

Exhibit 2

CONSTRUCTION CONTRACT GENERAL CONDITIONS

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SECTION 1 — SCOPE OF THESE GENERAL CONDITIONS

1.1. General Application. These General Conditions encompass provisions that apply, and are incorporated into all construction contracts entered into by the Pima County Community College (College), unless otherwise specifically excluded in the executed Contract. Sections 2 through 14 of these General Conditions apply to all construction contracts, in whatever form.

1.2. Application to Specific Contracts.

1.2.1. For JOC contracts, see additional provisions in Section 15

1.2.2. For Design contracts see Section 15;

1.2.3. For change orders, see all applicable Sections including Section 15.

1.3. Amendments by Special Provisions. These General Conditions may be amended as applicable to a specific project, contract, or work/project/JOC order as set forth in the contract and/or the Special Provisions. Such amendments will only apply to that specific Project, contract or order, and in the event of a specific conflict with these General Conditions, the amendment will take precedence.

SECTION 2 — GENERAL DEFINITIONS

2.1. Air Quality Control Plan - All fully approved air quality control plans, including all amendments thereto, submitted by Contractor and otherwise applicable to the Work and the Project in compliance with Appendix E hereto.

2.2. Allowance - A specific amount for a specific item of Work, if any, that College agrees has not been sufficiently designed, detailed, or selected at the time the Contract Price is agreed to for Contractor to provide a definitive price. Allowances shall be treated in accordance with Section 15.4 of these General Conditions.

2.3. Change Order – A written instrument issued after execution of the Contract Documents signed by College and Contractor, stating their agreement upon all of the following: the addition, deletion or revision in the scope of services or deliverables; the amount of the adjustment to the Contract Price, the extent of the adjustment to the Contract Time, or modifications of other contract terms. The Contract Price and the Contract Time may be changed only by Change Order.

2.4. College (or Owner) – College of Queen Creek, a municipal corporation, with whom Contractor has entered into the Contract and for whom the Services and/or Work are to be provided pursuant to the Contract(s).

2.5. College Standard Specifications – The standard College specifications, details and requirements applicable to the specific project, contract or order including, without limitation those set forth in Section 3 below.

2.6. Contract – The written agreement executed between College and Contractor, including all of the Contract Documents.

2.7. Contract Documents – The documents which together form the Contract between College and Contractor, as identified in Article 2 of the Contract, or are otherwise incorporated into the Contract, including the Contract, the exhibits thereto, these General Conditions, the Project Manual, any Notice to Proceed, the IFB, RFQ, or RFP, and any Job Order (if applicable), the Plans and Specifications, Project Schedule, written and properly executed Change Orders, and any other documents so designated in the Contract. The Contract documents include the Construction Documents as set forth in Section 2.12 below.

2.8. Contract Price – The agreed-upon price to be paid to Contractor for full, timely, and acceptable completion of the Services or Work under the terms of the Contract.

2.9. Contract Time(s) – The number of calendar days or the dates related to the applicable phase, Substantial Completion, and/or Final Completion as stated in Contract Documents. The Contract Time is set forth in the Contract, and is based upon the Project Schedule agreed to by College in writing.

2.10. Contractor – The person or business entity with whom College has entered into an agreement for construction work or services in relation to the Project at issue. As used in these General Conditions, the term Contractor includes and applies to JOC under contract with College to provide pre-construction and/or construction services. Contractor does not include a Design Professional except as set forth in applicable Sections below.

2.11. Contractor Payment Request – The form that is accepted by College and used by Contractor in requesting progress payments or final payment and which shall include such supporting documentation as is required by the Contract Documents and/or College, including without limitation, the documentation included in Appendix C

2.12. Construction Documents – The plans, specifications, and drawings prepared and issued by the Design Professional and approved by College for construction, meaning the documents are sealed by the Design Professional (as required), acceptable for permitting and incorporated into the Contract Documents by reference. Also included are any submittals or other design-related documents accepted in writing by the College to be incorporated and/or revise the Construction Documents. All amendments and modifications to the Construction Documents must be approved in writing by College prior to incorporation into the Contract.

2.13. Contingency – An agreed to amount in the Contract Price that may only be used in accordance with the terms set forth in Section 15 of these General Conditions.

2.14. Critical Path – The sequence of project network activities which add up to the longest overall duration. Once established in the Project Schedule, the Critical Path for the Project shall not be changed without prior written approval of College.

2.15. Critical Path Method (CPM) - A scheduling technique which identifies the logical sequence of the activities occurring in a Construction Project, the anticipated time required to complete each activity in the Project, and the activities that must be completed on schedule to finish the Project within the anticipated time. CPM is also used as a management technique which enables contracting parties to predict when activities may occur so that resources can be effectively used and limitations can be identified.

2.16. Day - Calendar day(s) unless otherwise specifically stated in the Contract Documents.

2.17. Design Professional – The qualified, licensed person, firm or corporation who furnished design services required under the Contract Documents to include, but not limited to: development of the Construction Documents, review of Contractor Submittal(s), response to Request for Information, approval and certification of progress payment applications, construction administration, Substantial Completion, and Final Acceptance, if so designated.

2.18. Field Directive – A directive issued by College to Contractor to clarify drawings, specifications or procedures, request a proposal, transmit drawings or documents related to the Work, or otherwise perform specified work or activities either within the existing scope of the Work or as additional Work. See Section 9.2.1 below.

2.19. Final Acceptance – The written acceptance by College of the Project as being fully and finally complete and the Contractor has achieved full and final completion of the Project as defined in the Contract Documents and College has delivered to Contractor the formal signed written Final Acceptance of the Project.. See Section 6.4 below.

2.20. Fixed Price – A single, all-inclusive for the full and final completion of Work, specific portion or item encompassed in the Work, including, without limitation, all general conditions, fees, profit, overhead, taxes or cost of any kind attributable to the Work, specific portion or item of the Work for which the Fixed Price is agreed to.

2.21. Float – The number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Contract Time. Unless otherwise expressly agreed in writing, all Float belongs to College.

2.22. Invitation for Bids (IFB) – A invitation issued by College for Contractors to submit Fixed Price proposals to perform Work, including all Addenda.

2.23. Laws, Regulations, or Legal Requirements - Any and all applicable laws, rules, regulations, ordinances, codes and orders applicable to the Project of any and all governmental bodies, agencies, authorities and courts having jurisdiction and any applicable provisions of a Development Agreement for the Project (if any), including, without limitation, those provisions relating to the design and construction of the Project, dust control, hazardous materials, historical and environmental preservation, demolition, excavation, safety, employment, discrimination, ADA, building codes, zoning, and notice. Also included are the College's rules, regulations and policies related to access to College facilities, security, and the safety and protection of students, staff and visitors to the College and/or any College Facilities or services.

2.24. Notice of Final Completion – Formal notice issued by College that Substantial Completion of the Project has been achieved by the Contractor. See Section 6.4 below

2.25. Notice to Proceed (NTP) – A written notice given by College to Contractor fixing the date on which Contractor will start to perform Contractor's obligations under the Contract. The Notice to Proceed shall not be issued until the Contract Price is approved and accepted by College, although College may issue an authorization to begin limited work prior to that time.

2.26. Notice of Substantial Completion – Formal notice issued by College that Substantial Completion of the Project has been achieved by the Contractor. See Section 6.3 below.

2.1. Owner's Representative (OR) - The Owner's Representative throughout the Project including through the warranty period designated in Article 1 of the Contract, or any successor thereto designated by College.. The OR will have authority to act on behalf of the Owner, and will be the only individual who can bind College. However, the OR has no authority to bind College or the College Board in contravention of any College policies, rules or regulation, State or Federal statute or regulation, or these General Conditions. See Section 5.1.1 below.

2.2. Project – The Project specified in the Contract (including a Job Order).

2.3. Project Manual – The College's then current Project Manual for the Project.

2.4. Project Manager (PM) – The Project Manager designated in Article 1 of the Contract, or any successor thereto designated by College. The Project Manager has the authority to act on behalf of College, as delineated and limited by the Contract Documents and applicable law. College shall communicate with Contractor through the Project Manager. However, the Project Manager has no authority to bind College or the College Board in contravention of any College policies, rules or regulation, State or Federal statute or regulation, or these General Conditions. See Section 5.1.3 below.

2.5. Project Schedule – The schedule for the completion of the Project agreed to and/or required by College and incorporated into the Contract.

2.6. Project Specific Conditions – Additional conditions which apply to the specific Project and/or Scope of Work which are set forth in Exhibit D of the Contract, including Special Provisions as defined below.

2.7. Proposal – A Proposal submitted to the College by a Contractor, Design Professional in response to an Invitation for Bids (IFB), a Request for Qualifications (RFQ), a Request for Proposals (RFP) or other solicitation or request by the College. Proposals must be as required or requested by the College.

2.8. Requests for Information (RFIs) – Formal written request from Contractor to College and/or Design Professional for the Project seeking clarification or additional information needed for Contractor to properly complete the Work and/or Services under the Contract. College may require RFI's to be submitted on a specific form or in a specified format.

2.9. Request for Proposals (RFP) – A request issued by College for Proposals to be submitted by potential Contractors to perform Work including all Addenda.

2.10. Request for Qualifications (RFQ) - A request issued by College for Statements of Qualifications (SOQ) to be submitted by potential Contractors to perform Work, including all Addenda.

2.11. Schedule of Values (SOV) – The specified document prepared by Contractor, and approved and accepted by College, which divides the Contract Price into pay items, such that the sum of all pay items equals the Contract Price for the construction phase Work, or for any portion of the Work having a separate specified Contract Price. The Schedule of Values shall be all-inclusive.

2.12. Scope of Work – The scope of work agreed to and/or required by College and incorporated into the Contract Documents.

2.13. Site – The physical location of the Project and any ancillary or adjacent areas to be utilized by Contractor and/or College in relation to the Project, including storage and/or staging areas, and construction easements.

2.14. Special Provisions – Additional Provisions, including specifications and details. which apply to the specific Project and/or Scope of Work which are set forth in Exhibit D to the Contract.

2.15. Storm Water Pollution Prevention Plan – (If applicable) All fully approved storm water pollution prevention plans, including all amendments thereto, submitted by Contractor and otherwise applicable to the Work and the Project.

