

EXHIBIT II

CONTRACT PACKAGE - OWNER/CONTRACTOR - STIPULATED SUM

July 25, 2008 Edition

1. AGREEMENT –
2. EXHIBITS 1 TO 7
3. EXHIBITS A THROUGH D
4. GENERAL CONDITIONS (INCLUDING SUPPLEMENTARY CONDITIONS)

DREXEL – OWNER/CONTRACTOR STIPULATED SUM AGREEMENT

INFORMATION TO BE INSERTED IN OWNER/CONTRACTOR AGREEMENT – STIPULATED SUM

(Please use TAB KEY to go from Insert to Insert)

- First page Insert identifying information about the parties, the project and the date of the contract.
- Section 3.2(a) Insert the Date for Commencement of the Work **or** select “upon Notice To Proceed”; and cross-out the blank not used.
- Section 3.2(b) Insert the Date for “Ready for Owner’s FF&E” (which is prior to Substantial Completion), either as a fixed date **or** as a number of calendar days after NTP, and cross-out the blank not used; **or** select “N/A” if “Ready for Owner’s FF&E” is not applicable.
- Section 3.2(c) Insert the Date for Substantial Completion, either as a fixed date **or** as a number of calendar days after NTP; and cross-out the blank not used.
- Section 3.5 Insert a check mark in subsection 3.5(a) **or** (b) to select whether the Contractor’s liability for late completion is based on (a) the University’s actual damages or (b) liquidated damages; and cross-out the subsection not used. If subsection 3.5(b) is selected, then insert the daily dollar amount of liquidated damages for each day of late completion.
- Section 4.1.1 Insert the Stipulated Sum (in words and numbers)
- Section 4.3.1 Insert a check mark in subsection 4.3.1 (a) **or** (b) to select whether or not Contractor performance and payment bonds are required, and cross-out the subsection not used.
- Section 4.3.2 If Contractor bonds are not required under section 4.3.1, then insert a check mark in subsection 4.3.2 (a) **or** (b) to indicate whether or not Subcontractor performance and payment bonds are required, and, if they are required, then insert the subcontract dollar amount for which subcontractor bonds are required; and cross-out the subsection not used. Alternatively, if bonds are not required, and if subguard insurance is acceptable, then check the box for subguard insurance.
- Section 4.4.1.1 Insert, for Change Orders, the maximum mark-up for the Contractor’s home office overhead and profit.

- Section 4.4.1.2 Insert, for Change Orders, the maximum mark-up for the Contractor's general conditions costs, with one percentage inserted for changes where no time extension is included in the change **and** a separate percentage inserted where a time extension is included in the change.
- Section 4.4.1.3 Insert, for Change Orders, the maximum percentage mark-ups for all subcontractors and sub-subcontractors in the combined aggregate, before adding the Contractor's mark-up.
- Section 5.1.3 Insert information for the payment schedule.
- Section 8.2.1 Insert a check mark in subsection 8.2.1 (a) **or** (b) to select whether or not the University has elected to make direct payment to all subcontractors under section 9.11 of the General Conditions; and cross-out the subsection not used.
- Last Page Insert signatures, names and titles.
- Exhibit A to D Already attached.
- Exhibits 1 to 7: Attach:
- Exhibit 1 List of Drawings, Specs, etc on which the Stipulated Sum is based.
 - Exhibit 2 Allowance items.
 - Exhibit 3 Assumptions and Clarifications to the Stipulated Sum.
 - Exhibit 4 Alternates included in Stipulated Sum, and open alternates.
 - Exhibit 5 Unit Prices
 - Exhibit 6 List of Contractor's key personnel assigned to Project.
 - Exhibit 7 Contractor's Approved CPM Schedule for the Project

Before commencement of Work on site: If Contractor payment and performance bonds are required, then the Contractor must deliver these bonds, in the form attached to the Agreement as Exhibit "D", before commencing work on the site.

Before commencement of Work on site: If Contractor payment and performance bonds are required, then the Contractor must sign, file and deliver a time-stamped copy of the Contractor Waiver of Liens on behalf of Subcontractors and Sub-Subcontractors/Suppliers, in the form attached to the Agreement as Exhibit "A", before commencing work on the site.

AGREEMENT BETWEEN OWNER AND CONTRACTOR - STIPULATED SUM

This **AGREEMENT** is made as of the ____ day of ____, in the year of ____

BETWEEN the Owner:

Drexel University, a non-profit Pennsylvania corporation

and the Contractor:

The Project is known as:

The Architect is:

The Owner and Contractor agree as follows.

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement; these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 8.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 MILESTONE DATES AND LIABILITY FOR LATE COMPLETION

3.1 The Contractor shall achieve Substantial Completion of the entire Work, and shall achieve the other Milestone dates, no later than the dates set forth in Section 3.2 below.

3.2 The required date of Substantial Completion and the other required Milestone Dates, all of which are critical, with TIME BEING OF THE ESSENCE, are as follows:

- (a) **Commence construction of the Work:** _____, 20_____, or upon Notice to Proceed.
(insert a specific date or cross out the block for a date if upon NTP)
- (b) **Ready for Owner's FF&E** _____, 20_____, or _____ calendar days after Notice to Proceed.
(insert either a specific date or a number of calendar days, and cross out the subsection not used)

"Ready for Owner's FF&E" means the construction of the Work is sufficiently complete to permit access to the premises by Owner and Owner's separate contractors for the purpose of installation of furniture, fixtures and equipment.

- (c) **Substantial Completion:** _____, 20_____, or _____ calendar days after Notice to Proceed.
(insert either a specific date or a number of calendar days, and cross out the subsection not used)

"Substantial Completion" means Substantial Completion (as defined in Article 14 of this Agreement) of all the Work, including certificates of occupancy or similar governmental authorizations, if required for occupancy.

(d) **Final Completion** of all the Work, including without limitation all punchlist items, shall be within thirty (30) days of Substantial Completion of all the Work, except to the extent that Owner agrees in writing to longer time periods for items which Owner determines, in its sole discretion, will require more than thirty (30) days to complete.

3.3 If the Contractor is delayed in the progress of the Work by acts or neglect of the Owner or Architect, or by separate contractors employed by the Owner, or by changes ordered in the Work not caused by the fault of the Contractor, or by force majeure (as defined in section 8.3.3 of the General Conditions), then the Milestone Dates will be extended by change order, to the extent of any actual impact on the Milestone Dates from said delays, subject to the terms and conditions of Article 8 of the General Conditions. The Milestone Dates will not be changed for concurrent delays, non-critical delays, or other delays which do not cause any actual impact on the Milestone Dates.

3.4 In the event the Contractor fails to achieve the Ready for Owner's FF&E date in Section 3.2 (b) above, or the Substantial Completion date set forth in Section 3.2(c) above, or such later dates to which either the Ready for Owner's FF&E date or Substantial Completion date may have been extended by change order, then in such event, the Contractor shall be liable to the Owner for all damages incurred by Owner as a result of the failure of Contractor to achieve the Ready for Owner's FF&E date and/or the Substantial Completion date. Contractor acknowledges that Owner may incur, without limitation, the following types of financial damages, if Contractor fails to achieve the Ready for Owner's FF&E date and/or the Substantial Completion date, for which Contractor shall be liable to Owner hereunder: additional professional fees, additional consulting fees, additional project management time of Owner's employees, additional financing costs, lost revenue, loss of tax advantages, loss of grants, additional rent or other charges for alternative or carry-over space requirements, and other additional expenses (together "Owner's damages").

3.5 The Contractor agrees that it shall be liable for Owner's damages on the following basis:

[Select 3.5(a) or (b) with a check mark, and cross out the subsection not used. If subsection 3.5(b) is selected, then insert the liquidated damages dollar amount for each day of late Completion.]

(a) (_____) on the basis of **actual damages** incurred by Owner as a result of Contractor's failure to achieve the Ready for Owner's FF&E date in Section 3.2 (b) above, and/or the Substantial Completion date set forth in Section 3.2 (c) above;

or

(b) (_____) on the basis of actual damages incurred by Owner as a result of Contractor's failure to meet the Ready for Owner's FF&E date, and on the basis of **liquidated damages** (and not as a penalty) at the rate of \$_____ for each calendar day that the Project is not substantially complete after the required Substantial Completion date. The Contractor agrees, if a liquidated damage amount is set forth herein, that the actual damages that would be incurred by Owner due to late Substantial Completion

would be substantial but difficult to quantify and calculate, and that the liquidated damage amount represents a reasonable estimate by the parties of the actual damages that the Owner would incur for each calendar day of late Substantial Completion.

ARTICLE 4 CONTRACT SUM, PERSONNEL AND SCHEDULE, BONDS AND CHANGE ORDER MARK-UPS

4.1 Contract Sum

4.1.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be the Stipulated Sum of _____ Dollars (\$_____), subject to additions and deductions as provided in the Contract Documents.

4.1.2 The Contract Sum is based upon the following:

- Exhibit 1 List of Drawings, Specifications, addenda, and other documents.
- Exhibit 2 Allowance items, if any.
- Exhibit 3 Assumptions and Clarifications to the Stipulated Sum, if any.
- Exhibit 4 Alternates, if any, included in the Stipulated Sum, and open Alternates not yet selected.
- Exhibit 5 Unit Prices, if any.

4.1.3 The Contractor represents and warrants that it has included within the Contract Sum everything that will be necessary for the proper and complete construction of the Work, including all items that the Contractor knew or reasonably should have known would be necessary for the proper and complete construction of the Work whether or not specifically shown, listed or described in the Construction Documents, including without limitation all components and elements which, even if not detailed on the Construction Documents, are reasonably inferable therefrom for the construction of a complete, safe, and high-quality Project; and the Contractor agrees that it shall not be entitled to any increase in the Contract Sum or any extension of the Contract Time for any such items.

4.1.4 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect (for example, without limitation, when the Drawings and Specifications are not 100% complete), the Contractor represents and warrants that it has provided in the Contract Sum for such further completion or development of the Drawings and Specifications consistent with the Construction Documents and reasonably inferable therefrom; and the Contractor agrees that it shall not be entitled to any increase in the Contract Sum or any extension of the Contract Time for or as a result of such further completion or development of the Drawings and Specifications. Such further completion and development of the Drawings and Specifications does not include, however, such things as changes in scope, systems, or kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by change order.

4.2 Personnel and Schedule

The following additional exhibits are also included in this Agreement:

- Exhibit 6 List of Contractor's key personnel assigned to Project
- Exhibit 7 Contractor's Approved Schedule for the Project.

4.3 Bonds

4.3.1 Contractor **(a)** shall (_____), **or (b)** shall not (_____), be required to post performance and payment bonds, each in the amount of 100% of the Contract Sum, in the form and manner set forth in Section 6.3.1 of this Agreement.

[Select (a) or (b) with a check mark, and cross out the subsection not used.]

4.3.2 If Contractor is not required to post performance and payments bonds under subsection 4.3.1 above, then Contractor **(a)** shall (_____), **or (b)** shall not (_____) require its subcontractors, for all subcontracts in amounts greater than \$_____, to post performance and payment bonds, each in the amount of 100% of their respective subcontract amounts, with Owner named as a

dual obligee on all such performance bonds. Alternatively, Owner may elect, in its sole discretion, by checking this box: _____, to require and accept a Subguard insurance program maintained by Contractor, and satisfactory to Owner in its sole discretion, in lieu of subcontractor bonds.

[Select (a) or (b) with a check mark, and cross out the subsection not used; if subsection (a) is selected, then insert the subcontract dollar amount for which subcontractor bonds are required. If bonds are not required and if subguard insurance is acceptable, then check the box for subguard insurance]

4.4 Change Order Mark-Ups

4.4.1 Notwithstanding anything to the contrary in this Agreement or the other Contract Documents, any adjustments to the Contract Sum on account of changes in the Work shall include:

4.4.1.1 Contractor's mark-up for overhead and profit on change orders of no more than _____ percent (____%) of the Cost of the Work included in the change,

4.4.1.2 Contractor's mark-up for general conditions costs of no more than _____ percent (____%) if no time extension is granted for the change; and no more than _____ percent (____%) if a time extension is granted for the change, subject to the No Damage for Delay Time Periods in section 8.3.5 of the General Conditions; and

4.4.1.3 Mark-ups for overhead and profit of all subcontractors and sub-subcontractors in the combined aggregate of no more than _____ percent (____%) of the combined subcontractor and sub-subcontractor direct costs for the change.

ARTICLE 5 PAYMENTS

5.1 Progress Payments

5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as set forth in section 5.1.3 below.

5.1.3 Provided an Application for Payment is received by the Architect (in proper form and amount, and with all required documentation) not later than the _____ day of a month, the Owner shall make payment to the Contractor not later than the _____ day of the next month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than (____) days after the Architect receives the Application for Payment.

5.1.4 Each Application for Payment shall be based upon the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect and Owner may require. This schedule shall be used as a basis for reviewing the Contractor's Applications for Payment.

5.1.5 Applications for Payment shall show the percentage completion of each portion of the Work as of the end of the period covered by the Application for Payment.

5.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included as provided in Section 7.3.8 of the General Conditions, even though the Contract Sum has not yet been adjusted by Change Order.

- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the work or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing.
- .3 Subtract the aggregate of previous payments made by the Owner.
- .5 Subtract the shortfall, if any, indicated by the Contractor in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's accountants in such documentation.
- .6 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of the General Conditions.

5.1.7 Except with the Owner's prior written approval, payments to Subcontractors shall be subject to retention of not less than ten percent (10%) in the same manner as set forth in subparagraphs 7.1.11 and 7.1.12 below. The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments and retention for subcontracts.

5.1.8 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

5.1.9 In taking action on the Contractor's Applications for Payment, the Architect and Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Architect or Owner has made a detailed examination, audit or arithmetic verification of the documentation submitted by the Contractor.

5.1.10 All progress payments shall be less retainage of ten percent (10%) of the total amount otherwise due. Upon written request from Contractor when the Project reaches 50% completion, the retainage for the remaining Work may be reduced to five percent (5%) by Owner in its sole discretion. If Contractor requests such a retainage reduction to five percent (5%) for the remaining Work, then Contractor shall provide Owner, simultaneously with its request, with a revised Schedule of Values to reflect all buy-outs by Contractor and all other adjustments to its actual costs. If the Owner agrees, in its sole discretion, to such a reduction in retainage, then the ten percent (10%) retainage shall remain applicable to and held by Owner for the Work already performed, and retainage of five percent (5%) shall be applied to and held by Owner from payments for the remaining Work.

5.1.11 Upon Substantial Completion of all of the Work, the Owner shall pay a sum sufficient to increase the total payments to Contractor to 98% of the Contract Sum, less any unused Allowances, and less 200% of the value of any incomplete or non-conforming Work (including all punchlist items) and unsettled claims.

5.2 Final Payment

5.2.1 Final payment shall be made by the Owner to the Contractor when (1) the Contract has been fully performed by the Contractor, subject to the Contractor's responsibility to correct nonconforming Work, as provided in Section 12.2.2 of the General Conditions and to satisfy other requirements which necessarily survive final payment; (2) a final Application for Payment and a has been submitted by the Contractor and reviewed by the Owner and Architect; and (3) a final Certificate for Payment has been issued by the Architect and approved by the Owner. Such final payment shall be made by the Owner not more than thirty (30) days after the conditions set forth herein have been satisfied.

5.2.2 The amount of the final payment shall be calculated as follows:

- .1 Take the Contract Sum.
- .2 Subtract amounts, if any, for which the Architect withholds, in whole or in part, a final Certificate for Payment as provided in Section 9.5.1 of the General Conditions or other provisions of the Contract Documents.
- .3 Subtract the aggregate of previous payments made by the Owner.
- .4 Subtract any offsets of Owner.

ARTICLE 6 INSURANCE AND BONDS

6.1 INSURANCE RERQUIRED OF THE CONTRACTOR

The Contractor shall purchase and maintain insurance as set forth below and in Section 11 the General Conditions. Such insurance shall be written for not less than the following limits, or greater if required by law:

6.1.1 (1) Statutory Workers' Compensation in amounts sufficient to comply with applicable laws and regulations.

- (2) Employer's Liability per: Accident/Disease (Policy Limit)/Disease (Each) \$1,000,000/\$1,000,000/\$1,000,000.

6.1.2 (1) Comprehensive General Liability including products/completed operations, independent contractors, owner's and contractor's protective liability, broad form contractual liability, and broad form property damage, with the exclusion pertaining to explosion, collapse and underground property damage eliminated for all the above coverages. The combined single limits of liability shall not be less than (i) \$1,000,000 per project aggregate /\$2,000,000 General Aggregate per project aggregate for bodily injury and property damage for Contractor. Completed operations coverage to be maintained for at least three (3) years after Final Completion of each project.

(2) Comprehensive Automobile Liability including owned, hired and non-owned automobiles with combined single limits of not less than \$1,000,000 combined single limit for bodily injury and property damage coverage plus Umbrella Liability coverage under subparagraph 3 below.

(3) Umbrella Liability in excess of the underlying limits of the aforementioned insurance coverages in clauses 6.1.1 (2) and 6.1.2 (1) and (2) of not less than (a) \$25,000,000 combined single limit for bodily injury and property damage (follow form underlying) for Contractor or (b) \$50,000,000 combined single limit for bodily injury and property damage (follow form underlying) for Contractor if the Contract Sum for this Project is more than \$50,000,000.

(4) If the Contractor is responsible for the design of the mechanical, electrical, fire protection and/or plumbing systems ("MEP Systems") under the Agreement, then professional liability insurance for the design professionals employed or retained by Contractor for such design, with such professional liability insurance to include coverage of at least \$1,000,000 per occurrence and \$1,000,000 in the aggregate through final completion of the Project and for a period of time of at least three (3) years beyond the date of final completion of the Project..

The Contractor shall require each Subcontractor to maintain his own insurance of like types with a minimum limit of \$1,000,000 for each occurrence, unless the subcontract is in excess of \$1,000,000, in which case the Subcontractor shall increase the Umbrella Excess Liability to a minimum limit of \$5,000,000 or the amount of the subcontract, whichever is higher. The Contractor shall also require the Subcontractors to indemnify and save harmless the Owner as stated in paragraph 3.18 of the General Conditions.

6.1.3 All insurance required by this Agreement shall be written with a company or companies of recognized responsibility, authorized to engage in the business of general and professional liability and workers' compensation insurance in the Commonwealth of Pennsylvania, having an A VII rating or better under the Best Guide. The Contractor shall provide to Owner, prior to commencement of this Agreement, (and from time to time thereafter as the Owner may request) a certificate evidencing such insurance and, prior to the expiration of any policy, a certificate evidencing renewal or replacement of such insurance. All such policies shall contain a provision that they may not be canceled or changed without at least thirty (30) days prior written notice to Owner. The Contractor's policies of comprehensive general liability insurance, automobile liability insurance and umbrella liability insurance shall name the Owner, and such other entities as Owner may designate, as additional insureds as its and their interests may appear and shall provide evidence of a severability of interest clause, and such policies shall be primary for claims asserted by the additional insureds. Such coverages shall be maintained by insurance carriers acceptable to Owner in all respects. The Contractor waives all rights of subrogation against Owner with regard to losses covered by the Workers' Compensation policy, and the Workers' Compensation policy shall contain a waiver of subrogation in favor of Owner.

6.1.4 OTHER REQUIREMENTS FOR INSURANCE

All insurance policies shall (a) be maintained on an occurrence basis, (b) provide primary coverage and not calling upon any other insurance procured by other parties for defense, payment or contribution, (c) contain endorsements requiring thirty (30) days' advance written notice to named or additional insureds of any cancellation or reduction in coverage, and (d) be written by responsible insurance companies licensed to do business in the state in which the Premises are located. Any such policy may be a so-called blanket policy covering additional locations. If a policy is carried on a so-called blanket policy covering additional locations, then such policy must comply with the terms of this Agreement and provide that coverage afforded thereunder that is available for losses with respect to the Premises may not be reduced or diminished below the minimum required coverages set forth herein. Contractor shall not do or suffer anything to be done whereby any of the insurance required to be provided by Contractor and Subcontractors by this Agreement shall or may be invalidated in whole or in part. Proof of such insurance coverages required to be carried shall be delivered to Owner in the form of a certificate of insurance in form reasonably acceptable to Owner at least twenty (20) days prior to the date that such insurance is required to be in effect in accordance with the terms of this Agreement, and at least twenty (20) days prior to the expiration of any existing policy. At Owner's request, from time to time or at any time, the Contractor shall provide duplicate originals or copies of such policies certified by the insurers

within twenty (20) days after request. Nothing contained in the insurance requirements in this Section 6.1 shall be construed as a waiver of subrogation against, or a limitation of the liability of, the Contractor, unless such a waiver or limitation of liability is expressly stated herein.

6.2 INSURANCE REQUIRED OF THE OWNER

During both phases of the Project, the Owner shall purchase and maintain liability and property insurance as set forth in Sections 11.2 and 11.4 of the General Conditions.

6.2.1 PROPERTY INSURANCE

See Article 11 of the General Conditions.

6.2.2 Boiler and Machinery insurance shall be included in Owner's property insurance.

6.3 PERFORMANCE BOND AND PAYMENT BOND

6.3.1 If the Owner requires a performance and payment bond pursuant to section 4.3.1 of this Agreement, the Contractor shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder. The amount of each bond shall be equal to one hundred percent (100%) of the Contract Sum and shall be in the form attached hereto as Exhibit "D", and shall be issued by a corporate surety listed as acceptable on U.S. Department of Treasury Circular 570 and otherwise acceptable to Owner.

6.3.2 The Contractor shall deliver the required bonds to the Owner at least three days before the commencement of any Work at the Project site.

ARTICLE 7 TERMINATION OR SUSPENSION

7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of the General Conditions.

7.2 The Work may be suspended by the Owner as provided in Article 14 of the General Conditions.

ARTICLE 8 MISCELLANEOUS PROVISIONS

8.1 INTEREST

8.1.1 Amounts unpaid by Owner to Contractor after the date on which payment is due shall bear interest, commencing one hundred and twenty (120) days after the date on which payment is due, at one percent per annum (1.0% per year).

8.2 DIRECT PAYMENT OF SUBCONTRACTORS

8.2.1 Owner (a) _____ shall, or (b) _____ shall not, pay subcontractors directly pursuant to Section 9.11 of the General Conditions. [*Select (a) or (b) with a check mark, and cross out the subsection not used.*]

8.3 RECORD MEP DRAWINGS

8.3.1 If the Contractor is responsible for the design of the mechanical, electrical, fire protection and/or plumbing systems ("MEP Systems") under the Agreement, then Contractor shall prepare, through its or its subcontractor's duly-licensed engineer, and furnish to Owner, a set of record MEP drawings and specifications in the following CAD format to enable Owner to maintain a project reference file. The MEP drawings must be Autocad-compatible and have the ability to be reproduced in *.DWG or *.DXF formats. All MEP drawings must be submitted on both hard copy and on compact disk (CD). These record MEP drawings and specifications must include all changes in the Work made during construction.

