

SECTION 00700

UNIVERSITY OF MARYLAND, BALTIMORE

STANDARD GENERAL CONDITIONS OF CONSTRUCTION CONTRACT

Revised: 12/14/81 - UMAB
03/04/82 - UMAB
01/03/85 - UMAB
11/04/88 - UMAB
03/22/91 - UMAB
06/20/91 - UMAB
11/06/91 - UMAB
07/02/92 - UMAB
08/04/93 - UMAB
01/14/94 - UMAB
12/10/96 – UMAB
08/12/13 - UMAB
02/05/14 – UMB
12/02/16 – UMB
10/31/17 – UMB
07/24/2020 – UMB
10/12/2020 - UMB

TABLE OF CONTENTS

<u>SECTION 1: DEFINITIONS AND RESPONSIBILITIES</u>	2
1.01 <u>DEFINITIONS</u>	2
1.02 <u>UNIVERSITY'S RESPONSIBILITIES</u>	7
1.03 <u>CONTRACTOR'S RESPONSIBILITIES</u>	7
<u>SECTION 2: AWARD AND EXECUTION OF CONTRACT</u>	10
2.01 <u>AWARD</u>	10
2.02 <u>EXECUTION OF CONTRACT AND AMENDMENT</u>	10
2.03 <u>FAILURE TO EXECUTE CONTRACT:</u>	11
2.04 <u>PERFORMANCE AND PAYMENT BONDS</u>	11
2.05 <u>CERTIFICATIONS REQUIRED BY LAW</u>	12
2.06 <u>CONTRACT DOCUMENTS</u>	13
2.07 <u>SHOP DRAWINGS</u>	16
<u>SECTION 3: SCOPE OF THE WORK</u>	18
3.01 <u>INTENT OF THE CONTRACT DOCUMENTS</u>	18
3.02 <u>GENERAL CONDITIONS CONTROLLING</u>	18
3.03 <u>DIFFERING SITE CONDITIONS</u>	18
3.04 <u>SITE INVESTIGATION</u>	19
3.05 <u>CONDITIONS AFFECTING THE WORK</u>	19
3.06 <u>CHANGES IN THE WORK</u>	19
3.07 <u>UNAUTHORIZED WORK</u>	21
<u>SECTION 4: CONTROL OF THE WORK</u>	22
4.01 <u>AUTHORITY OF THE ARCHITECT</u>	22
4.02 <u>CONFORMITY WITH CONTRACT REQUIREMENTS</u>	22
4.03 <u>ADJACENT WORK</u>	23
4.04 <u>CONTROL BY THE CONTRACTOR</u>	23
4.05 <u>COOPERATION WITH UTILITIES</u>	24
4.06 <u>AUTHORITY AND DUTIES OF UNIVERSITY INSPECTORS</u>	25
4.07 <u>INSPECTION OF THE WORK</u>	25
4.08 <u>REMOVAL OF DEFECTIVE WORK</u>	26
4.09 <u>MAINTENANCE OF WORK DURING CONSTRUCTION:</u>	26
4.10 <u>FAILURE TO MAINTAIN ENTIRE PROJECT</u>	27
4.11 <u>UNIVERSITY'S RIGHT TO DO WORK:</u>	27
4.12 <u>AUTHORITY OF OFFICE OF ENVIRONMENTAL HEALTH AND SAFETY</u>	28
4.13 <u>IDENTIFICATION:</u>	28
4.14 <u>NOISE CONTROL:</u>	28
4.15 <u>PARKING:</u>	29
4.16 <u>KEYS:</u>	29
4.17 <u>PRESS RELEASES:</u>	29
<u>SECTION 5: MATERIALS</u>	30
5.01 <u>GENERAL</u>	30
5.02 <u>STORAGE AND HANDLING OF MATERIALS</u>	32
5.03 <u>SUBSTITUTION</u>	33
5.04 <u>APPROVED EQUALS</u>	33
5.05 <u>CONTRACTOR'S OPTIONS</u>	33
5.06 <u>TESTS</u>	33
5.07 <u>BUY AMERICAN STEEL</u>	34
5.08 <u>SALES TAX</u>	34
5.09 <u>HAZARDOUS MATERIALS:</u>	34

SETTING 6: LEGAL RELATIONS AND RESPONSIBILITIES	36
6.01 <u>LAWS TO BE OBSERVED</u>	36
6.02 <u>PERMITS AND LICENSES</u> :.....	36
6.03 <u>PATENTED DEVICES, MATERIALS, AND PROCESSES</u>	37
6.04 <u>LAND, AIR, AND WATER POLLUTION</u>	37
6.05 <u>CONTRACTOR'S LIABILITY INSURANCE</u>	39
6.06 <u>BUILDER'S RISK INSURANCE</u>	41
6.07 <u>ASSIGNMENTS</u>	43
6.08 <u>SEPARATE CONTRACTS</u>	43
6.09 <u>PAYMENT OF SUBCONTRACTORS</u>	43
6.10 <u>RELATIONSHIP OF CONTRACTOR TO PUBLIC OFFICIAL AND EMPLOYEES</u> ...	44
6.11 <u>NO WAIVER OF LEGAL RIGHTS</u>	45
6.12 <u>COVENANT AGAINST CONTINGENT FEES</u>	45
6.13 <u>ASSIGNMENT OF ANTITRUST CLAIMS</u>	45
6.14 <u>FEDERAL PARTICIPATION</u>	46
6.15 <u>DISPUTES</u>	46
6.16 <u>CLAIMS</u>	47
6.17 <u>VARIATIONS IN ESTIMATED QUANTITIES</u>	48
6.18 <u>PRE-EXISTING REGULATIONS</u>	48
6.19 <u>FINANCIAL DISCLOSURE</u>	48
6.20 <u>POLITICAL CONTRIBUTION DISCLOSURE</u>	49
6.21 <u>COMPLIANCE WITH LAWS</u>	49
6.22 <u>RECIPROCITY</u> :.....	49
6.23 <u>DEWATERING</u>	49
 SECTION 7: PROSECUTION AND PROGRESS OF THE WORK	 51
7.01 <u>NOTICE TO PROCEED</u>	51
7.02 <u>PROJECT SIGNS</u> :.....	51
7.03 <u>PROSECUTION OF THE WORK</u> :.....	52
7.04 <u>PUBLIC CONVENIENCE AND SAFETY</u>	52
7.05 <u>BARRICADES AND WARNING SIGNS</u>	53
7.06 <u>PRESERVATION, PROTECTION, AND RESTORATION OF PROPERTY</u>	53
7.07 <u>PROGRESS SCHEDULE AND TIME</u>	54
7.08 <u>PROGRESS PHOTOGRAPHS</u>	56
7.09 <u>SUSPENSION OF THE WORK</u>	56
7.10 <u>CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE CONTRACT</u>	57
7.11 <u>UNIVERSITY'S RIGHT TO TERMINATE FOR ITS CONVENIENCE</u>	57
7.12 <u>TERMINATION FOR DEFAULT -- DAMAGES FOR DELAY -- TIME</u> <u>TENSIONS</u>	62
7.13 <u>PARTIAL ACCEPTANCE</u>	64
7.14 <u>FAILURE TO COMPLETE ON TIME/LIQUIDATED DAMAGES</u>	64
7.15 <u>SUBSTANTIAL COMPLETION AND FINAL INSPECTION</u>	64
7.16 <u>CLEANING-UP</u>	66
7.17 <u>GUARANTEES</u>	66
7.18 <u>NOTICE TO UNIVERSITY OF LABOR DISPUTES</u>	66
 SECTION 8: PAYMENTS	 68
8.01 <u>SCOPE OF PAYMENT</u> :.....	68
8.02 <u>FORCE ACCOUNT WORK</u> :.....	71
8.03 <u>CASH ALLOWANCES</u>	73
8.04 <u>CERTIFICATES OF PAYMENT</u>	73
8.05 <u>DEDUCTIONS FOR UNCORRECTED WORK</u>	74
8.06 <u>PAYMENTS WITHHELD</u>	74
8.07 <u>CORRECTION OF WORK BEFORE FINAL PAYMENT</u>	75
8.08 <u>ACCEPTANCE AND FINAL PAYMENT</u>	76
8.09 <u>INTEREST</u>	76

8.10	<u>AUDITS BY THE UNIVERSITY</u>	76
8.11	<u>MULTI-YEAR CONTRACTS</u>	77
8.12	<u>PAYMENT OF STATE OBLIGATIONS</u>	77
<u>SECTION 9: EMPLOYEES, SUBCONTRACTORS, AND WORK CONDITIONS</u>		78
9.01	<u>EMPLOYEES AND WORKMANSHIP:</u>	78
9.02	<u>NON-DISCRIMINATION-EMPLOYMENT POLICIES</u>	80
9.03	<u>SUBCONTRACTS</u>	84
9.04	<u>RELATION OF CONTRACTOR AND SUBCONTRACTOR</u>	84
9.05	<u>MINORITY BUSINESS ENTERPRISE UTILIZATION</u>	86
9.06	<u>PREVAILING WAGE RATES</u>	88
9.07	<u>APPRENTICESHIP REQUIREMENTS FOR PUBLIC WORKS</u> <u>CONTRACTS</u>90	
9.08	<u>CONSTRUCTION SAFETY AND HEALTH STANDARDS</u>	91

END OF TABLE OF CONTENTS

SECTION 1: DEFINITIONS AND RESPONSIBILITIES

1.01 DEFINITIONS (these definitions shall apply to the entire Contract unless specifically noted):

"Addendum" -- Means a revision or clarification to the original forms, conditions, Specifications and Drawings, made prior to execution of the Contract. Addendums are part of the Bid Documents.

"Any" -- Means 'any and all' whenever more than one item would be applicable or required to complete the Work of the Project in accordance with the Contract Documents.