2.16. Subcontractor – An individual or firm having a direct Contract with Contractor or any other individual or firm having a Contract with the aforesaid contractors at any tier, who undertakes to perform a part of the pre-construction services or construction phase Work at the site for which Contractor is responsible. Subcontractors shall be selected through the Subcontractor selection process described in the Contract Documents, if any. See Section 4 below.

2.17. Sub-subcontractor - A person or organization who has a direct or indirect contract with the Subcontractor to perform any of the Work at the site, or to supply any materials or equipment to be used in the Project. The term "Sub-subcontractor" is referred to throughout the Contract Documents as singular in number and masculine in gender, and means a Sub-subcontractor or an authorized representative thereof.

2.18. Substantial Completion -The date when College determines that the Work (or separable units of Phases as provided in the Contract Documents) is essentially and satisfactorily complete in accordance with the Contract Documents such that the Project is ready for use by College for its intended purpose, is ready to be opened to the general public, and fully occupied or used by College. See Section 6 below.

2.19. Team Approach - The College intends to use this solicitation process to form a team consisting of PCC representatives and construction partners that will work collaboratively to develop plans for this Job Order Contract, to meet the needs of the various user groups, delivered on-time and within budget.

2.20. Traffic Control Plan – All fully approved traffic control plans, including all amendments thereto, submitted by Contractor and otherwise applicable to the Work and the Project.

2.21. Total Float – Number of Days by which the pre-construction services or construction phase Work or any part of the same may be delayed without necessarily extending a pertinent Contract Time or schedule milestone in the Project Schedule.

2.22. Unit Price – The amount attributable to each unit of materials, labor or Work item for the actual quantity of each line item performed and/or installed as measured in the field during construction and accepted and certified by the College. Each unit price includes all labor, material, equipment, overhead, and profit attributable to that unit, scope, element, or item of Work.

2.23. Work – The entire completion of construction or the various separately identifiable parts thereof, required to be furnished during the construction phase. Work includes and is the result of performing or furnishing labor and furnishing and incorporating materials, resources and equipment into the construction, and performing or furnishing services and documents as required by the Contract Documents for the construction phase.

SECTION 3 — CONTRACT DOCUMENTS

3.1 Precedence. In the event of any inconsistency between any of the terms of the Contract Documents enumerated in the Contract, such inconsistencies shall be resolved by giving precedence to the terms of the lowest numbered of the numbered documents. Anything in the Contract Documents to the contrary notwithstanding, the provisions of all pertinent general public laws of the State of Arizona in effect at the time of the execution of this Contract shall be a part of the Contract between the parties and shall take precedence over all of the other Contract Documents. These General Conditions are considered to be part of the Contract and have the same precedence as the Contract.

3.2 Changes to the Contract: Changes to the Contract may be accomplished after execution of the Contract and without invalidating the Contract, only by Change Order under Section 9 below.

3.3 The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. The intention of the Contract Documents is to include, without limitation, all labor, materials, equipment and other items as provided in Subparagraph 7.4.1 necessary for the proper execution and completion of the Work. Words and abbreviations which have well known technical or trade meanings are used herein in accordance with such recognized meanings.

3.4 The organization of the Contract Documents into divisions, sections and articles, and the arrangements of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade, or constituting part of the Contract or having any legal or contractual significance.

3.5 Written interpretations necessary for the proper execution or progress of the Work, in the form of drawings or otherwise, may be issued by College.

3.6 All Drawings, Specifications and other data, and copies thereof, furnished to the Contractor are and shall remain the property of College. They are not to be used on any other project, and, with the exception of one set for each party to the Contract, are to be returned to College upon request at the completion of the Work.

3.7 It shall be the responsibility of the Contractor to ensure that each Subcontractor, Sub-subcontractor and supplier has a current set of those portions of the Construction Documents that may be required for proper execution of their respective portions of the Work.

3.8

**SECTION 4 — CONTRACTOR'S RESPONSIBILITIES
FOR CONSTRUCTION SERVICES**

4.1 General

4.1.1 Contractor shall construct the Work in accordance with the Contract Documents and as outlined in Exhibit A to the satisfaction of College, exercising the degree of professional care, skill, diligence, quality and judgment that a professional Contractor engaged, experienced and specializing in the construction of projects and/or facilities of similar scope, function, size, quality, complexity and detail in areas throughout the United States comparable to Queen Creek, Arizona would exercise at such time, under similar conditions. Contractor shall, at all times, perform the Work in conformance with sound and generally accepted engineering principles and construction management and construction contracting practices.

4.1.2 Contractor shall comply with, and require all Subcontractors to comply with, the Arizona Contractors' license Laws, Regulations, or Legal Requirements including all requirements with respect to being duly registered and licensed.

4.1.3 Contractor shall manage the Work as required under the College Project Management Manual (Appendix A) except as may be expressly modified in the Contract Documents.

4.1.4 Contractor will have duly authorized and prepared representatives attend and actively participate in all meetings and presentation as required by the College. Contractor shall also fully and timely communicate with College as required under the Contract Documents and by the College Project Manager concerning all issues related to the applicable Project and/or Contract, and Contractor's performance. Failure to comply with this requirement shall be a material default under the applicable Contract, and shall entitle College to take such remedial action as College determines is appropriate, including, without limitation any and all remedies available to College under Section 10 hereof, the Contract Documents, law or equity, including termination for cause.

4.2 Contractor's Pre-Contract and Pre-Work Deliverables

4.2.1 Before beginning any Work under the Contract, Contractor shall execute the Contract and deliver to College the items listed in the Contract Documents including without limitation all pre-Work deliverable required under this Section 4.2, and the Contract must be executed by College. Failure to do so will be a material breach of the Contract could result in College: (i) declaring Contractor in default and collecting on Contractor's bid bond, or performance bonds as appropriate; (ii) suspending and/or debaring Contractor; and/or (iii) terminating the Contract for Cause and recovering damages from Contractor therefore.

4.2.2 Signed Contract. When Contractor delivers a signed Contract to College, Contractor shall also deliver to College such bonds and certificates of insurance with endorsements in such amounts (and other evidence of insurance requested by College) required under Section 11 of these General Conditions, and as the Contract requires.

4.2.3 Government Approvals and Permits. Except as otherwise required under the Contract Documents, Contractor shall obtain all necessary permits for the Work and pay all applicable fees. Contractor is specifically notified of the need to obtain the necessary environmental permits or file the necessary environmental and regulatory permit notices. Copies of all permits and the associated notices must be provided to College prior to starting the permitted activity.

4.2.4 Required Compliance Plans. Prior to commencing the Work, Contractor shall deliver to College in such forms as College may require, and obtain College's written approval thereof, all required plans to support construction activities related to the Work, including without limitation as applicable:

- (a) Traffic Control Plan under Section 4.11 below;
- (b) Air Quality Control Plan under Section 4.12 below;

- (c) Storm Water Pollution Prevention Plan under Section 4.13; and
- (d) Any other such plans required under the Contract Documents or otherwise by College.

4.2.5 Access to Adjacent Property. To the extent required to perform the Work and not provided by the College, temporary access agreements or other agreements to be enable Contractor and College (if applicable) to access property adjacent to the Site.

4.3 Pre-Construction Meeting

4.3.1 Prior to the commencement of any Work, College will schedule and hold with Contractor and others as determined necessary by College, a Pre-Construction Meeting. The minutes of the Pre-Construction meetings approved by College shall become Contract Documents.

4.3.2 Prior to the Pre-construction Meeting, Contractor shall provide the Project Manager and any other designated by the Project Manager with a Schedule of Values in a form specified by College describing and providing specific individual values for all subcontracts, Work items, contingencies allowances, general conditions, taxes, bonds and insurance, and other categories of the Work and Contract Price that will be used to submit Pay Applications for the Work. The total amount of the Schedule of Values shall not be greater than the Contract Price. The Schedule of Values shall be reviewed at the Pre-Construction Conference and revised in response to comments and questions from College. Once accepted by College in writing, the Schedule of Values for the Project will not be changed without the prior written approval of College.

4.4 Performance of the Work (Including Field Measurements)

4.4.1 Unless otherwise provided in the Contract Documents to be the responsibility of College or a separate Contractor, Contractor shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Contractor to complete the Work consistent with the Contract Documents.

4.4.2 Contractor's designated representative, approved in writing by the College, shall be present at the Site at all times that material Work under this Contract is taking place, who shall have the authority to take actions required to properly carry out the Work being performed.

4.4.3 Before ordering materials or doing Work, Contractor and each Subcontractor shall verify measurements at the Site and shall be responsible for the correctness of such measurements. No extra charge or compensation will be allowed because of differences between actual dimensions and the dimensions indicated on the Contract Documents, including the drawings.

4.4.4 If Contractor, with the exercise of reasonable care, should have recognized such error, inconsistency, omission or difference and fails to report it to College, and if Contractor proceeds with the Work affected by such observed errors, discrepancies or omissions, without receiving such clarifications, it does so at its own risk. If Contractor observes error, discrepancies or omissions in the Construction Documents, it shall promptly notify the Contractor and College and request clarification. Contractor shall be liable to College for damages resulting from error, inconsistencies or omissions in the Construction Documents or for differences between field measurements or conditions in the Construction Documents.

4.4.5 In all cases of interconnection of its Work with existing or other work, Contractor shall verify at the Site all dimensions relating to such existing or other work. Any errors due to Contractor's failure to so verify all such grades, elevations, locations or dimensions shall be promptly rectified by Contractor without any increase in the Contract Price. Any design errors or omissions noted by Contractor during this review shall be reported promptly to College.

4.4.6 Contractor shall be responsible for the proper performance of the work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract

Documents is intended or deemed to create any legal or contractual relationship between College and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

4.4.7 Contractor will not substitute or change any Subcontractor or Supplier without the prior written approval of College. Any substitute or replacement Subcontractor or Supplier shall be required to meet the same qualifications and selection criteria and process as the original Subcontractor or Supplier. If a Subcontract/Supplier selection plan has been approved by College, Contractor will follow that plan unless otherwise approved by College in writing.