8.4 SPECIAL TAX ZONES

8.4.1 If the Owner notifies the Contractor that the Project is for a qualified business located within a special tax zone, as defined in the statutes of the state where the project is located, the ordinances of the local governmental entity or otherwise, such that it qualifies for exemptions to the sales and/or use taxes, or other taxes, for certain building machinery, equipment and/or materials purchased by the Contractor for the Project pursuant to this Agreement, then Owner hereby certifies that the building

machinery, equipment and/or materials provided by Contractor will be for the exclusive use, consumption and utilization by a qualified business in the special tax zone. In such event, Contractor, when it purchases building machinery, equipment and/or materials, that are exempt from the sales and use taxes, or other taxes, as set forth above, shall tender, in a timely manner, an exemption or other appropriate certificate, properly completed and executed, to the vendor. In such event, Contractor shall also provide the appropriate exemption certificates to all subcontractors and suppliers providing building machinery and equipment which is exempt from the sales and use taxes or other taxes. If the Contract Sum under this Agreement is based on a Guaranteed Maximum Price, then the cost to be reimbursed to Contractor under this Agreement shall not include any sales or use taxes or other taxes for which an exemption was available as set forth in this paragraph. If the Contract Sum under this Agreement is a Stipulated Sum, then the Contract Sum shall be reduced by Change Order for the amount of the sales or use or other taxes for which an exemption was available as set forth in this paragraph, unless the tax saving was already taken into account in the Stipulated Sum.

8.5 JOINT CHECKS

8.5.1 (a) If Owner has a reasonable basis to believe that Contractor is not paying all of its subcontractors and suppliers in a timely and proper manner, or (b) if Contractor does not provide adequate written assurances and documentation to Owner, at Owner's request, demonstrating that Contractor is paying all of its subcontractors and suppliers in a timely manner, (c) then Owner, in its sole discretion, may issue joint checks payable to Contractor and any particular subcontractor and/or supplier with regard to any payments otherwise due to Contractor for work performed or materials supplied on behalf of Contractor by such subcontractor or supplier. Any such joint checks shall constitute payment to Contractor. Any such joint checks are solely for the benefit and protection of Owner, and shall not create a contractual relationship between Owner and any subcontractor or supplier, and shall not confer any rights upon any subcontractor or supplier, as a third-party beneficiary or otherwise, against Owner.

8.6 CONFLICTS IN CONTRACT DOCUMENTS.

8.6.1 In the event of conflict or variance between the terms of Article 8 of this Agreement and the terms of other Articles of this Agreement or the terms of the General Conditions or the Supplemental Conditions, then the terms of Article 8 of this Agreement shall govern, subject to paragraph 8.6.2 below.

8.6.2 In the event of conflict or variance between two or more requirements in any of the Contract Documents, the requirement that is more stringent upon the Contractor and more beneficial to the Owner shall govern in all instances.

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

9.1.1 This Agreement.

9.1.2 The General Conditions attached hereto, including the Supplementary Conditions attached thereto.

9.1.3 The other Conditions of the Contract are listed in Exhibits "1" through "7" attached hereto and the Project Manual (if any) identified in Exhibit "1" attached hereto.

9.1.4 The Specifications are listed in Exhibit "1" attached hereto and/or the Project Manual (if any) identified in Exhibit "1" attached hereto.

9.1.5 The Drawings are listed in Exhibit "1" attached hereto and/or the Project Manual (if any) identified in Exhibit "1" attached hereto.

9.1.6 The Addenda, if any, are listed in Exhibit "1" attached hereto and/or the Project Manual (if any) identified in Exhibit "1" attached hereto.

9.1.7 The other Documents forming part of the Contract Documents are as follows:

1. Exhibit A- Contractor Waiver of Liens on behalf of Sub-contractors and Sub-Subcontractors/Suppliers (if a payment bond is required) (*see G.C. §9.6.9 and §13.9.2*).

2. Exhibit B-1 - Contractor Monthly Affidavit, Release and Waiver of Liens (*see G.C. §9.6.8*).
3. Exhibit B-2 - Subcontractor Monthly Affidavit, Release and Waiver of Liens (*see G.C. §9.6.8*)
4. Exhibit C-1 - Contractor Final Payment Affidavit, Release and Waiver of Liens (*see G.C. §9.10.6*)
5. Exhibit C-2 - Subcontractor Final Payment Affidavit, Release and Waiver of Liens (*see G.C. §9.10.6*).
6. Exhibit C-3 - Subsubcontractor/Supplier Final Payment Affidavit, Release and Waiver of Liens (*see G.C. §9.10.6*)
7. Exhibit D- Form of Contractor's Performance Bond and Payment Bond (*see Agreement §4.3*)
8. Exhibits 1 to 7 – See sections 4.1.2 and 4.2 above.

ARTICLE 10 EFFECTIVE DATE OF AGREEMENT

10.1 This Agreement is entered into as of the day and year first written above. Contractor and Owner acknowledge and agree that Contractor may have started performing its services based on verbal agreements and correspondence as of the day and year first written above before the parties signed this Agreement. Contractor and Owner agree that this Agreement covers all such services and is effective as of the day and year first written above, and this Agreement supersedes all such prior verbal agreements and correspondence.

OWNER: DREXEL UNIVERSITY

CONTRACTOR: _____

By: _____

By: _____

Name: _____
 Title: _____
 Date: _____, _____

Name: _____
 Title: _____
 Date: _____, _____

By: _____

Name: _____
 Title: _____
 Date: _____, _____

EXHIBITS A THROUGH D

Exhibit A

WAIVER OF LIENS BY CONTRACTOR ON BEHALF OF SUBCONTRACTORS

TO BE INDEXED AS FOLLOWS:

DREXEL UNIVERSITY (PLAINTIFF)

V.

CONTRACTOR (DEFENDANT)

AND

CONTRACTOR (PLAINTIFF)

V.

DREXEL UNIVERSITY (DEFENDANT)

WAIVER OF LIENS BY CONTRACTOR ON BEHALF OF SUBCONTRACTORS

THIS INSTRUMENT is executed this ____ day of ____, 20 ____ by, ____ having an office at ____ (“Contractor”) in favor of DREXEL UNIVERSITY, having an office ____ at , Philadelphia, Pennsylvania ____ (“Owner”).

W I T N E S S E T H:

1. Owner and Contractor have entered or shall enter into a certain agreement (the “Contract”) for the construction of certain improvements and the renovation of certain other improvements (collectively, the “Improvements”) on a parcel of land located at ____ and known as the ____ project (collectively, the “Property”). The Property is owned by Owner.

2. Contractor has posted a bond guaranteeing payment for labor and materials provided by Subcontractors on the project (as defined in the Pennsylvania Mechanics’ Lien Law, as amended).

3. Contractor has entered or shall enter into a certain agreements with Subcontractors, and the Subcontractors have or shall enter into agreements with Sub-subcontractors and Suppliers.

4. By the terms of the Contract and by this Instrument, Contractor has covenanted, promised and agreed and hereby covenants, promises and agrees that no mechanic’s or materialmen’s liens would be or will be filed or maintained against the Improvements or the estate or title of Owner in the Property, or any part thereof, or the appurtenances thereto, by any Subcontractor as defined by the Pennsylvania Mechanics’ Lien Law, as amended, including without limitation any Subcontractor in direct privity of contract with Contractor, and also any subcontractor or supplier in direct privity of contractor with any Subcontractor, or anyone else for or on account of any work, labor or materials supplied in the performance of any Trade Contract, or under any supplemental contract or for extra work under or related to any Trade Contract, or in the erection, construction or completion of the Improvements on the Property or any appurtenance thereto under or related to any Trade Contract.

NOW THEREFORE, in consideration of ten dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and the Contract and this Instrument and the covenants of Owner herein and therein contained, and intending to be legally bound hereby, Contractor agrees as follows:

1. Contractor is or may be a contractor within the meaning of the Mechanics’ Lien Law of 1963, as amended (the “Act”).

2. Each Subcontractor is or may be a “Subcontractor” within the meaning of the Pennsylvania Mechanics’ Lien Law, as amended (the “Act”).

3. Each subcontractor and supplier in direct privity of contract with a Subcontractor (hereinafter “Sub-subcontractor/Supplier”) is or may be a “Subcontractor” within the meaning of the Pennsylvania Mechanics’ Lien Law, as amended (the “Act”).

4. Contractor, on behalf of all of its Subcontractors, all Sub-subcontractors/Suppliers and all other persons who are “Subcontractors” as defined in the Pennsylvania Mechanics Lien Law as amended, and anyone else acting or claiming through or under any of them, does hereby waive and relinquish all rights of all of its Subcontractors, all Sub-subcontractors/Suppliers, and all other persons who are “Subcontractors” as defined in the Pennsylvania Mechanics Lien Law as amended, and anyone else acting or claiming through or under any of them, to file a mechanics’ lien, or notice of intention to file any lien, and Contractor does hereby covenant, promise and agree that no mechanics’ lien or other lien of any kind whatsoever shall be filed or maintained by any of them against the Improvements or the estate or title of Owner in the Property or the appurtenances thereto, or any part thereof, for work done or materials furnished in connection with any Trade Contract for and about the Improvements or the Property or any part thereof.

5. This Instrument waiving the right of lien on behalf of all Subcontractors, Sub-subcontractors/Suppliers and any other party acting through or under them or any of them, shall be an independent

covenant and shall operate and be effective as well with respect to work done and materials furnished under any supplemental contract for extra work relating to any such Trade Contract in the erection, construction and completion of the Improvements to the same extent as to any work and labor done and materials furnished in connection with any such Trade Contract.

6. THE FOLLOWING PARAGRAPH CONTAINS A WARRANT OF ATTORNEY FOR THE CONFESSION OF JUDGMENT AGAINST ANYONE ACTING UNDER OR THROUGH CONTRACTOR IN VIOLATION OF THIS WAIVER. In order to give Owner full power and authority to protect itself, the Improvements, the Property, the estate or title of Owner therein, and the appurtenances thereto, against any and all liens filed by any Subcontractor, Sub-subcontractor/Supplier or anyone acting by or through them, whether in their own name or in the name of Contractor or anyone acting under or through it, in violation of the foregoing covenants, Contractor, knowingly and upon advice of separate counsel, hereby irrevocably authorizes and empowers any Attorney of any Court of Common Pleas of the Commonwealth of Pennsylvania, to appear as Attorney for it, them or any of them, in any such Court, and in its or their name or names, to the extent permitted by law, mark satisfied of record at the cost and expense of the Contractor or of any Subcontractor, subcontractor or materialman, any and all lien or liens, filed in violation of the foregoing covenants, or cause to be filed and served in connection with such lien or liens any pleading or instrument, or any amendment to any pleading or instrument previously filed by it or them, and to incorporate therein, as part of the record, the waiver and release contained in this Instrument, and for such act or acts this Instrument or a copy thereof shall be good and sufficient warrant and authority. A reference to the court, term and number in which and where this Instrument shall have been filed shall be conclusive evidence of the authority herein contained to warrant such action, and the Contractor, for itself and for them, hereby remises, releases and quit-claims all rights and all manner or errors, defects and imperfections whatsoever in entering such satisfaction or in filing such pleading, instrument or amendment, or in any way concerning them.

7. This Instrument is made and may be filed with the Prothonotary or Clerk of the county in which the Property is located in accordance with the requirements of the Act.

8. The provisions of this Instrument are severable. Any provisions of this Instrument which shall be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof, and the remaining provisions shall nevertheless remain in full force and effect.

IN WITNESS WHEREOF, the undersigned Contractor has executed this Instrument as of the date and year first above written.

CONTRACTOR:
(Insert name of Contractor)

Attest: _____
Secretary

By: _____
(Signature)

Title: _____

Name: _____

(Corporate Seal)

: ss

On the _____ day of _____, 20____, before me, the subscriber, a notary public in and for the Commonwealth of Pennsylvania, personally appeared _____ (name of person signing on behalf of contractor), who acknowledged himself to be the _____ (title of the person signing for the contractor) of _____ (the name of the company), a _____ (corporation or general partnership or sole proprietorship), and that he/she, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the _____ (corporation or general partnership or sole proprietorship) by himself as such (title of person signing on behalf of the contractor).

WITNESS my hand and seal the day and year aforesaid.

(SEAL)

Notary Public

My Commission Expires:

EXHIBIT B-1

CONTRACTOR PROGRESS PAYMENT AFFIDAVIT, RELEASE, AND WAIVER OF LIENS

Exhibit B-1

CONTRACTOR PROGRESS PAYMENT AFFIDAVIT, RELEASE, AND WAIVER OF LIENS

TO UNIVERSITY: Name: Drexel University
 Address: _____

FROM CONTRACTOR:
 Name: _____
 Address: _____

PROJECT: _____

CONTRACT DATE: _____,

Payment Request No.: _____
Period From: _____,
To: _____, (hereinafter the "Partial Completion Date")
Payment Request Amount: \$ _____

1. **CERTIFICATIONS, AFFIRMATIONS AND WARRANTIES.** The undersigned Contractor (hereinafter "the Undersigned"), to support its entitlement to the requested payment, and for and in consideration of payments made by University to the Undersigned, or to a subcontractor, materialman or supplier of the Undersigned, for work, services, materials or equipment provided or performed in the construction of the above-referenced Project, hereby affirms, certifies and warrants as follows:

- (a) The Payment Request Amount set forth above represents the actual value of work performed for the above payment request period for which payment is due under the terms of the Contract (and all authorized changes thereto) between the Undersigned and the University relating to the Project, including (i) all labor expended or furnished in the design or construction of the Project, (ii) all materials and equipment delivered to the site and either incorporated or to be incorporated in the Project; (iii) all materials, fixtures and equipment for the Project stored off-site to the extent authorized by University and for which payment therefor is permitted by the Contract, (iv) all services furnished or performed in the design or construction of the Project, and (v) all equipment used, or provided for use, in the construction of the Project. All of items (i) through (v) above are hereafter collectively referred to as "work performed in the construction of the Project."

- (b) Subject to receipt of payment for the Payment Request Amount set forth above, the Undersigned certifies that it has received payment in full, less retainage, for all work performed in the construction of the Project through the date set forth above (hereinafter the "Partial Completion Date"), and, except for retainage, the Undersigned has no claims, on its own behalf or on behalf of others, against University, and/or its lenders, or the Project, based upon or relating to work performed in the construction of the Project through the Partial Completion Date, except for outstanding written requests for change orders previously submitted by Contractor to University in writing and in conformity with the terms of the General Conditions of the Agreement between University and Contractor.

- (c) The Undersigned has not assigned to anyone any claim, any lien, or any right to file or perfect a lien, against University, University's lenders, or the Project.
- (d) The Undersigned has paid in full all laborers, and, subject to retainage no greater than the percentage retainage held by University, all subcontractors, suppliers, materialman and others with respect to all work performed in the construction of the Project through and including the last application for payment for which University has paid Contractor.
- (e) The Undersigned has not given or executed any security interests for or in connection with any materials, equipment, appliances, machines, fixtures or furnishings which have been or are to be installed as part of the Project, and is conveying good title to the same to University.

2. **WAIVER AND RELEASE.** Subject to receipt of payment for the Payment Request Amount set forth above, the Undersigned does hereby forever waive and release in favor of University, University's lenders, the Project, and the title company or companies examining and/or insuring title to the Project, and any and all successors and assigns of the above, all rights that presently exist or hereafter may accrue to the Undersigned, by reason of work performed in the construction of the Project through the Partial Completion Date, (i) to assert a lien upon the land and/or improvements comprising the Project (whether under the lien statute of any jurisdiction or otherwise), and (ii) to assert or bring, subject to paragraph 1(b) above, any causes of actions, claims, suits, stop notices and/or demands which the Undersigned ever had or now has against University, University's lenders, or the Project. Subject to paragraph 1(b) above, the Undersigned hereby releases, acquits and forever discharges University and University's lenders, and their representative partners, directors, officers, employees, agents, successors and assigns, from all claims, liabilities, obligations, causes of action and demands whatsoever, whether known or unknown, arising now or in the future, relating to or arising from the Project, based upon any cause, matter or thing whatsoever from the inception of the Project through the date of this Release, including but not limited to all claims for additional compensation, other damages or time extensions relating to delay, disruption, acceleration, inefficiency or extra work.

3. **INDEMNIFICATION.** The Undersigned hereby agrees to indemnify, defend and hold harmless University, University's lenders, and their respective successors and assigns, from and against any and all damages, costs, judgments, liabilities, demands, suits and expenses (including reasonable attorney's fees) directly or indirectly relating to any cause of action, claim, lien or stop notice filed by any person or entity with respect to (i) any work performed in the construction of the Project through the Partial Completion Date, (ii) any rights waived or released herein, and (iii) any misrepresentation or breach of any certification, affirmation or warranty made by the Undersigned in this document. Upon demand by University, the Undersigned will undertake to defend such causes of actions, claims, liens or stop notices at its sole cost and expense, and will bond off any liens.

Date: _____, _____

CONTRACTOR: _____

By: _____

Name: _____

Title: _____

SWORN TO AND SUBSCRIBED
BEFORE ME THIS _____ DAY
OF _____, _____

Notary Public

EXHIBIT B-2

SUBCONTRACTOR PROGRESS PAYMENT AFFIDAVIT, RELEASE, AND WAIVER OF LIENS

Exhibit B-2

SUBCONTRACTOR PROGRESS PAYMENT AFFIDAVIT, RELEASE, AND WAIVER OF LIENS

TO CONTRACTOR:

Name: _____
Address: _____

FROM SUBCONTRACTOR:

Name: _____
Address: _____

PROJECT:

UNIVERSITY:

Drexel University

SUBCONTRACT DATE:

_____, ____.

Subcontractor Payment Request No.: _____

Period From: _____

To: _____, _____ (hereinafter the "Partial Completion Date")

Cross Reference Contractor/Contractor Application for Payment No.: _____

Subcontractor Payment Request Amount: \$ _____

1. **CERTIFICATIONS, AFFIRMATIONS AND WARRANTIES.** The undersigned Subcontractor (hereinafter "the Undersigned"), to support its entitlement to the requested payment, and for and in consideration of payments made by Contractor to the Undersigned, or to a subcontractor, materialman or supplier of the Undersigned, for work, services, materials or equipment provided or performed in the construction of the above-referenced Project, hereby affirms, certifies and warrants as follows:

- (a) The Subcontractor Payment Request Amount set forth above represents the actual value of work performed for the above payment request period for which payment is due under the terms of the Subcontract (and all authorized changes thereto) between the Undersigned and the Contractor relating to the Project, including (i) all labor expended or furnished in the design or construction of the Project, (ii) all materials and equipment delivered to the site and either incorporated or to be incorporated in the Project; (iii) all materials, fixtures and equipment for the Project stored off-site to the extent authorized by Contractor and for which payment therefor is permitted by the Subcontract, (iv) all services furnished or performed in the design or construction of the Project, and (v) all equipment used, or provided for use, in the construction of the Project. All of items (i) through (v) above are hereafter collectively referred to as "work performed in the construction of the Project."
- (b) **Except for the Subcontractor Payment Request Amount set forth above, the Undersigned certifies that it has already received payment in full, less retainage, (i) for all prior Subcontractor Payment Requests and (ii) for all work performed in the construction of the Project through the date set forth above (the "Partial Completion Date");** and, except for retainage, the Undersigned has no claims, on its own behalf or on behalf of others, against Contractor, University or the Project, based upon or relating to work performed in the construction of the Project through the Partial Completion Date, except for outstanding written requests for change orders previously submitted by Subcontractor to Contractor and by Contractor to University in writing and in conformity with the terms of the Subcontract between Subcontractor and Contractor

and the terms of the General Conditions of the Agreement between Contractor and University..

- (c) The Undersigned has not assigned to anyone any claim, any lien, or any right to file or perfect a lien, against Contractor, University, or the Project.
- (d) Except for the Subcontractor Payment Request Amount set forth above, the Undersigned certifies that it has paid in full all laborers, and, subject to retainage no greater than the percentage retainage held by Contractor, all subcontractors, suppliers, materialman and others with respect to all work performed in the construction of the Project through the Partial Completion Date.
- (e) The Undersigned has not given or executed any security interests for or in connection with any materials, equipment, appliances, machines, fixtures or furnishings which have been or are to be installed as part of the Project, and is conveying good title to the same to Contractor.

2. **WAIVER AND RELEASE.** Subject to receipt of payment for the Subcontractor Payment Request Amount set forth above, the Undersigned does hereby forever waive and release in favor of Contractor, University, the Project, and the title company or companies examining and/or insuring title to the Project, and any and all successors and assigns of the above, all rights that presently exist or hereafter may accrue to the Undersigned, by reason of work performed in the construction of the Project through the Partial Completion Date, (i) to assert a lien upon the land and/or improvements comprising the Project (whether under the lien statute of any jurisdiction or otherwise), and (ii) to assert or bring, subject to paragraph 1(b) above, any causes of actions, claims, suits, stop notices and/or demands which the Undersigned ever had or now has against Contractor, University, or the Project. Subject to paragraph 1(b) above, the Undersigned hereby releases, acquits and forever discharges University and University's lenders, and their representative partners, directors, officers, employees, agents, successors and assigns, from all claims, liabilities, obligations, causes of action and demands whatsoever, whether known or unknown, arising now or in the future, relating to or arising from the Project, based upon any cause, matter or thing whatsoever from the inception of the Project through the date of this Release, including but not limited to all claims for additional compensation, other damages or time extensions relating to delay, disruption, acceleration, inefficiency or extra work.

3. **INDEMNIFICATION.** The Undersigned hereby agrees to indemnify, defend and hold harmless Contractor, University, and their respective successors and assigns, from and against any and all damages, costs, judgments, liabilities, demands, suits and expenses (including reasonable attorney's fees) directly or indirectly relating to any cause of action, claim, lien or stop notice filed by any person or entity with respect to (i) any work performed by or on behalf of the Undersigned in the construction of the Project through the Partial Completion Date, (ii) any rights waived or released herein, and (iii) any misrepresentation or breach of any certification, affirmation or warranty made by the Undersigned in this document. Upon demand, the Undersigned will undertake to defend such causes of actions, claims, liens or stop notices at its sole cost and expense.

Date: _____, _____

SUBCONTRACTOR: _____

By: _____

Name: _____

Title: _____

SWORN TO AND SUBSCRIBED
BEFORE ME THIS _____ DAY
OF _____, _____

Notary Public

EXHIBIT C-1

CONTRACTOR FINAL PAYMENT AFFIDAVIT, RELEASE, AND WAIVER OF LIENS

- (d) The Undersigned has not assigned to anyone any claim, any lien, or any right to file or perfect a lien, against University, University's lenders, or the Project.
- (e) The Undersigned has paid in full all laborers, Subcontractors, subcontractors, suppliers, materialman and others with respect to all work performed in the construction of the Project through Final Completion.
- (f) The Undersigned has not given or executed any security interests for or in connection with any materials, equipment, appliances, machines, fixtures or furnishings which have been or are to be installed as part of the Project, and is conveying good title to the same to University.

2. **WAIVER AND RELEASE.** The Undersigned does hereby forever waive and release in favor of University, University's lenders, the Project, and the title company or companies examining and/or insuring title to the Project, and any and all successors and assigns of the above, all rights that presently exist or hereafter may accrue to the Undersigned, by reason of work performed in the construction of the Project or by reason of any other cause, matter or thing relating to the Project, (i) to assert a lien upon the land and/or improvements comprising the Project (whether under the lien statute of any jurisdiction or otherwise), and (ii) to assert or bring any causes of actions, claims, suits, stop notices and/or demands which the Undersigned ever had or now has against University, University's lenders, or the Project. The Undersigned hereby releases, acquits and forever discharges University and University's lenders, and their representative partners, directors, officers, employees, agents, successors and assigns, from all claims, liabilities, obligations, causes of action and demands whatsoever, whether known or unknown, arising now or in the future, relating to or arising from the Project, based upon any cause, matter or thing whatsoever from the inception of the Project through the date of this Release, including but not limited to all claims for additional compensation, other damages or time extensions relating to delay, disruption, acceleration, inefficiency or extra work.

