coverage or limits.

11.1.12 Certificates of insurance submitted to the Owner shall clearly set forth exclusions and deductible clauses. The Owner may allow certain deductible clauses which the Owner, in its sole discretion, does not consider excessive, overly broad, or harmful to the interests of the Owner. Standard exclusions may be allowed, provided they are not inconsistent with the requirements of this Article. Regardless of the allowance of exclusions or deductions by the Owner, the Construction Manager shall be responsible for the deductible limit of the policy and all exclusions consistent with the risks the Construction Manager assumes under this Agreement and as imposed by law.

11.1.13 In the event that the Construction Manager provides evidence of insurance in the form of Certificates of Insurance, valid for a period of time less than the period during which the Construction Manager is required by the terms of the Contract Documents to maintain insurance, said Certificates will be acceptable, but the Construction Manager shall be obligated to renew its insurance policies as necessary and to provide new Certificates of Insurance from time to time so that the Owner is continuously in possession of evidence of the Construction Manager's insurance in

accordance with the provisions of this Article.

11.1.14 In the event the Construction Manager fails or refuses to renew its insurance policy, or the policy is canceled or otherwise terminated, or modified so that the insurance does not meet the requirements of this Article, the Owner may refuse to make payment of any further monies due under the Contract. The Owner in its sole discretion may use its own monies, or monies retained under this Paragraph, to renew the Construction Manager's insurance for the periods and amounts referred to above. If the Owner uses its own money to obtain said insurance, the cost thereof shall be considered a charge against the Construction Manager and shall be paid by the Construction Manager immediately upon receipt of the invoice and if Construction Manager refuses to make such payment, the Owner may deduct such costs from any monies due or that may become due to the Construction Manager under this Agreement. Alternately, the Owner may declare the Construction Manager to be in default and direct the surety to complete the Project.

11.1.15 Insurance required under this Article shall not cover: tools owned by mechanics or workmen; tools, equipment, scaffoldings, staging, owned or rented by the Construction Manager, subcontractor, or any employees thereof; or, shanties or trailers to house employees, or lockers, or stored equipment, or tools. The Owner will not be liable for any loss, no matter how caused, to tools, machinery, equipment and materials, and other property of the Construction Manager or Subcontractors or leased or hired by them.

11.1.16 Any policy of insurance secured covering the Construction Manager or Subcontractors against physical loss or damage to property shall include an endorsement waiving the right of subrogation against the Owner for any loss or damage occurring to such property.

11.1.17 In the event that any of the required insurance policies lapse, are revoked, suspended or otherwise terminated, for whatever cause, the Construction Manager shall immediately stop all Work at the Site, and shall not again work at the Site until authorized to do so by the Owner in writing. Upon quitting the site, the Construction Manager shall leave plant, materials, equipment, tools and supplies on the site. Contract Time will continue to run during any such periods and no extensions of time or additional compensation will be granted.

11.1.18 If the Work stated in the Agreement is not suspended (whether or not because of omission of the Owner to order suspension), then the Owner may, at its option, obtain insurance affording coverage equal to the above required. The cost of such insurance shall be considered a charge against the Construction Manager and shall be paid for by the Construction Manager to the Owner, or upon failure or refusal to pay such charge within a reasonable time after the Owner submits the bill to him, the amount thereof may be deducted from any monies due or that may become due to the Construction Manager under the Agreement.

11.1.19 The Construction Manager expressly understands and agrees that any insurance protection required by the Contract Documents, or otherwise provided by the Construction Manager, shall in no way limit the Construction Manager's responsibility to defend, indemnify and save harmless the Owner as provided in the Contract Documents.

11.1.20 Insurance requirements are specified to provide assurance to the Owner that the Construction Manager will be financially able to discharge its obligations under this Article and as to the risks assumed elsewhere in the Contract Documents and shall not in any way be construed as a

limitation on the nature and extent of such obligations or liability of the Construction Manager including its obligation to defend and indemnify the Owner as provided in this Agreement. Neither the procurement of the above insurance or any substitute insurance nor the extent of coverage or the limits of liability thereunder shall be construed to be a limitation in the nature or extent of the Construction Manager's obligations, or to relieve the Construction Manager of any such obligations.

11.1.21 No requisitions for payment will be honored unless proper Certificates of Insurance required under the Contract Documents are submitted in accordance with this Article.

11.1.22 Violation of any of the terms of any policy issued by the insurance company to the Construction Manager shall not invalidate policies or insurance, issued in connection with the Contract.

11.1.23 The Construction Manager shall furnish to the Owner two copies of Certificates herein required specifically setting forth evidence of all coverage required by the Contract Documents including paragraph 11.1 hereof.

11.1.23.1 The form of the Certificate shall be AIA Document G705 or any form as requested by the Owner.

11.1.23.2 The Construction Manager shall furnish to the Owner copies of any endorsements that are subsequently issued amending coverage or limits.

11.2 PERFORMANCE BOND AND PAYMENT BOND

11.2.1 The Contractor shall procure and deliver to the Owner for its approval security covering the faithful performance of the Contract and payment of all persons and firms performing labor and furnishing materials in connection with the Contract Documents (collectively, the ☐Payment and Performance Bonds☐ or ☐Bonds☐), with an obligation for the payment by the Contractor, and by all Subcontractors, of all indebtedness which may accrue to any person, firm or corporation, in an amount not exceeding the amount specified in the Payment and Performance Bonds, on account of any labor performed or materials, provisions, provender or other supplies, or teams, fuels, oils, implements or machinery used or consumed in, upon, for or about the construction of the Project. Unless otherwise specified by the Owner and permitted by law, the amount of each Bond shall be equal to one hundred percent (100%) of the Contract Sum, shall be substantially in the form required by law pursuant to N.J.S.A. 2A:44-147 and the cost thereof shall be included in the Contract Sum. No payments shall be due under the Contract and no Work shall be performed by Contractor unless Owner is in possession of Bonds that comply with the provisions of this Article and that are otherwise acceptable to Owner.

11.2.2 The surety issuing any Payment and Performance Bonds shall meet the following standards:

.1 the surety shall have the minimum surplus and capital stock or net cash assets required by N.J.S.A. 17:17-6 or N.J.S.A. 17:17-7, whichever is appropriate, at the time that the Request for Proposal or Request for Quotation was issued; and

.2 with respect to all Payment and Performance Bonds in the amount of \$850,000 or more, (i) if the amount of the Bond is at least \$850,000, but not more than \$3.5 million, the surety

shall hold a current certificate of authority, issued by the United States Secretary of the Treasury pursuant to 31 U.S.C. . 9305, that is valid in the State of New Jersey as listed annually in the United States Circular 570, except that if the surety has been operational for a period in excess of five years, the surety shall be deemed to meet the requirements of this subparagraph if it is rated in one of the three highest categories by an independent, nationally recognized United States rating company that determines the financial stability of insurance companies, which rating company or companies shall be determined pursuant to standards promulgated by the Commissioner of Insurance by regulation, and (ii) if the amount of the Bond is more than \$3.5 million, the surety shall hold a current certificate of authority, issued by the United States Secretary of the Treasury pursuant to 31 U.S.C. . 9305, that is valid in the State of New Jersey as listed annually in the United States Circular 570 and, if the surety has been operational for a period in excess of five years, the surety shall be rated in one of the three highest categories by an independent, nationally recognized United States rating company that determines the financial stability of insurance companies, which rating company or companies shall be determined pursuant to standards promulgated by the Commissioner of Insurance by regulation; provided, however, that a surety which does not hold a certificate of authority issued by the United States Secretary of the Treasury shall be exempt from such requirement if, pursuant to N.J.S.A. 2A:44-143a.(1)(b), the surety meets an equivalent set of standards developed by the Commissioner of Insurance by regulation.

11.2.3 Unless otherwise specified by Owner, the Payment and Performance Bonds must at least comply with the following requirements:

.1 there is attached thereto a duly executed Surety Disclosure Statement and Certification in substantially the form set forth in N.J.S.A. 2A:44-143;

.2 the Bonds are executed by the Contractor exactly as its name appears in the Contract Documents and are accompanied by a certification as to the authorization of the attorney-in-fact to commit the surety company;

.3 the Bonds provide that the obligations of the surety will not be affected in the event of any modification, omission or addition in the terms of the Contract Documents; and

.4 the Bonds are legally effective from the effective date of the Contract until as long as permitted by the applicable statute of limitation.

11.2.4 The Contractor agrees to replace any surety in the event the surety becomes insolvent, unauthorized to do business in the State of New Jersey or if the Owner has a reasonable objection against the surety. The Contractor shall bear the cost of obtaining the required replacement Bonds.

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 required in writing by the Architect or

Owner, be uncovered for the Architect's or Owner's observation and be replaced at the Construction Manager's expense without change in the Contract Time. If prior to the date of Substantial Completion, the Construction Manager, a Subcontractor or anyone for whom either is responsible uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing and other building systems, machinery, equipment or other mechanical device, the Construction Manager shall cause such item to be restored to "like New" condition at no expense to the Owner.

12.1.2 If a portion of the Work has been covered which the Architect or Owner has not specifically requested to observe prior to its being covered, the Architect or Owner may request to see such Work and it shall be uncovered by the Construction Manager. If such Work is found to be in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work is not in accordance with the Contract Documents, the Construction Manager shall pay such costs 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 The Construction Manager shall promptly correct Work rejected by the Architect or Owner as defective or failing to conform to the requirements of the Contract Documents, whether observed before or after Final Payment and whether or not fabricated, installed or completed. The Construction Manager shall bear costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect's services and expenses made necessary thereby.

12.2.2 If, within one year after the Date of Final Payment or within one year after acceptance by the Owner of designated equipment or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, the Work or any portion thereof is found to be defective or not in accordance with the Contract Documents, the Construction Manager shall correct it promptly after receipt of a written notice from the Owner to do so unless the Owner has previously given the Construction Manager a written acceptance of such condition. This obligation shall survive termination of the Contract. The Owner shall give such notice promptly after discovery of the condition.

- .1** The Construction Manager further agrees, that within ten (10) calendar days after being notified in writing by the Owner of any Work not in accordance with the requirements of the Contract Documents or any defects in the Work, the Construction Manager will commence and prosecute with due diligence all Work necessary to fulfill the terms of this guarantee, and to complete the Work within a reasonable period of time, but in no event later than seventy two (72) hours after start of Work. In the event the Construction Manager fails to so comply, the Construction Manager hereby authorizes the Owner to proceed and have such Work done at the Construction Manager's expense and the Construction Manager will pay the cost thereof upon demand and authorizes the Owner to remove the nonconforming or defective Work and store the salvable materials or equipment at the Construction Manager's expense. If the Construction Manager does not pay costs of such removal and storage within ten days after written notice, the Owner may sell such materials and equipment at auction or at private sale and shall account for the

proceeds thereof, after deducting costs and damages that should have been borne by the Construction Manager, including compensation for the Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Construction Manager should have borne, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Construction Manager are not sufficient to cover such amount, the Construction Manager shall pay the difference to the Owner.

- .2 The Owner will be entitled to all costs, including reasonable attorney's fees, necessarily incurred upon the Construction Manager's refusal to pay the above costs.
- .3 Correction of nonconforming or defective Work shall include correction of other work damaged as a result of such non-conformance or defect.
- .4 In the case of any work performed in correcting defects pursuant to the guarantees provided by this Article 12, the guarantee periods specified by this Article 12 shall begin anew from the date of completion of such work.

12.2.3 The Construction Manager shall remove from the Site all portions of the Work which are defective or nonconforming and which are neither corrected by the Construction Manager nor accepted by the Owner.

12.2.4 In the case of the work performed in correcting defects pursuant to the guarantees provided by this Article 12, the guarantee periods specified by this Article 12 shall begin anew from the date of completion of such work.

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

12.2.6 Nothing contained in this Paragraph 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Construction Manager might have under the Contract Documents. Establishment of the time period of one year as described in Subparagraph 12.2.2 relates only to the specific obligation of the Construction Manager 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 Construction Manager's liability with respect to the Construction Manager's obligations other than specifically to correct the Work.

12.3 ACCEPTANCE OF NONCONFORMING WORK

12.3.1 If the Owner prefers to accept Work which 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

13.1.1 The Contract Documents shall be construed and governed by and in accordance with the Constitution and laws of the State of New Jersey, including the New Jersey Contractual Liability Act N.J.S.A. 59:13-1 et seq. and the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq. and any litigation brought under this Agreement shall be venued only in the courts of the State of New Jersey, in and for the County of Essex.

13.1.2 Consent to Jurisdiction and Waiver of Trial by Jury. Except as otherwise provided in this Contract, disputes and claims arising under this Contract which are not disposed of by mutual agreement shall be governed by the laws of the State of New Jersey, as they may from time to time be amended. The Construction Manager, by entering into this Contract, irrevocably consents and submits to the exclusive jurisdiction of the Courts of New Jersey over any action at law, suit in equity or other proceeding that may arise out of this Contract, and the Construction Manager agrees, during the period of performance and of warranty, to maintain within the State of New Jersey an agent to accept service of legal process on his behalf. Notwithstanding the language of N.J.S.A. 59:13-4, the Construction Manager expressly waives trial by jury on any and all disputes and claims arising out of this Contract whether by or against the Construction Manager, Owner or any other person or entity.

13.2 ASSIGNMENTS OF ANTITRUST CLAIM(S)

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

13.2.2 In connection with this assignment of antitrust claims, the following are the express obligations of the Construction Manager:

1. Construction Manager will take no action which will in any way diminish the value of the rights conveyed or assigned hereunder.
2. Construction Manager will advise the Attorney General of New Jersey:
 - (a) in advance, of its intention to commence any action on its own behalf regarding any such claim or cause(s) of action;
 - (b) immediately upon becoming aware of the fact that an action has been commenced on its behalf by some other person(s) or entity of the pendency of such action; and
3. Construction Manager will notify the defendants in any antitrust suit of the fact of the

within assignment at the earliest practicable opportunity after the Construction Manager has initiated an action on its own behalf or after Construction Manager becomes aware that such an action has been filed on its behalf by another person or entity. A copy of such notice will be sent by the Construction Manager to the Attorney General of New Jersey.

4. In the event any payment under any such claim or cause of action is made to the Construction Manager, it shall promptly pay over to the Owner the allotted share thereof, if any, assigned to the Owner hereunder.

13.3 COMPLIANCE WITH LAWS AND CODES

13.3.1 All general construction, plumbing and electrical work is to be done in accordance with the New Jersey Uniform Construction Code. No work requiring inspections and approvals of construction code officials is to be covered or enclosed prior to inspection and approval by appropriate code enforcement officials.

13.3.2 All sewage disposal work shall conform with the regulations of the New Jersey Department of Environmental Protection and Energy.

13.3.3 A Certificate of Electrical Code Compliance is to be obtained from the electrical inspector prior to the issuance of the Certificate of Final Acceptance for electrical work.

13.3.4 The Construction Manager and all subcontractors shall comply with the Federal Occupational Safety and Health Act of 1970 and all of the rules and regulations promulgated thereunder.

13.3.5 The Construction Manager shall keep fully informed of all Federal, State and local laws, regulations, rules, ordinances, orders, codes and decrees of any authority having jurisdiction over the Project which in any way affect those engaged or employed on the Work or which in any way affect the conduct of the Work. The Construction Manager shall at all times observe and comply with, and shall cause its employees and agents and its Subcontractors, suppliers, materialmen and any of their employees or agents to observe and comply with all such laws, regulations, rules, ordinances, orders, codes and decrees. Construction Manager shall indemnify and defend Owner and its employees and agents against any claim, fine, penalty or other loss arising from or based upon the violation of any such law, regulation, rule, ordinance, order, code or decree, whether by Construction Manager, its employees or agents or its Subcontractors, suppliers, materialmen or their employees or agents. If any discrepancy or inconsistency is discovered between the Contract Documents and such law, regulation, rule, ordinance, order, code and decree, the Construction Manager shall immediately report same to the Owner and Architect in writing.

13.4 SUCCESSORS, ASSIGNS AND ASSIGNMENT

13.4.1 The Owner and Construction Manager respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents.

13.4.2 The Construction Manager agrees not to assign, in whole or in part, this Contract or agree to

the assignment of any subcontracts or any amounts payable hereunder or thereunder, or claims of any nature it may have against the Owner or to delegate any of Construction Manager's responsibilities under the Contract Documents without the prior written consent of Owner. The Owner, in its sole discretion, considering primarily the interests of the Owner, may grant or deny such consent. No consent to any assignment of this Contract or any subcontract shall under any circumstances operate to relieve the Construction Manager or its surety of any of their responsibilities under the Contract Documents.

13.4.3 The Construction Manager agrees that the Owner may assign this Contract or any rights arising hereunder, including any guarantees or warranties of workmanship or material, in whole or in part, without the consent of the Construction Manager.

13.5 WRITTEN NOTICE

13.5.1 All notices, demands, requests, instructions, approvals, claims and orders between the Owner, Architect and Construction Manager must be in writing. Written notice shall be deemed to have been duly served if delivered in person to the individual or 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 U.S. mail return receipt requested, to the address set forth in the Agreement or at such other address as may be specified in writing pursuant to paragraph 13.5.3 below.

13.5.2 The Agreement shall designate by name and address the person to whom notices affecting the Contract are to be given or delivered.

13.5.3 The Owner, the Construction Manager or the Architect may change the person or address to which notices are to be sent at any time by written notice to the other parties.

13.6 RIGHTS AND REMEDIES

13.6.1 Except as expressly provided in the Contract Documents, 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 at law or equity.

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

13.7 TESTS AND INSPECTIONS

13.7.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be scheduled by the Construction Manager in a timely manner as to avoid any delay in the completion of the Work. Unless otherwise provided, the Construction Manager 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 Construction Manager shall notify the Architect and Owner at least

five (5) days prior to the scheduled inspection, test or request for approval of when and where tests and inspections or approvals are to be made so the Architect and Owner may observe such procedures. The Owner shall bear costs of tests, inspections or approvals which do not become requirements until after execution of the Agreement.

13.7.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require special or additional testing, inspection or approval not included under Subparagraph 13.7.1, the Architect will, upon written authorization from the Owner, instruct the Construction Manager to make arrangements for such special or additional testing, inspection or approval by an entity acceptable to the Owner, and the Construction Manager shall notify the Architect and Owner at least five (5) days prior to when and where tests and inspections or approvals are to be made so the Architect or Owner may observe such procedures. Any such special or additional testing, inspections or approvals shall be promptly scheduled by the Construction Manager so as not to delay the completion of the Work. The Owner shall bear such costs except as provided in Subparagraph 13.7.3.