4.4.8 Contractor shall not change or replace any members of its Project team, including Contractor's Representative, Project Manager, or Superintendent, without an explanation for the change being given to College, and receiving prior written approval of the change from College, which approval will not be unreasonably withheld.

4.4.9 Unless otherwise agreed to by College in writing, Contractor will hold frequent project meetings as specified in the Contract Documents or agreed to by College which will be attended and participated in by duly authorized and knowledgeable representative(s) of Contractor, and others as requested by College, as provided under Section 4.1.3.

4.5 Subcontractors and Suppliers

4.5.1 The Contractor shall not contract with any Subcontractor proposed to perform portions of the Work designated in the Construction Documents, or if none is so designated, with any Subcontractor proposed for the principal portions of the Work who has not been accepted by College. The Contractor will not be required to contract with any Subcontractor to which Contractor has a reasonable objection.

4.5.2 Notwithstanding any provisions to the contrary in the Contract Documents, if any Subcontractor listed is found by College not to be qualified to perform public work as a matter of law, qualifications, or otherwise, upon written notice from College, the Contractor shall submit a qualified Subcontractor for College's approval and shall substitute such qualified and approved Subcontractor at no additional cost to College.

4.5.3 Subject to Section 4.5.2 above, if College otherwise requires a change of any proposed Subcontractor previously accepted by it, the Contract Price may be increased or decreased by the difference in cost occasioned by such change as agreed to by the Parties in a Change Order.

4.5.4 The Contractor shall not make any substitution for any Subcontractor or Supplier who has been accepted by College unless the substitution is approved in writing by College.

4.5.5 Subcontractors whose scope of work has a value greater than 15% of the total Contract Price are required to furnish performance and payment bonds to Contractor, unless otherwise approved in writing by College.

4.5.6 Nothing contained in the Contract Documents shall create any contractual, master-servant or principal-agent relationship between College, and any Subcontractor, Sub-subcontractor, or Supplier.

4.5.7 All work performed for the Contractor by a Subcontractor shall be pursuant to an appropriate written agreement in a form approved by College between the Contractor and the Subcontractor (and where appropriate between Subcontractors and Sub-subcontractors) which shall contain provisions that:

.1 preserve and protect the rights of College under the Contract with respect to the Work to be performed under the subcontract so that the subcontracting thereof will not prejudice such rights;

.2 require that such work be performed in accordance with the requirements of the Contract Documents;

.3 require submission to the Contractor of applications for payment under each subcontract to which the Contractor is a party, in reasonable time to enable the Contractor to apply for payment in accordance with Article 12;

.4 require that all claims for additional costs, extensions of time, damages for delays or otherwise with respect to subcontracted portions of the Work shall be submitted to the Contractor (via any Subcontractor or Sub-Subcontractor where appropriate) in the manner provided in the Contract Documents for like claims by the Contractor upon College;

.5 waive all rights the contracting parties may have against one another for damages caused by fire or other perils covered by the property insurance described in Article 14, except such rights as they may have to the proceeds of such insurance held by College as trustee under Article 14; and

.6 obligate such Subcontractor specifically to consent to the provisions of this subsection.

4.5.8 College may, on Subcontractor's request, furnish to any Subcontractor, if practicable, information regarding percentages of completion certified to the Contractor on account of work done by such Subcontractor.

4.5.9 The Owner shall not have any obligation to pay or to see to the payment of any monies to any Subcontractor except as may otherwise be required by law.

4.6 Control of the Project Site

4.6.1 Throughout all phases of construction, including suspension of Work, Contractor shall keep the Site reasonably free from debris, trash and construction wastes to permit Contractor to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Prior to Final Acceptance of the Work, or a portion of the Work, Contractor shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit College to occupy the Project or a portion of the Project for its intended use.

4.6.2 Contractor shall take whatever steps, procedures or means necessary to prevent dust nuisance due to construction operations. The dust control measures shall be maintained at all times to the satisfaction of College and in accordance with all applicable Laws, Regulations, or Legal Requirements, including those adopted and/or enforced by Pima County, as applicable, and the Air Quality Control Plan submitted under Section 4.2.4 above.

4.6.3 Contractor shall be responsible to College for the acts and omissions of Contractor's employees, Subcontractors and their agents and employees, and any other person performing any of the Work under a Contract with Contractor, or claiming by, through or under Contractor, for all damages, losses, costs and expenses resulting from such acts or omissions.

4.6.4 Contractor will be responsible for strictly complying with the plans submitted under Section 4.2.4 above and all conditions for accessing property adjacent to the Site under Section 4.2.5.

4.6.5 Failure to comply with the requirements of this Section 4.6 shall be a material default under the applicable Contract, and shall entitle College to take such remedial action as College determines is appropriate, including, without limitation any and all remedies available to College under Section 10 hereof, the Contract Documents, law or equity, including termination for cause.

4.7 Project Safety

4.7.1 Contractor is responsible for safety of the Site and the Project for employees of Contractor as well as for members of the general public and others who may drive or walk through or be at or near the Site, or be impacted by the Work.

4.7.2 Contractor assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work.

4.7.3 Contractor shall provide a “competent person” as required by O.S.H.A regulations. The “competent person” shall be identified at the Pre-Construction Conference with College advised in writing of any changes.

4.7.4 Contractor and Subcontractors shall comply with all Laws, Regulations, or Legal Requirements relating to safety, as well as any College specific safety requirements set forth in the Contract Documents, including College’s rules, regulations and policies related to access to College facilities, security, and the safety and protection of students, staff and visitors to the College and/or any College Facilities or services..

4.7.5 As between College and Contractor, Contractor is responsible to College for any and all the safety issues relating to the Work on the Project. Contractor shall administer and manage the safety program. This will include, but not necessarily be limited to review of the safety programs of each Subcontractor. Contractor shall monitor the establishment and execution of compliance with all applicable regulatory and advisory agency construction safety standards.

4.7.6 Contractor shall maintain and have sole responsibility for safety on the job site.

4.7.7 Failure to comply with the requirements of this Section 4.7 shall be a material default under the applicable Contract, and shall entitle College to take such remedial action as College determines is appropriate, including, without limitation any and all remedies available to College under Section 10 hereof, the Contract Documents, law or equity, including termination for cause.

4.8 Shop Drawings, Submittals, Substitutions and Reuse.

4.8.1 Shop Drawings and Other Submittals

4.8.1.1 Contractor shall prepare and submit shop drawings and other submittals showing details of all work to insure proper installation of the Work using those materials and equipment specified under the Approved Plans and Specifications.

4.8.1.2 A schedule of shop drawing and other expected submittals shall be submitted with the Project Schedule for College approval that avoids bulk submissions to the extent reasonably possible. Unless otherwise noted, shop drawings will not be required for items specified or detailed in the Uniform Standard Specifications and Details or the Technical Specifications. The schedule of shop drawing and other submittals shall include all of the items for which shop drawings and/or submittals are required by the Contract Documents, including the Specifications.

4.8.1.3 Shop drawings and submittals shall be numbered consecutively for each specification section and shall accurately and distinctly present the following:

- (a) All working and erection dimensions.
- (b) Arrangements and sectional views.
- (c) Necessary details, including complete information for making connections between work under this Contract and work under other Contracts.

- (d) Kinds of materials and finishes.
- (e) Parts list and description thereof.

4.8.1.4 Contractor shall schedule, prepare and submit all shop drawings and other submittals in accordance with a time-table that will allow its suppliers and manufacturers sufficient time to fabricate, manufacture, inspect, test and deliver their respective products to the project site in a timely manner so as to not delay the complete performance of the work.

4.8.1.5 The review of shop drawings and/or submittals will be general and shall not relieve Contractor of responsibility for the accuracy of such drawings or submittals, nor for the proper fitting and construction of the Work, nor for the furnishing of materials or Work required by the Contract. No construction called for by shop drawings or submittals shall be initiated until such have been reviewed and approved by College.

4.8.2 Substitutions or Reuse. Any requests or proposals for substitutions and/or reuse of materials shall be submitted and processed as provided in Section 4.8.2 above.

4.8.3 Long Lead Time Items. Contractor shall submit shop drawings and/or other submittals on all long lead items to be furnished and installed as part of the project within ten (10) days after execution of the Contract. In addition, Contractor shall order all long lead items to be furnished and installed as part of this Project within (3) days after receiving approved shop drawings and/or submittals. For all long lead times for which shop drawings are not required, Contractor shall order said long lead items within fifteen (15) days after execution of the Contract. Within two (2) days after ordering long lead items, Contractor shall supply copies of all purchase orders, along with an accurate delivery schedule from the supplier.

4.9 Testing

4.8.1 Inspection, Quality Control and Quality Assurance Testing. All equipment and materials used in the construction of the Project, especially those upon which the strength and durability of the structure may depend, shall be subject to adequate inspection and testing in accordance with accepted standards to establish conformity with Specifications, applicable codes and standards and suitability for use intended, all as set forth more particularly in the Specifications. Any material rejected by College shall be removed immediately and replaced in an acceptable manner to College at no additional cost to College. When QC/QA tests indicate noncompliance with the Contract Documents, retesting shall be performed by the same testing laboratory that performed the tests that indicated noncompliance.

4.9.2 Where the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any of the Work to be inspected, tested or approved, the Contractor shall give the OR timely notice of its readiness and of the date arranged so the OR may observe such inspection, testing or approval. College shall pay the cost of all such tests, except where otherwise provided herein, and except for retest or re-inspection of Work which fails to comply with the Contract Documents.

4.9.3 If after the commencement of the Work the OR determines that any of the Work requires special inspection, testing or approval which Subparagraph 4.9.2 does not include, Contractor will, upon written authorization from the OR, order such special inspection, testing or approval, and the Contractor shall give notice of readiness as in Subparagraph 4.9.2. If such special inspection or testing reveals a failure of the Work to comply:

- .1 with the requirements of the Contract Documents, or
- .2 with laws, ordinances, rules, regulations or orders of any public authority having jurisdiction over the Work,

the Contractor shall bear all costs thereof, including the cost of College's additional services made necessary by such failure, and the costs of such inspection or testing and other expenses related thereto, including without limitation College's legal fees, if any, incurred in connection with advising Owner of such

failure of compliance; otherwise, the Owner shall bear such costs.