3 **INDEMNIFICATION.** The Undersigned hereby agrees to indemnify, defend and hold harmless University, University's lenders, and their respective successors and assigns, from and against any and all damages, costs, judgments, liabilities, demands, suits and expenses (including reasonable attorney's fees) directly or indirectly relating to any cause of action, claim, lien or stop notice filed by any person or entity with respect to (i) any work performed in the construction of the Project, (ii) any rights waived or released herein, and (iii) any misrepresentation or breach of any certification, affirmation or warranty made by the Undersigned in this document. Upon demand by the University, the Undersigned will undertake to defend such causes of actions, claims, liens or stop notices at its sole cost and expense, and will bond off any liens.

Date: _____, _____

CONTRACTOR: _____

By: _____

Name: _____

Title: _____

SWORN TO AND SUBSCRIBED
BEFORE ME THIS ____ DAY
OF _____, _____

Notary Public

EXHIBIT C-2

SUBCONTRACTOR FINAL PAYMENT AFFIDAVIT, RELEASE, AND WAIVER OF LIENS

Exhibit C-2

SUBCONTRACTOR FINAL PAYMENT AFFIDAVIT, RELEASE, AND WAIVER OF LIENS

TO CONTRACTOR:

Name: _____
Address: _____

FROM SUBCONTRACTOR:

Name: _____
Address: _____

PROJECT:

OWNER:

Drexel University

CONTRACT DATE: _____, _____, _____

Payment Request No.: _____ (Final Payment)

Period From: _____

To: _____ (hereinafter the "Final Completion Date")

Final Payment Request Amount: \$ _____

1. **CERTIFICATIONS, AFFIRMATIONS AND WARRANTIES.** The undersigned Subcontractor (hereinafter "the Undersigned"), to support its entitlement to the requested final payment, and for and in consideration of payments made by Contractor to the Undersigned, or to a Sub-subcontractor, subcontractors, materialman or supplier of the Undersigned, for work, services, materials or equipment provided or performed in the construction of the above-referenced Project, hereby affirms, certifies and warrants as follows:

- (a) The Undersigned has completed all of its work on the Project, and has achieved Final Completion of the Project.
- (b) The Final Payment Request Amount set forth above represents the actual value of work performed through Final Completion and for which final payment is due under the terms of the Contract (and all authorized changes thereto) between the Undersigned and Contractor relating to the Project, including (i) all labor expended or furnished in the design or construction of the Project, (ii) all materials and equipment delivered to the site and either incorporated or to be incorporated in the Project; (iii) all materials, fixtures and equipment for the Project stored off-site to the extent authorized and for which payment therefor is permitted by the Contract, (iv) all services furnished or performed in the design or construction of the Project, and (v) all equipment used, or provided for use, in the construction of the Project. All of items (i) through (v) above are hereafter collectively referred to as "work performed in the construction of the Project."
- (c) Subject to receipt of the Final Payment Request Amount set forth above, the Undersigned certifies that it has received payment in full, including all retainage, for all work performed through Final Completion of the Project; and the Undersigned certifies that no further payments are or will be due to it on this Project; and the Undersigned further certifies that it has no claims, on its own behalf or on behalf of others, against Contractor, University, and/or its lenders, or the Project, based upon or relating to work performed in the construction of the Project or otherwise relating to or arising from the Project, whether for labor, materials, equipment or otherwise relating to the Project.
- (d) The Undersigned has not assigned to anyone any claim, any lien, or any right to file or perfect a lien, against University, University's lenders, or the Project.

- (e) The Undersigned has paid in full all laborers, Sub-subcontractors, subcontractors, suppliers, materialman and others with respect to all work performed in the construction of the Project through Final Completion.
- (f) The Undersigned has not given or executed any security interests for or in connection with any materials, equipment, appliances, machines, fixtures or furnishings which have been or are to be installed as part of the Project, and is conveying good title to the same.

2. **WAIVER AND RELEASE.** The Undersigned does hereby forever waive and release in favor of University, University's lenders, Contractor, the Project, and the title company or companies examining and/or insuring title to the Project, and any and all successors and assigns of the above, all rights that presently exist or hereafter may accrue to the Undersigned, by reason of work performed in the construction of the Project or by reason of any other cause, matter or thing relating to the Project, (i) to assert a lien upon the land and/or improvements comprising the Project (whether under the lien statute of any jurisdiction or otherwise), and (ii) to assert or bring any causes of actions, claims, suits, stop notices and/or demands which the Undersigned ever had or now has against University, University's lenders, Contractor or the Project. The Undersigned hereby releases, acquits and forever discharges Contractor, University and University's lenders, and their representative partners, directors, officers, employees, agents, successors and assigns, from all claims, liabilities, obligations, causes of action and demands whatsoever, whether known or unknown, arising now or in the future, relating to or arising from the Project, based upon any cause, matter or thing whatsoever from the inception of the Project through the date of this Release, including but not limited to all claims for additional compensation, other damages or time extensions relating to delay, disruption, acceleration, inefficiency or extra work.

3 **INDEMNIFICATION.** The Undersigned hereby agrees to indemnify, defend and hold harmless Contractor, University, University's lenders, and their respective successors and assigns, from and against any and all damages, costs, judgments, liabilities, demands, suits and expenses (including reasonable attorney's fees) directly or indirectly relating to any cause of action, claim, lien or stop notice filed by any person or entity with respect to (i) any work performed by or on behalf of the Undersigned in the construction of the Project, (ii) any rights waived or released herein, and (iii) any misrepresentation or breach of any certification, affirmation or warranty made by the Undersigned in this document. Upon demand, the Undersigned will undertake to defend such causes of actions, claims, liens or stop notices at its sole cost and expense, and will bond off any liens.

Date: _____, _____, _____

SUBCONTRACTOR: _____

By: _____

Name: _____

Title: _____

SWORN TO AND SUBSCRIBED
BEFORE ME THIS _____ DAY
OF _____, _____

Notary Public

EXHIBIT C-3

SUB-SUBCONTRACTOR/SUPPLIER FINAL PAYMENT AFFIDAVIT, RELEASE, AND WAIVER OF LIENS

Exhibit C-3

SUB-SUBCONTRACTOR/SUPPLIER FINAL PAYMENT AFFIDAVIT, RELEASE, AND WAIVER OF LIENS

TO: SUBCONTRACTOR

Name: _____
Address: _____

FROM: SUB-SUBCONTRACTOR/SUPPLIER:

Name: _____
Address: _____

PROJECT: _____

OWNER: Drexel University

CONTRACT DATE: _____, _____, _____

Payment Request No.: _____ (Final Payment)
Period From: _____
To: _____, _____ (hereinafter the "Final Completion Date")
Final Payment Request Amount: \$ _____

1. **CERTIFICATIONS, AFFIRMATIONS AND WARRANTIES.** The undersigned Sub-Subcontractor/Supplier (hereinafter "the Undersigned"), to support its entitlement to the requested final payment, and for and in consideration of payments made by Subcontractor to the Undersigned, or to a sub-subsubcontractor, materialman or supplier of the Undersigned, for work, services, materials or equipment provided or performed in the construction of the above-referenced Project, hereby affirms, certifies and warrants as follows:

- (a) The Undersigned has completed all of its work on the Project, and has achieved Final Completion of the Project.
- (b) The Final Payment Request Amount set forth above represents the actual value of work performed through Final Completion and for which final payment is due under the terms of the Contract (and all authorized changes thereto) between the Undersigned and Subcontractor relating to the Project, including (i) all labor expended or furnished in the design or construction of the Project, (ii) all materials and equipment delivered to the site and either incorporated or to be incorporated in the Project; (iii) all materials, fixtures and equipment for the Project stored off-site to the extent authorized and for which payment therefor is permitted by the Contract, (iv) all services furnished or performed in the design or construction of the Project, and (v) all equipment used, or provided for use, in the construction of the Project. All of items (i) through (v) above are hereafter collectively referred to as "work performed in the construction of the Project."
- (c) Subject to receipt of the Final Payment Request Amount set forth above, the Undersigned certifies that it has received payment in full, including all retainage, for all work performed through Final Completion of the Project; and the Undersigned certifies that no further payments are or will be due to it on this Project; and the Undersigned further certifies that it has no claims, on its own behalf or on behalf of others, against Subcontractor, Contractor, University, and/or its lenders, or the Project, based upon or relating to work performed in the construction of the Project or otherwise relating to or arising from the Project, whether for labor, materials, equipment or otherwise relating to the Project.

- (d) The Undersigned has not assigned to anyone any claim, any lien, or any right to file or perfect a lien, against University, University's lenders, or the Project.
- (e) The Undersigned has paid in full all laborers, Sub-subsubcontractors, suppliers, materialman and others with respect to all work performed in the construction of the Project through Final Completion.
- (f) The Undersigned has not given or executed any security interests for or in connection with any materials, equipment, appliances, machines, fixtures or furnishings which have been or are to be installed as part of the Project, and is conveying good title to the same.

2. **WAIVER AND RELEASE.** The Undersigned does hereby forever waive and release in favor of University, University's lenders, Subcontractor, Contractor, the Project, and the title company or companies examining and/or insuring title to the Project, and any and all successors and assigns of the above, all rights that presently exist or hereafter may accrue to the Undersigned, by reason of work performed in the construction of the Project or by reason of any other cause, matter or thing relating to the Project, (i) to assert a lien upon the land and/or improvements comprising the Project (whether under the lien statute of any jurisdiction or otherwise), and (ii) to assert or bring any causes of actions, claims, suits, stop notices and/or demands which the Undersigned ever had or now has against University, University's lenders, Subcontractor, Contractor or the Project. The Undersigned hereby releases, acquits and forever discharges Subcontractor, Contractor, University and University's lenders, and their representative partners, directors, officers, employees, agents, successors and assigns, from all claims, liabilities, obligations, causes of action and demands whatsoever, whether known or unknown, arising now or in the future, relating to or arising from the Project, based upon any cause, matter or thing whatsoever from the inception of the Project through the date of this Release, including but not limited to all claims for additional compensation, other damages or time extensions relating to delay, disruption, acceleration, inefficiency or extra work.

3 **INDEMNIFICATION.** The Undersigned hereby agrees to indemnify, defend and hold harmless Subcontractor, Contractor, University, University's lenders, and their respective successors and assigns, from and against any and all damages, costs, judgments, liabilities, demands, suits and expenses (including reasonable attorney's fees) directly or indirectly relating to any cause of action, claim, lien or stop notice filed by any person or entity with respect to (i) any work performed by or on behalf of the Undersigned in the construction of the Project, (ii) any rights waived or released herein, and (iii) any misrepresentation or breach of any certification, affirmation or warranty made by the Undersigned in this document. Upon demand, the Undersigned will undertake to defend such causes of actions, claims, liens or stop notices at its sole cost and expense, and will bond off any liens.

Date: _____, _____, _____

SUBCONTRACTOR: _____

By: _____

Name: _____

Title: _____

SWORN TO AND SUBSCRIBED
BEFORE ME THIS _____ DAY
OF _____, _____

Notary Public

Exhibit D

**CONTRACTOR'S PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT
BOND**

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that the Contractor:
(Here insert full name and address of Contractor)

as Principal, hereinafter called "Contractor",

and the Surety:
(Here insert full name and address of Surety)

as Surety, hereinafter called "Surety",

are held and firmly bound unto the Owner:
(Here insert full name and address of Owner)

DREXEL UNIVERSITY

as Obligee, hereinafter called "Obligee", in the amount of:
(Here insert dollar amount of Bond)

for the payment whereof the Contractor and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor has by written agreement dated _____ entered into a contract with Obligee for:
(Here insert full name, address and description of project)

which contract is incorporated herein by reference and made a part hereof, and is hereinafter referred to as the "Contract."

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform said Contract, including all of the obligations set forth therein, in accordance with the terms thereof, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

1. The Surety hereby waives notice of any modifications or changes to the Contract, including without limitation change orders and time extensions.

2. Whenever Contractor shall be, and shall be declared by Obligeo to be, in default under the Contract, the Owner having performed its obligations thereunder, the Surety shall:

a) Promptly pay to the Obligeo, upon demand, any and all costs, expenses, losses and other damages which the Obligeo has or shall sustain as a result of the Contractor's default or defaults; and

b) Upon demand by the Obligeo, promptly remedy the Contractor's default or defaults, in addition to paying any sums due to the Obligeo under subparagraph 2(a) above. The Obligeo reserves the right, in each instance, in its sole discretion, either (i) to demand that the Surety remedy any or all of the Contractor's defaults and/or (ii) to make the Obligeo's own arrangements to remedy any or all of the Contractor's defaults. In the latter event, the Obligeo may demand payment from the Surety for all the costs thereof under subparagraph 2(a) above, and the Surety shall promptly make payment to the Obligeo of all of said costs.

3. a) If the Contractor has been terminated by the Obligeo for default, then the Obligeo may elect, in its sole discretion, to arrange itself for the completion of the work under the Contract, in which event the Surety shall promptly pay to the Obligeo, upon demand, all of the Obligeo's costs, expenses, losses and other damages which the Obligeo has or shall sustain as a result of the default or defaults of the Contractor, including without limitation all of the additional costs incurred by the Obligeo for the completion of the work and the correction of all defective and non-conforming work, beyond the balance of the contract price and all of the Obligeo's other damages, including without limitation damages (whether liquidated or otherwise) caused by the late completion of the work. The Surety shall also remain responsible for the satisfaction of all of the other obligations of the Contractor under the Contract, in accordance with all of its terms and conditions.

b) (i) If the Contractor has been terminated by the Obligeo for default, and if the Obligeo elects not to arrange itself for the completion of the work under the Contract as set forth under subparagraph 3(a) above, then the Surety shall promptly and without delay, upon demand from the Obligeo, undertake to perform and complete all of the obligations of the Contractor under the Contract, in accordance with all of its terms and conditions, including without limitation performance of all remaining work, correction of all defective and non-conforming work, and satisfaction of all other obligations of the Contractor under the Contract, including without limitation monetary obligations, warranties, guarantees, and the payment of damages to Obligeo, including without limitation damages (whether liquidated or otherwise) caused by the late completion of the work, and the Obligeo shall pay to the Surety the balance of the contract price, as and when due under the Contract, for work performed by the Surety or any contractor retained by the Surety to complete the work under the Contract .

(ii) If the Owner makes demand upon the Surety to perform and complete the obligations of the Contractor pursuant to subparagraph 3(b)(i) above, then the Surety shall make its own arrangements for the completion of the Contract; provided, however, that the Surety must obtain the Obligeo's prior approval of all proposed contractors and subcontractors that the Surety desires to retain for the performance by Surety of the work under the Contract. The Owner shall not unreasonably withhold its approval of contractors and/or subcontractors that the surety proposes to retain, but shall not be required to approve any entity that Owner believes to lack proper experience or appropriate financial strength or with whom the Owner has previously had an unsatisfactory experience or whose reputation Owner believes to be unfavorable. In no event shall the Owner be required to approve selection of the Contractor to perform any portion of the work under the Contract.

4. The term "balance of the contract price", as used in this Bond, shall mean the total amount payable by Obligeo to the Contractor under the Contract and any amendments thereto, less the

amount previously paid by the Obligee to the Contractor, and less adjustments and offsets to the balance of the contract price for costs, expenses, losses and other damages incurred or to be incurred by the Obligee as a result of the Contractor's default or defaults.

5. In no event may the Surety use the Contractor to remedy a default or to complete the Contract, if the Obligee has terminated the Contractor for default, unless the Obligee consents in its sole discretion.

6. Any suit by Obligee against Surety under this Bond must be instituted within four (4) years after Final Acceptance of the Work under the Contract or, if the Contractor has been terminated, then within four (4) years after the termination. In any suit by any party under this Bond, the exclusive forum shall be the state or federal court in the county where the project is located, and not any other forum, except with the written consent of the Obligee; provided, however, that the Surety consents to arbitration, if demanded by Obligee, of any claim by Obligee for which Obligee would have the right to demand arbitration against Contractor under the terms and conditions of the Contract, in which event the terms and conditions of the arbitration clause in the Contract shall apply to such arbitration with the Surety.

7. If the Surety breaches its obligations under this Bond, then the Obligee shall be entitled to recover its attorney's fees and costs in any suit against the Surety.

8. No right of action shall accrue on this Bond to or for the use of any person or legal entity other than the Obligee named herein, or the heirs, executors, administrators, successors or assigns of the Obligee.

Signed and sealed this ____ day of ____, 20__.

CONTRACTOR (Insert Name):

(Witness)

By: _____ [SEAL]
Name of Person Signing: _____
Title: _____

SURETY (Insert Name):

(Witness)

By: _____ [SEAL]
Name of Person Signing: _____
Title: _____

ACKNOWLEDGMENTS TO BOND

SURETY ACKNOWLEDGMENT

STATE OF _____ :
: SS.
COUNTY OF _____ :

On this _____ day of _____ in the year _____, before me personally came _____, to me known, who being by me duly sworn, did depose and say that he/she resides in _____; that he/she is the attorney-in-fact of _____, the corporation described in and which executed the above instrument as surety; that he/she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he/she signed his/her name thereto by like order and with authority to do so.

NOTARY PUBLIC STAMP	NOTARY PUBLIC
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INDIVIDUAL - PRINCIPAL

STATE OF _____ :
: SS.
COUNTY OF _____ :

On this _____ day of _____ in the year _____, before me personally came _____, to me known and known to me to be the individual of said name described in and who executed the foregoing instrument and duly acknowledged to me that he/she executed the same.

NOTARY PUBLIC STAMP	NOTARY PUBLIC
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CORPORATION - PRINCIPAL

STATE OF _____ :
: SS.
COUNTY OF _____ :

On this _____ day of _____, in the year _____, before me personally came _____, to me known, who, being by me duly sworn, did depose and say that he/she resides in _____; that he/she is _____ of _____, the corporation described in and which executed the foregoing instrument as principal; that he/she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he/she signed his name thereto by like order and with authority to do so.

NOTARY PUBLIC STAMP	NOTARY PUBLIC
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PARTNERSHIP - PRINCIPAL

STATE OF _____ :
: SS.
COUNTY OF _____ :

On this _____ day of _____, in the year _____, before me personally came _____, to me known, and known to me to be a partner of the firm of _____, and he/she duly acknowledged to me that he/she executed the same for the uses and purposes therein mentioned and with authority to do so.

NOTARY PUBLIC STAMP	NOTARY PUBLIC
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POWER OF ATTORNEY

[Attach power of attorney for attorney-in-fact who signs for Surety]

CONTRACTOR'S LABOR AND MATERIAL PAYMENT BOND

Labor and Material Payment Bond

KNOW ALL MEN BY THESE PRESENTS that:

(Here insert full name and address or legal title of Contractor)

as Principal, hereinafter called "Principal", and,

(Here insert full name and address or legal title of Surety)

as Surety, hereinafter call the Surety, are held and firmly bound unto:

(Here insert full name and address or legal title of Owner)

DREXEL UNIVERSITY

as Obligee, hereinafter called Obligee, for the use and benefit of Obligee and the claimants hereinbelow defined, in the amount of _____, for the payment of which Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has by written agreement dated _____ entered into a contract with Owner for
(Here insert full name, address and description of project)

in accordance with drawings and specifications prepared by
(Here insert full name and address or legal title of Architect)

which contract is by reference made a part of, and it hereinafter referred to as the "Contract".

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, with respect to Owner, this obligation shall be void if Principal (a) shall promptly make payment to all claimants as hereinafter defined, for all labor, materials and equipment used or reasonably required for use in the performance of the Contract and (b) shall defend, indemnify and hold harmless the Owner from all claims, demands, mechanic's liens, or suits for the payment of labor, materials and equipment used or reasonably required for use in the performance of the Contract; otherwise it shall remain in full force and effect subject, however to the conditions set forth below. With respect to claimants, this obligation shall be void if Principal promptly makes payment for all sums due, whether to claimants or Owner; otherwise it shall remain in full force and effect subject, however to the conditions set forth below.

1. A claimant is defined as one having a direct contract with the Principal or with a subcontractor or a subsubcontractor of the Principal for labor, materials or equipment, used or reasonably required for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

2. The above named Principal and Surety hereby jointly and severally agree with the Obligees that every claimant as herein defined, who has not been paid in full before the expiration period of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for the use of such claimant, prosecute the suit to the final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The Obligees shall not be liable for the payment of any costs for expenses of any such suit.

3. No suit of action shall be commenced hereunder by any claimant:

a) Unless claimant, other than one having a direct contract with the Principal, shall have given written notice to any two of the following: the Principal, the Obligees, or the Surety above named, within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished or for whom the work or labor was done or performed. Such notice shall be signed by mailing the same registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal, Obligees or Surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer.

b) After the expiration of one (1) year following the date on which Principal ceased work on said Contract, it being understood, however, that if

any limitation embodied in this Bond is prohibited by any law controlling the construction hereof, such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

c) Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the Project, or any part thereof, is situated, or in the United States District Court for the district in which the aforesaid project, or any part thereof, is situated, and not elsewhere.

4. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of mechanics' liens, which may be filed of record against said improvement, whether or not claim for the amount of such lien be presented under and against this Bond.

5. The Surety hereby waives notice of any change, including without limitation changes of time, to the Contract or to related subcontracts, purchase orders and other obligations.

Signed and sealed this ____ day of ____, 20 ____ .

(Witness)

(Principal) (Seal)

(Title)

(Witness)

(Surety) (Seal)

(Title)

ACKNOWLEDGMENTS TO BOND

SURETY ACKNOWLEDGMENT

STATE OF _____ :
: SS.
COUNTY OF _____ :

On this _____ day of _____ in the year _____, before me personally came _____, to me known, who being by me duly sworn, did depose and say that he/she resides in _____; that he/she is the attorney-in-fact of _____, the corporation described in and which executed the above instrument as surety; that he/she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he/she signed his/her name thereto by like order and with authority to do so.

NOTARY PUBLIC STAMP	NOTARY PUBLIC
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INDIVIDUAL - PRINCIPAL

STATE OF _____ :
: SS.
COUNTY OF _____ :

On this _____ day of _____ in the year _____, before me personally came _____, to me known and known to me to be the individual of said name described in and who executed the foregoing instrument and duly acknowledged to me that he/she executed the same.

NOTARY PUBLIC STAMP	NOTARY PUBLIC
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CORPORATION - PRINCIPAL

STATE OF _____ :
: SS.
COUNTY OF _____ :

On this _____ day of _____, in the year _____, before me personally came _____, to me known, who, being by me duly sworn, did depose and say that he/she resides in _____; that he/she is _____ of _____, the corporation described in and which executed the foregoing instrument as principal; that he/she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he/she signed his name thereto by like order and with authority to do so.

NOTARY PUBLIC STAMP	NOTARY PUBLIC
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PARTNERSHIP - PRINCIPAL

STATE OF _____ :
: SS.
COUNTY OF _____ :

On this _____ day of _____, in the year _____, before me personally came _____, to me known, and known to me to be a partner of the firm of _____, and he/she duly acknowledged to me that he/she executed the same for the uses and purposes therein mentioned and with authority to do so.