"The Architect" -- A person registered in the State of Maryland to practice architecture and commissioned by the University to serve as architect on this project. If no person is appointed to serve as Architect, from time to time, then the term "Architect" shall refer to the Office of Facilities Management of the University. Whenever the contract documents are prepared by a registered Engineer in independent practice, and no Architect is employed, each reference to "Architect" refers to the Engineer. If Design/Build project, the term "Architect" shall refer to the person registered in the State of Maryland to practice architecture and commissioned by the Design/Build Contractor to serve as Architect on this project.

"Architect/Engineer (A/E)" -- Means the Architect as defined above.

"As indicated", "As Shown," "As Specified" -- Means "as indicated", shown or specified in the Contract Documents.

"Change Order" -- A written order signed by the responsible procurement officer, directing a Contractor to make changes in implementation of the construction phase of the project which the Contract authorizes the procurement officer to order with or without the consent of the Contractor. Also referred to as "Contract Amendment".

"Contract" -- The written agreement executed between the University and the Contractor, covering the performance of the work and furnishing of labor, services, equipment, and materials, and by which the University is obligated to compensate him at the mutually established and accepted rate or price. The Contract shall include the Procurement Request, the Procurement Response, contract forms and bonds, these Standard Conditions, and special conditions pertaining to work on the campus involved, drawings, specifications, addenda, supplemental specifications, all special provisions, all technical provisions, all plans and notices to proceed, any Change Orders and Supplemental Agreements (and any amendments or modifications of any of these from time to time) that are required to complete the construction of the work in an acceptable manner, including authorized extensions thereof, and any other matter agreed to as being part of the contract in a component of the contract. In the event that, the Procurement Request requires an amendment of the Contract as a condition to the performance of or payment for any portions of the work such amendment shall be a part of the Contract. ("Construction Amendment") (Said documents are sometimes referred to as the "contract documents.")

"The Contractor" -- The person or entity having direct contractual relation with the University for the Execution of the Work. If the Contractor hereunder is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder. The Contractor shall indicate its Federal Tax Identification or Social Security Number following its name on the first page of the Contract. Sometimes the successful Procurement Responder shall be referred to as the Contractor in connection with the period prior to effectiveness of the Contract but after the Contract has been awarded, as the context may require.

"Contract Time and Completion Date" -- The number of calendar days shown in the specifications indicating the time allowed for the completion of the Work. In case a calendar date of completion is shown, instead of the number of calendar days, such work shall be completed on or before that date.

Critical Path Method (CPM) - A scheduling/management tool showing a network of work elements or activities for a construction project.

"Day" -- Means calendar day unless otherwise designated.

"Drawings" -- The Drawings are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the work, generally including plans, elevations, sections, details, schedules and diagrams.

"Or Equal," "Similar To," or similar expressions -- Means the judgment of "equality" or "acceptability" rests with the University.

"Indicated" -- See "As indicated" above.

"Notice to Proceed" -- A written notice to the Contractor of the date on or before which he shall begin the prosecution of the Work.

"Owner" -- Means the University as defined below.

"Performance Bond and Payment Bond" -- The security in the form approved by the University and executed by the Contractor and his surety, and paid for by the Contractor, as a guarantee that he will pay in full all his bills and accounts for materials and labor used in the construction of the work, as provided by law, and completely perform the Work.

"Plans" -- The official drawings approved by the University as part of the contract documents, including those incorporated in the contract documents by reference.

"The President" -- Shall be understood to mean the President of the University of Maryland, Baltimore or his or her designee.

"Procurement Officer" -- The person designated by the President and authorized by the University in accordance with law or regulations to formulate, enter into, or administer contracts or make written determinations and findings with respect to them.

"Procurement Request" or "Solicitation" -- Refers to the Invitation to Bid, or Request for Proposal or other procurement solicitation in connection with the Work.

"Procurement Responder" -- Refers to the person or entity submitting a Procurement Response. The "Successful Procurement Responder" refers to the Procurement Responder to whom the Contract is awarded.

"Procurement Response" -- Refers to the response submitted to a Procurement Request.

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

"Contractor's Project Manager" The Project Manager is a Contractor employee who will be involved from Notice to Proceed to Construction Close-Out (Completion of the Punch List work included with the Substantial Completion Certificate). This person will be responsible for the overall management, administration, communication and completion of this project for the Contractor.

"University's Project Manager" -- This person will represent the University and will be responsible for the overall management, administration, communication and completion of this project for the University.

"Related Sections" -- A phrase in the specifications to direct the reader to find provisions on other work which is directly related to the subject section."

"Repair" -- Where used in the contract documents shall be taken to mean to restore after injury, deterioration, or wear; to mend, to renovate by such means as appropriate and to supply such materials and labor as necessary to render the item to be repaired sound, solid, true, plumb, square, even, smooth and fully serviceable. Upon completion of such repair the items must be, unless otherwise stated, rendered to such conditions as to present a first class finished work, or in instances where the repaired item serves as a base for additional finish, the repaired work must be such as to permit a first class finish, to be applied without extra cost to the University. When the word "repair" is used in connection with machinery or mechanical equipment it shall mean, in addition to the above, rendering the equipment completely serviceable and efficient ready for normal use for which it was intended originally.

"Replace," "Restore," "Renew," "Make Good," "Reconstruct" and similar expressions -- Means to "provide", using new materials, as applicable to the type of work involved.

"Specifications" -- The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the work, and performances of related services.

"State" -- Refers to the State of Maryland.

"Subcontractor" -- As employed herein includes only those having a direct contract with the Contractor. It includes one who furnishes material worked to a special design according to the plans and specifications for the Work. It excludes one who merely furnishes material not so worked.

"Superintendent" The Superintendent is a Contractor employee who will be involved onsite (generally 100% of the time) from start of Construction field activities to Construction Close-Out and is able to make decisions while in the field. This person will be responsible for the overall direct supervision of the subcontractors, daily coordination of the work on site, maintenance of the schedule, on site management such as material delivery, outages, etc. The Superintendent should have knowledge of safety hazards and MOSHA requirements and the ability to interpret contract plans and specifications for the subcontractors.

"Supplemental Agreement" -- A written agreement covering added or changed work which is beyond the scope of the Contract and Change Orders. A Supplemental Agreement becomes a part of the Contract when approved and properly executed by all parties to the Contract.

"Surety" -- The corporate body bound with and for the Contractor, for the full and complete performance of the Contract and for the payment of all debts pertaining to the Work.

"University" -- Refers to the University of Maryland, a body corporate and an agency of the State of Maryland. In particular, the University refers to the University of Maryland, Baltimore or another campus of the University as specified in the Contract, or the authorized representative that issues the Procurement Request.

"Work" -- Work shall be understood to mean the furnishing of all labor, materials, equipment, services, utilities, and other incidentals necessary to the successful completion of the project and the carrying out of all the duties and obligations imposed by the Contract.

"Written Notice" -- Shall be deemed to have been duly served if delivered in person to the individual or to the member of the firm or to an office of the corporation to whom it is intended, or if delivered to or sent by registered mail, to the last business address known to him who gives notice.

1.02 UNIVERSITY'S RESPONSIBILITIES:

- A. The University shall furnish, upon request, any available record drawings, utility plans, and other data pertinent to existing conditions to the extent that such material is available. The University, however, can offer no assurances that such drawings, property description, or other data are accurate, current or complete.
- B. Information under the University's control shall be furnished by the University with reasonable promptness to avoid delay in the orderly progress of the work.
- C. The foregoing are in addition to other duties and responsibilities of the University enumerated in the Contract.
- D. The State shall not assume any obligation to indemnify, hold harmless, or pay attorney's fees that may arise from or in any way be associated with the performance or operation of this agreement [21.07.03.23]

1.03 CONTRACTOR'S RESPONSIBILITIES: Notwithstanding anything in this Contract to the contrary, the following items are in addition to the Contractor's obligation set forth elsewhere in the Contract.

- A. The Contractor shall supervise and direct the Work, using his best skill and attention. He solely shall be responsible for all construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work under the Contract.
- B. The Contractor shall be responsible to the University for acts and omissions of his employees, his agents or subcontractors and their agents and employees, and other persons performing any of the Work under a contract with the Contractor.
- C. The Contractor shall not be relieved from his obligation to perform the Work in accordance with the contract documents, either by the Contract, or by inspections, tests, or approvals required or performed any person in connection with the Work.
- D. The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, and the contract documents, and shall not encumber the site unreasonably with any materials or equipment. The Contractor shall submit proof of a Confined Space Program to UMB's Office of Environmental Health & Safety (EHS), 714 W. Lombard Street, Baltimore, MD 21201-1041.
- E. Cutting and Patching of Work:

- (1) The Contractor shall be responsible for all cutting, fitting, or patching that may be required to complete the Work or to make its several parts fit together properly.
 - (2) The Contractor shall not alter, damage or endanger any portion of the Work of the University or any separate contractors by cutting, patching, otherwise altering any work or excavation. The Contractor shall not cut or otherwise alter the work of the University and of such separate contractor.
 - (3) The Contractor shall not unreasonably withhold from the University or any separate contractor his consent to cutting or otherwise altering the Work.
- F. The Contractor shall perform the Work in accordance with the lines, grades, typical cross sections, dimensions, and other data required by the contract documents as modified from time to time, including the furnishing of all materials, services, implements, machinery, equipment, tools, supplies, transportation, labor, and all other items necessary for the satisfactory prosecution and completion of the project in full compliance with the requirements of the contract documents.
- G. Indemnification:
- (1) To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the University System of Maryland, the University and any Client University, the State of Maryland, the Architect, the Engineer, and the local government of the city or county where the Project is located (if requested by the University), and their agents and employees, from and against all claims, damages, losses, and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of the Work, provided that any such claim, damage, or loss or expense: (1) is attributable to bodily injury, sickness, disease, death, or personal injury or injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent or willful act or omission of the Contractor, any Subcontractor or Sub-subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, regardless of whether or not the claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Section. This obligation is not intended to be or to imply a waiver of the sovereign or governmental immunity of the University, the State, the Client University, or any local jurisdiction where the Project is located.
 - (2) In any and all claims against the University or the State of Maryland or the Architect or any of their agents or employees by any employee of the Contractor, any Subcontractor or Sub-subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or any Subcontractor or Sub-subcontractor under worker's or workmen's compensation acts, disability benefit acts or other employee benefit acts.

