

Board of County Commissioners of the County of Burlington



Office of the
Division of Purchasing
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DATE OF ADDENDUM: September 4, 2026

TO ALL PROSPECTIVE BIDDERS:

Burlington County Agricultural Center - 2026 Improvements (CPU-26-0051)

Addendum No. 1

The purpose of this addendum is to provide answers to questions received by the deadline for questions and pertinent information regarding the specifications issued for the solicitation of bids titled **"Burlington County Agricultural Center - 2026 Improvements" (CPU-26-0051)**.

Bidders shall review all documentation and attachments included in Addendum No. 1. All documents and information contained in this addendum are hereby added to the specifications for the solicitation of bids referenced above. All Bidders shall acknowledge receipt of this addendum under the "Attributes" tab within the solicitation at <https://burlcobids.ionwave.net>. An attribute regarding addendum acknowledgement was added and is required prior to bid submission.

Documents included in Addendum No.1:

1. Attachment A – Copy of the Pre-bid Conference Sign-In Sheet
- *2. Attachment B – Revised Section 00300 – Burlington County General Conditions

***Important Note:** Page 00300-52 of the bid specifications has been revised to clarify the Maintenance Bond or Guarantee amount. The Maintenance Bond or Guarantee shall be for a sum equal to fifteen (15%) of the total contract price.

Questions & Answers

- 1. Will APF Armor-Rez CQ 100 be an acceptable alternative to PaliKrom 185 for Section 096723 Resinous Flooring specification?**

Answer: Proposed "or equal" substitutions will be evaluated when submitted by the selected Contractor prior to purchase or installation of the work. Refer to specifications section 300 "General Conditions" for additional information.



August 26, 2026 10:00 AM Commissioners Conference Room

[illegible]

SECTION 00300

BURLINGTON COUNTY GENERAL CONDITIONS

ARTICLE 1 - GENERAL PROVISIONS

1.1 BASIC DEFINITIONS

1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the Agreement between Owner and Contractor (hereinafter the Agreement), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Design Professional. The Contract Documents also include all documents submitted as part of a complete bid submission or required to be submitted as a prerequisite for commencement of the work.

1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by Modification as defined in 1.1.1 above. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Design Professional and Contractor, (2) between the Owner and a Subcontractor or Sub-subcontractor, (3) between the Owner and Design Professional or (4) between any persons or entities other than the Owner and Contractor. The Design Professional shall, however, be entitled to performance and enforcement of the obligations under the Contract intended to facilitate performance of the Design Professionals duties.

1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, incidentals, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or part of the Project. Temporary facilities, tools, and other portions of the work which are not to be delivered to the Owner at, or prior to, final completion shall not be subject to the General Conditions except to the extent that they may interfere with our otherwise adversely affect the Owner's use of or interest in the site.

1.1.4 THE PROJECT

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

1.1.5 THE DRAWINGS

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

1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services inclusive of Division 0.

1.1.7 THE PROJECT MANUAL

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

1.1.8 THE OWNER

The term "Owner" means the Board of Commissioners of Burlington County, New Jersey

1.1.9 THE OWNER'S REPRESENTATIVE

For the purposes of this specification, the Owner's representative shall also be referred to as "Design Professional". The name of the Owner's representative is listed in Division 0, Section 00050.

1.1.10 CONTRACTOR

The word 'Contractor' shall mean the Contractor with whom the overall single lump-sum contract has been executed.

1.1.11 DESIGN PROFESSIONAL

The phrase 'Design Professional' shall reference the Architect or Engineer of Record for the Project.

1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

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

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

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

1.2.4 Details referenced to portions of the Work shall apply to other like portions of the Work not otherwise detailed.

1.2.5 The Contractor shall request, from the Design Professional, interpretation of apparent discrepancies, conflicts, or omissions in the Specifications and Drawings. Subcontractors shall forward such requests through the Contractor. Such requests, and the Design Professional interpretation, shall be in written form. Other forms of communications shall be used to expedite resolution of concerns, but will not be binding.

1.2.6 During the course of the Work, should any ambiguities or discrepancies be found in the Specifications or on the Drawings; or should there be found any discrepancies between the Drawings and Specifications to which the Contractor has failed to call attention before submitting his bid, then the Design Professional will interpret the intent of the Drawings and Specifications; and the Contractor hereby agrees to abide by the Design Professional's interpretation and to carry out the work in accordance with the decision of the Design Professional. It is expressly stipulated that neither the Drawings nor the Specifications shall take precedence over the other, and it is further stipulated that the Design Professional may interpret or construe the Drawings and Specifications so as to secure in all cases the result most consistent with the needs and requirements of the work.

1.2.7 In all cases, the Details, Drawings, and Specifications shall be checked with existing conditions and with work in place, and variations, if any, shall be referred by the Contractor to the Design Professional for adjustment, as the Contractor will be responsible for the fit or work in place.

1.2.8 When a profile, section or other finished condition is shown, furring or other method of obtaining such finished conditions shall be provided. The Drawings may show work fully drawn out or only a portion thereof, the remainder being in outline. The drawn out portions apply to other like or similar places.

1.2.9 Where it is required in the sSpecifications that materials, products, processes, equipment, or the like be installed or applied in accordance with manufacturer's instructions, directions, or specifications, or words to this effect, it shall be construed to mean that said application or installation shall be in strict accordance with printed material concerned for use under conditions similar to those at the job site. Provide copies of such instructions to the Design Professional and obtain his written approval before beginning Work.

1.2.10 Any material specified by reference to the number, symbol, or title of a Commercial Standard, Federal Specification, ASTM Specification, trade association standard, or other similar standards, shall comply with the requirements in the latest adopted revision thereof and any amendments or supplements thereto in effect at the time the Contract Documents are issued for bid. The standards referred to, except as modified in the Specifications, shall have full force and effect as though printed in the Specifications. The Design Professional will furnish upon request information as to how copies of the standards referred to may be obtained.

1.3 CAPITALIZATION

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

1.4 INTERPRETATION

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

1.5 EXECUTION OF CONTRACT DOCUMENTS

1.5.1 The Owner and the Contractor shall sign five (5) copies of the Contract Documents. One (1) complete set will be returned to the Contractor and shall serve as his copy of the executed Contract for Construction.

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

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

1.6.1 The Drawings and Specifications prepared by the Design Professional and the Design Professional's consultants are Instruments of Service through which the Work to be executed by the Contractor is described. Other documents, including those in electronic format are not included in the Instruments of Service. The Contractor will be issued free of charge one paper copy of the plans and one copy of the Specifications for his use during the Project. Neither the Contractor nor any Subcontractor, Sub-subcontractors or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Design Professional or the Design Professional's consultants, and unless otherwise indicated the Design Professional and the Design Professional's consultants shall be deemed the authors of them and will retain all common law, statutory and other reserved rights, in addition to the copyrights. All copies of Instruments of Service, shall be returned or suitably accounted for to the Design Professional, at the Owner's and or the Design Professional's request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Design Professional and the Design Professional's consultants, and copies thereof furnished to the Contractor, are for use solely with respect to this Project, they are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the Scope of the Work without the specific written consent of the Owner, Design Professional and the Design Professional's consultants. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Design Professional and the Design Professional's consultants appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this authorizations shall bear the statutory copyright

notice, if any, shown on the Drawings, Specifications and other documents prepared by the Design Professional and the Design Professional's consultants. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Design Professional's or Design Professional's consultants' copyrights or other reserved rights.

ARTICLE 2 - OWNER

2.1 GENERAL

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

2.1.2 The Owner shall furnish to the Contractor within fifteen (15) days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

2.2.2. The Contractor shall secure and pay for all necessary approvals from any agency with jurisdiction over the work, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. The Owner shall reimburse the Contractor for the direct cost of such expenses, without mark-up for overhead and profit pursuant to Subparagraph 7.2.1.

2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and legal description of the site. The Contractor shall not be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

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

2.2.5 The Contractor will be furnished free of charge: One (1) set of Contract Documents fully executed by Contractor and Owner, and sealed Drawings and Specifications as required for submission to necessary code officials, one (1) set of reproducible Drawings and one (1) additional Project Manual for use by the Contractor and the subcontractors to make record documents. If additional documents are required by the Contractor, the additional documents may be obtained at the cost of reproduction. One (1) copy of any subsequent Drawing issued after the release of the bid documents will be provided free of charge.

2.3 OWNER'S RIGHT TO STOP THE WORK

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

2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

2.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven (7) day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such seven-day period, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change order shall be issued deducting from payments then or thereafter due the Contractor for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Design Professional's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Design Professional. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor and/or his Surety shall pay the difference to the Owner.

ARTICLE 3 - CONTRACTOR

3.1 General

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

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

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

3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

3.2.1 Since the Contract Documents are complementary, before starting each portion of the Work, the Contractor shall carefully study and compare the various Drawings and other Contract Documents relative to that portion of the Work, The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the Design Professional at once.

The Contractor agrees that he will make no claim for additional payment or any other concession because of any misinterpretation or misunderstanding of the Contract Documents on his part, or of any failure to fully familiarize himself with any conditions related to the contract. This does not

preclude the contractor from claiming additional payment related to differing site conditions pursuant to NJSA 40A:11-16.7 as listed below

Differing Site Conditions:

(1) If the contractor encounters differing site conditions during the progress of the work of the contract, the contractor shall promptly notify the contracting unit in writing of the specific differing site conditions encountered before the site is further disturbed and before any additional work is performed in the impacted area.

(2) Upon receipt of a differing site conditions notice in accordance with paragraph (1) of this subsection, or upon the contracting unit otherwise learning of differing site conditions, the contracting unit shall promptly undertake an investigation to determine whether differing site conditions are present.

(3) If the contracting unit determines different site conditions that may result in additional costs or delays exist, the contracting unit shall provide prompt written notice to the contractor containing directions on how to proceed.

(4)

(a) The contracting unit shall make a fair and equitable adjustment to the contract price and contract completion date for increased costs and delays resulting from the agreed upon differing site conditions encountered by the contractor.

(b) If both parties agree that the contracting unit's investigation and directions decrease the contractor's costs or time of performance, the contracting unit shall be entitled to a fair and equitable downward adjustment of the contract price or time of performance.

(c) If the contracting unit determines that there are no differing site conditions present that would result in additional costs or delays, the contracting unit shall so advise the contractor, in writing, and the contractor shall resume performance of the contract, and shall be entitled to pursue a differing site conditions claim against the contracting unit for additional compensation or time attributable to the alleged differing site conditions.