4.9.4 Required certificates of re-inspections or testing to secure compliance with this Section 4.9 shall be paid for by the Contractor.

4.10 Project Record Documents

4.10.1 During the construction period, Contractor shall maintain at the jobsite a full-size set of prints of the Construction Document Drawings and Shop Drawings for Project Record Document purposes.

4.10.2 Contractor shall mark these drawings to indicate the actual installation where the installation varies from the original Construction Documents. Contractor shall give particular attention to information on elements that will be concealed, which would be difficult to identify or measure and record later. Items required to be marked include but are not limited to:

- (a) Dimensional changes to the Drawings.
- (b) Revisions to details shown on Drawings.
- (c) Locations and depths of underground utilities.
- (d) Revisions to routing of piping and conduits.
- (e) Actual equipment locations.
- (f) Changes made by Change Order or Addendum.
- (g) Details not on original Contract Drawings.

4.10.6 Contractor shall submit Project Record Drawing sets and Shop Drawings to College or its representative for review and comment.

4.10.7 Upon receipt of the reviewed Project Record Drawings from College, Contractor shall correct any deficiencies and/or omissions to the drawings and submit the final original of the Project Record Drawings to College prior to Final Acceptance and as a condition of Final Acceptance.

4.10.8 Project Manager will review the Project Record Drawings monthly prior to the date established for the Payment Request and shall be the sole judge of acceptance of these drawings.

4.11 Project Schedule. Contractor is responsible for preparing, monitoring, providing to College, and complying with and constructing the Project in conformance with the Project Schedule as set forth in Section 6 below.

4.12 Cutting and Patching of Work. Any cutting and patching required shall be performed in accordance with instructions contained in the technical specifications of the Project.

4.13 Cleaning Up. Contractor at all times during the progress of the Work shall keep the buildings, Work, and site free from accumulation of waste materials or rubbish caused by his operations. At the completion of the Work, Contractor shall remove all his waste materials and rubbish from and about the Project, as well as all his tools, construction equipment, machinery and surplus materials not specified to be left at the site, and shall clean all glass surfaces and other areas or materials as specified, and leave the Work "broom-clean" or its equivalent, except where more stringent cleaning requirements are provided by the Contract Documents.

4.14 Separate Contractors. The Owner reserves the right to award other contracts in connection with other portions of, or services related to the Project

4.14.1 Contractor shall afford other contractors reasonable opportunity for the introduction to the site and storage of their materials and equipment thereon and the execution of their work, and shall properly connect and coordinate his Work with theirs.

4.14.2 If any part of the Contractor's Work depends for proper execution or results upon the work of any other separate contractor, the Contractor shall inspect and promptly report to the Owner any apparent discrepancies or defects in such work that render it unsuitable for such proper execution and results. Failure of the Contractor to so inspect and report shall constitute an acceptance of the other contractor's work as fit and proper to receive his Work, except as to defects which may develop in the other separate contractor's work after the execution of the Contractor's Work.

4.14.3 Should the Contractor cause damage to the work or property of any separate contractor on the Project, the Contractor shall, upon written notice, promptly attempt to settle such other contractor's claim. If such separate contractor sues the Owner on account of any damage alleged to have been so sustained, the Owner shall promptly notify the Contractor, who shall defend such proceedings at the Contractor's expense, and if any judgment against the Owner arises therefrom, the Contractor shall promptly pay or satisfy it and shall immediately, upon presentation to it of a statement thereof, reimburse the Owner for all attorneys' fees and court costs which the Owner has incurred.

4.15 Traffic Control. Contractor is solely responsible for timely submitting and obtaining all necessary approvals of all required Traffic Control Plans and then fully and strictly complying with the Traffic Control Plan at all times in relation to the Work and the Project.

4.15.1 Once fully approved, a Traffic Control Plan may not be amended without the College's prior written approval, and Contractor obtaining all additional required approvals for the amendment.

4.15.2 Contractor shall be responsible to College for the acts and omissions of Contractor's employees, Subcontractors and their agents and employees, and any other person performing any of the Work under a Contract with Contractor, or claiming by, through or under Contractor, for all damages, losses, costs and expenses resulting from failure to comply with any Traffic Control Plan.

4.15.3 Compliance with a Traffic Control Plan shall not relieve Contractor from liability for any action or failure to act in emergencies or other circumstances which require Contractor to take additional actions or refrain from taking actions to protect the Project, College, any person, or property from damages or injury which could have been avoided by Contractor, or its employees, Subcontractors and their agents and employees, and any other person performing any of the Work under a Contract with Contractor, or claiming by, through or under Contractor acting reasonably under the circumstances.

4.15.4 Failure to comply with the requirements of this Section 4.15 shall be a material default under the applicable Contract, and shall entitle College to take such remedial action as College determines is appropriate, including, without limitation any and all remedies available to College under Section 10 hereof, the Contract Documents, law or equity, including termination for cause.

4.16 Air Quality Control. Contractor is solely responsible for timely submitting and obtaining all necessary approvals of all required Air Quality Control Plans and then fully and strictly complying with the Air Quality Plan at all times in relation to the Work and the Project.

4.16.1 Once fully approved, an Air Quality Control Plan may not be amended without the College's prior written approval, and Contractor obtaining all additional required approvals for the amendment.

4.16.2 Contractor shall be responsible to College for the acts and omissions of Contractor's employees, Subcontractors and their agents and employees, and any other person performing any of the Work under a Contract with Contractor, or claiming by, through or under Contractor, for all damages, losses, costs and expenses resulting from failure to comply with any Air Quality Control Plan.

4.16.3 Compliance with an Air Quality Control Plan shall not relieve Contractor from liability for any action or failure to act in emergencies or other circumstances which require Contractor to take additional actions or refrain from taking actions to protect the Project, College, any person, or property from

damages or injury which could have been avoided by Contractor, or its employees, Subcontractors and their agents and employees, and any other person performing any of the Work under a Contract with Contractor, or claiming by, through or under Contractor acting reasonably under the circumstances.

4.16.4 Failure to comply with the requirements of this Section 4.16 shall be a material default under the applicable Contract, and shall entitle College to take such remedial action as College determines is appropriate, including, without limitation any and all remedies available to College under Section 10 hereof, the Contract Documents, law or equity, including termination for cause.

4.17 Storm Water Pollution Prevention. Contractor is solely responsible for timely submitting and obtaining all necessary approvals of all required Storm Water Pollution Prevention Plans under Appendix E and then fully and strictly complying with the Air Quality Plan at all times in relation to the Work and the Project.

4.17.1 Once fully approved, a Storm Water Pollution Prevention Plan may not be amended without the College's prior written approval, and Contractor obtaining all additional required approvals for the amendment.

4.17.2 Contractor shall be responsible to College for the acts and omissions of Contractor's employees, Subcontractors and their agents and employees, and any other person performing any of the Work under a Contract with Contractor, or claiming by, through or under Contractor, for all damages, losses, costs and expenses resulting from failure to comply with any Storm Water Pollution Prevention Plan.

4.17.3 Compliance with a Storm Water Pollution Prevention Plan shall not relieve Contractor from liability for any action or failure to act in emergencies or other circumstances which require Contractor to take additional actions or refrain from taking actions to protect the Project, College, any person, or property from damages or injurie which could have been avoided by Contractor, or its employees, Subcontractors and their agents and employees, and any other person performing any of the Work under a Contract with Contractor, or claiming by, through or under Contractor acting reasonably under the circumstances.

4.17.4 Failure to comply with the requirements of this Section 4.17 shall be a material default under the applicable Contract, and shall entitle College to take such remedial action as College determines is appropriate, including, without limitation any and all remedies available to College under Section 10 hereof, the Contract Documents, law or equity, including termination for cause.

4.18 Drawings and Specifications.

4.18.1 At Site. Contractor shall maintain at the site for College one (1) copy of all Drawings, Specifications, Addenda, approved Shop Drawings, Change Orders, other Modifications, and manufacturers' printed specifications and recommendations, in good order and marked carefully, legibly and accurately to record on a daily basis all changes made during construction, all of which shall be available to College at all times. These Drawings shall be delivered to the OR upon completion of the Work. The Drawings indicating the changes shall be maintained throughout the duration of the Project

4.18.2 Electronic Transmission. The Record Drawings and (unless otherwise specified) all manufacturers' maintenance manuals, printed specifications and recommendations, which by reference in the several divisions of the Specifications are a part thereof. which shall be transferred to electronic media, in the form and at such times as required by College.

4.19 Warranty and Correction of Defective Work

4.19.1 Contractor warrants to College that the construction of the Work shall be of good and workmanlike quality and completed in strict conformance with all applicable Laws, Regulations, or Legal Requirements and the plans and specifications and all other terms and conditions of the Contract Documents, including all materials and equipment furnished as part of the construction, shall be new unless

otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship.

4.19.2 Unless expressly otherwise provided in the Contract, the date of Final Acceptance of the Project by College shall be the beginning of the Warranty period, except for landscaping, which will commence as set forth in the Landscaping Warranty Requirements (Appendix I) by some Subcontractors of their work. Contractor shall furnish extended warranties for facilities placed in service before Final Acceptance and that expire no earlier than one year beyond Final Acceptance, except as otherwise required in the Contract Documents.

4.19.3 Contractor's warranty obligation shall be in accordance with the College Standard Specifications or elsewhere in the Contract Documents. In the event of a conflict, the more stringent and longer warranty provisions will apply, unless specifically excluded in the Contract Documents.

4.19.4 In addition, unless otherwise specified in the Contract Documents, Contractor and Subcontractors shall provide to College all of the written warranties that apply to the Work, in a form acceptable to College, as required under the College Standard Specifications and the Landscape Warranty Requirements (Appendix I).

4.19.5 Nothing in the warranties contained in the Contract Documents are intended to limit any manufacturer's warranty which provides College with greater warranty rights than set forth in this Section or the Contract Documents. Contractor will provide College with all manufacturers' warranties prior to Final Acceptance.

4.19.6. A progress payment, or partial or entire use or occupancy of the Project by College, shall not constitute acceptance of Work not in accordance with the Contract Documents.