- (3) The obligations of the Contractor under this Section shall not extend to the liability of the Architect, Engineer, or their agents or employees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the Architect or Engineer, or their agents or employees provided such giving or failure to give directions or instructions, is the primary cause of the injury or damage.

END OF SECTION 1

SECTION 2: AWARD AND EXECUTION OF CONTRACT

2.01 AWARD

- A. The University reserves the right to cancel the award of any Contract before the execution of the Contract by all parties without any liability on its part.
- B. The successful Procurement Responder will be given written notice of award stating that his Procurement Response has been accepted and that he has been awarded the Contract.
- C. When the Procurement Responder consists of more than one person or entity, each such person or entity participating in the Procurement Response will be held jointly and severally responsible as a Procurement Responder for the duties of the Contractor.

2.02 EXECUTION OF CONTRACT AND AMENDMENT:

The University's Department of Procurement Services, after a Notice of Award has been issued, shall forward the formal contract form, and other applicable contract forms (including but not limited to, Contract Affidavit, Minority Business Participation Exhibit II, Performance and Payment Bonds,) to the Contractor for execution and from time to time shall forward to Contractor the forms required in connection with any Contract or the Contract Amendment for construction, as applicable. The Contractor shall execute the Contract form or the Contract Amendment, and other applicable forms and return them along with required certificate(s) of insurance to the Department of Strategic Sourcing and Acquisitions Services within ten (10) days after receipt of same.

After receipt of the properly executed contract forms, and other applicable forms, the Department of Strategic Sourcing and Acquisitions Services will execute the Contract or the Contract Amendment, as applicable, and forward the Contractor a copy.

The Contract and/or Contract Amendment shall not be in effect until and unless it is executed by all parties and approved by the Board of Public Works or other external parties [if such approval(s) is required].

2.03 FAILURE TO EXECUTE CONTRACT:

Failure of the Contractor to execute the Contract or the Contract Amendment and file acceptable bonds within the time provided in Section 2.02 and Section 2.04D shall be just cause for the payment of damages guaranteed by the bid bond or other securities at an amount equal to the increased contract price paid by the University as a result of the failure of the Contractor to execute the Contract, or the Contract Amendment, or the amount set forth in The Procurement Response as liquidated damages, whichever is higher.

In the event that the damages sustained by the University exceed the amount of the bid security, the University reserves the right to proceed against the Contractor for the balance of its damages.

2.04 PERFORMANCE AND PAYMENT BONDS:

(Required when initial contract exceeds \$100,000.00) [21.07.02.10]

- A. The University shall provide to the Contractor for execution copies of the Performance and Payment Bonds along with the contract form. The bonds must be executed and returned to the University as provided in the Contract. The premium for the bonds shall be paid by the Contractor.
- B. The bonds shall be in the full amount of the contract price.
- C. The Contractor shall adjust the amount of the bonds from time to time to reflect any increase or decrease in the contract price over the amount of \$100,000. For any such additions, the Contractor will be reimbursed by the University in the amount of the actual amount of the increased bond cost. For any such decrease, the Contractor will credit the University the actual amount of the decreased bond cost. The Contractor shall provide updated bonds that reflect the increase or decrease within ten (10) working days of the fully executed contract modification.
- D. The Contractor shall deliver fully executed 100% Performance and Payment Bonds to UMB's Department of Strategic Sourcing and Acquisition Services within ten (10) working days after the fully executed Contract is sent to the Contractor.

2.05 CERTIFICATIONS REQUIRED BY LAW:

- A. **Cost and Price Certification:** [21.07.01.23]
 - 1. The Contractor, by submitting cost or price information certifies that, to the best of its knowledge, the information submitted is accurate, complete and current as to a mutually determined specified date prior to the conclusion of any price discussions or negotiations for:
 - (a) a negotiated contract, if the total contract price is expected to exceed \$100,000 or a smaller amount set by the Procurement Officer; or
 - (b) a change order or contract modification expected to exceed \$100,000, or a smaller amount set by the Procurement Officer.
 - 2. The price under the contract and any change order, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date agreed upon between the parties, was inaccurate, incomplete or not current.
 - 3. If the parties are negotiating for a change order which is expected to exceed \$100,000, the Contractor shall truthfully execute a cost and price information certificate on a form provided by the University. The certificate will provide, in relevant part that the Contractor's price and cost information is accurate, complete and current as of mutually determined date prior to the change order.

B. **Contingent Fee Prohibition:**

At the time the parties execute the Contract, if not sooner, the Contractor shall truthfully execute a certificate on a form provided by the University which provides that he has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent, or paid any fee or any other consideration contingent on the making of the Contract.

C. **Corporation Registration and Tax Payment Certification:**

The Contractor represents and warrants, and shall truthfully execute a certificate on a form provided by the University so stating, (1) that it is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter may be necessary, to remain so qualified, and (2) that it is not in arrears with respect to the payment of any monies due and owing the University or the State of Maryland, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and it shall not become so in arrears during the term of this Contract.

2.06 CONTRACT DOCUMENTS:

A. The contract documents are complementary. That which is called for by any one shall be as binding as if called for by all.

- (1) Intent of the documents is to include all work necessary for proper completion of the Project (excluding any part that is excluded from the Contract) ready for continual efficient operation. It is not intended, however, to include any work not reasonably inferable that is not explicitly described in the Contract Document.
- (2) Clarification - Whenever the Contractor has questions, the Contractor should obtain clarification of all questions which may have arisen as to intent of the contract documents or any actual conflict between two or more items in the contract documents. Should the Contractor have failed to obtain such clarification, then the University may direct that the Work proceed by any method indicated, specified, or required by the contract documents in the interest of maintaining the best construction practice. Such direction by the University shall not constitute the basis for a claim for extra costs by the Contractor. The Contractor acknowledges that it has had the opportunity to request clarification prior to submitting its bid to the University and therefore agrees that he is not entitled to claim extra costs as a result of such clarification.
- (3) Jargon -- Work described in words that have a well-known technical or trade meaning shall be held to refer to such recognized standard use.
- (4) Identification -- The Contract documents shall be signed in triplicate by the University and the Contractor.
- (5) Singular or plural references shall mean one or more like terms of work as necessary to complete the Work, unless specifically directed otherwise.
- (6) Typographical and spelling errors in the specifications will be interpreted by the A/E for their meaning and intent.

- (7) The following order of precedence shall be used when there is a conflict in the Contract Documents. When the order of precedence cannot be used to resolve a conflict, then the more expensive labor, material or equipment shall be provided.
- (a) The written agreement between the University and the Contractor which generally incorporates the Solicitation;
 - (b) Supplementary Conditions (Section 00800)
 - (c) General Conditions (Section 00700)
 - (d) Specifications, Divisions 1 through 16
 - (e) Drawings, in the following order of precedence:
 - (i) Notes on Drawings in order of scale with largest first
 - (ii) Details in order of scale with largest first
 - (iii) Figured Dimensions
 - (iv) Scaled Dimensions
- B. Drawings -- The Contractor shall do no Work without proper drawings and instructions. Drawings are in general drawn to scale and symbols are used to indicate materials and structural and mechanical requirements. When symbols are used those parts of the drawings are of necessity diagrammatic and it is not possible to indicate all connections, fittings, fastenings, etc., which are required to be furnished for the proper execution of the work. Diagrammatic indications of piping, ductwork and conduit, and similar items in the work are subject to field adjustment in order to obtain proper grading, fitting passage over, under or past obstructions, to avoid exposure in finished rooms and unsightly and obstructing conditions. The Contractor shall make these adjustments at no increased cost to the University.
- (1) Copies Furnished -- The University will furnish the Contractor without cost, an electronic set of drawings and specifications.
 - (2) Copies At The Site -- The Contractor shall keep in the job site office a complete set of all drawings, specifications, shop drawings, schedules, etc., in good order and available to the Architect and the University.
 - (3) Ownership -- All contract documents remain the property of the University. The Contractor shall not use any of them on other work and shall return to the University upon completion of the work.
- C. Large Scale Detail Drawings -- When the University directs, the Architect shall furnish additional instructions, in the form of large scale developments of the drawings used for bidding, or to amplify the specifications for the proper execution of the Work. These shall be true developments of the bidding documents and reasonably inferable therefrom. The Work shall be executed in conformity therewith.

- D. Dimensions -- The Contractor shall carefully check all dimensions prior to execution of the particular portion of the Work affected. Whenever inaccuracies or discrepancies are found, the Contractor shall consult the Architect prior to any construction or demolition. Should any dimensions be missing, the Architect will be consulted and supply them prior to execution of the Work unless, under the specifications, the Contractor is responsible for determining dimensions. Dimensions for items to be fitted into constructed conditions at the job will be taken at the job and will be the responsibility of the Contractor. The obvious intent of the documents or obvious requirement dictated by conditions existing or being constructed supersedes dimensions or notes which may be in conflict therewith. Whenever a stock size manufactured item or place of equipment is specified by its normal size, it is the responsibility of the Contractor to determine the actual space requirements for setting or entrance to the setting space. No extra cost will be allowed by reason of work requiring adjustments in order to accommodate the particular item of equipment.
- E. Whenever new work, building, addition, or portions thereof are not accurately located by plan dimensions, the Architect will supply exact position for execution of the Work.