(5) Execution of the contract by the contractor shall constitute a representation that the contractor has visited the site and has become generally familiar with the local conditions under which the work is to be performed.

(6) As used in this subsection, "differing site conditions" mean physical conditions at the contract work site that are subsurface or otherwise concealed and which differ materially from those indicated in the contract documents or are of such an unusual nature that the conditions differ materially from those ordinarily encountered and generally recognized as inherent in the work of the character provided for in the contract.

Suspension of Work:

(1) The contracting unit shall provide written notice to the contractor in advance of any suspension of work lasting more than 10 calendar days of the performance of all or any portion of the work of the contract.

(2) If the performance of all or any portion of the work of the contract is suspended by the contracting unit for more than 10 calendar days due to no fault of the contractor or as a consequence of an occurrence beyond the contracting unit's control, the contractor shall be entitled to compensation for any resultant delay to the project completion or additional contractor expenses, and to an extension of time, provided that, to the extent feasible, the contractor, within 10 calendar days following the conclusion of the suspension, notifies the contracting unit, in writing, of the nature and extent of the suspension of work. The notice shall include available supporting information, which information may thereafter be supplemented by the contractor as needed and as may be reasonably requested by the contracting unit. Whenever a work suspension exceeds 60 days, upon seven days' written notice, either party shall have the option to terminate the contract for cause and to be fairly and equitably compensated therefor.

(3) Upon receipt of the contractor's suspension of work notice in accordance with paragraph (2) of this subsection, the contracting unit shall promptly evaluate the contractor's notice and promptly advise the contractor of its determination on how to proceed in writing.

(4)

(a) If the contracting unit determines that the contractor is entitled to additional compensation or time, the contracting unit shall make a fair and equitable upward adjustment to the contract price and contract completion date.

(b) If the contracting unit determines that the contractor is not entitled to additional compensation or time, the contractor shall proceed with the performance of the contract work, and shall be entitled to pursue a suspension of work claim against the contracting unit for additional compensation or time attributable to the suspension.

(5) Failure of the contractor to provide timely notice of a suspension of work shall result in a waiver of a claim if the contracting unit can prove by clear and convincing evidence that the lack of notice or delayed notice by the contractor actually prejudiced the contracting unit's ability to adequately investigate and defend against the claim.

Change in Character of Work:

(1) If the contractor believes that a change directive by the contracting unit results in a material change to the contract work, the contractor shall so notify the contracting unit in writing. The contractor shall continue to perform all work on the project that is not the subject of the notice.

(2) Upon receipt of the contractor's change in character notice in accordance with paragraph (1) of this subsection, the contracting unit shall promptly evaluate the contractor's notice and promptly advise the contractor of its determination on how to proceed in writing.

(3)

(a) If the contracting unit determines that a change to the contractor's work caused or directed by the contracting unit materially changes the character of any aspect of the contract work, the contracting unit shall make a fair and equitable upward adjustment to the contract price and contract completion date. The basis for any such price adjustment shall be the difference between the cost of performance of the work as planned at the time of contracting and the actual cost of such work as a result of its change in character, or as otherwise mutually agreed upon by the contractor and the contracting unit prior to the contractor performing the subject work.

(b) If the contracting unit determines that the contractor is not entitled to additional compensation or time, the contractor shall continue the performance of all contract work, and shall be entitled to pursue a claim against the contracting unit for additional compensation or time attributable to the alleged material change.

(4) As used in this subsection, "material change" means a character change which increases or decreases the contractor's cost of performing the work, increases or decreases the amount of time by which the contractor completes the work in relation to the contractually required completion date, or both.

Change in Contract Quantities:

(1) The contracting unit may increase or decrease the quantity of work to be performed by the contractor.

(2)

(a) If the quantity of a pay item is cumulatively increased or decreased by 20 percent or less from the bid proposal quantity, the quantity change shall be considered a minor change in quantity.

(b) If the quantity of a pay item is increased or decreased by more than 20 percent from the bid proposal quantity, the quantity change shall be considered a major change in quantity.

(3) For any minor change in quantity, the contracting unit shall make payment for the quantity of the pay item performed at the bid price for the pay item.

(4)

(a) For a major increase in quantity, the contracting unit or contractor may request to renegotiate the price for the quantity in excess of 120 percent of the bid proposal quantity. If a mutual agreement cannot be reached on a negotiated price for a major quantity increase, the contracting unit shall pay the actual costs plus an additional 10 percent for overhead and an additional 10 percent for profit, unless otherwise specified in the original bid.

(b) For a major decrease in quantity, the contracting unit or contractor may request to renegotiate the price for the quantity of work performed. If a mutual agreement cannot be reached on a negotiated price for a major quantity decrease, the contracting unit shall pay the actual costs plus an additional 10 percent for overhead and an additional 10 percent for profit, unless otherwise specified in the original bid; provided, however, that the contracting unit shall not make a payment in an amount that exceeds 80 percent of the value of the bid price multiplied by the bid proposal quantity.

If the Contractor performs any construction activity knowing or having a reasonable opportunity to know that it involves a recognized or apparent error, inconsistency or omission in the Contract Documents without such written notice to the Design Professional, the Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction.

3.2.2 Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the Design Professional, but it is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents.

3.2.3 If the Contractor believes that additional cost or time is involved because of clarifications or instructions issued by the Design Professionals in response to the Contractor's notices or requests for information pursuant to Subparagraphs 3.2.1 and 3.2.2, the Contractor shall make Claims as provided in Subparagraphs 4.3.6 and 4.3.7. If the Contractor fails to perform the obligations of Subparagraph 3.2.1. and 3.2.2, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations.

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall be fully and solely responsible for the jobsite safety of such means, methods techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Design Professional and shall not proceed with that portion of the Work without further written instructions from the Design Professional.

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

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

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

3.3.4.1 Contractor shall lay out work and be responsible for all lines, elevations and measurements of the building, and other work executed by him under the Contract. They must exercise proper

precaution to verify the figures shown on the drawings before laying out the work and will be held responsible for any errors resulting from their failure to exercise such precaution.

3.3.5 The Contractor, when requested by the Design Professional, shall meet with representative of the Design Professional at all times and furnish all information requested. They shall allow the Design Professional to inspect the work at all times. Neither the Owner nor the Design Professional shall be liable to the Contractor for extra compensation or damages for interference or delays on account of any such meetings, information, or inspections so requested or other acts of the Design Professional done in good faith and within the scope of their employment by the Owner. In addition, the Contractor is entrusted with the oversight, management control and general direction of this project to insure that all contract completion dates are met. In the event that there are any delays caused to any subcontractor on this project, liability shall lie with the Contractor and not with the Owner.

3.4 LABOR AND MATERIALS

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

3.4.1.1 The Contractor must provide, at his own expense, suitable storage facilities at the site for the proper protection and safe storage of his materials. Such storage facilities and placement thereof must be approved in advance in writing by the Design Professional or Owners Representative.

3.4.1.2 All materials delivered to the premises which are to form a part of the Work are to be considered the property of the Owner and must not be removed without the Design Professional's consent, but the Contractor shall remove all surplus materials upon completion of each phase of the work and as directed by the Design Professional or Owners Representative.

3.4.1.3 When any room is used as a shop, storeroom, etc., during the progress of the work, the Contractor making use of the space will be held responsible for any repairs, patching or cleaning arising from such use. Prior approval of Design Professional and Owner for use of such areas is mandatory.

3.4.2 The Contractor may make substitutions only with the consent of the Owner, after evaluation by the design professional and in accordance with an RFI and associated Change Order if applicable.

3.4.2.1 Not later than twenty (20) days from the Notice to Proceed, the Contractor shall provide a list showing the name of the manufacturer proposed to be used for each of the products identified in the Specifications Div. 1-26, and if applicable, the installing Subcontractor's name. If a proposed product is being submitted as a proposed "equal" and not listed in the Specifications, comply with requirements listed elsewhere in the Specifications.

3.4.2.2 The Design Professional will promptly reply in writing to the Contractor stating whether the Owner or the Design Professional, after due investigation, has reasonable objection to any such "or equal" proposal. If adequate data on any proposed manufacturer or installer is not available, the Design Professional may State that action will be deferred until the Contractor provides further data.

Failure of the Owner or the Design Professional to reply promptly shall not constitute a waiver of any of the requirement of the Contract Documents, and all products furnished by the listed manufacturer must conform to such requirements. Any changes to such an approved list will be deemed a substitution.

3.4.2.3 After the Contract has been executed, the Owner and the Design Professional will consider a formal request for the substitution of products in place of those specified only under the conditions set forth elsewhere in the Specifications. By making requests for substitutions the Contractor:

- (A) Represents that the Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified.
- (B) Represents that the Contractor will provide the same warranty for the substitution that the Contractor would for that specified.
- (C) Certifies that the cost data presented is complete and includes all related costs under this Contract but excludes costs under separate contracts, and waives all claims for additional costs related to the substitution which subsequently become apparent; and
- (D) Will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

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

3.4.4 The Contractor will be held to be thoroughly familiar with all conditions affecting labor in the locale of the Project, including, but not limited to, trade jurisdictions and agreements, incentive and premium time, pay, procurement, living and commuting conditions. Contractor shall assume responsibility for costs resulting from his failure to verify conditions affecting his labor.

3.5 WARRANTY

3.5.1 The Contractor warrants to the Owner and Design Professional that materials and equipment furnished under the contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirement of the Contract.

3.5.2 The warranty period for the Work shall be two (2) years from the date of Final Acceptance or the Certificate of Occupancy, whichever occurs later. The Contractor shall be responsible for work or materials provided by the Suppliers, Subcontractors or others during this warranty period.

3.5.3 The Contractor shall provide a maintenance bond during the warranty period in accordance with the requirements outlined in Article 11 INSURANCE AND BONDS of the Supplementary General Conditions.

3.5.3 The Contractor shall maintain insurance coverage in accordance with the requirements for Liability Insurance/Maintenance Guarantee Period in Article 11 INSURANCE AND BONDS of the Supplementary General Conditions

3.6 TAXES

3.6.1 The County of Burlington is exempt from all taxes including Federal Excise Tax, Fuel Tax, Transportation Taxes, and State Sales or Use Tax. Contractor's Exemption Purchase Certificate Form ST-13, issued by the State of New Jersey, Division of Taxation, Sales Tax Bureau, shall be completed and submitted to his suppliers for materials used on this project only.

