

**AGREEMENT**  
**BETWEEN**  
**NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY**  
**AND**  

---

**FOR**  
**GENERAL CONSTRUCTION SERVICES**

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2008 (the "Effective Date") between the New Jersey Schools Development Authority (the "Authority"), having an office located at 1 West State Street, Trenton, New Jersey 08625-0991, and \_\_\_\_\_ ("Contractor"), a \_\_\_\_\_ corporation with its principal place of business at \_\_\_\_\_.

Contractor, for and in consideration of the payments hereinafter specified and agreed to be made by the Authority, hereby covenants and agrees to perform all of the Services to be performed in accomplishing this Agreement for the Project identified as

Contract Number: GP-0096-C01

Project Name: General Construction Services

in strict conformity with this Agreement, including all appendices and attachments hereto.

Provided that Contractor strictly and completely performs all of the Services specified and all other obligations set forth in this Agreement, and subject only to such increases or decreases permitted by this Agreement, the Authority will pay Contractor the sum of \_\_\_\_\_ (\$\_\_\_\_\_).

**IN WITNESS WHEREOF**, the Parties have duly executed this Agreement.

**[CONTRACTOR]**

**NEW JERSEY SCHOOLS  
DEVELOPMENT AUTHORITY**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

Sworn and subscribed to before me  
This \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

By: \_\_\_\_\_  
Name of Affiant:

Notary Public of

My commission expires: \_\_\_\_\_, 20\_\_.

Reviewed and Approved as to form for NJSDA:

**ANNE MILGRAM  
Attorney General of the State of New Jersey**

By: \_\_\_\_\_  
Name:  
Title: Deputy Attorney General

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### **1.1 DEFINITIONS**

**AUTHORITY** means the New Jersey Schools Development Authority, created pursuant to Section 4 of P.L. 2007, c. 137, approved August 6, 2007 (N.J.S.A. 52:18A-238), or any successor thereto, or any representative authorized to act on behalf of the Authority with respect to the School Facilities Projects and the Contract.

**AUTHORITY HAVING JURISDICTION** means any applicable local, State, national or Federal entities having jurisdiction over the Project or the Contractor.

**CHANGE IN THE WORK** means a change in the School Facilities Projects, the Work or the Contract Documents, including, but not limited to, an increase or decrease in the Work, or an acceleration of time for the performance of the Work, or a change in the sequence in which the Work is to be performed.

**CHANGE ORDER** means a written order, directing or authorizing a Change in the Work. Change Orders shall be executed by the Authority and the Contractor and shall include all adjustments to compensation and time warranted by the Change in the Work.

**CLAIM** means a demand by the Contractor for (a) a time extension which is disputed by the Authority, or (b) the payment of money or damages, arising from work done by or on behalf of the Contractor in connection with the Contract, that is disputed by the Authority. A Claim will cease to be a Claim upon resolution thereof, including resolution by withdrawal or release or delivery of a Change Order or other amendment to the Contract Documents signed by all parties.

**CLIENT SCHOOL DISTRICT** means the school district or school districts in which a School Facilities Project is located.

**COMMENCEMENT DATE or NTP DATE** means the date set forth in the Notice to Proceed on which the Contractor shall begin performing Work pursuant to the Contract Documents

**CONSTRUCTION CHANGE DIRECTIVE** means a written order, signed by the Authority, directing a change in the Work prior to agreement on appropriate Contract Price and Contract Time adjustments.

**CONTRACT** means the entire and integrated agreement between the Contractor and the Authority encompassing all of the Contract Documents.

**CONTRACT CHANGE REQUEST** means a written request, by the Contractor or the Authority, for an adjustment in the Contract Price, a modification to the Contract Documents or an extension of Contract Time.

**CONTRACT COMPLETION** means that point in time after Substantial Completion and Final Acceptance and Completion of all School Facilities Projects comprising the School Facilities Package when all requirements of the Contract Documents have been satisfied and final payment has been tendered.

**CONTRACT DOCUMENTS** means the executed form of contract, General Conditions, Supplementary Conditions, plans, Specifications, scopes of work, instructions to bidders and addenda, Price Proposal, Technical Proposal, Change Orders, other amendments, and all exhibits, appendices and documents attached to or referenced in any of the foregoing materials.

**CONTRACT PRICE** means the sum stated in the Contract, as it may be adjusted in accordance with the Contract Documents, that represents the total amount payable by the Authority to the Contractor for performance of the Work.

**CONTRACT TIME** means the number of calendar Days allotted in the Contract Documents for completion of the Work. The Contract Time is calculated from the Commencement Date

**CONTRACTOR** means the individual, firm, partnership, corporation, limited liability company, or any acceptable combination thereof contracting with the Authority for performance of the construction of the School Facilities Package, pursuant to the Contract Documents.

**DAY** means a calendar day, unless otherwise designated.

**DCA** means the New Jersey Department of Community Affairs

**DESIGN CONSULTANT** means the person or entity lawfully practicing architecture or engineering that is engaged by the Authority to provide certain services in connection with the School Facilities Package.

**DIRECTIVE** means an order by the Authority directing the Contractor to perform Work under the Contract Documents. A Directive by the Authority requires the Contractor to perform the directed Work, even if there remains a dispute as to whether the Directive constitutes a Change in the Work or warrants additional Compensation

**FINAL ACCEPTANCE AND COMPLETION** means (i) that point in time when all requirements of all Contract Documents for the School Facilities Project have been performed; (ii) all items on the Punch List have been performed; (iii) all manuals, warranties and as-builts have been delivered; (iv) any and all liens have been released; (v) when all other requirements established in Article 11.2 have been met; (vi) when a permanent certificate of occupancy, continued use or completion or equivalent legal authorization to occupy has been issued; and (vii) when the Authority has made its final payment to Contractor.

**FORCE MAJEURE EVENT** means an unforeseeable event beyond the control of the Contractor that is not due to an act or omission an act or omission of the Contractor (or any Subcontractor or other person or entity for which the Contractor may be contractually or legally responsible) that materially and adversely affects the Contractor's obligations under this Agreement, to the extent that such event (or the effects thereof) could not have been avoided or mitigated by due diligence and use of reasonable efforts by the Contractor. Force Majeure Events may include wars, floods, hurricanes, tornadoes, acts of terrorism, earthquakes, and other acts of God.

**LEGAL REQUIREMENTS** means all applicable Federal, State and local laws, acts, statutes, ordinances, codes, executive orders, rules and regulations in effect or hereinafter promulgated that apply to Contractor's performance of the Work under the Contract Documents, including, but not limited to, current versions of the New Jersey Uniform Construction Code, the DCA Homeland Security Best Practices Standards for Schools Under Construction or Being Planned for Construction ("Best Practice Standards"), the Occupational Safety and Health Act of 1970, the Soil, Erosion and Sediment Control Act, as well as any requirements of any local or national Authorities having Jurisdiction over the Project, as applicable.

**NOTICE TO PROCEED** or **NTP** means a written notice from the Authority to the Contractor setting the Commencement Date on which the Contractor shall begin performing Work pursuant to the Contract Documents.

**PROJECT SCHEDULE** means the most current schedule for the Package submitted by the Contractor and approved by the Authority, as described in Article 4 of the General Conditions and Section 1310 of

the Specifications. Initially, the Project Schedule shall be the approved baseline Project Schedule and thereafter it shall be the most recent approved revised Project Schedule.

**PROJECT SCHOOL DISTRICT** means the school district in which the Project is located.

**PROJECT SITE** means the geographical location of each School Facility Project where Work is to be performed.

**PUNCH LIST** means means the list of incomplete or defective Work to be performed or remedied by the Contractor. The Punchlist shall only include items that are incidental to the Work and not required to be completed in order for the Authority to use the Project for its intended purpose. The Punchlist shall also include Work that is not compliant with the Code or any applicable Legal Requirements.

**RETAINAGE** means money withheld by the Authority from funds otherwise due the Contractor, as delineated in Article 13.

**SAFETY MANUAL** means the latest edition of NJSDA's Safety Manual available at the time this Agreement is executed.

**SCHOOL FACILITY** means and includes each structure, building or facility used wholly or in part by a Client School District for academic purposes.

**SCHOOL FACILITIES PACKAGE** or **PACKAGE** means all of the School Facilities Projects that are identified in the Supplementary Conditions. The Contractor's Work under the Contract shall encompass all of the School Facilities Projects included in the School Facilities Package.

**SCHOOL FACILITIES PROJECT** or **PROJECT** means the demolition, construction, improvement, repair, alteration, modernization, renovation, reconstruction or maintenance of all or any part of a School Facility or of any personal property necessary for or ancillary to any School Facility. Each School Facilities Project that is part of the Contractor's Work is identified in the Supplementary Conditions.

**SPECIFICATIONS** means that document attached hereto and made a part hereof.

**STATE** means the State of New Jersey, its departments, agencies, officers and employees.

**SUBSTANTIAL COMPLETION** means that point in time when all of the following have occurred: (i) essential requirements of the Contract Documents for the School Facilities Project have been fully performed so that the purpose of the Contract Documents is accomplished; (ii) the Punch List has been created; (iii) there are no important or material omissions or technical defects or deficiencies regarding the School Facilities Project; (iv) a temporary certificate of occupancy, continued use or completion or equivalent legal authorization to occupy has been issued; and (v) the School Facilities Project is ready for occupancy in accordance with its intended purpose.

**SUPPLEMENTARY CONDITIONS** means that document attached hereto and made a part hereof.

**WORK** means the furnishing of all labor, services, materials, equipment, tools, transportation, supplies and other incidentals to be furnished, provided or performed by the Contractor, as required by the Contract Documents, including all efforts necessary or appropriate to achieve Final Acceptance and Completion.

## **1.2 Intent**

The intent of the Contract Documents is to describe a functionally complete and aesthetically acceptable Project to be constructed and completed by the Contractor in every detail in accordance with the Contract Documents. Any work that may be reasonably inferred from the Contract Documents as being required to produce the intended result shall be supplied whether or not specifically called for. Where the Contract Documents describe portions of the Work in general terms, but not in complete detail, it is understood that only the best construction practice is to prevail and only materials and workmanship of the first quality are to be used.

Only where the Contract Documents specifically describe a portion of a Project as being performed by others is the Work deemed not to constitute construction of the entire Project.

### **1.3 Interpretation**

In the Contract Documents, where appropriate: the singular includes the plural and vice versa; references to statutes or regulations include all statutory or regulatory provisions consolidating, amending or replacing the statute or regulation referred to; the words "including," "includes," and "include" shall be deemed to be followed by the words "without limitation"; unless otherwise indicated, references to articles, sections, appendices or schedules are to this Contract; words such as "herein," "hereof," "hereunder," and "foregoing" shall refer to the entire document in which they are contained and not to any particular provision or section; words not otherwise defined, which have well-known technical or construction industry meanings, are used in accordance with such recognized meanings; and words of any gender used herein shall include each other gender, where appropriate. When two or more potential interpretations of the same requirement of the Work exist, the most stringent (as determined by the Authority in its sole discretion) shall apply. Unless otherwise specified, lists contained in the Contract Documents defining the Projects, the Package or the Work shall not be deemed all-inclusive. This Contract shall not be construed as if it was prepared by the Authority, but rather as if both parties had prepared it.

### **1.4 Referenced Standards**

Unless otherwise specified by the Authority, any reference in the Contract Documents to a described publication affecting any portion of a Project or the Work shall be deemed to mean the latest edition or revision thereof, including amendments and supplements thereto.

### **1.5 Explanations**

Should it appear that the Work or any of the matters relative thereto is not sufficiently detailed or explained in the Contract Documents, the Contractor shall apply to the Authority in writing for such further written explanations as may be necessary and shall abide by the explanation provided. The Contractor shall promptly notify the Authority of all errors, omissions, inconsistencies or other defects (including inaccuracies and inconsistencies) which it may discover in the Contract Documents, provide written recommendations regarding changes or corrections to resolve any such error, omission or defect, and obtain the Authority's approval before proceeding with the Work affected thereby. The Contractor shall not take advantage of any apparent error or omission, inconsistency or other defect in the Contract Documents.

### **1.6 Approvals, Acceptances, Consents and Determinations of Authority**

In all cases where approvals, acceptances, consents or determinations are required to be provided hereunder, such approvals or consents shall not be withheld unreasonably and such determinations shall be made reasonably, except in cases where a different standard (such as, by way of example only, sole discretion) is specified. In cases where sole discretion is specified for an approval, consent, determination or other decision, the decision shall not be subject to dispute resolution hereunder.

## **1.7 Plans and Specifications.**

The plans consist of general drawings and show such details as are necessary to give a comprehensive representation of the construction contemplated. The Contractor shall keep one set of plans available at a Project Site at all times. All alterations affecting the requirements and information given on the plans will be authorized in writing.

Omissions from the plans or Specifications of details of Work which are manifestly necessary to carry out the intent of the Contract Documents, or which are customarily included, shall not relieve the Contractor from including such omitted details of Work, but they shall be included as if fully and correctly set forth and described, without entitlement to a Change Order hereunder.

## **1.8 Conformity with Contract Documents.**

All Work performed shall be in conformity with the lines, grades, cross-sections, dimensions, and material requirements, including tolerances, shown in the Contract Documents. The purpose of tolerances is to accommodate occasional minor variations from the middle portion of the tolerance range that are unavoidable for practical reasons. When a maximum or minimum value is specified, the production and processing of the material and the performance of the Work shall be so controlled that the Work shall not be preponderantly of borderline quality or dimension. Although measurement, sampling and testing may be considered evidence of conformity, the Authority shall determine whether the Work deviates from the Contract Documents.

## **1.9 Order of Precedence**

1.9.1 Each of the Contract Documents is an essential part of the Contract, and a requirement occurring in one is as binding as though occurring in all. The Contract Documents are intended to be complementary and to describe and provide for a complete contract. In the event of any conflict among the Contract Documents, the executed form of contract and all Change Orders shall control. With respect to the other Contract Documents, the order of precedence shall be as set forth below:

- (a) Supplementary Conditions
- (b) General Conditions
- (c) Specifications
- (d) Large Scale Drawings
- (e) Small Scale Drawings

1.9.2 The parties realize that in performing the Work, field conditions may require modifications in the plans and quantities of Work involved. Work must be carried out to meet these field conditions to the satisfaction of the Authority and in accordance with its directions and the Contract Documents.

## **ARTICLE 2. THE AUTHORITY**

### **2.1 Authority Obligations**

2.1.1 The Authority shall designate, in writing, one or more representatives who shall have express authority to bind the Authority with respect to certain of the matters requiring the Authority's acceptance, approval or authorization.

2.1.2 Unless otherwise provided in the Contract Documents, upon Contract award, the Authority will furnish to the Contractor, free of charge, six (6) copies of the plans and Specifications, and any additional instructions by means of supplemental drawings, manuals, or other documents reasonably necessary for the proper execution of the Work.

2.1.3 Information and services under the Authority's control shall be furnished with reasonable promptness in accordance with the Contract Documents in order to permit an orderly progress of the Work.

2.1.4 The Authority will secure and pay for required Uniform Construction Code permits.

2.1.5 The Authority will furnish surveys describing the Project Sites, as applicable. The Contractor shall be entitled to rely on the accuracy of this information, but shall exercise proper caution with regard to the safe and legal performance of the Work.

2.1.6 The Authority will have all additional duties and responsibilities specifically assigned to it in other parts of the Contract Documents.

## **ARTICLE 3. CONTRACTOR**

### **3.1 Responsibility for the Work**

3.1.1 The Contractor shall furnish all construction and other services, provide all materials, equipment and labor and undertake all efforts necessary or appropriate to construct a Project in accordance with the requirements of the Contract Documents, the Project Schedule, applicable law, governmental approvals, the approved quality management program, the approved Contractor's safety program, the plans and Specifications and all other applicable safety, environmental and other requirements, taking into account the limits of each Project Site and all other applicable physical limits resulting from constraints affecting each Project, so as to achieve Substantial Completion, Final Acceptance and Completion and Contract Completion by the deadlines specified herein, and otherwise to do in a timely manner everything required by and in accordance with the Contract Documents. The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents by reviews, tests, inspections or approvals performed by any person, or by the failure of any person to take such action.

3.1.2 The Contractor shall supervise and be responsible for the acts and omissions of the Contractor's employees, agents, officers and subcontractors and other persons performing portions of the Work, as though all such persons were directly employed by the Contractor.

### **3.2 Review of Contract Documents and Site**

3.2.1 The Contractor shall carefully study and review the Contract Documents.

3.2.2 The Contractor acknowledges that, prior to submitting its bid, in accordance with prudent and generally accepted engineering and construction practices, it inspected and examined each Project Site and surrounding locations and undertook other appropriate activities sufficient to familiarize itself with the Site to the extent the Contractor deemed necessary or advisable for bidding the Package, and as a result of such review, inspection, examination and other activities the Contractor is familiar with and accepts the physical requirements of the Work.

3.2.3. The Contractor shall perform no portion of the Work without Contract Documents, or where required, approved shop drawings, product data or samples for such portion of the Work.

### **3.3 Permits**

Except as explicitly identified in Section 2.1.4, the Contractor shall obtain and pay for all permits, fees, approvals, licenses, government charges and inspection fees necessary for the proper execution and completion of the Work and/or required for the Project by any government or quasi-government entity having jurisdiction over the Project, including, but not limited to, soils erosion permits, construction trailer permits, water permits, utility permits and street opening permits

### **3.4 Quality Management Program**

The Contractor shall have full responsibility for quality assurance and quality control for each Project, including provision of and compliance with a quality management program, meeting all of the requirements contained in the Supplementary Conditions.

### **3.5 Safety Program**

The Contractor shall have full responsibility for safety at each Project Site at all times prior to Acceptance and Completion of each Project. The Contractor shall be responsible for preparing a Safety Plan for the Project which recognizes the importance of performing the Services and Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property and individuals at the Site or adjacent thereto. The Authority's safety division and or other Authority representatives shall review Contractor's Safety Plan for consistency with the Authority's requirements and policies, based upon the latest version of the Safety Manual and all other applicable Legal Requirements, including, but not limited to, governmental safety codes, rules, regulations and requirements, such as OSHA The Contractor's Safety Plan shall meet all of the requirements contained in the Supplementary Conditions.

3.4.1 The Authority has implemented a School Facilities Projects OCIP in accordance with the N.J.S.A. 18A:7G-44. The Contractor and its' subcontractors shall be required to cooperate with the insurance carriers risk control engineer's safety issues and/or related recommendations.

### **3.6 Scheduling**

The Contractor shall at all times schedule and direct the Work to provide an orderly progression of the Work to achieve Completion within the time specified in the Contract Documents, including furnishing such employees, materials, facilities and equipment and working such hours, including extra shifts and overtime hours, as may be necessary to achieve such goal, all at the Contractor's own expense.

### **3.7 Performance as Directed**

3.7.1 At all times during the term of the Contract, including during the course of, and notwithstanding the existence of any dispute, the Contractor shall perform as directed by the Authority, in a diligent manner and without delay, shall abide by the Authority's decision or order, and shall comply with all applicable provisions of the Contract Documents.

3.7.2 The Authority may direct the Contractor to perform Work pursuant to the Contract Documents. Such Directives from the Authority do not constitute a change to the scope of the Work and will not result in an increase in the Contract Price or an adjustment to the Contract Time.

## **ARTICLE 4. TIME; PROJECT SCHEDULE AND PROGRESS**

### **4.1 Time of Essence**

Time is of the essence in this Contract.