2.07 SHOP DRAWINGS:

- A. The Contractor shall submit, for the Architect's approval at such time as agreed in the Contractor's schedule, shop drawings, including setting drawings, and schedules as required by the University or the Architect for the work of the various subcontractors. These drawings shall be prepared in conformity with the best practice and standards for the trade concerned. Due regard shall be given to speed and economy of fabrication and erection.
- B. All shop drawings must show the name of the project and the University Contract number.
- C. Size of Drawings -- All shop drawings and details submitted to the Architect for approval shall be printed on sheets of the same size as the contract drawings prepared by the Architect. When a standard of a fabricator is of such size to be printed more than one drawing on a sheet of the size of the Architect's drawing, this is acceptable. Sheets larger than the Architect's drawing will not be accepted except when specifically permitted by the University. Shop detail supplied on a sheet of letter size 8-1/2" x 11" is acceptable for schedules and small details.
- D. Items For Which Shop Drawings Will Be Required -- Shop drawings will be required for all items which are specifically fabricated for the work or when the assembly of several items is required for a working unit. Shop drawings are required for all items designated in the contract specifications, for all reinforcing and structural steel, specially made or cut masonry units, miscellaneous metal work, specially made millwork, plaster molds, or moldings, marble and slate, special rough hardware, and all heating, ventilating, plumbing, and electrical items requiring special fabrication, or detail connections including refrigeration, elevators, dumb waiters, laboratory equipment, ducts, etc. Refer to submittal section(s) of the specifications.
- E. Copies Required -- Contractor shall supply two (2) copies for the Architect's file and eight (8) copies for the University's Office of Facilities Management, in addition to such copies as the Contractor may desire for his own use.
- F. Examination and Approval -- The Architect will examine shop drawings with reasonable promptness, noting desired corrections or granting approval or rejecting them.

- G. Field Dimensions and Conditions -- The Architect is not responsible for the check of dimensions or existing conditions in the field. This is the sole responsibility of the Contractor.
- H. Resubmission -- When the Architect or the University notes desired corrections or rejects the drawings, the Contractor shall resubmit the drawings promptly with corrective changes, without additional compensation.
- I. Contractor's Responsibility -- Unless the Contractor has, in writing, notified the Architect to the contrary, at the time of submission, the University and the Architect may and will assume that the drawings are in conformity with the existing contract documents and do not involve any change in the contract price or any change which will alter the space within the structure or alter the nature of the building from the contemplated in the contract documents.
- J. University's and Architect's Notations -- Should the Contractor consider any rejection of the University's and Architect's notation on the shop drawings to require an increase in the cost of the work from that contemplated in the Contract documents, then the Contractor shall desist from further action relative to the item it questions and shall notify the Project Manager, Procurement Officer and Architect, in writing, within five (5) days of the additional or less cost involved. No work relative to the item shall be executed until the entire matter is clarified and the Contractor is ordered by the University to proceed. Failure of the Contractor to serve written notice as above required shall constitute a waiver of any claim in relation thereto. Similarly, should the University's and Architect's notation or change involve less work than is covered by the contract drawings, the Contractor shall allow the University an equitable credit resulting from the change in the work.

END OF SECTION 2

SECTION 3: SCOPE OF THE WORK:

3.01 INTENT OF THE CONTRACT DOCUMENTS:

It is the intent of the contract documents to show all the work necessary to complete the project.

3.02 GENERAL CONDITIONS CONTROLLING:

Subject to Section 2.06 A (7), in event of a conflict between these General Conditions and any other provision of the contract documents, these General Conditions shall prevail unless such other provision expressly provides to the contrary.

3.03 DIFFERING SITE CONDITIONS: [21.07.02.05]

- A. The Contractor shall promptly, and before such conditions are disturbed, notify the Procurement Officer in writing of: (1) Subsurface or latent physical conditions at the site differing materially from those indicated in this Contract, or (2) unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in this Contract. The Procurement Officer shall promptly investigate the conditions, and if he finds that such conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed as a result of such conditions, an equitable adjustment shall be made and the Contract modified in writing accordingly.
- B. No claim of the Contractor under this clause shall be allowed unless the Contractor has given the notice required in paragraph A above provided, however, the time prescribed therefore may be extended by the University.
- C. No claim by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this Contract.

3.04 SITE INVESTIGATION:

This provision is in addition to any other provision in the Contract relating to Site Investigation. [21.07.02.06]

The Contractor acknowledges that he has investigated and satisfied himself as to the conditions affecting the work, including but not restricted to those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power, roads and uncertainties of weather, river stages, tides or similar physical conditions at the site, the conformation and conditions of the ground, the character of equipment, and facilities needed preliminary to and during prosecution of the work. The Contractor further acknowledges that he has satisfied himself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the University, as well as from information presented by the drawings and specifications made a part of the Contract. Any failure by the Contractor to acquaint himself with the available information may not relieve him from responsibility for estimating properly the difficulty or cost of successfully performing this work. The State assumes no responsibility for any conclusions or interpretations made by the Contractor on the basis of the information made available by the University.

3.05 CONDITIONS AFFECTING THE WORK:

The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the Work and the general and local conditions which affect the Work or the cost thereof. Any failure by the Contractor to do so will not relieve him from responsibility for successfully performing the Work without additional expense to the University. The Contractor agrees not to place any credence in any understanding or representation concerning conditions made by any University employee or agents prior to the execution of this Contract unless such understanding or representation is expressly stated in the Contract.

3.06 CHANGES IN THE WORK: [21.07.02.02]

- A. A procurement officer of the University's Department of Strategic Sourcing and Acquisition Services may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a Change Order, make any change in the Work within the general scope of the Contract, including but not limited to changes:
 - (1) In the specifications (including drawings and designs);
 - (2) In the method or manner of performance of the Work;
 - (3) In the University-furnished facilities, equipment, materials, services, or site; and/or,
 - (4) Directing acceleration in the performance of the Work.
- B. Any other written order or oral order (which terms as used in this paragraph B shall include direction, instruction, interpretation, or determination from the Procurement Officer which causes any such change) shall be treated as a Change Order under this clause, provided that the Contractor gives the procurement officer written notice stating the date, circumstances, and source of the order, and that the Contractor regards the order as a Change Order.
- C. Except as herein provided, no order, statement, or conduct of the Procurement Officer or other University personnel shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment hereunder.
- D. If any change under this Section causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this Contract, whether or not changed by any order, an equitable adjustment shall be made and the Contract modified in writing accordingly; provided, that except for claims based on defective specifications, no claim for any change under paragraph B above shall be allowed for any costs incurred more than twenty (20) days before the Contractor gives written notice as therein required: provided further, that in the case of defective specifications for which the University is responsible, the equitable adjustment shall include any increased cost reasonable incurred by the Contractor in attempting to comply with such defective specifications.
- E. If the Contractor intends to assert a claim for an equitable adjustment under this Section, it shall within thirty (30) days after receipt of a written Change Order under paragraph A above or the furnishing of written notice under paragraph B above, submit to the procurement officer a written statement setting forth the general nature and monetary extent of such claim unless this period is extended by the University. The statement of claim hereunder may be included in the notice under paragraph B above.

- F. No claim by the Contractor for an equitable adjustment hereunder shall be allowed or asserted after final payment under this Contract.
- G. In order to facilitate review of quotations for extras or credits, all proposals (except those so minor that their propriety can be seen by inspection) shall be accomplished by a complete itemization of costs including labor, materials and Subcontracts. Where major cost items are Subcontracts, they shall also be itemized. In no case will a change involving over \$2000.00 be approved without such itemization.
- H. Each Contractor and subcontractor shall furnish labor and materials for any additional work ordered by the University (and for which no pre-agreed price has been fixed) for the net cost of all labor and materials furnished, plus an overhead and profit amount not to exceed 15% on work performed by its own forces. In addition each Contractor and each subcontractor shall be entitled to mark up by an amount not to exceed 10% any invoice received from another subcontractor for work performed by the other subcontractor's forces.
- I. Each contract modification or change order that affects contract price shall be subject to the prior written approval of the Procurement Officer and other appropriate University authorities and to prior certification of the appropriate fiscal authority of fund availability and the effect of the modification or change order on the project budget or the total construction cost. If, according to the certification of the fiscal authority, the contract modification or change order will cause an increase in cost that will exceed budgeted and available funds, the modification or change order may not be made unless sufficient additional funds are made available or the scope of the project is adjusted to permit its completion within the project budget.

3.07 UNAUTHORIZED WORK:

Each contract modification or change order that affects contract price shall be subject to the prior written approval of the Procurement Officer and other appropriate authorities and to prior certification of the appropriate fiscal authority of fund availability and the effect of the modification or change order on the project budget or the total construction cost. If, according to the certification of the fiscal authority, the contract modification or change order will cause an increase in cost that will exceed budgeted and available funds, the modification or change order may not be made unless sufficient additional funds are made available or the scope of the project is adjusted to permit its completion within the project budget.

Contractor shall not be paid for any work not authorized in writing by the Procurement Officer.

END OF SECTION 3

SECTION 4: CONTROL OF THE WORK:

4.01 AUTHORITY OF THE ARCHITECT:

- A. Under the direction of the University, the Architect shall be the initial interpreter of any drawings included among the contract documents. He will furnish with reasonable promptness such clarifications as he may deem necessary for the proper execution of the Work; such clarifications to be consistent with the intent of the contract documents. He is the agent of the University only to the extent provided in the contract documents. When in special instances he is authorized by the University so to act, he has authority to recommend to the University to stop work whenever such stoppage may be necessary to insure the proper execution of the Contract.
- B. Except as otherwise provided in the contract documents, all the Architect's decisions are subject to review by the University.

