

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

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

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

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

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

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

7.5 Changes Warranting an Adjustment in Contract Time

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

7.6 Indirect Costs

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

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

7.7 Changes Requiring a Decrease in Contract Price

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

7.8 Disputes Regarding Changes

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

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

7.9 Minor Changes In the Work

7.9.1 The Authority shall have authority to order minor changes in the Work not involving an adjustment in the Contract Price or the Contract Time, and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order, and shall be binding on the Authority and the Contractor. The Contractor shall carry out such written orders promptly.

7.9.2 The Contractor shall not perform any Changes in the Work **unless** authorized in writing by the Authority.

7.10 Differing Site Conditions

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

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

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

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

7.10.5 No adjustment in Contract Time or Contract Price that would result in a benefit to the Contractor will be allowed unless the Contractor provides the written notice required in this Article 7.10.

ARTICLE 8. INSURANCE AND BONDS

8.1 Performance and Payment Bonds

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

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

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

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

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

8.2 Contractor Insurantee

8.2.1 The Contractor shall secure and maintain in force until Contract Completion and at all times, thereafter, ~~when~~ the Contractor may be correcting, removing or replacing defective Work or completing plantings, insurance for damages imposed by law and assumed under the Contract of the kinds and in the amounts ~~hereinafter~~ provided with insurance companies authorized to do business in the State of New Jersey.

8.2.2 Within five (5) Days of receipt of the Notice of Award, the Contractor shall furnish to the Authority a certificate or certificates of insurance together with declaration pages, in a form satisfactory to the Authority, showing that the Contractor has complied with this Section 8. Insurance binders are not acceptable as proof of insurance coverage.

8.2.3 All of the policies of insurance required to be purchased and maintained and the certificates, declaration pages, or other evidence thereof shall contain a provision or endorsement that the coverage afforded is not to be canceled, materially changed, or renewal refused until at least thirty (30) Days prior written notice ~~has~~ been given to the Authority by certified mail.

8.2.4 Contractor Insurance Requirements. The Contractor shall procure and maintain liability insurance, as specified below, to protect the Contractor, the Authority, the State and the Client School District, and their respective, officers, employees and agents against claims of or relating to personal **injury** (including death) to persons or damage to property which may arise from or in connection with the performance of the Work (whether performed on-Site or off-Site) by the Contractor, its employees, officers, agents, subcontractors or other individuals or entities for whom the Contractor may be contractually or legally responsible from the date of execution of the Contract until Contract Completion.

8.2.4.1. Commercial General Liability. Commercial General Liability insurance is to be written as broad as the standard coverage form currently in use in the State of New Jersey, and shall not be circumscribed by any endorsements limiting the breadth of coverage. The policy shall include coverage for **contractual** liability, products, completed operations and any explosion, collapse and underground (XCU) operations. Limits of liability shall not be **less** than \$5,000,000 combined single limit with excess or umbrella coverage with the same **terms** and conditions as the underlying coverage in an amount such that the primary and **excess/umbrella** coverage equals \$5,000,000. The policy shall name the Authority, the State and the Client School District, their respective **officers**, employees and agents as additional insureds.

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

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

8.2.4.3. Owner's and Contractor's Protective Liability Insurance (OCPL). In addition to the insurance required above, the Contractor shall obtain **and** maintain a separate Owner's and Contractor's Protective Liability insurance policy for the same limits of liability as specified for the Commercial General Liability insurance. The policy shall be maintained in force for the term of the Contract or for one year, whichever is longer, and shall name the State, the Authority, the Client School District and their respective officers, employees and agents as insureds.

8.2.4.4. Builder's Risk Insurance. The Contractor shall provide Builder's Risk insurance insuring the interest of the Authority, the State and the Client School District, covering all real and personal property for all risks of physical loss or damage to the School Facility Project, including coverage while in transit and during storage away **from** the site.

The Contractor shall maintain such coverage from the date of execution of the Contract until Contract Completion.

Coverage shall include all materials, supplies, assemblies, **furnishings** and equipment that are intended for specific installation in the Project while such materials, supplies, assemblies, furnishings and equipment **are** located at the Site, in transit and while temporarily located away from the Site **for** the purpose of repair, adjustment or storage.