13.7.3 If such procedures for testing, inspection or approval under Subparagraphs 13.7.1 and 13.7.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, the Construction Manager shall bear all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's and/or Owner's services and expenses, as well as the cost of the testing or inspection.

13.7.4 All submittals of inspection and test reports or requests for approval shall, unless otherwise required by the Contract Documents, be secured by the Construction Manager and within five days of its receipt by Construction Manager, delivered to the Architect or Owner, together with a certification signed by the Construction Manager attesting to his knowledge of the submittal, acceptance of its findings and acknowledgment that any material or equipment tested meets the required standards and certifying to the reports representation of the facts. Failure to provide the certification shall be grounds for rejection of the submittal.

13.7.5 In addition to subparagraph 13.7.4, the Construction Manager agrees to insert in all contracts or purchase orders for inspection and testing the requirement that the testing or inspection person or entity submit, in conjunction with the report to the Construction Manager, a copy of the report directly to the Owner and that such report be submitted within seven (7) calendar days of the test or inspection. The copy of the report shall be held by Owner pending receipt of the Construction Manager's certification of the report as provided in Subparagraph 13.7.4.

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

13.7.7 When non-complying Work is found, the entire area of Work involved shall be corrected at no additional time and at no cost to the Owner, to the Architect's and Owner's satisfaction. Additional testing, sampling or inspection needed to determine non-complying Work shall be at the Construction Manager's expense, which will not be reimbursed by the Owner. The Construction Manager may employ the Owner's or any other competent independent testing laboratory approved by the Owner. All corrected Work shall be re-tested at the Construction Manager's expense, which will not be reimbursed by the Owner and at no extension of Contract Time.

13.8 INTEREST

13.8.1 Construction Manager agrees that no interest shall be due and payable from the Owner on any sums retained, deducted or withheld from the progress payments or final payment, or for failure to make any progress payments or the final payment on the date when such payment may be due; nor shall the Construction Manager be entitled to keep any interest on monies overpaid or erroneously retained by it.

13.9 ASBESTOS

13.9.1 The discovery, use or handling of products containing asbestos will be strictly governed by Federal, State, and local regulations.

13.9.2 No material or product containing more than one percent (1%) asbestos in any form may be used on this Project without the specific written consent of the Owner. The naming of any material or product in the specifications does not constitute a warranty that such products are deemed not to contain more than one percent (1%) asbestos. It shall be the sole responsibility of the Construction Manager and the suppliers of all material and products to advise the Owner and Architect if any material intended for use on the Project contains any percentage of asbestos. The Owner reserves the right to conduct laboratory tests of any product or material at any time to determine the chemical content of any material. Such tests will be carried out at the Owner's expense. If any product or material which has been installed in the job is found to have any asbestos content and such product and material has been installed without advising the Owner of same or without the specific written consent of the Owner, the Construction Manager shall be solely responsible for the complete removal of such product and material and its replacement with an alternative approved material. In the event of the requirement by the Owner of such removal and the replacement, all costs shall be borne by the Construction Manager and no costs for delay of construction and no extension in construction time shall be allowed by the Owner.

13.10 PREVAILING WAGE ACT

13.10.1 The Construction Manager and all Subcontractors shall comply with all provisions of the New Jersey Prevailing Wage Act of 1963, Chapter 150, governing wages for workers who are employed on this Project. All provisions of said Act and amendments thereto are hereby made a part of this Contract and every related subcontract in which the Contract Price is in excess of two thousand dollars (\$2,000.00). Provisions of the Act include:

13.10.1.1 All workers engaged in the performance of service directly under this Contract shall be paid not less than the prevailing rate of wage as specified by the Commissioner of Labor and Industry.

13.10.1.2 Each Construction Manager and Subcontractor shall keep an accurate record showing the name, craft or trade, and actual hourly rate of wages paid to each worker employed by it in connection with said Project. Records shall be preserved for two years from date of payment and shall be open at all reasonable hours for inspection by Owner and Commissioner of Labor and Industry.

13.10.1.3 The Construction Manager and Subcontractor shall post the prevailing wage rate for each craft and classification involved, as determined by the Commissioner of Labor and Industry, including the effective date of any changes thereof, in prominent and easily accessible places at the site of the Work, and at such place or places as are used by them to pay workers their wages.

13.10.1.4 In the event that it is found that any worker employed by the Construction Manager or any Subcontractor covered by this Contract is paid less than the required wage rates, the Owner may terminate the Construction Manager's or Subcontractor's right to proceed with the Work or such part of the Work as to which there has been a failure to pay required wages and to prosecute the Work to completion or otherwise. The Construction Manager and its Surety shall be liable to the Owner for any excess costs occasioned thereby.

13.10.1.5 The Construction Manager and Subcontractors shall file written statements certifying to the amounts then due and owing to any and all workers for wages due on account of said Work. Said statements shall be filed prior to final payment and also prior to the final payment of any retained percentage funds by the Owner. The statements shall set forth names of the persons whose wages are unpaid and the amount due to each. The statements should be verified by the oath of the Construction Manager or Subcontractor as the case may be, that he/she read such statement subscribed by him/her, knows the contents thereof and that the same is true to his/her own knowledge.

13.11 EQUAL OPPORTUNITY

13.11.1 The Construction Manager will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, nationality, creed, ancestry, age, disability, marital status, familial status, affectional or sexual orientation, atypical hereditary cellular or blood trait, liability for service in the Armed Forces of the United States and as set forth in the New Jersey Law Against Discrimination, Title VII and all federal laws guaranteeing equal employment. The Construction Manager will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to the characteristics listed above. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Construction Manager agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

13.11.2 The Construction Manager shall comply with all applicable state and federal laws regarding equal opportunity and affirmative action in all solicitations or advertisements for employees placed by or on behalf of the Construction Manager.

13.11.3 The Construction Manager will send to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or workers' representative of the Construction Manager's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

13.11.4 The Construction Manager will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

13.11.5 The Construction Manager will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

13.11.6 In the event of the Construction Manager's noncompliance with the nondiscrimination clauses of this contract or with any such rules, regulations or orders, this Contract may be canceled, terminated or suspended, in whole or in part, and the Construction Manager or subcontractor, as applicable, may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, 30 C.F.R. 12319 (1965) and other sanctions may be imposed and remedies invoked as provided in said Executive Order No. 11246 or by any related rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

13.11.7 The Construction Manager will include the provisions of Subparagraphs 13.11.1 through 13.11.3 in every subcontract or purchase order, so that such provisions will be binding upon each Subcontractor or vendor. The Construction Manager will further include the provisions of Subparagraphs 13.11.4 through 13.11.7 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, 30 C.F.R. 12319 (1965) so that such provisions will be binding upon each subcontractor or vendor and the Construction Manager will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event that the Construction Manager becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Construction Manager may request the United States to enter into such litigation to protect the interests of the United States.

13.11.8 It is expected that the Construction Manager will carry out the obligations in Paragraphs 13.11, 13.12 and 13.13 pertaining to equal employment, minority employment and affirmative action with the same effort and action as the Construction Manager will any other part of the Contract Documents.

13.12 MINORITY AND FEMALE PARTICIPATION

13.12.1 In accordance with Executive Order No. 84 (Florio) (1993) (hereinafter, "E.O. 84"), N.J.S.A. 52:32-17 et seq. and N.J.A.C. 17:14-1.1 et seq., which establish a set-aside program, the Owner is committed to making contract opportunities available to as many qualified Minority Business Enterprises (MBE's) and Women Owned Enterprises (WBE's) as possible and has taken affirmative action to encourage MBE's and WBE's to seek participation in the Owner's contract opportunities. To ensure meaningful participation of qualified MBE's and WBE's in this Project, the Construction Manager agrees to use reasonable efforts as defined in N.J.A.C. 17:14-1.1 et seq., and to take affirmative action, to recruit, employ and subcontract with qualified MBE's and WBE's so as to meet the following targets of participation:

Seven percent (7%) MBE participation

Three percent (3%) WBE participation

13.12.2 The Construction Manager warrants and represents to Owner that there will be MBE and WBE participation at the above target levels, thereby demonstrating non-discrimination on the basis of race or sex in awarding subcontracts, including the award of contracts for supplies, materials, equipment, consulting and other goods or services.

13.12.3 The Construction Manager will submit a participation plan in compliance with the above targets before commencing the Work. The Owner will review the Construction Manager's efforts to determine if it has attained the target participation levels. If the Construction Manager fails to attain the target participation levels, the Construction Manager must establish by documentary evidence that it has engaged in reasonable outreach efforts. The Owner's decision regarding what constitutes reasonable outreach efforts pursuant to N.J.A.C. 17:14-1.1 et seq. shall be final and binding on all parties and the Owner may declare any resulting contracts void and unenforceable if the Construction Manager fails to demonstrate a reasonable effort to comply with target participation levels. Compliance with the target participation levels is a material term of the Contract and failure to attain, or to make a reasonable effort to attain, the target participation levels may result in Construction Manager's default.

13.12.4 As used herein, the following terms shall be defined as follows:

1. "Minority Business Enterprise" shall mean a business which has its principal place of business in New Jersey, is independently owned and operated and at least fifty-one percent (51%) of which is owned and controlled by persons who are African Americans, Latinos or Asian Americans, defined as follows:
 - (a) African American - a person having origins in any of the black racial groups of Africa.
 - (b) Latino - a person of Mexican, Puerto Rican, Cuban, Central or South American, Caribbean Island or other Spanish culture or origin, regardless of race.
 - (c) Asian American - a person having origins in any of the original people of the Far East, southeast Asia, and Indian subcontinent, Hawaii or the Pacific Islands.
2. "Women-Owned Business Enterprise" shall mean a business that has its principal place of business in New Jersey, is independently owned and operated, and at least fifty-one percent (51%) of which is owned and controlled by women.

13.12.5 The Construction Manager shall fully cooperate in any studies, surveys or other reports which may be conducted by the Owner or the State of New Jersey to determine the Construction Manager's compliance with E.O. 84, N.J.S.A. 52:32-17 et seq. and N.J.A.C. 17:14-1.1 et seq.

13.13 AFFIRMATIVE ACTION FOR CONSTRUCTION CONTRACTS

13.13.1 During the performance of this Contract, the Construction Manager agrees as follows:

13.13.1.1 The Construction Manager or Subcontractor, where applicable, will not discriminate against any employees or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. Except with respect to sexual or affectional orientation, the Construction Manager will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment without regard to their age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Construction Manager 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.

13.13.1.2 The Construction Manager or Subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the Construction Manager, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation.

13.13.1.3 The Construction Manager or Subcontractor, where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of the Construction Manager's commitments under the New Jersey Law against Discrimination, P.L. 1975, c.127 and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

13.13.1.4 The Construction Manager or Subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time.

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

13.13.2.1 If the Construction Manager or Subcontractor has a referral agreement or arrangements with a union for a construction trade, the Construction Manager or Subcontractor shall, within three days of the contract award, seek assurances from the union that it will cooperate with the Construction Manager or Subcontractor as it fulfills its affirmative action obligations under this Contract and in accordance with the rules promulgated by the Treasurer pursuant to P.L. 1975, c. 127, as supplemented and amended from time to time. If the Construction Manager or Subcontractor is unable to obtain said assurances for the construction trade union at least five (5) days prior to the commencement of construction work, the Construction Manager or Subcontractor agrees to attempt to hire minority and female workers directly, consistent with the applicable employment goal. If the Construction Manager's or Subcontractor's prior experience with a construction trade union, regardless of whether the union has provided said assurances, indicates a significant possibility that the trade union will not refer sufficient minority and female workers consistent with the applicable employment goal, the Construction Manager or Subcontractor agrees to be prepared to hire minority and female workers directly, consistent with the applicable employment goal, by complying with the hiring procedures prescribed under Subparagraph 13.13.3 below; and the Construction Manager or Subcontractor further agrees to take said action immediately if it determines or is so notified by the Affirmative Action Officer that the union is not referring minority and female workers consistent with the applicable employment goal.

13.13.3 If the hiring of a workforce consistent with the employment goal has not or cannot be achieved for each construction trade by adhering to the procedures of Subparagraphs 13.13.2 and 13.13.2.1 above, or if the Construction Manager does not have a referral agreement or arrangement with a union for a construction trade, the Construction Manager or Subcontractor agrees to take the following actions consistent with the applicable county employment goals.

13.13.3.1 To notify the Public Agency Compliance Officer, Affirmative Action Office, and at least one approved minority referral organization of its manpower needs, and request referral of minority and female workers.

13.13.3.2 To notify any minority and female workers who have been listed with it as awaiting available vacancies.

13.13.3.3 Prior to commencement of Work, to request the local construction trade union, if the Construction Manager or Subcontractor has a referral agreement or arrangement with a union for the construction trade, to refer minority and female workers to fill job openings.

13.13.3.4 To leave standing requests for additional referrals to minority and female workers with the local construction trade union, if the Construction Manager or Subcontractor has a referral agreement or arrangement with a union for the construction trade, the State training and employment service and other approved referral sources in the area until such time as the workforce is consistent with the employment goal.

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

13.13.3.6 To adhere to the following procedure when minority and female workers apply or are referred to the Construction Manager or Subcontractor:

- .1** If said individuals have never previously received any document or certification signifying a level of qualification lower than that required, the Construction Manager or Subcontractor shall determine the qualifications of such individuals and if the Construction Manager's or Subcontractor's workforce in each construction trade is not consistent with the applicable employment goal, it shall employ such persons which satisfy appropriate qualification standards; provided however, that a contractor or subcontractor shall determine that the individual at least possesses the skills and experience classification determination which may have been made by a Public Agency Compliance Officer, union, apprentice program or a referral agency, provided the referral agency is acceptable to the Affirmative Action Office and provided further, that, if necessary, the Construction Manager or Subcontractor shall hire minority and female workers who qualify as trainees pursuant to these regulations implementing P.L.1975 c.127. All of these requirements, however, are limited by the provisions of Subparagraph 13.13.4 below;
- .2** If the Construction Manager's or Subcontractor's workforce is consistent with the applicable employment goal, the name of said female or minority group individual shall be maintained on a waiting list for the first consideration, in the event the Construction Manager's or Subcontractor's workforce is no longer with the applicable employment goal; and
- .3** If, for any reason, said Construction Manager or Subcontractor determines that a minority individual or a female is not qualified or if the individual qualifies as an advanced trainee or apprentice, the Construction Manager or Subcontractor shall inform the individual in writing with the reasons for the determination, maintain a copy in its files, and send a copy to the Public Agency Compliance Officer and to the Affirmative Action Office.

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

13.13.4 The Construction Manager or Subcontractor agrees that nothing contained in Subparagraph 13.13.3 above shall preclude the Construction Manager or Subcontractor from complying with the hiring hall or apprenticeship provisions in any applicable collective bargaining agreement or hiring hall arrangement, and, where required by custom or agreement, it shall send journeymen and trainees to the union for referral or to the apprenticeship program for admission, pursuant to such agreement or arrangement: provided, however, that where the practices of a union or apprenticeship program will result in the exclusion of minorities and females or the failure to refer minorities and females consistent with the county employment goal, the Construction Manager or Subcontractor shall consider for employment persons referred pursuant to Subparagraph 13.13.3 above without regard to such agreement or arrangement; provided further, however, that the Construction Manager or Subcontractor shall not be required to employ female and minority advanced trainees and trainees in numbers which result in the employment of advanced trainees 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 Construction Manager or Subcontractor agrees that, in implementing the procedures of Subparagraph 13.13.3 above, it shall, where applicable, employ minority and female workers residing within the geographical jurisdiction of the union.

13.13.5 The Construction Manager agrees to complete an Initial Project Manning Report on forms provided by the Affirmative Action Office or in the form prescribed by the Affirmative Action Office and submit a copy of said form no later than three (3) days after signing the Contract; provided, however, that the public agency may extend in a particular case the allowable time for submitting the form to no more than fourteen (14) days; and to submit a copy of the Monthly Project Manning Report once a month thereafter for the duration of this Contract to the Affirmative Action Office and to the Public Agency Compliance Officer. The Construction Manager agrees to cooperate with the public agency in the payment of budgeted funds, as is necessary, for on-the-job and off-the-job programs for outreach and training of minority and female trainees employed on the construction projects.

13.13.6 The Construction Manager and its Subcontractors shall furnish such reports or other documents to the Affirmative Action Office as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Affirmative Action Office for conducting a compliance investigation pursuant to SUBCHAPTER 10 OF THE ADMINISTRATIVE CODE (NJAC 17:27).

13.13.7 Provisions of Subparagraphs 13.13.1.4, 13.13.2, 13.13.3, 13.13.4 and 13.13.5 are not required for subcontractors with four (4) or fewer employees or for a Construction Manager or subcontractor who has presented evidence of a federally approved or sanctioned Affirmative Action Program.

13.14 PARTIAL INVALIDITY

13.14.1 If any provision of the Contract (or the application thereof to any part or circumstances) shall be held to be illegal, invalid or otherwise unenforceable, the remainder of the Contract and the application or statutory effectiveness of such provision of the Contract to other parts or circumstances shall not be affected thereby and each provision, term, covenant or condition of the Contract shall be enforced to the fullest extent permitted by law.

13.14.2 If any provision of the Contract shall be such as to destroy its mutuality or to render it invalid or illegal, then, if it shall not appear to have been so material that without it the Contract would not have been made by the parties, it shall not be deemed to form part thereof but the balance of the Contract shall remain in full force and effect.

13.15 PROVISIONS OF LAW DEEMED INSERTED

13.15.1 Each and every provision of law and clause required by law to be inserted in the Contract shall be deemed to be inserted therein and the Contract shall be read and enforced as though it were included therein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Contract shall forthwith be physically

amended to make such insertion.

13.16 AUDITING

13.16.1 Omnibus Reconciliation Act - Examination of Records In accordance with the Omnibus Reconciliation Act of 1980, PL96-499 (Section 952), the Secretary of the Department of Health and Human Services, the U.S. Comptroller General, or their representatives shall be permitted to examine the Contract and the Construction Manager's books and records with regard to the Project, and such records shall be retained by Construction Manager for a period of four (4) years following completion of the Project, or for such longer period as may be required by law. Each agreement between the Construction Manager and any Subcontractor shall contain a similar provision.

13.16.2.1 The Construction Manager shall afford the Owner and the Owner's accountants full and free access to the Construction Manager's records, books, ledgers, registers, payrolls, correspondence, instructions, drawings, receipts, subcontracts, invoices, purchase orders, vouchers, memoranda, change orders, progress schedules and any other documents relating to the Work to be performed under the Contract (collectively, referred to as the "records"), including the right to make photostatic copies of, or transcripts from, such records.