NOTARY PUBLIC STAMP	NOTARY PUBLIC
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POWER OF ATTORNEY

[Attach power of attorney for attorney-in-fact who signs for Surety]

EXHIBIT 1

List of Drawings, Specifications, Addenda and other Documents on
which the Stipulated Sum is based

EXHIBIT 2

Allowance Items

EXHIBIT 3

Assumptions and Clarifications to the Stipulated Sum

EXHIBIT 4

Alternates included in the Stipulated Sum, and open alternates not yet selected

EXHIBIT 5

Unit Prices

EXHIBIT 6

List of Contractor's key personnel assigned to Project.

EXHIBIT 7

Contractor's Approved CPM Schedule for the Project

**GENERAL CONDITIONS OF THE CONTRACT FOR
CONSTRUCTION (INCLUDING SUPPLEMENTARY
CONDITIONS)**

General Conditions of the Contract for Construction

TABLE OF ARTICLES

1. GENERAL PROVISIONS
2. OWNER
3. CONTRACTOR
4. ADMINISTRATION OF THE CONTRACT
5. SUBCONTRACTORS
6. CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
7. CHANGES IN THE WORK
8. TIME
9. PAYMENTS AND COMPLETION
10. PROTECTION OF PERSONS AND PROPERTY
11. INSURANCE AND BONDS
12. UNCOVERING AND CORRECTION OF WORK
13. MISCELLANEOUS PROVISIONS
14. TERMINATION OR SUSPENSION OF THE CONTRACT
- 15-22: SUPPLEMENTARY CONDITIONS

ARTICLE 1 GENERAL PROVISIONS

1.1 BASIC DEFINITIONS

1.1.1 THE CONTRACT DOCUMENTS

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

1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and Contractor, (2) between the Owner and a Subcontractor or Sub-subcontractor, (3) between the Owner and Architect or (4) between any persons or entities other than the Owner and Contractor. The Contract Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than Owner and Contractor; provided, however, it is understood and agreed that Owner is an intended third-party beneficiary of all subcontracts, all purchase orders, and all other agreements between Contractor and third parties relating to the Project, including without limitation Contractor's agreements with any subcontractors. Contractor shall incorporate the obligations of Contractor under this Agreement into its respective subcontracts, purchase orders and other agreements with third parties.

1.1.3 THE WORK

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

1.1.4 THE PROJECT

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

1.1.5 THE DRAWINGS

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

1.1.6 THE SPECIFICATIONS

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

1.1.7 THE PROJECT MANUAL

The Project Manual is a volume assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

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

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

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

1.3 CAPITALIZATION

1.3.1 Terms capitalized in these General Conditions include those which are (1) specifically defined, (2) the titles of numbered articles and identified references to Paragraphs, Subparagraphs and Clauses in the document or (3) the titles of other documents published by the American Institute of Architects.

1.4 INTERPRETATION

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

1.5 EXECUTION OF CONTRACT DOCUMENTS

1.5.1 The Contract Documents shall be signed by the Owner and Contractor. If either the Owner or Contractor or both do not sign all the Contract Documents, the Architect shall identify such unsigned Documents upon request.

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

1.6 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

1.6.1 The Drawings, Specifications and other documents, including those in electronic form, prepared by the Architect and the Architect’s consultants are Instruments of Service through which the Work to be executed by the Contractor is described. The Contractor may retain one record set. Neither the Contractor 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 or the Architect’s consultants, and unless otherwise indicated the Architect and the Architect’s consultants shall be deemed the authors of them and will retain all common law, statutory and other reserved rights, in addition to the copyrights, subject to any separate agreement between the Architect and the Owner with regard to ownership rights. All copies of Instruments of Service, except the Contractor’s record set, shall be returned or suitably accounted for to the Owner and the Architect, on request, upon completion of the Work.

The Drawings, Specifications and other documents prepared by the Architect and the Architect’s consultants, and copies thereof furnished to the Contractor, are for use by the Contractor solely with respect to this Project. They are not to be used by the Contractor 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, Architect and the Architect's consultants, subject to any separate agreement between the Architect and the Owner with regard to ownership rights. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' or Owner's copyrights or other reserved rights.

Notwithstanding anything to the contrary in these General Conditions or the Agreement, the ownership rights with regard to the plans and specifications for the mechanical, electrical, fire protection and plumbing systems ("MEP Systems") are as set forth in the Agreement.

ARTICLE 2 OWNER

2.1 GENERAL

2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing an individual to be the Owner's Project Manager to act as its representative with regard to the Project. The Owner's Project Manager shall have responsibility and authority for the day-to-day management and coordination of design services and construction services on the Project, and for the transmission of information and requests from the Contractor to the Architect, and to other personnel in the Owner's Facilities Department as may be appropriate, and for the transmission of responses thereto. Owner is a university, and no deans, vice-deans or other representatives of any schools within the university have authority to make decisions on behalf of Owner with regard to this Agreement, and Contractor shall not request or rely upon any directions or statements from any such persons. All decisions shall be communicated to Contractor by the Owner's Project Manager.

2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

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

2.2.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site to the extent reasonably required for the Work. Except as provided in paragraphs 3.2.1 through 3.2.4 and 4.3.4 of these General Conditions, the Contractor shall otherwise be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

2.2.2.1 Notwithstanding anything to the contrary in this section 2.2.2, the existence and location of utilities indicated on the plans are not guaranteed by Owner, and they shall be investigated and verified in the field by Contractor before starting work. Subject to the preceding sentence, the Contractor shall not be liable for inaccurate utility locations which may be shown in Owner furnished plans. Excavation and other work in the vicinity of existing structures and utilities shall be carefully done by hand.

2.2.2.2 The Contractor shall be responsible for any damage to, and maintenance and protection of, known existing utilities and structures.

2.2.2.3 The Contractor shall promptly notify Owner of:

1. the existence and location of any utilities found but not indicated on the plans;

2. the location of utilities indicated on the plans but found existent in a different location than indicated; and
3. the absence of utilities indicated on the plans.

2.2.2.4 The Contractor (with the cooperation of the Owner) will arrange with the utility companies to remove or relocate utility lines as required.

2.2.3 Information or services required of the Owner by the Contract Documents shall be furnished by the Owner with reasonable promptness. Any other information or services relevant to the Contractor's performance of the Work under the Owner's control shall be furnished by the Owner after receipt from the Contractor of a written request for such information or services.

2.2.4 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, such copies of Drawings and Project Manuals as are reasonably necessary for execution of the Work.

2.3 OWNER'S RIGHT TO STOP THE WORK

2.3.1 If the Contractor 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, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Subparagraph 6.1.3.

2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

2.4.1 If the Contractor 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 such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner, in addition to any other damages incurred by the Owner. This right of Owner shall be in addition to and not in limitation of Owner's rights under other provisions of this Agreement, including without limitation Articles 12 and 14. Owner's right to stop the work shall not relieve Contractor of any of its responsibilities and obligations under or pursuant to the Contract Documents. The right of the Owner to stop the Work pursuant to this Subparagraph 2.4. 1 shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

2.5 OWNER'S ADDITIONAL RIGHTS

2.5.1 The rights stated in Article 2 shall be in addition to and not in limitation of any other rights of the Owner granted in the Contract Documents or at law or in equity.

ARTICLE 3 CONTRACTOR

3.1 GENERAL

3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative.

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

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

3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

3.2.1 Since the Contract Documents are complementary, before starting each portion of the Work, the Contractor shall carefully study and compare the various Drawings and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Subparagraph 2.2.3, shall take field measurements of and verify any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; provided, however, any errors, inconsistencies or omissions discovered by the Contractor shall be reported promptly to the Architect and Owner as a request for information in such form as the Architect and Owner may require.

3.2.2 Any design errors, omissions or inconsistencies noted by the Contractor during this review shall be reported promptly to the Architect and Owner, but it is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents. The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, but any nonconformity discovered by or made known to the Contractor shall be reported promptly to the Architect and Owner.

3.2.3 If the Contractor believes that additional cost or time is involved because of clarifications or instructions issued by the Architect in response to the Contractor's notices or requests for information pursuant to Subparagraphs 3.2.1 and 3.2.2, the Contractor shall make Claims as provided in Subparagraphs 4.3.6 and 4.3.7. If the Contractor fails to perform the obligations of Subparagraphs 3.2.1 and 3.2.2, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. The Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents, unless the Contractor recognized or reasonably should have recognized such error, inconsistency, omission or difference and failed to report it to the Architect and Owner.

3.2.4 In addition to and notwithstanding Sections 3.2.1 to 3.2.3 of the General Conditions, Contractor hereby represents and warrants that it has carefully studied and compared all of the existing Contract Documents, and that it has reported to the Owner and the Architect any errors, inconsistencies or omissions that it has discovered in the Contract Documents prior to its execution of this Agreement; and Contractor hereby represents and warrants that it has included within the Contract Sum everything that will be necessary for the proper and complete construction of the Work, including all items that Contractor knew or reasonably should have known would be necessary for the proper and complete construction of the Work whether or not specifically shown, listed or described in the Contract Documents as part of the Work; and Contractor hereby agrees that it shall not be entitled to additional compensation, whether by change order, claim or otherwise, for any such items, irrespective of whether or not such items constitute errors, inconsistencies or omissions in the Contract Documents, to the extent that Contractor knew or reasonably should have known that such items would be necessary for the proper and complete construction of the Work.

3.2.5 Where a typical or representative detail is shown on the Drawings, such detail shall constitute the standard of workmanship and materials throughout corresponding portions of the Work. Where necessary, the Contractor shall adopt such detail for use in said corresponding portions of the Work in a manner that is satisfactory to the Architect.

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES AND RESPONSIBILITIES

3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The

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

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

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

3.3.4 The Contractor shall be responsible for laying out the Work and shall be responsible for all lines, elevations, and measurements of the Work. The Contractor shall exercise proper precautions to verify all figures shown on the Drawings before laying out the Work and will be responsible for any errors or omissions resulting from his failure to exercise such precautions.

3.3.5 The Contractor shall base all measurements, both horizontal and vertical, from established bench marks. All work shall agree with these established lines and levels.

3.4 LABOR AND MATERIALS AND SELF-PERFORMED WORK

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

3.4.2 The Contractor may make substitutions only with the written consent of the Owner, after evaluation by the Architect and in accordance with a Change Order. By making requests for substitutions, the Contractor: (1) represents that the proposed substitute product is equal or superior in all respects to that specified, (2) represents that the Contractor will provide the same warranty for the substitution that the Contractor would for that specified, (3) certifies that any cost data presented is complete and includes all related costs under this Contract, (4) waives all claims for additional costs related to the substitution which subsequently become apparent; and (5) agrees that it shall coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

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

3.4.4 Unless specifically agreed otherwise by Owner and Contractor in writing in each instance, where two or more requirements in the Contract Documents conflict, the most stringent requirement shall prevail. By way of example and not limitation, in the event of discrepancies in the Contract Documents with regard to materials, material systems, equipment or equipment systems, the item of greater cost shall govern in all instances.

3.4.5 Where no specific kind, make or quality of material is specified, a first class standard article shall be furnished, subject to the prior written approval of the Owner and the Architect.

3.4.6 Where materials or makes are specified and where the words "or equal" or "approved equal" or similar

terms are used, it shall be the Contractor's responsibility to obtain prior written approval of the Owner and the Architect of any proposed manufacturer other than those named.

3.4.7 Where materials or makes are specified and where the words "or equal" or "approved equal" or similar terms, are not used, then only the makes specified shall be furnished and installed unless prior written approval of the Owner and the Architect of proposed substitutions has been obtained.

3.4.8 All such materials and makes, as set forth in paragraphs 3.4.4 through 3.4.7 above, shall be submitted to Owner and Architect (i) in sufficient time to enable Owner and Architect to review and evaluate them, and to obtain such additional information with respect to them as Owner or Architect may request, in order to enable Owner and Architect to approve or disapprove the proposed material or make prior to Contractor's award of a subcontract or purchase order for such materials and makes, or (ii) as specified for the material or make in a submittal schedule agreed upon in writing among Owner, Architect and Contractor.

3.4.9 The Contractor shall identify, purchase, and expedite the procurement of equipment, materials, and supplies which require lead time for procurement, fabrication, or manufacture in order to insure delivery, installation and construction in a timely manner. The Contractor shall provide or arrange for all temporary facilities and other requirements necessary to enable Contractor and all subcontractors to perform their work and to insure the safe and proper management, supervision, prosecution and inspection of the Project.

3.4.10 The Contractor and each subcontractor shall furnish all scaffolding, trestles, ladders and platforms, and all other equipment that are required by code and is required for the execution of the Work under its Contract. Where it becomes necessary for the Contractor or any subcontractor to move its scaffolding and/or staging to permit installation of other work, it shall do so at its own expense. This requirement does not apply to work done by Owner and Owner's separate contractors, unless their work has been previously specified, scheduled and coordinated with the Contractor. The Contractor shall check all materials and labor entering into the Work and shall keep full and detailed accounts thereof.

3.4.11 The acceptance at any time of materials by or in behalf of Owner shall not be a bar to future rejection if they are subsequently found to be defective or inferior in quality or uniformity to the material specified, or are not as represented to Architect or Owner.

3.4.12 Contractor shall be responsible for the care and storage of materials delivered to the Work or purchased for use thereon. Stored materials shall be carefully and continuously protected by Contractor from damage, vandalism or deterioration and so located as to facilitate inspection by Owner and Architect.

3.4.13 If the Contractor wishes to perform portions of the Project work itself, it shall identify such items of work, quote a firm, fixed price for that work, and provide a basis for comparing the Contractor's proposed price for that work with the cost of having an independent subcontractor perform it. The basis of comparison must be competitive bids on terms substantially similar to the terms pursuant to which the Contractor will perform the work, unless the Owner agrees, in writing, to another basis of comparison. If the Owner directs that the work be performed via subcontract rather than by the Contractor itself, and the subcontract price is higher than the Contractor's proposed price, the Owner shall issue a Change Order to the Contractor for the difference, but without any adjustment to the Contractor's Fee. If the Owner consents to have the Contractor perform a portion of the work with its own forces, that work shall be regarded as being performed directly pursuant to this Contract, and subject to its terms, and not pursuant to any subcontract. The terms upon which the Work is to be performed by the Contractor itself shall be set forth in a Change Order executed by the parties.

3.5 WARRANTY

3.5.1 The Contractor warrants to the Owner and Architect that materials 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, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper

or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect or Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is in addition to all other warranties set forth herein.

3.6 TAXES

3.6.1 The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor which are legally enacted as of the date of the Agreement between Owner and Contractor, whether or not yet effective or merely scheduled to go into effect. Taxes paid by the Contractor shall also include Unemployment, Old Age Pension, Business Privilege or other taxes imposed by local, state or federal government. Taxes and assessments on real property comprising the site of Project are to be excluded.

3.7 PERMITS, FEES AND NOTICES

3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required as of the date of the Agreement between Owner and Contractor. In the event that any applicable codes, laws, ordinances, regulations or other legal requirements applicable to the Project require that any permits be obtained by Owner, and this Agreement otherwise requires such permits to be obtained by Contractor, then Contractor shall provide Owner with all of the information necessary for Owner to obtain such permits; and Contractor shall indemnify and hold Owner harmless from and against any and all claims, damages, losses and expenses, including but not limited to attorneys fees, arising out of or resulting from any inaccurate, incomplete or otherwise improper information furnished by Contractor to Owner.

3.7.2 The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities, and requirements of Owner's property insurer, applicable to performance of the Work.

3.7.3 It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate Modification.

3.7.4 If the Contractor performs Work which it knows, or which it reasonably should know, to be contrary to laws, statutes, ordinances, building codes, or rules and regulations without notice to and approval by the Architect and Owner, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction and any damages incurred by Owner.

3.8 ALLOWANCES

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

3.8.2 Unless otherwise provided in the Contract Documents:

- .1** allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2** Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances;

- .3** whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Clause 3.8.2.1 and (2) changes in Contractor's costs under Clause 3.8.2.2.

3.8.3 Materials and equipment under an allowance shall be selected by the Owner and provided by the Contractor in sufficient time to avoid delay in the Work.

3.9 SUPERINTENDENT

3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case. The Contractor shall also ensure that each subcontractor employs a competent superintendent on site when each such subcontractor is performing work.

3.9.2 The personnel assigned by Contractor to perform services pursuant to this Agreement shall be subject to the continuing approval of the Owner, which approval shall not be unreasonably withheld. Contractor agrees that its Project Manager, Job Superintendent and other key project personnel as listed on Exhibit 6 to Amendment No. 1, once approved by Owner, shall not be changed without the prior written consent of Owner.

3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES AND BUDGETS

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

3.10.2 The Contractor shall prepare and keep current, for the Architect's and Owner's approval, a schedule and status report of submittals which is coordinated with the Contractor's construction schedule and allows the Architect or Owner reasonable time to review submittals.

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

3.10.4 Regardless of the form and degree of detail in the Project Schedule during the Pre-Construction Phase, the Project Schedule shall be maintained by the Contractor on a critical path method basis once the Construction Phase begins, unless the Owner agrees otherwise in writing. If necessary, the approved Project Schedule shall be revised by the Contractor at the start of the Construction Phase to accommodate this requirement, and the revision shall be approved by the Owner. The Project Schedule shall reflect all necessary design, bidding and award, submittal procedures, approvals, procurement, manufacturing, installation, construction, inspection, testing, and other activities that must be carried out to complete the Project. The Project Schedule shall provide for completion of the Work by the Scheduled Completion Date, and for completion of any agreed milestones by the relevant Milestone Completion Date(s). Without limitation, the Project Schedule shall provide for submission of Submittals in such time, and in such order, as will promote timely and efficient manufacture, procurement, delivery, and construction of the Work, and shall allow the Architect ten (10) business days within which to review and approve Submittals.

3.10.5 The Contractor shall continue to issue Schedule Update Reports at least monthly once the Construction Phase has begun. The Schedule Update Reports shall reflect actual conditions of Project progress as of the date of the update, identify developing delays regardless of their cause, and reflect the Contractor's best projection of the actual date by which the Project will be completed and any agreed milestones met.

3.10.6 By means of a narrative statement (not merely a critical path method schedule) the Contractor shall identify the causes of any delay or potential delay and state what, in the Contractor's judgment, must be done to avoid or reduce that delay. The Contractor shall point out in its narrative, changes that have occurred since the last update, including those related to major changes in the scope of Work, activities modified since the last update, revised projections of durations, progress and completion, revisions to the schedule logic or assumptions, and other relevant changes. Any significant variance from the previous schedule or update shall be identified. If the Owner or Architect is identified as causing any delay, the Contractor shall state specifically what actions or omissions by the Owner or Architect the Contractor claims have caused the delay.

3.10.7 The Schedule Update Reports submitted by the Contractor shall also include a "look ahead" narrative identifying actions, if any, that the Owner or Architect must take within the next month to avoid delay to the Work. In preparing the Schedule Update Reports, the Contractor may not impose upon the Owner or Architect any deadlines not agreed to by the Owner, said Owner agreement not to be unreasonably withheld. However, the Contractor may make suggestions for accelerated action by the Owner or Architect as a means of overcoming Excusable Delays.

3.10.8 All Schedule Update Reports shall be in a form reasonably acceptable to the Owner. The Owner may make reasonable requests during the Project for changes to the format or for further explanation of information provided. Submission by Contractor of updates showing that Project completion will be achieved later than the Substantial Completion Date, or that any other milestone will be completed after the relevant Milestone Completion Date, shall not constitute requests for extension of time and shall not operate to change the agreed dates. The Owner's receipt, without objection, of any schedule update showing completion of the Project or any milestone later than the currently agreed dates shall not be regarded as the Owner's agreement that the Contractor may have an extension of time, or as a waiver of any of the Owner's rights, but merely as the Contractor's representation that, as a matter of fact, the relevant Work may not be completed by the agreed dates. Changes to the Substantial Completion Date or any other agreed Milestone Completion Date(s) may be made only by Change Order.

3.10.9 The Contractor shall issue Budget Update Reports at least monthly once the Construction Phase has begun. The Budget Update Reports during the Construction Phase shall show (1) the current approved Project Budget (or the Guaranteed Maximum Price, if there is one) broken down into line items as approved by the Owner, (2) the current projected cost to complete by line item, (3) variances between budgeted and projected costs, (4) reasonably detailed accounts of costs actually committed and actually incurred, and (5) an analysis of cash flow needs in form and degree of detail satisfactory to the Owner.

3.11 DOCUMENTS AND SAMPLES AT THE SITE

3.11.1 The Contractor 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 field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be maintained in an organized manner, shall be available to the Architect and Owner, and shall be delivered to the Architect for submittal to the Owner upon completion of the Work. Shop drawings to be maintained and delivered by Contractor shall include all shop drawings required by the Contractor for actual construction or coordination of trades, in addition to those shop drawings required to be submitted to the Architect.

3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

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

3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate, for those portions of the Work for which submittals are required by the Contract Documents, the way by which the Contractor 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. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals which are not required by the Contract Documents, or which do not comply with the Contract Documents, may be returned by the Architect without action.

3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect and Owner, in an organized fashion, Shop 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 which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect without action.

3.12.6 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor 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.

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

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

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

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

Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Subparagraph 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance or design criteria set forth in the Contract Documents.

3.13 USE OF SITE

3.13.1 The Contractor 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. The Contractor shall keep its employees and the employees of its subcontractors out of areas beyond the contract limit lines, except where necessary for actual performance of work.

3.14 CUTTING AND PATCHING

3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. The Contractor shall be responsible for any cutting, fitting and patching that may be required in the Contract Documents. The Contractor shall not endanger any work of any other contractors by cutting, excavating or otherwise altering their work, and shall not cut or alter the work of any other contractor except with the written consent of the Architect.

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

3.15 CLEANING UP

3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract and, in that regard, Contractor shall clean up the premises and surrounding area on a regular basis and as frequently as necessary to keep them so free. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials. In addition to the general broom cleaning, the Contractor shall do the following special cleaning at completion of the Work: (1) remove all stains, marks, fingerprints, mortar and paint spots, and other defacements from all finished work both exterior and interior, including finished hardware and tile work, (2) employ professional window cleaners to remove putty stains and paint from all glass and mirrors and to wash and polish the same, (3) clean all fixtures and equipment, and (4) clean and polish all tile and other finished floors (vinyl tile shall be machine buffed but not waxed or polished).

3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor.

3.16 ACCESS TO WORK

3.16.1 The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located. Contractor shall provide and maintain access roads to the building(s) during construction.

3.17 ROYALTIES, PATENTS AND COPYRIGHTS

3.17.1 The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or

product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished in writing to the Architect and Owner.

3.18 INDEMNIFICATION

3.18.1 To the fullest extent permitted by law, and to the extent claims, damages, losses or expenses are not covered by Project Management Protective Liability insurance (if any) purchased by the Contractor in accordance with Paragraph 11.3, the Contractor shall indemnify and hold harmless the Owner and its trustees, officers, directors, consultants, agents and employees, from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use therefrom, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph 3.18.

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

3.18.3 In addition to the indemnity obligations set forth in Paragraphs 3.18.1 to 3.18.2 above, the Contractor shall indemnify and hold harmless the Owner and its trustees, officers, directors, consultants, agents and employees, and its separate contractors and any of their subcontractors, sub-subcontractors, agents and employees, from and against any claims against the Owner or any of them, by any employee of the Contractor, its subcontractors, anyone directly or indirectly employed by it or them or anyone for whose acts it or they may be liable, in the event of injury or death to such employee, to the fullest extent permitted by law and regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.