Coverage shall include structures, excavations and foundations, including pilings, demolition, re-excavation and debris removal and operational testing.

The Builder's Risk insurance policy shall be endorsed waiving the insurance company's rights of subrogation and provide that the insurance company will not cancel such insurance without giving 30 Days' prior written notice to the Authority.

Deductibles or self-insured retentions with respect to the builder's risk insurance shall be no greater than \$25,000 per claim for flood and earthquake, and no greater than \$10,000 per claim for all other property losses. The Contractor shall bear the cost of all deductibles and self-insured retentions. Notwithstanding any deductible or self-retention, the Contractor shall remain solely liable for the full amount of any item covered by the builder's risk insurance.

The Authority and the Contractor waive all rights against each other for damages caused by fire or other perils to the extent they are covered by the builder's risk insurance or any other property insurance applicable to the Work.

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

(a) The Authority, the State, and the Client School District, and their respective officers, employees and agents shall be covered as additional insureds as respects any and all liability arising out of the Work or this Contract.

(b) For any claims related to the Project, the Contractor's insurance coverage shall be primary insurance with respect to the Authority, the State, and the Client School District, and their respective officers, employees and agents, and **shall** specify that coverage continues notwithstanding the fact that the Contractor **has** departed **from** the Site. Any insurance or self-insurance maintained by the Authority, the State or the Client School District, and their respective officers, employees and agents, shall be excess of the Contractor's insurance and shall not contribute with it.

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

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

(e) The Builders' Risk policy shall a waiver of subrogation against the Authority, the State, the Client School District, and their respective officers, employees and agents.

8.2.6 Disclaimer. The Contractor and each subcontractor have the responsibility to make sure that their respective insurance programs fit their particular needs, and it is their responsibility to arrange for and secure any insurance coverage **that** they deem advisable, whether or not specified herein.

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

8.2.8 Right to Remedy. If the Contactor fails to provide insurance as required herein, the Authority shall have the right, but not the obligation, to purchase such **insurance**. In such event, the Contact Price shall he reduced by the amount paid for such insurance.

ARTICLE 9. SUSPENSION OF ~~THE~~ WORK

9.1 Suspension for Convenience

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

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

9.1.3 Failure of the Authority to consider the Work suspended and to allow for an adjustment in the Contract Price or in Contract Time will not bar recovery under the foregoing provisions, provided the Contractor gives written notice to the Authority within ten (10) Days of the start of the alleged suspension. Failure of the Contractor to give such written notice pursuant to the provisions of this **Section** shall constitute a waiver of any and all claims for a Contract Price, adjustments or extensions in Contract Time arising from the alleged suspension

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

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

9.3 Site Safety

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

ARTICLE 10. DEFAULT AND TERMINATION

10.1 Default of Contractor

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

- (a) The Contractor fails either (i) to promptly begin the Work under the Contract Documents or (ii) to prosecute the Work in accordance with the Project Schedule; or
- (b) The Contractor fails to perform the Work in accordance with the Contract Documents, including conforming to applicable standards in constructing each Project; the Contractor refuses to remove and replace rejected materials or unacceptable Work, or
- (c) The Contractor discontinues the prosecution of the Work (exclusive of Work stoppage (i) due to termination by the Authority, or (ii) due to and **during** the continuance of a Force Majeure Event or suspension by the Authority; or
- (d) The Contractor fails to resume performance of Work which has been suspended or stopped, within a reasonable time after receipt of notice from the Authority to do so or (if applicable) after cessation of the event preventing performance; or
- (e) The Contractor shall have become insolvent, or generally does not pay its debts as they **become** due, or admits in writing its inability to pay its debts or ~~makes an~~ assignment for the benefit of creditors; or
- (f) No Insolvency, receivership, reorganization or bankruptcy proceedings shall have been commenced by or against the Contractor; or
- (g) **Any** representation or warranty made by the Contractor in its bid documents, the Contract Documents or any certificate, schedule, instrument or other document delivered by the Contractor pursuant to the Contract Documents or law shall have been materially false or misleading when made; or
- (h) The Contractor breaches any material term or condition of the Contract Documents; or
- (i) The Contractor shall have assigned or transferred the Contract Documents or any right or interest herein or any major interest in the Contractor shall have been assigned ~~or~~ transferred without the Authority's prior written consent; or
- (j) The Contractor fails to discharge or obtain a stay of any judgment or order for the payment of money arising out of the prosecution of the Work (provided that for purposes hereof, posting of a bond in the

amount of 124% of such judgment or order shall be deemed **an** effective stay); or