3.7 PERMITS, FEES AND NOTICES

3.7.1 The Contractor shall secure and pay for all fees for permits from agencies with jurisdiction, certificates and inspections in connection with the project and shall be responsible for the associated coordination with appropriate trades and officials. The Owner shall reimburse the Contractor for direct fees associated with municipal and state fees without markup for overhead and profit pursuant to subparagraph 7.2.1.

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

3.7.2.1 The Contractor shall be responsible to obtain and maintain business licenses required by the State, county and / or city and shall give all notices and comply with all laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the work.

3.7.3 The Contractor is responsible to insure that his Work as described by the Contract Documents is in accordance with applicable laws, statutes ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Design Professional and Owner in writing, and necessary changes shall be accomplished by appropriate Modification.

3.7.3 If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Design Professional and Owner, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

3.8 ALLOWANCES

3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct. The Design Professional shall review for approval all allowance items and the costs of such items as submitted by the contractor.

3.8.2 Unless otherwise provided in the Contract Documents:

1. allowances shall cover the cost to the Contractor of materials and equipment delivered at the site, all required taxes, less applicable trade discounts; costs for unloading and handling at the site, labor, and installation costs.

2. Contractor's overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances;
3. whenever costs are more or less than allowances, the contract sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect:
 - a. The difference between actual costs and the allowances under Clause 3.8.2.1 and
 - b. Changes in Contractor's costs under Clause 3.8.2.2

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

3.9 PROJECT MANAGER AND SUPERINTENDENT

3.9.1 The Contractor shall employ and assign a competent project manager to the Project.

3.9.2 At least one Superintendent shall be required at each project site and shall be present at the jobsite from the start of construction and shall remain on the site until the completion of all corrective and punch list items. The number of necessary assistants to the Superintendent shall be such that areas where work is in progress shall be adequately supervised by the Contractors Superintendent or one of his assistants. If, in the Design Professionals' opinion, the quality or progress of the Work is adversely affected by lack of adequate supervision, the Contractor shall increase the number of supervisory personnel at no increase in the Contract Sum.

3.9.2.1 The Superintendent shall be "full time" and present at the site for the duration of the entire Project while the Work is progressing.

3.9.3 The Project Manager and the Superintendent cannot be the same person.

3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Design Professional's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised monthly and included with each monthly payment application.

3.10.1.1 Less specified elsewhere the Contractor shall comply with these requirements: Within fifteen (15) days after the date of the "Notice to Proceed " the General Contractor shall submit to the Design Professional, on forms supplied by the Design Professional, or on the Contractor's own forms if acceptable to the Design Professional, a bar-graph Progress Schedule upon which shall be indicated the dates for starting and the dates for completion of all Contracts and all divisions of the work in a manner which will coincide with Time for Completion. Progress Schedules should be updated and presented at each construction meeting unless otherwise noted.

3.10.2 The Contractor shall prepare and keep current, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Design Professional reasonable time to review submittals.

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

3.10.4 Schedules shall comply with the requirements of Division 1 relating to "Construction Schedules."

3.11 DOCUMENTS AND SAMPLES AT THE SITE

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

3.12 SHOP DRAWINGS PRODUCT DATA AND SAMPLES

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

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

3.12.3 Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged except for samples authorized to be used in the Work, samples shall be delivered to the Design Professional upon completion of the Work if requested, and otherwise shall become the property of the Contractor and shall be removed from the site.

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

3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Design Professional Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents. This shall be done with reasonable promptness and in each such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Design Professional without action.

3.12.6 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field

measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements for the Work and of the Contract Documents.

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

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

3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Design Professional on previous submittals. In absence of such written notice the Design Professional's approval thereof.

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

3.12.11 Detailed requirements for Shop Drawings, Product Data and Samples are specified in Division 1.

3.13 USE OF SITE

3.13.1 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not encumber the site.

3.13.2 The Contractor is responsible for insuring the safety of the Work and all persons associated with the work either directly or indirectly through the location and weights of all equipment and materials he intends to place on the slab.

3.13.3 If not specified in the Contract Documents, the limit of Contractor activities and use of the site shall be determined by the Design Professional prior to the start of construction.

3.14 CUTTING AND PATCHING

3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.

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

3.15 CLEANING UP

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

3.15.2 The Contractor shall be responsible to clean the site at the end of each work day.

3.15.3 The Contractor shall be responsible to supply separate dumpsters for general refuse, wood, cardboard, and other recyclable materials as the contract warrants to reduce the impact of the job on landfills and create overall less waste.

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

3.16 ACCESS TO WORK

3.16.1 The Contractor shall provide the Owner and Design Professional access to the Work in preparation and progress wherever located. Access shall be permitted at all times.

3.17 ROYALTIES, PATENTS AND COPYRIGHTS

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

3.18 INDEMNIFICATION

3.18.1 To the fullest extent permitted by law and to the extent claims, damages, losses or expenses are not covered by Article 11 the Contractor shall indemnify and hold harmless the Owner, Design Professional, Design Professional's consultants, and agents and employees of any of them from and against claims, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph 3.18.

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

3.18.3 The Contractor's indemnification as described in Section 3.18 shall continue after the completion of the performance of the Work for any claim, damage, loss or expense caused by negligent acts or omissions of the Contractor, a Subcontractor or anyone for whose acts they may be responsible which negligent acts or omissions occur prior to the completion of the Work or the Maintenance Guarantee Period.

ARTICLE 4 ADMINISTRATION OF THE CONTRACT

4.1 DESIGN PROFESSIONAL

4.1.1 The Design Professional is the person lawfully licensed to practice or an entity lawfully practicing identified as such in the Agreement and is referred to throughout the Contract

Documents as if singular in number. The term "Design Professional" means the Design Professional or the Design Professional's authorized representative." The term Design Professional includes the Design Professional or other professional listed elsewhere in the Contract Documents as the Owner's Representative.

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

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

4.2 DESIGN PROFESSIONALS ADMINISTRATION OF THE CONTRACT

4.2.1 The Design Professional will provide administration of the Contract as described in the Contract Documents, and will be an Owner's representative (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the two-year maintenance period for correction of Work described in Paragraph 12.2. The Design Professional will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

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

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

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

4.2.5 Based on the Design Professional's evaluation of the Contractor's Applications for Payment, the Design Professional will review and certify the amount due and issue Certificates for Payment in accordance with Article 9.

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

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

4.2.8 The Design Professional will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Article 7 CHANGES IN WORK.

4.2.9 The Design Professional will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, will receive and forward to the Owner, for the Owners review and records, written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

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

4.2.11 The Design Professional will interpret and decide matters concerning performance under and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Design Professional's response to such request will be made in writing. delay shall not be recognized on account of failure by the Design Professional to furnish such interpretations.

4.2.12 Interpretations and decisions of the Design Professional will be consistent with the intent of

and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and initial decisions, the Design Professional will endeavor to secure faithful performance by both Owner and Contractor will not show partiality to either and will not be liable for results of interpretations or decisions do rendered in good faith.

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

4.3 CLAIMS AND DISPUTES

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

4.3.2 Time Limits on Claims. Claims by the Contractor must be initiated within five (5) days after occurrence of the event giving rise to such Claim or within five (5) days after the Contractor first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the Design Professional and the other party.

4.3.3 Continuing Contract Performance. Pending final resolution of a Claim except as otherwise agreed in writing or as provided in Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

4.3.4 Claims for Concealed or Unknown Conditions.

(1) If the contractor encounters differing site conditions during the progress of the work of the contract, the contractor shall promptly notify the contracting unit in writing of the specific differing site conditions encountered before the site is further disturbed and before any additional work is performed in the impacted area.

(2) Upon receipt of a differing site conditions notice in accordance with paragraph (1) of this subsection, or upon the contracting unit otherwise learning of differing site conditions, the contracting unit shall promptly undertake an investigation to determine whether differing site conditions are present.

(3) If the contracting unit determines different site conditions that may result in additional costs or delays exist, the contracting unit shall provide prompt written notice to the contractor containing directions on how to proceed.

(4)

(a) The contracting unit shall make a fair and equitable adjustment to the contract price and contract completion date for increased costs and delays resulting from the agreed upon differing site conditions encountered by the contractor.

(b) If both parties agree that the contracting unit's investigation and directions decrease the contractor's costs or time of performance, the contracting unit shall be

entitled to a fair and equitable downward adjustment of the contract price or time of performance.

(c) If the contracting unit determines that there are no differing site conditions present that would result in additional costs or delays, the contracting unit shall so advise the contractor, in writing, and the contractor shall resume performance of the contract, and shall be entitled to pursue a differing site conditions claim against the contracting unit for additional compensation or time attributable to the alleged differing site conditions.

(5) Execution of the contract by the contractor shall constitute a representation that the contractor has visited the site and has become generally familiar with the local conditions under which the work is to be performed.

(6) As used in this subsection, "differing site conditions" mean physical conditions at the contract work site that are subsurface or otherwise concealed and which differ materially from those indicated in the contract documents or are of such an unusual nature that the conditions differ materially from those ordinarily encountered and generally recognized as inherent in the work of the character provided for in the contract.

Suspension of Work:

(1) The contracting unit shall provide written notice to the contractor in advance of any suspension of work lasting more than 10 calendar days of the performance of all or any portion of the work of the contract.

(2) If the performance of all or any portion of the work of the contract is suspended by the contracting unit for more than 10 calendar days due to no fault of the contractor or as a consequence of an occurrence beyond the contracting unit's control, the contractor shall be entitled to compensation for any resultant delay to the project completion or additional contractor expenses, and to an extension of time, provided that, to the extent feasible, the contractor, within 10 calendar days following the conclusion of the suspension, notifies the contracting unit, in writing, of the nature and extent of the suspension of work. The notice shall include available supporting information, which information may thereafter be supplemented by the contractor as needed and as may be reasonably requested by the contracting unit. Whenever a work suspension exceeds 60 days, upon seven days' written notice, either party shall have the option to terminate the contract for cause and to be fairly and equitably compensated therefor.

(3) Upon receipt of the contractor's suspension of work notice in accordance with paragraph (2) of this subsection, the contracting unit shall promptly evaluate the contractor's notice and promptly advise the contractor of its determination on how to proceed in writing.