3.18.4 In addition to the indemnity obligations set forth in Paragraphs 3.18.1 to 3.18.3 above, the Contractor agrees, to the fullest extent permitted by the law, to defend, indemnify, and hold harmless the Owner and its trustees, officers, directors, consultants, agents and employees (collectively, "Owner's Indemnified Parties"), from and against losses to the extent caused by the breach of the Contract, or intentional, reckless or negligent acts or omissions of the Contractor, its employees or subcontractors in connection with the Project. No provision of this Contract shall be construed as a limitation on, modification of, or waiver of any of the rights the Owner has under the Contract or by law. The Contractor's duty to indemnify shall not be limited by available insurance or by applicable workers' compensation or disability benefit laws. With respect to this indemnity, the Contractor hereby expressly waives its right to assert against the Owner any immunities and defenses that it may have under such laws.

3.19 IMAGES OR REPRESENTATIONS OF PROJECT OR OWNER'S NAME

3.19.1 Any use of images or representations of the Project and/or the Owner's name promotionally or otherwise in connection with the Contractor's business shall be subject to the Owner's prior written approval, which approval may be granted or withheld in the Owner's sole discretion.

3.20 CONFIDENTIAL INFORMATION

3.20.1 "Confidential Information" shall mean that information, whether or not marked as "confidential", disclosed to the Contractor in connection with and during the term of this Agreement in connection with the

services to be performed hereunder. It shall also mean information, concepts, and methodology arising out of the work performed hereunder, including drafts and associated materials. All Confidential Information disclosed to the Contractor during the term of, or in anticipation of, this Agreement shall be deemed to be in connection with this Agreement. The term "Confidential Information" shall not mean any information which is previously known to the Contractor without obligation of confidence, or without breach of this Agreement as necessary for the defense of the Contractor; is publicly disclosed by the Owner either prior or subsequent to the Contractor's receipt of such information; or is rightfully received from a third party without obligation of confidence.

3.20.2 The Contractor agrees to hold all Confidential Information in trust and confidence and not to use such Confidential Information other than for the benefit of the Owner, during the term of this Agreement. Except as may be authorized in writing by the Owner, the Contractor agrees not to disclose any such Confidential Information, by publication or otherwise, to any person other than those who have a need to know for purposes of carrying out services in connection with this Agreement, and who agree to be bound by and comply with the provisions of this Article. The Contractor may make a reasonable number of copies of documents or other media containing Confidential Information for purposes of performing the services under this Agreement. Upon termination or expiration of this Agreement, the Contractor will promptly return to the Owner all written or descriptive matter or other documents, tapes or any other media, which contains any such Confidential Information.

ARTICLE 4 ADMINISTRATION OF THE CONTRACT

4.1 ARCHITECT

4.1.1 The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.

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

4.1.3 If the employment of the Architect is terminated, the Owner shall employ a new Architect whose status under the Contract Documents shall be that of the former Architect.

4.2 ARCHITECTS ADMINISTRATION OF THE CONTRACT

4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

4.2.2 The Architect, as a representative of the Owner, will visit the site at intervals appropriate to the stage of the Contractor's operations (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Subparagraph 3.3.1.

4.2.3 The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

4.2.4 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts, subject to Owner's review and approval.

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

4.2.6 The Architect will review and recommend approval or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Paragraphs 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's or Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

4.2.7 The Architect will prepare Change Orders and Construction Change Directives, all of which must be approved and signed by Owner.

4.2.8 The Architect (a) will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, and other required Milestone Dates under the Agreement, and (b) will receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor, and (c) will issue a final Certificate for Payment upon compliance by the Contractor with the requirements of the Contract Documents, subject to approval by Owner.

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

4.2.10 The Architect will interpret and make recommendations as to matters concerning performance under and requirements of, the Contract Documents on written request of either the Owner or Contractor, subject to approval by Owner or decisions by Architect. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Paragraph 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until 15 days after written request is made for them.

4.2.11 Interpretations and recommendations 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, and subject to Owner's approval. When making such interpretations and recommendations, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either.

4.2.12 The Architect's recommendations, if approved by Owner, on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

4.3 CLAIMS AND DISPUTES

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

4.3.2 Time Limits On Claims. Claims by Contractor must be initiated within 10 days after occurrence of the event giving rise to such Claim or within 10 days after Contractor first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the Architect and the Owner

4.3.3 Continuing Contract Performance Pending Claims And Disputes. Pending final resolution of a Claim, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents, subject to subparagraph 4.3.3.1 to 4.3.3.2 below.

4.3.3.1 If the Owner and Contractor are unable to agree as to whether or not a change has occurred that would entitle the Contractor to an adjustment to the Contract Sum and/or to the Milestone Dates (hereinafter "Disputed Work"), then the Contractor shall proceed expeditiously to perform the Disputed Work upon receipt of a written directive from Owner to do so. The Contractor shall then maintain a separate record of all of its actual costs incurred to perform the Disputed Work on a daily basis, and the Contractor may submit a claim under paragraphs 4.3 and 4.4 of the General Conditions.

4.3.3.2 If the Owner and the Contractor agree that a change has occurred, but are unable to agree as to the adjustment to the Contract Sum or the Milestone Dates resulting from the change (the "Changed Work"), then the Contractor shall proceed expeditiously to perform the Changed Work upon receipt of a written directive from Owner to do so. The Contractor shall then maintain a separate record of all of its actual costs incurred to perform the Changed Work on a daily basis, and the Contractor may submit a claim under paragraphs 4.3 and 4.4 of the General Conditions.

4.3.3.3 In order to avoid delays to the Project, Contractor shall continue to perform all of the Work, including without limitation all Disputed Work and all Changed Work, and shall not delay, slow down or refuse to perform any of the Work, pending the resolution of any or all claims and disputes; subject, however, to a reservation of rights by Contractor and Owner against each other with regard to all such claims and disputes provided that timely written notice thereof was provided by each party to the other in each instance in accordance with the Contract Documents.

4.3.4.1 Concealed Or Unknown Conditions. Contractor shall be responsible for all excavation and earth-moving operations on an unclassified basis. Contractor shall also confirm all existing topography of the Project site; and Contractor agrees that the existing topography is part of the surface and subsurface conditions for which Contractor is responsible under this Agreement. Contractor shall also be responsible for the importation and removal of all soil and other material to or from the Project site. Contractor represents and warrants that it has carefully examined, evaluated and satisfied itself as to the nature, location and character of the Project site and of the Work, including without limitation the surface and subsurface conditions, and that it has relied solely upon its own examination and evaluation, and not upon any information concerning surface or subsurface conditions supplied by Owner or Owner's agents. Any data or other information supplied by Owner or Owner's agents to Contractor concerning surface or subsurface conditions has been supplied solely for purposes of making the data and information available to Contractor as a courtesy, and not for reliance by Contractor upon said data or information. Contractor acknowledges (a) that Owner has provided Contractor with access to the Project site, and (b) that Contractor has conducted such examinations, investigations, explorations, borings, tests and studies concerning surface and subsurface conditions at and/or contiguous to the Project site as Contractor deemed appropriate. Contractor shall bear full responsibility and risk for all concealed or unknown physical conditions, whether surface or subsurface, regardless of whether such conditions are of an unusual nature, and regardless of whether such conditions differ materially from those

ordinarily found to exist and/or recognized as inherent in construction activities of the type provided for in the Contract Documents.

4.3.4.2 Exception for Concealed and Unknown Manmade Objects. Notwithstanding anything to the contrary in this section 4.3.4, however, Contractor shall be entitled to assert a Claim for a change order if it encounters concealed and unknown manmade objects below the surface of the ground that were not disclosed by Owner to Contractor and which Contractor in the exercise of due diligence could not reasonably have discovered. By way of example and not limitation, due diligence requires, among other things, a review by Contractor of utility records with regard to possible subsurface utilities not otherwise disclosed in the Contract Documents.

4.3.5 Claims For Additional Cost. If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Paragraph 10.6.

4.3.6 If the Contractor believes additional cost is involved 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 Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect or Owner, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, Claim shall be filed by Contractor in accordance with this Paragraph 4.3.

4.3.7 Claims For Additional Time

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

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

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

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

4.4 RESOLUTION OF CLAIMS AND DISPUTES

4.4.1 If a dispute, claim, or other matter in controversy arises out of or relates to this Agreement, or to the Project, and if it cannot be resolved through negotiation, then Contractor and Owner agree to proceed with formal mediation pursuant to paragraph 4.5 below, and to attempt in good faith to settle the dispute, claim, or other matter in controversy through formal mediation, before resorting and as a condition precedent to litigation.

4.4.2 Any controversy or claim arising out of or related to this Contract, or the breach thereof, shall be settled by mediation or litigation pursuant to paragraphs 4.5 and 4.6 of these General Conditions, and not by arbitration.

4.5 MEDIATION

4.5.1 See paragraphs 4.4.1 and 4.4.2 above.

4.5.2 Mediation shall be conducted by a mediator selected by agreement of the Owner and Contractor, with the cost and fees of the mediator to be equally shared by the Owner and Contractor. The mediator shall be selected by agreement of Owner and Contractor within thirty (30) days of a demand for mediation by either party. If the Owner and Contractor are unable to select a mediator by agreement within the thirty (30) day period set forth above, then the Owner and Contractor, or either of them, shall apply to the American Arbitration Association (“AAA”) for a list of qualified mediators with experience in construction disputes, and the Owner and Contractor shall select the mediator from the AAA list through the AAA. If the Owner and Contractor cannot select a mediator from the AAA list within thirty (30) days, then the AAA shall select the mediator and the Owner and Contractor hereby agree to proceed with the mediator. Information disclosed to the mediator by the Owner and the Contractor, or by witnesses, in the course of the mediation shall be confidential, and shall not be divulged by the mediator. The Owner and Contractor shall maintain the confidentiality of the mediation and shall not rely upon, or attempt to introduce as evidence in any judicial or other proceeding, any admissions made by the other in the course of the mediation proceedings, any proposals made or views expressed by the mediator, any proposals made or views expressed by any party to the mediation, or the fact that any party to the mediation had or had not expressed a willingness to accept a proposal for settlement made by the mediator.

4.5.3 Mediation shall proceed in advance of, and as a pre-condition to the filing of any legal or equitable proceedings; provided, however, that the mediation shall be completed within 90 days.

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

4.6 LITIGATION

4.6.1 Any controversy or claim arising out of or related to the Contract, or otherwise relating to the Project, shall be resolved by mediation, or by litigation if mediation is unsuccessful.

4.6.2 CONTRACTOR HEREBY WAIVES ANY AND ALL RIGHTS TO A TRIAL BY JURY WITH REGARD TO ANY AND ALL DISPUTES, CLAIMS OR OTHER MATTERS IN CONTROVERSY WITH OWNER THAT ARISE OUT OF OR RELATE TO THIS AGREEMENT, OR THAT ARISE OUT OF OR RELATE IN ANY MANNER TO THE WORK OR THE PROJECT, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE; AND CONTRACTOR ACKNOWLEDGES AND AGREES THAT THIS WAIVER OF THE RIGHT TO TRIAL BY JURY SHALL BE ENFORCEABLE IN ALL FORUMS AND JURISDICTIONS.

4.6.3 Owner’s liability to Contractor, if any, with respect to any dispute, claim or other matter in controversy, is expressly limited to Owner; and no personal liability or personal responsibility is assumed by, nor shall at any time be asserted or enforceable against, Owner’s trustees, directors, officers or other employees, or any parent, subsidiary or other affiliate of Owner, or any of their heirs, legal representatives, successors or assigns, on account of this Agreement or on account of any covenant, undertaking or agreement of Owner contained herein.

4.6.4 Contractor and Owner hereby agree that any litigation commenced by either of them against the other with regard to any and all disputes, claims or other matters in controversy that arise out of or relate to this Agreement, or that otherwise arise out of or relate in any manner to the Project, whether sounding in contract, tort or otherwise, shall be filed in, and only in, the state or federal court for the county in the state where the Project is located, and not in any other jurisdiction or forum. Contractor and Owner hereby consent to personal jurisdiction in the forums set forth above.

4.6.5 Anything herein elsewhere contained to the contrary notwithstanding, disputes, claims and questions concerning alleged violations of the terms of this Agreement relating to discrimination or of the President's Executive Order No. 11246 as amended shall be submitted to one of the following for arbitration:

PHILADELPHIA HUMAN RELATIONS COMMISSION
City Hall Annex
Philadelphia, Pennsylvania 19107

PENNSYLVANIA HUMAN RELATION COMMISSION
Pennsylvania State Office Building
Broad and Spring Garden Streets
Philadelphia, Pennsylvania 19130

SECRETARY OF LABOR Washington, D. C.,

or any such individual arbitrators as shall have been designated for the purpose by such agency or body.

ARTICLE 5 SUBCONTRACTORS

5.1 DEFINITIONS

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

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

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

5.2.1.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner and the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner or Architect will promptly reply to the Contractor in writing stating whether or not the Owner or the Architect, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner and Architect to reply promptly shall constitute notice of no reasonable objection.

5.2.1.2 All subcontracts shall include a waiver of lien provision to the extent valid under the law of the State in which the Project is located by which every subcontractor, for itself, its subcontractors, materialmen and suppliers waive any and all mechanic's liens and rights.

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

5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection.

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

5.3 SUBCONTRACTUAL RELATIONS

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

5.3.2 In the event a Subcontractor is named as a defendant in any proceeding by the Secretary of Labor under OSHA, the Contractor shall have the right to correct any alleged violations of OSHA, at the Subcontractor's expense, or to terminate the subcontract.

5.3.3 All subcontracts shall specifically:

5.3.3.1 Require submission to the Contractor of applications for payment under each subcontract to which the Contractor is a party, in reasonable time to enable the Contractor to apply for payment in accordance with the Contract Documents.

5.3.3.2 Require that all claims for additional costs, extension of time, damages for delays or otherwise with respect to subcontracted portions of the Work shall be submitted to the Contractor in sufficient time so that the Contractor may comply in the manner provided in the Contract Documents for like claims by the Contractor upon the Owner, subject in all instances to the limitations on such claims, and to the time and notice requirements applicable to such claims, set forth in the Contract Documents.

5.3.3.3 Waive all rights the subcontracting parties may have against one another for damages caused by fire or other perils covered by the property insurance in Paragraph 11.3.

5.3.3.4 Obligate each Subcontractor specifically to consent to the provisions of this Paragraph 5.3.

5.3.3.5 Obligate the Subcontractor to execute Waivers of Liens as provided in the Contract Documents.

5.3.3.6 Obligate the Subcontractor to take out and maintain insurance coverages as required under Article 11.

5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

5.4.1 The Contractor hereby assigns each Subcontract it has entered into or that it shall enter into in connection with the Work to the Owner, and its successors and assigns; provided, that such assignment shall only be effective upon (i) acceptance of such assignment by the Owner, or its successors or assigns, by notification in writing to the Subcontractor and (ii) the termination of this Contract or the Contractor's right to proceed with the Work (whether termination for default under Section 14.2 or termination for convenience under Section 14.4 hereof); and further provided that Contractor shall remain liable to its Subcontractors for (a) any pre-assignment breaches by Contractor of its obligations to its Subcontractors and (b) any monies due by

the Contractor to any Subcontractors for which the Owner is not otherwise responsible to the Contractor; and further provided that any acceptance of an assignment by Owner shall not include an acceptance of liability for such pre-assignment breaches or monies due by Contractor. Notwithstanding anything else contained in this Section 5.4.1, until such assignment is accepted by Owner, the Owner shall not be responsible for performance under the assignment or any Subcontract, and the Subcontractor shall have no claim or cause of action against the Owner.

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 to separate contractors in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Paragraph 4.3.

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

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

6.2 MUTUAL RESPONSIBILITY

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

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

6.2.3 In addition to any other rights and remedies of Owner under the Contract Documents, and subject to subparagraph 6.2.6 below, the Owner shall be reimbursed by the Contractor for costs incurred by the Owner, or which are payable by the Owner to a separate contractor or others because of delays, improperly timed activities or defective construction of the Contractor.

6.2.4 The Contractor shall promptly remedy damage wrongfully caused by the Contractor 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 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Subparagraph 3.14. If such separate contractor sues on account of any damage caused by the Contractor, the Owner shall notify the Contractor, who shall defend such proceedings at its expense, including legal fees, and if any judgment or award against the Owner arises therefrom, the

Contractor shall pay or satisfy it and shall reimburse Owner for all costs, including attorneys fees, which the Owner incurred.

6.2.6 Notwithstanding any other provisions in the Contract Documents, (a) should the Contractor, either itself or by its subcontractors or their respective sub-subcontractors, cause damage or injury to the property or work of any separate contractor with whom Owner has contracted, or by failing to perform its Work with due diligence cause any delay to any such separate contractor who suffers additional expense or damage as a result, or (b) should any separate contractor, either itself or by its subcontractors or their respective sub-subcontractors, cause damage or injury to the property or work of Contractor, or by failing to perform its work with due diligence cause any delay to Contractor who suffers additional expense or damage as a result, then (c) the Contractor and the separate contractor involved in such disputes shall either settle by agreement or litigate said claims or disputes between themselves. The Owner shall not be a party to disputes or actions between the Contractor and any separate contractor concerning such additional expense or damage. It is agreed by all parties that disputes or actions between the Contractor and any separate contractor concerning the additional expense or damage shall not delay completion of the Work, which shall be continued by the parties, subject to the rights hereinbefore provided. It is agreed by the parties to this Agreement (the Owner as promisee and the Contractor as promisor) that the intent of this clause is to benefit the separate contractors on the Project or related projects and to serve as an indication of the mutual intent of the Owner and the Contractor that this clause shall raise such separate contractors to the status of third party beneficiaries for claims against the Contractor, but only as to the terms and conditions of Subparagraphs 6.2.1 through 6.2.6 hereof. The Contractor further agrees that Subparagraphs 6.2.1 through 6.2.6 hereof are also provided as a benefit to the Contractor, and that they specifically exclude claims by the Contractor against the Owner for delays or other damages caused by separate contractors.

6.3 OWNERS RIGHT TO CLEAN UP

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

ARTICLE 7 CHANGES IN THE WORK

7.1 GENERAL

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

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

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

7.2 CHANGE ORDERS

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

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

7.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in Subparagraph 7.3.3.

7.3 CONSTRUCTION CHANGE DIRECTIVES

7.3.1 A Construction Change Directive is a written order prepared by the Architect or Owner, and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

7.3.2 A Construction Change Directive may be used by the Owner in the absence of total agreement on the terms of a Change Order.

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

- .1** mutual written 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 in writing;
- .3** cost to be determined in a manner agreed upon by the parties in writing and a mutually acceptable fixed or percentage fee in writing; or
- .4** as provided in Subparagraph 7.3.6.

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

7.3.5 A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor 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 Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Architect 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, subject to Subparagraph 7.5.1 below. In such case, and also under Clause 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this 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' compensation insurance;
- .2** costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3** rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4** costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5** additional costs of supervision and field office personnel directly attributable to the change.

7.3.7 The amount of credit to be allowed by the Contractor 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 Pending final determination of the total cost of a Construction Change Directive, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Architect will make an interim determination for purposes of monthly certification for payment for those costs, subject to approval by Owner. That determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a claim in accordance with Article 4.

7.3.9 When the Owner and Contractor agree in writing with the determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement in writing upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

7.4 MINOR CHANGES IN THE WORK

7.4.1 The Owner will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly; and the Contractor shall receive no additional compensation therefor, nor shall there be any change in the Contract Time as a result thereof.

ARTICLE 8 TIME

8.1 DEFINITIONS

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

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

8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Paragraph 9.8, provided that certificates of occupancy or similar governmental authorizations, if required for occupancy, have been issued by all governmental authorities having jurisdiction with regard to the Project.

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

8.2 PROGRESS AND COMPLETION

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

8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Contract Documents or a notice to proceed given by the Owner, the Contractor 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 Contractor shall proceed expeditiously and continuously with adequate forces and shall achieve Substantial Completion and Final Completion by the Milestone Dates set forth in the Agreement.

8.3 DELAYS, EXTENSIONS OF TIME AND DAMAGES FOR DELAY

8.3.1 See section 3.2 of the Agreement for the required Substantial Completion Date and any other required Milestone Dates..

8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Paragraph 4.3.

8.3.3 Force Majeure. Force majeure shall mean acts of God, area-wide labor disputes (whether lawful or not) to the extent not caused by Contractor, action or inaction by a governmental authority to the extent not caused by Contractor, war, civil riots, floods, natural disasters, fire, orders of any court or public authority having jurisdiction to the extent not caused by Contractor, adverse weather conditions which could not be reasonably anticipated, unavoidable casualties and any other cause not reasonably within the control of the Contractor and which by the exercise of due diligence the Contractor could not have, wholly or in part, prevented or overcome. Delays by Contractor's subcontractors or suppliers do not constitute force majeure, unless the delay by the subcontractor or supplier was itself caused by force majeure as defined in this paragraph.

8.3.4 Delays And Extensions Of Time If the Contractor's performance is delayed, because of Force Majeure events, acts or neglect of or interference by the Owner or Architect, changes ordered in the Work not caused by the fault of the Contractor, or other events (if any) which would entitle Contractor to an extension of time under the terms of this Agreement, and the Contractor would have otherwise been able to perform its obligations under the Contract Documents in a timely manner but for that delay, then, absent fraud by Owner, the Contractor's sole remedy shall be an extension of time for performance for a period equal to the extent of the delay, with no increase in the Contract Sum except as provided in Section 8.3.5 of these General Conditions (unless Owner in its sole discretion directs acceleration of the Work rather than granting an extension of time to which Contractor is otherwise entitled). To qualify for consideration for an extension of time, the Contractor must demonstrate that the delay is on the critical path of the Project Schedule, utilizing a critical path method analysis, in addition to satisfying all other requirements set forth in the Contract Documents. In the event of an occurrence which the Owner determines may justify delay, then, provided that the Contractor has timely requested an extension of time in accordance with the terms of this Agreement, the Contract Time shall be extended by Change Order for the length of time actually and directly caused by such occurrence; provided further, however, that such extension of the Contract Time shall be net of any delays caused by or due to the fault or negligence of the Contractor or any of the subcontractors or which are otherwise the responsibility of the Contractor or any of the subcontractors, and shall also be net of the amount of time by which the progress of the Work is ahead of the Project Schedule. The Contractor shall, in the event of any occurrence likely to cause a delay for which the Contractor would otherwise be entitled to an extension of time, cooperate in good faith with the Architect and the Owner to minimize and mitigate the impact of any such occurrence and do all things reasonable under the circumstances to achieve this goal. Except as provided in Section 8.3.5 of these General Conditions, the Contractor shall not be entitled to any damages for delay, disruption, interference or impact, or any increase in the Contract Sum, because of any delay, no matter how or by whom caused.

No time extensions will be granted due to jobsite labor disputes unless the labor dispute is area-wide. In no event shall jurisdictional labor disputes concerning this Project be a basis for a time extension.

No time extension will be granted for adverse weather conditions (which for purposes of the Contract Documents shall mean weather conditions which preclude the safe performance of Work on the critical path of the then-current Project Schedule) until the Contractor demonstrates that the total number of days by which the Contractor has been delayed due to adverse weather conditions exceeds the normal number of days of adverse weather for the region in which the Project is located, as determined over the twenty year period prior to the dates in question, as represented in the reports of the National Oceanic and Atmospheric Administration, closest reporting center to the Site. Contractor acknowledges that it has already made provision for such normal days of adverse weather in formulating the Project Schedule. The number of days of adverse weather for this purpose shall be determined on a monthly basis.