4.02 CONFORMITY WITH CONTRACT REQUIREMENTS:

- A. All Work performed and all materials furnished by the Contractor shall be in conformity with the Contract requirements.
- B. In the event the University finds the materials or the finished product in which the materials are used or the work performed are not in complete conformity with the Contract requirements and have resulted in an inferior or unsatisfactory product, the work or materials shall be removed and replaced or otherwise corrected by and at the expenses of the Contractor.
- C. In the event the University finds the materials or the finished product in which the materials are used are not in complete conformity with the Contract requirements, but have resulted in a satisfactory product, the University shall then make a determination if the work shall be accepted. In this event, the University will document the basis of acceptance by a change order which will provide for an appropriate adjustment in the Contract price. Acceptance of the work will be contingent upon the Contractor's acceptance of a Contract Amendment incorporating the Change Order.

4.03 ADJACENT WORK:

- A. The University shall have the right, at any time, to contract for and perform other work on, near, over, or under the work covered by the Contract. In addition, other work may be performed under the jurisdiction of another State agency. The Contractor shall cooperate fully with such other contractors and carefully fit his own work to such other as may be directed by the Architect.
- B. The Contractor agrees that in event of dispute as to cooperation or coordination with adjacent contractors, the University will act as referee and decisions made by the University will be binding. The Contractor agrees to make no claims against the University or the State of Maryland for any inconvenience, delay, or loss experienced by him because of the presence and operations of other contractors.

4.04 CONTROL BY THE CONTRACTOR:

- A. The Contractor shall constantly maintain efficient supervision of the work, using the best skill and coordinating ability. He shall carefully study and compare all drawings, specifications, and other instructions and check them against conditions existing, or being constructed on the project. He shall at once report to the University and the Architect any error, inconsistency, or omission which he may discover.
- B. The Contractor shall schedule and conduct regular progress meetings every other week, and as directed by the University, at which Subcontractors (Sub-subcontractors if necessary), University, Architect, and other designated representatives, and the Contractor can discuss such matters as progress, scheduling, and construction-related issues. The Contractor is responsible for taking meeting notes and distributing these to all invited parties within three (3) working days after such meetings. The meeting notes are the product of the Contractor. Failure of the University to respond to such notes is not deemed to be acceptance.

4.05 COOPERATION WITH UTILITIES:

- A. It is understood and agreed that the Contractor has considered in his bid all of the permanent and temporary utility appurtenances in their present or relocated positions and that no additional compensation will be allowed for normal delays, inconvenience, or damage sustained by him due to any interference from the said utility appurtenances, the operation of moving them, or the making of new connections thereto if required by the Contract documents.
- B. The Contractor shall have responsibility for notifying all affected utility companies prior to the necessity of performing any work on their utilities and shall cooperate with them in achieving the desired results. All damage to utility facilities caused by the Contractor's operations shall be the responsibility of the Contractor.
- C. At points where the Contractor's operations are adjacent to properties of railway, communication, water, and power companies, or are adjacent to other property, damage to which might result in expense, loss, or inconvenience, work shall not be commenced until all arrangements necessary for the protection thereof have been made by the Contractor.
- D. The Contractor shall cooperate with the owners of any underground or overhead utility lines in their removal and rearrangement operations in order that these operations may be reduced to a minimum and that services rendered by those parties will not be unnecessarily interrupted.
- E. In the event of interruption to utility services as a result of accidental breakage or as a result of being exposed or unsupported the Contractor shall promptly notify the proper authority and shall cooperate with the said authority in the restoration of service. No work shall be undertaken around fire hydrants until provisions for continued service have been approved by the local fire authority.
- F. Utility outages shall be kept to a minimum and will be permitted only with the written approval of the University's Office of Facilities Management. All requests for outages shall be made a minimum of ten (10) working days in advance of their need. Requests for outages will not be considered unless they include an identification of all areas which will be affected by the proposed outage.

4.06 AUTHORITY AND DUTIES OF UNIVERSITY INSPECTORS:

- A. University inspectors shall be authorized to inspect all work done and all material furnished. Such inspection may extend to all or any part of the work and to the preparation, fabrication, or manufacture of the materials to be used. The inspector is not authorized to revoke, alter, or waive any requirements of the Contract, nor is he authorized to approve or accept any portion of the complete project. He is authorized to call the attention of the Contractor to any failure of the work or materials to conform to the contract. He is authorized to reject materials or suspend the work (after review with the procurement officer) until any questions at issue can be referred to and decided by the University. Inspectors shall perform their duties at such times and in such manner as will not unnecessarily impede progress on the Contract.
- B. The inspector shall in no case act as foremen or perform other duties for the Contractor, nor interfere with the management of the work by the latter.
- C. Any advice which the inspector may give the Contractor shall not be construed as binding the University in any way or releasing the Contractor from fulfilling all the terms of the Contract. The duty of the inspector on the project is to observe the progress of the work and to report any deviations from the requirements of the Contract documents; however, should the inspector fail to report any such deviation from the Contract requirements, this does not release the Contractor from fulfilling all of the terms of the Contract.
- D. Where there is disagreement between the Contractor and the inspector, the inspector will immediately direct the University's and the Architect's attention to the issues of disagreement, and if the Contractor still refuses to make corrections, comply or suspend work, the Procurement Officer will prepare and deliver in writing to the Contractor, by mail or otherwise, a written order suspending the work and explaining the reason for such shutdown. Any work performed during the inspector's absence will not be accepted or paid for and may be required to be removed and disposed of at Contractor's expense.

4.07 INSPECTION OF THE WORK:

- A. Work, including the fabrication and source of supply, is subject to observation by the Architect and to the University's Office of Facilities Management's right to inspect specific items.
- B. The Contractor shall provide facilities for access and inspection as required by the University.
- C. If the specifications, the Office of Facilities Management's instructions, law, ordinances, or any public authority require any work to be specially tested or approved, the Contractor shall give the Office of Facilities Management timely notice of its readiness for inspection, and if inspection is by another authority, the date fixed for such inspection. Inspections by the Office of Facilities Management shall be made promptly and where practicable at the source of supply. Any work covered without approval of the University must, if required by the Architect or the Office of Facilities Management, be uncovered for examination, and then recovered, both at the Contractor's expense.

4.08 REMOVAL OF DEFECTIVE WORK:

- A. All work and materials which do not conform to the requirements of the Contract will be considered unacceptable.
- B. Any unacceptable or defective work, whether the result of poor workmanship, use of defective materials, damage through carelessness or any other cause, found to exist shall be removed and replaced by work and materials which shall conform to the Contract requirements or shall be remedied otherwise in an acceptable manner authorized by the University.
- C. Upon failure on the part of the Contractor to comply promptly with any order of the University, made under the provisions of this section, the University shall have authority to cause defective or unacceptable work to be remedied or removed and replaced and unauthorized work to be removed and to deduct the costs from any monies due or to become due the Contractor under this Contract.

4.09 MAINTENANCE OF WORK DURING CONSTRUCTION:

- A. The Contractor shall maintain the Work during construction and until acceptance. This maintenance shall be continuous and effective, prosecuted with adequate equipment and forces to the end that all parts of the work be kept in satisfactory condition at all times and protected from damage of any kind from external sources.
- B. Particular attention shall be given to drainage, both permanent and temporary. The Contractor shall use all reasonable precautionary measures to avoid damage or loss that might result from accumulations and concentrations of drainage shall be diverted or dispensed when necessary to prevent damage to excavation, embankments, surfaces, structures, or property. Suitable measures shall be taken by the Contractor to prevent the erosion of soil in all construction areas where the existing ground cover has been removed. Such measures shall be in compliance with the requirements of any governmental entity having jurisdiction.
- C. All cost of maintenance work during construction and before final acceptance shall be included in the base bid and the Contractor will not be paid any additional amount for such work.
- D. In the event that the Contractor's Work is halted by the University for failure to comply with the provisions of the Contract, the Contractor shall maintain the entire project as provided herein, and provide such ingress and egress for local residents or tenants adjacent to the project site, for tenants of the project site, and for the general public as may be necessary during the period of suspended work or until the Contractor has been declared in default.
- E. On projects where pedestrian or vehicular traffic flow is maintained, the Contractor shall be responsible for repair and restoration of all traffic damage to the work, either partially or totally completed, until such time as the work is accepted by the University.

4.10 FAILURE TO MAINTAIN ENTIRE PROJECTError! Bookmark not defined.:

If the Contractor shall at any time, fail to comply with the provisions of paragraph 4.09, the University shall immediately notify the Contractor to comply with the required maintenance provisions. In the event that the Contractor fails to remedy unsatisfactory maintenance within 24 hours after receipt of such notice, the University will immediately proceed with adequate forces and equipment to maintain the project, and the entire cost of this maintenance may be deducted from monies due the Contractor, without in anyway limiting the right of the University to enforce any and all other remedies to which it is entitled by law or under the Contract.

4.11 UNIVERSITY'S RIGHT TO DO WORK:

If the Contractor should neglect to prosecute the work properly or fail to perform any provision of this Contract, the University after three (3) days' written notice to the Contractor may make good such deficiencies and may deduct the cost thereof from the monies then or thereafter due the Contractor, without in anyway limiting the right of the University to enforce any and all other remedies to which it is entitled by law or under the Contract.

4.12 AUTHORITY OF OFFICE OF ENVIRONMENTAL HEALTH AND SAFETY:

- A. The University of Maryland, Baltimore's Office of Environmental Health and Safety ("EHS") is responsible for promoting a safe and healthful work environment for the project and for verifying the Contractor's compliance with Federal and State environmental protection regulations and University safety and health practices. To carry out these responsibilities, EHS is authorized to inspect the project, all work done and being done, and all material to be furnished and being furnished. In the event that EHS learns of an unsafe condition, EHS is authorized to suspend work (after notice to the Procurement Officer and the Office of Facilities Management) until the unsafe condition is cured by the Contractor. "Unsafe condition" shall mean any practice that represents a significant risk of injury or health hazard to University employees, a significant adverse environmental impact or a physical hazard which could result in damage to University property and/or the public. The authority of EHS is in addition to any other rights of the University set forth herein.
- B. Prior to the Contractor proceeding with the Work, he is to submit proof of a Confined Space Program to UMB's Office of Environmental Health and Safety for verification.
- C. Contractor must provide UMB Environmental Health and Safety (EHS) with their Fall Protection Plan. Plan must include your employees training procedures and rescue procedures. Work may not be permitted until Fall Protection Plan has been signed off by UMB Environmental Health and Safety (EHS).