### **4.2 Deadlines for Substantial Completion, Final Acceptance and Completion and Contract Completion**

The Contractor shall achieve Substantial Completion, Final Acceptance and Completion, and Contract Completion on or before the dates set forth in the Supplementary Conditions or such other dates for Substantial Completion and Final Acceptance and Completion as may be established by Change Order. Failure to achieve Substantial Completion or Final Acceptance and Completion by the dates established by the Contract Documents will result in the application of Liquidated Damages in accordance with Article 12.

### **4.3 Contract Time/Notice to Proceed**

Contract Time shall begin on the Commencement Date set forth on the written Notice to Proceed issued by the Authority. The Notice to Proceed will be issued by the Authority after receipt and acceptance of properly executed Contract Documents, including, but not limited to, performance and payment bonds, and insurance certificates. Unless otherwise ordered by the Authority in writing, the Contractor shall initiate Work within 5 Days of the start date set forth in the Notice to Proceed. The Contractor shall not be entitled to any claim for delay, disruption, acceleration or any other claims arising from the timing of the Authority's issuance of the Notice to Proceed. The Contractor shall perform no Work prior to the issuance of the Notice to Proceed.

### **4.4 Construction Progress Schedule**

4.4.1 Scheduling of the Work is and shall be the Contractor's responsibility. The Contractor shall determine the most feasible order for the Work commensurate with the requirements of the Contract Documents. The construction of each Project shall be undertaken and completed in accordance with the Project Schedule prepared by the Contractor and approved by the Authority, as described in the Contract Documents. The Contractor shall provide a baseline Project Schedule and shall thereafter provide revised Project Schedules on a monthly basis. The Project Schedule shall, among other things, provide that Substantial Completion and Final Acceptance and Completion of each Project shall be achieved by the dates required by the Contract Documents. The Project Schedule shall be subject to review and approval by the Authority, and shall be updated monthly and revised periodically as described herein.

4.4.2 The Project Schedule shall be used by the parties for planning and monitoring the progress of the Work and as the basis for determining the amount of the monthly progress payment to be made to the Contractor. The Project Schedule shall also be used by the Authority to determine if the Contractor is adequately planning and executing the Work and conducting activities in accordance with the Contract Documents.

### **4.5 Calculation of Adjustments to Contract Time**

4.5.1 If the Contractor is delayed in completion of the Work, the Contract Time may be extended upon request by the Contractor to the Authority.

4.5.1.1 The Contractor shall not be entitled to an extension of the Contract Time for a weather-related delay unless it demonstrates that the weather conditions during the

relevant time period were particularly severe as compared to the normal weather conditions at the Site during that time of year, and that these weather conditions adversely impacted the Project's critical path, as defined in the Project Schedule. No time extensions will be considered for any weather conditions that do not affect work on critical path.

4.5.1.2 If unusually severe or abnormal weather conditions are shown to have affected the Project's critical path, a non-compensable extension to the Contract Time may be granted. Under no circumstances will the Contractor be entitled to a compensable delay due to weather-related delays

4.5.2 No request for an extension of the Contract Time will be granted unless the Contractor makes a written request for an extension of time to the Authority within ten (10) Days of the event that causes the delay. The request shall include the nature of the delay, the commencement date of the delay, activities on the Project Schedule affected by the delay, and recommended action to minimize the delay.

4.5.3 If required under any other provision of the Contract Documents, an extension of time commensurate with the delay will be granted.

4.5.4 In no event, will an extension of time be granted where it is determined that the Contractor could have avoided the circumstances that caused the request for the extension.

4.5.5 The burden of proof for substantiating a request for an extension of time shall be on the Contractor, and shall include evidence that the cause was beyond the control of the Contractor, as well as any other justification and supporting evidence that the Authority requires to evaluate the Contractor's request. If the Authority determines that the Contractor is entitled to an extension of any Contract completion date under the provisions of the Contract Documents, the determination as to the total number of Days of the extension shall be based upon the currently approved Project Schedule and on all data relevant to the extension.

4.5.6 No extension of time will be granted unless the reason for the delay is determined to be totally beyond the control of the Contractor, is due to no direct or indirect fault of the Contractor and results in a direct delay to work on the critical path of a CPM Project Schedule or a delay which exceeds available float for an activity on a bar chart Project Schedule.

4.5.7 Float time shown on the Project Schedule is not for the exclusive use of either the Contractor or the Authority. Float time is available for use by both parties to facilitate the effective use of available resources and to minimize the impact of problems that may arise during construction. No time extension will be granted as a result of any problem, Change Order or delay that only results in the loss of available positive float on the Project Schedule. The Contractor shall have no claim for cost escalation for any activity that is completed on or before the late end date shown on the approved baseline Project Schedule. Float time shown on the Project Schedule shall not be used by the Contractor in a manner that, in the opinion of the Authority is detrimental to the interests of the Authority. If the Contractor refuses to perform any item of Work, the Authority may, regardless of the float shown to be available for the Work, consider the Contractor to be in breach of the Contract.

4.5.8. The Contractor shall make no claim for damages or additional compensation for any delay in or hindrance to its performance of the Work occasioned by any act or omission by the Authority or any of its representatives or for any reason enumerated in this Article and shall be fully compensated by an extension of Contract Time to complete the performance of the Work, unless the delay or hindrance is caused by the negligence, bad faith, active interference or other

tortious conduct of the Authority or its representatives. If the delay is caused by such negligence, bad faith, active interference or tortious conduct, the Contractor shall be entitled to compensation on a time and materials basis, as provided in Article 7.4.4 and Section 1080 of the Specifications.

## **ARTICLE 5. PROSECUTION AND PROGRESS OF THE WORK**

### **5.1 Supervision**

5.1.1 The Contractor shall supervise and direct the Work as skillfully and attentively as possible. The Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the work under the Contract. The Contractor shall give the Work the constant attention necessary to facilitate the progress thereof, and shall cooperate with the Authority and its contractors, agents, servants and employees in every way possible.

5.1.2 When the Contractor is comprised of two or more persons, firms, partnerships, or corporations functioning on a joint venture basis, said Contractor shall designate in writing, before starting Work, the name of one individual who shall have the authority to represent and act for the joint venture.

The Contractor shall designate in writing before starting Work, a competent superintendent capable of reading and thoroughly understanding the Contract Documents, and who is thoroughly experienced in the type of construction being performed. The superintendent shall have the authority to represent, act for, and bind the Contractor in all matters relating to this Agreement. One or more alternates to the superintendent, with equal authority and qualifications, may also be designated. The superintendent and all alternates shall be capable of identifying existing and predictable hazards on the Site and working conditions that are unsanitary, hazardous, or dangerous to employees and shall have the authority to take prompt corrective measures to eliminate such hazards and conditions.

5.1.3 The superintendent or the alternate shall be present at a Project Site at all times while Work is actually in progress, irrespective of the amount of Work subcontracted. The superintendent or the alternate shall have full authority to execute orders or direction from the Authority without delay, and to promptly supply such materials, equipment, tools, labor, and incidentals as may be required. When Work is not in progress, the Contractor shall have in place a plan, acceptable to the Authority, for responding to an emergency situation that requires emergency work efforts.

5.1.4 Whenever the superintendent or the alternate is not present at a Project Site or at the site of any particular part of the Work, the Authority may suspend all of the Work or the particular part of the Work in reference until the superintendent or the alternate is present. Such suspension shall not be the basis of any claim against the Authority.

### **5.2 Key Personnel; Character of Employees**

5.2.1 Key Personnel. The Contract Documents identify the job categories of "key personnel" for the Package. The Contractor may, at any time, elect to add categories to the "key personnel" list. The Authority shall have the right to review the qualifications and character of each individual to be appointed to a key position (including personnel employed by subcontractors) and to approve or disapprove, in its sole discretion, use of such individual in such position prior to the commencement of any Work by such individual. The Contractor shall notify the Authority in writing of any proposed changes in any key personnel. The Contractor shall not change any key personnel without the prior written consent of the Authority.

5.2.2 Character of Employees. All employees of the Contractor and of each subcontractor shall have the skill, experience, licenses and other qualifications and approvals required to perform the Work assigned to them. If the Authority determines, in its sole discretion, that any person employed by the Contractor or by any subcontractor is not performing the Work in a proper and skillful manner, the Authority in its sole discretion may request in writing that the Contractor or subcontractor remove such person and such person shall not be re-employed on the Package without prior written approval of the Authority, acting in accordance with its sole discretion. If the Contractor or the subcontractor fails to remove such person or persons or fails to furnish skilled and experienced personnel for the proper performance of the Work, the Authority may suspend the affected portion of the Work pursuant to Article 9.2 below.

### **5.3 Cooperation Between Contractors.**

5.3.1 The Authority reserves the right to contract for and perform other or additional work on or adjacent to a Project Site at any time.

5.3.2 When separate contracts are let within the limits of a Project Site, or in areas adjacent thereto, the Contractor shall conduct its Work so as not to interfere with or hinder the progress or completion of the work being performed by other contractors. Moreover, the Contractor assumes the positive obligation of cooperating with such other contractors and coordinating its activities with theirs.

5.3.3 If there is a difference of opinion as to the respective rights of the Contractor and others doing work within the limits of or adjacent to a Project Site, the Authority, in its sole discretion, will decide as to the respective rights of the various parties involved in order to secure the completion of the Authority's work in general harmony and in a satisfactory manner. The decision of the Authority is final and binding and is not cause for claims by the Contractor for additional compensation.

5.3.4 The Contractor hereby waives any and all claims against the Authority for additional compensation that may arise because of inconvenience, delay, or loss experienced by it as a result of the presence and operations of other contractors working within the limits of or adjacent to a Project Site.

5.3.5 The Contractor shall arrange its Work and shall place and dispose of the materials being used so as not to interfere with the operation of the other contractors within the limits of a Project Site or adjacent thereto. The Contractor shall join its Work with that of the others in an acceptable manner and shall perform the Work in proper sequence with that of the others.

### **5.4 Authority of the Authority.**

5.4.1 The Authority is responsible for the administration of the Contract. The Authority will decide all questions regarding the quality, acceptability and the rate of progress of the Work; all questions regarding interpretation of the Contract Documents; all questions regarding the acceptable fulfillment of the Contract on the part of the Contractor; and all questions as to compensation.

5.4.2 The Authority has the authority to reject defective work or materials.

5.4.3 The Authority has the authority to suspend the Work, wholly or in part, pursuant to Article 9 of the Contract. The Authority may also suspend the Work wholly or in part, for such periods

as it deems necessary due to unsuitable weather, for conditions considered unsuitable for the prosecution of the Work, or for any other condition or reason deemed to be in the public interest.

5.4.4 The Authority has the authority to suspend partial payments under Article 13 of the Contract due to the failure of the Contractor to correct conditions unsafe for the workers, the students, employees or guests of the Client School District or the general public; for failure to carry out provisions of the Contract; or for failure to carry out orders.

## **5.5 Communications.**

All communications with the Authority shall be sent to the persons indicated in the Supplementary Conditions or elsewhere in the Contract Documents. Where communications are required by the Contract Documents to be directed to persons other than the Authority, a clear copy shall be sent to the Authority.

## **5.6 Duties of the Inspector.**

Inspectors engaged by the Authority are authorized to inspect all Work. Such inspection may extend to all or any part of the Work and to the preparation, fabrication, or manufacture of the materials and equipment to be used. The inspector is not authorized to alter or waive the provisions of the Contract. The inspector is not authorized to issue instructions contrary to the Contract Documents or to act as foreman for the Contractor; however, the inspector has the authority to reject Work subject to confirmation by the Authority.

## **5.7 Inspection of Work.**

5.7.1 Each part or detail of the Work is subject to inspection by DCA, the Design Consultant, the Authority and any representatives of the Authority. The Authority shall be allowed access to all parts of the Work and shall be furnished with such information and assistance by the Contractor as is required to make a complete and detailed inspection. When DCA, Design Consultant, or Authority representatives are on or about a Project Site in the course of their employment, they shall be deemed conclusively to be invitees of the Contractor.

5.7.2 The Contractor shall not cover any work that has not been inspected or approved by DCA.

5.7.3 The Authority may order any Work done without the required inspection to be removed and replaced. The Contractor will be responsible for the costs of uncovering, removing, and/or replacing the uninspected Work

5.7.4 The Client School District shall have the right to inspect the Work. Such inspection does not make the Client School District a party to the Contract and shall in no way interfere with the rights of either party hereunder.

5.7.5 The Contractor is responsible for control of the quality of the Work regardless of whether an authorized inspector is present or not. This obligation to perform the Work in accordance with the Contract Documents is not relieved by the observations of the Authority in the administration of the Contract, nor by inspections, tests, or approvals by others. Work not meeting the Contract requirements shall be made good, and unsuitable Work may be rejected, notwithstanding that such Work had been previously inspected and approved by the Authority or that payment therefore has been made.

## **5.8 Correction of Nonconforming or Defective Work.**

5.8.1 Repair and Replacement. In the event that the Authority determines that any of the Work performed or any of the materials furnished or equipment supplied, or any of the finished Work in which such materials are used or such equipment is installed, are not in strict conformity with the requirements of the Contract Documents or are otherwise defective, the Work, materials and/or equipment shall be removed, repaired, replaced or otherwise brought into strict compliance with the requirements of the Contract Documents by and at the sole cost and expense of the Contractor..

5.8.2 Correction of Nonconforming or Defective Work. The Authority shall require timely correction by the Contractor of nonconforming or defective Work. If nonconforming or defective Work remains uncorrected for more than thirty (30) Days from the Contractor's receipt of the notice of the nonconforming or defective Work from the Authority, its Project Manager, the Design Consultant, or DCA, the next Invoice to the Contractor shall be reduced by an amount equivalent to the entire value of the nonconforming or defective Work, as if the nonconforming or defective Work is 0% complete. The Authority shall maintain a continuing list of nonconforming Work as determined by the Authority and shall distribute this list to the Contractor periodically. If the Contractor fails to repair, replace, remove or otherwise remedy any nonconforming or defective Work in accordance with this Section, the Authority shall repair, replace, remove or otherwise remedy the Contractor's nonconforming or defective Work at the Contractor's expense. In such case, an appropriate written notice shall be issued by the Authority to the Contractor notifying the Contractor of the Authority's decision to repair, replace, remove or otherwise remedy the nonconforming or defective Work and deducting from the payments then or thereafter due the Contractor the cost of repairing, replacing, removing or otherwise remedying the Contractor's nonconforming or defective Work. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Authority upon demand

## **5.9 Shop Drawings, Product Data and Samples**

5.9.1 Shop drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or any subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

5.9.2 Product data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate a material, product or system proposed for use in some portion of the Work.

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

5.9.4 The Contractor shall prepare, review, approve and submit to the Authority with reasonable promptness and in such sequence as to cause no delay in the Work all shop drawings, product data and samples required by the Contract Documents.

5.9.5 By preparing, approving and submitting shop drawings, product data and samples, the Contractor represents that the Contractor has determined and verified all materials, field measurements and field construction criteria related thereto and has checked and coordinated the information contained within such submittals with the requirements of the Work and the Contract Documents.

5.9.6 The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Authority's approval of shop drawings, product data or samples, unless the Contractor has specifically informed the Authority in writing of such

deviation at the time of submission and the Authority has given written approval to the specific deviation. The Contractor shall not be relieved from responsibility for errors or omissions in the shop drawings, product data or samples by the Authority's approval of them.

5.9.7 The Contractor shall direct specific attention, in writing or on resubmitted shop drawings, product data or samples, to revisions other than those requested by the Authority on previous submittals.

5.9.8 No portion of the Work requiring submission of a shop drawing, product data or sample shall be commenced until the submittal has been approved by the Authority. All such portions of the Work shall be in accordance with approved submittals.

## **5.10 As-Built Plans and Drawings**

5.10.1 The Contractor shall keep on each Project Site at all times one set of plans to be marked "AS-BUILT." During the course of the Project, the Contractor shall mark these drawings with colored pencils to reflect any changes, as well as the dimension and the location of all pipe runs, conduits, traps, footing depths or any other information not already shown on the plans or differing therefrom. All buried utilities outside the building shall be located by a survey performed by a licensed surveyor who shall certify as to its accuracy. These marked-up plans and surveys shall be made available to the Authority upon request at any time during the progress of the Work.

5.10.2 The Contractor shall submit the "as-built" documents to the Authority with a certification as to the accuracy of the information thereon at the time of Final Completion and before final payment will be made to the Contractor. The Contractor shall also submit, at the request of the Authority, one set of all shop and/or erection drawings used for "as-built" documentation.

## **5.11 Testing**

5.11.1 Prior to the initiation of any testing required by code, the Contract Documents or the manufacturer, the Authority will provide the Contractor with the names of testing laboratories and firms engaged by the Authority for use on the Package.

5.11.2 The Contractor shall notify the Authority in writing of when it will test Work required to be tested by code, the Contract Documents or the manufacturer. The notice shall be provided no later than five (5) working Days prior to the scheduled test. The Authority will pay for the services of testing laboratories and firms performing tests which are required by code or specified in the Contract Documents as being the responsibility of the Authority. The Contractor shall bear all other testing costs.

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

5.11.4 In the event such special or additional inspections or testing reveals that the Work does not comply with the terms and conditions of the Contract, the Contractor shall bear all costs incurred by the Authority made necessary by such noncompliance.

5.11.5 The Contractor shall utilize the inspection and testing services of entities engaged by the Authority. Failure to use such entities shall be grounds for rejection of the inspection or test as non-conforming.

5.11.6 All test reports submitted to the Authority by the Contractor shall be accompanied by a certification signed by the Contractor, attesting to the Contractor's knowledge of the contents of the submittal, its acceptance of its findings, acknowledgment that material testing meets the required standards, and a certification that the report accurately represents all of the facts contained therein. Failure to provide the written certification shall be grounds for rejection of the submittal.

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

## **5.12 Equipment and Materials**

5.12.1 The Contractor warrants to the Authority that all materials and equipment furnished under the Contract will be new, unless otherwise specified, and that all Work will be of good quality, free from faults, defects, and in conformance with the Contract Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective and rejected by the Authority. If required by the Authority, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty shall be in addition to, and not in lieu of, any other warranty or guarantee provided for in the Contract Documents.

5.12.2 The Contractor shall furnish and deliver the necessary equipment and materials in ample quantities and as frequently as required to avoid delay in the progress of the Work and shall store them so as not to cause interference with the orderly progress of a Project. The Contractor shall have its representative at each Project Site to accept delivered materials, as such materials will not be accepted for delivery by the Authority.

5.12.3 Storage of materials is the responsibility of the Contractor. Materials shall be stored to ensure the preservation of their quality and fitness. Stored materials, even though approved before storage, may again be inspected prior to their use on a Project. Stored materials shall be located so as to facilitate their prompt inspection. With the approval of the Authority, portions of a Project Site may be used for storage purposes and for the placing of the Contractor's plant and equipment, but additional space, as required, must be provided by the Contractor at the Contractor's expense. Private property shall not be used for storage purposes without written permission of the owner or lessee. Copies of such written permission shall be furnished to the Authority prior to storage. Storage sites shall be restored to their original condition at no cost to the Authority.

5.12.4 No materials, equipment, or supplies for the Work shall be subject to any lien or encumbrance or other agreement by which an interest is retained by the seller or any other person or entity. The Contractor warrants, by signing its invoice, that it has good and sufficient title to all material, equipment and supplies used by it in the Work, free from all liens, claims or encumbrances.