No extension of time will be granted if the Contractor is concurrently delayed by events within the control of Contractor, any of its subcontractors or anyone providing services or materials on their behalf.

8.3.5 Damages For Delays. Extensions of time shall be the Contractor's exclusive remedy for any delay, disruption or active interference, no matter how or by whom caused, absent fraud by Owner, unless the aggregate delays to the critical path caused exclusively by the Owner exceed (a) forty-five (45) days for projects with a duration of more than one year, (b) thirty (30) days for projects with a duration longer than six months but less than one year, and (c) twenty-one (21) days for projects with a duration of less than six months. This time period is referred to as the "No Damages for Delay Time Period"; and the Contractor accepts the risk of any increased or additional costs during the No Damages for Delay Time Period, and the Contractor represents and agrees that it has provided for this risk in the Contract Sum. The Contractor shall be entitled to an increase in the Contract Sum only to the extent that the aggregate delays to the Work on the critical path caused solely by the Owner exceed the No Damages for Delay Time Period; and any increase to the Contract Sum shall be limited to the amount by which the Contractor incurs increased or additional costs during the time period starting after the No Damages for Delay Time Period. The Contractor shall not in any event be entitled to lost profits or consequential damages in connection with any delay. Notwithstanding any other provision of these General Conditions, the Contractor shall not in any event be entitled either to extensions of time or adjustments in the Contract Sum with respect to delays which it would have experienced due to events within the control of the Contractor, any of its subcontractors or anyone providing services or materials on their behalf, even in the absence of any delay caused by Owner or by causes otherwise beyond the control of the Contractor, its subcontractors and anyone providing services or materials on their behalf (i.e., concurrent delays). Further, in no event shall the Contractor be entitled to increased compensation on account of its home office overhead, unabsorbed or under-absorbed overheads, or other indirect costs, whether based on an Eichleay calculation or otherwise; and in no event shall the Contractor be entitled to increased compensation based on its own or a subcontractor's claimed losses on other projects or work foregone, or any other alleged costs or losses not arising directly from this 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 Contractor for performance of the Work under the Contract Documents. Notwithstanding anything to the contrary contained in the Contract Documents, the Owner may withhold any payment to the Contractor hereunder if and for so long as the Contractor fails to perform any of its obligations hereunder or otherwise in default under any of the Contract Documents; provided, however, that any such holdback shall be limited to an amount sufficient to cure any such default or failure of performance by the Contractor.

9.2 SCHEDULE OF VALUES

9.2.1 Before the first Application for Payment, the Contractor shall submit to the Owner a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

9.3 APPLICATIONS FOR PAYMENT

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

9.3.1.1 As provided in Subparagraph 7.3.8, such applications may include requests for payment on account of changes in the Work which have been properly authorized by Construction Change Directives, or by interim written determinations of the Architect approved in writing by the Owner, but not yet included in Change Orders.

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

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

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

9.4 CERTIFICATES FOR PAYMENT

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

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

9.5 DECISIONS TO WITHHOLD CERTIFICATION

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

Owner's approval. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Subparagraph 3.3.2, because of:

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner, in Owner's sole discretion, is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or 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;
- .7 persistent failure to carry out the Work in accordance with the Contract Documents; or
- .8 any claims of Owner against Contractor.

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

9.6 PROGRESS PAYMENTS

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

9.6.2 The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor 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 Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

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

9.6.4 Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law.

9.6.5 Payment to material suppliers shall be treated in a manner similar to that provided in Subparagraphs 9.6.2, 9.6.3 and 9.6.4.

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

9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or

both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

9.6.8 Each Application for Payment submitted by the Contractor shall show the current percentage of completion on a line-item basis. Each Application for Payment shall be supported by the following documentation, each in a form satisfactory to the Owner:

- (a) The Contractor's Monthly Affidavit, Release and Waiver of Liens, in the form attached as Exhibit "B-1" of the Agreement, with respect to work performed and materials supplied for the Project and monies to be paid pursuant to the Application for Payment.
- (b) A Monthly Affidavit, Release and Waiver of Liens from each and every Subcontractor, in the form attached as Exhibit "B-2" of the Agreement, with respect to work performed and materials supplied for the Project, unless this requirement is waived in writing by Owner as to any particular Subcontract(s).
- (c) Statement of account, indicating the Subcontract amounts, monies paid to date and monies due the Subcontractors for work performed on the Project.
- (d) Such other documents in form, scope and substance as the Owner may require or as the Contract Documents require for disbursement of funds.
- (e) Should Contractor fail or be unable to provide an Affidavit, Release and Waiver of Liens from a Subcontractor with respect to work performed and materials supplied for the Project as set forth above, then Owner may withhold payment from Contractor in such amounts as Owner may determine are necessary to protect Owner against claims or liens by such Subcontractor or its Sub-subcontractor/Supplier, subject to Contractor's right to provide Owner with a bond (from a surety company, and in form and substance, acceptable to Owner) to indemnify, defend and hold harmless the Owner against all possible claims and liens by such Subcontractor and its Sub-subcontractors/Suppliers.

9.6.9 The initial payment by the Owner to the Contractor on account of Work performed by any Subcontractor shall be conditioned upon the Owner's prior receipt of the following documentation:

- (a) The Subcontractor's approved Certificate of Insurance (original).
- (b) The Subcontractor's schedule of values, approved by the Architect and the Owner.
- (c) A time-stamped copy of a fully executed and filed Waiver of Liens, in the form attached as Exhibit "A" to the Agreement, signed by the Contractor on behalf of its Subcontractors and their Sub-subcontractors/Suppliers, if the Contractor has posted a Payment Bond.
- (d) The Subcontractor's payment and performance bonds if and as required in the Contract Documents.
- (e) Such other documentation as the Owner may from time to time reasonably require.

9.6.10 Payment For Materials. Unless otherwise agreed in writing, the Owner will make payment only on account of materials or equipment purchased by the Contractor for installation and incorporation into the Work when such materials have been installed or, if approved for billing by Owner in writing in its sole discretion, when they are needed to maintain the sequence of the Work and have been delivered to and safely stored and protected at the Site. If the Contractor desires to store any materials or equipment at some secure place other than the Site, it shall first obtain the written permission of the Owner and, if the Owner (in its sole discretion) provides its written permission, shall comply with the Owner's requirements, including without limitation Owner's requirements for an acceptable storage facility, insurance, bills of sale or invoices, marking and segregation of stored items, or otherwise. The Contractor shall be responsible for the safety and security of all

stored materials or equipment, whether stored on or off the Site. Engineering tests or test results are not considered Materials or equipment incorporated into the Work and the costs for them shall be prorated over the duration of the Project

9.7 FAILURE OF PAYMENT

9.7.1 If the Architect does not issue a Certificate for Payment, through no fault of the Contractor and without reasonable cause, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor without reasonable cause, within seven days after the date established in the Contract Documents the amount certified by the Architect, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents. Notwithstanding anything to the contrary in this paragraph 9.7.1, however, if the Owner and the Contractor have a dispute with regard to any particular items included in the Contractor's Application for Payment, then such disputes shall be resolved pursuant to subparagraphs 4.3.3.1 through 4.3.3.3 of these General Conditions, and the Contractor shall not delay, slow down or refuse to perform any of the Work and rather shall abide by subparagraphs 4.3.3.1 through 4.3.3.3.

9.8 SUBSTANTIAL COMPLETION

9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use, subject to Paragraph 8.1.3 above. The Contractor shall secure and deliver to the Owner written warranties and guarantees from its Subcontractors, Sub-subcontractors and suppliers bearing the date of Substantial Completion or some other date as may be agreed to by the Owner and stating the period of warranty as required by the Contract Documents. Operating Manuals shall be provided at the same time. In addition the Owner will not consider a project as substantially complete prior to the issuance of a substantially completed close out book as specified in these General Conditions. The Contractor is responsible for the warranty of all Work, whether performed by it or by its Subcontractors at any tier.

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

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

9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate, which shall be within thirty (30) days of the date of Substantial Completion. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of all the Work, unless otherwise provided in the Certificate of Substantial Completion.

9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof

as set forth in the Contract Documents. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

9.9 PARTIAL OCCUPANCY OR USE

9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage; provided such occupancy or use is consented to by the insurer as required under Clause 11.4.1.5 and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect and Owner as provided under Subparagraph 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work for these purposes shall be determined by written agreement between the Owner and Contractor.

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

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

9.9.4 The Owner shall have the right, upon (10) days' written notice to the Contractor, to take possession of and use any completed or partially completed portions of the Work, notwithstanding that the time for completing the Work on such portions may not have expired; but such possession and use shall not be deemed an acceptance of the Work or any part thereof which is not in accordance with the Contract Documents. If such prior use materially impedes the operations of the Contractor, it shall be entitled to reasonable compensation therefor and to a reasonable extension of time to the appropriate Milestone Dates.

9.10 FINAL COMPLETION AND FINAL PAYMENT

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

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

the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

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

9.10.4 No entrance, use or occupancy of all or part of the Project shall constitute an acceptance of Work or a waiver of the Owner's claims against Contractor.

9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of all claims by that payee.

9.10.6 Releases Of Lien - Final Payment. The Contractor shall submit, with its Application for Final Payment, (a) a Final Payment Affidavit, Release and Waiver of Liens executed by Contractor in the form attached as Exhibit "C-1" of the Agreement, (b) a Final Payment Affidavit, Release and Waiver of Liens executed by each Subcontractor in the form attached as Exhibit "C-2" of the Agreement, and (c) a Final Payment Affidavit, Release and Waiver of Liens executed by each Sub-subcontractor/Supplier in the form attached as Exhibit "C-3" of the Agreement, releasing all claims and waiving all mechanics' and materialmen's liens when final payment is made. Should Contractor fail or be unable to provide a Final Payment Affidavit, Release and Waiver of Liens from a Subcontractor and its Sub-subcontractors/Suppliers with respect to work performed and materials supplied for the Project as set forth above, then Owner may withhold payment from Contractor in such amounts as Owner may determine are necessary to protect Owner against claims or liens by such Subcontractor or its Sub-subcontractor/Supplier, subject to Contractor's right to provide Owner with a bond (from a surety company, and in form and substance, acceptable to Owner) to indemnify, defend and hold harmless the Owner against all possible claims and liens by such Subcontractor and its Sub-subcontractors/Suppliers.

9.10.7 The Owner may require the Contractor to submit a certification that all amounts previously due to Subcontractors have been paid before making the Final Payment

9.11 DIRECT PAYMENT TO SUBCONTRACTORS.

9.11.1 Notwithstanding anything to the contrary contained in the Contract Documents, if the project is located in Philadelphia County, PA, then the Owner, in its sole discretion, may direct that the Contractor, acting pursuant to written authorization by the Owner, which authorization (if given) shall be deemed conditioned upon the Owner's written approval of the Subcontract sum or total delivered contract price for the Subcontract or materials purchase in question, shall purchase materials and hire all labor and engage all Subcontractors, and the Owner shall, and hereby in such event does, (1) pledge its credit and agrees to be liable in the first instance to the Subcontractors and material suppliers, whose Subcontract sums and delivered materials prices are so approved, for respectively such approved sums and delivered materials prices (to which they become entitled for performance of their agreements), as distinguished from merely guaranteeing payments to them or undertaking to reimburse the Contractor for the cost of such Subcontracts and materials contracts, and (2) agree to make payments, limited to the amounts so approved by the Owner and any change orders issued or approved by Owner, directly to the Subcontractors and materialmen, when and if such payments are authorized by Owner and the Architect and the Contractor as more fully set forth in this Agreement. Other than as set forth in the immediately preceding sentence, the Contractor shall remain liable under each Subcontract and materials contract as if and as though the Contractor were responsible for making all payments thereunder and for all of Contractor's obligations set forth in the Contract Documents with respect to the Subcontracts, Subcontractors, materials contracts and materialmen, including, without limitation, Contractor's principal and direct liability for

any claims for incidental, special or consequential damages (including, without limitation, damages for delay, interference and/or loss of efficiency), and for any and all additional compensation of any type or amount not approved by Owner. It is the intent of both parties to this Agreement that no other rights and responsibilities among Owner, Architect, the Contractor and the Subcontractors and materialmen shall be affected hereby, including but not limited to the Contractor's responsibility to Owner for the proper and timely performance of the Work (whether performed by Contractor, the Subcontractors or anyone else on its or their behalf), and the Contractor's responsibility to pursue and defend all disputes between and among Owner, Contractor and Subcontractors and materialmen, whether regarding payments to Subcontractors and materialmen or any other matters. If Owner elects to utilize this provision for direct payment to subcontractors, then Contractor shall not include in its invoices to Owner amounts allocated to the payment of the Philadelphia Business Privilege Tax, with respect to payments from Owner to Subcontractors and material suppliers.

9.11.2 If Owner exercises its right to elect direct payment of subcontractors, then Contractor agrees that each Subcontract and material contract entered into by Contractor shall contain the following provision:

COMPENSATION TO BE PAID BY CONTRACTOR. It is intended that [name of Subcontractor or supplier] shall be a third party beneficiary of Paragraph of the Principal Contract, in which Owner authorizes Contractor in connection with the Project to purchase materials, hire labor and engage Subcontractors, in respect of which Owner shall be responsible for paying each Subcontractor or vendor directly those Subcontract sums and materials purchase amounts as are approved by Owner, and in any change orders issued pursuant to the Principal Contract in such amounts as are approved by Owner. No other right or responsibility under the Principal Contract or any other contract shall be affected in connection with the foregoing. No other provision in the Principal Contract or the Contract Documents shall create or give to Subcontractor, materialman or any third parties any claim or right of action against the Owner, and it is specifically agreed that no Subcontractor, materialman or any third party may assert (and each hereby waives) against the Owner any claim for incidental, special, and/or consequential damages, which shall include, but is not limited to, any damages for delay, interference, and/or loss of efficiency, and any claim for any and all additional compensation of any type or amount not approved by Owner. At the direction of the Architect and Contractor, Owner shall make the monthly payments to Subcontractor that are approved in accordance with the payment provisions of the Principal Contract.

9.11.3 The Contractor shall indemnify, defend and hold harmless the Owner from any responsibility and liability to any Subcontractor or materialmen, unless the Owner is determined by judicial decision to be responsible or liable to such party under this Paragraph 9.11. Upon such determination, the Contractor shall be reimbursed for all costs, including attorney's fees, incurred in defending the interests of the Owner (plus interest as set forth in the Contract Documents), unless the Contractor is determined by judicial decision to be the party primarily liable as between Owner and Contractor.

9.11.4 Owner shall have the right to withdraw any Subcontract or material purchase from the application of Paragraphs 9.11.1 to 9.11.3 by written notice to Contractor and the Subcontractor or materialman before Owner gives its written approval of the Subcontract sum or delivered materials price.

9.11.5 All payments made by Owner to Subcontractors or others under this Paragraph 9.11 or otherwise, shall be credited against payments otherwise due by Owner to Contractor under this Agreement, and shall be included in and subject to the Contract Sum.

9.11.6 Any payment bond or performance bonds, and any subcontractor default insurance, required under the Contract Documents shall apply, to the extent of their terms, to all payments due by Contractor to each Subcontractor, materialman or other, or due by any them to any sub-subcontractor, sub-materialman or other, irrespective of whether or not Owner has agreed to make direct payment to Subcontractors or others under this Paragraph 9.11, and irrespective of any provision of this Paragraph 9.11.

9.11.7 Any performance bond or payment bond, and any subcontractor default insurance, required under the Contract Documents shall apply to all of the Work, irrespective of whether or not Owner has agreed to make

direct payment to any of Contractor's Subcontractors or others under this Paragraph 9.11, and irrespective of any provision of this Paragraph 9.11.

9.12 OTHER CONDITIONS FOR OWNER PAYMENT TO SUBCONTRACTORS

9.12.1 Unless Owner is making direct payments to subcontractors pursuant to section 9.11 above, Contractor shall make prompt payment to all persons furnishing labor, equipment or material in the prosecution of the Work and shall cause its subcontractors, suppliers, and materialmen to make prompt payment to all such persons. In all cases of non-payment, without cause, by Contractor or any subcontractor, supplier or materialman of any sum or sums of money due to laborers or other workmen or to subcontractors, suppliers or materialmen for work performed or labor, material or equipment supplied in connection with the job, Owner is hereby authorized to pay such subcontractors, workmen, suppliers, and materialmen, which direct payments shall be deemed to be payment to Contractor under this Contract on account of the Contract Sum. If any action at law or equity shall be instituted by virtue of or under any law or statute now in force or hereafter enacted by any such persons for sums owing to them, Owner may pay all wages, damages, recoveries, costs and expenses and reasonable counsel fees arising therefrom and deduct the same from any monies due or to become due to Contractor and Owner may, from time to time, retain such reasonable sums as Owner may deem necessary for its protection or safety, and Contractor shall pay any deficiency arising therefrom upon demand.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

10.2 SAFETY OF PERSONS AND PROPERTY

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

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

10.2.2 The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss. The Contractor assumes responsibility, with respect to its operations and those of its Subcontractors relating to the Work, for strict compliance with OSHA and all other applicable laws, ordinances, rules, regulations and lawful orders of public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss.

10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities. The Contractor shall, or, in the case of its Subcontractor, require that the latter, conform any part of the Work, for which the Contractor or its Subcontractor, as the case may be, is responsible, to any order issued under OSHA.

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

10.2.4.1 In the performance of the Work, the Contractor shall transport, store, use and/or dispose of all materials categorized by any applicable law or governmental authority as petroleum products or hazardous substances in strict compliance with all applicable laws relating thereto. The Contractor shall indemnify and hold harmless the Owner, Architect, and their respective contractors, consultants, agents, and employees, from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from the Contractor's failure to comply with this Paragraph. Nothing contained in this Paragraph or in this Agreement shall obligate the Contractor to handle or remove petroleum products or hazardous materials presently located on the project site.

10.2.5 The Contractor shall promptly remedy damage and loss (including without limitation damage or loss insured under property insurance required by the Contract Documents) to property referred to in Clauses 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Clauses 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Paragraph 3.18.

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

10.2.7 The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

10.3 HAZARDOUS MATERIALS ENCOUNTERED ON THE SITE

10.3.1 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

10.3.2 The Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. The Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up, which adjustments shall be accomplished as provided in Article 7.

10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance encountered on the site presents the risk of bodily injury or death as described in Subparagraph 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) and provided that such damage, loss or expense is not due to the negligence of a party seeking indemnity.

10.4 The Owner shall not be responsible under Paragraph 10.3 for materials and substances brought to the site by the Contractor, Subcontractors, Sub-Subcontractors, or agents or employees of any of them, or other persons or entities performing or supplying portions of the Work for or on behalf of any of them, unless such materials or substances were required by the Contract Documents.

10.5 If, without negligence on the part of the Contractor, subcontractors, sub-subcontractors, suppliers, or agents or employees of any of them, the Contractor is held liable for the cost of remediation of a hazardous material or substance encountered on the site solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

10.6 EMERGENCIES

10.6.1 In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Paragraph 4.3 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

11.1 CONTRACTOR'S LIABILITY INSURANCE

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

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

11.1.2 The insurance required by Subparagraph 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be

maintained after final payment. Limits of insurance shall be the greater of the limits set forth in Article 6 of the Agreement, or as required by law.

11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required by this Paragraph 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Subparagraph 9.10.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

11.2 OWNER'S LIABILITY INSURANCE

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

11.3 PROJECT MANAGEMENT PROTECTIVE LIABILITY INSURANCE

11.3.1 Optionally, the Owner may require the Contractor to purchase and maintain Project Management Protective Liability insurance from the Contractor's usual sources as primary coverage for the Owner's, Contractor's and Architect's vicarious liability for construction operations under the Contract. Unless otherwise required by the Contract Documents, the Owner shall reimburse the Contractor by increasing the Contract Sum to pay the cost of purchasing and maintaining such optional insurance coverage. The minimum limits of liability purchased with such coverage shall be equal to the aggregate of the limits required for Contractor's Liability Insurance under Clauses 11.1.1.2 through 11.1.1.5.

11.3.2 To the extent of the amount of the damages covered by Project Management Protective Liability insurance, the Owner, Contractor and Architect waive all rights against each other for such damages, except such rights as they may have to the proceeds of such insurance. The policy shall provide for such waivers of subrogation by endorsement or otherwise.

11.4 PROPERTY INSURANCE

11.4.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Paragraph 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Paragraph 11.4 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project. The property insurance excludes the theft or loss of Contractor's and subcontractor's tools and equipment.

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

11.4.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance which will protect the interests

of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

11.4.1.3 If the Owner's property insurance has deductibles, the Contractor shall pay all costs not covered because of such deductibles up to \$100,000 per occurrence to the extent that the loss was caused by Contractor or any of its Subcontractors, Sub-subcontractors or anyone for whose acts it may be responsible to Owner.

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

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

11.4.1.6 Notwithstanding Subparagraphs 11.4.1.1 through 11.4.1.5 above, Owner, in its sole discretion, may require Contractor to purchase and maintain the builders' risk "all-risk" property insurance, rather than Owner purchasing and maintaining such insurance, in which event Contractor shall provide and maintain such insurance in compliance with all of the requirements set forth above (except that such insurance provided by Contractor shall have no deductible or self-insured retention), and such insurance shall include and protect the interests of the Owner.

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

11.4.3 Loss of Use Insurance. The Owner, at the Owners option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. If the Owner purchases and maintains such insurance, then the Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused, to the extent that the Owner's losses and other damages are covered and paid for by such insurance.

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

11.4.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Subparagraph 11.4.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

11.4.6 Before an exposure to loss may occur, the Owner shall, if Contractor so requests in writing, file with the Contractor a copy of a certificate of insurance evidencing the coverages required by this Paragraph 11.4.

11.4.7 Waivers of Subrogation. The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent of the amount of such damages covered by property insurance obtained pursuant to this Paragraph 11.4 or other

property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner. The foregoing waiver afforded the Contractor and the Architect, his consultants, agents and employees or any of them shall not extend to the liability imposed by subparagraph 3.18.3. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged. The waivers of subrogation do not apply to damages in excess of the amounts covered by the property insurance.

11.4.8 A loss insured under Owner's property insurance shall be adjusted by the Owner and made payable to the Owner subject to requirements of any applicable mortgagee clause and of Subparagraph 11.4.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

11.4.9 The Owner shall have power to adjust and settle a loss with insurers.

11.5 PERFORMANCE BOND AND PAYMENT BOND

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

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

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 or Owner's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time. Request to see such Work by the Architect or the Contractor shall be pursuant to written authorization from the Owner.

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

12.2 CORRECTION OF WORK

12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

12.2.1.1 The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional

testing and inspections and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

12.2.2 AFTER SUBSTANTIAL COMPLETION

12.2.2.1 In addition to the Contractor's obligations under Paragraph 3.5, if, within one (1) year after the later of (a) the date of Substantial Completion of all of the Work, (b) the date of final occupancy, (c) the date for commencement of warranties established under Subparagraph 9.9.1, or (d) by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Paragraph 2.4.

12.2.2.2 The one-year period for correction or further correction of Work shall be extended with respect to portions of Work first performed or corrected after Substantial Completion by the period of time between Substantial Completion and the actual performance or prior correction of the Work.