4.13 EMPLOYEE IDENTIFICATION:

- A. The Contractors shall obtain identification (University ID Badge) for their employees, equipment and/or Subcontractors at the prevailing University badge fee. **EMPLOYEE IDENTIFICATION OF WORKMEN ASSIGNED TO THE UNIVERSITY PROJECTS SHALL BE VISIBLE AT ALL TIMES.**
- B. All vehicles and mobile equipment shall be identified with the Contractors Name displayed in a highly visible manner.

4.14 NOISE CONTROL:

- A. The Contractor shall execute the Work in this Contract as quietly as practicable to avoid unnecessary disturbances. Use of audio devices is not allowed on the Project site. Two-way communication radios are allowed.
- B. Any complaints duly registered by the University of Unacceptable Noise Levels shall be cause for the use of special precautions and methods of operation by the Contractor to reduce noise to acceptable levels. The University shall be the sole judge of the tolerability of noise levels.

4.15 PARKING:

Parking of employees of the Contractor and/or subcontractor(s) is the responsibility of the applicable Contractor and/or subcontractor. UMB's Parking Office may be contacted as to designated public parking facilities on campus with any costs thereof to be borne by the Contractor or subcontractor, dependent on whose employees utilize such public parking.

4.16 KEYS:

- 1. No keys shall be issued to Contractor without the proper authorization by University Project Manager. Keys shall be requested and issued only as required, i.e. master keys shall not be issued when individual keys will suffice. Once authorized, Contractor(s) will be programmed access to the key box located in the work control area of UMB's Facilities and Operations.
- 2. Key(s) shall be returned each day before end of business except when specifically authorized for night time or weekend work. All keys shall be returned before final payment on a project.
- 3. University keys, in the possession of Contractors and/or Service personnel, will not be loaned to others, tampered with or duplicated.

4.17 PRESS RELEASES:

The Contractor shall not issue any press release for any publication, including newspaper or media, without first clearing the text with UMB and obtaining the prior written approval of UMB in each instance.

END OF SECTION 4

SECTION 5: MATERIALS:

5.01 GENERAL:

- A. All materials shall meet all quality requirements of the Contract. In order to expedite the inspection and testing of materials, the Contractor shall notify the University and the Architect in writing of the sources from which he proposes to obtain all materials requiring approval, testing, inspection, or certification prior to incorporation into the work as soon as possible after receipt of notification of award of the Contract.
- B. Materials include all manufactured products and processed and unprocessed natural substances required for completion of the Contract. The Contractor, in accepting the Contract, is assumed to be thoroughly familiar with the materials required and their limitations as to use, and requirements for connection, setting, maintenance, and operation. Whenever an article, material, or equipment is specified and a fastening, furring, connection (including utility connections), access hole, flashing closure piece, bed, or accessory is normally considered essential to its installation in good quality construction, such shall be included as if fully specified. Nothing in these specifications shall be interpreted as authorizing any work in any manner contrary to applicable laws, codes, or regulations.
- C. Approval -- All materials are subject to the University's approval as to conformity with the specifications, quality, design, color, etc. No material for which approval is necessary shall be used until written approval is given by the University and Architect. Approval of a subcontractor or supplier as such does not constitute approval of a material which is other than that included in the specifications.
- D. New Materials -- Unless otherwise specified, all materials shall be new. Old materials must not be used as substitutes for new, regardless of condition or repair, unless approved in writing by the University.
- E. Quality -- Unless other specified, all materials shall be of the best quality of the respective kinds.
- F. Samples -- The Contractor shall furnish for approval all samples as directed. The materials used shall be the same as the approved samples.
- G. Proof of Quality -- The Contractor shall, if requested, furnish satisfactory evidence as to the kind and quality of materials either before or after installation. He shall pay for any tests or inspections called for in the specifications and such tests as may be deemed necessary for "substitutions," as set forth in paragraph 5.03 of these General Conditions.
- H. Standard Specifications -- When no specification is cited and the quality, processing, composition, or method of installation of a thing is only generally referred to, then:
 - (1) For items not otherwise specified below, the latest edition of the applicable American Society for Testing Materials specification is the applicable specification.
 - (2) For items generally considered as plumbing and those items requiring plumbing connections, the applicable portions of the latest edition of the B.O.C.A. Code are the applicable specifications.
 - (3) For items generally considered as heating, refrigerating, air-conditioning, or ventilating, the applicable portions of the latest edition of the A.S.H.R.A.E.

Handbook published by the American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc., are the applicable specifications.

- (4) For items generally considered as site work, the applicable portions of the Maryland S.H.A. Standard Specifications are the applicable specifications.
 - (5) For items generally considered as electrical, the applicable provisions of the latest edition of the National Electric Code are the applicable specifications.
 - (6) For items generally considered as fire protection, the applicable portions of the latest edition of the National Fire Protection Association Code are the applicable specifications.
- I. The Contractor shall provide the University with Material Safety Data Sheets (MSDS) as required by law. The Contractor shall provide EHS with a material safety data sheet ("MSDS") for all products and materials which (i) contain hazardous chemical and (ii) to which OSHA Regulations (29 CFR, 1910.1200) apply. The Contractor must submit a binder of all applicable MSDS's to EHS within forty-five (45) days of issuance of the Notice to Proceed. EHS will review this binder and return it to the Contractor accordingly. The Contractor shall maintain in its possession on the project site, at all times, a copy of each MSDS required to be submitted in connection with the chemicals, compounds, or materials used in the project. In the event EHS has questions arising from any MSDS, in each instance, notwithstanding anything herein to the contrary, EHS shall have the right to contact the Contractor and the vendor of the chemical, compound or material in question.

5.02 STORAGE AND HANDLING OF MATERIALS:

- A. Materials shall be so stored as to assure the preservation of their quality and acceptability for the Work. Stored materials, even though approved before storage, may again be inspected prior to their use in the Work. Stored materials shall be located so as to facilitate their prompt inspection. Approved portions of the project site may be used for storage purposes and for the placing of the Contractor's plant and equipment. Such storage areas must be restored to their original condition by the Contractor at his expense. If off-site storage is used, Contractor shall provide the necessary copy of the insurance policy with the University as the certificate holder. See Section 6.05 and Section 6.06 for further details.
- B. Materials shall be handled in such a manner as to preserve their quality and acceptability for the Work.
- C. Contractor shall confirm his apparatus and the storage of materials to the area delineated in the Contract documents as the "Limit of Contract."
- D. Explosives:
 - (1) Explosives shall not be stored upon any property belonging to the University.
 - (2) Should the Contractor desire to use explosives on any University property he shall first receive written approval of the University. The approval will stipulate time, place, and quantity to be used and manner of use.
 - (3) The Contractor shall assume all responsibility for injury to persons or property damage which may result from the use and/or transportation of explosives. The

Contractor must comply with any and all ordinances, regulations, and restrictions in relation to the use of explosives.

E. Paints

- (1) Oil base paints and liquids shall not be stored in large quantities on the project site. Containers shall be limited to five (5) gallon size. Any liquid with a flash point of less than one hundred (100) shall be contained in safety cans, UL approved. Liquid with a higher flash point shall be stored in rigid cans. Glass containers shall not be used.
- (2) Oily rags, waste, etc., must be removed from the work site at the close of each working day.

5.03 SUBSTITUTION:

- A. Should the Contractor desire to substitute another material for one or more specified by name he shall apply to the University, in writing, for permission, stating the credit or extra cost that will result from the use of such material and explaining all potential benefits to the University from the substitution. The University will not consider the substitution of any material different in type or construction methods unless such substitution affects a benefit to the University.
- B. The Contractor shall not submit requests for approval of materials other than those specified without a written statement that a substitution is proposed. Approval of a "substitute material" by Architect when the Contractor has not designated such material as a "substitute", shall not be binding on the University, and will not release Contractor from any obligations of the Contract. The University, at its discretion, may approve a "substitute material" as a Substitution after the fact. Such approval, if given, must be set out in writing.
- C. A material which is an approved equal (see #5.04) is not a substitution under this Section 5.03.

5.04 APPROVED EQUALS:

The terms "Or Equal", "Equal", "Approved Equal" are used as synonyms throughout the specifications. They are implied in reference to all named manufacturers in the specifications unless otherwise stated. Only materials fully functionally equal or superior in all details and characteristics will be considered to be approved equals. The Contractor shall apply to the University in writing for confirmation that a material is an approved equal. The University's Office of Facilities Management is the final judge as to equality.

5.05 CONTRACTOR'S OPTIONS:

When several products or manufacturers are named in the specifications for the same purpose of use, then the Contractor may select any of those so named. However, all of the units required for, and used in, the project must be the same in material and manufacture.

5.06 TESTS:

- A. If the contract documents, laws, ordinances, rules, regulations, or orders of any public authority having justification require any portion of the work to be inspected, tested, or approved, the Contractor shall give the University and the Architect timely notice of its readiness so the Architect may observe such inspection, testing, or approval. The Contractor shall bear all costs of such inspections, tests, or approvals conducted by public authorities.
- B. The University reserves the right to require special inspection, testing or approval which the contract documents do not include, and instruct the Contractor to order such special inspection, testing, approval, and the Contractor shall give notice as provided in 5.06 A above. If such special inspection or testing reveals a failure of the Work to comply with the requirements of the contract documents, the Contractor shall bear all costs of testing, inspection, and replacement or remediation, including compensation for the Architect's additional services made necessary by such failure; otherwise the University shall bear such costs and an equitable adjustment will be made.
- C. Required certificate of inspection, testing, or approval shall be secured by the Contractor and promptly delivered by him to the University and the Architect.