## **5.13 Substitutes or "Or Equal" Items.**

5.13.1 Whenever materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular supplier, the naming of the item is intended to establish the type, function, and quality required. Unless the name is followed by words indicating that no substitution is permitted, material and equipment of other suppliers may be accepted if sufficient information is submitted by the Contractor to allow the Authority to

determine that the material or equipment proposed is equivalent or equal to that named. Requests for review of substitute items of material or equipment will not be accepted from anyone other than the Contractor.

5.13.2 If the Contractor wishes to furnish or use a substitute item of material or equipment, the Contractor shall make written application to the Authority for approval thereof, certifying that the proposed substitute performs adequately the functions and achieves the results called for by the Contract Documents, is equal or similar to that specified, and is suited to the same use as that specified. The application shall state that the evaluation and approval of the proposed substitute does not prejudice the Contractor's achievement of Final Acceptance and Completion in accordance with the Contract Time. It shall also state whether or not approval of the proposed substitute for use in the Work requires a change in any of the Contract Documents to adapt the design to the proposed substitute, and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified shall be identified in the application, and available maintenance, repair, and replacement service shall be indicated. The application shall also contain an itemized estimate of all costs that result directly or indirectly from approval of such substitute, including costs of redesign, all of which will be considered in evaluating the proposed substitute. The Authority may require the Contractor to furnish additional data about the proposed substitute.

5.13.3 If a specific means, method, technique, sequence, or procedure of construction is indicated in or required by the Contract Documents, the Contractor may furnish or use a substitute means, method, technique, sequence or procedure of construction which is acceptable, if the Contractor submits sufficient information to allow the Authority to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents. The information provided by the Contractor shall conform with the information required in Article 5.13.2 above.

5.13.4 The Authority shall be allowed a reasonable time within which to evaluate each proposed substitute. The Authority will be the sole judge of acceptability, and no substitute shall be ordered, installed, or used without the express written approval of the Authority. If approval is given, it shall be understood to be on the condition that the Contractor shall remain fully responsible for producing Work in conformity with Contract requirements.

5.13.5 If, after trial use of the substituted materials, equipment, means, method, technique, sequence, or procedure of construction, the Authority determines that the Work produced does not meet Contract requirements, the Contractor shall discontinue the use of the substitute and shall complete the remaining Work with the specified materials, equipment, means, method, technique, sequence, or procedure of construction. The Contractor shall remove the deficient Work and replace it as specified, or take such other corrective action as the Authority may direct.

5.13.6 The Authority will not permit any increases in Contract Price or extensions of Contract Time as a result of the use of authorized substitutes.

5.13.7 The Authority may require the Contractor to furnish, at no cost to the Authority, a special performance guarantee or other surety with respect to any substitute.

5.13.8 When the Contract Documents permit the use of more than one type of material, equipment, or product, only one type is to be used throughout the Package.

## **5.14 Acceptance and Rejection of Materials, Equipment and Furnishings**

5.14.1 When specified by the Contract Documents, certain materials, equipment, assemblies, and furnishings, will be accepted only on the basis of certificates of compliance stating that such materials, equipment, furnishings or assemblies fully comply with the requirements of the Contract. The form of certificates of compliance must be approved by the Authority.

5.14.2 The Contractor shall require the manufacturer or supplier to furnish the number of copies of certificates of compliance specified in the Contract Documents with each delivery of materials, equipment, assemblies and furnishings. The Contractor shall provide these copies to the Authority.

5.14.3 Certificates of compliance shall contain the following information:

- (a) Project to which the material is consigned.
- (b) Name of the Contractor to which the material is supplied.
- (c) Kind of material supplied.
- (d) Quantity of material represented by the certificate.
- (e) Means of identifying the consignment, such as label marking, seal number, or other identifying mark.
- (f) Date and method of shipment.
- (g) Statement that the material has been tested and found in conformity with the pertinent Contract requirements stated in the certificate.
- (h) Signature of a person having legal authority to bind the supplier.
- (i) Signature attested to by a notary public or other properly authorized person.

5.14.4 Payments will not be made for materials, equipment, assemblies or furnishings specified for acceptance on the basis of certificates of compliance until the Authority has received such certificates.

5.14.5 Materials or assemblies, used on the basis of certificates of compliance, may be sampled and tested at any time. If found not to be in conformance with the Contract requirements, such materials and assemblies will be rejected whether in place or not.

5.14.6 All materials, equipment, assemblies and furnishings, whether in place or not, which do not conform to the requirements of the Contract Documents, shall be considered as unacceptable, and shall be rejected and removed immediately from the Project Site, unless otherwise directed. Rejected materials, equipment, assemblies or furnishings, the defects of which have been corrected, shall not be used until approval has been given.

## **5.15. Use of Explosives**

5.15.1 When the use of explosives is necessary for the prosecution of the Work, the Contractor shall exercise the utmost care not to endanger life or property, including new Work. The Contractor shall be responsible for all damage resulting from the use of explosives.

5.15.2 A pre-blasting meeting will be scheduled by the Authority with the Office of Safety Compliance, Mine Safety and Explosives, New Jersey Department of Labor. The Contractor shall attend the pre-blasting meeting. No blasting will be permitted prior to the pre-blasting meeting.

5.15.3 Explosives shall be stored safely under lock and key. The storage places shall be marked plainly **DANGEROUS EXPLOSIVES**. The storing and handling of explosives and highly

inflammable materials shall conform to the regulations of the Office of Safety Compliance, Mine Safety and Explosives, New Jersey Department of Labor, and to local regulations relating thereto. Proper means shall be used to avoid blasting damage to public and private property. All persons within the danger area shall be warned and given time to withdraw.

### **5.16 Cut-overs and interruptions.**

All cut-overs of mechanical and electrical services to existing buildings shall be approved, scheduled and coordinated in advance with the relevant municipal utility and the Project School District and performed at a time convenient to the occupants so as not to unreasonably interfere with their operations.

### **5.17 Layout and Dimensional Control**

5.17.1 The Contractor shall be responsible for locating and laying out the building and all of its parts on each Project Site, in strict accordance with the plans, and shall accurately establish and maintain dimensional control. The Contractor shall employ the services of a competent and licensed New Jersey engineer or land surveyor, as appropriate, to perform all layout work and to test the level of excavations, footing base plates, columns, walls and floors and roof lines, and furnish to the Authority, as the Work progresses, certifications that each such level is as required by the plans. The plumb lines of vertical surfaces shall be tested and certified by the surveyor as the Work progresses.

5.17.2 The engineer/surveyor shall establish all points, lines, elevations, grades and bench marks for proper control and execution of the Work. The engineer/surveyor shall establish a single permanent benchmark as directed, to which all three coordinates of dimensional control shall be referred. The engineer/surveyor shall verify all Authority-furnished topographical and utility survey data and all points, lines, elevations, grades and benchmarks.

5.17.3 Should any discrepancies be found between information given on plans and the actual Site or field conditions, the Contractor shall notify the Authority in writing of such discrepancy, and shall not proceed with any Work affected until receipt of written instructions from the Authority.

### **5.18 Security**

The Contractor shall provide all locks, doors and security construction necessary to secure a School Facility until Final Acceptance and Completion of that School Facility. The Contractor shall be responsible for the security of any stored materials and/or temporary structures that it has located on a Project Site outside of each School Facility. The Contractor shall provide all Site fencing, gates, security personnel, security services, and security structures and equipment required by the Contract Documents, or otherwise necessary to properly protect the Site.

### **5.19 Authority Field Office**

The Contractor shall provide on-Site, suitable, separate weather-tight, insulated field office facilities for use by employees of the Authority and its contractors, consultants, and agents which meet all of the requirements contained in the Contract Documents. The Contractor shall be responsible for the maintenance of these facilities as required by the Contract Documents.

### **5.20 Photographs**

With each application for payment, the Contractor shall submit monthly progress photographs to the Authority as required by the Contract Documents.

## **5.21 Repair of Finished Surfaces, Applied Finishes, Glass**

5.21.1 The Contractor shall be responsible for replacement of all broken glass installed by it or by its subcontractor, after the glass has been installed, no matter by whom or what the breakage was caused. The Contractor shall replace all broken, scratched or otherwise damaged glass before Final Acceptance and Completion. The Contractor shall wash all glass on both sides upon Final Completion, or when directed, removing all paint spots, stains, plaster, or other foreign material.

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

## **5.22 Temporary Facilities**

The Contractor shall provide such storage areas, employee vehicular parking areas, staging areas, excavation borrow/spoils designated areas, commercial canteen areas, field offices, telephones, toilet facilities, and other temporary facilities required by the Contract Documents or which are necessary to perform the Work. The Contractor shall locate these areas to suit Project requirements, subject to approval of the Authority.

## **5.23 Temporary Services and Enclosures**

The Contractor shall provide such temporary electricity, water, or other utilities, as required by the Contract Documents, or which are necessary to perform the Work. The Contractor shall also supply such temporary enclosures and heat, as required by the Contract Documents, or which are necessary to perform the Work.

## **5.24 Access, Roads and Walks**

5.24.1 The Contractor shall be responsible for providing and maintaining unobstructed traffic lanes on the designated construction access routes, either shown on the Contract drawings or reasonably required for the performance of the Work. The Contractor shall provide and maintain all required safety devices. The Contractor shall provide, place, grade and compact all necessary materials, to maintain such routes, and shall remove snow and debris as necessary to provide and maintain in serviceable condition the access roadbed, as well as pedestrian ways.

5.24.2 The Contractor shall be responsible for constructing and keeping all roadways, drives and parking areas within or proximate to the Site free and clear of debris, gravel, mud or any other Site materials, by ensuring that all reasonably necessary measures are taken to prevent such materials from being deposited on such surfaces. These efforts include, as may be appropriate, the cleaning of vehicle wheels and undercarriages prior to exit from the Site. The Contractor shall be responsible for any citations, fines, or penalties imposed on it, the State, the Authority, or the Client School District for failing to comply with applicable local rules and regulations.

5.24.3 The Contractor shall obtain permission in writing from the Authority before using for construction purposes any existing driveways or parking areas not specifically designated for such use in the Contract Documents. The Contractor shall maintain such driveways and areas in good condition during the construction period, and at Final Acceptance and Completion, shall leave them in the same condition as at the start of the Work. Conditions before use shall be carefully photographed or otherwise documented by the Contractor.

5.24.4 The Contractor shall not commence construction of permanent driveways, parking areas or walks without the written approval of the Authority.

## **ARTICLE 6. SUBCONTRACTORS**

### **6.1 Approval of Subcontractors**

6.1.1 In the event the Contractor hires, employs or otherwise engages Subcontractors, the Contractor shall be considered the sole point of contact with regard to all matters relating to the Contract. All communication between Subcontractors and the Authority shall pass through the Contractor.

6.1.2 The Contractor must: (i) when required under Section 6.1.4 below, select only Subcontractors that have been pre-qualified by the Authority, and (ii) in all cases, obtain the consent of the Authority, as detailed below, prior to the engagement of any Subcontractors.

6.1.3 The Contractor shall not subcontract to firms or individuals that are suspended or debarred by the State of New Jersey or by any instrumentality thereof, or to firms or individuals that are otherwise not eligible to perform Work as subcontractors on the School Facilities Project pursuant to regulation, Authority procedures, or the requirements of the Contract Documents.

6.1.4. The Contractor shall comply with the Authority's regulations and standards for the prequalification of Subcontractors for certain types of Work on the Project. For that type or quantity of work for which prequalification of a Subcontractor is generally required by the Authority either by policy or regulation, the Contractor shall only employ Subcontractors who are pre-qualified by the Authority to perform such Work.

6.1.5 No subcontractor shall perform Work on the School Facilities Project until it has been approved by the Authority, which approval shall not be granted until Authority confirmation of the subcontractor's New Jersey Department of Labor Public Works Contractor Registration Act Certification, New Jersey Department of Treasury Division of Revenue Business Registration, and verification of any applicable trade licenses, business permits, and/or certificates.

6.1.6. The Contractor shall list in its bid proposal all subcontractors required by the Contract Documents to be included therein.

6.1.7. As soon as a potential additional subcontractor has been identified by the Contractor, but in no event less than fourteen (14) Days prior to the scheduled initiation of Work by such subcontractor, the Contractor shall notify the Authority in writing of the name and address of such subcontractor and shall request that the Authority approve such subcontractor. The Authority will notify the Contractor in writing whether the subcontractor has been approved or advise the Contractor of the reasons for disapproval of the subcontractor. If a proposed subcontractor is disapproved, the Contractor may submit another candidate for approval.

6.1.8. The Authority shall not be liable for any costs, damages or delays incurred by the Contractor as a result of the reasonable disapproval of a subcontractor by the Authority, nor shall the Contractor be entitled to reimbursement or time extensions in connection with such disapproval.

### **6.2 Substitution of Subcontractors**

The Contractor shall make no substitution of any subcontractor previously approved without written notification to the Authority and the receipt of the Authority's written approval for such substitution. The

Contractor shall submit substitutions for any subcontractor no less than fourteen (14) Days prior to the initiation of work by the Subcontractor.

### **6.3 Contractor's Obligation for Subcontracted Work**

The Contractor shall remain fully responsible to the Authority for the proper performance of the Contract irrespective of whether the work is performed by the Contractor's own forces or by subcontractors engaged by the Contractor. Approval of a subcontractor by the Authority shall not relieve the Contractor of the responsibility of complying with all provisions of the Contract Documents and does not imply approval of any Work performed by the subcontractor. Nothing contained in the Contract Documents shall create any contractual relationship between any subcontractor and the Authority.

### **6.4 Payments to Subcontractors**

The Contractor shall comply with the provisions of N.J.S.A 52:32-40 and N.J.S.A 52:32-41, concerning the prompt payment of subcontractors.

## **ARTICLE 7. CHANGES IN THE WORK**

### **7.1 General**

7.1.1 The Authority reserves the right to make such alterations, deviations, additions to, or omissions from the Contract Documents as it deems necessary for the satisfactory completion of the Work. Such increases, decreases, alterations or omissions shall not invalidate the Contract or release the surety.

7.1.2 Changes in the Work may be accomplished by Change Order or Construction Change Directive, consistent with the procedures and requirements set forth in this Article 7.

### **7.2 Change Orders**

7.2.1 A Change Order shall not be effective for any purpose unless executed by the Authority and the Contractor.

7.2.2 Change Orders may be issued for one or more of the following purposes:

- (a) to modify the scope of the Work;
- (b) to revise the Contract Time;
- (c) to adjust the Contract Price; or
- (d) to revise other terms and conditions of the Contract Documents.

### **7.3 Contract Change Requests**

7.3.1 Within ten (10) Days of encountering a condition, event or occurrence that allegedly causes or necessitates a change in or addition to the Work, the Contractor shall so notify the Authority in writing. The Contractor's notice shall include a full explanation of the circumstances and any Contract Price or Contract Time adjustment it deems warranted by the Change in the Work.

7.3.2 Within ten (10) Days of receipt from the Authority of a Contract Change Request that proposes or directs a Change in the Work, the Contractor shall provide to the Authority any Contract Price or Contract Time adjustment it deems warranted by the Change in the Work.

7.3.3 All requests for Contract Time or Contract Price adjustments shall contain a written representation by the Contractor that the requested adjustments include all known and anticipated impacts or amounts, direct, indirect and consequential, which may be incurred as a result of the event, occurrence or condition giving rise to the requested Change in the Work.

7.3.4 All requests for Contract Time adjustments shall be accompanied by copies of both the current approved Project Schedule and a proposed revision to that Schedule incorporating the changed Work and the effect of such changed Work on the Schedule. Failure to provide the required schedule data shall be grounds for rejection of the Construction Change Request.

7.3.5 Following the submission of the Contract Change Request, the Contractor shall diligently continue performance of all other Work to the maximum extent possible, in accordance with the Contract Documents, unless otherwise directed by the Authority.

## **7.4 Calculation of Adjustments to the Contract Price**

In the event that the Authority approves a Contract Change Request, and issues a Change Order including an adjustment to the Contract Price, the Authority shall be the sole arbiter as to whether the Contract Price shall be adjusted on a lump sum or time and materials basis.

7.4.1 Upon request by the Authority, the Contractor shall submit within ten (10) Days a lump sum cost proposal for the Change in the Work. The Contractor's proposal shall itemize the labor and material costs for the various components of the Change in the Work, shall conform to the instructions regarding the pricing of additive and deductive changes set forth in Section 1080 of the Specifications, and shall be accompanied by the signed proposals of all Subcontractors who will perform any portion of the Change in the Work and of all suppliers who will furnish materials or equipment for incorporation therein.

7.4.1.1 The cost of any increase in the Contractor's bond premium caused by a Change in the Work shall be considered a direct cost and is to be added to the Contractor's proposal after overhead and profit have been calculated.

7.4.1.2 Contractor may include in its lump sum proposal a markup no greater than ten percent (10%) for overhead and five percent (5%) for profit for work related to the Change in the Work performed by its own workforce. Contractor may also include an additional five percent (5%) markup for Subcontractor work performed. In no case shall the Contractor submit, or will the Authority accept, a total markup greater than twenty percent (20%) in a lump sum cost proposal to complete a Change in the Work, regardless of how many tiers of Subcontractors perform the Work

7.4.2 In the event that the Contractor fails to submit its lump sum proposal within the designated time, the Authority may issue a Construction Change Directive and order the Contractor to proceed with the Change in the Work and the Contractor shall so proceed. In such an event, the Authority may choose to make a determination of the reasonable cost and time to perform the Change in the Work, based on its own estimates, the Contractor's submission or a combination thereof.

7.4.3 In the event that the Contractor and the Authority are unable to agree as to the reasonable cost and time to perform the Change in the Work based upon the Contractor's lump sum proposal, and the Authority does not elect to have the Change in the Work performed on a time and materials basis, the Authority may choose to make a determination of the reasonable cost and time to perform the Change in the Work, based on its own estimates, the Contractor's submission or a combination thereof.

7.4.3.1 A Change Order shall be issued in this case for the cost and time determined by the Authority and shall become binding upon the Contractor unless the Contractor memorializes its protest in writing on the Change Order within thirty (30) Days of the issuance of the Change Order.

7.4.3.2 Irrespective of whether or not the Contractor and the Authority are in agreement regarding the cost and time associated with performing the Change in the Work, the Authority may issue a Construction Change Directive and order the Contractor to perform the Change in the Work. Failure of the parties to reach agreement regarding the cost and time of performing the Change in the Work and/or any pending protest, shall not relieve the Contractor of its obligation to perform the Change in the Work promptly and expeditiously.

7.4.4 In the event that the Authority elects to have the Change in the Work performed on a time and materials basis, the same shall be performed, whether by the Contractor's forces or the forces of any of its subcontractors, at actual cost to the entity performing the Change in the Work, calculated in accordance with the instructions regarding the pricing of additive and deductive changes set forth in Section 1080 of the Specifications.

7.4.4.1 The Contractor shall submit to the Authority daily time and materials tickets, to include the identification number assigned to the Change in the Work, the location and description of the Change in the Work, the classification of labor employed (and names and social security numbers), the materials used, the equipment rented (not tools) and such other evidence of cost as the Authority may require.

7.4.4.2 The Authority may require authentication of all time and materials tickets and invoices by persons designated by the Authority for such purpose. The failure of the Contractor to secure any required authentication shall, if the Authority elects to treat it as such, constitute a waiver by the Contractor of any claim for the cost of that portion of the Change in the Work covered by a non-authenticated ticket or invoice; provided, however, that the authentication of any such ticket or invoice by the Authority shall not constitute an acknowledgement by the Authority that the items thereon were reasonably required for the Change in the Work.

7.4.5 The Authority reserves the right to reject the Contractor's proposal for an adjustment in the Contract Price and to elect to perform the Change in the Work using another contractor.