13.16.2.2 The Construction Manager shall establish and maintain such records in accordance with generally accepted accounting principles, which specifically identify the Project and all labor and material, costs and expenses, whether direct or indirect. All costs and expenses must be supported by appropriate documentation, including, but not limited to, canceled checks. All records shall be preserved by the Construction Manager for a period of ten (10) years after final payment, or for such longer period of time as may be required by law.

13.16.2.3 The Construction Manager acknowledges and agrees that the Construction Manager's obligation to establish, maintain, preserve and grant access to, and the Owner's right to audit, such records extends to actual costs incurred by Subcontractors and Sub-subcontractors in the performance of any Work under the Contract. Accordingly, Construction Manager shall require in all subcontracts that the Subcontractor establish, maintain, preserve and grant access to Owner all records relating to any Work performed under the subcontracts, including Work performed by a Sub-subcontractor.

13.16.2.4 The Construction Manager agrees that Owner shall have no obligation to pay Construction Manager for any claim for payment which is in any way premised upon the actual costs of the Construction Manager, unless the claim is substantiated by records required to be maintained under this Subparagraph 13.16.2.

13.16.2.5 If any unsubstantiated or over payments are discovered as a result of any audit conducted by Owner or Owner's accountants, Construction Manager shall be notified by Owner in writing. Construction Manager agrees to repay Owner for any unsubstantiated or over payments within thirty (30) Days of such notice or, if the Work is not yet complete, Construction Manager hereby authorizes Owner to reduce Construction Manager's next Application for Payment by the amount of such unsubstantiated or over payment.

13.17 BUY AMERICAN

13.17.1 Construction Manager agrees to comply with N.J.S.A. 52:32-1 and/or N.J.S.A. 52:33-1 et seq., as applicable, and agrees that manufactured products of the United States, whenever available, shall be used by Construction Manager in its performance of the Work and Construction Manager shall cause its Subcontractors to use such domestic products in their performance of the Work, unless the Owner determines that such preference is impracticable, unreasonable, uneconomical or otherwise contrary to the public interest or interests of the Owner.

13.18 CONFLICTS OF INTEREST

13.18.1 The Construction Manager shall be prohibited from the following activities, the violation of which shall render Construction Manager liable to debarment in the public interest, pursuant to the procedures established by Executive Order No. 34 (Byrne) (1976), by any Executive department or agency:

- .1** Construction Manager shall not pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b. and e., in the Department of the Treasury or any other agency with which such vendor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i., of any such officer or employee, or any partnership, firm, or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g.
- .2** The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from Construction Manager shall be reported in writing forthwith by Construction Manager to the Attorney General and the Executive Commission on Ethical Standards.
- .3** Construction Manager may not, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in Construction Manager to, any State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or instrumentality thereof, or with any person, firm or entity with which he is employed or associated or in which he has interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.

- .4 Construction Manager shall not influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.
- .5 Construction Manager shall not cause or influence, or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the Construction Manager or any other person.
- .6 The provisions cited above in Subparagraphs 13.18.1.1 through 13.18.1.5 shall not be construed to prohibit a State officer or employee or special State officer or employee from receiving gifts from or contracting with Construction Manager under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards may promulgate under Subparagraph 13.18.1.3.

13.19 WORKER AND COMMUNITY RIGHT TO KNOW ACT

13.19.1 The provisions of the Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq., which require the labeling of all containers of hazardous substances are applicable to this Contract and all "containers", as defined in the Act, shall be labeled by the Construction Manager in compliance with the provisions of the Act and Construction Manager shall notify Owner of the presence and location of such containers.

13.20 GENERAL PROVISIONS

13.20.1 All personal pronouns used in this Contract, whether used in the masculine, feminine, or neuter gender, shall include all other genders; and the singular shall include the plural and vice versa. Titles of articles, paragraphs, and subparagraphs are for convenience only, and neither limit nor amplify the provisions of this Contract in itself. The use herein of the word "including," when following any general statement, term, or matter, shall not be construed to limit such statement, term, or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such words as "without limitation," or "but not limited to, or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter.

13.20.2 Any specific requirement in this Contract that the responsibilities or obligations of the Construction Manager also apply to a Subcontractor is added for emphasis and are also hereby deemed to include a Subcontractor of any tier. The omission of a reference to a Subcontractor in connection with any of the Construction Manager's responsibilities or obligations shall not be construed to diminish, abrogate or limit any responsibilities or obligations of a Subcontractor of any tier under the Construction Manager Documents or the applicable subcontract.

13.21 SET-OFF FOR STATE TAX INDEBTEDNESS

13.21.1 Pursuant to P.L. 1995, c. 159, effective January 1, 1996, and notwithstanding any provision of the law to the contrary, whenever any taxpayer, partnership or S corporation under contract to

provide goods or services or construction project to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of State government, is entitled to payment for those goods or services or on that construction project at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set-off so much of that payment as shall be necessary to satisfy the indebtedness. The amount of the set-off shall not allow for the deduction of any expense or other deduction which might be attributable to the taxpayer, partner, or shareholder subject to set-off under this Act.

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

ARTICLE 14

TERMINATION OR SUSPENSION OF THE CONTRACT

14.1 TERMINATION BY THE CONSTRUCTION MANAGER

14.1.1 The Construction Manager may terminate the Contract if the Work is stopped for a period of sixty (60) continuous days through no act or fault of the Construction Manager, Subcontractor or Sub-subcontractor their agents or employees or any other persons performing portions of the Work under contract with the Construction Manager, for any of the following reasons:

- .1** issuance of an order of a court or other public authority having jurisdiction;
- .2** an act of government, such as a declaration of national emergency, making material unavailable;
- .3** if repeated suspensions, delays or interruptions by the Owner as described in Paragraph 14.3 constitute in the aggregate the lesser of an amount equal to the Contract Time, or one hundred and twenty (120) days in any three hundred and sixty-five (365) day period.

14.1.2 If one of the above reasons exists, the Construction Manager may, upon fifteen (15) days written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable demobilization and cancellation charges. Other than such payment, no damages of any nature shall be claimed against Owner in the event that Construction Manager exercises this right of termination.

14.1.3 If the Work is stopped for a period of sixty (60) days through no act or fault of the Construction Manager or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Construction Manager because the Owner

has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Construction Manager may, upon fifteen (15) days written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Subparagraph 14.1.2.

14.1.4 Construction Manager may not terminate the Contract if, during the fifteen (15) day notice period, Owner cures or proceeds to cure the default under the termination notice.

14.2 TERMINATION BY THE OWNER FOR CAUSE

14.2.1 The Owner may terminate the Contract if the Construction Manager:

- .1** 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 Construction Manager and the Subcontractors;
- .3** disregards any state, federal or local laws, ordinances, rules, regulations decrees or orders or the laws, ordinances, rules, regulations, decrees or orders of a public authority having jurisdiction over the Project;
- .4** otherwise breaches a provision of the Contract Documents;
- .5** breached any warranty made by the Construction Manager under or pursuant to the Contract Documents;
- .6** fails to furnish the Owner with assurances satisfactory to the Owner evidencing the Construction Manager's ability to complete the Work in compliance with all the requirements of the Contract Documents;
- .7** fails after commencement of the Work to proceed continuously with the construction and completion of the Work for more than five (5) days, except as permitted under the Contract Documents;
- .8** fails to comply with the insurance requirements of the Contract Documents;
- .9** files, records or allows anyone claiming under Construction Manager to file or record a lien, encumbrance or other claim against the Owner, Owner's property or the Project; or
- .10** makes a general assignment for the benefit of its creditors or permits a receiver, trustee or custodian to be appointed on account of its insolvency or files a petition for relief under the Federal Bankruptcy Code ("Code") or if a petition for relief is filed against the Construction Manager by its creditors under the Code and such petition is not vacated within thirty (30) days thereafter or if any Subcontractor having a contract in excess of ten thousand dollars (\$10,000.00) makes a general assignment for the benefit of its creditors, permits a receiver, trustee or custodian to be appointed on account of its insolvency, files a petition for relief under the Code, or if a petition for relief is filed against the Subcontractor by its creditors under the Code and such

petition is not vacated within thirty (30) days thereafter.

14.2.2 When any of the above reasons exist, the Owner, may without prejudice to any other rights or remedies of the Owner and after giving the Construction Manager and the Construction Manager's surety, if any, seven (7) days written prior notice, terminate Contract and may, subject to any prior rights of the surety:

- .1** take possession of the site and all materials, equipment, tools, and construction equipment and machinery thereon owned by the Construction Manager;
- .2** accept assignment of subcontracts pursuant to Paragraph 5.3; and
- .3** finish the Work by whatever reasonable method the Owner may deem expedient.

14.2.3 When the Owner terminates the Contract for one of the reasons stated in Subparagraph 14.2.1, the Construction Manager 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 the cost of finishing the Work, including compensation for the Architect's services and expenses made necessary by Construction Manager's default, the Construction Manager shall be paid only for the Work performed to the date of termination less an amount determined by the Owner to be compensation for damages it suffers by reason of Construction Manager's default, including liquidated and consequential damages. If such costs exceed the unpaid balance, the Construction Manager shall pay the difference to the Owner immediately upon demand. The amount to be paid to the Construction Manager or Owner, as the case may be, shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.

14.3 TERMINATION OR SUSPENSION BY THE OWNER FOR CONVENIENCE

14.3.1 The Owner may, at any time, terminate the Contract in whole or in part for the Owner's convenience and without cause and without prejudice to any other right or remedy, or the Owner may order the Construction Manager in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine. The Owner may for any reason without cause and without prejudice to any other right or remedy, terminate the Agreement, in whole or in part, upon written notice to the Construction Manager. Termination by the Owner under this Paragraph shall be by a notice of termination delivered to the Construction Manager specifying the extent of termination and the effective date.

14.3.2 Upon receipt of a notice of termination for convenience, the Construction Manager shall immediately, in accordance with instructions from the Owner, proceed with performance of the following duties regardless of delay in determining or adjusting amounts due under this Paragraph:

- .1** cease operation as specified in the notice;
- .2** place no further orders and enter into no further; subcontracts for materials, labor, services or facilities except as necessary to complete continued portions of the Contract;

- .3 terminate all subcontracts, and orders to the extent they relate to the Work terminated;
- .4 proceed to complete the performance of Work not terminated; and
- .5 take actions that may be necessary, or that the Owner may direct, for the protection and preservation of the terminated Work.

14.3.3 Upon such termination, the Construction Manager shall recover, as its sole remedy, payment for Work properly performed in connection with the terminated portion of the work prior to the effective date of termination and for items properly and timely fabricated off the Project site, delivered and stored in accordance with the Owner's instructions. The Construction Manager hereby waives and forfeits all other claims for payment and damages, including, without limitation, anticipated profits.

14.3.4 The Owner shall be credited for: (1) payments previously made to the Construction Manager for the terminated portion of the Work; (2) claims which the Owner has against the Construction Manager under the Contract; and (3) the value of the materials, supplies, equipment or other items that are to be disposed of by the Construction Manager that are part of the Contract Sum.

14.4 OWNER'S RIGHT TO STOP THE WORK

14.4.1 If the Construction Manager fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Paragraph 12.2 or fails to carry out Work in accordance with the Contract Documents, or fails to prosecute the Work with due diligence, the Owner, by written order signed personally or by an agent specifically so empowered by the Owner in writing, may order the Construction Manager 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 Construction Manager or any other person or entity, except to the extent required by Subparagraph 6.1.3. The Owner's stoppage of the Work shall not render the Owner liable for claims of any kind, including without limitations, claims for money damages either by the Construction Manager, its subcontractors or by any of other contractor. Any order issued hereunder by the Owner which is determined to be unreasonable shall not be deemed a breach of the Agreement by Owner, but shall be deemed to be a suspension for the convenience of Owner as provided in Paragraph 14.3.

14.5 OWNER'S RIGHT TO CARRY OUT THE WORK

14.5.1 If the Construction Manager defaults or neglects to carry out the Work in accordance with the Contract Documents and falls within a seven (7) 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 Construction Manager the cost of correcting such deficiencies including amounts determined by Owner to be appropriate compensation for damages it suffers including liquidated and consequential damages, and compensation for the Architect's additional services and expense made necessary by such defaults, neglect or failure. If payments then or thereafter due the Construction Manager are not sufficient to cover such amounts, the Construction Manager shall

immediately pay the difference to the Owner.

14.6 EXTENT OF OWNER RIGHTS

14.6.1 The rights stated in this Agreement and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner granted in the Contract Documents, at law or in equity.

14.6.2 In no event shall the Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the Owner in the Contract Documents.

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c/kw/6/31/96

UNIVERSITY OF MEDICINE AND DENTISTRY OF NEW JERSEY

Request for Proposal for
Construction Management Services
For Reconstruction of the GA-Level, 6th, 10th, and 11th Floor
School of Nursing – Stanley S. Bergen Jr. Building
and
Renovations to the Pediatric Dentistry & Special Care Treatment Suite
New Jersey Dental School

RFP #P12-061

ATTACHMENT D

**AGREEMENT BETWEEN OWNER AND ARCHITECT
For Schematic Design and Architectural Services
with a Construction Manager**

The Agreement listed above is enclosed following this page.

**Agreement Between Architect and the
University of Medicine and Dentistry of New Jersey
For Schematic Design and Architectural Services
with a Construction Manager**

THIS AGREEMENT is entered into this _____ day of _____, 2010, by and between the University of Medicine and Dentistry of New Jersey ("Owner") a public instrumentality and agency of the State of New Jersey with offices Suite 1419 at 65 Bergen Street, Newark, New Jersey 07107-3001 and _____ ("Architect") an organization authorized to do business in the State of New Jersey with offices at _____, to perform professional services for the following Project ("Project"):

**Architectural/Engineering Services
for the Reconstruction of the
Project A: Reconstruction of the GA-Level, and the 6thFloor - School of Nursing –or-
Project B: Renovations to the Pediatric Dentistry & Special Care Treatment Suite
on the Newark, NJ Campus**

in accordance with the Owner's Request for Proposal #P10-068 dated _____ and all conditions stated therein ("RFP"), and Architect's response thereto dated _____ ("Architect's Response").

IN CONSIDERATION of the terms and conditions contained herein, the Owner and Architect agree as follows:

ARTICLE 1

Architects Services and Responsibilities

1.1 Basic Services

1.1.1 The Architect, as the acknowledged primary design professional for the Owner, shall be responsible and obligated for taking the lead on the Project regarding design matters and for supplying all information necessary for the successful design and construction of the Project so as to facilitate Project completion on schedule, within budget and of good quality (fit and finish) construction. The Architect's Basic Services consist of the services described in this Agreement and include, but are not necessarily limited to, structural, mechanical, fire protection and electrical engineering services and other services included in those documents which constitute the Agreement between the Owner

and Architect as set forth in Article 10 and Appendix A, and in the Owner's Request for Proposal (RFP) and in other reports supplied to the Architect for commission of work all of which are incorporated herein by reference as if attached and are made a part hereof and together with this Agreement are hereinafter collectively referred to as "Agreement". All services by the Architect under this Agreement shall conform with applicable federal, state and local laws, regulations rules and codes as well as Factory Mutual Insurance loss prevention codes and standards and the requirements of the National Fire Protection Association.

1.1.2 The date of commencement of the services under this Agreement shall be the date of this Agreement.

1.1.3 The Architect shall make the following personal appearances and contacts and shall perform the following related services as part of Basic Services

1.1.3.1 Architect shall attend all regular Project meetings, which shall be held at least once every two weeks, as well as any special meetings with the Owner, the Owner's employees effected by or involved with the Project, the Owner's Committees or Board of Trustees, as the Owner determines to be necessary to facilitate Project completion, obtain required information or Project funding and approval. Architect shall have all mechanical, electrical and plumbing engineers attend all on-Site coordination meetings and any special meetings, as requested by Owner. Architect shall prepare any exhibits or documents required for presentation at such meetings and shall act as a spokesperson, as required. The Architect shall issue minutes of these meetings to the Owner within five (5) working days of the meeting. The Architect shall follow-up on any requests, as necessary.

1.1.3.2 Architect and/or Expeditor, if Owner has agreed to the provision of services by an Expeditor, shall initiate and attend such governmental meetings as are necessary for approval of the Project and shall actively pursue with any governmental authority having jurisdiction over the Project, and with the Owner, any governmental requirements or request necessary to secure

approvals, permits, temporary Certificates of Occupancy and a final Certificate of Occupancy. Architect and/or Expeditor shall prepare any exhibits or documents required for presentation at such meetings and shall testify or act as a spokesperson, as required. Architect and/or Expeditor shall issue minutes of these meetings to the Owner within five (5) working days of the meeting. The Architect and/or Expeditor shall follow-up on any requests, as necessary.

1.1.4 The Architect shall not be reimbursed for clarifications of Contract Documents, bid documents or specifications or for reviewing and preparing Change Orders and Construction Change Directives resulting from Architect's own errors, omissions, conditions uncovered at the Site which require interpretation by the Architect, including, but not limited to existing hazardous material conditions, code violations, and capacity and suitability of existing Mechanical, Electrical, Plumbing, and Fire Protection ("MEPFP") systems to support the design of this Project, or for revisions required to meet the Fixed Limit of Construction Cost established in the Program Document prepared pursuant to the services performed in Part I for actual construction of the Project ("Fixed Limit of Construction Cost").

1.1.5 The Architect shall not be compensated for changes in the design, necessitated by the enactment or revision of codes, laws or regulations subsequent to the execution of the Agreement. The Architect shall provide input to the Construction Manager regarding adjustments to the Project Budget or Construction Cost to reflect the impact of such changes.

1.1.6 Architect shall provide the following project representation services as part of Basic Services:

1.1.6.1 The Architect shall supply sufficient technical personnel to complete all responsibilities contained herein in accordance with the Project Schedule and to the complete satisfaction of the Owner. The Architect shall provide to the Owner within five (5) Days after the date of this Agreement a list of all of its personnel assigned to this Project. The Architect

shall also furnish the Owner in writing the names, addresses and the office, home, mobile, pagers, etc. telephone numbers of the members of its organization and subcontractors' organizations who can be contacted in the event of an after-hours emergency at the Project Site. The Owner shall do the same for the Contractor. Once Project personnel have been assigned by the Architect and approved by the Owner, they shall not be removed from the Project without the Owner's prior consent unless they are terminated from employment by the Architect.