5.07 BUY AMERICAN STEEL:

Only steel products made in the United States shall be used or supplied in the performance of the Contract or any subcontract. Steel products include products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated, or otherwise similarly processed from steel made in the United States. This requirement shall not apply if the University has determined that the cost of such steel products is unreasonable or inconsistent with the public interest and has communicated this determination in writing to the Contractor. The provisions of this Section shall not apply where they are in conflict with any Federal grant or regulation affecting this Contract.

5.08 SALES TAXError! Bookmark not defined.:

Supplies and materials purchased in connection with the Contracts will not be tax exempt.

5.09 HAZARDOUS MATERIALS:

- A. The use or handling of regulated materials, including asbestos or PCB, shall be strictly governed by Federal, State and Local regulations.
- B. No Contractor furnished material or product containing any asbestos in any form may be used on this project.
- C. Contractor must remove any and all materials covered under the hazardous waste regulations upon completion of the project or more often as directed by EHS or required by law or regulation.
- D. It is assumed that hazardous materials are not present within the areas of work in the existing buildings but the Contractor is advised to remain alert to the possibility of encountering hazardous materials during the course of the Work. In the event that hazardous materials are encountered and must be handled, the Contractor shall

immediately stop all work within the affected area and notify the University's Project Manager for instructions. The Contractor shall coordinate and cooperate with the hazardous material removal contractor in the removal of hazardous materials within the areas of work under the Contract.

END OF SECTION 5

SETTING 6: LEGAL RELATIONS AND RESPONSIBILITIES:

6.01 LAWS TO BE OBSERVED:

- A. The Contractor shall keep fully informed of all Federal, State, and Local laws, ordinances, and regulations and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any manner affect those engaged or employed on the work or which in any way affect the conduct of the work. The Contractor shall at all times observe and comply with all such laws, ordinances, regulations, orders, and decrees, and shall protect and indemnify the University, any Client University, and the State of Maryland and its representatives against such claim or liability arising from or based on the violation of any law, ordinance, regulation, order, or decree, whether by the Contractor, its employees or subcontractors.
- B. The Contractor must comply with the provisions of the Workmen's Compensation Act and Federal, State, and City laws relating to hours of labor.
- C. The provisions of this Contract shall be governed by the Laws of Maryland. [21.07.01.07]
- D. The Contractor shall give all notices and comply with all applicable State, Federal and local laws, ordinances, rules, and regulations bearing on the conduct of the work as drawn and specified.
- E. If the Contractor observes that the drawings and specifications are at variance with any law, he shall promptly notify the University, and any necessary changes shall be adjusted as provided in the Contract for changes in the work. If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules, and regulations, and without such notice to the University, the Contractor shall bear all costs arising therefrom, including without limitation fines, penalties and correction or replacement of work and materials.

6.02 PERMITS AND LICENSES:

- A. The University will file with the appropriate local authority drawings and specifications and any pertinent data reasonably proper for their information. No permits are applicable for work on University property with the exception of (i) any permits required in the specifications as noted in 6.02, C. below and (ii) Cutting & Welding permit noted in 6.02, D. below.
- B. Any permits required for work on non-University property are the responsibility of the Contractor in terms of the permit acquisition, cost thereof and all obligations and liability under the permit.
- C. Any permits required by the specifications (i.e., Air and Radiation Management Administration boiler permits, etc.) are the responsibility of the Contractor in terms of the permit acquisition, cost thereof and all obligations and liability under the permit.
- D. Before any welding, burning, pipe sweating or brazing is started at the University of Maryland, Baltimore, a "CUTTING & WELDING PERMIT" must be obtained from EHS, 714 W. Lombard Street, Baltimore, MD 21201-1041, or for a Project at a Client University from the appropriate office there. This permit must be requested from EHS at least two days prior to the anticipated hot work. The cardboard portion of the permit shall be secured to either the cutting or welding equipment. At the end of the requested time, the cardboard portion of the permit must be returned to EHS.
- E. The Contractor must be licensed as required by the Laws of the State of Maryland (Art.

56, Sec. 180, Annotated Code of Maryland) and must be qualified by submission and approval of a qualification Questionnaire when requested.

6.03 PATENTED DEVICES, MATERIALS, AND PROCESSES:

The Contractor shall pay for all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall save the University, and Client University, and the State of Maryland harmless from loss on account thereof, except that the University or Client University shall be responsible for any such loss when a particular process or the product of a particular manufacturer or manufacturers is specified by the Contract as the University's responsibility; however, if the Contractor has information that the process or articles specified is an infringement of a patent, then the Contractor shall be responsible for such loss unless he promptly gives such information to the Procurement Officer.

6.04 LAND, AIR, AND WATER POLLUTION:

- A. The Contractor shall incorporate all permanent erosion control features into the work at the earliest practicable time. Temporary pollution control measures will be used to correct conditions that develop during construction that were not foreseen during design, that are needed prior to installation of permanent pollution control features, or that are needed temporarily to control erosion that develops during normal construction practices, but are not associated with permanent control features on the project.
- B. Temporary pollution control may include measures outside the project site where such work is necessary as a direct result of project construction. The University's Office of Facilities Management shall be notified of all such off-site control measures taken by the Contractor. This notice shall not relieve the Contractor of responsibility for such work.
- C. In case of failure on the part of the Contractor to control erosion, pollution, and/or siltation, the reserves the right to employ outside assistance or to use its own forces to provide the necessary corrective measures. All expenses incurred by the in the performance of such duties for the Contractor shall be withheld from monies due to the Contractor.
- D. The Contractor must submit evidence to the University's Office for Facilities and Operations that the governing Federal, State, and local air pollution criteria will be, and were, met. This evidence and related documents will be retained by the University's Office for Facilities and Operations for onsite examination.
- E. If the performance of all or any part of the Work is suspended, delayed, or interrupted due to an order of a court of competent jurisdiction as a result of environmental litigation, as defined below, the Procurement Officer, at the request of the Contractor, shall determine whether the order is due in any part to the acts or omissions of the Contractor required by the University's as one of the terms of this Contract. If it is determined that the order is due in any part to acts or omissions of the Contractor required by the terms of the Contract, such suspension, delay, or interruption shall be considered as if ordered by the Procurement Officer in the administration of this Contract under the terms of the "Suspension of Work" Section of this Contract. The period of such suspension, delay, or interruption shall be considered reasonable, and an adjustment shall be made for any increase in the cost of performance of this Contract (excluding profit) as provided in that Section, subject to all the provisions thereof.
- F. The term "environmental litigation", as used herein, means a lawsuit alleging that the work will have an adverse effect on the environment or that the University has not duly considered, either substantively or procedurally, the effect of the Work on the environment, or that the University and/or Contractor has not complied with applicable

environmental laws and regulations.

6.05 CONTRACTOR'S LIABILITY INSURANCE:

A. From and after the execution of the Contract by the Contractor in connection solely with Worker's or Workmen's Compensation Insurance and from and after the execution of the Contract Amendment by the Contractor in connection with all insurance enumerated in this Section 6.05.A, the Contractor shall purchase and maintain insurance required by this Section 6.05.A, applicable to all claims which may arise out of or result from the Contractor's operations under the Contract, whether such operations be by the Contractor, by any Subcontractor or Sub-subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. All insurance except Workmen's Compensation shall name the University of Maryland, Baltimore, any Client University, the University System of Maryland, and the State of Maryland as additional insured's, The Contractor shall purchase and maintain at its own expense insurance required by this 6.05A. applicable to all claims which may arise out of or result from the Contractor's operations under the Contract, whether such operations be by the Contractor, by any agent or subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. All insurance except Workmen's Compensation shall name the University of Maryland and the State of Maryland as an additional insured.

- (1) Worker's or Workmen's Compensation Insurance.
- (2) Employer's Liability Insurance.
- (3) Comprehensive General Liability Insurance for bodily injury and property damage, including loss of use of property, arising out of any occurrence. This insurance should include the following extensions:
 - (a) Products and completed operations coverage for a period of at least two years (see Section 00700, #7.17 Guarantees for further information and/or details regarding the guarantee period)
 - (b) Personal injury liability coverage (including contractual coverage);
 - (c) Contractual liability insurance to cover the Contractor's obligation to the University and the State of Maryland under Section 1.03 G.
 - (d) Broad form property damage (including completed operations);
 - (e) Independent contractor's coverage.
 - (f) "X", "C", and "U" coverage applying to explosion, collapse of other structures and underground foundations;
 - (g) If the work involves containment or removal of asbestos, pollution liability (environmental protection liability) coverage.
- (4) Business automobile liability insurance which will pay for liabilities arising out of accidents involving the ownership, operation, maintenance or use including the loading or unloading of any automobile.
- (5) Umbrella liability

- B. The coverage listed in paragraph 6.05 A shall be written for not less than the following limits of liability*.
- (a) Comprehensive general liability insurance including all extensions –
\$2,000,000 each occurrence;
\$2,000,000 personal injury;
\$2,000,000 products/completed operations;
\$2,000,000 general aggregated
 - (b) Worker's Compensation Insurance and Unemployment Insurance as required by the laws of the State of Maryland.
 - (c) Employer's liability insurance - - \$1,000,000 each accidental injury or disease and \$2,000,000 aggregate.
 - (d) Property damage liability insurance with a limit of not less than \$2,000,000 for each accident.
 - (e) Business automobile bodily injury liability insurance with limits of not less than \$1,000,000 for each person and \$2,000,000 for each accident, and property damage liability insurance, with a limit of not less than \$2,000,000 for each accident.
 - (f) Umbrella liability - - \$5,000,000 limit.

*These insurance limits may be achieved singularly or in combination with other insurance coverage limits.