4.19.7 Without limiting the foregoing or anything in these General Conditions or the Contract to the contrary, Contractor shall obtain and provide to College all warranties for any portion of the Project offered by the manufacturer, installer or provider thereof. College and the user of the facility shall have the right to the full value and benefit of all such warranties. Contractor will ensure all such warranties are fully transferrable to facilitate the full value of this Section 4.19.7.

SECTION 5 — COLLEGE'S RESPONSIBILITIES

5.1 College Project Representatives

5.1.1 Owner Representative (OR). Unless otherwise specified in the Contract, the College Facilities Manager shall be the Owner's Representative for the Project. College may change the OR by written notice to Contractor.

5.1.2 Unless otherwise specified Only the OR has authority on behalf of College to:

- (a) Approve any changes in the Work, the Contract Documents or the Construction Documents, and only through the Change Order Process under Section 9 below;
- (b) Approve Contractor payment applications;
- (c) Approve any substitutions;
- (d) Approve or agree to any other matter requiring College's approval or agreement.

5.1.3 Project Manager (PM). College may also utilize a PM to communicate with Contractor and be responsible for providing College-supplied information and direction (subject to

approval or agreement by the OR) to assist Contractor to fulfill its obligations under the Contract Documents.

5.1.4 **Inspectors.** College may also utilize inspectors whose role is solely to inspect the Work as required. Inspectors have no authority to direct or order, different, changed or additional work, nor to approve any changes in the Contract Documents, Construction Documents or the Work. Inspectors may advise Contractor as to corrections which may be necessary to comply with the Construction Documents and may archive acceptance of portions of the Work under the Inspector's jurisdiction, subject to approval by the OR.

5.1.5 Nothing contained in the Contract Documents shall create any contractual relationship between the Contractor and any of representative of the College.

5.1.6 All final decisions concerning Change Orders, Payments, Substantial Completion, Final Completion, Liquidated Damages and Contract Time shall be reserved to the College, and this provision shall take precedence over any other term of the Contract Documents.

5.2 Separate Contractor Services. College may contract separately with one or more third-parties to provide construction services, construction administration and/or inspection of the Project. The third-party's Contract, as well as other firms hired by College in relation to the Work may be furnished to Contractor to facilitate their performance in relation to the Project.

SECTION 6 — CONTRACT TIME

6.1 Contract Time

6.1.1 The Contract Time shall start with the Notice to Proceed ("NTP") and end with Final Acceptance, as set forth in Section 6.4 below.

6.1.2 The NTP will be issued by the OR in the form and upon such conditions as College determined appropriate for the Project.

6.1.3 The Contract Time shall be as set forth in the Project Schedule. Contractor agrees that it will commence performance of the Work and complete the Project through both Substantial Completion and Final Acceptance within the Contract Time.

6.1.4 Time is of the essence of this Contract, for the Project, for the Work, and for each phase and/or designated Milestone thereof.

6.2 Project Schedule

6.2.1 The Project Schedule shall be prepared, updated, revised and maintained by Contractor and timely communicated to College, throughout the Contract Time.

6.2.2 The Project Schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve Contractor of its obligations to complete the Work within the Contract Time, as adjusted in accordance with the Contract Documents. No modification to the Contract Documents or the Contract Time shall be effective unless approved in advance by College.

6.2.3 An updated Project Schedule shall be submitted by Contractor at least monthly to College as part of the Payment Request, and such shorter interval as may be required by College or under the Contract Documents.

6.2.4 Contractor shall provide College with a status report as requested by College detailing the progress of the Work, including at a minimum: (i) if the Work is proceeding according to schedule, (ii) any discrepancies, conflicts, or ambiguities found to exist in the Contract Documents that

require resolution, and (iii) other information detailing items that require resolution so as not to jeopardize the ability to complete the Work in the Contract Time.

6.2.5 Acceptance of a submitted schedule by College should in no way be construed as an affirmation or admission that the schedule is reasonable or workable by Contractor. The responsibility for completing the Work on the Project within the Contract Time remains the obligation of Contractor. College's review shall not relieve Contractor from compliance with the requirements of the Contract Documents or be construed as relieving Contractor of its complete and exclusive control over the means, methods, sequences and techniques for executing the work.

6.2.6 Critical Path Method (CPM)

6.2.6.1 Unless otherwise specified in the Contract, the Project Schedule shall include a Critical Path Method (CPM) diagram schedule showing the sequence of activities, the interdependence of each activity and identifies the Critical Path.

6.2.6.2 The CPM diagram schedule shall be in calendar Days and indicate duration, earliest and latest start and finish dates for all activities, and total Float Times for all activities except critical activities. The CPM diagram shall be presented in a time scaled graphical format for the Project as a whole.

6.2.7 Float Time

6.2.7.1 The Total Float time within the overall schedule is for the exclusive use of College, but College may approve Contractor's use of Float as needed to meet contract Milestones and the Project completion date.

6.2.7.2 Contractor shall not be allowed to sequence, hide, or reallocate Float Time through such strategies, as extending activity duration estimates to consume available Float, using preferential logic, or using extensive crew/resource sequencing, tec. No time extensions will be granted nor delay damages paid until a delay occurs which extends the Work beyond the Contract Time.

6.2.8 Weather Delays. Contractor is required, in preparing the Project Schedule to take into account all relevant weather conditions, including normal rainfall and distribution. No additional Compensation shall be given for any weather-related delays or impacts on the Work or the Project Schedule. The burden of documenting weather impact on the Critical Path (in the case of rain normal rainfall, the excessive rainfall) and the impact on Critical Path activities is on Contractor.

6.2.9 College and Contractor shall negotiate for the potential recovery of damages related to expenses incurred by the Contractor for a delay that meets all three of the following criteria: (i) for which College is responsible; and (ii) is unreasonable under the circumstances; and (iii) was not within the contemplation of the Parties. No damages for any other delays will be recoverable by Contractor.

6.3 Substantial Completion

6.3.1 When Contractor considers that the Work, phase or a portion thereof, which College agrees to accept separately, is substantially complete, Contractor shall submit a notice that the Work is ready for a Substantial Completion walk through and/or testing, as College requires to establish Substantial Completion.

6.3.2 Upon receipt Contractor's notice, Project Manager and Contractor will conduct a walk through and/or operation testing to determine whether the Work or designated portion thereof is substantially complete. If the walk through and/or testing, as determined by the Project Manager, discloses any item, whether or not included on Contractor's Punch List, which is not sufficiently completed in accordance with the Contract Documents so that College can occupy or utilize the Work, phase or

designated portion thereof for its intended use, Contractor shall, before issuance of the Certificate of Substantial Completion, compete or correct such item upon notification by Project Manager.

6.3.3 **Notice of Substantial Completion.** The Project Manager shall not issue a Notice of Substantial Completion unless and until the Work (or separable units or Phases as provided in the Contract Documents) is essentially and satisfactorily complete in accordance with the Contract Documents, such that the Project is ready for use by College for its intended purpose, opening to the general public, full occupancy or use by College (including, without limitation, all separate units, or rooms, facilities, access, income-generating areas, and/or all areas serving the general public, as applicable, shall be ready for full operation without material inconvenience or discomfort), including, to the extent applicable to the Work, the following: all materials, equipment, systems, controls, features, facilities, accessories and similar elements are installed in the proper manner and in operating condition, inspected and approved; surfaces have been painted; masonry and concrete cleaned with any sealer or other finish applied; utilities and systems connected and functioning; site work complete; permanent heating, ventilation, air condition, vertical transportation and other systems properly operating with proper controls; lighting and electrical systems installed, operable and controlled; paving completed, signage installed, and/or other work as applicable, has been performed to a similar state of essential and satisfactory completion. In no event shall Substantial Completion be deemed to have occurred unless and until: (i) a temporary certificate of occupancy has been issued by the appropriate Governmental Authorities (as applicable); and (ii) all terms and Work required under this Agreement have been fulfilled by Contractor and same shall have also been approved and accepted by College, subject only to the Punch List Items.

6.4 Final Acceptance

6.4.1 Unless otherwise expressly agreed to in writing by College or set forth in the Contract, Final Acceptance must be obtained by no later than 30 calendar days after the date of Substantial Completion. Failure to timely obtain Final Acceptance will be a material breach of the Contract.

6.4.2 Upon receipt of written notice that the Work is ready for final inspection and acceptance, College and Contractor will jointly inspect to verify that the remaining items of Work have been completed. There shall be no partial acceptance. Final Acceptance shall not be issued and final completion shall not occur until all items of work, including Punch List Items, have been completed to College's satisfaction as reflected in the written Final Acceptance.

6.4.3 Final Payment under Section 8.4 below shall not be due, owing, or paid by College until Final Acceptance is actually obtained and issued.

SECTION 7 — CONTRACT PRICE

7.5 **Job Order Contracts.** Section 15 controls the Contract Price for Job Order Contracts.

7.6 **Taxes.** The Contractor shall pay all sales, consumer, use, transaction privilege and other taxes required by law in connection with the performance of the Contract, whether in force as of the date of this Contract or later imposed. If the Contractor's principal place of business is not in Arizona, Contractor shall post a bond for taxes in compliance with A.R.S. § 42-5007 and furnish evidence of such bond to Owner prior to submitting any application for payment hereunder.

SECTION 8 — PAYMENT

8.1 Progress Payments

8.1.1 Unless otherwise agreed to in writing by College, all Payment Applications shall be submitted on the College approved form, and at a minimum shall include and/or approval thereof conditioned upon:

- (a) An accurate and current estimate of the work performed during the preceding calendar month certified by Contractor to the Project Manager;
- (b) All required testing and reports up to date and submitted;
- (c) All Field Orders and Change Orders started that month are executed and submitted;
- (d) Progress photos submitted;
- (e) Survey documentation (if applicable) submitted;
- (f) Updated and complete logs of contingency and allowance utilization, in the form required by College, submitted;
- (g) Updated schedule submitted (acceptance by the College does not mean acceptance as schedule can only be changed pursuant to Section 6.2 above); and
- (h) All prior payment applications have been signed and submitted.