## **7.5 Changes Warranting an Adjustment in Contract Time**

All requests for additional Contract Time associated with Changes in the Work shall be processed, evaluated and resolved in accordance with Article 4.

## **7.6 Indirect Costs**

The Contractor shall not be entitled to any amount for indirect costs, damages or expenses of any nature, including, but not limited to, labor inefficiency, wage, material or other escalations beyond the lump sum, unit price or time and materials calculations provided for in this Article 7 and in Section 1080 of the Specifications, regardless of any delays, interferences, suspensions, changes in sequence or the like, for whatever cause, whether reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable, arising from the performance of any and all Changes in the Work performed pursuant to this Article 7. It is understood and agreed that the Contractor's sole and exclusive remedy in the event of a

Change in the Work shall be the recovery of its direct costs, as compensable hereunder, and an extension of the Contract Time, but only in accordance with the provisions of Article 4.

### **7.7 Changes Requiring a Decrease in Contract Price**

If a Change in the Work will result in a decrease in the Contract Price, the Authority may request a quotation by the Contractor of the amount of such decrease for use in preparing a Change Order. The Contractor's quotation, based on the requirements of Section 1080 of the Specifications, shall be forwarded to the Authority within five (5) Days of the Authority's request and, if acceptable to the Authority, shall be incorporated in the Change Order.

### **7.8 Disputes Regarding Changes**

7.8.1 If any dispute should arise between the parties with respect to an increase or decrease in the Contract Price or the Contract Time as a result of a Change in the Work, the Contractor shall not suspend performance of a Change in the Work or the Work, itself, unless otherwise so ordered by the Authority in writing. The Authority shall, however, pay to the Contractor up to the Authority's reasonably estimated value for the Change in the Work, regardless of the dispute, if the Change in the Work results in an increase in the Contract Price; and the Authority shall have the right to decrease the Contract Price up to the Authority's reasonably estimated value of the Change in the Work, regardless of the dispute, if the Change in the Work results in a decrease in the Contract Price.

7.8.2 No claim relating to or flowing from a Change in the Work shall be allowed, unless it is memorialized in writing on the Change Order related to that Change in the Work prior to execution by the Contractor.

### **7.19 Differing Site Conditions**

7.9.1 If, during the progress of the Work, the Contractor encounters subsurface and/or latent conditions at a Site that materially differ from those shown on the plans or indicated in the Specifications or physical conditions of an unusual nature that materially differ from those ordinarily encountered and generally recognized as inherent in work of the character and in the location of the Project Site, it shall immediately give notice to the Authority of such conditions before they are disturbed.

7.9.2 Upon receipt of the written notice, the Authority shall promptly investigate the conditions and if it finds that they materially differ from those shown on the plans or indicated in the Specifications, the Authority shall cause such changes in the plans and/or Specifications as are necessary.

7.19.3 Any increase or decrease in cost or time resulting from such changes shall be adjusted in the manner provided for Changes in the Work in this Article 7.

7.9.4 The Authority shall not be liable or responsible for additional work, costs or changes to the Work due to material differences between actual conditions and the conditions indicated by any geotechnical, soils or other reports, surveys and analyses made available for the Contractor's review.

7.9.5 No adjustment in Contract Time or Contract Price that would result in a benefit to the Contractor will be allowed unless the Contractor provides the written notice required in this Article 7.9.

## **ARTICLE 8. INSURANCE AND BONDS**

### **8.1 Performance and Payment Bonds**

8.1.1 The Contractor shall furnish within five (5) Days of receipt of the Notice of Award both a performance bond and a payment bond, each in statutory form, in an amount equal to 100 percent of the Contract Price, guaranteeing the due and punctual performance of all obligations of the Contractor under the Contract Documents.

8.1.2 The surety must be currently authorized to do business in the State of New Jersey.

8.1.3 The bonds shall cover all guarantees and warranties required by the Contract, and all alterations, extensions of Contract Time, Changes in the Work and other changes authorized by the Contract Documents, without the need to secure the consent of the surety or sureties.

8.1.4 Bonds must be legally effective as of the date the Contract is signed. Each bond must indicate the Contractor's name exactly as it appears on the Contract. Current attorney-in-fact instruments and financial statements of the surety must be included for **each** bond. An authorized officer or agent of the surety must execute the bonds. All bonds and the sureties that write them must conform in all respects to the requirements of applicable state law.

8.1.5 No Contract shall be executed by the Authority unless and until the required bonds are submitted and approved by the Authority.

### **8.2 Contractor Insurance and NJSDA School Facilities Projects Owner Controlled Insurance Program**

8.2.1 NJSDA School Facilities Projects Owner Controlled Insurance Program Coverage Provided. The Authority has implemented a School Facilities Projects Owner Controlled Insurance Program (OCIP") in accordance with the N.J.S.A. 18A:7G-44. The terms and conditions of this Section 8, addressing the OCIP and Contractor insurance requirements, shall apply during the term of this Contract. In addition, the Contractor and its subcontractors shall be required to comply with all provisions of the applicable Project Safety Manual, as such compliance has a direct bearing on the insurance costs of the Authority. The OCIP will provide on-site General Liability, on-site Employer's Liability and Workers' Compensation, Builders Risk and on-site Excess Liability coverage. Through the OCIP, the Authority shall provide coverage to all Contractors and eligible subcontractors of every tier providing direct labor on a School Facilities Project, except as otherwise provided herein. Firms providing temporary labor services and leasing companies are to be treated as subcontractors for OCIP enrollment purposes. Certain types of subcontractors or services are not eligible for enrollment in the OCIP, as set forth in Section 8.3 below. The Authority shall pay all premiums associated with the OCIP, including deductibles or self-insured retention, unless otherwise provided in the Contract Documents.

8.2.2. Contractor and Subcontractor Insurance Requirements. Although the OCIP provides broad coverages and high limits, it is not intended to, nor does it, meet all of the insurance needs of the Contractor and its subcontractors. In addition to coverage provided by the OCIP, therefore, an enrolled Contractor shall be responsible for providing proof that it and its subcontractors have retained, at a minimum, the insurance coverages set forth in Section 8.2.13 below.

8.2.3. Risk Management Unit. OCIP management shall be handled by the Authority's Risk Management Unit and OCIP Administration Services Provider (collectively, the "RMU"). All OCIP questions are to be directed to the RMU.

8.2.4. Mandatory Enrollment. Enrollment in the OCIP is mandatory, but not automatic. The Contractor shall be required to notify the RMU of all subcontractors of every tier providing direct labor on the School Facilities Project and follow enrollment procedures as provided by the Authority in the NJSDA OCIP Insurance Procedures Manual. Any failure on the part of the Contractor to comply with this notification requirement may negate coverage under the OCIP, and the Contractor shall bear all risk associated with any such lack of coverage.

8.2.5. Coverage Term. The term of OCIP coverage shall extend and terminate as follows:

8.2.5.1. Coverage of the Contractor. Builder's Risk coverage of the Contractor shall extend to and terminate upon the occurrence of Substantial Completion of the School Facilities Project, as such is defined in Article 1. On-site Workers' Compensation, General Liability, Umbrella/Excess Liability coverage of the Contractor shall extend to and terminate upon the occurrence of Final Acceptance and Completion, as defined in Article 1.

8.2.5.2. Coverage of Subcontractors. On-site Workers' Compensation, General Liability, Umbrella/Excess Liability coverage provided to any subcontractor shall extend to and terminate upon the earlier of: (i) the occurrence of Final Acceptance and Completion of the School Facilities Project, as such is defined in Article 1, or (ii) the completion of such subcontractor's work at the School Facilities Project. Builder's Risk coverage provided to any subcontractor shall extend to and terminate upon the earlier of: (i) the occurrence of Substantial Completion of the School Facilities Project, as such is defined in Article 1, or (ii) the completion of such subcontractor's work at the School Facilities Project.

8.2.5.3. Warranty Work Exclusion. The Contractor and any subcontractor of any tier shall be ineligible for participation in the OCIP and thus shall be responsible for purchasing and maintaining its own insurance coverage in accordance with Section 8.3.2 below for the performance, after Final Acceptance and Completion of the School Facilities Project, as such is defined in Article 1, of any warranty Work on the School Facilities Project pursuant to Article 19, and in no event shall such Work be subject to coverage under the OCIP.

8.2.6. Authority's Right to Terminate.

8.2.6.1. Right to Terminate the OCIP. The Authority has the right to terminate or to modify the OCIP or any portion thereof. To exercise such right, the Authority shall provide thirty (30) Days advance written notice of termination or material modification to the Contractor and all subcontractors covered by the affected OCIP coverage. In such event, the Contractor and subcontractors shall be required to obtain such replacement insurance coverage as may be specified by the Authority. Certificates evidencing such insurance shall be provided to the Authority prior to the effective date of the termination or modification of the OCIP coverage. The Authority shall reimburse the Contractor and subcontractors for the reasonable cost of such replacement insurance.

8.2.6.2. Right to Terminate Enrollment. The Authority has the right to terminate the enrollment in the OCIP or any portion thereof of the Contractor or any of its subcontractors. To exercise such right, the Authority shall provide thirty (30) Days advance written notice of termination to the Contractor or subcontractor. In such event, the Contractor or subcontractor shall be required to obtain such replacement insurance coverage as may be specified by the Authority. Certificates evidencing such insurance shall be provided to the Authority prior to the effective date of the termination of coverage under the OCIP. The Contractor or subcontractor shall be required to invoice the Authority for the reasonable cost of such replacement insurance. Notwithstanding anything to the contrary, in the event this Contract is wholly terminated for convenience or for

cause pursuant to Article 10 Section 10.3, OCIP coverage shall terminate as set forth in the Order of Termination for Convenience or Order for Termination for Cause, as the case may be.

8.2.7. Waiver of Subrogation. The Contractor waives all rights of subrogation and recovery against the Authority and subcontractors of all tiers to the extent of any loss or damage, including damage to any property or equipment, insured under the OCIP. The Contractor shall require all subcontractors of all tiers enrolled in the OCIP to include in their contracts with the Contractor the same waiver of their rights to subrogation and recovery.

8.2.8. No Release. The provision of the OCIP by the Authority shall in no way be interpreted as relieving the Contractor of any other responsibility or liability under the Contract Documents or any applicable law, statute, regulation, or court order, including, but not limited to, the risk of loss and indemnification obligations under Article 16.

8.2.9. OCIP Provided Coverage. The terms and conditions of such policies or programs, as such policies or programs may be from time to time amended, are incorporated by reference. Contractor agrees to be bound by the terms of coverage as contained in such insurance policies.

8.2.9.1. Workers' Compensation and Employer's Liability Insurance shall be provided for Contractor and subcontractor employees working on site, in accordance with applicable state laws. Separate policies will be provided reflecting the following Limits of Liability:

Workers' Compensation Applicable Statutory Benefits

Employer's Liability

\$1,000,000	Bodily Injury by Accident
\$1,000,000	Bodily Injury by Disease - Policy Limit
\$1,000,000	Bodily Injury by Disease - Each Employee.

8.2.9.2. Commercial General Liability Insurance shall be provided on an "occurrence" form under a master liability policy. Certificates of Insurance will be provided to the Contractor and all tiers of Subcontractors reflecting the following Limits of Liability:

\$2,000,000	Bodily Injury and Property Damage Liability Combined Single Limit each occurrence (per Region)
\$5,000,000	General Aggregate Limit (per Region) reinstated annually
\$5,000,000	Products and Completed Operations Aggregate (per Region)
\$2,000,000	Personal Injury and Advertising Injury
\$50,000	Fire Damage Legal Liability
\$5,000	Medical Expense
\$2,000,000	Railroad Protective Liability

Commercial General Liability Insurance coverage and terms shall include, but shall not be limited to, the following:

- (a) Occurrence Basis;
- (b) Products;
- (c) Completed Operations (a minimum six-year term after Schools Facilities Project Final Acceptance and Completion);
- (d) Contractual Liability specifically designating the indemnity provision of this Contract as an insured contract;
- (e) Independent Contractor's Liability;

- (f) Personal Injury;
- (g) Explosion, Collapse, and Underground (X,C,U) exclusions deleted; and
- (h) Designated Premises Only.

8.2.9.3. Excess Liability Insurance shall be provided under a master liability policy. Certificates of Insurance will be provided to the Contractor and all tiers of Subcontractors reflecting the following Limits of Liability:

\$300,000,000	per occurrence
\$300,000,000	aggregate.

8.2.10. Builder’s Risk

8.2.10.1 “All Risk” Coverage. Builder’s Risk shall provide “All Risk” coverage on a replacement cost basis subject to standard exclusions, property limitations and conditions. Such insurance shall include the interests of the Authority, Contractor, and any enrolled subcontractor of any tier providing direct labor on a Schools Facilities Project, with the following terms:

Primary Limit: \$200,000,000

8.2.10.2. Exclusions. The Builder’s Risk policy shall not provide coverage against loss by theft or disappearance of any materials (unless the materials are to be incorporated into the School Facilities Project), tools or equipment of the Contractor or of any enrolled subcontractor of any tier, or of any other person furnishing labor or materials for the School Facilities Project.

8.2.11. Insurance Certificates and Policies. Each enrolled Contractor and all tiers of enrolled subcontractors shall receive a separate Workers’ Compensation policy. Certificates of Insurance shall be furnished evidencing the Workers’ Compensation, General Liability and Umbrella/Excess Liability coverage. The related policies shall be available for review by the Contractor upon request to the RMU. The Contractor and its subcontractor shall be bound by the terms of coverage as contained in such insurance certificates and/or policies.

8.2.12. Contractor and Subcontractor OCIP Responsibilities. The Contractor and subcontractors of all tiers enrolled in the OCIP shall cooperate with the Authority and the RMU in the administration and operation of the OCIP. Such responsibilities and cooperation shall include, but not necessarily be limited to, the following:

- (a) Ensuring that no enrolled subcontractor shall commence Work at the School Facilities Project site until it has received prior approval from the RMU.
- (b) Compliance with all applicable safety program, administrative, and claims procedures, as outlined in the respective manuals.
- (c) Promptly providing necessary contract, operations, safety, and insurance information.
- (d) Promptly responding to RMU or insurance company requests for claims, payroll, or other information.
- (e) Attending periodic meetings regarding administration, claims review, or safety.
- (f) Completing all OCIP forms required by the RMU or applicable manual.

8.2.13. Supplemental Insurance Requirements of Contractor and Subcontractors. As provided in Section 8.2.2, notwithstanding enrollment in the OCIP, the Contractor and it’s subcontractors of

every tier providing direct labor on the School Facilities Project must, upon enrollment in the OCIP, attach to the required enrollment forms, certificates of valid insurance evidencing current coverage for the On-site and Off-site exposures enumerated below, which are not provided by the OCIP. Insurance binders are not acceptable as proof of insurance coverage. Such coverage must be purchased and maintained from insurance companies authorized to transact the business of insurance in the State of New Jersey and are rated "A-" or better by A.M. Best Company. The insurance certificates and policies must provide for thirty (30) Days written notice to the RMU prior to cancellation of coverage for any reason except non-pay. For purposes of this Section 8.2.13, "Off-Site" shall include, but not necessarily be limited to, the Contractor's regularly established workplace, plant, factory, office, shop, warehouse, yard, or other property, even if such operations are for training of apprentices or for fabrication of materials to be used at the School Facilities Project site. The following are the insurance requirements, and related insurance provisions of this Contract:

8.2.13.1. Off-Site and On-Site Business Automobile Liability: Business Automobile Liability Insurance covering owned, non-owned, and hired vehicles. The limits of liability shall not be less than \$1,000,000 combined single limit each accident. The policy shall name the Authority, the New Jersey Economic Development Authority, the New Jersey Department of Education, the State, the Project Management Firm, the Design Consultant, and the Client School District, and their respective directors, officers, members, employees and agents as additional insureds.

8.2.13.2. Off-Site Workers' Compensation and Employer's Liability: Workers' Compensation Insurance in accordance with the laws of the State of New Jersey and any other state or federal jurisdiction as is required to protect the employees of the Contractor or any subcontractor to be engaged in the performance of work at an Off-Site location. This policy shall include Employer's Liability protection with a limit of liability of not less than the following:

- (a) Bodily Injury by Accident \$500,000 each accident
- (b) Bodily Injury by Disease \$500,000 each employee
- (c) Bodily Injury by Disease \$500,000 policy limit.

8.2.13.3. Off-Site Commercial General Liability: Commercial General Liability insurance, written as broad as the standard coverage form currently in use in the State of New Jersey, and not be circumscribed by any endorsements limiting the breadth of coverage. The policy shall include coverage for contractual liability, products, completed operations and any explosion, collapse and underground (X,C,U) operations. Limits of liability shall not be less than \$1,000,000 Bodily Injury and Property Damage combined single limit for each occurrence, with excess or umbrella coverage with the same terms and conditions as the underlying coverage in an amount such that the primary and excess/umbrella coverage equals \$1,000,000. The policy shall either be endorsed to exclude the School Facilities Project, or, if the policy includes the School Facilities Project, such coverage must be endorsed as Excess and/or Difference in Conditions ("DIC") of the OCIP coverage, and the cost thereof shall in no way be charged to or paid by the Authority.

8.2.13.4. Off-Site/On-Site Contractors Equipment. The Contractor shall purchase and maintain Contractor's property insurance covering construction machinery, whether or not the capital value of which has been included in the Contract, equipment, and tools used by the Contractor in the performance of Work. Such coverage shall be written on a policy form at least equivalent to that provided by a "Contractor's Equipment Floater," as such is customarily defined within the insurance industry. The Contractor shall notify all tiers of subcontractors of their obligation to insure any machinery, equipment and tools used by the subcontractors in the performance of Work.

8.2.13.5. Right to Remedy. If the Contractor fails to provide insurance as required in this Section 8.2.13, the Authority shall have the right, but not the obligation, to purchase such insurance. In such event, the Contract Price shall be reduced by the amount paid for such insurance.

8.2.13.6. No Recourse. There shall be no recourse against the Authority, the State or the Client School District for payment of premiums or other amounts with respect to the insurance required by this Section 8.2.13.

8.2.13.7. Disclaimer. The Contractor and each subcontractor has responsibility to make sure that their respective insurance programs fit their particular needs, and it is their responsibility to arrange for and secure any insurance coverage, at their own expense, that they deem advisable, whether or not specified herein.