- (k) The Contractor fails to comply with Contract requirements regarding prevailing wage payments, equal employment opportunity or affirmative action requirements; or
- (l) The Contractor shall have failed, absent a valid dispute, to make payment when due for labor, equipment or materials in accordance with its agreements with subcontractors and applicable law; or
- (m) The Contractor shall have failed to comply with any applicable statute or regulation or failed reasonably to comply with the instructions of the Authority, consistent with the Contract Documents; or
- (n) The Contractor fails, for any other reason whatsoever, to carry out the **Work** in an acceptable manner or to **fully** comply with all requirements of the Contract.

10.1.2 The Contractor and surety shall be entitled to fifteen **(15)** Days' notice and opportunity to cure any breach described in (a) through (d) and **(h)** through (m) above (excluding any such breach that by its nature cannot be cured); provided that if such breach is capable of cure, but by its nature cannot be cured within fifteen **(15)** Days, such additional period of time shall **be** allowed as may reasonably be necessary to cure the breach, provided the Contractor or surety commences such cure within such fifteen **(15)** Day period and thereafter diligently prosecutes such cure to completion; and provided further that in the case of an emergency, the Authority shall have the right to shorten the fifteen **(15)** Day cure period by so specifying in the notice of breach.

10.2 Remedies for Contractor Event of Default

10.2.1 If any breach described in Section 10.1 is not **subject** to cure or is not cured within the period (if any) specified in Section 10.1.2, the Authority may notify the Contractor and surety of its intent to terminate the Contract for cause, pursuant to Section 10.4, or declare that an "Event of Default" has occurred and notify the Contractor to discontinue the **Work**. The declaration of an Event of Default shall **be** in writing and given to the Contractor and surety.

10.2.2 The Authority may appropriate any or all materials and equipment on the Site **as** may be suitable and acceptable and may direct the surety to complete each Project or may enter into an agreement for the completion of each Project, according to the terms and provisions of the Contract, with another contractor or the surety, or **use** such other methods as may be **required** for the completion of each Project, including completion of the **Work** by the Authority.

10.2.3 The Contractor and the surety shall not be relieved of liability for continuing liquidated damages on account of a breach or default by the Contractor or by the Authority's declaration of an Event of Default, or by any action taken by the Authority under **this** Section 10.2.

10.2.4 All costs and charges incurred by the Authority, together with the cost of completing the **Work**, will be deducted **from** any monies due or that may become due the Contractor and the surety. If such expense exceeds the **sum** that would be available **from** such monies, then the Contractor and the Surety shall be liable and shall pay to the Authority the amount of such excess.

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

10.2.6 If, after an Event of Default is declared under the provisions of this Article, it is determined, for any reason, that the Contractor was not in default, the rights and obligations of the parties are the same as if a notice of termination for convenience had been issued pursuant to Article 10.3.

10.2.7 If the Authority's default of the Contractor pursuant to the provisions of this Article is found by a court to be legally unjustified, the Contract will be treated as if terminated for convenience pursuant to Article 10.3 and such termination will be compensated for in accordance with the provisions of that Article.

10.3 Termination of Contract for Convenience

10.3.1 The Authority may, by written Order of Termination for Cause, terminate the Contract or any portion thereof for convenience after determining that for reasons beyond the Contractor's control, the Contractor is unable to proceed with or complete the Work as contracted for, or that termination is in the public interest. The Order of Termination for Convenience shall specify the items of Work that shall be completed prior to the termination.

10.3.2 The Contractor shall complete all items of Work specified in the Order of Termination for Convenience. Such Work shall include, but not be limited to, all Work necessary to ensure the safety of the public, to properly secure fully constructed and partially constructed Work, and to secure each Project Site. The work so ordered shall be performed in accordance with the Contract Documents and may include items of work not in the original Contract.