(4)

(a) If the contracting unit determines that the contractor is entitled to additional compensation or time, the contracting unit shall make a fair and equitable upward adjustment to the contract price and contract completion date.

(b) If the contracting unit determines that the contractor is not entitled to additional compensation or time, the contractor shall proceed with the performance of the

contract work, and shall be entitled to pursue a suspension of work claim against the contracting unit for additional compensation or time attributable to the suspension.

(5) Failure of the contractor to provide timely notice of a suspension of work shall result in a waiver of a claim if the contracting unit can prove by clear and convincing evidence that the lack of notice or delayed notice by the contractor actually prejudiced the contracting unit's ability to adequately investigate and defend against the claim.

Change in Character of Work:

(1) If the contractor believes that a change directive by the contracting unit results in a material change to the contract work, the contractor shall so notify the contracting unit in writing. The contractor shall continue to perform all work on the project that is not the subject of the notice.

(2) Upon receipt of the contractor's change in character notice in accordance with paragraph (1) of this subsection, the contracting unit shall promptly evaluate the contractor's notice and promptly advise the contractor of its determination on how to proceed in writing.

(3)

(a) If the contracting unit determines that a change to the contractor's work caused or directed by the contracting unit materially changes the character of any aspect of the contract work, the contracting unit shall make a fair and equitable upward adjustment to the contract price and contract completion date. The basis for any such price adjustment shall be the difference between the cost of performance of the work as planned at the time of contracting and the actual cost of such work as a result of its change in character, or as otherwise mutually agreed upon by the contractor and the contracting unit prior to the contractor performing the subject work.

(b) If the contracting unit determines that the contractor is not entitled to additional compensation or time, the contractor shall continue the performance of all contract work, and shall be entitled to pursue a claim against the contracting unit for additional compensation or time attributable to the alleged material change.

(4) As used in this subsection, "material change" means a character change which increases or decreases the contractor's cost of performing the work, increases or decreases the amount of time by which the contractor completes the work in relation to the contractually required completion date, or both.

Change in Contract Quantities:

(1) The contracting unit may increase or decrease the quantity of work to be performed by the contractor.

(2)

(a) If the quantity of a pay item is cumulatively increased or decreased by 20 percent or less from the bid proposal quantity, the quantity change shall be considered a minor change in quantity.

(b) If the quantity of a pay item is increased or decreased by more than 20 percent from the bid proposal quantity, the quantity change shall be considered a major change in quantity.

(3) For any minor change in quantity, the contracting unit shall make payment for the quantity of the pay item performed at the bid price for the pay item.

(4)

(a) For a major increase in quantity, the contracting unit or contractor may request to renegotiate the price for the quantity in excess of 120 percent of the bid proposal quantity. If a mutual agreement cannot be reached on a negotiated price for a major quantity increase, the contracting unit shall pay the actual costs plus an additional 10 percent for overhead and an additional 10 percent for profit, unless otherwise specified in the original bid.

(b) For a major decrease in quantity, the contracting unit or contractor may request to renegotiate the price for the quantity of work performed. If a mutual agreement cannot be reached on a negotiated price for a major quantity decrease, the contracting unit shall pay the actual costs plus an additional 10 percent for overhead and an additional 10 percent for profit, unless otherwise specified in the original bid; provided, however, that the contracting unit shall not make a payment in an amount that exceeds 80 percent of the value of the bid price multiplied by the bid proposal quantity.

(5) As used in this subsection, the term "bid proposal quantity" means the quantity indicated in the bid proposal less the quantities designated in the project plans as "if and where directed."

4.3.5 If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Paragraph 10.6. All required notices for additional costs shall be made by certified mail.

4.3.6 If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Design Professional, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Design Professional, (4) termination of the Contract by the Owner, (5) Owner's suspension or (6) other reasonable grounds, Claim shall be filed in accordance with this Paragraph 4.3.

4.3.7 Claim for Additional Time

4.3.7.1 All claims for additional time shall comply with N.J.A.C. 5:30-11.3.

(a) No changes in quantities, work performed, services rendered, materials, supplies or equipment delivered or provided shall be authorized, permitted or accepted except by the procedures established herein.

All change orders unless otherwise stated in this subchapter shall be subject to the following:

1. Each change order shall be in writing and shall be numbered consecutively (beginning with number one) and attached to the original purchase order or contract for each project.

2. Change orders which result in payment reduction below the originally contracted price may be made by locally established procedure, provided that any change orders increasing cost on the same contract shall include reference to such reductions.

3. Quantities of items or work shall not be changed in such a manner as to nullify the effect of the competitive determination of lowest responsible bidder which was made at the time of contract award, if at said time the changes could have been reasonably foreseen.

4. Responsibility required by these rules to be exercised specifically by the governing body, including authorization of change orders, shall not be delegated except for minor field (site) modifications pursuant to N.J.A.C. 5:3011.4.

5. Change orders may be executed by the representative appointed by the governing body but the responsibility for the authorization of change orders shall not be delegated by the governing body except for minor field (site) modifications pursuant to N.J.A.C. 5:30-11.4.

6. Change orders shall be used to change the number of units or items originally advertised and contracted for, provided that: i. ii. iii. Unit prices or a price methodology were sought in the original specifications and included in the contract; The original specification and the contract included a provision that the unit prices could be so used; and If (a)6i and ii above were not contained in the original specification, a change order shall not be issued.

7. Change orders shall not be used to substantially change the quality or character of the items or work to be provided, inasmuch as such would have been a determining factor in the original bidding.

8. Change orders shall not serve the purpose of escalation clauses and, therefore, shall not be utilized to effectuate upward price adjustments.

9. Total number of change orders executed for a particular contract shall not cause the originally awarded contract price to be exceeded by more than 20 percent unless otherwise authorized by these rules.

10. If proposed change orders do exceed the 20 percent limitation of (a)9 above, no work shall be performed or purchases made until the procedures of N.J.A.C. 5:30-11.9 have been completed. If the governing body determines issuance of the change order is not justifiable, a new contract shall be executed in accordance with the Local Public Contracts Law.

11. Before authorizing any change orders resulting in additional expenditures, the availability of funds shall be certified in writing by the chief financial officer or certifying finance officer, as appropriate.

12. The 20 percent limitation of (a)9 above shall not apply to emergency situations as defined within N.J.S.A. 40A:11-6.

13. Change order authorizations shall not be withheld until the completion of the entire project.

If the Contractor wishes to make Claim for an increase in the Contract Time, written notices provided herein shall be given. The Contractor's Claim shall include an estimate of probable effect on progress of the Work. In the case of a continuing delay only one Claim is necessary. Claims for additional time shall not include reimbursement to the Contractor for any additional money. All required notices for additional time shall be made by certified mail.

4.3.7.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could have been reasonably anticipated, and had an adverse effect on the scheduled construction.

4.3.7.3 Any claim for extension of time should be made in writing to the Design Professional not more than five (5) days after the commencement of any delay, otherwise, it shall be waived. The Contractor shall provide an estimate of the probable effect of such delay on the progress of the Work. No claim made beyond the five (5) days shall be considered valid.

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

4.3.9 If unit prices are stated in the Contract Documents and if quantities originally contemplated are so changed in a proposed Change Order or Construction Change Directive or if stated prices cannot be justified by the Design Professional so that application of such unit prices to revised quantities of Work proposed will cause substantial inequity to the Owner, the applicable unit prices shall be equitably adjusted.

4.3.10 The Contractor agrees that if any delay in the Contractor's works unnecessarily delays the work of any Contractor or Contractors; or causes the Owner or the Owner's vendors damages for expenses that the Owner or his vendors would not have needed to incur; the Contractor shall in that case pay all costs and expenses incurred by such parties due to such delays and hereby authorizes the Owner to deduct the amount of such costs and expenses from any monies due or to become due the Contractor under this Contract. The Design Professional shall be responsible for ascertaining whether the Contractor is responsible for delaying any of the work of any other Contractor or for causing such damages to be incurred. His decision shall be final.

4.4 RESOLUTION OF CLAIMS AND DISPUTES

4.4.1 Decision of Design Professional. Claims, including those alleging an error or omission by the Design Professional but excluding those arising under Paragraphs 10.3 through 10.5, shall be referred initially to the Design Professional for decision. An initial decision by the Design Professional shall be required as a condition precedent to mediation, or litigation of all Claims between the Contractor and the Owner arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Design Professional with no decision having been rendered by the Design Professional. The Design Professional will not decide disputes between the Contractor and persons or entities other than the Owner.

4.4.2 The Design Professional will review Claims and within ten (10) days of the receipt of Claim take one of more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or on part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Design Professional is unable to resolve this claim. If the Design Professional lacks sufficient information to evaluate the merits of the claim or if the Design Professional concludes that, in the Design Professional's sole discretion, it would be inappropriate for the Design Professional to resolve the claim.

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

4.4.4 If the Design Professional requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either provide a response on the requested supporting data, advise the Design Professional when the response of supporting data will be furnished or advise the Design Professional that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Design Professional will either reject or approve the Claim in whole or in part.

4.4.5 The Design Professional will approve or reject Claims by written decision, which shall state the reasons therefore and which shall notify the parties of any change in the Contract Sum or Contract Time or both. The approval or rejection of a Claim by the Design Professional shall be final and binding on the parties but subject to mediation.

4.4.6 When a written decision of the Design Professional states that (1) the decision is final but subject to mediation and (2) a demand for mediation of a Claim covered by such decision must be made within thirty (30) days after the date on which the party making the demand received the final written decision, then failure to demand mediation within said thirty (30) days' period shall result in the Design Professional's decision becoming final and binding upon the Owner and Contractor. If the Design Professional renders a decision after mediation proceedings have been initiated, such decision may be entered as evidence, but shall not supersede mediation proceedings unless the decision is acceptable to all parties

4.4.7 Upon receipt of Claim against the Contractor or at any time thereafter, the Design Professional or the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Design Professional or Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

4.4.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the Claim by the Design Professional, by mediation.

4.5 MEDIATION

4.5.1 Pursuant to the requirements of N.J.S.A. 40A:11-50, any Claim arising out of or related to the

Contract, except Claims relating to the aesthetic effect and except those waived as provided for in Subparagraphs 4.3.10, 9.10.4 and 9.10.5 shall, after initial decision by the Design Professional or 30 days after submission of the Claim to the Design Professional, be subject to alternative dispute resolution through mediation as a condition precedent to the institution of legal or equitable proceedings by either party.