### 8.3 Subcontractors Ineligible for OCIP.

8.3.1. Types of Ineligible Subcontractors. Subcontractors of the types set forth below, or that solely provide the types of work or services enumerated below, shall not be eligible for enrollment in the OCIP (hereinafter cited as "Ineligible Subcontractors"). The Authority may, at its sole discretion, exclude other types of subcontractors from enrollment in the OCIP. The following shall be Ineligible Subcontractors:

- (a) Consultants;
- (b) Suppliers (that do not perform or subcontract installation);
- (c) Vendors;
- (d) Guard & security services;
- (e) Janitorial services;
- (f) Truckers (including trucking to the Schools Facilities Project where delivery or removal of materials is the only scope of work performed);
- (g) Other temporary project services;
- (h) Demolition;
- (i) Lead, asbestos, & hazardous materials abatement;
- (j) Off-site fabricators; and
- (k) Material Dealers

8.3.2. Insurance Requirements of Ineligible Subcontractors. Unless otherwise directed by the Authority, the Contractor shall require all Ineligible Subcontractors to purchase and maintain at their own expense the insurance coverages set forth below. Prior to permitting an Ineligible Subcontractor to perform any Work, the Contractor must furnish the RMU with certificates of insurance together with declaration pages, in a form satisfactory to the Authority, showing that the Ineligible Subcontractor has complied with this Section 8.3.2. Insurance binders are not acceptable as proof of insurance coverage. The insurance shall be purchased and maintained from insurance companies that are authorized to transact the business of insurance in the State of New Jersey and are rated "A-" or better by A.M. Best Company. All of the policies of insurance required to be purchased and maintained and the certificates, declaration pages, or other evidence thereof shall contain a provision or endorsement that the coverage afforded is not to be canceled, materially changed, or renewal refused until at least thirty (30) Days prior written notice has been given to the Authority by certified mail. The coverages enumerated below shall protect the Contractor, the Authority, the New Jersey Economic Development Authority, the New Jersey Department of Education, the State, the Project Management Firm, the Design Consultant, and the Client School District, and their respective directors, officers, members, employees and agents against claims of or relating to personal and bodily injury (including death) to persons or damage to property which may arise from or in connection with the performance of the Work (whether performed On-site or Off-site) by the Ineligible Subcontractor, its employees, officers, agents,

subcontractors or other individuals or entities for whom the Ineligible Subcontractor may be contractually or legally responsible while performing Work. The required coverages are as follows:

8.3.2.1. Commercial General Liability. Commercial General Liability insurance is to be written as broad as the standard coverage form currently in use in the State of New Jersey, and shall not be circumscribed by any endorsements limiting the breadth of coverage. The policy shall include coverage for contractual liability, products, completed operations and any explosion, collapse and underground (X,C,U) operations. Limits of liability shall not be less than \$5,000,000 combined single limit with excess or umbrella coverage with the same terms and conditions as the underlying coverage in an amount such that the primary and excess/umbrella coverage equals \$5,000,000.

8.3.2.2. Off-Site/On-Site Asbestos, Lead, and Hazardous Material Abatement, Transportation and/or Disposal: Where applicable to the School Facilities Project, Contractors Pollution Liability with minimum limits of \$5,000,000 per occurrence and \$5,000,000 aggregate for all operations conducted.

8.3.2.3. Off-Site/On-Site Contractors Equipment. The Contractor shall purchase and maintain Contractor's property insurance covering construction machinery, whether or not the capital value of which has been included in the Contract, equipment, and tools used by the Contractor in the performance of Work. Such coverage shall be written on a policy form at least equivalent to that provided by a "Contractor's Equipment Floater," as such is customarily defined within the insurance industry. The Contractor shall notify all tiers of subcontractors of their obligation to insure any machinery, equipment and tools used by the subcontractors in the performance of Work. The Contractor shall indemnify, defend, and hold the Authority and its officers, agents, and employees harmless from any such loss, theft, or disappearance.

8.3.2.4. Business Automobile Liability. The Contractor shall carry Business Automobile Liability Insurance covering owned, non-owned, and hired vehicles. The limits of liability shall not be less than \$1,000,000 combined single limit each accident.

8.3.2.5. Workers' Compensation, Employer's Liability. Workers' Compensation Insurance in accordance with the laws of the State of New Jersey and any other state or federal jurisdiction as is required to protect the employees of the Contractor or any subcontractor who will be engaged in the performance of the Work. This policy shall include Employer's Liability protection with a limit of liability of not less than \$500,000, as follows:

- (a) Bodily Injury by Accident \$500,000 each accident
- (b) Bodily Injury by Disease \$500,000 each employee
- (c) Bodily Injury by Disease \$500,000 policy limit.

8.3.3. Endorsement and Waivers. The Commercial General Liability Policy, Automobile Liability Policy and Excess/Umbrella Policies required to be provided by the Contractor shall contain or be endorsed to contain the following provisions:

(a) The Contractor, the Authority, the New Jersey Economic Development Authority, the New Jersey Department of Education, the State, the Project Management Firm, the Design Consultant, and the Client School District, and their respective directors, officers, members, employees and agents shall be covered as additional insureds.

(b) For any claims related to the Project, the Ineligible Subcontractor's insurance coverage shall be primary insurance with respect to the Contractor, the Authority, the New Jersey Economic

Authority, the New Jersey Department of Education, the State, the Project Management Firm, the Design Consultant, and the Client School District, and their respective directors, officers, members, employees and agents and Contractor warrants that coverage shall continue for a minimum of two years notwithstanding the fact that the Ineligible Subcontractor has departed from the School Facilities Project site. Any insurance or self-insurance maintained by the Authority, the State or the Client School District, and their respective directors, officers, members, employees and agents, shall be excess of the Ineligible Subcontractor's insurance, and shall not contribute with it.

(c) Any failure on the part of the Ineligible Subcontractor to comply with reporting provisions or other conditions of the policies, any breach of warranty, any action or inaction of the Ineligible Subcontractor or others, any foreclosure related to the Project or any change in ownership of all or any portion of the Project shall not affect coverage provided to the Contractor, the Authority, the New Jersey Economic Development Authority, the New Jersey Department of Education, the State, the Client School District, and their respective directors, officers, members, employees and agents.

(d) The Ineligible Subcontractor's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

8.3.4. Disclaimer. Ineligible Subcontractors shall be responsible for ensuring that their respective insurance programs fit their particular needs, and it is their responsibility to arrange for and secure any insurance coverage that they deem advisable, whether or not specified herein.

8.3.5. No Recourse. There shall be no recourse against the Authority, the State or the Client School District for payment of premiums or other amounts with respect to the insurance required of Ineligible Subcontractors hereunder.

8.3.6. Right to Remedy. If an Ineligible Subcontractor fails to provide insurance as required herein, the Authority shall have the right, but not the obligation, to purchase such insurance. In such event, the Contractor's Contract Price shall be reduced by the amount paid for such insurance.

## **ARTICLE 9. SUSPENSION OF THE WORK**

### **9.1 Suspension for Convenience**

9.1.1 The Authority may order the Contractor in writing to suspend all or any part of the Work for such period of time as the Authority may determine to be appropriate for the convenience of the Authority. If performance of all or any part of the Work is for any period of time suspended, delayed or interrupted by an act of the Authority in administration of the Contract, an adjustment pursuant to Article 7.4 will be made for the increase in the cost of performance of the Work, An extension of Contract Time may also be granted as provided in Article 4, if appropriate.

9.1.2 No adjustment will be made under this Article for any suspension, delay or interruption, to the extent that performance of the Work would have been so suspended, delayed or interrupted by any other cause, including the fault or negligence of the Contractor, or if such adjustment is provided or excluded under any other provision of the Contract.

9.1.3 Failure of the Authority to consider the Work suspended and to allow for an adjustment in the Contract Price or in Contract Time will not bar recovery under the foregoing provisions, provided the Contractor gives written notice to the Authority within ten (10) Days of the start of

the alleged suspension. Failure of the Contractor to give such written notice pursuant to the provisions of this Section shall constitute a waiver of any and all claims for a Contract Price adjustments or extensions in Contract Time arising from the alleged suspension.

## **9.2 Suspension of the Work for Other Reasons**

The Authority may suspend the Work, wholly or in part, for such period as the Authority deems necessary because of a failure on the part of the Contractor to carry out orders given or to perform any requirements of the Contract Documents. The Contractor shall promptly comply with the written order of the Authority to suspend the Work in whole or in part. The suspended Work shall be resumed when appropriate corrective action, as approved by the Authority, has been taken by the Contractor. The Contractor shall not be entitled to an adjustment in the Contract Price or the Contract Time because of such suspension.

## **9.3 Site Safety**

In the event that a suspension of Work is ordered under this Article, the Contractor shall undertake all Work necessary to secure the safety of the Site for the protection of persons at the Site, students, employees and guests of the Client School District and the public, and to protect the permanent and temporary construction.

# **ARTICLE 10. DEFAULT AND TERMINATION**

## **10.1 Default of Contractor**

Nothing contained in this Section shall limit the right of the Authority to recover any and all costs and damages resulting from the Contractor's failure to perform the Work in an acceptable manner.

10.1.1 Events of Default. The Contractor shall be in default under this Contract upon occurrence of any one or more of the following events or conditions, following notice and opportunity to cure (if applicable), as specified in Section 10.1.2.

- (a) The Contractor fails to either (i) promptly begin the Work under the Contract Documents, or (ii) prosecute the Work in accordance with the Project Schedule;
- (b) The Contractor fails to perform the Work in accordance with the Contract Documents;
- (c) The Contractor refuses to remove and replace rejected materials or nonconforming, defective or unacceptable Work;
- (d) The Contractor fails to resume performance of Work which has been suspended or stopped within a reasonable time after receipt of notice from the Authority to resume Work;
- (e) The Contractor disregards or otherwise fails to comply with all applicable Legal Requirements;
- (f) The Contractor refuses or otherwise fails to properly staff the Project;

- (g) The Contractor fails, absent a valid dispute, to make payments to Subcontractors for materials, labor or services in accordance with the respective agreements between the Contractor and its Subcontractors;
- (h) The Contractor fails to maintain or produce any Documents or other records required by the Contract Documents to be so maintained or produced;
- (i) The Contractor fails to cooperate with the Authority where such cooperation is deemed necessary by the Authority for the implementation of the Contract Documents;
- (j) The Contractor fails to obtain and properly maintain the level of insurance coverages outlined in the Contract Documents;
- (k) The Contractor fails to obtain and properly maintain the level of bonding outlined in the Contract Documents;
- (l) The Contractor assigns or transfers its obligations, privileges or rights under the Contract Documents without the prior, written consent of the Authority;
- (m) The Contractor fails to comply with requirements of the Contract Documents regarding prevailing wage payments, equal employment opportunity or affirmative action requirements;
- (n) The Contractor makes any misrepresentation or conceals any material fact;
- (o) The Contractor commences or has commenced against it any action under the United States Bankruptcy Code or any State or Federal insolvency law, the commencement of which, in the Authority's judgment, may effectively impair the ability of the Contractor to perform its obligations under the Contract Documents;
- (p) The Contractor fails to discharge or obtain a stay of any judgment or order for the payment of money arising out of the prosecution of the Work (provided that for purposes hereof, posting of a bond in the amount of 124% of such judgment or order shall be deemed an effective stay);
- (q) The Contractor fails to perform Work as required under the Contract Documents; or
- (r) The Contractor violates or breaches the Contract Documents or any material provision or term thereof

10.1.2 The Authority shall provide the Contractor and its surety with written notice of the Contractor's default ("Notice of Default"). For all such Events of Default except those contained in subsections 10.1.1 (n) and (o) (and any such default that by its nature cannot be cured), the Contractor or its surety may avoid termination if, within seven (7) Days of receipt of the Notice of Default, it commences correction of such default, neglect or violation, with diligence and promptness, fully curing the same within the time prescribed by the Authority, if any, within the

Notice of Default. If the Contractor's default is capable of cure, but by its nature, cannot be cured within seven (7) Days, such additional period of time shall be allowed as may reasonably be necessary to cure the default, provided that the Contractor or its surety commences such cure within such seven (7) Day period and thereafter diligently prosecutes such through completion. Failure of the Contractor to commence correction of its default, neglect or violation within seven (7) Days of receipt of the Notice of Default, or to cure the same within the time prescribed by the Authority, shall allow the Authority to issue a Notice for Termination for Default as per Section 10.2 of this Agreement.

## **10.2 Termination for Cause**

If any default described in Section 10.1 above is not subject to cure or is not cured within the period specified in 10.1.2, the Authority may terminate this Agreement for cause. Any such Termination for Cause shall be effected by delivery of a "Notice of Termination for Cause" to the Contractor and its surety specifying the extent to which the Work under the Contract is terminated and the date upon which such termination becomes effective.

10.2.1 Upon Termination for Cause by the Authority pursuant to this Section, the Authority may, without prejudice to any other rights or remedies of the Authority, complete the Work that was required to be performed by the Contractor by whatever methods the Authority may deem appropriate.

10.2.2 In the event the Contract is terminated for cause pursuant to this Section, the Authority reserves the right not to make any further payments to the Contractor and may require the Contractor to repay all or a portion of the monies already paid. The Contractor or its surety, at their own expense, shall be obligated to take any steps necessary to enable the Authority to complete the Work itself, or for the Authority to engage the surety or another contractor to complete the Work. Such steps may include, but are not limited to, the prompt delivery to the Authority of all Submittals, Documents and Work Product identified herein and/or related to the Project.

10.2.3 Materials obtained by the Contractor for the Project that have not yet been incorporated into the Work may, at the option of the Authority, be purchased from the Contractor at the Contractor's actual cost and delivered to a prescribed location or otherwise disposed of as mutually agreed. Upon Authority's request to purchase such materials, the Contractor shall assure that such materials are protected as per the requirements of the Contract Documents

10.2.4 In the event the Contractor is terminated for cause pursuant to this Section, the Contractor shall take the steps necessary to secure and protect the completed and partially-completed Work and materials and equipment, whether or not such materials and equipment are incorporated into the Work and whether or not such materials and equipment are on the Project Site or stored off-site. Contractor and its Surety shall be liable for all costs incurred by the Authority as a result of the Contractor's failure to adequately secure and protect the Work, materials and/or equipment after receiving a Notice of Termination for Cause.

10.2.5 All costs and charges incurred by the Authority in completing the Work will be deducted from any monies due or that may become due to the Contractor and the surety. If the payments then or thereafter due the Contractor and the surety are not sufficient to cover the Authority's cost to complete the Work itself or to engage another contractor to complete the Work, the Contractor and the surety shall pay the difference to the Authority upon demand.

10.2.6 The Contractor and the surety shall not be relieved of liability for Liquidated Damages to the extent they are assessed under the terms of the Contract Documents, on account of any action taken by the Authority under this Section.

10.2.7. The rights and remedies of the Authority are in addition to any other rights and remedies provided by law or equity or provided under the Contract or the Performance or Payment Bonds.

10.2.8 If the Authority's termination for default of the Contractor pursuant to the provisions of this Section 10.2 is found by a court of competent jurisdiction to have been unjustified, the Contract will be treated as if terminated for convenience and the Contractor shall be compensated in accordance with the provisions of Section 10.3.

10.2.9 No action by the Authority pursuant to this Section shall operate to waive or release any claims that the Authority may have against the Contractor or the surety under the Contract Documents

### **10.3 Termination of Contract for Convenience**

10.3.1 Performance by the Contractor of its obligations under the Contract Documents may be terminated by the Authority in whole or in part, whenever the Authority, in its sole discretion, determines that such termination is in its best interest. Such a termination shall be called a "Termination for Convenience.

10.3.2 Any such Termination for Convenience shall be effected by delivery of a "Notice of Termination for Convenience" specifying the extent to which the Work under the Contract is terminated and the date upon which such termination becomes effective.

10.3.3 Upon receipt of a Notice of Termination for Convenience, the Contractor shall complete all Work necessary to ensure the safety of the public, the Authority, employees and guests of the Project School District, properly secure and protect the completed and partially-completed Work and materials and equipment, whether or not such materials and equipment are incorporated into the Work and whether or not such materials and equipment are on the Project Site or stored off-site, and perform all other Work requested by the Authority in the Notice of Termination for Convenience. Contractor and its Surety shall be liable for all costs incurred by the Authority as a result of the Contractor's failure to adequately secure and protect the Work, materials and/or equipment after receiving a Notice of Termination for Convenience.

10.3.4 Upon such Termination for Convenience, the Contractor shall be entitled to Compensation for the Work actually and satisfactorily performed by the Contractor, less payments previously made. The Contractor shall also be entitled to the reasonable costs and expenses attributable to such Termination for Convenience.

10.3.5 Upon a Termination for Convenience, the Contractor shall furnish to the Authority, free of charge, such closeout reports, Documents, and materials as may be reasonably required by the Authority. Materials purchased by the Contractor for the Project that have not yet been incorporated into the Work may, at the option of the Authority, be purchased from the Contractor at the actual cost and delivered to a prescribed location or otherwise disposed of as mutually agreed.

10.3.6 Within sixty (60) days of the effective termination date, the Contractor shall submit to the Authority claims for any costs that were incurred but that are not subject to payment pursuant to this Section 10.3 or any other provision of the Contract Documents. No claim will be allowed for anticipated profits on Work that has not been performed. The Contractor's failure to submit a claim to the Authority within sixty (60) Days of the effective termination date shall constitute a waiver of any and all claims pursuant to this Section 10.3.

## **ARTICLE 11. SUBSTANTIAL COMPLETION AND FINAL ACCEPTANCE AND COMPLETION**

### **11.1 Substantial Completion**

11.1.1 When the Contractor determines the Work on a Project is substantially complete as defined in Section 1.1, but for the issuance of a permanent Certificate of Occupancy or permanent Certificate of Acceptance, the Contractor shall prepare a written notice thereof for submission to the Authority. The notice shall list the items of Work remaining to be completed or corrected and shall request the Authority perform a Substantial Completion inspection. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

11.1.2 If, upon inspection of the Project, the Authority determines that the School Facility is substantially complete, the Contractor shall take all necessary actions to cause the issuance of a permanent Certificate of Occupancy or permanent Certificate of Acceptance for the School facility. Upon issuance of a permanent Certificate of Occupancy or permanent Certificate of Acceptance, the Authority will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, a reasonable time within which the Contractor shall complete Punch List work, and any other terms agreed to at that time by the Contractor and the Authority. All provisions of the Contract Documents shall remain in effect after the date of Substantial Completion, with the exception of any changes to the terms of the Contract expressly set forth in the Certificate of Substantial Completion.

11.1.3 The Authority may issue a Certificate of Substantial Completion upon its determination that the Work is substantially complete and the issuance of a temporary Certificate of Occupancy or a temporary Certificate of Acceptance if the Authority, in its sole discretion, deems doing so to be in the best interests of the Client School District, its students and employees, the State and the Authority.

11.1.4 If upon inspection of the School Facility, the Authority determines that the Work on a Project is not substantially complete to the satisfaction of the Authority, the Authority will so notify the Contractor and advise it of the actions necessary to bring the Project to Substantial Completion. Upon notification by the Contractor that the required actions have been taken, the Authority will once again inspect the School Facility. This procedure will be repeated, as necessary, until the Authority determines that the School Facility is substantially complete and issues a Certificate of Substantial Completion in accordance with Section 11.1.2.

11.1.5 After Substantial Completion, the Contractor is relieved of the duty of maintaining and protecting the Project. In addition, the Contractor is relieved of its responsibility for damage to the Project occurring after Substantial Completion, except insofar as such damage or repair is covered by warranty or is caused or made necessary by the act of the Contractor or anyone for whom the Contractor is legally responsible. The issuance of a Certificate of Substantial Completion shall not void or alter any of the other terms of the Contract Documents including, but not limited to, terms relating to warranties, or relieve the Contractor of its obligation to complete the Work, unless such terms are expressly modified by the Certificate of Substantial Completion.

11.1.6 The acceptance by the Contractor of the first progress payment after Substantial Completion shall constitute a waiver of all claims by the Contractor, except those previously made in writing and identified as unsettled at the time of its application for such payment, and except for Retainage due or claims accruing subsequent to Substantial Completion.

## **11.2 Final Acceptance and Completion**

11.2.1 The Contractor shall notify the Authority in writing when each School Facilities Project has reached completion and is ready for final inspection and the issuance of a Certificate of Final Acceptance and Completion. The Contractor shall have completed all items on the Punch List and totally complied with all of the requirements of Section 01700 of the Specifications, Contract Closeout, before requesting such final inspection.

11.2.2 When such final inspection indicates that the School Facilities Project is in compliance with the Contract Documents and when all of the requirements of Section 01700 of the Specifications have been met by the Contractor, the Authority will promptly issue a Certificate of Final Acceptance and Completion stating that to the best of its knowledge, information and belief, and on the basis of observations and inspections, the School Facilities Project has been completed in accordance with the terms and conditions of the Contract Documents.