10.3.3 The Contract shall be considered substantially complete upon completion and acceptance of all items of Work specified in the Order of Termination for Convenience, except punch list items. After completion of the punch list items and provision of all documents required by the Contract, the Contract shall terminate upon the issuance of final payment.

10.3.4 The Authority reserves the right to declare in default a Contractor who fails to perform all of the items of Work set forth in an Order of Termination for Convenience.

10.3.5 When the Authority orders termination of the Contract for convenience, all completed items of Work of that date will be paid in conformity with the payment provisions of Article 13, except that the Contractor will be paid 100% of the estimate submitted by the Contractor and approved by the Authority. Payment for new items of work, if any, will be made either at agreed prices or on a time and materials basis, as provided for in Article 7.

10.3.6 Materials obtained by the Contractor for the Work that have not yet been incorporated therein may, at the option of the Authority, be purchased from the Contractor at actual cost delivered to a prescribed location or otherwise disposed of as mutually agreed.

10.3.7 Within sixty (60) days of the effective termination date, the Contractor shall submit to the Authority claims for any costs that were incurred but that are not subject to payment pursuant to Section 10.3.6 above or any other provision of the Contract. Such claims may include such cost items as reasonable mobilization efforts, overhead expenses attributable to the terminated Project, subcontractor costs not otherwise paid for, and actual idle labor costs if Work is stopped

in advance of the termination date, and guaranteed payments. Claims shall not be made for costs that are prohibited under Article 18.8, or for anticipated profits on Work that is not performed.

10.4 Termination of the Contract for Cause

10.4.1 The Authority may, by written Order of Termination for Cause, terminate the Contract or any portion thereof for cause if any breach described in Article 10.1 is not subject to cure or is not cured within the period (if any) specified in Article 10.1.2. The decision whether to issue an Order of Termination for Cause or declare an Event of Default will be made in the sole discretion of the Authority acting in the best interests of the State.

10.4.2 Prior to the issuance of an Order of Termination for Cause, the Authority will give written notice to the Contractor and surety of the causes for the proposed termination. The notice will demand the elimination of such causes. If the Contractor or surety, within a period of ten Days after such notice, does not proceed in accordance therewith, the Authority may issue an Order of Termination for Cause.

10.4.3 The Order of Termination for Cause will terminate the Contractor's right to proceed with any items of Work, except as specified in the termination order. Such Work will include punch list items and all work necessary to ensure the safety of the public, to properly secure existing Work already constructed or partially constructed, and to secure each Project site. The Work so ordered shall be performed in accordance with the Contract Documents and may include items of work not in the original Contract. Substantial completion shall occur when all work specified in the termination order, except for punch list items, is complete and accepted by the Authority. After the completion of all punch list items and all documents required by the Contract, the Contract shall terminate upon issuance of final payment.

10.4.4 When the Authority issues an Order of Termination for Cause, all completed items of Work as of that date will be paid for at the Contract price. All completed items of Work of that date will be paid in conformity with the payment provisions of Article 13, except that the Contractor will be paid 100% of the estimate submitted by the Contractor and approved by the Authority. Payment for new items of work, if any, will be made either at agreed prices or on a time and materials basis, as provided for in Article 7.

10.4.5 Materials obtained by the Contractor for the Work that have not yet been incorporated therein may, at the option of the Authority, be purchased from the Contractor at actual cost delivered to a prescribed location or otherwise disposed of as mutually agreed.

10.4.6 In terminating a Contract for cause, the Authority does not waive its right to sue the Contractor for any costs incurred by the Department as a result of the termination, including the additional costs of completing each Project. The Authority reserves the right to declare in default a Contractor who fails to carry out the conditions set forth in an Order of Termination for cause.

10.4.7 Where the Authority's termination of the Contract for cause pursuant to the provisions of this Article is found by a court to be legally improper, the termination of the Contract for cause will be treated as if it had been a termination for convenience, and such termination is to be compensated for in accordance with the provisions of this Article governing terminations for convenience.