4.5.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to the Contract and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

4.5.3 The party seeking mediation shall pay the entire case filing or set-up fee to the American Arbitration Association. All other expenses shall be paid in accordance with M-17 of the AAA Construction Industry Mediation Rules. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

4.5.4 The Contractor must proceed with all work required under this Contract during the mediation process described below if so, required by the Board in its sole discretion.

4.5.5 A dispute arising under this Contract shall be submitted in writing to the County's representative with all facts and supporting data. The County's representative will submit the written description of the dispute to the County, who will review the dispute and issue its decision or request additional facts or documentation after which it will render a decision.

4.5.6 After receipt of the decision from the County, disputes shall be submitted for mediation to the American Arbitration Association (AAA) under the American Arbitration Association Construction Industry Mediation Rules prior to being submitted to a court for adjudication with the exception of disputes concerning the bid solicitation for award process or the formation of contracts or subcontracts entered into pursuant to the Local Public Contracts Law.

4.5.7 Whenever more than one dispute of a similar nature arises under a construction contract or under related construction contracts, a contracting party may demand that the disputes be joined unless the mediator appointed to resolve the dispute determines that the disputes are inappropriate for joinder.

4.5.8 Whenever a dispute concerns more than one contract, such as when a dispute in a contract involving construction relates to a contract involving design, architecture, engineering or management, upon the demand of a contracting party, the disputes shall be joined unless the mediator determines that the disputes are inappropriate for joinder.

ARTICLE 5 SUBCONTRACTORS

5.1 DEFINITIONS

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

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

5.2 AWARD OF SUBCONTRACT

5.2.1 The names of all subcontracts not required to be supplied in the Bid Form and material suppliers shall be submitted to the Design Professional for approval not later than seven (7) days after the date of the notice to proceed. The list of proposed subcontractors shall include a description of the materials and equipment each proposes to furnish and install in the work. The description shall be in sufficient detail to allow the Design Professional to determine general conformance to Contract requirements. Approval of the submittals required under this Article shall not relieve the Contractor from conformance to Contract requirements.

5.2.2 The Design Professional will promptly reply in writing to the Contractor stating whether the Owner or the Design Professional, after due investigation, has reasonable objection to any such proposed subcontractor, manufacturer, installer or material supplier. If adequate data on any such proposed entity is not available, the Design Professional may state that action will be deferred until the Contractor provides further data. Failure of the Owner or the Design Professional to reply promptly shall not constitute a waiver of any of the requirements of the Contract Documents, and all products furnished by the listed manufacturer must conform to such requirements.

5.2.3 If the Owner or Design Professional has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Design Professional has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such a change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such a change unless the Contractor has acted promptly and responsively in submitting names as required.

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

5.2.5 If a Subcontractor is a manufacturer or supplier of products, or is otherwise limited as to the products he can supply, and if products to be installed by that Subcontractor require any specified procedures to determine compliance with requirements of the contract, then identification of such Subcontractor shall be considered tentative subject to determination of product compliance, and no Change Order shall be issued to the Contractor to replace such Subcontractor with a Subcontractor capable of complying with the requirements of the contract.

5.3 SUBCONTRACTUAL RELATIONS

5.3.1 By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Design Professional. Each subcontract agreement shall preserve and protect the rights of the Owner and Design Professional under the Contract Documents with respect to the Work to be performed by the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and upon written request of the subcontractor, identify to the subcontractor terms and conditions of the propped subcontract agreement which may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

5.3.2 The Contractor shall obligate each subcontractor specifically to comply with the New Jersey Plan of Affirmative Action to avoid discriminatory practice in employment.

5.3.3 The Contractor shall obligate each subcontractor to comply with the applicable prevailing wage schedule of the Department of Labor of the State of New Jersey.

5.3.4 Written confirmation of award of each major subcontract, other than those required to be submitted with the Bid Submission shall be submitted to the Design Professional, in form subject to his approval, within seven (7) days after receipt of Design Professional's request.

5.4 RESERVED

ARTICLE 6 - CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. The Contractor shall coordinate and supervise such efforts in order to eliminate claims & damages.

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

6.1.3 The Contractor shall provide for the coordination of the Work of his own forces and of each of the separate contractors. In addition, the Contractor shall insure the cooperation of his forces and those of his subcontractors as provided in Paragraph 6.2 with the forces of the Owner's staff, Contractors and/or Subcontractors.

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

6.2 MUTUAL RESPONSIBILITY

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

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

6.2.3 The Owner shall be reimbursed by the Contractor for costs incorrect by the Owner which are payable to a separate contractor because of delays, improperly timed activities, or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of the delays, improperly timed activities, damage to the Work or defective construction of a separate contractor.

6.2.4 Should the Contractor cause damage to the work or property of any separate contractor or subcontractor on the project, the Contractor shall, upon due notice, promptly settle with such other contractor by agreement or otherwise resolve the dispute. If such separate contractor sues or institutes an arbitration proceeding against the Owner on account of any damage alleged to have been so sustained, the Contractor shall defend such proceeding at his own expense, and if any judgment against the Owner arises there from, the Contractor shall pay or satisfy it and shall reimburse the Owner for any attorney's fees and court costs which the Owner has incurred.

6.2.5 Should the Contractor cause damage to the work or property of any separate Contractor on the project, the contractor shall, upon due notice, settle with such other Contractor by agreement or Court of Law if he will so settle. If such separate Contractor sues the Owner or the Design Professional or initiates a Court of Law proceeding on account of any damage alleged to have been so sustained, the Contractor agrees that he will hold the Owner or Design Professionals harmless against any such claim or suite and that he will reimburse to the Owner or Design Professional as the case may be, the cost of defending such suit, including a reasonable attorney" fee and if any

judgment against the Owner or Design Professional arises there from, the Contractor shall pay all cost incurred by the Owner or Design Professional.

6.2.6 Should the Contractor be caused damage by any other separate Contractor on the Work by reason of such other Contractor's failure to perform properly his contract with the Owner, no action will lie against the Owner and the Owner shall have no liability therefore, but the Contractor may assert his claim for damages against such separate contractor as a third party beneficiary under the Contract between such other Contractor and the Owner.

6.2.7 Claims and other disputes and matters in question between the Contractor and a separate contractor shall be subject to the provisions of Paragraph 4.3

ARTICLE 7 CHANGES IN WORK

7.1 General

7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents. All change orders shall be in accordance with N.J.A.C. 5:30-11.3.

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

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

7.2 CHANGE ORDERS

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

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

7.2.2 Methods used for determining the change to the Contract Sum for Change Orders shall be the same as stated in Subparagraph 7.3 CONSTRUCTION CHANGE DIRECTIVES.

7.2.3 Any change in work authorized in writing by the Owner or Design Professional that will require a change in the cost of the work, whether an additive or deductive change in cost, shall show a complete cost breakdown of labor, material, equipment, and overhead and profit in accordance with Subparagraph 7.3.6 and 7.3.10.

7.2.4 When a Change Order involves both additions and deletions in material, the net quantity are to be determined and the allowable overhead and profit as defined in 7.3.10 is to be applied to the net quantity.

7.2.5 When a Change Order involves deletions in material and labor, the amount of the credit will be equal to the line item on the Schedule of Values or a unit of the value if only a portion of the value is being deleted.

7.2.6 EXTRA WORK: Any work which may be required of the Contractor and is not, in the opinion of the Design Professional, properly a part of the work of the Contractor, or understood to be done as part of the work of the contractor, or understood to be done as part of any item or work listed in these specifications shall be classed as extra work. The contractor shall not in any case perform any extra work without receiving a signed Change Order or Construction Change Directive from the Design Professional. All Change Orders must be pre-approved by the Board of Freeholders. No contract may be increased by Change Orders by more than twenty percent (20%) of the original Contract sum.

7.3 CONSTRUCTION CHANGE DIRECTIVES

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

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

7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on Subparagraph 7.3.6 and 7.3.10

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

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

7.3.6 If the Contractor does not respond promptly or disagrees with the method for adjustment in the contract Sum, the method and the adjustment shall be determined by the Design Professional on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in the case of a increase in the Contract Sum, an allowance for overhead and profit in accordance with the schedule set forth in Subparagraph 7.3.10. In such case, the Contractor shall keep and present, in such form as the Design Professional may prescribe, an itemized accounting together with appropriate supporting data.

Determination of the net cost for the purposes of this Subparagraph 7.3 CONSTRUCTION CHANGE DIRECTIVES and Subparagraphs. 7.2 CHANGE ORDERS shall be limited to the following:

- .1 cost of labor, including social security, old age and unemployment insurance, fringe benefits required by Law, and workers compensation insurance;
- .2 costs of materials, supplies and equipment, including cost of transportation whether incorporated or consumed;
- .3 costs for rental of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

Costs that are specifically excluded for the purposes of this Subparagraph 7.3 CONSTRUCTION CHANGE DIRECTIVES and Subparagraphs 7.2 CHANGE ORDERS are as follows:

- .1 costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work, and;
- .2 additional costs of supervision, field office rental, or field office personnel or other field office or main office overhead;

The Total Cost calculated by the methods in this Subparagraph, 7.3.6, shall constitute the "Net Cost" attributable to the Change in the Contract Sum and shall be the basis to which the allowable overhead and profit, as defined in 7.3.10, applies.

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

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

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

7.3.10 Subparagraphs 7.2 CHANGE ORDERS and 7.3 CONSTRUCTION CHANGE DIRECTIVES, the allowable overhead and profit to be applied to the net cost of the change in the Contract Sum shall be based on the following schedule:

- 1. For all extra work or portion thereof performed by the Contractor's own forces, the total change in the Contract Sum shall be limited to the net cost of the extra work plus a maximum allowance of fifteen percent (15%) of the net cost for all of the General Contractor's overhead costs and profit.

2. For all extra work or portion thereof performed by a Subcontractor(s), the total change in the Contract Sum shall be limited to the net cost of the extra work performed by the Subcontractor plus a maximum allowance of fifteen percent (15%) of that net cost for the Subcontractor's overhead and profit plus a maximum allowance of five percent (5%) of the combination of Subcontractor's net cost plus any net costs that may be accrued by the Contractor for the Contractor's overhead and profit. In no case shall the total allowance for overhead and profit on a Subcontractor(s) work exceed twenty percent (20%) of the total net cost of the Work.
3. Costs for Insurance and Bonds shall be included in the percentages listed above as allowable overhead and profit and shall not be listed as separate or additional line items when calculating the total change to the Contract Sum for Change Orders or Construction Change Directives.