11.2.3 If the requested inspection discloses that the School Facilities Project has not reached completion to the satisfaction of the Authority or if the Contract Closeout requirements of Section 01700 of the Specifications have not been met by the Contractor, the Authority will so notify the Contractor and advise it of the actions necessary to correct deficiencies. The Contractor shall immediately comply with the notice and take the required actions. Upon correction of the deficiencies, the Contractor shall notify the Authority which will review the actions taken by the Contractor and, if necessary, perform another inspection of the School Facilities Project. This procedure will be repeated until a Certificate of Final Acceptance and Completion is issued.

## **ARTICLE 12 LIQUIDATED DAMAGES**

### **12.1 Failure to Complete on Time**

The Contractor recognizes that if it fails to complete the Work on time as required by the Contract Documents, the Authority, State, Client School District and public will suffer substantial losses and damages in terms of the effects of the delay on the use of each Project, the impact on the quality of education of students in the Client School District, additional expenses relating to the State's compliance with court orders regarding improvements to educational facilities, and additional costs to the Authority for the engineering, inspection and administration of the Contract. Because such damages are extremely difficult or impossible to estimate, the parties agree that if the Contractor fails to achieve Substantial Completion or Final Acceptance and Completion by the dates specified in the Contract Documents, the Contractor shall pay the Authority liquidated damages in accordance with the schedule set forth in the Contract Documents, in lieu of actual damages.

### **12.2 Computation of Damages**

The Substantial Completion Liquidated Damage amount shall be paid by the Contractor for each and every calendar day the Contractor is in default of its obligation to attain Substantial Completion. The Final Acceptance and Completion Liquidated Damage amount shall be paid by the Contractor after Substantial Completion for each and every calendar day it is in default of its obligation to attain Final Acceptance and Completion by the date required by the Contract Documents.

### **12.3 Limitation**

Liquidated damages are intended to compensate the Authority (on its own behalf and on behalf of the State, Client School District and public) solely for the Contractor's failure to meet the deadlines for Substantial Completion and Final Acceptance and Completion of each School Facility, as required by the

Contract Documents and shall not excuse the Contractor from liability for any other breach of the Contract requirements including, but not limited to, any failure of the Work to conform to the Contract Documents. This provision for liquidated damages does not bar or waive the Authority's right to enforce other rights and remedies against the Contractor, including but not limited to, specific performance or injunctive relief.

#### **12.4 Deduction; Payment**

The Authority shall have the right to deduct liquidated damages from any amounts, including Retainage, owed by the Authority to the Contractor or its surety. If liquidated damages are not deducted from such amounts, liquidated damages shall be payable by the Contractor to the Authority within ten (10) Days after receipt by the Contractor of a request for payment by the Authority.

### **ARTICLE 13 PAYMENT AND CONTRACT COMPLETION**

**13.1.1** As full compensation for the Work to be performed under the Contract, and subject to the limitations contained herein, the Authority shall pay to the Contractor the Contract Price, as such amount may be adjusted from time to time to account for Change Orders.

**13.1.2** The Contract Price shall be increased or decreased only in accordance with Article 7.

**13.1.3** The Contractor acknowledges and agrees that, subject only to the Contractor's rights under Article 7, the Contract Price includes (a) all equipment, materials, labor, insurance and bond premiums, home office, jobsite and all other overhead, profit and services relating to the Contractor's performance of its obligations under the Contract Documents (including all work, equipment, materials, labor and services provided by subcontractors and all intellectual property rights necessary to perform the Work); (b) performance of each and every portion of the Work; (c) the cost of obtaining all approvals and permits; and (d) payment of any duties, permit and other fees and/or royalties imposed with respect to the Work and any equipment, materials, labor or services included therein.

#### **13.2 Schedule of Values**

**13.2.1** Before the first application for payment, the Contractor shall submit to the Authority a Schedule of Values allocated to the various portions of the Work, as set forth in the Contract Documents, and supported by such substantiating data as the Authority may require. If approved by the Authority, this Schedule of Values, shall be used as a basis for the Contractor's applications for payment and only for this purpose.

**13.2.2** If approved by the Authority, the Contractor may include in its Schedule of Values a line item for Contractor and subcontractor mobilization. The Contractor shall not front-end load its Schedule of Values.

#### **13.3 Applications for Payment**

**13.3.1** Prior to the date for each progress payment, as established by the Contract Documents, the Contractor, shall submit to the Authority an itemized application for payment, supported by substantiating data, including but not limited to the Contractor's certification that all Work for which payment is requested has been completed in full in accordance with the Contract Documents, and reflecting Retainage, if any, as provided elsewhere in the Contract Documents.

**13.3.2** The Contractor shall also certify that:

- (a) Each subcontractor or supplier has been paid any amount due from any previous progress payment and shall be paid any amount due from the current progress payment; or
- (b) There exists a valid basis under the terms of the subcontractor's or supplier's contract to withhold payment from the subcontractor or supplier, and therefore payment is withheld.

Additionally, whenever this certification indicates that payment has been or will be withheld from a subcontractor or supplier, the Contractor shall, in accordance with P.L. 1991, c. 507, provide written notice of such non-payment to the subcontractor or supplier and shall provide to the Authority and to the surety providing the Performance and Payment Bonds for the Contractor, a copy of the written notice of withholding of payment. The notice shall detail the reason for withholding payment and shall state the amount of payment withheld.

13.3.3 No payment will be processed or owing to the Contractor for Work at any time that the Contractor has failed to provide a project schedule acceptable to the Authority or at any time that an Event of Default has been declared or as otherwise stated herein.

13.3.4 Failure by the Authority to pay any amount in dispute shall not postpone, alleviate, diminish or modify in any respect the Contractor's obligation to perform under the Contract Documents, including the Contractor's obligation to achieve Substantial Completion, Final Acceptance and Completion of each Project and all Work in accordance with the Contract Documents, and the Contractor shall not cease or slow down its performance under the Contract Documents on account of any such amount.

13.3.5 Contractor shall receive payment from the Authority by one of the following electronic payment methods: (1) the Automated Clearing House ("ACH") payment system, or (2) wire transfer. Any fees or costs associated with the use of either of the listed electronic payment methods shall be solely the Contractor's responsibility. Contractor may obtain the documents required to use either electronic payment method from the Authority's website. The Contractor shall provide to the CM the documents necessary to use the electronic payment method selected before any payment will be made to the Contractor by the Authority.

13.3.6 Within thirty (30) Days after receipt of the Contractor's properly supported Invoice, the Authority, pursuant to New Jersey's Prompt Payment Act, N.J.S.A. 52:32-32 and 2A:30A-2, will make payment of the approved amount of such Invoice, unless within twenty (20) Days of receipt the Authority issues a notice in accordance with the Prompt Payment Act indicating that funds will be withheld, the amount of the funds to be withheld and the reason for such withholding. The twenty (20) Day period for providing notice to the Contractor that the Authority will withhold funds shall be extended if additional authority for payment by the Authority's Board of Directors is required as indicated by the Operating Authority of the Authority. [Cecelia to revise portion re Board of Directors] The thirty (30)-Day payment requirement shall be extended if the Contractor fails to provide complete and sufficient documentation in support of the amounts claimed and the Authority reserves the right to refuse payment as a result.

13.3.7 If the Contractor submits any false or fraudulent Invoice to the Authority for payment, the Contractor shall be held liable and subject to all penalties and damages under the New Jersey False Claims Act, N.J.S.A. 2A:32 et seq.

13.3.8 In the event the Contractor fails to pay its Subcontractors in a timely manner and the Authority is in full compliance with its obligations regarding timely payment of sums due the

Contractor, the Authority may, but is not obligated to, make payments directly to each Subcontractor or by two-party checks. The Authority's decision to make such payments to the Contractor's Subcontractors will not give rise to any liability of the Authority for making such payments, will not in any way require the Authority to exercise its option to make such payments, and will not create any contractual relationship between the Authority and any Subcontractor. Payments to Subcontractors will not constitute acceptance of the adequacy of Work performed by the Contractor or its Subcontractors.

13.3.9 In the event of a dispute between the Authority and the Contractor as to whether an amount is owed for certain Work, or as to whether an amount has been reasonably withheld by the Authority, the Authority shall pay all amounts that are not in dispute, but shall not be required to pay the amount that is in dispute until the parties settle or otherwise resolve such dispute. The Contractor shall continue to perform all of its obligations under the Contract Documents notwithstanding such dispute.

### **13.4 Retainage**

13.4.1 Except as otherwise provided herein, the Authority shall withhold funds ("Retainage") from payments made to the Contractor in accordance with this Section. The Retainage Authority shall be an amount equivalent to ten percent (10%) of the amount due on the first fifty percent (50%) of the Contract Price, as it may be adjusted from time to time by Change Order. On the remaining fifty percent (50%) of the Contract Price, the Authority shall withhold up to five percent (5%) of the amount due as Retainage from all invoiced amounts. The Authority, in its sole discretion and in accordance with any agreement between the Authority and the Contractor, may reduce the amount of Retainage withheld from the Contractor.

13.4.2 At the time of Substantial Completion, the Contractor may request that the Authority reduce Retainage. The Authority in its sole discretion and in accordance with any agreement between the Authority and the Contractor, may reduce the percentage of Retainage withheld or may release the total amount of Retainage being withheld by the Authority if the Authority determines that such action is warranted by the progress and quality of the Work. Any request by the Contractor for a reduction in retainage must be accompanied by the following documents, available on the SDA website:

- (a) Certificate of Substantial Completion (Form 701), in cases in which a Certificate of Occupancy has been issued;
- (b) Confirmation of Contract Compliance (Form 702), in cases in which a Certificate of Occupancy has not yet been issued;
- (c) Consent to Surety Reduction in or Partial Release of Retainage (Form 814); and
- (d) Request for Reduction of Retainage (Form 816), signed by the NJSCC approving the reduction in retainage to the new percentage or amount.

13.5.3 At the time of Final Payment, the Authority shall release to the Contractor all Retainage other than amounts applied to the payment of liquidated damages or amounts which the Authority in its sole discretion deems necessary to retain to cover any existing or threatened claims or liens, or any amounts otherwise due the Authority under the Contract Documents

### **13.5 Other Deductions**

13.5.1 In addition to Retainage, the Authority may deduct from each progress payment the following:

- (a) any liquidated damages which have accrued as of the date of the application for payment;

- (b) any sums expended by the Authority in performing any of the Contractor's obligations under the Contract which the Contractor has failed to perform; and
- (c) any other sums which the Authority is entitled to recover from the Contractor under the terms of the Contract Documents.

### **13.6 Unincorporated Materials and Equipment**

13.6.1 The Authority will pay for materials and equipment not yet incorporated in the Work, subject to the Retainage provisions set forth above, if the Contractor has demonstrated, to the satisfaction of the Authority that:

- (a) The materials and equipment have been properly stored and protected along or upon each Project Site or have been stored at locations owned or leased by the Contractor or the Authority within the State of New Jersey; and
- (b) The materials and equipment have been inspected and appear to be acceptable, based upon available supplier's certifications and/or materials test reports; and
- (c) The Contractor has provided the Authority with an invoice or bill of sale sufficient to show the price paid for the materials and equipment and a fully executed release of liens for materials and equipment stored for incorporation in the Authority's Project; and
- (d) The materials and equipment, if stored on property not belonging to the Authority, the State or the Client School District, are fenced in with access limited to the Authority and the Contractor, and the fenced-in materials and equipment are clearly identified in large letters as being without encumbrances and for use solely on a Project; and
- (e) When such materials and equipment are stored in a leased area, the lease is made out to the Contractor and provides that it shall be canceled only with the written permission of the Authority; and
- (f) The Contractor has secured and provided evidence of insurance coverage of the stored materials and equipment and related transit, including a loss-payable clause endorsement to the Contractor's insurance policy providing payment to the Authority in the event of loss of the specified stored materials and equipment.
- (g) The Contractor has secured a written statement from the surety consenting to payment for materials and equipment stored off-Site.

13.6.2 The Contractor assumes full responsibility for the safe storage and protection of the materials and equipment and nothing in this Article shall relieve the Contractor of any obligations or responsibilities imposed elsewhere in the Contract Documents.

13.6.3 If materials or equipment paid for under this Article are damaged, stolen, or prove to be unacceptable, the Authority may either deduct the payments therefore from subsequent progress payments, or require the Contractor to replace the materials or equipment at its own expense.

13.6.4 It is specifically understood and agreed that an inspection and approval of the materials by the Authority shall not in any way subject the Authority to pay for the materials or any portion

thereof, even though incorporated in the Work, if the materials shall in fact be unfit to be used in the Work, nor shall such inspection be considered as any waiver of objection to the Work on account of the unsoundness or imperfection of the material used.

13.6.5 Payment for materials and equipment, as provided for herein, shall not be deemed to be an approval of such materials and equipment, and the Contractor shall be responsible for and shall deliver to a Project Site and properly incorporate in the Work only those materials and equipment that comply with the Contract Documents.

13.6.6 The Contractor shall pay any and all costs of handling and delivering materials and equipment to and from the place of storage to a Project Site, as well as any storage rental. Any taxes levied by any government against the materials or equipment shall be borne by the Contractor.

13.6.7 No payment for living or perishable plant materials will be made by the Authority until such plant materials are planted.

13.6.8 Following payment therefore, all materials and equipment so accepted shall become the property of the Authority. The Contractor, at its own expense, shall promptly execute, acknowledge and deliver to the Authority proper bills of sale or other instruments in writing in a form acceptable to the Authority conveying and assuring to the Authority title to such materials and equipment, free and clear of all liens. The Contractor, at its own expense, shall conspicuously mark or paint such materials and equipment as the property of the Authority, shall not permit such materials to become commingled with non-Authority-owned property and shall take such other steps, if any, as the Authority may require or regard as necessary to vest title in such materials and equipment to the Authority, free and clear of liens.

13.6.9 The Authority will be under no obligation to make payment to the Contractor on account of materials or equipment not incorporated in the Work unless the Contractor, in its Schedule of Values, includes line items for such delivered and stored materials or equipment.

13.6.10 Payment for unincorporated material and equipment furnished and delivered as indicated in this Article will not exceed the amount paid by the Contractor, as evidenced by a bill of sale supported by a paid invoice, reduced by Retainage withheld as specified above.

13.6.11 The Contractor warrants that title to all Work, materials and equipment covered by an application for payment will pass to the Authority either by incorporation in the construction or upon receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances; and that no Work, materials or equipment covered by an application for payment will have been acquired by the Contractor, or by any other person performing Work at the site or furnishing materials and equipment for a Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

### **13.7 Certificates for Payment**

13.7.1 The Authority will, after receipt of the Contractor's application for payment, and within the time set forth in the Specifications, either issue a Certificate for Payment for such amount as the Authority deems properly due, or notify the Contractor in writing of its reasons for withholding a Certificate, as provided below.

13.7.2 The submission and approval of the Project Schedule and monthly updates thereof as required by the Contract Documents shall be an integral part and basic element of the application

upon which progress payment shall be made. The Contractor shall be entitled to progress payments only as determined from the currently approved and updated schedule.

### **13.8 Progress Payments**

13.8.1 After a Certificate for Payment has been issued, the Authority shall make payment in the manner and within the time provided in the Contract Documents.

13.8.2 The Contractor shall promptly pay each subcontractor (including suppliers, laborers, and materialmen) performing labor or furnishing material for the Work, upon receipt of payment from the Authority, out of the amount paid to the Contractor on account of such subcontractor's work, the amount to which said subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to the Contractor on account of such subcontractor's work. The Contractor shall, by an appropriate agreement with each subcontractor, also require each subcontractor to make payments to its sub-subcontractors in similar manner.

13.8.3 The Authority, shall have no obligation to pay or to see to the payment of any moneys to any subcontractor.

13.8.4 No Certificate for a progress payment, nor any progress payment, nor any partial or entire use or occupancy of a Project by the Authority or Client School District, shall constitute an acceptance of any Work not in accordance with the Contract Documents.

13.8.5 The Contractor shall keep the Work and the Site free and clear of all liens related to labor and materials furnished in connection with the Work. Furthermore, the Contractor waives any right it may have to file any type of lien in connection with the Work.

13.8.6 Notwithstanding anything to the contrary contained in the Contract Documents, if any lien is filed or if there is reason to believe that any lien may be filed at any time during the progress of the Work or during the term of this Contract, the Authority may refuse to make any payment otherwise due the Contractor or may withhold from any payment due the Contractor a sum sufficient, in the opinion of the Authority, to pay all obligations and expenses necessary to satisfy such lien. The Authority may withhold such payment unless or until the Contractor, within ten Days after demand therefore by the Authority, shall furnish satisfactory evidence that the indebtedness and any lien in respect thereof has been satisfied, discharged and released of record, or that the Contractor has legally caused such lien to be released of record pending the resolution of any dispute between the Contractor and the person or persons filing such lien. If the Contractor shall fail to furnish such satisfactory evidence within ten Days of the demand therefore, the Authority may discharge such indebtedness and deduct the amount thereof, together with any and all losses, costs, damages and attorney's fees suffered or incurred by the Authority from any sum payable to the Contractor under the Contract Documents, including but not limited to final payment and retained percentage. This subparagraph shall be specifically included in all subcontracts and purchase orders entered into by the Contractor.

### **13.9 Payments Withheld**

13.9.1 The Authority may deny the Contractor's application for payment, in whole or in part, because

- (a) the Work has not progressed to the point indicated;
- (b) the quality of the Work is not in accordance with the Contract Documents;

- (c) defective work has not been remedied;
- (d) third party claims have been filed, whether in court, arbitration or otherwise, or there exists reasonable evidence that such claims will be filed;
- (e) there exists reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price;
- (f) the Contractor has caused damage to the Authority or another contractor;
- (g) there exists reasonable evidence that the Work will not be completed within the Contract Time, or within any Contract milestones identified in the Contract Documents;
- (h) the Contractor has failed or refused to carry out the Work in accordance with or to otherwise substantially and materially comply with the Contract Documents;
- (i) liens have been filed or there exists reasonable evidence that a lien may be filed for any portion of the Work; or
- (j) the Contractor has failed or refused to properly schedule and coordinate the Work, or to provide project schedules, reports and updates.

13.9.2 The Authority may nullify all or part of any Certificate of Payment previously issued to the extent necessary to protect the Authority, the State and the Client School District from loss as a result of any of the conditions set forth in Article 13.9.1 above.

13.9.3 When all of the conditions listed in Article 13.9.1 above are corrected, the Authority will make payment for the amounts withheld due to these conditions.

### **13.10 Contract Completion and Final Payment**

13.10.1 After Final Acceptance and Completion and receipt of the documentation required by the Contract Documents and of written notice that the Work is complete, the Authority will issue a final Certificate of Payment. The final Certificate of Payment will constitute a further representation that the conditions precedent to the Contractor's being entitled to final payment as set forth in the Contract Documents have been fulfilled. Payment shall be made in full to the Contractor, in accordance with the New Jersey Prompt Payment Act, provided that the requirements of Article 13 and the Specifications have been fulfilled, except for an amount mutually agreed upon for any work remaining incomplete or uncorrected for which the Authority is entitled a credit under the Contract Documents.

13.10.2 Neither the final payment nor the remaining retained percentage shall become due until the Work is free and clear of any and all liens and the Contractor submits to the Authority:

- (a) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Authority may in any way be responsible, have been paid or otherwise satisfied;
- (b) consent of surety to final payment; and

- (c) other data establishing payment or satisfaction of all obligations, such as receipts, releases and waivers of liens arising out of the Contract, to the extent and in such form as may be designated by the Authority.