1.1.6.2 From the start of the Construction Phase (Paragraph 1.7) through the completion of the Project Close-Out Phase (Paragraph 1.8), Architect shall have an architect, licensed by the State of New Jersey, provide on-Site representation, as Owner determines to be needed, with the authority to act on behalf of Architect. Any equipment or requirement necessary to adequately perform said service shall be provided by Architect.

1.1.6.3 The Architect shall immediately remove from the Project, whenever requested to do so by the Owner, any employee, agent or Subcontractor of Architect who is considered by the Owner to be incompetent or disposed to be disorderly or who for any other reason is not satisfactory to the Owner, and that person shall not again be employed on the Project without the consent of the Owner.

1.1.7 In the event of a conflict of any laws, codes, ordinances, regulations and requirements, the stricter shall govern. Owner's approval of any of the services performed by Architect under this Agreement shall not be construed as authority to violate, cancel, or set aside any provision of any applicable law, code, ordinance, regulation or requirement.

1.1.8 The Architect shall not proceed with the preparation of any phase of the work until so directed in writing by the Owner.

1.1.9 The Architect shall prepare a complete Project Schedule and shall submit the Project Schedule with the Schematic Design documents. The Project Schedule shall be updated and submitted to Owner for approval at the end of the Design

Development Phase, the Construction Document Phase and as often as requested by Owner in the Construction Phase. The Project Schedule shall include the milestones, completion dates for all phases of Architect's services hereunder and for the Work that will be performed during the Construction Phase, including, but not limited to, delivery and installation of equipment, fixtures and furniture.

The Project Schedule shall also show the Project review and approval time frames for governmental review and approvals, including the New Jersey Department of Community Affairs ("DCA") plan review, Owner review and approvals, and review and approvals by other appropriate authorities having jurisdiction over the Project. The Owner will supply the Architect with a schedule of Buildings and Grounds Committee meetings and Board of Trustee meetings, which will also be shown as milestone dates on the Architect's Project Schedule. During the Construction Phase, milestone dates shall be shown for the start of construction, Substantial Completion, Final Completion, and Project Close-out, including completion of the Punchlist delivery of the Certificate of Occupancy and final payment to the Contractor.

1.1.10 As part of Basic Services, Architect shall provide all of the interior design and furniture, fixture and equipment planning services set forth in the Owner's RFP and as described throughout this Agreement.

1.2 PART I: Schematic Design Phase

1.2.1 The Architect shall either review the Project Program furnished by the Owner to ascertain and determine the requirements of the Project and shall confirm such requirements with the Owner and Construction Manager or shall prepare the Project Program with the Owner to meet the Owner's needs, budget and timetable.

1.2.2 The Architect shall prepare and submit a certified statement to the Owner and Construction Manager stating that the Architect visited and visually inspected the site and that the Architect is satisfied that all survey data previously furnished is accurate as to apparent surface outcroppings, streams, trees,

undergrowth or other features that present unusual conditions which could adversely effect the design and construction cost of the Project.

1.2.3 Based on the confirmed program, Architect shall work with Owner and Construction Manager to prepare as many Schematic Design documents as necessary to develop and approved solution to meet the Project Program, design and budgeting requirements of the Owner. The documents shall consist of drawings and other documents illustrating the scale and relationship of the design components including adjacencies, circulation, uses of space, general arrangements and square footages for approval by the Construction Manager and Owner. Schematic documents shall include, but are not limited to:

- Site evaluation and study
- Site plan including utility layouts
- Building Code analysis
- Functional space program
- Scaled floor plans, elevations, sections and details
- Structural drawings and calculations
- Recommendations on electrical systems, heating
and cooling systems, plumbing systems and
hazardous material removal
- Parking evaluation including impact on Owner's
facilities
- Utility plant evaluation and effect on Master
Utility Plan
- Telecommunications and computer systems
- Hazardous material survey and results for both
above ground and below ground surveys
- Life cycle costing
- Energy consumption analysis
- Space analysis
- Outline specifications in Construction
Specifications Institute (CSI) format
- Selection of furniture, equipment and fixtures

Design of graphics and signage
Selection of material, building systems and
equipment
Budget estimates
Project schedule

1.2.4 The Construction Manager shall perform a detailed value engineering study for the Project and shall advise the Owner of potential cost savings. The Architect shall participate in this process and fully support its efforts.

1.2.5 The Architect shall assist the Construction Manager in the preparation of the preliminary Project Budget estimates, subject to the Fixed Limit of Construction Cost. The Architect shall be responsible for including all services that will be required for the complete design and construction of this Project. The Project Budget shall include all costs related to the Project including the Construction Manager and the Architect's fees; anticipated hazardous materials surveys and abatement costs where identifiable; site preparation costs; governmental fees; contingency fees including sufficient funds for concealed conditions and field conditions that may occur; equipment costs; other costs of Owner's consultants and contractors; existing code violations which must be corrected as part of the Project; sufficient funds for retrofit of existing mechanical, electrical, plumbing, structural systems; and removal of contaminated conditions. Also included in the Project Budget shall be the total cost of all contracts to be performed in the construction of the Project (Construction Costs), including the costs for the actual site work and construction of the Project by a contractor. Architect shall review and confirm the Construction Manager's preliminary Project Budget estimate. If agreement on the Project Budget estimate cannot be reached between the Architect and Construction Manager, the Architect shall redesign the Project to meet the Owner's Project Budget requirements at no additional cost to Owner.

1.2.6 The Architect shall provide six (6) sets of Schematic Design documents to the Construction Manager who will prepare an estimate of Construction Costs for comparison to the budgeted Construction Costs. The Architect shall review the documents, the Project Budget and the Construction Manager's estimate of Construction Costs with the Construction Manager and Owner for the Owner's approval.

1.2.7 The Architect, shall physically verify critical dimensions and other information and existing conditions pertaining to any existing structure or site.

1.2.8 The Architect, shall obtain written verification from the appropriate authorities that utility facilities exist and can service the Project. The Architect shall forward such written verification or report availability concerns to the Construction Manager.

1.2.9 The Architect shall complete the Schematic Design Phase within _____ (_____) Days from execution of this Agreement.

1.2.10 The Architect shall document the applicable requirements necessary for the various Project functions or operations, such as those for existing and projected personnel, space, furniture, furnishings and equipment, operating procedures, security criteria and communications relationships.

1.2.11 Based on the approved relationship diagrams, the Architect shall prepare space allocation and utilization plans indicating partition and furnishings locations and preliminary furniture and equipment layouts. The Architect shall provide an evaluation of the program and the Project budget, each in terms of the other.

1.2.12 The Architect shall prepare studies to establish the design concept of the Project indicating the types and quality of finishes and materials and furniture, furnishings and equipment.

1.2.13 The Architect shall make investigations, survey, valuations, inventories or detailed appraisals of existing

facilities, furniture, furnishings and equipment, and the relocation thereof, and other services required in connection with work performed or furnished by the Owner.

1.2.14 The Architect shall provide services for the design and selection of graphics and signage in accordance with Owner's standards.

1.3 PART II: Complete Architectural, Engineering and Interior Design Services

1.3.1 Architect's Project communication and correspondence for the Basic Services described in Paragraphs 1.3 through 1.8 shall be addressed to the Owner's Facilities Design and Construction Project Manager or as otherwise directed by Owner.

Architect shall provide the Construction Manager with a copy of any such written Project communication or correspondence. Architect shall complete all services defined in Subparagraphs 1.3.1 to 1.3.6 within _____ (___) Days of commencement of this phase.

1.3.2 Prior to beginning any services set forth in Paragraphs 1.4 through 1.8, Architect shall perform the following services:

1.3.2.1 review and provide services as required to validate the Program Document, Schematic Design Documents and other documents provided by Owner and developed under the services provided in Paragraph 1.2 and confirm their validity with Project representatives from all end user groups identified by Owner and with the Owner's Facilities Design and Construction Project Manager.

1.3.2.2 prepare and submit a certified statement to Owner stating that Architect has visited the Project site, has made a thorough visual inspection of the site, paying particular attention to clear dimensions and the adequacy of building systems and has reviewed and verified and is satisfied that all existing drawing and related data furnished by the Owner are accurate with regard to the existing conditions of the Project, including the

Hazardous Material Survey Report prepared pursuant to the services provided under Paragraph 1.2, the planned system upgrade in a design prepared by Burns & Roe as part of the Owner's Master Utility Plan and documentation regarding other adjacent projects, and with regard to any other features that present unusual conditions that could adversely effect the design and construction cost of the Project; and

1.3.2.3 based upon the reviews, verifications and inspections performed pursuant to Subparagraphs 1.3.2.1 and 1.3.2.2, prepare one (1) set of Mylar original drawings of all existing Project conditions for submission to Owner prior to Architect beginning the Design Development Phase (Paragraph 1.4).

1.3.3 When providing the Basic Services described in Paragraphs 1.3 through 1.8, Architect shall attend all regular and special meetings with the Owner, the Owner's employees effected by or involved with the Project, the Owner's Committees or Board of Trustees or the Construction Manager, as the Owner determines to be necessary to facilitate Project completion, obtain required information or Project funding and approval. Architect shall have all mechanical, electrical and plumbing engineers attend all on-Site coordination meetings and any special meetings, as requested by Owner. Architect shall prepare any exhibits or documents required for presentation at such meetings and shall act as a spokesperson, as required. The Architect shall issue minutes of these meetings to the Owner within five (5) working days of the meeting. The Architect shall follow-up on any requests, as necessary.

1.3.4 When providing the Basic Services described in Paragraphs 1.3 through 1.8, Architect and/or Expeditor, if Owner has agreed to the provision of services by an Expeditor, shall initiate and attend such governmental meetings as are necessary for approval of the Project and shall actively pursue with any governmental authority having jurisdiction over the Project, and with the Construction Manager, any governmental requirements or requests necessary to secure approvals, permits, temporary

Certificates of Occupancy and a final Certificate of Occupancy. Architect and/or Expeditor shall prepare any exhibits or documents required for presentation at such meetings and shall testify or act as a spokesperson, as required. Architect and/or Expeditor shall issue minutes of these meetings to the Owner within five (5) working days of the meeting. The Architect and/or Expeditor shall follow-up on any requests, as necessary.

1.4 Design Development Phase

1.4.1 Based on approved Schematic Design Documents and the services performed pursuant to Paragraph 1.3.2, the Architect shall work with the Owner and Construction Manager and shall provide the Design Development services as required to prepare Design Development Documents. Architect shall complete the Design Development Phase within _____ (____) Days of commencement of services on this phase.

1.4.2 The Design Development Documents shall consist of drawings and other documents to fix and describe the size and character of the entire Project as to architectural, structural, mechanical, fire protection and electrical systems, materials, finishes and interior construction, including special design features to be incorporated into floors, walls, partitions or ceilings, and all other elements, required for the complete design documentation of the Project. The Design Development Documents shall be suitable for review, evaluation and development into Construction Documents, including all necessary federal, state and local approvals. It is intended that all design concepts, systems, materials, finishes, furniture, fixtures and equipment be sufficiently defined and graphically presented so that a detailed Construction Cost estimate can be prepared by the Construction Manager and submitted to the Owner for approval. Design Development Documents shall include but are not limited to:

- Site evaluation and study
- Site drawings
- Plans, elevations, sections and other details
pertinent to the features of design
- Site plan including utility layouts
- Mechanical systems with line diagrams and

- utility room sections
- Plumbing layouts
- Fire protection drawings
- Electrical systems with line diagrams and load projections
- Building Code and life safety analysis, including compliance with ADA
- Floor plans, elevations, sections and details
- Typical wall sections
- Structural design
- Structural drawings and calculations
- Parking evaluation including impact on Owner's facilities
- Utility plant evaluation and effect on Master Utility Plan
- Utility distribution systems
- Elevator systems
- Preliminary HVAC design including boiler and chiller sizing
- Telecommunications and computer systems
- Life cycle costing
- Energy consumption analysis
- Space analysis
- Outline specifications and performance criteria
- Selection of furniture, equipment and fixtures
- All special features, acoustical, food service, medical or research equipment, computers, furniture, signage, interior design, audio/visual equipment, telecommunications, etc. necessary for the proper operation and use of the completed Project
- Design of graphics and signage
- Listing of proposed bid packages
- Listing of long lead time equipment
- Selection of material, building systems and equipment
- Operation strategy detailing how the facility will remain in operation during the proposed construction.

1.4.3 Architect shall provide Owner with a complete code analysis for the Project, including issues relevant to compliance with the Americans With Disabilities Act, 42 U.S.C.A. .12101 et seq. Architect shall verify with the New Jersey Department of Community Affairs and any other governmental authority having jurisdiction over the Project which code compliance issues must be addressed for the Project and which issues can be deferred to later renovations of the Project building. After such verification,

Architect shall present all required code compliance issues and upgrades to Owner, with Architect's recommendations, for Owner's review and consideration. Owner shall determine if any deferrable code compliance items shall be included as part of the Project.

1.4.4 Based upon the Design Development Documents, Architect shall provide Owner with six (6) copies of a Definitive Cost Estimate, in CSI format, summarized by Owner's Project Budget format. Owner shall provide Construction Manager with a copy of the Definitive Cost Estimate and Architect shall assist the Construction Manager in its validation of same. If the Construction Manager determines that the Definitive Cost Estimate exceeds the Fixed Limit of Construction Cost or if agreement on the Definitive Cost Estimate cannot be reached between the Architect and Construction Manager, Architect shall prepare and submit scope of Work reduction options for consideration by Owner. In the event that the Project must be redesigned to meet the Fixed Limit of Construction Cost requirement, Architect shall provide such services at no additional cost to Owner.

1.4.5 Architect shall assist and cooperate with the Construction Manager in preparing a detailed value engineering study and shall advise the Owner of potential cost savings. If Owner approves any cost saving item, Architect shall revise its Definitive Cost Estimate to reflect the cost savings and shall provide Owner with six (6) copies of the revised Estimate.

1.4.6 Architect shall provide six (6) sets of the Design Development Documents and Project Schedule to the Construction Manager in the form specified in Section 4 of the Owner's RFP. The Architect shall review the Design Development Documents with the Construction Manager and Owner for Owner's approval.

1.4.7 After completion of the Design Development Documents and prior to proceeding to the Construction Documents Phase, Architect shall prepare and present a full audio/visual presentation(s) and Design Narrative(s).

1.5 Construction Documents Phase

1.5.1 Based upon approved Design Development Documents,

the Architect shall work with the Owner and Construction Manager and shall provide the construction document services, including interior design services, as required to prepare Construction Documents. Architect shall complete the Construction Documents Phase within _____ (____) Days of commencement of services on this phase.

1.5.2 The Construction Documents shall consist of Final Drawings, Specifications and other associated documents and shall set forth in detail the requirements for the construction of the Project ("Work") and the Work required for the phasing of construction for the architectural, structural, mechanical, plumbing, fire protection and electrical systems, materials, furniture, fixtures, equipment, works of art, furnishings, site work and all other elements required for the completion of the Project. The Construction Documents shall also detail the requirements to comply with all governmental authorities having jurisdiction over the Project as well as with the requirements of the National Fire Protection Association and the Factory Mutual Insurance Company loss prevention codes and standards so as to provide a fully functional, code complaint Project and shall further include all necessary bidding information of the Owner. The Construction Documents shall be submitted to the Construction Manager for the Owner's approval and shall include, but not be limited to:

- Site logistic Plans, including locations for hoist,
contractor parking, waste containers,
construction trailers and staging areas
- Construction Phasing plans
- Design data and analyses
- Specifications and design calculations which
set forth the requirements for all products,
materials, furniture, furnishings, equipment
execution and workmanship and which shall follow
the CSI format
- Schedules, Specification in CSI format and other
documents detailing the requirements for
fabrication, procurement, shipment, delivery and
installation of furniture, furnishings and
equipment, considering that such shall be
performed under one or more contracts or
purchase orders between Owner and Contractor or

supplier
Schedules and submittal log identifying items
for which shop drawings and/or samples are to be
submitted by the contractor(s)
A schedule of all close-out documents to be
submitted by each contractor prior to final
payment
Construction drawings
Operation strategy detailing how the facility will
remain in operation during the proposed
construction.

1.5.3 When the Construction Documents are seventy percent (70%) complete, Architect shall update and revise the Definitive Cost Estimate. Architect shall provide Owner with six (6) copies of the revised Definitive Cost Estimate and Owner shall provide Construction Manager with a copy of the revision. Architect shall assist the Construction Manager in its validation of same. If the Construction Manager determines that the Definitive Cost Estimate exceeds the Fixed Limit of Construction Cost or if agreement on the Definitive Cost Estimate cannot be reached between the Architect and Construction Manager, Architect shall prepare and submit scope of Work reduction options for consideration by Owner. In the event that the Project must be redesigned to meet the Fixed Limit of Construction Cost requirement, Architect shall provide such services at no additional cost to Owner.

1.5.4 Architect shall assist and cooperate with the Construction Manager in updating and revising the detailed value engineering study and shall advise the Owner of potential cost savings. If Owner approves any cost saving item, Architect shall revise its Definitive Cost Estimate to reflect the cost savings and shall provide Owner with six (6) copies of the revised Estimate.

1.5.5 When the Construction Documents are seventy percent (70%) complete, Architect shall provide one (1) set of reproducible Construction Documents to the Construction Manager so that the Construction Manager can establish a Guaranteed Maximum Price ("GMP") for the construction of the Project. The Architect shall assist the Construction Manager in establishing the

Guaranteed Maximum Price, as required or as directed by Owner.

1.5.6 When instructed by Owner, Architect shall proceed with the completion of the Construction Documents. When the Construction Documents are one hundred percent (100%) complete, Architect shall provide one (1) set of reproducible documents to the Construction Manager and six (6) sets to the Owner, of which one (1) set shall be signed and sealed and one (1) set shall be on Mylar. In addition, the Architect shall supply the Owner with a 3.5" diskette containing computer files of any work done on a CADD system in a format compatible with AUTOCAD Version 12, with a hard copy listing of all files and their contents and a diskette containing all specifications produced utilizing word processing software at no additional cost to Owner.

1.5.7 The Architect shall assist the Construction Manager in preparing the necessary bidding and procurement information, bidding and procurement forms, purchase orders, and the forms of Agreement between the Owner and the Contractors or suppliers, in accordance with Owner's standards.

1.5.8 The Architect shall identify to the Construction Manager and Owner any propriety specified items and explain in detail the requirement for the item.