ARTICLE 8 TIME

8.1 DEFINITIONS

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

8.1.2 The work to be performed under this contract shall commence after the required insurance has been obtained and approved and within seven days after issuance of the Notice To Proceed by the Design Professional. The contract time shall commence as of the date of the Notice To Proceed unless otherwise specified in the agreement.

8.1.3 The date of Substantial Completion is the date certified by the Design Professional in accordance with Paragraph 9.8

8.1.3.1 Pursuant to Subparagraph 8.1.3 as supplemented hereinafter as between the Owner and Contractor as to all acts or failures to act occurring prior to the relevant Date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such Date of Substantial Completion; as to all acts or failures to act occurring subsequent to the relevant Date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Certificate of Payment.

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

8.2 PROGRESS AND COMPLETION

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

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

of commencement shall be established by the Contract Documents or a notice to proceed given by the Design Professional.

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

8.3 DELAYS AND EXTENSIONS OF TIME

8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work and believes that the Contract Time should be extended due to changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, or by other causes which the Design Professional determines may justify, such extension then the Contract Time shall be extended by Change Order for such reasonable time as the Design Professional may determine.

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

8.3.3 This paragraph 8.3 does not preclude recovery of damages for delay by the Owner as follows:

1. The Contractor understands and agrees that all Work must be performed in an orderly and closely coordinated sequence so that the date for substantial completion may be met.

2. If the Contractor fails to complete his work or fails to complete a portion of his work necessary to allow another Contractor to commence his work, he shall pay the Owner as liquidated damages, and not as a penalty, the sum stated in the Contract Documents Form of Agreement for each day of delay. Such amount is agreed upon as a reasonable and proper measure of damages which the Owner will sustain each calendar day by failure of the Contractor to complete work within the stipulated time.

3. Substantial Completion will be determined by the Design Professional, and shall be deemed, to be completion of the whole work for purposes of tolling the Municipal Mechanics Lien Law.

4. For damages occurring at the time of delay, the Owner may retain the amount due to him under this clause from any payments due to the Contractor in accordance with the provisions of Paragraph 9.5

5. If the Owner shall suffer financial loss if the project is not substantially complete on the date set forth in the Contract Documents. The Contractor (and the Contractor's Surety) shall be liable for and pay to the Owner the sums hereinafter stipulated and fixed, agreed as liquidated damages for each calendar day of delay until the work is substantially complete or the actual costs of financial loss suffered on account of the project not being substantially complete on the date set forth in the Contract Documents, whichever is greater.

8.3.4 Apart from an extension of time, no payment or allowance of any kind shall be made to the Contractor as compensation for damages on account of hindrance or delay from any cause in the progress of the work whether such delay be avoidable or unavoidable. The Contractor agrees that

he will make no claim for compensation, damages, or litigation of damages for any such delays, and will accept in full satisfaction for such delays said extension of time.

8.3.5 The Contractor agrees that the Owner can deduct from the Contract Sum, any wages paid by the Owner to any Inspector or Design Professional or other professional necessarily employed by the Owner for any number of days in excess of the number of days allowed in the Contract Documents for completion of Work.

8.3.6 Precedent to claims for delay where the cause of delay is due to weather conditions, extension of time shall be granted only for unusually severe weather, as determined by reference to historical data. The term "historical data" as used in the preceding sentence shall be construed according to this formula; Average rainfall (or snow or low temperature) for the past five (5) years.

8.3.7 The Contractor agrees that if any delay in the Contractor's work unnecessarily delay the work of any Contractor or Contractors, the Contractor shall in that case pay all costs and expenses incurred by such parties due to such delays and hereby authorizes the Owner to deduct the amount of such costs and expenses from any moneys due or to become due to Contractor under this Contract. The Design Professional shall be responsible for ascertaining whether the Contractor is responsible for delaying any of the work of any other Contractor. The Design Professional's decision shall be considered valid.

ARTICLE 9. PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

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

9.2 SCHEDULE OF VALUES

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

9.3 APPLICATIONS FOR PAYMENT

9.3.1 All payment applications shall comply with the Prompt Payment Act N.J.S.A 2A:30A-1. Payment Applications shall not be submitted more frequently than once each calendar month. The billing date shall be the date upon which the Design Professional receives a notarized Application for Payment from the Contractor for his own company as General Contractor and each of the Sub-Contractors listed on the bid form. ("Listed" subcontractors are those providing Plumbing and Gas Fitting, HVAC, Electrical, Structural Steel and Ornamental Iron Work.) The Contractor shall be responsible for reviewing, approving and submitting the Application for Payment. The Applications for Payment shall be submitted on AIA Document G702 and G703, and include an Approved and Certified County Voucher form obtainable from the County Purchasing Department, a completed Payroll Affidavit Form WH-347(1/68) obtainable from the US Department of Labor Wage and Hour Division. The Contractor must also submit additional AIA G702 and G703 forms summarizing the particular applications for payment.

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

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

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

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

9.3.4 By the Contractor's signature on the AIA 702 & 703 Forms and their County Voucher Forms, certifies his agreement that the amounts stated on those forms are the correct amounts being due each of the Sub-Contractors.

9.3.5 Withholding of Partial Payment (Retainage); the Owner shall withhold 2% of the amount due on each partial payment paid to the Contractor pending completion of the contract or agreement.

9.3.6 Upon acceptance of the work performed, pursuant to this contract for which the contractor has agreed to the withholding of payments pursuant to Article 9 of this contract, all amounts being withheld by the Owner shall be released and paid in full to the contractor within forty five (45) days of the date as established by the Design Professional and the Owner, without further withholding of any amounts for any purpose whatsoever, provided that the contract has been satisfactorily completed.

9.4 CERTIFICATES FOR PAYMENT

9.4.1 The issuance of a Certificate for Payment will constitute a representation by the Design Professional to the Owner, based on the Design Professional's evaluation of the Work and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Design Professional's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to

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

9.5 DECISIONS TO WITHHOLD CERTIFICATION

9.5.1 The Design Professional may withhold a Certificate for Payment if in the Design Professional's opinion the representation to the Owner required by Subparagraph 9.4.2 cannot be made. If the Design Professional is unable to certify payment as shown on the Payment Application, the Design Professional will notify the Contractor and the Owner. The Design Professional may also withhold a Certificate for Payment or, because of subsequently discover evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Design Professional's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Subparagraph 3.3.2, because of:

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

9.6 PROGRESS PAYMENTS

9.6.1 If the General Contractor has performed in accordance with the provisions of the contract and these specifications and the billing for the work has been approved and certified by the Design Professional, the amount due will be paid not more than 30 days after the billing date. Payment Applications certifying to work that has not been completed or that has not been completed in a satisfactory manner by either the Contractor or a Listed Subcontractor shall be returned to the General Contractor for correction. Payment applications containing incorrect amounts and/or mathematical errors shall also be returned to the General Contractor for correction. Submittal of a Corrected Payment Application shall be considered a new Application for Payment for purposes of N.J.S.A. 2A:30A-1 et seq.

All disputes between owners, prime contractors, subcontractors or sub subcontractors shall provide that disputes regarding whether a party has failed to make payments required pursuant to N.J.S.A. 2A:30A-1 et seq., shall be submitted to alternative dispute resolution in accordance with Section 4.6 of these Specifications.

The provisions of this Subparagraph 9.6.1 apply to Progress Payments, Final Payments and Retainage Monies.

9.6.2 If a subcontractor or sub subcontractor has performed in accordance with the provisions of its contract with the prime contractor or subcontractor and the work has been accepted by the owner, the Design Professional, or the General Contractor, as applicable, and the parties have not otherwise agreed in writing, the General Contractor shall pay to its subcontractor, excluding the Listed Subcontractors, and the subcontractors shall pay to its sub subcontractor within 10 calendar days of the receipt of a progress payment, final payments or receipt of retainage monies, the full amount received for the work of the subcontractor or sub subcontractor based on the work completed or the services rendered under the Contract.

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

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

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

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

9.6.8 As per N.J.S.A. 40A:11-16, county entities entering into a lump sum, single overall contract for construction are required to issue direct checks to the listed sub-contractors (Plumbing and Gas Fitting, HVAC, Electrical, Structural Steel and Ornamental Iron Work See the bid form Section 00410). Monies due the listed subcontractor cannot be paid to the general contractor.

Checks to the listed sub-contractors will be issued only upon written direction from the general contractor verifying the amount to be paid and the quantities of work performed.

THIS DOES NOT CONSTITUTE A CONTRACTURAL RELATIONSHIP BETWEEN THE COUNTY AND THE LISTED SUB-CONTRACTORS, NOR DOES IT IMPLY THAT THE COUNTY "PAYS" THE

SUB-CONTRACTOR, NOR DOES IT IN ANY WAY RELIEVE THE GENERAL CONTRACTOR FROM HIS MANAGEMENT OF OR FIDUCIARY RESPONSIBILITIES TO THE LISTED SUB-CONTRACTORS.

9.7 FAILURE OF PAYMENT

9.7.1 If the Design Professional does not issue a Certificate for Payment, through no fault of the Contractor, within seven (7) days after receipt of the Contractor's Application s for Payment, or if the Owner does not pay the Contractor within seven (7) days after the date established in the Contract Documents the amount certified by the Design Professional or awarded by arbitration, then the Contractor may, upon seven additional days' written notice two the Owner and Design Professional , stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay, and start-up, plus interest as provided in the Contract Documents. If a payment due under the Prompt Payment Act is not made in a timely manner, the delinquent party shall be liable for the amount of money owed under the contract, plus interest at a rate equal to the prime rate plus 1%.

9.8 SUBSTANTIAL COMPLETION

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

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

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

9.8.4 When the Work or designated portion thereof is substantially complete, the Design Professional will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion or the date of the Certificate of Occupancy whichever is the latter. The Contractor shall guarantee that work or materials provided by Suppliers, Subcontractors or others for use in the project are also bound by this timeline.

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

9.8.6 The payment at substantial completion shall be sufficient to increase the total payments to 98% of the contract sum, less such amounts as the Design Professional shall determine for all incomplete work and unsettled claims.