10.5 In terminating a Contract for convenience or cause pursuant to this Article:

1. The Contractor shall make cost records available to the extent necessary to determine the validity and amount of each item for which it seeks compensation.
2. The Contractor shall not be relieved of contractual responsibilities for the **Work** completed, nor **shall** the surety be relieved of its obligations for any just claim arising out of the **Work** performed.
3. The Contractor shall, if **so** directed by the Authority, remove promptly any or all of its equipment and supplies from each Project Site or other property of the State. If the Contractor fails to remove the equipment and supplies as directed, the Authority may remove such equipment and supplies at the expense of the Contractor.

ARTICLE 11. SUBSTANTIAL COMPLETION AND FINAL ACCEPTANCE AND COMPLETION

11.1 Substantial Completion

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

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

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

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

necessary, until the Authority determines that the School Facility is substantially complete and issues a Certificate of Substantial Completion in accordance with Section 11.1.2.

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

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

11.2 Final Acceptance and Completion

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

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

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

ARTICLE 12 LIQUIDATED DAMAGES

12.1 Failure to Complete on Time

The Contractor recognizes that if it fails to complete the Work on time as required **by** the Contract Documents, the Authority, State, Client School District and public will **suffer** substantial losses and damages in terms of the effects of the delay on the use of each Project, the impact on the quality of education of students in the Client School District, additional expenses relating to the State's compliance

with court orders regarding improvements to educational facilities, and additional costs to the Authority for the engineering, inspection and administration of the Contract. Because such damages are extremely difficult or impossible to estimate, the parties agree that if the Contractor fails to achieve Substantial Completion or Final Acceptance and Completion by the dates specified in the Contract Documents, the Contractor shall pay the Authority liquidated damages in accordance with the schedule set forth in the Contract Documents, in lieu of actual damages.

12.2 Computation of Damages

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

12.3 Limitation

Liquidated damages are intended to compensate the Authority (on its own behalf and on behalf of the State, Client School District and public) solely for the Contractor's failure to meet the deadlines for Substantial Completion and Final Acceptance and Completion of each School Facility, as required by the Contract Documents and shall not excuse the Contractor from liability for any other breach of the Contract requirements including, but not limited to, any failure of the **Work** to conform to the Contract Documents. This provision for liquidated damages does not bar or waive the Authority's right to enforce other rights and remedies against the Contractor, including but not limited to, specific performance or injunctive relief.

12.4 Deduction; Payment

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

ARTICLE 13 PAYMENT AND CONTRACT COMPLETION

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

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

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

13.2 Schedule of Values

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

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

13.3 Applications for Payment

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

13.3.2 The Contractor shall also certify that:

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

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

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

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

13.4 Retainage

13.4.1 Except as otherwise provided herein, the Authority shall withhold funds ("Retainage") from payments made to the Contractor in accordance with this paragraph. The Retainage shall be

an amount equivalent to five (5) percent of the amount due on the first fifty (50) percent of the Contract Price, as it may be adjusted from time to time by Change Order. On the remaining fifty (50) percent of the Contract Price, the Authority may withhold up to 2.5% of the amount due as Retainage from all invoiced amounts if the Authority in its sole discretion determines that the manner of completion of the Work is not satisfactory, that the continued withholding of Retainage is in the public interest, or that other good and sufficient reasons exist to continue the withholding of Retainage.

13.4.2 At the time of Substantial Completion, the Contractor may request that the Authority reduce Retainage. The Authority in its sole discretion may cease the withholding of additional Retainage and/or reduce all or part of the total amount of Retainage being held by the Authority if it determines that such action is in the public interest.

13.4.3 At the time of final payment, the Authority shall release to the Contractor all Retainage other than amounts applied to the payment of liquidated damages or amounts which the Authority in its sole discretion deems necessary to retain to cover any existing or threatened claims, liens and stop notices relating to the Package, or any amounts otherwise due the Authority under the Contract.

13.5 Other Deductions

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

- (a) any liquidated damages which have accrued as of the date of the application for payment;
- (b) any **sums** expended by the Authority in performing any of the Contractor's obligations under the Contract which the Contractor has failed to perform; and
- (c) any other sums which the Authority is entitled to **recover 60m** the Contractor under the terms of the Contract Documents.