8.1.2 Unless otherwise agreed to in writing by College, the payment process functions as follows:

- (a) Prior to the end of each month, Contractor shall send a “pencil draft” Payment Application to Project Manager.
- (b) The Project Manager and Contractor shall review the “pencil draft” Payment Application and Contractor and Project Managers shall attempt to agree in writing upon any necessary adjustments.
- (c) Within seven (7) days, Contractor shall then submit a final Payment Application. When approved by the Project Manager, the progress payment shall be processed for payment of any approved amounts within fourteen (14) days (except final payments).

8.1.3 Retention. Payments shall be made pursuant to A.R.S. § 41-2577 and the percent (10%) retention shall be withheld pursuant to A.R.S. § 41-2576.

8.1.3.1 When construction of the Project is fifty percent (50%) completed, Contractor may request payment of one-half of the retention pursuant to A.R.S. § 41-2576(B), subject to all of College’s rights to withhold or offset payments, and/or other rights of College, under the Contract. In order to be eligible for the potential reduction in retention, Contractor must provide such documentation, and in such form, as the College may require, including without limitation unconditional lien releases in statutory form for all payments made by the College to the date of Contractor’s request, executed by Contractor and all subcontractors and suppliers for the Project.

8.1.3.2 College reserves the right under A.R.S. § 41-2576 to reinstate the ten percent (10%) retention requirement if College determines that satisfactory progress is not being made.

8.1.6 Allowances. If the Contact includes any Allowance items (as defined in Section 15.1.1 below) payments for the Allowance items shall be included in progress payments and accounted for as set forth in Section 15.4 below.

8.1.7 Value Engineering. Any changes in the Contract Price through value engineering or otherwise shall be accomplished through a written Change Order under Section 9 below.

8.1.8 Schedule of Values. All pay items relating to the Work indicated in the project plans and/or specifications are listed in the Schedule of Values. The Contractor shall include all necessary costs to complete this Project within these items in the Schedule of Values. Any work necessary to complete the Project as represented in the plans and/or specifications that is not specifically separately listed as a pay item on the Schedule of Values shall be considered incidental to the Work and included in the items listed in the Schedule of Values and no separate payment shall be made.

8.2 Final Payment. Subject to all of College's rights to withhold or offset payment, and other rights under the Contract, Final Payment including remaining retainage shall be paid only after, in addition to the requirements for progress payments under Section 8.1 above :

- (a) The Work has been fully completed (including completion of all incorrect or incomplete work items) and the written Final Acceptance has been issued by College;
- (b) All Necessary operating manuals, any excess materials and supplies necessary for matching materials and supplies incorporated into the Work, and complete "as-built" record drawings (including the CAD or Building Information Model (BIM), if required by the Contract Documents), plans and specifications have been delivered to and accepted by College (as specified in this Section 8.3);
- (c) All full and unconditional lien waivers and releases by Contractor and any person performing labor or supplying material, machinery, fixtures, or tools for the Work have been delivered to Contractor have been submitted to College;
- (d) All required warranty bonds have been submitted and approved by College;
- (e) The required pre-warranty inspections have been scheduled and approved by College;
- (f) All conditions and requirements imposed by College or any financing entity for the corresponding disbursement have been met; and
- (g) Contractor delivers to College a fully completed Contractor Final Payment Application requesting Final Payment in the form required by the College.

8.3 College's Right to Withhold Certification or Payment. College may withhold a certification of payment estimate, and also because of subsequently discovered evidence may nullify the whole or a part of a certification for payment previously issued, and/or payment, for failure to provide the documentation and/or certifications required by the College to support the payment estimate, and also to such extent as may be necessary to protect the College from loss for which the Contractor is responsible, including without limitation:

- (a) Defective Work not remedied;

- (b) Third party claims filed or reasonable evidence indicating probable filing of claims;
- (c) Failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- (d) Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- (e) Damage to College, the Work, the Project, the Project Site, or a separate contractor;
- (f) 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;
- (g) Material failure to carry out the Work in accordance with the Contract Documents;
- (h) Discovery that prior certification of payment and/or payment was improper or not correct for any reason; or
- (i) Any other reason permitted under applicable law.

8.4 Liens and Bond Claims. Contractor shall make all payments, in the time required, for all labor and materials furnished to Contractor in the course of the Work and shall promptly furnish evidence of such payments as College may require. Contractor shall pay when due all claims arising out of performance of the Work covered by this Contract for which a lien may be filed either against the real estate or leasehold interest of College, or against payments due from College to Contractor, or for which a claim may be made against any payment or performance bond or both. To the fullest extent permitted by law, Contractor agrees that no liens or other claims in the nature of a lien against the real estate, leasehold, or other interest of College, against payment due from College to Contractor, or against any payment or performance bond, shall be filed or made in connection with the Work by any party who has supplied professional services, labor, materials, machinery, fixtures, tools, or equipment used in or in connection with the performance of this Contract, and Contractor agrees to remove or to cause to be removed any such liens or claims in the nature of a lien or bond claim within ten (10) days upon receiving notice or obtaining actual knowledge of the existence of such liens or claim. In addition, Contractor agrees to defend, indemnify, and hold harmless College from and against any and all such liens and claims. This paragraph does not apply to claims and liens of Contractor due to non-payment for work performed.

8.5 Financial Record Keeping and College's Audit Right

8.5.1 Records for all Contracts between College and Contractor shall, upon reasonable notice, be open to inspection and subject to audit, scanning, and/or reproduction during normal business working hours. College or its designee may conduct such audits or inspections throughout the term of this Contract and for a period of three years after Final Payment or longer if required by law.

8.5.2 College, its authorized representative, and/or the appropriate agency, reserve the right to audit Contractor's records in compliance with local, state or federal policies, statutes or at College's discretion, within three (3) years of Final Acceptance of the Work.

SECTION 9 — CHANGES TO THE CONTRACT

9.1 Changes in the Work

9.1.1 College reserves the right to make such changes in the plans and specifications for the Work, as it may deem appropriate and any such change as set forth in a written Change Order shall be deemed a part of this Contract as if originally incorporated herein.

9.1.2 Contractor shall not be entitled to payment for additional work unless a written Change Order, in form and content prescribed by College, has been executed by College prior to starting the additional Work.

9.1.3 Any agreement which modifies the terms of the Contract (including Change Orders) shall be approved in writing by the OR, subject to additional approvals as required by College Code and/or College Procurement Policy. Once properly executed by both parties, these modifications to the Contract shall have the same effect as if they had been included in the original Contract.

9.2 Change Order Procedure

9.2.1 Field Directives. The College may issue to Contractor Field Directives (see Definition in Section 2 above) related to the Work. Issuance of a Field Directive by College does not, mean that the Field Directive is or relates to a change in the Work, unless expressly stated in the Field Directive.

9.2.2 Change Order Request. If Contractor believes that a Field Directive constitutes a change in the Work, Contractor shall submit a Change Order Request to College, which will then be reviewed, negotiated, and approved or rejected by the College. If the College and Contractor cannot agree, the College may, in its sole discretion, order Contractor to perform the work required under the field directive, and Contractor shall be required to perform the work under the Field Directive and the issues in dispute shall be resolved as a Claim by Contractor. Under no circumstances shall Contractor be entitled to compensation beyond what would be recoverable under the terms of the Contract.

9.2.3 Change Order. Contractor shall then submit a fully competed Change Order in the form required by the College (see Appendix I) for approval and execution by the College. No Change Order will be effective to change the Contract unless and until a Change Order has been approved and signed by appropriate representatives of Contractor and College.

9.2.4 Contractor shall be responsible to maintain and update contingency and allowance logs in relation to the Work, including Field Directives and Changes, in the form required by the College.

9.3 Accuracy of Change Order Pricing Information. Signature by the contracting parties shall constitute full accord and satisfaction between College and Contractor for all costs, damages, and expenses of whatever kind of nature, including delay, impact or acceleration damages, which may be occasioned by a Change Order of other modification of the Contract agreed to in writing.

9.4 Emergencies. In any emergency affecting the safety of persons and/or property, Contractor shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time resulting from emergency work shall be determined as provided in this Section.

9.5 Differing Site Conditions. If Differing Site Conditions are encountered at the Project Site, then notice by the observing party shall be given to the other party promptly before conditions are disturbed (to the extent practicable) and in no event later than fourteen (14) days after first observance of the conditions. College will promptly investigate such conditions and, if College determines that Differing Site Conditions exist and they materially cause an increase in the cost of, or time required for, performance of any part of the Work, Contractor will be entitled to equitable adjustment in the Contract Price or Construction Schedule (and other time requirements), or both. If it is determined by College that the conditions at the

Project Site are not Differing Site Conditions and no change is justified, then College shall so notify Contractor in writing, stating the reasons. Claims in opposition to such determination must be made within fourteen (14) days after College has given notice of its decision. If College and Contractor cannot agree on an adjustment in the Contract Price or Project Schedule (and other time requirements), the adjustment shall be submitted to dispute resolution as provided these General Conditions.

9.5 Changes In Laws, Regulations, Or Legal Requirements Or Taxes. In the event of a material change in applicable Laws, Regulations, or Legal Requirements, or taxes subsequent to the date of the Contract by the parties, Contractor may be entitled to a Change Order, in College's discretion, to the extent Contractor can document to the satisfaction of College that such change significantly increases Contractor's actual cost of performance of the Work.

SECTION 10 — SUSPENSION AND TERMINATION

10.1 Suspension. College may suspend the Contract and/or Contractor's performance wholly or in part due to the failure of the Contractor; to correct conditions unsafe for the workmen or the general public; for failure to carry out provisions of the Contract; for failure to carry out orders; for such periods as College may deem necessary due to unsuitable weather; for conditions considered unsuitable for the prosecution of the work, or for any other condition or reason deemed to be in the public interest.

10.2 Termination by the College for Cause

10.2.1 College may terminate the contract or a portion thereof if conditions encountered during the progress of the work make it impossible or impracticable to proceed with the work or a local or national emergency exists. When contracts, or any portion thereof, are terminated before completion of all work in the contract, adjustments in the amount bid for the pay items will be made on the actual quantity of work performed and accepted, or as mutually agreed for pay items of work partially completed or not started. No claim for loss of anticipated profits will be considered. Termination of the Contract or any portion thereof shall not relieve the Contractor of its responsibilities for the completed Work nor the surety of its obligation for and concerning any claims arising out of the Work performed.