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

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

12.2.5 Nothing contained in this Paragraph 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents, including without limitation Contractor's liability to Owner in damages for defective or non-conforming work. Establishment of the one-year period for correction of Work as described in Subparagraph 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

12.3 ACCEPTANCE OF NONCONFORMING WORK

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, provided that the Owner's acceptance must be in writing, 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 shall be governed by the law of the Commonwealth of Pennsylvania.

13.2 SUCCESSORS AND ASSIGNS

13.2.1 The Owner and Contractor 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. Contractor shall not assign the Contract or sublet it as a whole without the prior written consent of Owner; nor shall Contractor assign any monies due or to become due to Contractor hereunder, without the prior written consent of the Owner. Any purported assignment by the Contractor of this Contract or of any right, title or

interest of the Contractor hereunder, made without the prior written consent of the Owner shall be absolutely void and of no effect.

13.3 WRITTEN NOTICE

13.3.1 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 mail to the last business address known to the party giving notice.

13.4 RIGHTS AND REMEDIES

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

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

13.5 TESTS AND INSPECTIONS

13.5.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect and Owner timely notice of when and where tests and inspections are to be made so that the Architect and Owner may be present for such procedures. The Owner shall bear costs of tests, inspections or approvals which do not become requirements until after the Agreement was signed.

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

13.5.3 If such procedures for testing, inspection or approval under Subparagraphs 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including without limitation those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

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

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

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

13.5.7 Neither the observations of the Owner or the Architect in connection with the Administration of the Construction Contract, nor inspections, tests or approvals by persons other than the Contractor shall relieve the Contractor from his obligations to perform the Work in accordance with the Contract Documents.

13.6 LIMITATION ON CLAIMS BY CONTRACTOR

13.6.1 Whether based on Changes, claims for equitable adjustments, claims of breach of contract, termination of contract, suspension of Work, or any other types of claims of any kind, or otherwise, the Contractor shall not request and shall not in any event be entitled to (i) consequential damages, (ii) lost profits on work not performed, (iii) attorneys' fees or (iv) any other damages, costs or expenses of any kind except for actual costs incurred on this Project, plus a reasonable allowance for overhead and profit. If the Agreement is based on a Guaranteed Maximum Price, then the reasonable allowance for the Contractor's overhead and profit shall be as set forth in Paragraph 5.1.2 of the Agreement. If the Agreement is based on a Stipulated Sum, rather than a Guaranteed Maximum Price, the reasonable allowance for Contractor's overhead and profit shall not exceed the percentage listed in the Contractor's estimate for the Project which was provided to Owner before commencement of the Work.

13.7 UTILITIES DURING CONSTRUCTION

13.7.1 The cost of all utilities required during the construction of the Project, whether for power, water, heat or otherwise, and whether temporary service or permanent service, shall be borne by the Contractor until Substantial Completion of all of the Work.

13.8 MECHANICS LIENS

13.8.1 The Contractor shall, at its sole expense, defend, indemnify, and hold harmless Owner from all mechanics' liens, or claims of rights to enforce such liens, filed or asserted by any Subcontractor or any of their respective Sub-subcontractors/Suppliers or anyone else claiming by or through any of them, against the Project or the improvements to be erected thereon arising out of any Work performed or labor or materials furnished under the Contract. Neither final payment by the Owner nor acceptance of the Work shall constitute a waiver of this duty to defend, indemnify and hold harmless Owner. If any such mechanics' lien or claim for lien shall be filed at any time, the Contractor shall promptly defend such lien or claim for lien at its sole expense (including without limitation attorneys fees and expenses), and shall pay and satisfy any lien or judgment as may be established in such case. Further, upon the filing of any such lien, the Contractor shall, at its sole expense, promptly cause the lien to be discharged, whether by posting a bond with the court or by other means acceptable to Owner; and the Contractor shall thereupon seek leave from the court to substitute itself for the Owner as the party defendant. The Contractor may litigate any lien claim or suit filed thereon, at its sole expense (including without limitation attorneys fees and expenses), provided that the Contractor causes the lien to be discharged and fulfills its obligation to defend, indemnify and hold harmless Owner. The Contractor shall reimburse the Owner for all damages and expenses incurred by the Owner, including without limitation any costs incurred by Owner (including without limitation all attorneys fees and expenses) and any amounts that Owner may be compelled to pay to bond off, discharge or satisfy any such lien or claim. Owner shall have the right to deduct any such damages and expenses from any and all sums due to Contractor, without prejudice to the right of Owner to recover any further amounts due to Owner from Contractor

13.8.2 If Owner has required Contractor to post a bond guaranteeing payment for labor and materials provided by Subcontractors and their subcontractors and suppliers ("Payment Bond"), then (i) Contractor shall obtain the Payment Bond and provide it to Owner prior to performing any Work on the Project, (ii) Contractor shall notify each Subcontractor and each subcontractor and supplier in direct privity of contract with each Subcontractor (hereinafter "Sub-subcontractor/Supplier") that it has posted a Payment Bond; and Contractor shall provide a copy of the Payment Bond to each Subcontractor, and to each such Sub-subcontractor/Supplier, upon demand, (iii) Contractor shall require each of the Subcontractors, and each of their Sub-subcontractors/Suppliers, to waive and relinquish, in their respective contracts with each other, all right to file a mechanics' lien, or notice of intention to file any lien, and each shall covenant, promise and agree that no mechanics' lien or other lien of any kind whatsoever shall be filed or maintained against the improvements represented by the Project or the estate or title of Owner in the property or the appurtenances thereto, or any part thereof, by or in the name of the Subcontractor, or any such Sub-subcontractor/Supplier, for work done or materials furnished in connection with the Subcontract for and about the Site, the Project, or any part thereof; and (iv) Contractor shall, prior to commencing work on the Project, execute and file a Waiver of Liens, in the form attached as Exhibit "A" to the Agreement, which waives and relinquishes all rights by all Subcontractors and all Sub-subcontractors/Suppliers to file a mechanics' lien, or notice of intention to file any lien, against the improvements represented by the Project or the estate or title of Owner in the property or the appurtenances

thereto, or any part thereof, by or in the name of the Contractor, the Subcontractor, or any such Sub-subcontractor/Supplier, for work done or materials furnished in connection with the Subcontract for and about the Site, the Project, or any part thereof.

13.8.3 The Contractor shall notify the Owner within two (2) days after the day on which Contractor becomes aware or should have become aware of the existence of any mechanics or materialman's lien upon or attaching to the Site or the Project. The Contractor shall immediately take action as required by Section 13.8.1 of these General Conditions with regard to any such liens.

13.9 COMMENCEMENT OF STATUTE OF LIMITATIONS FOR OWNER CLAIMS AGAINST CONTRACTOR

13.9.1 Notwithstanding any provision of the Contract Documents to the contrary, no applicable statute of limitations shall be deemed to have commenced with respect to any claims by Owner relating to any portion of the Work which the Contractor did not construct or install in accordance with the requirements of the Contract Documents and which would not be visible from an ordinary inspection without removing covered work or obtaining access to generally inaccessible areas. The applicable statute of limitations instead shall be deemed to have commenced no earlier than the date that such act or failure by Contractor is discovered by the Owner.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

14.1 TERMINATION BY THE CONTRACTOR

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

- .1** issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped;
- .2** an act of government, such as a declaration of national emergency which requires all Work to be stopped;
- .3** because the Architect, without reasonable cause, has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Subparagraph 9.4.1, or because the Owner, without reasonable cause, has not made payment on a Certificate for Payment within the time stated in the Contract Documents.

14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, the Owner orders repeated suspensions, delays or interruptions of the entire Work pursuant to paragraph 14.3 which constitute in the aggregate more than 100 percent of the total number of days scheduled for performance of all of the Work, or 180 days in any 365-day period, whichever is less.

14.1.3 If one of the reasons described in Subparagraph 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner only as set forth in Subparagraph 14.5 below.

14.1.4 If the Work is stopped for a period of 60 consecutive work days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner only as provided in Subparagraph 14.5 below.

14.1.5 If the Contractor has and exercises the right to terminate the Contract for any other reasons, then the Contractor may recover from the Owner only as provided in Subparagraph 14.5 below.

14.2 TERMINATION BY THE OWNER FOR CAUSE

14.2.1 The Owner may terminate the Contract if the Contractor:

- .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 Contractor and the Subcontractors;
- .3** persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or
- .4** otherwise is in material breach of a provision of the Contract Documents.

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 Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1** take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2** accept assignment of subcontracts pursuant to Paragraph 5.4; 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 Contractor shall not be entitled to receive further payment until the Work is finished, subject to offsets for the Owner's damages.

14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, is an obligation for payment that shall survive termination of the Contract, and is in addition to all other rights and remedies of Owner against Contractor, including without limitation Contractor's liability to Owner under the Agreement for late completion damages.

14.2.5 If the Owner terminates the Contract for cause, and if it is subsequently determined in litigation that the termination for cause was not justified, then the Contractor shall be entitled to compensation only as set forth in and subject to the limits of paragraph 14.5 below.

14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

14.3.2 If the Owner exercises its rights under Subparagraph 14.3.1 above, the Contract Sum and Contract Time shall be adjusted only for increases in the cost (including profit on the costs) and time caused by suspension, delay or interruption as described in Subparagraph 14.3.1, and Contractor shall be entitled to receive payment only as set forth in Subparagraph 14.5 below. No adjustment shall be made to the extent:

- .1** that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or

- .2 that an equitable adjustment is made or denied under another provision of the Contract.

14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

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

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

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

14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment only as set forth in Subparagraph 14.5 below, and subject to Subparagraph 14.4.4 below

14.4.4 Notwithstanding the provisions of Subparagraph 14.2, the Owner may, at any time and for any reason during the course of the Work, terminate the Contract or the Contractor's right to proceed with the Work under the Contract by giving written notice to the Contractor of such termination. In such event, the Owner may take possession of and utilize in completing the Work such materials, tools, equipment, appliances, and paint as may be on the Site or stored off-Site for the Project and necessary therefor. In the event of such a termination by the Owner for convenience, the Contractor shall remain liable to the Owner for (a) defective work performed prior to the termination (whether discovered before or after termination), (b) late completion damages to the extent of the delays to the critical path of the Project for which the Contractor was responsible as of the date of the termination, and (c) any other damages that survive a termination for convenience.

14.5 LIABILITY OF OWNER TO CONTRACTOR IN THE EVENT OF TERMINATION OR SUSPENSION

14.5.1 If the Agreement is terminated by the Contractor as provided in Article 14.1 of the General Conditions or otherwise, or if this Agreement is suspended or terminated by the Owner for convenience as provided in Article 14.3 or 14.4 of the General Conditions, then the Contractor may recover from the Owner, less any offsets by the Owner, only for (a) payment for work performed on the Project, including a reasonable allowance for overhead and profit on actual direct costs incurred for work completed on the Project and (b) the unrecovered cost of materials, equipment, tools, and construction equipment and machinery rented or purchased for the Project, less mitigation and salvage. In the event of suspension or termination of the Contract under any provision of Article 14 of the General Conditions or otherwise, whether by Contractor or Owner, and whether for cause or not, Contractor shall not be entitled in any event to recover (i) consequential damages, (ii) lost profits on work not performed, (iii) attorneys fees or (iv) any other damages, costs or expenses of any kind except as set forth in this Paragraph 14.5.

ARTICLES 15 TO 21: SUPPLEMENTARY CONDITIONS AS SET FORTH BELOW:

SUPPLEMENTARY CONDITIONS

ARTICLE 15 EQUAL EMPLOYMENT OPPORTUNITY

15.1.1. During the performance of this Contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, sexual or affectional preference, marital status, national origin, handicap, or because he or she is a disabled veteran or veteran of the Vietnam Era. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, age, sex, sexual or affectional preference, marital status, national origin, handicap, or because he or she is a disabled veteran or veteran of the Vietnam Era. 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 setting forth the provisions of this nondiscrimination clause.

(2) The Contractor 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 race, color, religion, age, sex, sexual or affectional preference, marital status, national origin, handicap, or because he or she is a disabled veteran or veteran of the Vietnam Era.

(3) The Contractor will provide and send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advertising to the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order 11246, as amended, with both Section 503 of the Rehabilitation Act of 1973, as amended and Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, as these articles make reference to Executive Order 11246, and with the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by Executive Order 11246, as amended, by both Section 503 of the Rehabilitation Act of 1973, as amended and Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, as these articles make reference to Executive 11246, and by 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 or compliance agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246, as amended, or by both Section 503 of the Rehabilitation Act of 1973, as amended, and Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, as these articles make reference to Executive Order 11246, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 or by rule, regulation, or order of the Secretary of Labor, as otherwise provided by law.

(7) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (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 11246, as amended, or to Section 503 of the Rehabilitation Act of 1973, as amended, and Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, as these articles make reference to Executive Order 11246, as amended, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order, as the administering agency may direct as a means of enforcing such provisions, including sanctions for compliance, provided,

however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

(8) All disputes, claims and questions under this Article which are subject to arbitration shall be treated in accordance with Subparagraph 4.5.3.

(9) In construing this Paragraph 15.1, the term "compliance agency" shall mean any governmental agency or agencies administering grant funds for the project.

15.2 Exclusion of Third Parties.

15.2.1. No person, firm or corporation not a party to this contract shall have any right, title, or interest hereunder, in connection herewith, or by reason hereof, except as otherwise expressly provided.

ARTICLE 16 REMOVAL AND/OR RELOCATION OF EXISTING PIPES, CONDUITS, ETC.

16.1 All existing pipes, conduits, ducts, etc. in the project area (above and below grade at the site), whether or not shown on the Drawings, interfering with new or altered construction, regardless of whether such construction is general construction, plumbing, heating or fire protection, shall be removed and/or relocated to suit new conditions. Such work shall be performed by the respective trades whose pipes, conduits, ducts, etc., are involved.

16.2 The Contractor and Subcontractors must review Architectural Drawings as well as those of other trades and visit the site to observe actual conditions. No extra payments shall be permitted for failure of Contractors to have knowledge of reasonably observable existing visible conditions or reasonably inferable conditions, regardless of whether or not existing pipes, conduits, ducts, etc., are specifically shown on the Drawings, or references concerning same are stated in the Specifications.

16.3 THE CONTRACTOR MUST INVESTIGATE AND VERIFY THE LOCATION AND ELEVATION OF ALL EXISTING UTILITY AND DRAINAGE SYSTEMS BEFORE BEGINNING ANY EXCAVATION AND/OR ROUGH GRADING WORK AND SHALL NOTIFY THE OWNER AND THE ARCHITECT IMMEDIATELY OF ANY DISCREPANCIES BETWEEN THE EXISTING UTILITY AND DRAINAGE CONDITIONS AND THOSE REQUIRED BY THE CONTRACT DRAWINGS. NO EXTRA CHARGES OR ADDITIONAL COMPENSATION WILL BE PAID THE CONTRACTOR FOR EXTRA WORK RESULTING FROM HIS FAILURE TO COMPLY WITH THE REQUIREMENTS HEREIN.

ARTICLE 17 WARRANTIES

17.1 In addition to all other the requirements of the General Conditions, the warranty requirements included herein shall be a part of the Contract Documents.

17.2 Various Specification sections require specific written warranties from either subcontractors, suppliers or manufacturers.

17.3 The Contractor expressly warrants that all operating systems' installations, when operated in accordance with instructions of the manufacturer or the Contractor, will develop capacities and characteristics indicated/specified and will fulfill every requirement, and should the installations, in any way, fail to do so, the Contractor shall without delay and without additional cost to the Owner, provide whatever additional equipment, material, and all labor necessary to correct the fault and to comply with these requirements and meet with the approval of the Architect.

Nothing contained in this Article shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents. The establishment of the time period of one year after the Date of Substantial Completion or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents, relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which his obligation to comply with the Contract Documents may be sought to be enforced,

nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to his obligations other than specifically to correct the Work.

- 17.4** All warranties shall become effective from date of signature by the Architect of the Certificate of Substantial Completion, AIA Form G704, prepared by the Contractor for the project, portion thereof, or item of work as so described in the certificate.

ARTICLE 18 DELETED.

ARTICLE 19 CONFLICT OF INTEREST.

- 19.1** The Contractor confirms that, to the best of its knowledge, there exists no actual or potential conflict between the Contractor's employees, business or financial interests, and the services to be performed by the Contractor under this Agreement. The Contractor will provide written notification to the Owner, after execution of this Agreement, of any change in circumstances which is likely to lead to (or has resulted in) an actual or potential conflict of interest or payment to any employee or faculty member of Drexel University. The notification from the Contractor will describe the nature of such actual or potential conflict or payment to any employee or faculty member.

ARTICLE 20 ACCESS CLAUSE AND REFUND RIGHTS

20.1 Owner's Access to Accounting Records

In addition to all other requirements set forth in the Contract Documents, the Contractor 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, and the system shall be satisfactory to the Owner. The Owner or its representative shall be afforded access to all the Contractor's records, books, correspondence, instructions, drawings, receipts vouchers, memoranda, and similar data relating to this Contract, and the Contractor shall preserve all such records for a period of four years, or for such longer period as may be required by law, after the final payment.

20.2 Assignment of Refund Rights

The Contractor agrees to assign and transfer to the Owner all its rights to sales and use tax which may be refunded as a result of a claim for refund for materials purchased in connection with this contract. The Contractor further agrees that it will not file a claim for refund for any sales or use tax, which is the subject of this assignment.

20.3 Contracts with Subcontractors

The Contractor agrees to include the "Owner's Access to Accounting Records" and "Assignment of Refund Rights" paragraphs, in full, in any contracts with subcontractors.

ARTICLE 21 FURTHER SUPPLEMENTARY CONDITIONS.

21.1 General

- 21.1.1** The purpose of this section is to supplement the General Conditions of the Contract and requirements of Division 1. In the event of conflicts between these Project Procedures requirements and the "Conditions" or "General Requirements" of Division 1, the Architect will decide which of the conflicting requirements govern. All the Contractor responsibilities under this Article 21 shall also apply to all subcontractors and sub-subcontractors, materialmen and others furnishing work or services at the facilities of the Owner.

- 21.1.2** The Contractor, his officials, employees and associates visiting or conducting business on the premises of the Owner in conjunction with the Work shall comply with these requirements.

21.2 Kick Off Meeting

21.2.1 Prior to any work activity, a Project kick off meeting will be scheduled by the Department of Planning, Design & Construction, at which time the Contractor work hours, areas designated for storage and access to the site are resolved and will be so noted in these meeting minutes. No work will commence before this meeting.

21.3 Emergencies

21.3.1 Before work is started, the Contractor shall furnish to the Project Manager, Department of Planning, Design & Construction, the name of the principal responsible for the Project, plus at least one alternate, with home addresses and telephone numbers who may be contacted in the case of emergencies occurring outside regular hours of work. The Contractor, at his option, may also submit the names of additional persons to be contacted concerning other matters such as injuries, deliveries of material, etc.

21.3.2 The Contractor shall comply with emergency orders of uniformed and other personnel of the Owner, including Security Guards, Administration Staff, Safety and Facilities Departments, in the enforcement of the Owner's rules.

21.3.3 Where the work site may involve hazardous conditions presenting danger to the Contractor's personnel, such as exposure to chemical, radioactive or pathogenic agents, etc. request instructions through the Project Manager, Department of Planning, Design & Construction, as to required protective measures and abide by such instructions.

21.3.4 The Owner will inform the Contractor of any known imminent hazard.

21.4 Deliveries

21.4.1 The Contractor shall arrange with the Project Manager, Department of Planning, Design & Construction, for the delivery of supplies, materials and equipment to the Work site or designated storage areas. Deliveries to the site shall be made during regular working hours (7:30 A.M. to 4:30 P.M.). The Owner will not, under any circumstances, accept responsibility for receiving, unloading, or storing materials.

21.4.2 If construction takes place in an existing building, deliveries of materials to the work site will be made to the Owner's usual loading facilities. No special loading facilities will be available for the sole use of the Contractor.

21.4.3 Flammable materials shall be stored only in approved areas in accordance with Article 21.21.

21.5 Motor Vehicles and Parking Regulations

21.5.1 All persons driving motor vehicles on the University Campus in connection with the Work, including the driving of employees' personal vehicles, shall abide by the official Owner motor vehicle and parking regulations as a condition of being permitted to enter the premises and as a part of the Contract requirements. Employees of the Contractor will not be permitted to park in the general parking areas of the Owner, except for the limited designated parking spaces to be assigned. In general, THERE WILL BE NO PARKING AVAILABLE FOR CONSTRUCTION PERSONNEL ON THE GROUNDS OR IN THE IMMEDIATE AREA due to limited parking facilities.

21.5.2 Use only designated truck routes for the delivery of material and other Contract operations. Designation of such truck routes shall be required and approved before the start of construction. The Contractor is responsible for notifying all suppliers to make deliveries by the designated routes and for posting approved signs where necessary.

21.5.3 Vehicles operated on Owner's Property in connection with the Work shall be loaded in such a manner as to minimize spillage of dirt, gravel, and other debris.

21.5.4 The Contractor shall immediately remove spillage of nails, construction materials and scrap. Dirt and gravel spillage or accumulations shall be removed as soon as practicable, but in every case they shall be removed no later than the end of each work-day. Where dust becomes a problem to the Owner's operations, the Contractor shall keep the area controlled by sprinkling or such other methods as are approved by the Safety Department.

21.5.5 The driver of any vehicle involved in an accident on the premises shall report it as soon as possible in person, or by telephone, to the Security Department. Drivers of vehicles involved shall remain until released and shall furnish such reports of the accidents as required by the Owner.

21.5.6 All vehicles shall be kept under control at all times when on the grounds. Contractors will not permit their employees to block emergency vehicles, access roads or connections for fire equipment.

21.6 Sanitation

21.6.1 Use special care in maintaining the work areas free from food debris and food wrappers. Provide covered trash containers and be responsible for the sanitary collection and prompt removal of such trash in these containers from the grounds.

21.6.2 All trash shall be removed daily to an outside container as designated by the Project Manager. All material shall be put inside the container.

21.6.3 Generally the Contractor's personnel and forces shall not use any toilet facilities in any of the Owner's existing buildings. However, the Project Manager may identify specific restroom facilities for use by the Contractor's staff. The Contractor is then responsible to keep the areas clean.

21.7 Housekeeping Requirements

21.7.1 The Contractor shall keep all job sites clean and orderly at all times to reduce hazards. Materials and equipment shall be stored in such a manner that they will not cause any collapse or any type of damage to buildings or walking surfaces.

Materials and equipment shall not block or hinder access to fire hydrants, fire extinguisher, electrical equipment, ladders, entrances or exits.

21.7.2 The Contractor will identify routes to minimize construction dust and dirt.

21.7.3 The Contractor shall provide fire-resistant ceiling-to-floor dust shields and walk-off mats to protect wall/floor and carpet areas.

21.7.4 It is the Contractor's responsibility to cause all scrap, rubbish and construction debris to be disposed of in accordance with Federal, State and local regulations. Any unnecessary costs incurred due to improper disposal will be back-charged. Arrangements shall be made with the Department of Planning, Design & Construction for independent waste removal or use of the Owner's vendors. Contractors and its subcontractors are not permitted to use the Owner's dumpsters, or to park near or around the Owner's dumpsters.

21.7.5 None of the Owner's equipment is to be used unless specifically authorized by the Project Manager in writing.

21.7.6 The Contractor shall provide and use its own cleaning equipment (i.e. carts, buckets, mops, vacuum cleaners). A written request to the Department of Custodial Services is necessary to use the Owner's equipment. If the Owner's equipment is used without approval, a back charge will be issued to the Contractor for wear on equipment and labor costs.