13.10.3 Prior to the issuance of final payment, the Contractor shall certify in writing that:

- (a) the Contractor has reviewed the requirements of the Contract Documents;
- (b) the Work has been inspected by the Contractor for compliance with all requirements of the Contract Documents, and the Work complies in all respects with the requirements of the Contract Documents;
- (c) all equipment and systems have been installed in accordance with the Contract Documents and have been tested in accordance with specification requirements and are operational; and
- (d) the Work is complete in all respects.

13.10.4 In compliance with the Prevailing Wage Act, prior to the issuance of final payment, the Contractor and all subcontractors shall provide the Authority with written statements in a form satisfactory to the Authority, certifying to the amounts then due and owing from the Contractor and subcontractors filing such statements to any and all workers for wages due on account of the Contract. The statements shall contain the names of the persons whose wages are unpaid and the amount due to each respectively. The statements shall be verified by the oath of the Contractor or subcontractor, as the case may be, that said party has read such statement subscribed by it, that said party knows the contents thereof, and that the same is true of its own knowledge. Nothing contained herein shall impair the right of the Contractor to receive final payment because of failure of any subcontractor to comply with the provisions of this subsection.

13.10.5 If any subcontractor refuses to furnish a release or waiver required by the Authority, the Contractor may furnish a bond satisfactory to the Authority to indemnify the Authority, the State and the Client School District against any loss. If any lien or claim remains unsatisfied after all payments are made, the Contractor shall refund to the Authority all moneys that the latter may be compelled to pay in discharging such lien or claim, including all costs and reasonable attorneys' fees. The Authority may withhold from the final payment any sum that the Authority has reason to believe may be needed to satisfy any lien, claim or threat of lien arising from the Work.

13.10.6 The tendering of final payment shall constitute a waiver of all claims by the Authority against the Contractor, except those arising from:

- (a) unsettled liens, and claims against the Authority, the State or the Client School District, or their employees, officers, agents, or representatives;
- (b) faulty, defective or non-conforming Work discovered or appearing after Acceptance;
- (c) failure of the Work to comply with the requirements of the Contract Documents;
- (d) terms of any warranties contained in or required by the Contract Documents;
- (e) damages incurred by the Authority, the State or the Client School District resulting from lawsuits brought against them, their agents, employees, officers or representatives because of failures or actions on the part of the Contractor, its subcontractors, sub-subcontractors, or any of their officers, employees, agents or representatives.

(f) fraud or bad faith committed by the Contractor or any subcontractor or supplier, during performance of the Work, but discovered by the Authority after Final Payment.

13.10.7 The acceptance of final payment by the Contractor shall constitute a waiver of all claims by the Contractor, except those expressly reserved by the Contractor at the time of the final Application for Payment. The reservation shall state the specific amounts of the claims being reserved. Failure to state specific amounts shall result in a waiver of such claims. The Contractor shall be deemed to have waived all claims for which the notices required by law and the Contract Documents have not been filed.

## **ARTICLE 14 PROTECTION OF PERSONS AND PROPERTY.**

### **14.1 Safety Precautions and Programs**

Neither the Authority, the State, the Client School District, the Project Management Firm, the Design Consultant, or their respective agents, employees, officers or representatives are responsible for the means, methods, techniques, sequences or procedures utilized by the Contractor, or for safety precautions and programs in connection with the Work. The Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. This requirement applies continuously throughout the Contract performance, until final payment is made, and is not limited to regular working hours.

### **14.2 Safety of Persons and Property**

14.2.1 The Contractor shall take all reasonable actions necessary to protect the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

14.2.1.1 all persons working or otherwise present on each Site and all persons who may be affected in anyway by the Work;

14.2.1.2 all the Work and all materials and equipment to be incorporated therein, whether in storage on or off the each Site, under the care, custody or control of the Contractor or any of its subcontractors or sub-subcontractors; and

14.2.1.3 other property at a Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

14.2.2 The Contractor shall give all notices and comply with all applicable laws, ordinances, permits, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss.

14.2.3 The Contractor shall at all times safely guard the Authority's property from injury or loss. The Contractor shall at all times safely guard and protect its own property and the property of others, as provided by law and the Contract Documents, from damage. All passageways, guard fences, lights and other facilities required for protection by applicable safety regulations and the Contract Documents must be provided and maintained.

14.2.4 The Contractor shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards, including danger signs and other warnings against hazards.

14.2.5 When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the Work, the Contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel, and otherwise in accordance with these Contract Documents, law, regulation and ordinance.

14.2.6 The Contractor shall promptly remedy, at its own cost and expense, all damage or loss to property caused in whole or in part by the Contractor, any subcontractor, any sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be responsible or liable, except damage or loss solely attributable to the acts or omissions of the Authority or anyone directly or indirectly employed by it, or by anyone for whose acts the Authority is responsible or liable.

14.2.7 The Contractor shall perform such remediation and restoration by underpinning, repairing, rebuilding, replanting, or otherwise restoring as may be required or directed by the Authority, or shall otherwise make good such damage in a manner that is satisfactory and acceptable to the Authority. If the Contractor fails to promptly restore such property or make good such damage, the Authority may elect either (a) to proceed to repair, rebuild or otherwise restore such property, upon two (2) Days written notice to the Contractor, and the cost thereof will be deducted from any monies due or to become due the Contractor under the Contract; or (b) to reimburse the owners of property so damaged, and a sum sufficient, in the sole judgment of the Authority, to make the owners whole will be deducted from any monies due or to become due the Contractor under the Contract.

14.2.8 The Contractor is responsible for the proper packing, shipping, handling and storage (including, but not limited to shipment or storage at the proper temperature and humidity) of materials to be incorporated in the Work, so as to insure the preservation of the quality and fitness of the material for proper installation and incorporation in the Work, as required by the Contract Documents. For example, but not by way of limitation, Contractor shall, when necessary, place material on wooden platforms or other hard and clean surfaces and not on the ground and/or place such material under cover in an appropriate shelter or facility. Stored materials or equipment shall be located so as to facilitate proper inspection. Material and equipment which is delivered crated shall remain crated until ready for installation. Lawns, grass plots or other private property shall not be used for storage purposes without the written permission of the Authority and lessee.

14.2.9 The Contractor shall give notice in writing at least 48 hours before breaking ground, to all persons, public utility companies, owners of property having structures or improvements in proximity to a Site, superintendents, inspectors, or those otherwise in charge of property, streets, water pipes, gas pipes, sewer pipes, telephone cables, electric cables, railroads or other utilities, that may be affected by the Contractor's operation, in order that they may remove any obstruction for which they are responsible and have representatives on site to see that their property is properly protected. Such notice does not relieve the Contractor of responsibility for all damages and claims, resulting from performance of the Work.

14.2.10 The Contractor shall protect all utilities encountered while performing the Work, whether such utilities are indicated on the Contract drawings or not. The Contractor shall maintain utilities in service until moved or abandoned. The Contractor shall exercise due care when excavating around utilities and shall restore any damaged utilities to the same condition or better as existed prior to starting the Work, at no cost to the Authority. The Contractor shall maintain operating utilities or other services, even if they are shown to be abandoned on the Contract drawings, in service until new facilities are provided, tested and ready for use.

14.2.11 The Contractor shall protect the Work, including but not limited to, the Site, stored materials and equipment, excavations, and excavated or stockpiled soil or other material, intended

for use in the Work, and shall take all necessary precautions to prevent or minimize damage to same or detrimental effect upon its performance or that of its subcontractors, caused by or due to rain, snow, ice, run-off, floods, temperature, wind, dust, sand and flying debris. For example, but not by way of limitation, the Contractor shall, when necessary, utilize temporary dikes, channels or pumping to carry-off divert or drain water, and shall, as necessary, tie-down or otherwise secure the Work and employ appropriate covers and screens.

14.2.12 Unless otherwise approved by the Authority in writing, the Contractor's superintendent shall be responsible for the prevention of accidents and the protection of material, equipment and property.

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

14.2.14 Notification to the Contractor by the Authority of a safety violation shall in no way relieve the Contractor of sole and complete responsibility for the correctness of said violation or of sole liability for the causes or consequences of said violation.

14.2.15 The Contractor acknowledges that the safety of the Client School District's students, employees, and guests is of the utmost importance. The Contractor shall take no action which would jeopardize the safety of such students, employees, or guests and, without the Authority's written approval, shall take no action which would interfere with the activities of the Client School District, its students, employees or guests, at any Site.

### **14.3 Emergencies**

14.3.1 In any emergency affecting the safety of persons or property, the Contractor shall act, at all times to prevent threatened damage, injury or loss. If immediate action is required, the Contractor shall notify the Authority of the situation and all actions to be taken immediately upon recognition of an emergency, or as soon thereafter as is practicable. If, in the opinion of the Contractor, immediate action is not required, the Contractor shall notify the Authority of the emergency situation and proceed in accordance with the Authority's instructions; provided, however, that if loss, damage, injury or death occurs that could have been prevented by the Contractor's prompt and immediate action, the Contractor shall be fully liable for all costs, damages, claims, actions, suits, attorney's fees and all other expenses arising therefrom or relating thereto.

14.3.1.1 Any additional compensation or extension of time claimed by the Contractor on account of emergency work shall be determined in accordance with the Changes in the Work provisions of the Contract Documents.

14.3.1.2 Nothing contained herein shall be construed as relieving the Contractor from the cost and responsibility for emergencies which, with normal diligence, planning, and the close supervision of the Work required under the Contract, could have been foreseen or prevented.

14.3.2 The Contractor shall provide the Authority with a list of the names and telephone numbers of the employees of each subcontractor designated to be contacted in case of an emergency during non-working hours. A copy of this list will also be displayed on the Site.

## **ARTICLE 15 DOCUMENTS AND RECORDS**

### **15.1 Maintenance and Retention of Contract Records**

The Contractor shall maintain its records in accordance with generally accepted accounting principles, for a period of not less than three years after receipt of final payment. The Contractor shall maintain and make available to the Authority on request such schedule of quantities and costs, project schedules, payrolls, reports, estimates, Change Orders, all original estimates, takeoffs and other bidding documents, all subcontractor and supplier contracts and changes, all records showing all costs and liabilities incurred or to be incurred in connection with the Package (including all subcontractor and supplier costs), all payment records and all records showing all costs incurred in labor and personnel of any kind, as well as all other records and data as the State may request concerning work performed or to be performed under the Contract. The Contractor shall require in each subcontract that the subcontractor establish, maintain and make available for audit by the Authority all records as defined and delineated herein that relate to all work performed by the Subcontractor.

### **15.2 Right to Audit**

The Authority reserves the right to audit the records of the Contractor in connection with all matters related to the Contract.

### **15.3 Records Supporting Claims**

No claim by the Contractor for payment which is premised to any degree upon actual costs of the Contractor shall be recognized or payable by the Authority, except and to the extent that such actual costs are substantiated by records required to be maintained under this Article.

## **ARTICLE 16. RISK OF LOSS AND INDEMNIFICATION**

### **16.1 Risks Assumed by the Contractor.**

The Contractor assumes the following risks, whether they arise from acts or omissions, whether negligent or not, of the Contractor, its subcontractors, suppliers, materialmen, employees, agents, and all others for whom the Contractor may be legally or contractually responsible, of the Authority, the State, the Client School District or of third persons, or from any other cause, and whether such risks are within or beyond the control of the Contractor, as described elsewhere in this Article. Excepted from this assumption of risks are only those risks which arise solely from affirmative acts of the Authority done subsequent to the execution of the Contract with actual and willful intent to cause loss, damage, and injury. The risks are as follows:

16.1.1 Risks of Loss or Damage to the Permanent Construction. Until Substantial Completion, the Contractor shall bear the risk of loss or damage to the permanent construction, temporary construction, and to materials, whether or not the Contractor has received payment for such construction or materials. The Contractor shall take every precaution against injury or damage to any part of the construction or to materials by the action of the elements or from any other cause. The Contractor shall promptly repair, replace, and make good any loss or damage without cost to the Authority.

The Contractor shall, in furtherance of the above paragraph, but not by way of limitation, at the Contractor's expense, erect such temporary structures as are necessary to protect the Work from damage. The risks for failure to take such actions shall be assumed by the Contractor.

In case of suspension of the Work from any cause whatever, the Contractor shall continue to be responsible for the Project as provided above and shall take such precautions as may be necessary to prevent damage to the Project.

16.1.2. Risks of Claims on Account of Injury, Loss, or Damage. The Contractor shall bear the risk of claims by third persons made against the Contractor or the Authority, on account of injuries (including wrongful death), loss, or damage of any kind whatsoever arising or alleged to arise out of or in connection with the performance of the Work. The risk of claims, whether or not actually caused by or resulting from the performance of the Work or out of or in connection with the Contractor's operations or presence at or in the vicinity of the Project Site or Authority premises, whether such claims are made and whether such injuries, loss, and damages are sustained, applies at any time both before and after Final Acceptance and Completion.

16.1.3 Risk of Loss to Property of Those Performing the Work. The Contractor shall bear the risk of loss or damage to any property of the Contractor, and of claims made against the Contractor or the Authority for loss or damage to any property of subcontractors, materialmen, workers, and others performing the Work, and to lessors. Said risk is assumed during all times prior to completion of removal of the property from a Project Site or the Authority's premises, or the vicinity thereof.

## **16.2 Indemnification**

16.2.1 The Contractor shall indemnify and save harmless the Authority, the State and the Client School District and their respective officers, employees and agents from and against any and all claims described in Article 16.1 above, and for all expenses incurred by the Authority, the State and the Client School District and their respective officers, employees and agents in the defense, settlement, or satisfaction thereof, including the cost of defense. If so directed, the Contractor shall, at its own expense, defend against any and all claims, in which event it shall not, without obtaining express advance permission from the Authority, the State or the Client School District (as applicable) raise any defense involving in any way jurisdiction of the court or other adjudicative body, immunity of the Authority, the State or the Client School District, the governmental nature of the Authority, the State or the Client School District or the provisions of any statutes respecting suits against the Authority, the State or the Client School District.

16.2.2 Neither Substantial Completion, Final Acceptance and Completion, Contract Completion nor the making of final payment releases the Contractor from its obligations under this Article. Moreover, neither the enumeration in this Article nor the enumeration elsewhere in the Contract of particular risks assumed by the Contractor or of particular claims for which it is responsible shall be deemed:

- (a). To limit the effect of the provisions of this Article or of any other term of the Contract relating to such risks or claims, or
- (b). To imply that the Contractor assumes or is responsible for risks or claims only of the type enumerated in this Article or in any other provisions of the Contract, or
- (c). To limit the risks which the Contractor would assume or the claims for which the Contractor would be responsible in the absence of such enumerations.

16.2.3 The Contractor expressly understands and agrees that the insurance provided by the Authority under the NJSDA OCIP pursuant to Article 8 and insurance otherwise required by the Contract Documents are in addition to and does not limit the indemnification and defense obligations of the Contractor.

## **ARTICLE 17 CLAIMS AND DISPUTE RESOLUTION**

### **17.1 Notice of Claims**

Compliance with the provisions of the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq. (“Act”), is a contractual obligation assumed by the Contractor in executing the Contract. Any notice of claim required by that Act, N.J.S.A. 59:13-5, shall be provided only on forms provided by the Authority. All forms shall be completed in their entirety and signed by the Contractor. Incomplete forms will be rejected and of no effect. The only evidence of compliance with N.J.S.A. 59:13-5 shall be the filing of a notice of claim on the forms provided by the Authority and the Contractor shall not claim that any other document sent to the Authority or to any of its officers, employees or agents satisfies this notice requirement. The Contractor understands that it will be forever barred from recovering against the Authority if it fails to give notice of any act or failure to act by the Authority, or the happening of any event, thing or occurrence, in accordance with N.J.S.A. 59:13-5 and on the forms required by this Section.

### **17.2 Review of Disputes**

17.2.1 Review of Claims. The administrative process for review of Claims is sequential in nature and mandatory. The Authority’s Claims procedure is composed of the following steps:

- Step One: Review by the Authority
- Step Two: Non-binding Mediation

Completion of the two (2) steps of Claims review is a mandatory prerequisite to the initiation of litigation by either Party.

17.2.2. Compliance with Claim Review Procedure. Each Claim will begin its review at Step One. A Claim will not proceed to the next step unless the Contractor submits a written objection to the prior step and requests that its Claim proceed to the next step. If at any step in the process a Claim is resolved, the Contractor must sign a full and final release as to any and all matters arising from the Claim.

17.2.3 Step One: The Authority’s Review. The Contractor must provide to the CM and the Authority the required forms as required by this Section to comply with the New Jersey Contractual Liability Act in order to begin the Authority’s administrative process for the review of Claims. The Contractor shall also submit to the Authority all documentation supporting the Contractor’s Claim. The documentation provided to the Authority will serve as the basis for evaluation of the Contractor’s position regarding the Claim throughout Step One of the administrative process. The Contractor shall submit additional information upon request by the Authority. No formal action will be taken by the Authority unless and until the Authority receives complete Claim documentation from the Contractor.

17.2.4 Authority Review and Decision. At the option of the Authority, a meeting may be scheduled with the Contractor and the Authority to discuss the Claim. The Authority shall render its decision regarding the Claim in writing within thirty (30) Days of the receipt of the complete supporting documentation or within thirty (30) Days of any meeting with the Contractor, the Authority and the CM, whichever is later. This time limit may be extended by mutual agreement

of the Parties. The Contractor, within fifteen (15) Days of the receipt of the decision by the Authority, shall accept or reject the Authority's decision in writing. If the Contractor neither accepts nor rejects in writing the Authority's decision within fifteen (15) Days, the Claim will be considered withdrawn from the administrative process and there will be no further administrative remedy available to the Contractor for the subject Claim.

17.2.5 Non-Binding Mediation. If the Contractor rejects in writing the decision of the Authority, there is no further automatic administrative review of the Claim. Within fifteen (15) Days after issuance of a Certificate of Occupancy or Certificate of Acceptance for this Project, the Contractor may request in writing that any or all outstanding Claims regarding this Project, which include any or all Claims that have been processed through Step One of the Claim resolution process, and that were neither withdrawn nor considered withdrawn from the process be submitted to Step Two, non-binding mediation. Such request shall be sent to the Authority. No Claim will proceed automatically to Step Two and the Contractor must make a specific written request that the Claim be elevated to Step Two for review. Step Two review will not be available until after the issuance of a Certificate of Occupancy or Certificate of Acceptance, unless an earlier time for submission of the Claim to Step Two is agreed to by the Contractor and the Authority. The cost of non-binding mediation shall be shared equally by the Contractor and the Authority. The mediator shall be selected by the Authority, with the concurrence of the Contractor. The rules for the mediation shall be agreed to by the Authority, the Contractor and the mediator prior to the start of the mediation. If the Parties fail to agree on the rules for the non-binding mediation, the mediation will not proceed and Step 2 will be deemed completed.

## **ARTICLE 18. LEGAL RELATIONS AND MISCELLANEOUS PROVISIONS**

### **18.1 Legal Jurisdiction**

This contract shall be governed and interpreted in accordance with the laws of the State of New Jersey. The Contractor further agrees, as a distinct and separate contract obligation in addition to any other requirements of the law, to be bound by the terms of the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq., with regard to the presentation and prosecution of any Claims against the Authority.