1.5.9 Once every two weeks the Architect shall submit to the Construction Manager progress reports listing work completed during the previous period, work planned for the upcoming period, special needs or concerns, problem areas and the status of schedule compliance.

1.5.10 Architect shall assist the Construction Manager in updating the Project Schedule.

1.6 Bidding or Negotiation Phase

1.6.1 The Architect shall perform the services necessary to assist the Construction Manager and Owner in obtaining bids, or negotiating contracts if requested, and in preparing and awarding construction contracts. The Architect shall do whatever is required to clarify the Work as needed.

1.6.2 In the event that the Owner rejects the Construction Manager's GMP and/or elects to publicly bid the Project, and the lowest responsive bid exceeds the Fixed Limit of Construction Cost, the Architect, if directed by the Owner, shall redesign the Project with the assistance of the Construction Manager in order to bring the Project within budget. Architect shall not be entitled to additional compensation for this redesign or any services required for the re-bidding of the Project. The Architect shall be responsible for any and all costs incurred by the Owner which are attributable to the re-design or re-bidding of the Project.

1.7 Construction Phase

1.7.1 The Construction Phase will commence with the award of the first Construction Contract and will terminate when the final Certificate for Payment is paid by the Owner.

1.7.2 The Architect shall provide administration of the Construction Contract and shall perform all of the duties and obligations as set forth herein, in the Owner's RFP and in the General Conditions of the Contract for Construction (a copy of which is appended hereto as Exhibit 1). The extent of the duties and responsibilities and the limitations of the Architect's authority as assigned hereunder shall not be modified without the written consent of the Architect and Owner. The term Contractor as used herein shall mean each person or entity awarded a Contract by the Owner, or supplier to whom a purchase order is issued by the Owner, or the Owner's agent in connection with interior construction, procurement or installation for the Work. Each such Contractor shall be referred to throughout the Contract Documents as if singular in number and masculine in gender. The term Contractor means the Contractor or the Contractor's authorized representative.

1.7.3 All of the Architect's and Owner's instructions to the Contractors shall be issued through the Architect. The Architect shall consult with the Owner's Project Manager, as appropriate, before issuing instructions to

Contractors.

1.7.4 The Architect and those consultants engaged by the Architect shall confer initially with the Contractors as often as may be required by the Owner in connection with the services to be rendered under this Agreement.

1.7.5 The Architect shall represent the Owner on the Site and advise the Contractors of all the Architect's instructions and intentions through interpretations of Construction Documents in conferences and/or written communications.

1.7.6 The Architect shall be responsible for administering the change order process. The Architect shall review, issue, prepare, Change Orders, and Construction Change Directives involving changes in scope, cost or time only after consultation and approval by Owner. The Architect shall evaluate and report on Construction Document changes, Change Orders, Construction Change Directives or any supplementary work initiated after commencement of the Construction Phase, including review of the Contractors' cost proposals in connection therewith.

1.7.7 The Architect and its consultants shall have access to the Work, at all times, wherever it is in preparation or progress and shall make frequent visits to the Site to maintain familiarization, by observation or inspection, with the conditions, progress, quantity and quality of the Work to determine if the Work is proceeding in accordance with the Construction Documents and Project Schedule. On the basis of on-site observations and inspections, the Architect and its consultants shall guard the Owner against errors, omissions, defects and deficiencies in the performance of the Contractor, but this shall not make the Architect or its consultants responsible for the Contractor's construction means, methods, techniques, sequences or procedures, safety precautions and programs. The Architect shall forward significant comments resulting from site visits to the Owner for appropriate action.

1.7.8 At the request of the Owner, the Architect shall evaluate and make specific written recommendations on all claims

and change order requests of the Contractors relating to the Architect's design, the execution and progress of the Work and on all matters or questions related thereto, and shall attend and actively participate at hearings, court hearings, or settlement conferences in connection with such claims upon notification by the Owner.

1.7.9 The Architect shall be the initial interpreter of the requirements of the Construction Documents and the judge of the performance thereunder by the Contractors. However, Owner shall have the right to overrule the Architect's decisions.

1.7.10 After award of the construction contracts, the Architect shall revise the Construction Documents to incorporate (a) bulletin information issued after submission of bidding documents to Owner and during the bidding period, (b) accepted alternates and (c) changes incorporated in the construction contracts. The revisions shall be identified and the Construction Documents shall be dated to reflect their revisions. Within fifteen (15) Days after contract award, Architect shall provide one (1) set of reproducible revised Construction Documents to the Construction Manager and six (6) sets to the Owner, of which one (1) set shall be signed and sealed and one (1) set shall be on Mylar.

1.7.11 The Architect shall advise the Owner and Contractor of work which the Architect finds does not conform to the Construction Documents.

1.7.12 The Architect shall conduct regular and special job site meetings with Contractors and other involved parties and report on and make recommendations relative to the progress of the Work. Regular job meetings shall be held at least once every two weeks or more frequently if required by the Owner or by job progress. Minutes of each meeting shall be prepared by the Architect and distributed to Contractors and Owner representatives within five (5) Days after the meeting.

1.7.13 The Architect shall promptly review and approve shop drawings, coordination drawings, samples, and other

submissions of the Contractor for conformity with the design concept of the Project and for compliance with the Construction Documents so as to avoid unreasonable delay in the progress of the Project and shall identify what changes if any are needed to bring them into compliance. The Architect shall also promptly render interpretations of the drawings and specifications in order that the intent and meaning thereof shall be faithfully carried out and understood by the Contractor(s).

1.7.14 The mechanical, electrical and plumbing engineers shall tag all piping and wiring that is to remain in the existing walls and ceilings.

1.7.15 The Architect shall conduct inspections in conjunction with the Owner to determine the dates of Substantial Completion and Final Completion of the Project. The Architect shall prepare and issue the "punchlist" of items to be completed within three (3) Days of the inspection date.

1.7.16 Should the Architect receive any written guarantees and other closeout documents from the Contractors, the Architect shall review all such documents and shall transmit them to the Owner with recommendations.

1.7.17 The Architect shall provide assistance to the Owner in the start-up, testing, testing under load, adjusting or balancing of equipment or systems, in the preparation of operation and maintenance manuals, and in the training of Owner personnel for operation and maintenance functions, unless such services are included in the contracts of others.

1.7.18 Upon completion of the Project, the Architect shall review the marked-up Record Drawings blackline prints of Construction Documents, as furnished to it by the Contractor(s), showing the locations, elevations and sizes of all Work as actually built and installed. Within thirty (30) days of Substantial Completion, the Architect shall make any required corrections to these Construction Documents and shall provide Owner with one (1) complete set of Mylar reproducible Project record drawings, two (2) sets of record blueprints and three (3) copies of the Project

manual, complete with addenda and change order documentation. The drawings are to be CADD generated and Architect shall provide copies of all drawing files to Owner on 3.5" diskettes, with a hard copy list of file names and content description. Files are to be submitted in the "DWG" format compatible with AUTOCAD 12 or in the "DXF" format if the DWG" format is not possible.

1.7.19 The Architect shall review the final placement of all items and inspect for damage, quality, assembly and function in order to determine that all furniture, furnishings and equipment are delivered and installed in accordance with the Contract Documents.

1.7.20 The Architect shall coordinate the schedules for delivery and installation of the Work, but shall not be responsible for any malfeasance, neglect or failure of any Contractors or suppliers to meet their schedules for completion or to perform their respective duties and responsibilities. The Architect shall immediately notify the Owner of any delay, problems or changes in schedules or failures or neglect of any Contractor.

1.7.21 The Architect shall coordinate and schedule Owner's relocation or removal of existing facilities, furniture, furnishings and equipment, and the contents thereof.

1.8 Project Close-Out Phase

1.8.1 The Architect shall perform the Post-Construction services so as to administer the closing out of consultant Contracts and the Construction Contract(s) with the Contractor(s). The Architect shall obtain from the Contractor(s) all required close-out documents including, but not limited to: warranties; guarantees; waivers and releases of liens; general release; affidavit of payment of all sums owed and settlement of all claims, to all vendors, material suppliers and sub-contractors; operating and maintenance manuals; spare parts and attic stock; and manufacturer's warranties and literature that will be needed by the Owner to properly operate and maintain the completed Project. All of this material shall be reviewed and approved by the Architect for completeness, accuracy and Contract Document compliance and

shall be transmitted to Owner before the Architect approves the Final Application for Payment and before the Architect issues the Certificate of Final Completion.

1.8.2 The Architect shall act in a prompt manner so as to complete the Project close-out phase within sixty (60) calendar days or as otherwise agreed by Owner.

1.8.3 The Architect's responsibilities under this Agreement continue through the Contractor(s)' one year guarantee period and the Architect shall prepare, review and approve the corrective action required to correct any defects discovered during the Contractor(s)' one year guarantee period, at no additional expense to the Owner.

ARTICLE 2

Additional Services

2.1 The Owner may at any time, issue additional instructions and require additional work or services not covered by this Agreement.

In this event, the Architect shall be entitled to additional compensation for the cost of the added work and expense; such additional compensation to be determined by mutual agreement between Owner and Architect, or to be determined by the hourly fees submitted by the Architect for additional services in Architect's Response, or a combination of either of these methods as determined by the Owner. Unless the parties agree that the service is a part of the Project, the following services shall be provided by the Architect, when authorized in writing by the Owner, and they shall be paid for by the Owner separately from and in addition to Basic Services, and as hereinafter provided. Any services not listed in this paragraph as "Additional Services" shall be considered Basic Services under this Agreement.

2.1.1 Except as expressly provided herein, provide design services relative to future facilities, systems and equipment which are not intended to be constructed as part of the Project.

2.1.2 Providing consultation concerning replacement of

any Work damaged by fire or other cause beyond the control of the Architect during construction and furnishing professional services as may be required in connection with the replacement of such Work.

2.1.3 Providing professional services made necessary by the default of a Contractor in the performance of its contract with Owner.

2.1.4 Providing the services of additional unanticipated consultants as approved by the Owner. In no event shall Architect be entitled to a mark-up cost greater than five percent (5%).

2.1.5 Providing inspection services and other actual, documented costs in the event that the Project Schedule is extended solely as a result of the Owner's instructions to temporarily suspend the Work. Architect is not entitled to additional compensation in the event of any other extension of the Project Schedule for completion of the Work.

ARTICLE 3

Owner's Responsibilities

3.1 The Owner shall provide full information regarding the requirements for the Project. The Owner shall provide the services of a Construction Manager for Part II of the Project. The Construction Manager shall examine documents submitted by the Architect and shall render decisions and advise the Owner pertaining thereto promptly to avoid unreasonable delay in the progress of the Architect's services. Prior to the completion of Part I of the Architect's services, Owner intends to publicly advertise and bid a Request for Proposal for a Construction Manager. The Construction Manager shall perform services as an agent of the Owner until seventy percent (70%) completion of the Construction Documents, at which time the Owner may elect to request the Construction Manager to submit a GMP for Owner's approval. The Owner may accept the GMP and enter into an agreement with the Construction Manager for construction of the Project; or may request the Architect to perform services for bidding the Project.

3.2 The Owner shall designate a Project Manager to act on behalf of the Owner with respect to the Project for Part I and Part II of this Agreement, as more particularly set forth in Subparagraphs 1.2.1 and 1.3.1.

3.3 The Owner shall furnish, if available, geotechnical, chemical, mechanical, hazardous materials surveys, or other investigations and tests when required by the Construction Manager and Architect.

If such data is required by the Architect and is not available from the Owner, the Architect shall contract directly for such services. The Architect shall confirm the accuracy of such data. The Architect shall also prepare specifications for surveys and/or geotechnical investigations and provide a boring plan.

3.4 The Owner will furnish such legal, accounting, and insurance counseling services as the Owner may deem necessary to protect its interest in the Project and such auditing services as the Owner may require to ascertain how or for what purposes Contractors have used the moneys paid under the Construction Contract.

3.5 The services, data, surveys and reports required under Paragraphs 2.3 and 2.4 shall be furnished at the Architect's expense unless otherwise so noted in the Architect's or Construction Manager's agreements with the Owner.

3.6 If the Owner or Construction Manager becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents, the Owner or Construction Manager shall give prompt written notice thereof to the Architect.

3.7 It is agreed by and between the parties to this Agreement that whenever the approval or authorization by the Owner is required, such shall be in writing and shall be expeditiously given and shall not be unreasonably withheld.

3.8 All Contract Documents including drawings and specifications, any changes, revisions or amplifications thereof, shall be subject to the written approval of the Owner before the same shall be deemed accepted.

ARTICLE 4

Architect Standards of Performance

4.1 Except as otherwise provided or by specific instructions from the Owner in writing, in performing the services under this Agreement the Architect represents that it shall at all times perform hereunder in accordance with the professional standard of care and skill customarily exercised by sophisticated members of the architectural profession in the United States who are experienced in the design and construction administration of buildings comparable to the Project, and Architect shall make certain that the Project is completed in accordance with the Contract Documents and that construction costs and time delays are minimized to the fullest extent practicably consistent with the Owner's criteria for function and quality.

4.2 All services to be rendered by Architect hereunder shall be rendered in a professional manner by, or under, the direct supervision of registered professional architects licensed to practice in the State of New Jersey. Nothing contained in this Agreement is intended to relieve the Architect of responsibility for maintaining adequate supervision over the design and also adequate observation or inspection of the construction work in order to guard the Owner against deficiencies in the design work and the work of the Contractors so that the Work is completed in compliance with Contract Documents. Whenever the term "inspect" or "inspection" is used in this Agreement, it shall mean the duty to inspect those aspects of the Work which sophisticated members of the architectural profession in the U.S. who are experienced in the design and construction administration of projects comparable to the Project would consider critical aspects. Architect shall have the duty to observe, not the duty to inspect, other aspects of the Work. Such inspections and observations shall be carried out in accordance with that standard of care and skill customarily exercised by such members of the architectural profession.

4.3 Notwithstanding any other provisions contained herein, the Architect shall not be relieved of liability to the Owner for

actual damages sustained by the Owner, resulting from error, omission or any breach of this Agreement by the Architect. The Owner, upon the discovery of any error, omission or breach, shall give written notification thereof to the Architect and Construction Manager. The Owner may withhold a portion of payments due to the Architect not to exceed twice the amount of the deductible identified in the professional liability policy for the purpose of establishing a reserve until such time as the exact amount of such actual damages is determined. The Owner shall expeditiously initiate such proceedings as may be necessary to fairly determine the exact amount, if any, of the actual damages. Such moneys withheld by the Owner shall be retained until the negotiated value of said damages is paid by the Architect and/or the Architect's insurance carrier or any other party. The acceptance, approval or payment for any of the Drawings, Specifications or other work and services performed by the Architect hereunder shall not constitute a release or waiver of any claim the Owner has or may have for latent defects, errors, omissions or other breach of this Agreement on the part of the Architect.

ARTICLE 5

Reimbursable Expenses

5.1 Reimbursable expenses to the Architect are in addition to the compensation for Basic and Additional Services and include actual expenditures made by the Architect's technical employees and professional consultants for the expenses listed in the following subparagraphs. No markup is allowed on reimbursable expenses. Only reimbursable expenses accompanied by proper documentation will be reimbursed.

5.1.1 Out of state travel shall be reimbursed only when authorized by the Owner. No travel expenses shall be reimbursable between Architect's office and any Owner site.

5.1.2 Models and renderings shall be reimbursed when not included in Basic Services and when authorized by the Owner.

5.1.3 Reimbursable expenses include the expense of reproduction of Drawings and Specifications, excluding those

specifically required to be furnished in accordance with this Agreement and excluding any drawings required for the Architect's use for coordination with its consultants or for expenses for plotting of CADD files.

5.1.4 Reimbursable expenses include the expense of the premium portion of overtime work requiring higher than regular rates when authorized in writing by the Owner, except when overtime work is required for the Architect to maintain Project Schedule.

5.1.5 Postage and express courier service are allowable reimbursable expenses.

ARTICLE 6

Payment to the Architect

6.1 Owner shall pay Architect a lump sum fee of _____ (\$_____) which includes the base fee of \$_____, reimbursables not to exceed \$_____ and hazardous material services not to exceed \$_____, for the Feasibility Study Phase, Part I, of Basic Services (Paragraph 1.2) under this Agreement.

6.2 Owner shall pay Architect a lump sum fee equal to _____ percent (____%) of the Fixed Limit of Construction Cost, established at the completion of Part I (Paragraph 1.2), for Part II Basic Services (Paragraphs 1.3 to 1.8). Payments on account of these services shall be made as follows:

Schematic Design Validation and other services set forth in Paragraph 1.3.2	10%
Design Development Phase	15%
Construction Document Phase	25%
Bidding or Negotiation Phase	5%
Construction Phase	30%
Project Close-out Phase	15%

6.3 Payments of fees will be made by Phase monthly in proportion to the services completed by the Architect and as

recommended by the Construction Manager when appropriate and as approved by the Owner. Payments of fees in each Phase shall be in proportion to the dollar value of services completed.

6.4 If the Bidding or Negotiation Phase has not commenced within one hundred eight (180) Days after the Architect has submitted the Construction Documents to the Owner, the Fixed Limit of Construction Cost established as a condition of this Agreement shall be reviewed by the Construction Manager who shall recommend to the Owner any adjustment due to changes in the general level of costs which may have occurred in the construction industry in the area in which the Project is located. The adjustment shall reflect changes in construction costs between the date of submission of the Construction Documents to the Owner and the date on which proposals are sought. The Fixed Limit of Construction Cost may be adjusted by the Owner in such instance; however, the Architect shall not be entitled to any increase in the fee set forth in paragraph 6.2 if the adjustment results in an increase in the Fixed Limit of Construction Cost.

6.5 All provisions of Paragraph 1.6.2 shall apply if bids received are in excess of the Fixed Limit of Construction Cost.

6.6 The Architect shall submit with each invoice for payment a signed statement indicating that any associated architect, engineer and consultant firm employed directly by the Architect have been paid a proportionate share of previous payments made by the Owner to which these individuals are entitled.

6.7 The balance of fees due the Architect shall be paid no later than one hundred eight (180) Days after Final Payment to all design and construction contracts relating to the Project and upon certification by the Architect that all consultants have been paid to date and will be paid the balances due them within thirty (30) Days after the receipt of final payment to the Architect. Final payment to the Architect shall not relieve the Architect of any contractual responsibilities.

6.8 No deduction shall be made from the Architect's fee for any penalty or liquidated damages charged to any Contractor, unless it

is determined that there is Architect responsibility under this Agreement.

6.9 Unless otherwise provided herein, the Architect shall not be entitled to any additional payment for damages due to delay on the Project.