21.7.7 All areas outside confines of the Project are to be kept clean of dust and debris from construction/demolition activities on a daily basis.

21.7.8 It is understood that all unloading, storage, clean-up and disposal under this Contract which relate to work or services of a particular subcontractor will be performed in all substantial respect by the subcontractor in question, and will not, except for minor items customarily performed by the Contractor or unless otherwise agreed by the Owner in writing, be considered a General Conditions expense.

21.8 Environmental Clearances

21.8.1 Prior to starting any demolition in laboratories, or in any areas containing fume hoods, sterilizers, or any other equipment which could be contaminated, the Contractor shall file a Request for Environmental Clearance with the Department of Safety and Health Programs on the Owner's form (Form "A").

21.8.2 Prior to starting any demolition, or construction in a concealed area (pipe chase, above a plaster ceiling, etc.), in building where the presence of Asbestos can be reasonably assumed, the Contractor shall request an asbestos clearance by filing a Request for Environmental Clearance (Form "A").

21.9 Temporary Closures

21.9.1 All non-construction areas shall be segregated from construction areas. All dust, weather, and noise barriers shall be neat in appearance and be effective.

21.9.2 All temporary construction partitions will be smoke tight and built of noncombustible materials. Asbestos containment is to be constructed in accordance with Philadelphia Air Management Services asbestos control regulations. Decking and guard rails used inside existing building shall be of flame retardant material.

21.9.3 Prior to installing temporary closures and protection devices, there shall be an agreement between the Contractor, the Architect's Representative and the Project Manager, as to the location, extent and type of closure.

21.9.4 Doors, access ways and openings around piping and machinery shall not interfere with the operation of equipment or utilities, nor interfere with legal exits.

21.9.5 Any temporary closing of legal exits in existing structures, as required for construction operations, must be approved by the Building Inspector and Fire Department.

21.9.6 Exit and directional signs must be provided when existing signs are removed or obstructed, to insure an immediate indication of emergency egress routes and/or access to fire protection equipment. Signs shall be consistent with the building's standards, if the existing signs cannot be relocated.

21.10 Protection of Utilities

21.10.1 When working in existing structures, the Contractor shall take special care to avoid personal injury or property damage which might result from interception or interruption of electrical, telephone, television, sewer, water, gas or other services.

21.10.2 Although the general location of utility lines and services may be shown on the drawings or described elsewhere, neither the Owner nor the Architect warrant the accuracy of the locations shown or described. Responsibility for determining the actual on-site location of utility lines shall rest solely with the Contractor. The Contractor shall verify the location of all lines and services before commencing work.

21.11 Continuity of Services

21.11.1 The Contractor shall interfere as little as possible with the Owner's normal operation.

21.11.2 The continuous operation of major services is of essence to the University's mission. Therefore, the Contractor shall not open or close valves, switch electrical loads on or off, or shutdown any services without prior approval from the Owner, via a Request for Utility Shutdown. (Form "B")

21.11.3 Shutting down of any sprinkler valves, fire pumps or fire alarm systems is forbidden without prior authorization and notification of the Director of Safety and Health Programs, via a Request for Utility Shutdown. (Form "B")

21.11.4 Whenever a fire or smoke detection system must be disrupted during a construction activity, a temporary detector system approved by the Department of Safety and Health Programs will be implemented through the installation of temporary pull stations and alternate devices such as heat detection heads or battery operated systems.

21.11.5 Approval and specific locations shall be obtained from the Department of Safety and Health Programs, through the Planning, Design and Construction Project Manager, prior to the moving, placing or mounting of any fire protection equipment.

21.11.6 All utility shutdowns must be requested a minimum of five (5) days advance notice on the Owner's forms. (Form "B")

21.11.7 If demolition is to take place after normal working hours or on weekends, in areas containing live utility lines, which could be damaged by the demolition activity, the Contractor shall request After Hours Coverage a minimum of five (5) days in advance on the Owner's forms. (Form "C")

21.12 Security

21.12.1 The Contractor shall be responsible for the security of its own materials from theft and vandalism. (This includes the personal tools and materials of the men working for the Contractor and subcontractors, even when stored in the premises.)

21.12.2 All equipment on site must be labeled with the company name.

21.12.3 The Contractor shall be responsible for excluding all but authorized personnel from Work sites.

21.12.4 All construction personnel shall be required to wear a visible, special identification badge at all times when on the Project site. The badges will be issued through the Owner's Department of Public Safety.

21.12.5 The Contractor and his employees shall report immediately to the Department of Public Safety any known violations of laws or regulations, or the discovery of any unaccountable property, either privately or Owner owned.

21.12.6 The Contractor's workmen will not be permitted in Owner's buildings other than the work site and public areas.

21.13 Safety

21.13.1 The Contractor shall assume complete responsibility for the safe performance of all Work performed on the Owner's property. The safety responsibility of the Contractor shall include its employees, subcontractors' employees, and all other persons connected with a project. A site-specific orientation program will be initiated by the Department of Safety and Health Programs and will be implemented by the Project Manager, or by the Contractor when one is retained by the Owner.

21.13.2 The Contractor is responsible to maintain the necessary safety precautions to permit the performance of work under operating conditions without endangering Owner's staff, personnel, students and visitors, and/or property.

21.13.3 The Contractor shall comply with all Occupational Safety and Health Administration ("OSHA") rules, regulations and general duty obligations applicable, and oversee that its employees and subcontractors comply with these rules.

21.13.4 The Contractor shall instruct its personnel regarding fire reporting and evacuation procedures and hazardous communication laws.

21.13.5 The Contractor shall have the responsibility to correct any unsafe condition that is created during the performance of their work.

21.13.6 The Contractor shall consult with the Owner's Facilities Management Department before working on or around any high voltage electrical lines, or in any of the Owner's substations. Prior to actual work, a Request for Utility Shutdown must be obtained. (Form "B")

21.13.7 All electrical equipment shall be properly insulated to guarantee safe operation. All temporary wiring shall be reviewed and approved by the Department of Safety and Health Programs.

- 21.13.8** The Contractor shall use proper lock-out procedures at all times. Tagging and locking of the Owner's electrical equipment must be coordinated with the appropriate Facilities Manager (University, UNICCO, API).
- 21.13.9** Construction of all temporary buildings and trailers, including wiring and heating facilities, shall be approved by the Planning, Design and Construction Project Manager and by the Department of Safety and Health Programs.
- 21.13.10** Prior to their use, the Contractor shall review the characteristics of hazardous material, substances or processes with the Department of Safety and Health Programs. A copy of the Material Safety Data Sheet ("MSDS") shall be available for review upon request. Environmental Protection Agency ("EPA") approved procedures shall be followed when disposing of hazardous waste and must comply with all applicable codes and standards.
- 21.13.11** The Contractor shall within 24 hours report all incidents to the Project Manager in Planning, Design and Construction, using the Construction Incident Report (Form "D"). The Contractor shall also immediately report all fires, injuries and accidents occurring on University property to the Department of Safety and Health Programs, all thefts to Public Safety, and all mechanical, plumbing and electrical incidents to the appropriate Facilities Manager (University, UNICCO, API).
- 21.13.12** The Department of Safety and Health Programs shall be notified immediately:
- a) before closing or blocking of any main passageways, fire aisles, fire doors, fire towers or entrances; or
 - b) in the event of any damage to fire equipment.
- 21.13.13** Violations of any University safety rules and/or applicable Federal, State, or municipal ordinances shall result in a job shutdown.

21.14 Additional Precautions during Demolition

- 21.14.1** When there is a substantial risk of pipe breakage or water leak during demolition in an occupied building, the Contractor shall provide in the area which could be affected, generally the floor below, a trash cart which will hold water, a shop vacuum cleaner, a roll of polyethylene to protect equipment or furniture and some plastic buckets (joint compound containers).

21.15 Dust and Fumes Control

- 21.15.1** When working in occupied areas, the Contractor shall provide temporary exhaust fans for extra ventilation, if strong smelling adhesives, glues, paints, caulking, solvents, etc. are used.
- 21.15.2** When working in occupied areas, the Contractor shall install and maintain temporary duct filters on returns, to prevent the pollution of HVAC systems, mitigate employee's exposure to construction dust and reduce false fire alarms.
- 21.15.3** When working with strong smelling compounds or creating dusty conditions outside occupied buildings, the Contractor shall contact the appropriate Facilities Manager (University, UNICCO, API), to identify local air intakes, and either provide adequate temporary filtering systems, or file a Request for Utility Shutdown (Form "B")

21.16 Overhead Work, Scaffolds and Barricades

- 21.16.1** The Contractor shall be responsible for barricading below work areas in order to protect students, employees and pedestrians from falling debris.
- 21.16.2** All scaffolds and work platforms shall be constructed to OSHA standards and maintained free of defects. Guardrails and tow bars shall be installed on all scaffolds and work platforms over ten (10) feet above the ground. Supporting level decking shall be at least two planks high and tested before usage.

- 21.16.3** Barricades or guardrails shall meet OSHA standards and be provided around all openings, excavations, pits, open sewers, and any openings in floors. These barricades or guardrails shall be kept in place at all times and adequately lit at night.
- 21.16.4** All rigging equipment, such as ropes, cables, hooks, shackles, chains and so on, shall be inspected daily before use and prior to each lift.
- 21.16.5** Before any construction or demolition is commenced, every sidewalk, public thoroughfare, corridor, stair tower, and/or exterior entrance or exit affected by such work shall be afforded structurally sound protection of adequate design for its intended use. Scaffolds, pedestrian bridges, elevated walkways, and/or safety nets shall be designed and installed to meet all applicable Federal, State, and local safety requirements and specifications.
- 21.16.6** Prior to starting demolition or construction activities, the Contractor shall retain a qualified person (as defined by OSHA CFR 1926.32 (m)) to assess the level of protection that will be required to safeguard passerby against falling objects. Scaffolding, sheds and canopies, when used as falling objects protection, shall be strong enough to prevent collapse or penetration by any object that may fall on the protective structure (OSHA CFR 1926.502 (j) (8)).
- 21.16.7** Prior to opening temporary elevated walkways, corridors or bridges to the public, the Contractor shall submit to the Planning, Design and Construction Project Manager design drawings completed and sealed by a licensed Professional Engineer.
- 21.16.8** Any scaffolding systems supporting passages open to the public, must be inspected daily by a competent person (as defined by OSHA CFR 1926.32(f)), to insure that the structural stability has not been lessened by defective or dislodged members, or by malicious tampering.
- 21.16.9** Protection shall be afforded by way of bollards, guardrails, barriers, etc., whenever the possibility of vehicular or heavy equipment impact exists.
- 21.16.10** Bolts and sharp edges shall be covered with suitable protection to lessen the chance of injury to passers-by.
- 21.16.11** Pedestrian walkways shall be lighted by natural or artificial means, sufficient to insure safety at all times.
- 21.16.12** Safety nets and their installation shall be drop-load tested as required by OSHA CFR 1926.502 (c) (4) (i) (ii) prior to commencement of overhead work activities. When it can be demonstrated that it is unreasonable to conduct such testing, the system shall be certified by a licensed Professional Engineer as being capable to absorb an impact force equal to that produced by the drop test specified by OSHA standards.

21.17 General Fire Prevention

- 21.17.1** The Contractor shall be responsible for fire prevention on the Project site.
- 21.17.2** All fires must be reported. To sound the alarm, use the nearest fire alarm box.
- 21.17.3** Accumulation of combustible waste materials and rubbish on the work site is prohibited. Remove construction waste on a daily basis. Burning of combustible waste materials and rubbish will not be permitted.

21.18 Use of University Safety Equipment

- 21.18.1** The Contractor shall not use fire hydrants or Drexel University's fire hose for purposes other than for fire protection use.
- 21.18.2** Water usage from the University fire standpipes for construction work is absolutely forbidden, due to automatic fire/flow alarm systems. Water may only be obtained from domestic sources.
- 21.18.3** The Contractor will provide its own fire extinguishers, fire blankets, welding covers, and portable devices and equipment required to carry out its work. Use of the University fire equipment shall not be permitted except in cases of an emergency.

21.18.4 The Contractor shall obtain a utility shutdown request prior to work on sprinklers, standpipes, fire pumps, or fire alarm systems. A contingency plan will be implemented by the Department of Safety and Health Programs, when systems will be out of service for an extended period of time.

21.19 Hot Work Permits

21.19.1 All welding/cutting shall be performed in accordance with the Philadelphia Fire Code (Section 5-2903). Copies are available from the Department of Safety and Health Programs. Additionally, all welding, soldering, cutting, burning or using of other open flame devices shall not be done by the Contractor until a Hot Work Permit has been obtained from the Department of Safety and Health Programs. (Form "E")

21.19.2 When welding, cutting or carrying out any hot work on projects adjacent to occupied areas, a system for venting the fumes in the space to the outside will be set in place, insuring that they are not directed toward a fresh air intake.

21.19.3 Flame cutting of sanitary lines will not be permitted.

21.19.4 Use and issue of hot work permits:

- a) Permits must be requested from the Department of Safety and Health Programs, at least a day prior to when needed on a Hot Work Permit Request.
- b) Permits shall be valid only for the job and in the area specified.
- c) Permits shall be good only for the date of issue.
- d) Fire watches shall be posted in accordance with the Philadelphia Fire Code.

21.20 Asbestos Clearances

21.20.1 Requests for asbestos clearances must be issued on the Owner's forms. (Form "A")

21.21 Flammable Liquids

21.21.1 All flammable liquids and/or gas shall be stored and used in accordance with the applicable State and local Safety codes, and not in the Owner's buildings.

21.21.2 All flammable liquids and gases shall be transported and dispensed from approved safety containers and with only the amount on hand needed for one day operational storage.

21.22 Smoking

21.22.1 No smoking is permitted in the Owner's buildings.

21.23 Alcoholic Beverages

21.23.1 Alcoholic beverages shall not be brought to or consumed on the Owner's premises. Intoxicated personnel will not be permitted on the premises.

21.24 Use of Elevators

21.24.1 The Contractor shall not use passenger or freight elevators for moving material and equipment in buildings occupied by the Owner's personnel, except as approved specifically by the Planning, Design and Construction Project Manager.

21.24.2 When the use of elevators is authorized by the Project Manager, erect protective padding and barriers as required to prevent damage to elevator cab finishes and elevator entrances.

21.25 Use of Owner's Cafeteria

21.25.1 The cafeteria and dining areas in the Owner's premises are prohibited for use by the Contractor's personnel and forces, unless authorized in writing by the Planning, Design and Construction Project Manager.

21.26 Noise Control

21.26.1 Construction noise has a deleterious impact on the University's staff, students and neighbors, and to the extent possible it shall be minimized.

21.26.2 If noisy procedures, such as jack hammering, power fastening or sawing, are required, the Contractor shall advise the Planning, Design and Construction Project Manager who will schedule such work at a time when it minimizes disturbance to students and staff.

21.26.3 City of Philadelphia Regulations and other regulations relating to construction noise apply to the project.

21.27 Project Meetings

21.27.1 The general provisions of the Contract, including the General and Supplementary Conditions and other Division 1 Specifications sections, apply to the work of this section.

21.27.2 Contractors and invited Subcontractors shall attend and participate in all Pre-construction Meetings and Progress Meetings scheduled by the Owner or its representatives.

- a) Attendance at meetings is a part of the Work, and cost of attendance is part of the Contract Sum.
- b) Representatives of all parties must have the authority to act for their firms or agencies in all matters pertaining to the Project.

21.27.3 The Contractor will take and keep records of all Meetings, and will distribute typed copies of general information developed at Meetings as promptly as possible to all participating firms and agencies.

21.27.4 Pre-construction Meeting: The Contractor will schedule a Pre-construction Meeting prior to commencing construction. This meeting will be held at a location designated by the Contractor with consideration for the convenience of all parties.

21.27.5 The Owner, the Architect and his professional consultants, the Contractor's Project Manager and Field Superintendent, the Subcontractors for Mechanical and Electrical work, and the Contractor's Safety Representative will attend this meeting.

21.27.6 The Contractor shall prepare for distribution and deliver to the Owner, not less than two (2) business days prior to the scheduled date of the Pre-construction Meeting, typed master list of all Subcontractors and major suppliers, and a first draft of the Construction Progress Schedule.

21.27.7 The agenda shall include but not necessarily be limited to the following items:

- a) Distribution of lists of major Subcontractors and Construction Progress Schedule draft.
- b) Introduction of representatives of all parties, and definitions of roles.
- c) Establishment of communication procedures.
- d) Identification of parties authorized to make decisions required.

- e) Procedures and processing of:
 - 1. Submittals, including Submittals Schedule
 - 2. Application for Payment, including Schedule of Values.
 - 3. Field decisions.
 - 4. Change Order Requests.
 - 5. Change Order and Construction Change Directives.
 - 6. Records of Meetings.
- f.) Discussion of Construction Progress Schedule:
 - 1. Review of Contractor's first draft
 - 2. Critical work sequencing.
 - 3. Major equipment deliveries and priorities.
 - 4. Work by Owner and separate Contractors, including delivery of Owner-furnished equipment.
- g.) Construction facilities, controls and construction aids:
 - 1. Use of premises.
 - 2. Office, work and storage areas.
 - 3. Owner's use of premises or other requirements.
 - 4. Temporary utilities.
 - 5. Security procedures.
 - 6. Housekeeping procedures.
- h.) Procedure for maintaining Record Documents.
- i.) Safety, noting that safety is solely the responsibility of the Contractor(s).
- j.) Confirmation of Contract Documents:
 - 1. Incorporation of Addenda items.
 - 2. Procedures for obtaining additional sets.
- k.) Schedule of regular progress meetings.

21.27.8 Progress Meetings: The Contractor will hold regular Progress Meetings as agreed upon by all parties concerned at the Pre-construction Meeting. .

21.27.9 The Contractor may also call special meetings as required by the progress of the Work or the resolution of special conditions.

21.27.10 The meetings will be held in a location to be designated by the Owner. The Owner, Architect and his professional consultants as needed, the Contractor, the Subcontractors and Suppliers as appropriate to the agenda, will attend these meetings.

21.27.11 The agenda will include but not necessarily be limited to the following items:

- a) Confirmation of record of previous meeting.
- b) Review of Work:
 - 1. Progress since previous meeting.
 - 2. Work in progress.
 - 3. Work planned during period prior to next meeting.
- c) Field observations, problems, conflicts and quality standard.
- d) Construction Schedule:
 - 1. Status of work relative to schedule.
 - 2. Corrective measures and procedures to regain projected schedule.
 - 3. Revisions to Construction Progress Schedule.
 - 4. Review of off-site fabrication, delivery schedules.
- e) Submittals:
 - 1. Identification of any submittals overdue from Contractor.
 - 2. Identification of any overdue submittal reviews.
 - 3. Impact, if any, of any non-compliance with Submittals Schedule.
 - 4. Resolutions of submittals problems.
- f) Changes to Contract, if any:
 - 1. Status of Change Order Requests issued and anticipated.
 - 2. Status of response by Contractor or Contractors.
 - 3. Status of Change Orders.
- g) Open discussion of items not covered by agenda.

21.28 Close Out Book

21.28.1 Prior to turning over a project to the Owner, the Contractor shall prepare a Close Out Book in duplicate, which will include the following:

21.28.2 Official approvals and certificates, including but not limited to:

- Subcontractors's Warranties/Guarantees
- Release of Liens (See Exhibits A-3 and A-4 to Agreement)
- Consent of Surety
- Letter of Transmittal for "As-Built Drawings turned over to the Owner"
- O&M Manuals
- Certificate of Substantial Completion
- Certification of occupancy.
- Building permits.
- Sprinkler certifications.
- Notarized letter on the polarity testing of outlets.
- City Licenses and Inspection certifications.
- Flame and smoke spread certification.
- Certification that all materials used in the construction are free of asbestos.
- Balancing reports.

21.28.3 Instruction manuals for mechanical, electrical, plumbing and fixed equipment, clearly showing the following information:

- Equipment numbers (tag number) of all applicable components in front of manual or front of tab section.
- Suitable cover with Project name and number, type of equipment, equipment identification number(s), and title of manual.
- Name, address, and telephone number of manufacturer and local representative.
- Name and P.O. number of purchasing Contractor.
- General description - basic information for general equipment in a practical, complete and comprehensive manner, prepared for use by operating and/or maintenance personnel, including significant technical characteristics.
- Storage procedures, long/short term, storage class and unloading/removal.
- Instructions for installation/removal.
- Maintenance, repair and periodic tests.
- Lubrication requirements - list, lube chart, etc.
- Start-up and operations procedures, including special procedures, and special precautions. Test, adjustment and calibration procedures shall be specified and identified to the specific equipment. Safety and other warning notices and installation, maintenance and operating limitations/cautions shall be emphasized.
- Parts lists shall be included showing part nomenclature, manufacturer's part number, and/or other information necessary for accurate identification and ordering of replacement parts. Common hardware items or other parts to be locally procured shall be adequately identified by technical description.
- A recommended spare parts list shall include those parts which ordinarily require replacement, so that Owner can determine and procure spare parts prior to operation.

- Instructions, parts lists and drawings shall be clearly legible and prepared on quality paper. Multiple page instructions shall be securely bound.
 - If a standard manual is furnished covering more than the specific equipment purchased, the applicable model, function modes (or other identification), parts and other information for the specific equipment purchased shall be clearly identified.
 - Dimensions shown on drawings and scale of drawings shall be in the English language or an English translation shall be added to the drawings.
 - All data sheets, parts lists, manuals, and any other printed mater shall be in the English language.
 - Schematic, wiring and motor/control panel outline drawings.
 - P & I and Loop and Logic Diagram(s) shall be included if applicable.
 - Warranty information - what service is covered, length of coverage, contact person or company for repairs.
- 21.28.4** Minutes of pre start-up inspection, start-up of equipment and post start-up inspection, including air balancing results if applicable.
- 21.28.5** Minutes of the instructional meeting(s) for the Facilities Department personnel at the University, UNICCO or API, as may apply, including a list of all those attending the meeting(s).
- 21.28.6** Items remaining on the punch list, the scheduled data for their completion and the name of the Contractor or Subcontractor who will perform the Work.
- 21.28.7** Copies of warranties and guarantees.
- 21.28.8** Schedules of stock material and quantity turned over to the Facilities Department at the University, UNICCO or API, as may apply.
- 21.28.9** As built drawings, approved by the Architect and Engineer.
- 21.28.10** A summary of the maintenance schedule for mechanical/plumbing and electrical systems (oiling, toning of fasteners, tightening of belts, changing of filters, exercising of valves) as would be found in a car owner's manual.
- 21.28.11** A summary of all warranties and guarantees.
- 21.28.12** A sign-off sheet to record the date of issuance of the Close Out Book.
- 21.28.13** The Owner shall consider accepting an incomplete Close Out Book at the time of substantial completion if it satisfies the following requirements:
- The missing items are not essential to the safe and effective operation and maintenance of the equipment.
 - The inclusion of colored inserts with description for any missing items with the date when they will be provided by Contractor.
 - The inclusion of a summary page with all missing items and the date at which the Contractor will provide them to the holders of the close out books.

21.29 In-Service- Instruction

21.29.1 Prior to turning over a project to the Owner, Contractor shall hold in-service meeting(s) to instruct the various personnel shifts of the University, UNICCO or API Facilities Department, as may apply, in the operation and maintenance of the equipment and system.

21.29.2 The Contractor will record and distribute minutes of these meetings including the list of all those attending each instruction meeting.