10.2.2 College may also terminate the Contract if College determines, in its sole discretion that Contractor has:

- (a) Refused or failed to supply enough properly skilled workers or proper materials;
- (b) Failed to make payment to Subcontractors for materials or labor in accordance with the respective agreements between Contractor and the Subcontractors;
- (c) Disregards Laws, Regulations, or Legal Requirements or orders of a public authority having jurisdiction;
- (d) Or is endangering public health and/or safety; and/or
- (e) Otherwise breached a provision of the Contract Documents or any other contract between College and Contractor.

10.2.3 When any of the above reasons exist, College may terminate the Contract, without prejudice to any other rights or remedies of College, after giving Contractor and Contractors' surety, if any, seven (7) days' prior written notice of College's intent to terminate the Contract and Contractor's failure to cure any such reasons. Upon such termination, College may: (1) take possession of the Site and of all materials thereon owned by Contractor; and/or (2) finish the Work by whatever reasonable method College may deem expedient. When College terminates the Contract for one of the reasons state above, Contractor shall not be entitled to receive further payment until the Work is finished. If the unpaid balance of the Contract Price, excluding any remaining Contingency existing at the time of such termination exceeds the

costs and expenses of finishing the Work and any other damages incurred by College, such excess shall be paid to Contractor. If such costs, expenses and damages exceed such unpaid balance, Contractor shall pay the difference to College. This obligation for payment shall survive termination of the Contract.

10.3 Termination by College for Convenience. College may also terminate the Contract at any time for its convenience upon seven (7) days written notice to Contractor specifying the termination date. In the event of termination which is not the fault, in whole or in part, of Contractor, College shall pay to Contractor only such compensation, including reimbursable expenses, undisputedly due under the terms of the Contract Documents for Work properly and timely performed and accepted by College on the Project prior to the termination date. Upon any termination of the Contract, no further payments shall be due from College to Contractor.

10.4 A.R.S. § 38-511. The Contract is subject to, and may be terminated by College in accordance with, the provisions of A.R.S. § 38-511.

10.5 Non-Appropriation. College is a government agency which relies upon the appropriation of funds by its governing body to satisfy its obligations. If College determines that it does not have funds to meet its obligations under the Contract, College shall have the right to terminate the Contract without penalty on the last day of the fiscal period for which funds were legally available for the Project.

10.6 Under no circumstances shall College have any liability for any costs, expenses, overhead, or profits in relation to any Work not actually performed, or for any future or anticipated profits, recovery, damages, expenses, or loses.

SECTION 11 — INSURANCE AND BONDS

11.1 Insurance Requirements

11.1.1 Contractor shall obtain, maintain, and provide verification of insurance coverage set forth in the Contract.

11.1.2 College may, in the Contract Documents, designate additional insured(s) along with College (and their respective employees, members, representatives, agents and affiliates) on all required insurance policies, and all coverage applicable to College under this Section 11.1 and Exhibit B shall apply to such designated additional insured(s) as well.

11.2.3 Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of this Contract.

11.1.4 Subcontractors. Contractor's certificate(s) shall include all Subcontractors as additional insureds under its policies or Contractor shall furnish to College separate certificates and endorsements for each Subcontractor. All coverages for Subcontractors shall be subject to the minimum requirements set forth in the Contract Documents, including Exhibit B of the Contract.

11.2 Bonds and Other Performance Security

11.2.1 When and as set forth in the Contract, Contractor shall provide a performance bond and a payment bond in full compliance with the applicable stator and Contract requirements. If no time is specified in the Contract, the bonds shall be delivered to the College with the signed Contract.

11.2.2 Each such bond shall be executed by a surety company or companies holding a Certificate of Authority to transact surety business in the State of Arizona, issued by the Director of the Arizona Department of Insurance. A copy of the Certificate of Authority shall accompany the bonds.

11.2.3 The bonds shall be made payable and be acceptable to College. The bond forms for the performance and payment bonds shall be in the forms required under A.R.S. § 41-2574.

Performance and Payment Bonds shall be required on all Job Orders in excess of \$50,000. Each of these bonds will be required ONLY from the awarded Contractor upon award of a specific Job Order in excess of \$50,000; unless, the scope of the work and the associated risk deem that requiring bonding for projects less than \$50,000 is in the best interest of the College.

11.2.4 All bonds submitted for this project shall be provided by a company which has been rated AM Best rating of A- or better for the prior four quarters by the latest edition of the "Results Best's Key Rating Guide (Property/Casualty)" published by the A.M. Best Company.

11.2.5 Personal or individual bonds are not acceptable.

SECTION 12 - INDEMNIFICATION

12.1 To the fullest extent permitted by law, Contractor, its successors and assigns shall indemnify and hold harmless the College and its agents, representatives, officers, directors, officials and employees from all demands, proceedings, suits, actions, claims, damages, or losses relating to, arising out of, resulting from or alleged to have resulted from the performance of the Work or failure to comply with Contractor's obligations under the Contract Documents or any Laws, Regulations, or Legal Requirements. Contractors' duty to indemnify and hold harmless College and its agents, representatives, officers, directors, officials and employees shall arise in connection with all demands, proceedings, suits, actions, claims, workers' compensation claims, unemployment claims, damages, losses or expenses (including but not limited to attorney's fees, court costs, and the cost of appellate proceedings) that are attributable to personal or bodily injury, sickness, disease, death or injury to, impairment or destruction of property including loss of use resulting therefrom, only to the extent caused by negligence, recklessness or intentional wrongful conduct of, of Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable.

12.2 The indemnified party shall have the right to approve the legal counsel selected by Contractor or the insurer of the liability, which approval shall not be unreasonably withheld.

12.3 The indemnification, hold harmless provisions and Contractor's Liability Insurance set forth herein shall survive any termination of the Contract.

SECTION 13 — DISPUTE RESOLUTION

13.1 Informal Dispute Resolution. The parties to the Contract agree that time is of the essence in relation to performance of the Contract and completion of the Project, therefore any and all disputes in relation to the Contract will initially be referred to the Project Manager, the Design Professional Representative and/or the Contractor Representative as applicable to the dispute, for immediate resolution. If, after good faith efforts to reach a resolution, none is reached, any party to the dispute may submit the dispute to the Dispute Resolution Representative ("DRR") process set forth below, which is intended to be an expedited process.

13.2 Dispute Resolution Representative ("DRR") Process

13.2.1 The Parties under the Contract agree that all claims and disputes in relation to the Project which are not resolved in the ordinary course of the Project ("Claim" or "Claims") shall, as a prerequisite to any mediation, or litigation of the Claim, first be submitted for resolution between the designated Dispute Resolution Representatives of the Parties as set forth herein (the "DRR Process").

13.2.2 The DRR Process shall be initiated through service of a DRR Notice as set forth below:

(a) for claims by the Contractor or the Design Professional, the DRR Process shall be initiated by the party asserting the claim serving written notice on the College setting forth in detail: (i) the basis for the claim; (ii) the effect of the Claim upon the construction of, and/or Project Schedule for, the

Project; (iii) the specific relief requested, the amount thereof, and how such was calculated; (iv) the parties involved in the Claim, and how they are involved; (v) the specific contract provisions in the Contract Documents (including, if applicable, drawings and specifications) which apply; and (vi) efforts made to date to resolve the Claim.

(b) For claims by the College, the DRR process will be initiated by the College providing written notice to the other parties of the basis and amount of its claim, the parties involved in the Claim, and how they are involved, the provisions in the Contract Documents that apply, and the relief requested.

(c) The DRR Notice shall be hand-delivered and e-mailed to the other parties' designated Dispute Resolution Representatives.

13.2.3 The other parties shall respond in writing to the DRR Notice ("DRR Response") within ten (10) calendar days of receipt of the DRR Notice, setting forth those items set forth in the DRR Notice that they agree with, dispute, and/or have questions concerning. The DRR Response shall be hand-delivered and e-mailed (with read receipt) to the other parties' Dispute Resolution Representatives.

13.2.4 The designated Dispute Resolution Representatives for the Parties to the claim shall then meet as soon as possible and in any event within twenty (20) calendar days of submission of the DRR Notice (regardless of whether a DRR Response has been submitted by all parties involved in the dispute), at a mutually agreed upon time and place, to attempt to resolve the Claim based upon the DRR Notice and DRR Response.

13.2.5 At any time after the first meeting required above, either party may terminate the DRR Process by written notice to the other party.

13.2.6 The parties may agree, in writing, to extend or modify the time limits or other provisions of the DRR process in relation to a specific pending Claim.

13.2.7 Unless otherwise designated in a written notice to the other parties, the Project Manager and the representatives of the Contractor and of the Design Professional shall act as the parties' designated Dispute Resolution Representatives.

13.2.8 If a resolution of the Claim is reached, that resolution shall be set forth in writing and shall be signed by the Parties' designated Dispute Resolution Representative. If the resolution involves a change in any Contract Documents, the Contract Price, the Project Schedule, or any other change requiring a written Change Order or other document, the Parties shall execute an appropriate written Change Order or other document pursuant to the terms of the Contract Documents.

13.3 Litigation

13.3.1 Unless extended by written agreement of the parties involved in the dispute, any Claim not resolved through the DRR process set forth above within five (5) calendar days after the meeting required under Section 13.2.4 above, or after the DRR is terminated pursuant to Section 13.2.5 above, whichever is earlier, shall be resolved through litigation brought in the Superior Court of Arizona in Pima County.

13.3.2 No party in any dispute resolution or court proceeding under this Agreement shall be entitled to an award of its attorneys' fees, costs, and expenses (including expert witness fees) incurred, except as required by law.

SECTION 14 — MISCELLANEOUS PROVISIONS

14.1 Assignment. Neither Contractor nor College shall, without the written consent of the other assign, transfer or sublet any portion of this Agreement or part of the Work or the obligations required by the Contract Documents, any such assignment will be void, will transfer no rights to the purported assignee, and would be a material breach of the Contract.