ARTICLE 7

Termination of Agreement; Suspension of Services

7.1 If for any reason the Project should be abandoned, suspended or postponed, the Owner may terminate this Agreement upon seven (7) Days written notice to the Architect. Upon receipt of such notice, unless otherwise directed, the Architect shall immediately discontinue all work hereunder at that point. In the event of any termination pursuant to this Article, the Owner shall have the right to audit all of the Architect's records pertaining to this Project. Upon such termination, the Architect shall be paid in accordance with the following:

7.1.1 Where compensation is based on a stipulated sum, that proportion of the fee, which the services actually and satisfactorily performed shall bear to the total services contemplated under this Agreement, less payments previously made.

7.1.2 If any compensation is based on a multiple of direct salary cost, the Architect shall be paid based upon the full extent of services directed and satisfactorily rendered.

7.1.3 Payment under Subparagraphs 7.1.1 and 7.1.2 shall include all reimbursable expenses and additional service compensation.

7.2 Upon seven (7) Days written notice to the Architect, the Owner may terminate this Agreement for any reason, with or without cause or Owner may terminate this Agreement if, in its sole discretion and judgment, it deems the services of the Architect to be unsatisfactory or in non-compliance with this Agreement. Upon receipt of such notice of termination, Architect shall immediately discontinue all services hereunder and shall be entitled to compensation as provided in Paragraph 6.1.

7.3 In the event of Architect's death or disablement to an extent which would, as determined by Owner, prevent its satisfactory performance hereunder, the Owner may terminate this Agreement as provided in Subparagraphs 7.3.1 and 7.3.2.

7.3.1 When Architect is a sole proprietorship, upon seven (7) Days written notice to the firm.

7.3.2 When the Architect is not a sole proprietorship, in the event of the death or disablement of one of the principals, upon seven (7) Days written notice to the surviving principals, Owner may either terminate this Agreement or authorize the surviving principals to assume full responsibility for the completion of this Agreement.

7.3.3. Upon receipt of a notice of termination, Architect shall immediately discontinue all services hereunder and shall be entitled to compensation as provided in paragraph 7.1.

7.4 The Architect shall not be entitled to any damages, including lost profits and other incidental, consequential and special damages, due to termination pursuant to this Agreement.

7.5 The Owner may order that Work on the Project be suspended or postponed, upon five (5) Days written notice. The Architect shall immediately cease all services hereunder, except as necessary to secure the Project and Architect shall be entitled to compensation as provided in paragraph 6.1. If the Owner directs that the Work on the Project be resumed within one hundred eighty (180) Days of any notice to suspend or postpone, the Architect shall be obligated to complete the Project for the fee provided for in this Agreement, plus any additional compensation that the Owner may approve in writing. If the Project is postponed or suspended for a period of more than one hundred eighty (180) Days, the Architect's compensation may be subject to re-negotiation by mutual agreement.

ARTICLE 8

Ownership of Documents

8.1 Upon termination of this Agreement, the original drawings and CADD files translated into AUTOCAD 12, revised to reflect "Record"

or "As-Built" conditions, shall be transmitted to the Owner and become the property of the Owner. The Architect, for record purposes, may retain a set of prints or reproducibles of those drawings prior to transmittal to the Owner.

8.2 It is understood and agreed between the parties to this Agreement that all documents including Drawings and Specifications furnished by the Architect pursuant to this Agreement are instruments of service in respect of this Project only. These documents are not intended or represented to be suitable for re-use by the Owner on other projects, for additions to this Project or completion of this Project by others unless the Architect's services under this Agreement are terminated for any reason. Any re-use without specific written verification or adaptation by the Architect will be at the Owner's sole risk and without liability or legal exposure to the Architect by the Owner or to the Owner by the Architect.

ARTICLE 9

Disputes/Claims/Litigation

9.1 Resolving Disputes Without Court Action

9.1.1 The Owner shall be, in the first instance, the interpreter of the requirements of this Agreement and the impartial judge of the Architect's performance hereunder. The Owner shall not side with the Architect, nor with the Contractors, but shall use its powers to enforce faithful performance by all. Disputes between the parties will be resolved as follows. The first step in this process is to request, in writing, the Owner's Project Manager's Determination. If the decision rendered by the Owner's Project Manager as a result of the request is not accepted by the parties concerned, the next step that may be taken is either one of escalating the Owner's Determination made by the Project Manager to the Owner's Associate Vice President for Facilities Design and Construction or litigation.

9.1.2 The Architect may at any time request a Owner's Determination of any claim, dispute or matter in question arising out of or relating to this Agreement.

9.1.3 The Contractors who are working on the same Project as the Architect may request an Owner's Project Manager's or Owner's Determination should they have any claim, dispute or matter in question arising out of or relating to their individual agreements. The Architect shall, with no additional compensation, be required to participate in such process either as a party to the dispute or as Owner's agent.

9.1.4 A Owner's Project Manager's Determination, shall be made as expeditiously as possible. Except as otherwise provided in this Agreement, disputes and claims concerning a question of fact arising under this Agreement which are not disposed of by mutual agreement shall be reviewed by the Owner who shall render a decision in writing and notify the Architect. Pending both the Owner's Project Manager's and Owner's Determination of such final decision, the Architect shall have no recourse to Court actions, assuming that the aforesaid procedures take place within a reasonable amount of time.

9.1.5 Pending final decision of such claim or dispute, the Architect and consultants shall proceed diligently with the timely performance of their contractual responsibilities and shall meet the Project Schedule.

9.2 Litigation

9.2.1 If the parties to a dispute for damages do not mutually agree as set forth in Article 9.1 the parties to the dispute agree to litigate the matter in a New Jersey court of law in Essex County.

9.2.2 No litigation, arising out of, or relating to such a dispute, shall include, by consolidation, joinder or any other manner, the Owner when the Owner has no direct responsibility in the dispute or for the damages arising therefrom.

9.2.3 Nothing contained herein shall, however, relieve Architect, Construction Manager or a contractor from any liability or damage resulting to the Owner on account of such dispute or damages.

ARTICLE 10

Extent of Agreement

10.1 This Agreement, including the documents listed in Appendix A, represents the entire and integrated agreement between the Owner and the Architect. It supersedes all prior negotiations, representations or agreements, either written or oral. The terms, conditions and provisions of the Agreement cannot be modified or varied except by agreement between Architect and the Owner.

10.2 Waiver of any part of this Agreement shall not be deemed a waiver of any other part.

ARTICLE 11

Notices

11.1 Any written notice intended to be given hereunder to the Architect, Construction Manager or to the Owner respectively, shall be effective on the third Day after mailing and shall be deemed sufficiently served if addressed and mailed by U.S. Certified mail to the Architect or Construction Manager at the addresses set forth hereinabove, or to the Owner at the Office of the Senior Vice President for Administration and Finance, Suite 1419, 65 Bergen Street, Newark, New Jersey 07107-3001 with copies to the Office of the Vice President for Operations, 1618 Administration Complex, 30 Bergen Street, Newark, New Jersey 07107-3000, or such other address as to which Architect is given notice.

ARTICLE 12

Other Consultants or Services

12.1 Should the Owner and the Architect determine that the unique nature of the Project requires the services of other consultants (e.g. traffic, soils, electronic data programmers, automation and

computerization consultants, etc.); such consultants shall be engaged by the Architect. All such consultants shall be qualified and competent and shall be selected by the Architect and shall be subject to the written approval of the Owner. Written requests for approval of consultants shall fully describe the scope of the work for which consultants are being engaged. Architect shall be entitled to a payment from the Owner equal to one and five hundredths (1.05) times the amount billed by the consultant to the Architect for such services.

12.2 Notwithstanding anything to the contrary in paragraph 12.1, if it is determined that the services of other consultants are required for the Project, the Owner reserves the right to directly hire any such consultant or to require bidding for the consultant services. In the event that Owner exercises this right, upon request of the Owner, the Architect and Construction Manager shall assist Owner in such hiring or bidding at no additional cost to Owner.

12.3 Notwithstanding anything to the contrary contained in Article 1, Owner reserves the right to hire a Construction Manager or Owner's Representative to assist in the administration of the Construction Contracts and Project Close Out as described in Paragraphs 1.7 and 1.8. In the event that Owner exercises this right, the Architect and Owner shall meet and come to an agreement on any reduction of services by the Architect and any credit due to the Owner for the reduced services during these Phases.

ARTICLE 13

Errors and Omissions

13.1 During Construction, the Owner shall be responsible for the cost of changes to the Work except for changes due to the errors or omissions of the Architect in the Construction Documents and except for changes and/or costs incurred by the Owner caused by the Architect's non-adherence to the Project Schedule. The Architect shall be liable and responsible for the cost of any changes to the Work necessitated by its errors and

omissions or lack of adherence to the Project Schedule, to the extent that such costs in the aggregate exceed one percent (1%) of the Cost of Construction for the Project as determined as of the award of the Construction Contracts to the Contractor(s). The Architect shall pay the Owner any such costs within thirty (30) Days of receipt of an invoice from the Owner for such costs. Such invoice shall not be made until the change has been performed and incorporated into the Project. In the event that Architect fails to make payment within thirty days, in addition to other rights in law or equity, Owner may deduct such costs from payments owed to Architect.

13.2 The cost of any changes to the Work from any error or omission related to code compliance shall be the total responsibility of the Architect and shall not be subject to the one percent (1%) aggregate threshold contained in Paragraph 13.1.

ARTICLE 14

State Contract Laws

14.1 This Agreement and the rights of the parties shall be governed by the constitution and laws of the State of New Jersey, including the New Jersey Contractual Liability Act N.J.S.A. 59:13-1 et seq. and the New Jersey Tort Claims Act N.J.S.A. 59:1-1 et seq. and any cause of action between the parties shall have jurisdiction and venue only in the courts of the State of New Jersey in and for the County of Essex.

ARTICLE 15

Auditing

15.1 Upon five (5) Days notice of Owner's request, Architect shall permit Owner or its designee to inspect, audit and photocopy all books, payrolls, ledgers, registers, receipts, subcontracts, overhead, cost, accounting and other data and records (collectively referred to as the "records") of the Architect relating to its performance and that of its subconsultants and designees, if any, under this Agreement, from the effective date hereof through and

until the expiration of ten (10) years after completion of and final payment to the Architect for its Project services.

15.2 Architect shall maintain such records in accordance with generally accepted accounting principals, which specifically identify the Project and all labor and materials, costs and expenses, whether direct or indirect. Architect's failure to maintain or produce such records shall preclude the recovery of any claim for Project costs related to the missing records.

15.3 The Architect further agrees to include in all its subcontracts hereunder a provision to the effect that the subconsultant agrees that Owner, and any of its duly authorized designees, shall, until the expiration of ten (10) years after final payment to the Architect under the subcontract, have access to and the right to examine any records related to the subconsultant's performance under the subcontract and that the failure of the subconsultant to maintain or produce such records shall preclude recovery from the Owner for any claim for Project costs related to the missing records.

15.4 If any unsubstantiated or overpayment are discovered as a result of any audit conducted by the Owner, or its designee, Architect shall be notified by Owner in writing. Architect agrees to repay Owner for any unsubstantiated or overpayment within thirty (30) Days of such notice or, if Architect fails to make such payment, Owner, in addition to other rights in law or equity, may deduct such unsubstantiated or overpayment from any payments owed to Architect. Further, if the Owner undertakes an audit of the records and such audit results in a finding of excessive profit due to improper statement of hourly rates, overhead, time required or other estimated cost data upon which this Agreement was negotiated, Architect authorizes Owner to reduce the lump sum fee to an amount Owner considers to be commensurate with the actual scope of services or to seek repayment, as provided in this subparagraph, of any excessive amounts already paid by Owner.

ARTICLE 16

Insurance

16.1 The Architect shall assume all responsibility for its actions and those of its employees, agents, servants and consultants while engaged in any activity connected with this Agreement. The Architect shall procure and maintain at Architect's sole expense, sufficient insurance to protect the Architect and Owner from any loss, damage, expense, property damage or bodily injury claims arising out of the performance of this Agreement. Architect must procure insurance from insurance companies licensed to do business in the State of New Jersey. Evidence of current insurance coverage shall be provided in the form of a Certificate of Insurance which shall be submitted before commencement of services. Except for Workman's Compensation and Professional Liability, Owner shall be named an additional insured. The insurance shall provide for thirty (30) Days notice in writing to the Owner prior to cancellation, expiration or non-renewal of the insurance coverage.

16.1.1 Workers Compensation Insurance applicable to the laws of the State of New Jersey and Employer's Liability Insurance as required by applicable State and Federal Law.

16.1.2 Commercial General Liability (CGL), written as broad as the standard coverage form currently in use in the State of New Jersey which shall not be circumscribed by any endorsements limiting the breath of coverage, including Contractor's Liability; Independent Contractor's Liability; Contractual Liability including Defense; Completed Operations and Products Liability all on the occurrence basis with Personal Injury Coverage and Broad Form Property Damage. XCU is included under CGL relating to Explosion, Collapse and Underground Property Damage. Completed Operations Liability shall be kept in force for at least six (6) years after the date of final completion. Limits of liability shall not be less than combined single limits of \$10,000,000, or higher limits if required by Owner.

16.1.3 Comprehensive Automobile Liability on an occurrence basis covering owned, non-ownership and hired car coverage as well as owned vehicles not less than combined single limits of \$1,000,000.

16.1.4 Professional Liability Policy with minimum limits of \$2,000,000.00.

16.2 Any insurance policies which are written on a "claims-made" basis shall include an "extended reporting period" provision of not less than five (5) years following completion of the services covered by this Agreement.

16.3 The insurance required under this Agreement are the minimum amount and types required and shall not in any way limit Architect's liability under this Agreement in excess of such coverage, nor shall it preclude the Owner from taking such other actions as are available to it under any other provision of this Agreement or otherwise in law or equity. The Owner's interests shall not be limited, abridged or restricted in any manner or form.

16.4 The Owner shall have the right to terminate this Agreement for cause if the Architect fails to maintain the insurance as specified herein.

ARTICLE 17

Indemnification

17.1 The Architect shall defend, indemnify, protect and save harmless the Owner and its agents, servants and employees from and against any and all suits, claims, demands, awards, losses, expenses or damages of whatsoever kind or nature arising out of any negligent act, error or omission of the Architect, its agent, servants, employees and retainees, in the performance of professional services or pertaining to materials supplied under this Agreement, including, but not limited to, reasonable expenditures for and costs of investigation, hiring of expert witnesses, court costs, counsel fees, settlements, judgments or awards.

17.2 The Architect agrees and understands that the Attorney

General of the State of New Jersey represents the Owner and will participate in any action involving the Owner which relates to the subject matter of the claim indemnified by the Architect under this Article and nothing contained herein shall be construed to prevent such participation; and provided further that the Attorney General of New Jersey shall retain sole control, at the Architect's sole expense, of the defense of any such claim and negotiations for its settlement or compromise to the extent that the Attorney General solely and exclusively determines that such claim implicates the public policy of the State of New Jersey including, without limitation, the constitutionality, the validity of statutory administrative or decisional law, the appropriateness of State action or the propriety of the conduct of State officers, employees or agents.

17.3 The Architect shall be liable to the Owner for any reasonable costs incurred by the Owner to correct, modify or redesign any drawings submitted by the Architect that are found to be defective or not in accordance with the provisions of this Agreement as a result of negligent act, error or omission on the part of the Architect, its agents, servants or employees. The Architect shall be given reasonable opportunity to correct any deficiencies.

17.4 The Architect agrees that any approval by the Owner of the services rendered by the Architect shall not operate to limit the obligations of the Architect assumed in this Agreement. Furthermore, the Architect agrees that the provisions of this indemnification shall in no way limit the Architect's obligations assumed in this Agreement, nor preclude the Owner from taking any other actions available under any other provisions of this Agreement or otherwise at law or in equity.

17.5 The Architect's obligation to defend, indemnify and hold harmless hereunder shall survive the termination and term of this Agreement.

17.6 The Architect shall give prompt notice to the Owner of all losses, damages or injuries to persons or property of the Owner, Architect or third persons in any way related to this Agreement or

for which a claim might be made against the Owner and shall promptly report to the Owner all such claims of which the Architect has notice, whether relating to matters insured or uninsured. No settlement or payment of any claim for loss, injury or damage or other matter as to which the Owner may be charged shall be made in a manner which may leave Owner at risk of any future liability for the claim, loss, injury or damage for which a settlement or payment is made.

ARTICLE 18

Non-Discrimination; Conflicts of Interest; Affirmative Action;

New Jersey Prevailing Wage Act

18.1 Non-Discrimination Architect shall not discriminate against any employee or subcontractor who is employed by Architect for the performance of any services covered by this Agreement or against any applicant for such employment because of race, color, religion, sex, national origin, creed, ancestry, age, disability, marital status, familial status, affectional or sexual orientation, atypical hereditary cellular or blood trait, liability for service in the Armed Forces of the United States and as set forth in the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq., the Civil Rights Act of 1964, Title VII, 42 U.C.S.A. 2000e et seq., the Age Discrimination in Employment Act, 29 U.S.C.A. 621 et seq., the Americans with Disabilities Act, 42 U.S.C.A. 12101 et seq. and all other federal laws guaranteeing equal employment. The Architect will comply with the non-discrimination requirements set forth in Paragraph 13.11 of the General Conditions appended hereto as Exhibit 1 and shall take affirmative action to ensure that applicants are employed, and employees are treated, without regard to such characteristics as set forth in Paragraph 13.11.

18.2 Conflicts of Interest Pursuant to Executive Order No. 189 (KEAN) (1988), the Architect shall comply with the provisions of Paragraph 13.18 of the General Conditions attached hereto as Exhibit 1, which prohibit conflicts of interest on the part of Architect in the provision of its services under this Agreement.

Violation of such provisions shall render Architect liable to disbarment in the public interest pursuant to procedures established by Executive Order No 34 (BYRNE) (1976).

18.3 Affirmative Action, Procurement, Professional and Service Contracts During the performance of this Agreement, the Architect agrees as follows:

18.3.1 The Architect and its subcontractors, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. Except with respect to affectional or sexual orientation, the Architect will take affirmative action to ensure such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Architect 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.

18.3.2 The Architect and its subcontractors, 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, sex, affectional or sexual orientation.

18.3.3 The Architect and its subcontractors, where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Agency Contracting Officer advising the labor union or workers representative of the contractor's commitments under the New Jersey

Law Against Discrimination, P.L. 1975, c127 and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

18.3.4 The Architect and its subcontractors, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to P.L. 1975, C. 127, as amended and supplemented from time to time.