9.9 PARTIAL OCCUPANCY OR USE

9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any state when the such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Clause 11.4.1.5 and authorized by public authorities having jurisdiction of the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Design Professional as provided under Subparagraph 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Design Professional.

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

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

9.10 FINAL COMPLETION AND FINAL PAYMENT

9.10.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final application for Payment, the Design Professional will promptly make such inspection and, when the Design Professional finds the Work acceptable under the Contract Documents and Contract fully performed, the Design Professional will promptly issue a final Certificate for payment stating that the best of the Design Professional's knowledge, information and

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

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

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

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

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

10.2 SAFETY OF PERSONS AND PROPERTY

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

- .1 employees on the Work and other persons who may be affected thereby;

- .2 the Work and materials and equipment to be incorporated therein or which has been incorporated into the Work, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities as well as any other real or personal property not designated for removal, relocation or replacement in the course of construction.
- .4 the Contractor shall replace all such materials and equipment which may be lost, stolen or damaged at his expense, whether or not such materials or equipment have been entirely or partially paid for by the Owner

10.2.2.1 Contractor shall comply with all regulations required by OSHA and PEOSHA.

10.2.2.2 The Contractor shall conform to all applicable New Jersey Department of Environmental Protection regulations.

10.2.2.3 Contractors must comply with Construction and Environment Standards contained in Federal and State Regulations and other applicable laws.

10.2.2.4 It is the Contractor's responsibility to determine the existence of potentially hazardous materials, including lead, to notify the Owner of the presence of such hazardous materials and to protect his workmen and the work area.

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

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

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

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

10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's

superintendent unless otherwise designated by the Contractor in writing to the Owner and Design Professional.

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

10.3 HAZARDOUS MATERIALS

10.3.1 The Contractor shall promptly notify the Design Professional and Owner of the presence of hazardous conditions at the site, including the start of hazardous operations or the discovery or exposure of hazardous substances.

10.4 The Owner shall not be responsible under Paragraph 10.3 for materials and substances brought to the site by the Contractor unless such materials or substances were required by the Contract Documents.

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

10.6 EMERGENCIES

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

ARTICLE 11. INSURANCE AND BONDS

11.1 CONTRACTORS LIABILITY

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

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

11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required by this Paragraph 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and

are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Subparagraph 9.10.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

11.1.4 WORKMEN'S COMPENSATION

11.1.1.4 The Contractor shall take out and maintain Workmen's Compensation insurance to fully protect the OWNER as required by existing law, or as such may be amended during the life of this contract. In case the Contractor shall subcontract any portion of the work, he shall require that all employees of the subcontractor are properly covered by such Workmen's Compensation Insurance. In case any class of employees engaged in hazardous work under this contract is not protected under Workmen's Compensation statute, the Contractor shall provide, and shall cause each subcontractor to provide adequate and suitable insurance for the protection of his employees not otherwise protected.

11.1.5 PUBLIC LIABILITY, PROPERTY, AUTOMOBILE AND ASBESTOS INSURANCE

11.1.5.1 ACCIDENTS, INJURIES, DAMAGES: When necessary for the Contractor, either as principal or by agent or employee, to enter upon the premises or property of the County in order to construct, erect, repair, inspect, make delivery or remove property hereunder, the Contractor hereby covenants and agrees to take, use, provide and make all proper, necessary and sufficient precaution, safeguards and protection against occurrence or happenings or any accidents, injuries, damages or hurt to any person or property during the progress of the Work herein covered, and to be responsible for, and to indemnify and save harmless the County from the payment of all sums of money by reason of all, or any, such accidents, injuries, damages or hurt that may happen or occur upon or about such work and all fines, penalties and loss incurred for or by any reason of the violation of any city borough ordinance regulation, or the laws of the State of New Jersey or of the United States, while the said work is in progress. Contractor shall carry insurance in accordance with provisions in Article of the General Supplementary Conditions of the Contract to indemnify the County against any claim for loss, damage or injury to property or persons arising out of the performance of the Contractor or his employees and agents of the services covered by the contract and the use, misuse, or failure of any equipment used by the Contractor or his employees or agents, and shall provide certificates of such insurance to the County. The aforesaid insurance coverage must remain in effect during the entire contract period and warranty maintenance period.

11.1.5.2 When asbestos work is included in the Project, asbestos insurance is required. The Contractor may, at his option, provide on policy in accordance with the limits set forth in these General and Supplementary Conditions for all risk except that related specifically to Asbestos Abatement activities, provided that the Asbestos Contractor supplies liability insurance in the amount specified here under General Liability/Asbestos Abatement Operations. In addition, both the General Contractor and the County of Burlington are to be named as additionally insured on the Asbestos Contractor's policy. If this option is exercised, both policies must be submitted in accordance with the specifications.

11.1.5.3 Without restricting the obligations and liabilities assumed under the Contract Documents, the Contractor shall, at his own cost and expense, purchase and maintain in force until final

acceptance of his work or the end of the warranty period, the forms of insurance coverage listed herein:

.A INSURANCE CERTIFICATES: Within seven (7) County business days from the date when the Notice of Award is delivered, the bidder to whom the Contract has been awarded shall submit insurance certificates, binders and policies as required. Certificates shall be issued to:

Burlington County Board of Commissioners
49 Rancocas Road
Mt. Holly, NJ 08060-6000
Attention: Insurance & Risk Management Division

Failure to submit insurance certificates, binders and policies within the specified time shall constitute a default for which the Board may take whatever actions that are allowed under the Contract.

In the event that the Contractor provides evidence of insurance in the form of certificates of insurance, valid for a period of time less than the period during which the Contractor is required by the terms of this Contract to maintain insurance, said certificates are acceptable, but the Contractor shall be obligated to renew its insurance policies as necessary and to provide new certificates of insurance so that the County is continuously in possession of evidence of the Contractor's insurance in accordance with the foregoing provisions.

However, the original policies of Owner's Protective Policy shall at this time be delivered to the OWNER for its possession.

All policies as hereinafter required shall be so written that the OWNER will be notified of cancellation or restrictive amendment at least thirty (30) days prior to the effective date of such cancellation of amendment.

B. REQUIRED INSURANCE: The Contractor shall take out and maintain during the life of this Contract the various types and amounts of all risk insurance as required to protect the Contractor, the OWNER and any subcontractor performing work covered by this Contract from claims for damages or personal injury including accidental death, as well as from claims for property damages which may arise from operations under this Contract, whether such operations be by himself or by any subcontractor or by anyone directly employed by either of them.

11.1.5.4ALL INSURANCE COVERAGE LISTED BELOW will be required for every construction project with the exception of item # 6 (GENERAL LIABILITY/ASBESTOS ABATEMENT INSURANCE) which will only be required when hazardous material abatement is included within the scope of work.

1. COMPREHENSIVE GENERAL LIABILITY INSURANCE: The minimum limit of liability shall be \$5,000,000 each occurrence/\$5,000,000 aggregate combined single limit for bodily injury and property damage.

2. COMPREHENSIVE AUTOMOBILE LIABILITY INSURANCE: with minimum limits of liability in the amount of \$5,000,000 per occurrence as a combined single limit for bodily injury and property damage.

3. OWNER'S AND CONTRACTOR'S PROTECTIVE INSURANCE: A separate Owner's and Contractor's Protective Liability Insurance policy shall be provided. The minimum limit of liability shall be \$4,000,000 per occurrence/\$4,000,000 aggregate as a combined single limit for bodily injury and property damage. The policy is to be written for the benefit of the County, its officers and employees; they are to be named as the insured.

4. WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE: Worker's Compensation Insurance shall be provided in accordance with the requirements of the laws of this State and shall include an all states' endorsement to extend coverage to any state which may be interpreted to have legal jurisdiction. Employer's Liability Insurance shall be provided with the following minimum limits.

\$500,000 Each Accident
\$500,000 Disease Each Employee.
\$500,000 Disease Aggregate Limit.

5. UMBRELLA OR EXCESS POLICY: can be used in conjunction with the primary policies to meet the limits required.

6. GENERAL LIABILITY/ASBESTOS ABATEMENT INSURANCE: General Liability/Asbestos Abatement Insurance naming the Owner, Consultant and General Contractor as additionally insured and covering all Asbestos Abatement related operations in connection with the project with limits of \$4,000,000 each and \$4,000,000 aggregate.

7. LIABILITY INSURANCE MAINTENANCE GUARANTEE PERIOD: Liability insurance during the maintenance guarantee period will be required as part of the close out documents of the project, naming the Owner as additionally insured for a period of 24 months or two years commencing with the date of Substantial Completion or the Certificate of Occupancy, whichever is the latter of the project by the County at limits required under a 11.1.1.11, B 1 & 2.

8. PROPERTY INSURANCE: Property insurance will be required as follows depending on work being performed, new construction or renovation/installation:

8.A NEW CONSTRUCTION – BUILDERS RISK INSURANCE:

1. The Contractor shall purchase and maintain builder's risk insurance on a replacement cost basis with a limit equal to or exceeding the full insurable value of the work. This insurance shall be maintained until Substantial Completion or the Certificate of Occupancy, whichever is the latter of the work by the County of Burlington.

2. The Owner and the Contractor must be specifically included as named insureds. Subcontractors and sub-subcontractors shall be included by naming them as additional insureds.
3. This builder's risk insurance shall include coverage for the following types of property:
 - .a All structures to be constructed, under construction or already constructed;
 - .b All materials, equipment, machinery and supplies which are to be incorporated into the Project.
 - .c Temporary structures of any nature whatsoever; and
 - .d Underground property, including but not limited to, foundations, pump stations, pipes, drains, tanks and connections.
4. The builder's risk insurance shall be written on all-risks policy form.
5. Coverage shall be written on an agreed value basis. Accordingly, any coinsurance or contribution clause shall be deleted.

.8B RENOVATIONS/INSTALLATIONS - INSTALLATION FLOATER INSURANCE:

- .1 The Contractor shall purchase and maintain an Installation Floater on a replacement cost basis with a limit equal to or exceeding the full insurable value of the work. The insurance shall be maintained until Substantial Completion or the Certificate of Occupancy, whichever is the latter of the work by the County of Burlington.
- .2 The Owner and the Contractor must be specifically included as named insureds. Subcontractors and sub-subcontractors shall be included by naming them as additional insureds.
- .3 This Installation Floater shall include coverage for the following types of property:
 - a. Renovations/installations under construction;
 - b. All materials, equipment, machinery and supplies, which are to be incorporated into the Project.
 - c. Temporary structures of any nature whatsoever; and
 - d. Underground property, including but not limited to, foundations, pump stations, pumps, pipes, drains, tanks and connections.
- .4 The Installation Floater insurance shall be written on an all-risks policy form.