13.6 Unincorporated Materials and Equipment

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

- (a) The materials and equipment have been properly **stored** and protected along or upon each Project Site or have been stored at locations owned or leased by the Contractor or the Authority within the State of New Jersey; and
- (b) The materials and equipment have been inspected and appear to be acceptable, based upon available supplier's certifications **and/or** materials test reports; and
- (c) The Contractor has provided the Authority with an invoice or bill of sale sufficient to show the price paid for the materials and equipment and a fully executed release of liens for materials and equipment stored for incorporation in the Authority's Project; and

The materials and equipment, if stored on property not belonging to the Authority, the State or the Client School District, are fenced in with access limited to the Authority and the Contractor, and the fenced-in materials and equipment are clearly identified in large letters as being without encumbrances and for use solely on a Project; and

- (e) When such materials and equipment are stored in a leased area, the lease is made out to the Contractor and provides that it shall be canceled only with the written permission of the Authority; and
- (f) The Contractor has secured and provided evidence of insurance coverage of the stored materials and equipment and related transit, including a loss-payable clause endorsement to the Contractor's insurance policy providing payment to the Authority in the event of loss of the specified stored materials and equipment.
- (g) The Contractor has secured a written statement from the surety consenting to payment for materials and equipment stored off-Site.

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

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

13.6.4 It is specifically understood and agreed that an inspection and approval of the materials by the Authority shall not in any way subject the Authority to pay for the materials or any portion thereof, even though incorporated in the Work, if the materials shall in fact be unfit to be used in the Work, nor shall such inspection be considered as any waiver of objection to the Work on account of the unsoundness or imperfection of the material used.

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

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

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

13.6.8 Following payment therefore, all materials and equipment so accepted shall become the property of the Authority. The Contractor, at its own expense, shall promptly execute, acknowledge and deliver to the Authority proper bills of sale or other instruments in writing in a form acceptable to the Authority conveying and assuring to the Authority title to such materials and equipment, free and clear of all liens. The Contractor, at its own expense, shall conspicuously mark or paint such materials and equipment as the property of the Authority, shall

not permit such materials to become commingled with non-Authority-owned property and shall take such other steps, if any, as the Authority may require or regard as necessary to vest title in such materials and equipment to the Authority, free and clear of liens.

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

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

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

13.7 Certificates for Payment

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

13.7.2 The submission and approval **of** the Project Schedule and monthly updates thereof as required by the Contract Documents shall be an integral **part** and basic element of the application upon which progress payment shall be made. The Contractor shall be entitled to progress payments only as determined from the currently approved and updated **schedule**.

13.8 Progress Payments

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

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

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

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

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

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

13.9 Payments Withheld

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

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

- (j) the Contractor has failed or refused to properly schedule and coordinate the Work, or to provide project schedules, reports and updates.

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

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

13.10 Contract Completion and Final Payment

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

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

- (a) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Authority may in any way be responsible, have been paid or otherwise satisfied;
- (b) consent of surety to final payment; and
- (c) other data establishing payment or satisfaction of **all** obligations, such **as** receipts, releases and waivers of liens arising out of the Contract, to the extent and in such form as may be designated by the Authority.

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

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

13.10.4 In compliance with the Prevailing Wage Act, prior to the issuance of final payment, the Contractor and all subcontractors shall provide the Authority with written statements in a form satisfactory to the Authority, certifying to the amounts then due and owing from the Contractor

and subcontractors filing such statements to any and all workers for wages due on account of the Contract. The statements shall contain the **names** of the persons whose wages are unpaid and the amount due to each respectively. The statements shall be verified by the oath of the Contractor or subcontractor, as the case may be, that said party has read such statement **subscribed by** it, that said party knows the contents thereof, and that the same is **true** of its own knowledge. Nothing contained herein shall impair the right of the Contractor to receive final payment because of failure of any subcontractor to comply with the provisions of this subsection.

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

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

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

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

ARTICLE 14 PROTECTION OF PERSONS AND PROPERTY.

14.1 Safety Precautions and Programs

Neither the Authority, the State, the Client School District, the Project Management Firm, the Design Consultant, or their respective agents, employees, officers or representatives are responsible for the **means**, methods, techniques, sequences or procedures utilized by the Contractor, or for safety precautions and programs in connection with the Work. The Contractor shall be solely responsible for initiating,

maintaining and supervising all safety precautions and programs in connection with the Work. This requirement applies continuously throughout the Contract performance, until final payment is made, and is not limited to regular working hours.