18.3.5 The Architect and its subcontractors agree to attempt in good faith to employ minority and female workers consistent with the applicable county employment goals prescribed by N.J.A.C. 17:27-5.2 promulgated by the New Jersey State Treasurer pursuant to P.L. 1975, C. 127, as amended and supplemented from time to time or in accordance with a binding determination of the applicable county employment goals determined by the Affirmative Action Office pursuant to N.J.A.C. 17:27-5.2 promulgated by the New Jersey State Treasurer pursuant to P.L. 1975, C. 127, as amended and supplemented from time to time.

18.3.6 The Architect and its subcontractors agrees to inform in writing all appropriate recruitment agencies in the area, including employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

18.3.7 The Architect and its subcontractors agrees to revise any of its testing procedures, if necessary, to assure 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 laws and applicable federal court decisions.

18.3.8 The Architect and its subcontractors agrees to revise 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, sex, affectional or sexual orientation, and agrees to conform with

the applicable employment goals, consistent with the statutes and court decisions of the State of New Jersey, and applicable federal law and applicable federal court decisions.

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

18.3.10 Provisions of Subparagraphs 18.3.4, 18.3.5, 18.3.6, 18.3.7 or 18.3.8 are not required for subcontractors with four (4) or fewer employees or for subcontractors or Architect if it has presented evidence of a federally approved or sanctioned Affirmative Action Program.

18.3.11 The Architect agrees that, except as noted above, all subcontracts negotiated by Architect shall include the provisions in this Paragraph 19.3, as required by PL 1975, c. 127.

18.4 New Jersey Prevailing Wage Act Architect shall comply with the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq., certain provisions of which are set forth in Paragraph 13.10 of the General Conditions attached hereto as Exhibit 1.

ARTICLE 19

Time of Performance; Liquidated Damages

19.1 It is mutually agreed between Architect and Owner that time is an essential element of this Agreement and that all time limits set forth in this Agreement, including any milestone dates set forth in the Project Schedule described in Subparagraph 1.1.9, are reasonable and of the essence.

19.1.1 If the Architect falls behind in meeting any of said milestone dates the Architect shall prepare and submit to the Owner its corrective action plan for applying additional resources to the Project, at its own expense, to make up the time lost by the

Architect to meet the next milestone date.

19.1.2 Failure of the Architect to meet any of the time limits set forth in this Agreement, including said milestone dates, or failure by the Architect to take corrective action or apply additional resources to the Project to meet milestone dates in accordance with its corrective plan shall constitute a breach of this Agreement and shall entitle the Owner to seek damages resulting therefrom, including liquidated damages described in this paragraph, or to pursue any other legal or equitable remedies.

19.2 In the event that the Architect neglects, refuses or otherwise fails to complete its services within the time periods specified herein, the Architect shall be liable to the Owner for the sum of ONE THOUSAND DOLLARS (\$1,000.00) per day for each day that the services remain incomplete.

19.3 Architect and Owner agree that it would be difficult to calculate actual damages and that the sum stated in Paragraph 20.2 is intended as a substitute therefore and shall be paid to the Owner as liquidated damages and not as a penalty as a reasonable forecast of loss to the Owner, recognizing losses due to administrative, inspection, interest and other costs resulting from such delay as well as for the loss to the owner of the use of the Project in a completed state of construction. The liquidated damages set forth herein shall be in addition to other consequential losses or damages that the Owner may incur because of such delay, including, without limitation, added costs of the Project and the costs of furnishing temporary services, if any.

19.4 Any sums payable from Architect to Owner as liquidated damages may be deducted by the Owner from any sums due or to become due to the Architect.

ARTICLE 20

No Damages for Delay

20.1 If the Architect is delayed in the completion of its services by any act, neglect or default of the Owner, Construction Manager or any other consultant or contractor employed by Owner, or any

changes ordered in the Work, or by strikes, lockouts, fire, unusual delay by common carrier, unavoidable casualties, or any case beyond the Architect's control, or by any cause which the Owner determines to justify the delay, Architect shall be allowed one additional day to the performance time specified in this Agreement for each day that the delay causes in the completion of the services, as determined by the Owner.

20.2 As a condition precedent to the grant of such an extension of time, Architect must give Owner written notice within five (5) Days of the first day of the delay, and shall include in such notice the causes for the delay and a request for an extension of time for such delay providing an estimate of the probable effect of such delay on the completion of its services. If Architect fails to give such notice within the five (5) Day time period, Architect shall not be entitled to any extension of time.

20.3 Apart from an extension of time, no payment or compensation of any kind shall be made from the Owner to the Architect for damages caused by any delay, whether the delay be avoidable or unavoidable.

ARTICLE 21

Miscellaneous Provisions

21.1 The failure of any party at any time to require the performance by the other party of any provision of this Agreement shall not be construed as a waiver and shall in no way affect the right to require such performance at any later time.

21.2 Invalidation of any one of the provisions of this Agreement, by judgment or court order, shall in no way affect any other provision contained herein and all such other provisions shall remain in full force and effect.

21.3 Nothing in this Agreement shall be construed to give any rights or benefits under this Agreement to anyone other than the Owner or Architect.

21.4 The titles to paragraphs of this Agreement are solely for the convenience of the parties and shall not be used to explain,

modify, simplify or aid in the interpretation of the terms of this Agreement.

21.5 The Owner and the Architect bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and the partners, successors, assigns and legal representatives of such other party with respect to all covenants to this Agreement.

21.6 This Agreement contemplates personal services by the Architect. Architect shall not assign, subcontract or transfer its corporate interest herein without the written approval of the Owner.

21.7 Publicity and/or public announcements pertaining to the Project shall be cleared by the Owner in writing prior to release.

21.8 As between the parties to this Agreement, as to all acts or failures to act by the Architect, any applicable Statute of Limitations shall be governed by N.J.S.A. 2A:14-1.2 et seq.

21.9 Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is incorrectly inserted, then upon notice by either party, this Agreement shall forthwith be physically amended to make such insertion.

21.10 Words or capitalized terms not defined in this Agreement shall have the meanings given to them in the General Conditions for Construction Contract, appended hereto as Exhibit 1.

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

FOR THE ARCHITECT:

FOR THE OWNER:

Denise Mulkern
Senior Vice President
for Finance

APPENDIX A

The documents which form a part of and are incorporated in this Agreement as if attached or repeated herein are the following:

- (1) Any modifications or amendments to this Agreement.
- (2) Any addenda to the RFP.
- (3) Agreement Between Architect and the University of Medicine and Dentistry of New Jersey For Schematic Design and Architectural Services with a Construction Manager.
- (4) Agreement Between Owner and Construction Manager for GMP Where Construction Manager Holds the Trade Contracts (Parts A and B)
- (5) The General Conditions for the Contract for Construction with Construction Manager as Contractor where Construction Manager holds the Trade Contracts appended as Exhibit 1.
- (6) Owner's Request for Proposal (RFP) for Architectural Services for this Project.
- (7) Owner's Feasibility Report for this Project.
- (8) Other reports supplied by Owner to the Architect for the Project.
- (9) Architect's Response to the Owner's RFP.

In the event of a conflict among the terms and conditions of this Agreement and any of the above listed documents, the first document listed shall have the highest priority or supersede all others. The others shall have priority corresponding to their position on the above stated list with the last having the least priority.

UNIVERSITY OF MEDICINE AND DENTISTRY OF NEW JERSEY

Request for Proposal for
Construction Management Services
For Reconstruction of the GA-Level, 6th, 10th, and 11th Floor
School of Nursing – Stanley S. Bergen Jr. Building
and
Renovations to the Pediatric Dentistry & Special Care Treatment Suite
New Jersey Dental School

RFP #P12-061

ATTACHMENT E

PURCHASING DEPARTMENT REQUIREMENTS

Purchasing Department Requirements are enclosed following this page. The information must be completed and submitted with the Fee Proposal information. Do not include the information within the body of the Technical Proposals.

OWNERSHIP DISCLOSURE FORM

Name of Firm: _____

INSTRUCTIONS: Provide below the names, home addresses, dates of birth, offices held and any ownership interest of all officers of the firm named above. If additional space is necessary, provide on an attached sheet.

Name	Home Address	Date of Birth	Office Held	Ownership Interest
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_____	_____	_____	_____	_____
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INSTRUCTIONS: Provide below the names, home addresses, dates of birth, and ownership interest of all individuals not listed above, and any partnerships, corporations and any other owner having a 10% or greater interest in the firm named above. If a listed owner is a corporation or partnership, provide below the same information for the holders of 10% or more interest in that corporation or partnership. If additional space is necessary, provide that information on any attached sheet. If there are no owners with 10% or more interest in your firm, enter "None" below. Complete the certification at the bottom of this form. If this form has previously been submitted to the UMDNJ, Purchasing Department in connection with another bid, indicate changes, if any, where appropriate, and complete the certification below.

Name	Home Address	Date of Birth	Office Held	Ownership Interest
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_____	_____	_____	_____	_____
-------	-------	-------	-------	-------

COMPLETE ALL QUESTIONS BELOW

Within the past five years has another company or corporation had a 10% or greater interest in the firm identified above? (If yes complete and attach a separate disclosure form reflecting previous ownership interests.) Yes _____ No _____

Has any person listed in this form or its attachments ever been arrested, charged, indicted, plead guilty or been convicted in a criminal or disorderly persons matter by the State of New Jersey, any other Political subdivision state or the U.S. Government? (If yes, attach a detailed explanation for each instance.) Yes _____ No _____

Has any person or entity listed in this form or its attachments ever been excluded suspended, debarred or otherwise declared ineligible by any agency of government from bidding or Contracting to provide services, labor, material or supplies? (If yes, attach a detailed explanation for each instance.) Yes _____ No _____

Are there now any criminal matters, suspension or debarment proceedings pending in which the firm and/or its officers and/or managers are involved? (If yes, attach a detailed explanation for each instance.) Yes _____ No _____

Has any federal, state or local license, permit or other similar authorization, necessary to perform the work applied for herein and held or applied for by any person or entity listed in this form, been suspended or revoked, or been the subject of any pending proceedings specifically seeking or litigating the issue of suspension or revocation? (If yes to any part of this question, attach a detailed explanation for each instance.) Yes _____ No _____

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 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 or any changes to the answers or information contained herein. I acknowledge that I am aware that it is a criminal offense to make a false statement or misrepresentation, 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.

I, being duly authorized, certify that the information supplied above, including all attached pages, is complete and correct to the best of my knowledge. I certify that all of the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment. (Print or Type)

Date: _____ Signature _____

_____ Name _____

_____ Title _____

NOTICE TO ALL BIDDERS

REQUIREMENT TO PROVIDE A CERTIFICATION
IN COMPLIANCE WITH MACBRIDE PRINCIPLES

AND NORTHERN IRELAND ACT OF 1989

Pursuant to Public Law 1995, c.134, a responsible bidder selected, after public bidding, by the Director of the Division of Purchase and Property, pursuant to N.J.S.A. 52:34-12, or the Director of the Division of Building and Construction, pursuant to N.J.S.A. 52-32-2, must complete the certification below by checking one of the two representations listed and signing where indicated. If a bidder who would otherwise be awarded a purchase, contract or agreement does not complete the certification, then the Directors may determine, in accordance with applicable law and rules, that it is in the best interest of the State to award the purchase, contract or agreement to another bidder who has completed the certification and has submitted a bid within five (5) percent of the most advantageous bid. If the Directors find contractors to be in violation of the principles which are the subject of this law, they shall take such action as may be appropriate and provided for 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 party.

I certify, pursuant to N.J.S.A. 52:34-12-2, that the entity for which I am authorized to bid:

_____ has not ongoing business activities in Northern Ireland and does not maintain a physical presence therein through the operation of offices, plants, factories or similar facilities, either directly or indirectly through intermediaries, subsidiaries or affiliated companies over which it maintains effective control; or

_____ will take lawful steps in good faith to conduct any business operations it has in Northern Ireland in accordance with the MacBride principles of nondiscrimination in employment as set forth in N.J.S.A. 52:18A-89.8 and in conformance with the United Kingdom's Fair Employment (Northern Ireland) Act of 1989, and permit independent monitoring of their compliance with those principles.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Signature of Bidder

Dated: _____

Print or Type Name

Company: _____

Title

AFFIRMATIVE ACTION DOCUMENTATION

Dear Vendor:

As a State Agency, New Jersey State Regulations N.J.A.C. 17:27 requires us to obtain documentation regarding our vendors' "Affirmative Action" status. In order for us to be in compliance and do business with your company for the procurement of goods and services, it will be necessary for you to provide only one of the following documents with your bid/proposal response.

1. A State of New Jersey "Certificate of Employee Information Report Approval," or
2. A Form AA/201 Affirmative Action Employee Information Report, or
3. A Federal letter of approval from the Department of Labor.

Please understand the importance of this request. Although you may have already submitted this information, our files must be updated annually with current employment statistics. Your noncompliance of this request may result in suspension of any future business with your company.

Sincerely,

Purchasing Services

SUPPLIER DIVERSITY AND VENDOR DEVELOPMENT PROGRAM

DIVERSITY VENDOR POLICY/REQUIREMENTS

I. PURPOSE

To outline goals and action plans to support and enhance the University's vendor base toward eradicating racial, ethnic, and gender discrimination from society at large through the New Jersey Set-Aside Program.

II. DEFINITIONS

Vendor Diversity Program - The University's commitment to ensure that a fair percentage of the total purchases for supplies, equipment, services, and construction is placed with, small businesses which include minority and women-owned businesses. The University has established a 25 percent goal for Small Businesses.

Small Businesses - A small business is now defined as having its principal place of business in New Jersey, gross annual revenues of \$12 million or less and no more than 100 full time employees.

A. New Jersey Business – this may be calculated in one of two ways:

- 1) 51% or more of its employees work in New Jersey as evidenced by payment of New Jersey unemployment taxes; or
- 2) 51% or more of its business activities take place in New Jersey as evidenced by payment of New Jersey income/business taxes.

B. 100 or fewer employees – a sole proprietorship, partnership or corporation having 100 or fewer employees, not including seasonal and part-time employees who work less than 90 days annually, if seasonal and part-time employees are normal to the industry. This does not include a consultant engaged by the business for work to be performed on a contract not related to the contract for which the small business is seeking eligibility.

C. Gross annual revenues may not exceed \$12 million.

Construction Contract - any contract involving any construction, renovation, reconstruction, rehabilitation, alteration, conversion, extension, demolition, repair or other changes or improvements of any kind whatsoever of any structure or facility. The term also includes the supervision, inspection and other on-site functions incidental to actual construction.

III. IMPLEMENTING DOCUMENT

A. Requirements:

1. General Guidelines:

- a. As part of its Supplier Diversity Program encompassing small businesses, the University is committed to actively and affirmatively seek diverse business relations. The goal is to ensure that an equitable portion of the University's total purchases for construction, goods, equipment and services is placed with diverse businesses. Vendors are to complete the Sub-Contractor Utilization Report in order to comply with target goals set by the University.
- b. All academic, healthcare and administrative units of the University are encouraged to consider vendor diversity in their purchases.

2. UMDNJ Vendor Diversity Program Goals and Targets:

A total of 25% of all contracts should be awarded to registered small businesses; which include minorities and women:

- 10% to firms whose gross annual revenues do not exceed \$500,000
- 10% to firms whose gross annual revenues do not exceed \$5 million
- 5% to firms whose gross annual revenues do not exceed \$12 million

A small business may be registered in one of three categories, based upon its annual gross revenues. These categories are:

- up to \$500,000
- up to \$5 million
- up to \$12 million

3. Program Requirements

Public contracting entities are now subject to meeting a 25% minimum overall goal collectively for the three categories of small business.

4. New Reporting Requirement

Public contracting authorities must now report annually on their outreach efforts.

5. Important Process Change

In order to be eligible to bid, a firm must now be registered as a small business as of the date of the bid opening. This is a change from previous requirements, which required a firm to have submitted an application one-day prior to bid opening.

6. Other UMDNJ Policies and Procedures:

The UMDNJ Vendor Diversity Program requirements shall apply to all other policies and procedures of the UMDNJ Department of Purchasing Services.

B. Responsibilities

All departments are responsible for integration of supplier diversity into their operations.

Revised 1/23/04
8/23/05

Small Business Sub-Contractor Utilization Report

Project Name	
Date	Purchase Order #
Project Coordinator	
Representative	
Address	
Phone #	

Prime Vendor Representative - Please fill in the following sub-contractor information (If applicable). List small business subcontractor vendor type as follows: (1) up to \$500,000, (2) up to \$5 million, (3) up to \$12 million. Photocopy this form as needed to list all subcontractors you will be utilizing for this awarded contract.

Sub-Contractor/Vendor Name	Type: __
Contact Person	
Address	
Phone #	
* Amt. \$ Pd. To Sub-contractor	
Scope/Type of Service	
Fed. ID #	

Sub-Contractor/Vendor Name	Type: __
Contact Person	
Address	
Phone #	
* Amt. \$ Pd. To Sub-contractor	
Scope/Type of Service	
Duration period of Sub-Contract	

Prepared By: _____ Phone #: _____

Print Name

Print Title

Signature

Bid/Bid #: _____

Term of Contract: _____

Return to: UMDNJ Director of Purchasing
Liberty Plaza, 2nd Floor
335 George Street
New Brunswick, New Jersey 08903

*Amount Paid to Subcontractor by
invoice: By-Weekly, Monthly, etc.

AFFIRMATIVE ACTION DOCUMENTATION

Dear Vendor:

1. UMDNJ Set-Aside Program Goals and Targets:

Small Business	15%
----------------	-----

For State Construction Contracts under Chapter 10A, Small businesses with no more than 100 full-time employees will be registered in one of the following 2 categories:

- (a) Small businesses whose gross revenues do not exceed \$1million, (8 1/3%) of set-aside contracts; or
- (b) Small businesses whose gross revenues do not exceed the applicable annual revenue standards set forth in 13 CFR 121.201, (16 2/3%) of set-aside contracts.

2. **DEFINITIONS**

- (a) Set-Aside Program - The University's commitment to ensure that a fair percentage of the total purchases for supplies, equipment, services, and construction is placed with small, minority and women businesses. The University has established a 15 percent goal for Small Business.
- (b) Small Businesses - Independently owned and operated businesses whose principal place of business is in New Jersey with 100 or fewer full-time employees.
- (c) Minority Business - A business in New Jersey which is a sole proprietorship, partnership or corporation at least 51% of which is owned and controlled by persons who are African-American, Latino or Asian-American.
- (d) Construction Contract - any contract involving any construction, renovation, reconstruction, rehabilitation, alteration, conversion, extension, demolition, repair or other changes or improvements of any kind whatsoever of any structure or facility. The term also includes the supervision, inspection and other on-site functions incidental to actual construction.