.5 Coverage shall be written on an agreed value basis. Accordingly, any coinsurance or contribution clause shall be deleted.

11.1.6 Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve the Contractor for liability in excess of such coverage, nor does it preclude the County from taking such other actions as are available to it under any other provisions of this Contract or otherwise in law.

11.1.7 The Comprehensive General Liability and Comprehensive Automobile Liability policies shall name the Burlington County Board of Chosen Freeholders, its officers and employees as additional insureds.

11.1.7 In the event the Contractor fails or refuses to renew its insurance policy or the policy is canceled, terminated, or modified so that the insurance does not meet the requirements of this subsection, the County may refuse to make payment of any further monies due under this Contract or refuse to make payment of monies due or coming due under other contracts between the Contractor and the County. The County may use monies retained under this paragraph to renew the Contractor's insurance for the periods and amounts referred to above. Alternately, the County may default the Contractor and direct the surety to complete the Project. During any period when the required insurance is not in effect, the County may suspend performance of the Contract. If the Contract is so suspended, additional compensation or extension of Contract Time is not due on account thereof.

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

11.5.1 The Contractor shall provide both a Performance and a Payment Bond covering faithful performance of the Contract and payment of obligations arising there under as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

11.5.2 PERFORMANCE AND PAYMENT BOND REQUIREMENTS: Within ten (10) days of the date of the notice of intent to award a contract to the bidder, the bidder must submit a performance bond in an amount equal to 100% of the contract amount to the County of Burlington, via the County's representative.

The Performance and Payment Bond must be drawn to the Board of Commissioners of the County of Burlington in an amount equal to the contract amount. It must be provided in substantially the format as found at N.J.S.A. 2A: 44-147, a copy of which is included in these specifications.

No Performance Payment Bond will be accepted by the Board of Commissioners unless there is attached thereto a Surety Disclosure Statement and Certification in substantially the form provided in these Section 00490.

The submission of a fully compliant Payment and Performance Bond is required prior to the County's issuance of a Purchase Order by the County and a Notice to Proceed by the County's Representative.

11.5.3 QUALIFICATIONS OF SURETY ISSUING A PAYMENT AND PERFORMANCE BOND: In accordance with N.J.S.A. 2A: 44-143, the Surety issuing the Payment and Performance Bond must meet the following qualifications which vary according to the amount of the Payment and Performance Bond required.

.1 SURETY REQUIREMENTS FOR ALL BONDS-ALL AMOUNTS: For all Payment and Performance Bonds, no matter what the amount, the surety must have the minimum surplus and capital stock or net cash assets required by N.J.S.A. 17: 17-6 (Capital required for stock company) or N.J.S.A. 17:17-7 (Capital required for mutual company) whichever is appropriate at the time the solicitation for bids is issued.

.2 SURETY REQUIREMENTS FOR BONDS AMOUNTS BETWEEN \$850,000 AND \$3.5 MILLION: For Payment and Performance Bonds in these amounts, the Surety must, in addition to requirements listed above, provide the following:

a. A CURRENT CERTIFICATE OF AUTHORITY issued by the United States Secretary of the Treasury pursuant to 31 U.S.C. Section 9350 that is valid in the State of New Jersey as listed annually in the United States Treasury Circular 570

or

b. CERTIFICATION OF OPERATION AND RATING which states that the surety has been operational for a period in excess of five years and is rated by one of the rating companies listed in N.J.A.C. 11:1-41.3 in one of three highest rating categories set forth in Appendix A to the same regulation promulgated by the New Jersey Commissioner of Insurance.

.3 SURETY REQUIREMENTS FOR BOND AMOUNTS OVER \$3.5 MILLION: For Payment and Performance Bonds in these amounts, the Surety must, in addition to requirements listed above, provide the following:

(a) A CURRENT CERTIFICATE OF AUTHORITY (As defined above in .2)

and

(b) CERTIFICATION OF OPERATION AND RATING (As defined above in .2)

Note: If the surety for bonds in excess of \$3.5 million does not hold a certificate of authority issued by the United States Secretary of the Treasury, said surety is exempt from the requirement to hold such a certificate if the surety meets the standards of the New Jersey Commissioner of Insurance

and is listed by the New Jersey Department of Insurance as an acceptable surety for provision of bonds on public works contract.

11.5.4 MAINTENANCE BOND: The Contractor shall provide a Maintenance Bond as specified below:

11.5.4.1 Before final payment is made, the Contractor shall furnish a Maintenance Bond or Guarantee made in favor of the County of Burlington in a sum equal to fifteen percent (15%) of the total contract price, including all supplemental and extra work performed on the project, as delineated in approved change orders furnished by the Contractor.

11.5.4.2 The Form of Maintenance Bond or Guarantee and the Surety Company providing said Bond or Guarantee shall be satisfactory to the County of Burlington. The Maintenance or Guarantee Bonds shall remain in full force and effect for a period of two (2) years from the date of Substantial Completion or the Certificate of Occupancy whichever is the latter (not substantial completion) of the project by the County. The date of which shall be established by the Design Professional.

11.5.4.3 The Maintenance Bond or Guarantee shall provide that the Contractor guarantees to replace for said period of two (2) years all work performed and all materials furnished according to the terms and performance requirements of the contract, and make good defects thereof which have become apparent before the expiration of the said period of two (2) years.

11.5.4.4 If in the judgment of the Design Professional, any part of the project needs to be replaced, repaired or made good during the specified Maintenance Bond or guarantee period, the Design Professional will so notify the Contractor in writing. If the Contractor refuses or neglects to start such work within five (5) days from the date of service of such notice or at such other time as the Design Professional may direct, or if the Contractor fails to complete such work within the time prescribed by the Design Professional, the County will have the work done by others and the cost thereof shall be paid by the Contractor or its Surety. Before the Surety is released from its Maintenance Bond or Guarantee, the Design Professional shall certify in writing that the foregoing obligation has been duly performed.

12.2 UNCOVERING AND CORRECTION OF WORK

12.1 UNCOVERING OF WORK

12.1.1 If a portion of the Work is covered contrary to the Design Professionals Request or to requirements specifically expressed in the Contract Documents, it must if required in writing by the Design Professional, be uncovered for the Design Professional's examination and be replaced at the contractors expense without change in the Contract Time

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

12.2 CORRECTION OF WORK

12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

12.2.2.1 In addition of the Contractor's obligations under Paragraph 3.5, if, within two-years after the date of final acceptance after the date for commencement of warranties established under Subparagraph 9.9.1, or by terms after the date for commencement of warranties established under Subparagraph 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Design Professional, the Owner may correct it in accordance with Paragraph 2.4.

12.2.2 AFTER SUBSTANTIAL COMPLETION

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

12.2.2.2 The two-year period for correction of Work shall be extended with respect to portions of Work first performed after Final Acceptance by the period of time between Final Acceptance and the actual performance of the Work.

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

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

12.2.5 Nothing contained in this Paragraph 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the two-year period for correction of Work as described in Subparagraph 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents

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

12.3 ACCEPTANCE OF NONCONFORMING WORK

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

13.1 MISCELLANEOUS PROVISIONS

13.1.1 The contract shall be governed by and construed in accordance with the laws of the State of New Jersey, including but not limited to the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., and the regulations of the Department of Community Affairs, at N.J.A.C 5:34-1 et seq. Funding all contracts are subject to the availability and appropriation of funds

13.2.1 SUCCESSORS AND ASSIGNS

13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract as a whole without written consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

13.3 WRITTEN NOTICE:

13.3.1 Written notice shall be deemed to have been duly served if delivered by registered or certified mail to the last business address known to the party giving notice.

13.4 RIGHTS AND REMEDIES

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

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

13.5 TESTS AND INSPECTIONS

13.5.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related

costs of tests, inspections and approvals. The Contractor shall give the Design Professional timely notice of when and where tests and inspections are to be made so that the Design Professional may be present for such procedures. The Owner shall bear costs of tests, inspections or approvals which do not be requirements until after bids are received.

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

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

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

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

13.6 INTEREST

13.6.1 The Contractor shall not be entitled to any payment of interest for any reason, action, or inaction by the Design Professional or Owner with the exception of interest permissible within the Prompt Payment Act N.J.S.A. 2A: 30A-1.

13.6.2 Any payments withheld for time delays, faulty materials, or workmanship, shall not bear interest for period of delay or non-acceptance.

13.7 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

13.7.1 As between the Owner and Contractor:

1. Before Substantial Completion. As to acts or failures to act occurring prior to the relevant date of Substantial Completion, and applicable statutes of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events no later than such date of Substantial Completion

2. Between Substantial Completion and Final Certificate for Payment. As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion, and prior to issuance of the final Certificate for Payment, and applicable statute of limitations shall commence to

run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Certificate for Payment; and

3. After Final Certificate for Payment. As to acts or failures to act occurring after the relevant date of issuance of the final certificate for Payment, and applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Contractor pursuant to any Warranty provide under Paragraph 3.5, the date of any correction of the Work or failure to correct the Work by the Contractor under Paragraph 12.2, or the date of actual commission of any other act or failure to perform and duty or obligation by the Contractor or Owner, whichever occurs last.

ARTICLE 14. TERMINATION OR SUSPENSION OF THE CONTRACT

14.2 TERMINATION BY THE OWNER FOR CAUSE

14.2.1 The Owner may terminate the Contract of the Contractor:

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

14.2.2 When any of the above reasons exist, the Owner, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety.

.1 take possession of the site and of all materials, equipment, tools and construction equipment and machinery thereon owned by the Contractor;

.2 accept assignment of subcontracts pursuant to Paragraph 5.4; and

.3 finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

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

14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Design Professional's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the contractor. If such costs damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be

certified by the Design Professional, upon application, and this obligation for payment shall survive termination of the Contract.

14.3 SUSPENSION BY THE OWNER FOR CONVIENCE

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

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

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

14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convince and without cause. The Contractor shall:

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

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

*****END OF SECTION 00300 - BURLINGTON COUNTY GENERAL CONDITIONS*****