14.2 Safety of Persons and Property

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

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

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

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

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

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

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

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

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

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

owners of property so damaged, and a sum sufficient, in the sole judgment of the Authority, to make the owners whole will be deducted from any monies due or to become due the Contractor under the Contract.

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

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

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

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

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

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

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

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

14.3 Emergencies

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

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

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

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

ARTICLE 15 DOCUMENTS AND RECORDS

15.1 Maintenance and Retention of Contract Records

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

15.2 Right to Audit

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

15.3 Records Supporting Claims

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

ARTICLE 16. RISK OF LOSS AND INDEMNIFICATION

16.1 Risks Assumed by the Contractor.

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

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

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

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

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

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

16.2 Indemnification

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

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

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

16.2.3 The Contractor expressly understands and agrees that the insurance required by the Contract Documents is in addition to and does not limit the indemnification and defense obligations of the Contractor.

ARTICLE 17 CLAIMS AND DISPUTE RESOLUTION

17.1 Notice of Claims

Compliance with the provisions of the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq. ("Act"), is a contractual obligation assumed by the Contractor in executing the Contract. Any notice of claim required by that Act, N.J.S.A. 59:13-5, shall be provided only on forms provided by the Authority. All forms shall be completed in their entirety and signed by the Contractor. Incomplete forms will be

rejected and of no effect. The only evidence of compliance with N.J.S.A. 59:13-5 shall be the filing of a notice of claim on the forms provided by the Authority and the Contractor shall not claim that any other document sent to the Authority or to any of its officers, employees or agents satisfies this notice requirement. The Contractor understands that it will **be** forever barred from recovering against the Authority if it fails to give notice of any act or failure to act by the Authority, or the happening of any event, thing or occurrence, in accordance with N.J.S.A. 59:13-5 and on the forms required by this Section.

17.2 Review of Disputes

17.2.1 The administrative process for review of disputes is sequential in nature and composed of the following steps:

- Step One - Review by the Project Management Firm.
- Step Two - Review by the Authority
- Step Three - Non-binding Mediation

Each dispute will begin its review at Step One. A dispute will not proceed to the next step unless the Contractor rejects in writing and within the time specified the decision of the preceding step. If at any step in the process a dispute is resolved, the Contractor must sign an unconditional release as to any and all matters arising from the dispute. If the Contractor commences litigation against the Authority in any **court** relating to the subject matter of a dispute which is in the administrative process for the review of disputes, the administrative process shall immediately terminate.

17.2.2 The Contractor must file the necessary forms as required by Article 17.1 to comply with N.J.S.A. 59:13-5 in order to **begin** the administrative process for the review of disputes. The Contractor must also notify the Project Management Firm in writing that all documentation in support of the dispute has been provided to the Project Management Firm and that the administrative review process should begin. No formal action will be taken by the Project Management Firm until this written notification is received. The documentation provided to the Project Management Firm will serve as the basis for evaluation of the Contractor's position regarding the dispute throughout Step One and Step Two of the administrative process and should be as complete as possible in order to support the Contractor's position. No additional information shall be submitted by the Contractor in Step One and Step Two of the administrative process, **unless** requested by the Project Management Firm or the Authority.

17.2.3 The Project Management Firm will render a decision regarding the matter in dispute within **15** Days of receipt of the Contractor's notification that Step One of the dispute resolution process should begin. The Contractor shall, within ten (10) Days of the receipt of the decision by the Project Management Firm either accept or reject the decision in writing. If the Contractor neither accepts nor rejects the Project Management Firm's decision within ten (10) Days of its receipt, the dispute will be considered withdrawn from the administrative process and there will be no further administrative remedy.

17.2.4 If the Contractor rejects in writing the decision of the Project Management Firm, the dispute is automatically forwarded to Step Two of the administrative process. The Project Management Firm will forward all information regarding the dispute to the Authority, which shall review all information provided by the Project Management Firm. At the option of the Authority, a meeting may be scheduled with the Contractor to discuss the dispute. The Authority shall render its decision regarding the dispute in writing within **15** Days of the receipt of the information from the Project Management Firm or within **15** Days of any meeting with the