3. A minority is a member of one of the following groups:

- (a) African-American - having origins in any of the black racial groups of Africa.
- (b) Asian-American - a person having origins in any of the original people of the Far East, Southeast Asia, and Indian subcontinent, Hawaii or the Pacific Islands.
- (c) Latino - of Spanish culture or origins in Mexico, Puerto Rico, Cuba, Central or South America, or the Caribbean Islands, regardless of race.
- (d) Women Business - a business in New Jersey which is a sole proprietorship, partnership or corporation at least 51% percent of which is owned and controlled by women.

Sincerely,

Purchasing Services

UNIVERSITY OF MEDICINE AND DENTISTRY OF NEW JERSEY

Request for Proposal for
Construction Management Services
For Reconstruction of the GA-Level, 6th, 10th, and 11th Floor
School of Nursing – Stanley S. Bergen Jr. Building
and
Renovations to the Pediatric Dentistry & Special Care Treatment Suite
New Jersey Dental School

RFP #P12-061

ATTACHMENT F

BUSINESS ASSOCIATE AGREEMENT

The Business Associate Agreement Involving the Access to Protected Health Information is enclosed following this page.

**This Business Associate Agreement
Is Related To and a Part of the Following
Underlying Agreement:**

Effective Date of Underlying Agreement: _____

School/Unit: _____

Vendor: _____

Business Associate Agreement

This Business Associate Agreement (“BAA”) is entered into between The University of Medicine and Dentistry of New Jersey - Physical Plant and Environmental Services departments.

_____ (“UMDNJ”), a body corporate and politic of the State of New Jersey having its principal administrative offices at 65 Bergen Street, Newark, New Jersey 07107 (hereinafter referred to as “Covered Entity”) and

[Name and Address of Contracting Party] (hereinafter referred to as “Business Associate”) (the “Covered Entity” and “Business Associate” hereinafter collectively referred to as the “Parties”). Any conflict between the terms of this BAA and the Underlying Agreement between the Parties shall be governed by the terms of this BAA.

WHEREAS, in connection with the Underlying Agreement the Business Associate provides services to Covered Entity and Covered Entity discloses to Business Associate certain Protected Health Information that is subject to protection under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act (Title XIII of the American Recovery and Reinvestment Act of 2009) (the “HITECH Act”), and regulations promulgated by the U.S. Department of Health and Human Services (the “HHS”) (hereinafter the “HIPAA Regulations” and the “HITECH Regulations,” respectively) and/or applicable state and/or local laws and regulations; and

WHEREAS, for good and lawful consideration and with acknowledgment of the mutual promises, set forth in the Underlying Agreement and herein, the Parties, intending to be legally bound, hereby agree as follows:

I. Definitions¹

1 An expanded definition of the following terms as well as the definition of other relevant terms are available on UMDNJ’s website at <http://www.umdny.edu/purchweb/vendors/index.htm> . Terms used in this Business Associate Agreement but not otherwise defined shall have the meaning ascribed to those terms in HIPAA, the HITECH Act, and any current and future regulations promulgated under HIPAA and/or the HITECH Act. See 45 C.F.R. 160.103, 164.402 and 164.501.

A. Breach means the unauthorized acquisition, access, use, or disclosure of protected health information (“PHI”) which compromises the security or privacy of such information in violation of HIPAA, the HITECH Act, the HIPAA Regulations, and/or the HITECH Regulations, except where a good faith belief exists that unauthorized persons to whom such information is disclosed would not reasonably have been able to retain such information. The term “Breach” does not include:

- 1. Any unintentional acquisition, access, or use of PHI by an employee or person acting under the authority of a Covered Entity or Business Associate if:**
 - a. Such acquisition, access, or use was made in good faith and within the course and scope of the employment or other professional relationship of such employee or person, respectively, with the Covered Entity or Business Associate; and**
 - b. Does not result in further unauthorized use or disclosure; or**
- 2. Any inadvertent disclosure by a person who is otherwise authorized to access PHI at a Covered Entity or Business Associate to another, similarly authorized person at the same Covered Entity, Business Associate or organized health care arrangement in which the Covered Entity participates and such information received as a result of such disclosure is not further used or disclosed in an impermissible manner.**

B. Business Associate means a service provider that receives PHI from, or creates or maintains PHI on behalf of, a Covered Entity including, but not limited to, claims processing or administration, data analysis, processing or administration, utilization review, quality assurance, billing, benefits management, practice management, repricing, transcription, legal, actuarial, accounting, consulting, data aggregation, administrative, accreditation or financial services, and vendors that offer personal health records to patients as part of a Covered Entity’s electronic health record, where the service or function involves the use or disclosure of individually identifiable health information from the Covered Entity or from another Business Associate of the Covered Entity. A Business Associate excludes, among others, employees of Covered Entities.

C. Covered Entities include (i) health care providers that transmit patient health information electronically in connection with a covered transaction, (ii) health plans (including employer-sponsored employee welfare benefit plans and self-insured employer-offered health plans), and (iii) health care clearinghouses.

D. Data Aggregation means, with respect to PHI created or received by a Business Associate, the combining of PHI received by a Business Associate in its capacity as a Business Associate for more than one Covered Entity to permit data analyses that relate to the health care operations of the respective Covered Entities.

E. Designated Record Set means any grouping of information that includes PHI and is maintained, collected, used, or disseminated by or for a Covered Entity that is (i)

medical records and billing records about individuals, and/or (ii) enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan, used, in whole or in part, by or for the Covered Entity, to make decisions about individuals.

F. Electronic Protected Health Information (“Electronic PHI”) means PHI that is transmitted by or maintained in electronic media.

G. Individual means the person who is the subject of PHI and includes a person who qualifies as a personal representative (45 C.F.R. 164.502(g)).

H. Protected Health Information (“PHI”) means physical and/or mental health and demographic information collected from an individual and created or received by a Covered Entity and/or Business Associate that identifies or could reasonably identify an individual (i.e., is “individually identifiable”) and is held or transmitted in any form including electronic media. PHI excludes educational records and employment records held by a Covered Entity as an employer (45 C.F.R. 164.501).

I. Required By Law means that Covered Entities may use and disclose PHI without individual authorization as required by law (including by statute, regulation, or court orders) in accordance with the requirements in 45 C.F.R. 164.512(c), (e) or (f).

J. Unsecured PHI means PHI not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of technology or methodology specified by the Secretary of HHS.

II. Permitted Uses and Disclosures of PHI by Business Associate

A. Except as otherwise limited in this BAA, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Underlying Agreement, provided that such uses and/or further disclosures (i) do not violate the requirements of HIPAA’s Business Associate contract standard at 45 C.F.R. 164.504(e)(1) and/or the HITECH Act, if done by the Covered Entity, (ii) are the minimum necessary PHI to accomplish the intended purpose, or (iii) are Required By Law.

B. Except as otherwise limited in this BAA, Business Associate may use or disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of Business Associate, provided, however, that any such uses or disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that (i) the PHI will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and (ii) the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been Breached.

C. Except as otherwise limited in this BAA, Business Associate may use PHI to provide Data Aggregation services to Covered Entity (42 C.F.R. 164.504(e)(2)(i)(B)).

D. Business Associate may use PHI to report violations of law to appropriate federal and state authorities as permitted under HIPAA and/or other federal and state laws. (45 C.F.R. 164.502(j) (1)).

III. Duties and Obligations of Business Associate Related to PHI

A. Business Associate shall not use or disclose PHI other than as permitted or required by the Underlying Agreement, this BAA, and/or as Required By Law. Business Associate shall immediately notify Covered Entity of any use or disclosure of PHI in violation of this BAA.

B. Business Associate shall use and implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of PHI and/or Electronic PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity.

C. Business Associate shall notify, in writing, the Covered Entity when the Business Associate discovers a Breach of Unsecured PHI. A Breach is deemed to have been discovered by a Business Associate as of the first day on which Business Associate (by its employee, officer, or other agent) knows or would have known of such Breach by exercising reasonable diligence. Business Associate's notification to Covered Entity (i.e., UMDNJ) shall:

1. Be made to the Covered Entity without unreasonable delay and in no event later than ten (10) days following the discovery of a breach, except in the case of a Business Associate that is an agent of the Covered Entity, in which case the Business Associate must provide the Covered Entity with immediate notification of the breach, except where law enforcement officials determine that a notification would impede a criminal investigation or cause damage to national security. Unless the language in the underlying agreement between the parties indicates that a Business Associate is an independent contractor, then the Business Associate shall be considered an agent of UMDNJ for purposes of breach notification.

2. To the extent possible, provide the identity of each Individual whose Unsecured PHI was, or is reasonably believed to have been, Breached, and any other information that the Covered Entity is required to include in the notice to affected Individuals under 45 C.F.R. 164.404(c), either at the time of notice of Breach to the Covered Entity or as promptly thereafter as information becomes available. Include information in substantially the same form as the "Notification To the Covered Entity About A Breach of Unsecured Protected Health Information" available to Business Associates at UMDNJ's website at http://www.umdj.edu/hipaaweb/BN/NOTICATION_TO_THE_COVERED_ENTITY.pdf .

D. Business Associate is subject to the same legal requirements to cure, terminate or report violations to the Secretary of HHS under the same duty and in the same manner as Covered Entity.

E. Business Associate shall mitigate, to the extent practicable, any harmful effect known to it resulting from an unauthorized use or disclosure of PHI or Breach of Unsecured PHI.

F. Business Associate shall ensure that any agent, including a subcontractor, to whom it provides PHI (i) received from, or (ii) created or received by Business Associate on behalf of, a Covered Entity agrees, in writing, to the same restrictions and conditions that apply through this BAA to Business Associate with respect to such PHI.

G. Business Associate (i) shall provide Covered Entity access to its premises for a review and demonstration of its internal practices and procedures for safeguarding PHI and, (ii) to the extent applicable, shall provide access for inspection and copying of PHI in a Designated Record Set at reasonable times at the request of Covered Entity or, as directed by Covered Entity, to an Individual (45 C.F.R. 164.524). If Business Associate maintains an Electronic Health Record, Business Associate shall provide such information in electronic format to enable Covered Entity to fulfill its obligations under the HITECH Act. (42 U.S.C. §17935(e)).

H. Business Associate shall, upon request with reasonable notice, provide Covered Entity with an accounting of uses and disclosures of PHI provided to it by Covered Entity.

I. Business Associate agrees to use, disclose and request (i) only the minimum necessary PHI, as defined by law, and (ii) to the extent practicable, only the limited data set of PHI excluding direct identifiers, as defined in 45 C.F.R. 164.514(e)(2).

J. Business Associate shall document such disclosures of PHI and information related to such disclosures as would be required for a Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI (45 C.F.R. 164.528). Should a Covered Entity or an Individual request an accounting of disclosures of PHI pursuant to 45 C.F.R. 164.528, Business Associate agrees to promptly provide Covered Entity with information in a format and manner sufficient to respond no later than sixty (60) days after receipt of such request, subject to specific statutory exceptions.

K. Business Associate shall make its internal practices, books and records, including policies and procedures, relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity, available to Covered Entity at the request of Covered Entity, or the Secretary of HHS, for purposes of the Secretary determining Covered Entity's compliance with HIPAA and/or the HITECH Act in the time, manner and place designated by the Covered Entity and/or the Secretary.

L. To the extent applicable, Business Associate shall make any amendment(s) to PHI in a Designated Record Set that Covered Entity directs or agrees to, no later than sixty (60) days after receipt of such request from a Covered Entity or Individual.

M. Business Associate agrees to abide by the limitations on marketing communications to Individuals regarding the purchase and use of products or services set forth in the HITECH Act and the HITECH Regulations.

N. Business Associate agrees and acknowledges that the administrative rules governing, and the civil and criminal penalties for violating, HIPAA, the HITECH Act, the HIPAA Regulations and the HITECH Regulations, apply to it in the same manner as they apply to Covered Entity, as more fully set forth at UMDNJ's website at

IV. Term and Termination

A. Term. The term of this BAA shall be effective as of the effective date of the Underlying Agreement and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions of this Section IV.

B. Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:

1. Provide an opportunity for Business Associate to cure the breach or end the violation, and terminate this BAA and the Underlying Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;

2. Immediately terminate this BAA and/or the Underlying Agreement if Business Associate has breached a material term of this BAA and cure is not possible; or

3. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary of HHS.

C. Effect of Termination.

1. (a) Except as provided in paragraph C.2 of this Section, upon termination of this BAA, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of PHI.

(b) Except as provided in paragraph C.2 of this Section, if Covered Entity, in its sole discretion, requires that Business Associate destroy any or all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, either due to the termination of this BAA or otherwise, Business Associate shall certify, in writing, to Covered Entity that the PHI has been destroyed and rendered indecipherable, pursuant to HIPAA and the HITECH Act. This provision also shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.

2. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity written notification of the conditions that make return or destruction infeasible within thirty (30) calendar days of such request. In such case, Business Associate shall extend the protections of this BAA to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI. This provision also shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.

3. Should the Business Associate make a disclosure of PHI in violation of this BAA, Covered Entity shall have the right to immediately terminate any contract, other than this BAA, then in force between the Parties, including the Underlying Agreement.

4. The provisions of this Section IV.C, shall survive the termination of this BAA and the Underlying Agreement for any reason.

V. Remedies In Event of Breach

A. Business Associate agrees and acknowledges that irreparable harm will result to Covered Entity, and to its business, in the event of breach by Business Associate of any covenants, duties, obligations and assurances in this BAA and further agrees that remedy at law for any such breach shall be inadequate and that damages resulting there from are not susceptible to being measured in monetary terms. In the event of any such breach or threatened breach by Business Associate, Covered Entity shall be entitled to (i) immediately enjoin and restrain Business Associate from any continuing violations and (ii) reimbursement for reasonable attorneys' fees, costs and expenses incurred as a proximate result of the breach. The remedies in this Section V shall be in addition to any action for damages and/or other remedy available to Covered Entity for such breach.

B. Business Associate shall indemnify and hold Covered Entity, its directors, officers, employees and agents harmless from any and all liabilities, damages, reasonable attorneys' fees, costs and expenses incurred by Covered Entity as a result of a breach of this BAA caused by Business Associate's actions or inactions and/or those of its employees and agents.

C. Business Associate agrees and acknowledges that the provisions of this BAA shall be strictly construed.

VI. Miscellaneous

A. Independent Contractor. None of the provisions of this BAA and/or the Underlying Agreement are intended to create nor shall be deemed or construed to have created any relationship between the Parties other than that of independent entities contracting with each other unless otherwise explicitly stated in this BAA or the Underlying Agreement.

B. Detrimental Reliance By Covered Entity. Business Associate agrees and acknowledges that its covenants, duties, obligations and assurances herein shall be detrimentally relied upon by Covered Entity in choosing to commence or continue a business relationship with Business Associate. Covered Entity shall not be liable to Business Associate for any claim, loss, or damage relating to Business Associate's use or disclosure of any information received from Covered Entity or from any other source.

C. Regulatory References. Any reference herein to law means the law as in effect or as amended.

D. Construction. The BAA shall be construed broadly and any ambiguity shall be resolved in favor of a meaning that complies and is consistent with applicable law.

E. Severability. In the event that any provision of this BAA violates any applicable statute, ordinance or rule of law in any jurisdiction that governs this BAA, such provision shall be ineffective to the extent of such violation without invalidating any other provision of this BAA.

F. Authority. The signatories below have the right and authority to execute this BAA for their respective entities and no further approvals are necessary to create a binding agreement.

G. Covered Entity's Notices To Business Associate. Covered Entity's Notices to Business Associate are available on UMDNJ's website at http://www.umdj.edu/hipaaweb/privacy/privacy_NPPUMDNJ03.htm. Such Notices include, but are not limited to, (i) any limitations in the Covered Entity's Notices of Privacy Practices that may affect the Business Associate, (ii) any changes in, or revocation of, permission by an Individual to use or disclose PHI, or (iii) any restriction in the use or disclosure of PHI that Covered Entity has agreed to.

H. Compliance With State Law. Business Associate agrees and acknowledges that as the holder of individually identifiable health information it is subject to New Jersey law. In the event of any conflict between federal health care laws and New Jersey law, the Business Associate shall comply with the more restrictive provision.

I. Conflict Among Contracts. Should there be conflict between the terms of this BAA and any other contract between the Parties (either previous or subsequent to the date of this BAA), the terms of this BAA shall control unless the Parties, in a subsequent writing, specifically otherwise provide.

J. Modification. This BAA may only be modified by a writing signed by the Parties. The Parties agree to take such action subsequent to this BAA as necessary to amend the BAA from time to time as necessary for the Parties to comply with the requirements of any applicable law.

K. Notices to Parties. Any notice required under this BAA to be given shall be made in writing to:

To The Covered Entity:
School/Unit/Department:

To The Business Associate:
Name/Title:_____

Address:
Telephone:
E-Mail:

Address:
Telephone:
E-Mail:

IN WITNESS WHEREOF, the parties have executed this Business Associate Agreement the day and year first written below.

**By: UNIVERSITY OF MEDICINE
AND DENTISTRY OF NEW JERSEY
[COVERED ENTITY]**

By: [BUSINESS ASSOCIATE]

Approved: _____

Approved: _____

Title: Denise Mulkern

Title:

Senior Vice President for Finance

Date: _____

Date: _____

UNIVERSITY OF MEDICINE AND DENTISTRY OF NEW JERSEY

Request for Proposal for
Construction Management Services
For Reconstruction of the GA-Level, 6th, 10th, and 11th Floor
School of Nursing – Stanley S. Bergen Jr. Building
and
Renovations to the Pediatric Dentistry & Special Care Treatment Suite
New Jersey Dental School

RFP #P12-061

ATTACHMENT G

PROJECT A – SCHEMATIC PLANS

Project A: Reconstruction of the GA-Level, 6th, 10th, and 11th Floor - School of Nursing schematic plans are enclosed following this page.

UNIVERSITY OF MEDICINE AND DENTISTRY OF NEW JERSEY

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New Jersey Dental School

RFP #P12-061

ATTACHMENT H

PROJECT B – SCHEMATIC PLANS

Project B: Renovations to the Pediatric Dentistry & Special Care Treatment Suite
Schematic plans are enclosed following this page.