14.2 Governing Law and Venue. In the performance of the Contract, Contractor shall abide by and conform to any and all Laws, Regulations, or Legal Requirements of the United States, State of Arizona, Maricopa County, and the College of Queen Creek including but not limited to federal and state executive orders providing for equal opportunities, the Federal Occupational Safety and Health Act and any other federal, state, county or local laws applicable to the Contract. This Contract shall be governed by and construed in accordance with the substantive laws of the State of Arizona, without reference to conflict of laws and principles. Exclusive jurisdiction and venue for any action brought to enforce or construe any provision of this Contract shall be proper in the Superior Court of Maricopa County, Arizona and both parties consent to jurisdiction and venue in such court for such purposes.

14.3 Survival. All warranties, representations and indemnifications by Contractor shall survive the completion or termination of this Agreement.

14.4 No Waiver. The failure of either party to enforce any of the provisions of the Contract Documents or to require performance of the other party of any of the provisions hereof shall not be construed to be a waiver of such provisions, nor shall it affect the validity of the Contract Documents or any part thereof, or the right of either party to thereafter enforce each and every provision.

14.5 Project Communications

14.5.1 All communications concerning the performance of the Work or the Project shall be provided to the designated Project Manager and Contractor's Representative set forth in Article 1 of the Contract.

14.5.2 Project communications may be exchanged by e-mail upon the written agreement of the Project Manager and Contractor Representative, but e-mail communications are not binding upon College and cannot change the terms of the Contract or the scope of work, or effectuate any change that requires a written change order. The use of e-mails is for information only.

SECTION 15 - PROVISIONS APPLICABLE SOLELY TO JOB ORDER CONTRACTS (JOC)

Note: The provisions in this Section 15 apply to Job Order Contracts. To the extent a Job Order may include design services, other provisions specific to the Job Order may also apply.

15.1 Additional Definitions.

The definitions set forth in Sections 1 and below shall apply to a Job Order Contracts and Job Orders. In addition, the definitions set forth above shall apply to all Cost-Based Job Orders. Definitions set forth in Special Conditions and the specific job order shall apply.

15.1.1 Contract – Includes specific Job Order Contract and Job Orders issued and agreed to by College and Contractor.

15.2 Job Order Intent.

Each Job Order will be interpreted to include all items reasonably necessary to complete the Project under that Job Order as described in the scope of the Work in that Job Order. All Work shall be performed in a professional manner and all materials used shall be new and of the highest quality and of the type best adapted to their purpose, unless otherwise specified. The Notice to Proceed, and the Start Date established therein, shall be deemed an integral part of the Job Order the same as if set forth therein.

15.3 Contractor’s Proposal for Prepriced/Unit Price Job Orders

15.3.1 The Contractor shall agree to perform all Prepriced Tasks for the Unit Prices set forth in the Construction Task Catalog® multiplied by one of the following Adjustment Factors:

Normal Working Hours Adjustment Factor: 7:00 am to 4:00 pm Monday to Friday, except for Holidays:

_____.

Other Than Normal Working Hours Adjustment Factor: 4:01 pm to 6:59 am Monday to Friday, and all-day Saturday, Sunday and Holidays:

_____.

Normal Working Hours Adjustment Factor (Federal Funded): 7:00 am to 4:00 pm Monday to Friday, except for Holidays:

_____.

Other Than Normal Working Hours Adjustment Factor (Federal Funded): 4:01 pm to 6:59 am Monday to Friday, and all-day Saturday, Sunday and Holidays:

_____.

15.3.2 The Contractor agree to use the following Adjustment Factor to calculate the value of Non Pre-priced Tasks:

Non Pre-priced Task Adjustment Factor:

_____.

15.4 Incidental Design Services

15.4.1 Contractor represents, covenants and agrees, and contractually assumes the obligation to furnish, all of the required incidental Design Services which may be required under a Job Order through properly licensed and experienced Design Professionals in complete accordance with all of the duties imposed on a Design Professional under the Contract Documents, Laws, Regulations, or Legal Requirements.

15.4.2 All Design Documents (and all other Project-related documents, models, computer drawings and other electronic expression, photographs and other expressions CADD, and BIM files and images included) that any Design Professional, Contractor and/or Contractor's Design Professional(s) prepare in connection with a Job Order and the copyrights therein (collectively, the "Instruments of Service") shall be the property of College. Contractor covenants and agrees to execute any additional document reasonably requested by College to confirm such assignment without any additional compensation.

15.5 Construction Services

15.5.1 The following subsections of this Section 15.5 set forth requirements beyond those set forth in Section 4 above which apply to Construction Services performed under a Job Order.

15.5.2 Contractor shall perform the Work using only those firms, team members and individuals designated by Contractor consistent with each Job Order or otherwise approved by College pursuant to the General Conditions. No other entities or individuals may be used without the prior written approval of the Project Manager.

15.5.3 Construction Phasing.

15.5.3.1 Unless otherwise specified in the Job Order, College and public use of the facilities where the Work is being performed and/or areas adjacent thereto is anticipated while the Work is being performed. The Work shall be planned and accomplished so that there will be a minimum of interference and inconvenience to College, staff, students, occupants in the building, and agencies and business in the vicinity, and to other contractors, craftsmen, maintenance personnel, and others who may have to do work in or utilized the affected facilities. Any blockage of building exits or driveways must be coordinated with College in advance and shall be part of the Traffic Control Plan under Section 4.15 of the General Conditions.

15.5.3.2 If applicable, furniture, portable office equipment and wall appurtenances not rigidly fastened to the walls shall be moved by Contractor, protected from damage and replaced to the original position upon completion of the work. If the work required by the Job Order will not allow furniture and portable office equipment to be replaced to its original position, new locations will be designated by College. Incidental costs associated with moving one-piece furnishings up to approximately 150 pounds to perform such tasks as painting, carpet or tile replacement, etc., are considered a general cost of building renovation and shall be included in the Contractor's Contract Price. Costs for large scale or wholesale removal and replacement of large quantities of desks or modular workstations, copiers, multiple full file cabinets, etc. to another location or storage outside the work space, or disassembly and reassembly of modular furniture is not considered part of the Contractor's Contract Price and will be priced separately.

15.5.3.3 The Work shall, so far as practicable, be done in definite sections or divisions and confined to limited areas which shall be completed before work in other sections or divisions are begun.

15.5.4 Work Site Conflicts. In the event of a conflict between Contractor and others in an occupied facility or where other contractors are performing work on the same facility under other contracts, College shall decide the dispute and College's decision shall be final.

15.5.5 Ownership of Work Product. In addition to the provisions of Section 16.5.2 above, and notwithstanding anything to the contrary in this Contract, all Work Product prepared or otherwise created in connection with the performance of this Contract, including the Work, are to be and remain the property of College. For purposes of this provision, "Work Product" shall include all designs, drawings, plans, specifications, ideas, renderings and other information or matter, in whatever form created (e.g., electronic or printed) and in all media now known or hereinafter created. All Work Product shall be considered Work Made for Hire as defined in the United States Copyright Act 17 U.S.C. §101 (Copyright Act). If for any reason any such Work is found not to be a work for hire, Contractor hereby transfers and assigns ownership of the copyright in such Work to College. The rights in this Section are exclusive to College in perpetuity.

15.6 Optional Liquidated Damages

15.6.1 Specific Job Orders. If indicated in a specific Job Order, College may have the right to assess liquidated damages in relation to that specific Job Order as set forth below.

15.6.2 Substantial Completion Liquidated Damages. Contractor acknowledges and agrees that if Contractor fails to obtain Substantial Completion of the Work within the Contract Time, College will sustain extensive damages and serious loss as a result of such failure. The exact amount of such damages will be extremely difficult to ascertain. Therefore, College and Contractor agree that if Contractor fails to achieve Substantial Completion of the Work within the Contract Time, College shall be entitled to retain or recover from Contractor, as liquidated damages and not as a penalty, the per diem amounts set forth in the Job Order commencing from the Substantial Completion Date required under the Job Order until the actual date of Substantial Completion.

15.6.3 Final Completion Liquidated Damages. For the same reasons set forth in Section 16.7.2 above, College and Contractor further agree that if Contractor fails to achieve Final Completion of the Work within the Contract Time, College shall be entitled to retain or recover from Contractor, as liquidated damages and not as a penalty, the per diem amounts set forth in the Job Order commencing from the actual date of Substantial Completion or the Final Completion Date as required under the Job Order, whichever is later, until the actual date of Final Completion.

15.6.4 If no specific liquidated damages amount is specified in a specific Job Order, and the Job Order so specifies, the provisions of PAG Specifications § 108.9 shall determine the amount of liquidate damages applicable to that specific Job Order.

15.6.5 College may deduct liquidated damages assessed pursuant to this Section 16.7 above from any unpaid amounts then or thereafter due Contractor under the Contract or any other agreement between Contractor and College. Any liquidated damages not so deducted from any unpaid amounts due Contractor shall be payable to College at the demand of College, together with interest from the date of the demand at the highest lawful rate of interest payable by Contractor.

15.7 Performance Measurement

15.7.1 Performance Assessment. After the final completion of Work under each Job Order, College, at Contractor's request, shall complete a written evaluation of the performance of Contractor on the Job Order. The evaluation shall consist of completion by College of the College's Customer's Satisfaction Form, as it may be modified by College, in College's sole discretion.

15.7.2 Feedback. The completed Customer Satisfaction Form will be shared with Contractor

as a means of providing feedback regarding Contractor's cost, schedule and quality of performance. Contractor may submit additional information, comment, recommendations or rebuttal for association with the Customer Satisfaction Form.

15.7.3 Comparative Assessment. Contractor's cost, schedule, and quality performance of Job Orders may be compared by College periodically to the performance of other like-situated contractors. The results of these comparisons may be provided to Contractor. Contractor understands that these assessments will necessarily involve significant subjectivity. Contractor agrees to this process and agrees further that the application of subjectivity in these assessments shall not form the basis for any claim or cause of action of any form or nature whatsoever.

15.7.4 Consideration in Assignment of Work. Contractor's record of cost, schedule and quality performance, and comparative assessments shall be significant considerations in College's determination whether to award future Job Orders. Contractor agrees that any determination by College not to award future Job Orders based on performance will be at the sole discretion of College.