### **18.2 Laws to be Observed**

The Contractor shall keep fully informed of all Federal, State and local laws, ordinances and regulations and all orders and decrees of bodies or tribunals having jurisdiction or Authority, which in any manner affect those engaged or employed on the Work, or which in any way affect the conduct of the Work. The Contractor shall at all times observe and comply with, and shall cause its agents and employees to observe and comply with, all such laws, ordinances and regulations orders and decrees, and shall protect and indemnify the Authority and its representatives against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order or decree whether by the Contractor or its employees, agents, subcontractors of any tier, suppliers or materialmen. If any discrepancy is discovered between the Contract Documents and any such law, ordinance, regulation, order or decree, the Contractor shall immediately report the same to the Authority in writing.

### **18.3 Permits**

Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for all permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the work.

### **18.4 State Sales Tax**

Materials, supplies or services for exclusive use in erecting the structures or buildings or otherwise improving, altering or repairing the School Facilities that are encompassed by this Package are exempt from the State sales tax. Purchases or rentals of equipment are not exempt from any tax under the State Sales Tax Act.

### **18.5 Assignment of Contract Funds and Claims**

The Contractor shall not transfer or assign to any party any contract funds, due or to become due, or claims of any nature it has against the Authority, without the written approval of the Authority. The Authority, in sole discretion, considering primarily the interests of the Authority, the State and the Client School District may grant or deny such approval.

### **18.6 Independent Contractor**

The relationship of the Contractor to the Authority is that of an independent contractor, and the Contractor, in accordance with its status as an independent contractor, covenants and agrees that it shall conduct itself consistent with such status, that it shall neither hold itself out as nor claim to be an officer or employee of the Authority by reason hereof. The Contractor shall not, by reason hereof, make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the Authority, including, but not limited to, workers compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.

### **18.7 Third Party Beneficiary Clause**

It is specifically agreed between the parties executing the Contract that no provision of the Contract is intended to make the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to the Contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of the Contract.

It is the further intent of the Authority and the Contractor in executing the Contract that no individual, firm, corporation, or any combination thereof, that supplies materials, labor, services, or equipment to the Contractor for the performance of the Work becomes thereby a third party beneficiary of the Contract.

### **18.8 Limitation of Liability**

Whether as a result of breach of Contract, tort (including negligence), or otherwise, the Authority will not be liable to the Contractor for any special, consequential, incidental, or penal damages including, but not limited to, loss of profit or revenues, loss of rental value for contractor-owned equipment, damages to associated equipment, cost of capital, or interest of any nature.

### **18.9 Affidavit Concerning Gifts to Authority Employees and Agents**

The Contractor shall not give any gifts of any nature, nor any gratuity in any form whatsoever, nor loan any money or anything of value to any Authority employee or relative thereof. The Contractor shall not rent or purchase any equipment or supplies of any nature whatsoever from any Authority employee or relative thereof. Similarly, such gifts, gratuities, loans, rentals or purchases shall not be given to or made from any agent of the Authority during the period of time that such agent is performing any function related in any way to the Package. Before receiving final payment, the Contractor shall execute, under oath, any affidavit, on forms provided by the Authority, swearing that the it has given no such prohibited gift, gratuities, or loans nor made any such prohibited rentals or purchases.

### **18.10 Personal Liability of Public Officials.**

In carrying out any of the provisions of the Contract, or in exercising any power or authority granted to them by or within the scope of the contract, there shall be no personal liability upon any officer, member of the Board, or employee of the Authority either personally or as officials of the Authority, it being understood that in all such matters they act solely as agents and representatives of the Authority.

#### **18.11 No Waiver of Legal Rights.**

Notwithstanding any other provision of the Contract, for a period of three years after Final Acceptance and Completion of a Project, all estimates and payments made pursuant to the Contract Documents, including the Certificate of Final Acceptance and Completion and final payment, are subject to correction and adjustment for clerical or other errors in the calculations involved in the determination of the amount of the payments. The Contractor and the Authority agree to pay to the other any sum due under the provisions of this Article, provided, however, if the total sum to be paid is less than \$100, payment will be waived.

A waiver on the part of the Authority of any breach of any part of the Contract is not to be held to be a waiver of any other or subsequent breach.

The Contractor, without prejudice to the terms of the Contract, shall be liable to the Authority at any time both before and after Contract Completion for latent defects, fraud, such gross mistakes as may amount to fraud, or actions affecting the Authority's rights under any warranty or guarantee.

#### **18.12 Recovery of Monies by the Authority.**

Whenever it is provided in the Contract Documents that the Authority is to withhold or deduct money from any monies due or that may become due the Contractor, or that the Contractor is to pay or return monies for any reason, or that the Authority can charge against the Contractor certain costs or assessments, or that Authority can recover any sum for any reason from the Contractor, it is understood that the Authority has available to it any monies due or that may become due the Contractor under the Contract and on other contracts between the Contractor and the Authority. Such other contracts shall include joint ventures in which the Contractor is a participant, but only to the extent of its participation. The right to recover against the Contractor as herein provided is in addition to and does not affect the right of the Authority to seek recovery against the Contractor or surety under the Contract, bonds, or as otherwise allowed by the law.

#### **18.13 Prevailing Wage**

The Contractor and each of its subcontractors shall comply with the New Jersey Prevailing Wage Act Laws of 1963, Chapter 150, (N.J.S.A. 34:11-56.25 et seq.) and all amendments thereto. The Contractor and its subcontractors shall certify their compliance with this law on forms satisfactory to the Authority prior to receiving payments.

#### **18.14 Patents**

If any design, device, material or process covered by letters of patent or copyright is used in the Work, the Contractor shall provide for such use by suitable legal agreement with the patentee or owner. The Contractor shall assume all costs arising from the use of patented materials, equipment, devices, or processes used on or incorporated in the Work. The Contractor shall defend, indemnify, and save harmless the Authority from any and all claims for infringement by reason of the use of any such patented design, device, material, or process, or any trademark or copyright.

#### **18.15 Environmental Protection**

The Contractor shall comply with all applicable Federal, State and local laws and regulations and all conditions of permits controlling protection of the environment. Necessary precautions shall be taken to prevent pollution of streams, lakes, ponds, rivers, wetlands, groundwater, and reservoirs with chemicals, fuels, oils, bitumens, or other harmful materials and to prevent pollution of the atmosphere from particulate and gaseous matter.

### **18.16 Performance of Work and Procurement of Materials within the United States**

18.16.1 Buy American Requirements. The Contractor shall comply with N.J.S.A. 52:32-1 and N.J.S.A. 52:33-1 et seq., which prohibit the use by the Contractor or any Subcontractor of materials or farm products produced and manufactured outside of the United States on any public work.

18.17.2 Executive Order No. 129 Requirements. In accordance with Executive Order No. 129 (2004) ("EO 129"), and with P.L. 2005, c. 92, the Contractor shall have a continuing duty to comply with the provisions of EO 129 and P.L. 2005, c. 92, as applicable. By executing this Contract, the Contractor agrees that all Work performed by the Contractor pursuant to the Contract Documents shall be performed within the United States. If, during the Term, the Contractor or a subcontracted firm proceeds to shift the performance of the Work outside of the United States, the Contractor shall be deemed in breach of the Contract and shall be subject to Termination for Cause, unless the Authority shall determine in writing that extraordinary circumstances require a shift of services or that a failure to shift the services would result in economic hardship to the Authority or the State

The Contractor shall comply with N.J.S.A. 52:32-1 and N.J.S.A. 52:33-1 et seq., which prohibit the use by the Contractor or subcontractor of materials or farm products produced and manufactured outside of the United States on any public work.

### **18.17 Modification**

No modification or amendment of this Contract or any provision contained therein shall be effective unless it is in writing and executed by both the Authority and the Contractor.

### **18.18 Affirmative Action Requirements**

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

- a. The Contractor or Subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, sex, or affectional or sexual orientation. The Contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment without regard to their age, race, creed, color, national origin, ancestry, marital status, sex, or affectional or sexual orientation. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, Notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.
- b. The Contractor or subcontractor, where applicable, will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all

qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, sex or affectional or sexual orientation.

- c. The Contractor or subcontractor, where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a Notice, to be provided by the Public Agency Compliance Officer, advising the labor union or workers' representative of the Contractor's commitments under this act, and shall post copies of the Notice in conspicuous places available to employees and applicants for employment.
- d. The Contractor or subcontractor, where applicable, agrees to comply with any and all regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time.
- e. When hiring workers in each construction trade, the Contractor or subcontractor agrees to attempt in good faith to employ minority and female workers in each construction trade consistent with the applicable employment goal prescribed by N.J.A.C. 17:27-7.3; provided, however, that the Affirmative Action Office may, in its discretion, exempt a Contractor or subcontractor from compliance with the good faith procedures prescribed by the following provisions (1), (2) and (3), as long as the Affirmative Action Office is satisfied that the Contractor is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the Affirmative Action Office, that its percentage of active "card carrying" members who are minority and female workers is equal to or greater than the applicable employment goal prescribed by N.J.A.C. 17:27-7.3 promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq. as amended and supplemented from time to time. The Contractor or subcontractor agrees that a good faith effort shall include compliance with the following procedures:
  - (1) If the Contractor or subcontractor has a referral agreement or arrangement with a union for a construction trade, the Contractor or subcontractor shall, within three working Days of the Contract award, seek assurances from the union that it will cooperate with the Contractor or subcontractor as it fulfills its affirmative action obligations under the Contract and in accordance with the regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as supplemented and amended from time to time. If the Contractor or subcontractor is unable to obtain said assurances from the construction trade union at least five working Days prior to the commencement of construction work, the Contractor or subcontractor agrees directly to attempt to hire minority and female workers consistent with the applicable employment goal. If the Contractor's or subcontractor's prior experience with a construction trade union, regardless of whether the union has provided said assurances, indicates a significant possibility that the trade union will not refer sufficient minority and female workers consistent with the applicable employment goal, the Contractor or subcontractor agrees to be prepared directly to hire minority and female workers consistent with the applicable employment goal by complying with the following hiring procedures prescribed under (2) below; and the Contractor or subcontractor further agrees immediately to take said action if it determines or is so notified by the Affirmative Action Office that the union is not referring minority and female workers consistent with the applicable employment goal.
  - (2) If the hiring of a work force consistent with the employment goal has not or cannot be achieved for each construction trade by adhering to the procedures of

(1) above, or if the Contractor or subcontractor does not have a referral agreement or arrangement with a union for a construction trade, the Contractor or subcontractor agrees to take the following actions consistent with the applicable county employment goals:

- (a) To notify the Public Agency Compliance Officer, Affirmative Action Office and at least one approved minority referral organization of its manpower needs, and request referral of minority and female workers;
- (b) To notify any minority and female workers who have been listed with it as awaiting available vacancies;
- (c) Prior to commencement of work, to request the local construction trade union, if the Contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade, to refer minority and female workers to fill job openings.
- (d) To leave standing requests for additional referral of minority and female workers with the local construction trade union, if the Contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade, the State Training and Employment Service and other approved referral sources in the area, until such time as the work force is consistent with the employment goal.
- (e) If it is necessary to lay off some of the workers in a given trade on a Project Site, to assure, consistent with the applicable State and Federal statutes and court decisions, that sufficient minority and female employees remain on the Site consistent with the employment goal; and to employ any minority and female workers so laid off by the Contractor on any other Construction Site in the area on which its work force composition is not consistent with an employment goal established pursuant to N.J.A.C. 17:27.

(3) To adhere to the following procedure when minority and female workers apply or are referred to the Contractor or Subcontractor:

- (i) If said individuals have never previously received any document or certification signifying a level of qualification lower than that required, the Contractor or subcontractor shall determine the qualifications of such individuals, and if the Contractor's or subcontractor's work force in each construction trade is not consistent with the applicable employment goal, it shall employ such persons which satisfy appropriate qualification standards; provided however, that a Contractor or subcontractor shall determine that the individual at least possesses the skills and experience recognized by any worker's skills and experience classification determination which may have been made by a Public Agency Compliance Officer, union, apprentice program or a referral agency, provided the referral agency is acceptable to the Affirmative Action Office and provided further that, if necessary, the Contractor or subcontractor shall hire minority and female workers who qualify as trainees pursuant to these regulations. All of the requirements of this paragraph, however, are limited by the provisions of paragraph 3. below.

- (ii) If the Contractor's or subcontractor's work force is consistent with the applicable employment goal, the name of said female or minority group individual shall be maintained on a waiting list for the first consideration, in the event the Contractor's or subcontractor's work force is no longer consistent with the applicable employment goal.
  - (iii) If, for any reason, said Contractor or subcontractor determines that a minority individual or a female is not qualified or if the individual qualifies as an advanced trainee or apprentice, the Contractor or subcontractor shall inform the individual in writing with the reasons for the determination, maintain a copy in its files, and send a copy to the Public Agency Compliance Officer and to the Affirmative Action Office.
  - (iv) To keep a complete and accurate record of all requests made for the referral of workers in any trade covered by the Contract and on forms made available by the Affirmative Action Office and shall be submitted promptly to that office upon request.
- (3) The Contractor or subcontractor agrees that nothing contained in the preceding provision (2) shall preclude the Contractor or subcontractor from complying with the hiring hall or apprenticeship provisions in any applicable bargaining agreement or hiring hall arrangement, and, where required by custom or agreement, it shall send journeymen and trainees to the union for referral, or to the apprenticeship program for admission, pursuant to such agreement or arrangement; provided, however, that where the practices of a union or apprenticeship program will result in the exclusion of minorities and females or the failure to refer minorities and females consistent with the county employment goal, the Contractor or subcontractor shall consider for employment persons referred pursuant to said provisions (2) without regard to such agreement or arrangement; provided further, however, that the Contractor or subcontractor shall not be required to employ minority and female advanced trainees and trainees in numbers which result in the employment of advanced trainees and trainees as a percentage of the total work force for the construction trade, which percentage significantly exceeds the apprentice-to-journey worker ratio specified in the applicable collective bargaining agreement, or in the absence of a collective bargaining agreement, exceeds the ratio established by practice in the area for said construction trade. Also, the Contractor or subcontractor agrees that, in implementing the procedures of the proceeding provision (2), it shall, where applicable, employ minority and female workers residing within the geographical jurisdiction of the union.
- (4) The Contractor agrees to complete an Initial Project Manning Report on forms provided by the Affirmative Action Office or in the form prescribed by the Affirmative Action Office and submit a copy of said form no later than three working Days after signing a construction Contract; and to submit a completed copy of a Monthly Project Manning Report to the Affirmative Action Office and to the public agency compliance officer once a month (by the seventh work day of each month) thereafter for the duration of this Contract. The Contractor agrees to cooperate with the public agency in the payment of budgeted funds, as is necessary for on-the-job and off-the-job programs for outreach and training of minority and female trainees employed on the construction Project.

- (5) The Contractor and its subcontractor shall furnish such reports or other documents to the Affirmative Action Office as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Affirmative Action Office for conducting a compliance investigation pursuant to N.J.A.C. 17:27-10.1 et seq.
- (6) Provisions (e) and (f) are not required for subcontractors with four or fewer employees in the company or a Contractor which has presented evidence of a federally approved or sanctioned affirmative action program.

### **18.19 State Inspector General**

The Office of the State Inspector General, or any other State inspecting or oversight agency may, at its discretion, investigate, examine and inspect the activities of the Contractor and all other parties involved with the Project relating to the construction and financing of the Project and to the implementation of the Educational Facilities Construction and Financing Act, P.L 2000, c. 72 (N.J.S.A. 18A:7G-1 et seq.). The Office of the State Inspector General, or any other State inspecting or oversight agencies may require the Contractor or any other party involved with the Project to submit duly verified reports which shall include such information and be in such form as they may require. In addition to the foregoing the Office of the State Inspector General, or any other State inspecting or oversight agencies may investigate, examine, inspect, or audit in any manner and at such times as they may deem necessary. The Contractor shall include in any and all contracts with Subcontractors a provision requiring such Subcontractors to permit the Office of the State Inspector General, or any other State inspecting or oversight agencies, in their discretion, to investigate, examine, inspect or audit in any manner and at such times as they may deem necessary.

### **18.20 Political Contributions Disclosure Form.**

Pursuant to law, the Contractor shall, on a continuing basis, disclose and report to the Authority, on the "Disclosure of Political Contribution" form provided by the Authority, any "contribution" (as that term is defined in P.L. 2005, c. 51) made during the Term of this Agreement by the Contractor or any "Business Entity" (as that term is defined in P.L. 2005, c. 51) associated with the Contractor, at the time such contribution is made.

### **18.21 Political Contributions ELEC Filing.**

The Contractor shall comply with its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission pursuant to N.J.S.A. 19:44A-20.13 (P.L. 2005, c. 271, section 3), in the event it receives contracts in excess of \$50,000 from a public entity in a calendar year. It is the Contractor's responsibility to determine if filing is necessary.

## **ARTICLE 19 WARRANTIES**

19.1 The Contractor warrants to the Authority that (1) the Work performed conforms to the Contract requirements and is free of any defect of equipment, material or design furnished or workmanship performed by the Contractor or any of its subcontractors, fabricators or suppliers at any tier, (2) materials and equipment furnished under the Contract Documents are new and of good quality, and (3) the Project is fit for use for its intended function.

19.2 The warranties shall commence upon Substantial Completion of a Project and continue for one year, unless otherwise stated in the Contract Documents. The warranties shall require the Contractor to remedy at its own expense any defect or failure in the Work to meet the requirements of the Contract

Documents. In addition, the Contractor shall remedy at its own expense any damage to the School Facility when that damage is the result of the Contractor's failure to conform to Contract requirements or to any such defect of equipment, material, workmanship or Contractor furnished design. The Contractor shall also restore any Work damaged in fulfilling the terms of this Article. The Contractor's warranty with respect to Work repaired or replaced hereunder shall run for one year from the date of repair or replacement.

19.3 The Authority shall have full authority to undertake enforcement of the warranties. Within seven Days of receipt by the Contractor of written notice of a failure of any of the Work to satisfy the Contractor's warranties, the Contractor shall consult with the Authority to determine when and how the Contractor shall remedy such failure; provided however, that in the case of an emergency requiring immediate curative action, the Contractor shall immediately implement such action as deemed necessary by either the Contractor or the Authority to correct the emergent condition. If the Contractor does not use its best efforts to proceed promptly to meet its warranty obligations or should no agreement be reached within seven (7) days (or immediately in the case of an emergency) between the Contractor and Authority regarding how to effectuate warranty repairs, the Authority, after notice to the Contractor, shall have the right to perform the repairs and the cost thereof shall be borne by the Contractor.

19.4 The Contractor shall obtain from all subcontractors and cause to be extended to the Authority, without in any way derogating the Contractor's own representations and warranties, appropriate warranties, guarantees and obligations with respect to design, materials workmanship, equipment, tools and supplies furnished by such subcontractors for periods at least as co-extensive in duration with the Contractor's warranties for such work. All such warranties, guarantees and obligations shall be in writing and shall run directly to and be jointly and severally enforceable by the Contractor and/or the Authority and their respective successors or assigns. The Contractor shall be responsible for enforcing such warranties, guarantees and obligations, at its own expense, in the name of and on behalf of the Authority if the Authority so requests.

19.5 The Contractor's warranties and all subcontractor warranties shall be assignable by the Authority without approval of any Contractor or subcontractor, which assignment shall be effective upon delivery of written notice of the assignment to the Contractor.

19.6 The foregoing warranties are in addition to all manufacturer warranties required by the Contract Documents and all rights and remedies available under the Contract Documents or applicable law and shall not limit the Contractor's liability or responsibility imposed by the Contract Documents or applicable law with respect to the Work.