- C. Satisfactory proof of purchase of required insurance shall be furnished on the Accord format for certificates prior to execution of the Contract and upon renewal of any policy, and upon obtaining any new insurance policy. Certificates must be amended to indicate: "Should any of the described policies be canceled before the expiration date thereof, or non-renewed, the issuing company will give forty-five (45) days prior written notice to the certificate holder," each Certificate should indicate the insurer, the appropriate policy number(s), the policy expiration date(s), the limits of liability in effect, and the Best's rating and financial rating of the insurer. A certificate will be accepted only if signed by an authorized representative of the insurer.
- D. Insurance certificates will be accepted only from an insurer having a minimum Best's rating of Class A for the policy holders' rating and Class IX for the financial rating. Insurers must be authorized to do business under the laws of the State of Maryland.
- E. No work shall be started at the site until appropriate certificates of insurance are filed with and approved by the procurement officer.

BUILDER'S RISK INSURANCE:

- A. The Contractor shall purchase and maintain at its own expense builder's risk insurance naming as additional insured the University of Maryland, Baltimore, any Client University, the University System of Maryland, the State of Maryland, the Contractor, any subcontractor, or anyone directly or indirectly employed by any of them. The University, the Client University and the State shall be loss payees as their interests may appear.
- B. The builder's risk policy shall cover any and all materials, equipment, machinery, and supplies of any nature whatsoever, intended to be used in or incidental to the completion of the Contract, but coverage shall apply to property on the Project site, property in transit, and property in temporary storage at locations other than the Project site which property is designated to become a permanent part of the insured project.
- C. The limits of insurance (without any coinsurance conditions applying) shall be the full value of the project when completed. Deductibles are allowed only if reported to the University, which shall not unreasonably withhold consent. The Contractor shall be responsible for paying the amount of the deductible to the University or State in the event of a claim by either or both of them which are within the coverage of the builder's risk policy. Coverage shall be on a full replacement cost basis with no deductions for actual physical depreciation.
- D. Insurance should be against all risks of direct physical loss of or damage to the insured property including theft; earthquake; flood; and settling, shrinkage or expansion of buildings or foundations other than normal settling shrinkage or expansion. Any fault, defect, error or omission exclusion should not apply to damage resulting from such fault, defect, error or omission in the design plans or specifications. Any faulty or defective workmanship or internal exclusion clause should not apply to damage resulting therefrom.
- E. The term of the builder's risk insurance shall continue until issuance of the substantial completion certificate on the project by the University.
- F. Contractor shall deliver to University a copy of each policy of the required insurance prior to execution of the Contract, upon execution of the Contract amendment and upon renewal of any policy, and upon obtaining any new insurance policy. All policies of insurance shall provide that the policy shall not be subject to cancellation, termination, or reduction in coverage, except after forty-five (45) days' prior written notice to University.
- G. Upon request, Contractor shall also furnish a certificate(s) of the required insurance. Certificates must be amended to indicate: Should any of the described policies be canceled before the expiration date thereof, or non-renewal, the issuing company will give thirty (30) days prior written notice to certificate holder." Each certificate should indicate the insurer, the appropriate policy number(s), the policy expiration date(s), limits of liability in effect, and the Best's rating and financial rating of the insurer. A certificate will be accepted only if signed by an authorized representative of the insurer.
- H. Insurance will be accepted only from an insurer having a minimum best's rating of Class A for the policy holders' rating and Class IX for the financial rating. Insurers must be authorized to do business under the laws of the State of Maryland.

- I. No work shall be started at the site until appropriate policies of insurance are filed with and approved by the Procurement Officer. Policies and certificates of insurance shall be submitted to the Procurement Officer for review and approval and shall be held by the Procurement Officer for the duration of the Contract. The University shall have the absolute right to terminate the Contract if a required policy of insurance is canceled at any time for any reason and a new policy effective immediately thereafter is not obtained by the Contractor and approved by the Procurement Officer.
- J. The Contractor shall adjust the amount of the builders risk insurance from time to time to reflect any increase or decrease in the Project over the amount of \$100,000.00. For any such additions, the Contractor will be reimbursed by the University in the amount of the actual amount of the increased insurance cost. For any decrease, the Contractor will credit the University the actual amount of the decreased insurance cost. The Contractor shall provide updated certificate that reflect the increase or decrease within ten (10) working days of the fully executed contract modification.

6.07 ASSIGNMENTS:

The Contractor shall not assign its rights or responsibilities under this Contract. The Contractor shall not assign monies due or to become due to it hereunder.

6.08 SEPARATE CONTRACTS:

- A. The University reserves the right to let other contracts in connection with this work. Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate his work with theirs.
- B. If any part of the Contractor's Work depends for proper execution or results upon the work of any other contractor, the contractor shall inspect and promptly report to the University any defects in such work that render it unsuitable for such proper execution and results. The Contractor's failure to so inspect and report shall constitute an acceptance of the other contractor's work as fit and proper for the reception of the Contractor's Work, except as to the defects which may develop in the other contractor's work after the execution of the Contractor's Work.
- C. To insure the proper execution of its subsequent Work, the Contractor shall measure work of others already in place and shall at once report to the University any discrepancy between the executed work and the drawings.

6.09 PAYMENT OF SUBCONTRACTORS:

- A. Neither the final payment nor any part of the retained percentage shall become due until the Contractor shall deliver to the University receipt for full payment to all subcontractors and any principal suppliers identified by the University.
- B. If any subcontractor or supplier refuses to provide a receipt for payment, the Contractor may obtain final payment by providing the University with a bond satisfactory to the University for payment to subcontractors or suppliers as a condition of fulfilling any contractual obligation (including warranties) or losses resulting from subcontractors' or suppliers' failure to fulfill such obligations. Under the bond the Contractor shall refund the University all monies paid to subcontractors or losses incurred, including all costs and reasonable attorney's fees.
- C. The contractor shall promptly pay a subcontractor (and shall cause Subcontractors to pay Sub-subcontractors) any undisputed amount to which the subcontractor (or Sub-

subcontractor) is entitled for work under this contract within 10 days of receiving a progress or final payment from the University. In the event the contractor (or Subcontractor) fails to pay promptly, a subcontractor (or Sub-subcontractor) may request remedy in accordance with COMAR 21.10.08. In each subcontract under this contract, the contractor shall include a clause that contains substantially the same provisions as this Section.

6.10 RELATIONSHIP OF CONTRACTOR TO PUBLIC OFFICIAL AND EMPLOYEES:

- A. In carrying out any of the provisions of the Contract, or in exercising any power or authority granted to them by or within the scope of the Contract, there shall be no liability upon the Procurement Officer or other authorized representatives of the University, it being understood that in all such matters they act solely as agents and representatives of the University.
- B. The University may terminate the right of the Contractor to proceed under this Contract if it is found by the Procurement Officer that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the University with a view toward securing a contract or securing a favorable treatment with respect to the awarding or amending or the making of any determination with respect to the performing of such contract. The facts upon which the Procurement Officer makes such findings may be reviewed in any competent court.
- C. In the event this Contract is terminated as provided in paragraph B hereof, the University shall be entitled (1) to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the Contract by the Contractor, and (2) in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Procurement Officer) which shall be not less than three(3) nor more than ten times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee.
- D. The rights and remedies of the University provided in this Section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
- E. Conflict of Interest - No official or employee of the State of Maryland whose duties as such official or employee include matters relating to or affecting the subject matter of this contract, shall during the pendency and term of this contract and while serving as an official or employee of the State become or be an employee of the contractor or any entity that is a subcontractor on this contract.

6.11 NO WAIVER OF LEGAL RIGHTS:

- A. The University and the State of Maryland shall not be precluded or estopped by any measurement, estimate, or certificate made either before or after the completion and acceptance of the work and payment therefore, from showing the true amount and character of the work performed and materials furnished by the Contractor, or from showing that any such measurement, estimate or certificate is untrue or is incorrectly made, for from showing that the work or materials do not in fact conform to the requirements of the Contractor. The University and the State of Maryland shall not be precluded or estopped, notwithstanding any such measurement, estimate, or certificate, and payment from recovering from the Contractor or its sureties, or both, such damage as the University may sustain by reason of the Contractor's failure to comply with the terms of the Contract. Neither the acceptance by the University nor acceptance by any representative of the University shall operate as a waiver of any portion of the Contract or

of any power herein or of any right to damages.

- B. The waiver by the University of any breach of the Contract shall not be held to be a waiver of any other or subsequent breach.

6.12 COVENANT AGAINST CONTINGENT FEES: [21.07.01.09]

The Contractor warrants that it has not employed or retained any person, partnership, corporation or other entity other than a bona fide employee or agent working for the Contractor to solicit or secure this Contract, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity other than a bona fide employee or agent, any fees or any other consideration contingent on the making of this Contract.

6.13 ASSIGNMENT OF ANTITRUST CLAIMS:

The Contractor sells, transfers, and assigns to the University and the State of Maryland all right, title, and interest in any cause of action arising at any time before the date of this assignment or during the performance of this Contract under the Antitrust Laws of the United States, including Section 1 of the Sherman Act and the Antitrust Law of Maryland relating to the purchase by the Contractor or the University and the State of Maryland of any products from any supplier or source whatever that is incorporated in the structure built under the terms of this Contract. The Contractor certifies that the above causes of action are lawfully owned, that no previous assignment of the causes of action has been made, and that the causes of action have not been attached or pledged in any manner whatsoever.

6.14 FEDERAL PARTICIPATION:

If the United States Government pays all or any portion of the cost of a project, the work under this Contract shall be subject to inspection by the appropriate federal agency. Such inspection shall in no sense make the federal government a party to this Contract and will not interfere in any way with the rights of either party hereunder.

6.15 DISPUTES: [21.07.01.06]

- A. This Contract is subject to the provisions of Title 7, Article 21 (Administrative and Civil Remedies) of the Code (the "Act") and COMAR 21.10. As noted therein, unless a lesser period is provided by applicable statute, regulation, or by this Contract, the Contractor shall file a written notice of a claim relating to the Contract with the Procurement Officer within thirty (30) days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within thirty (30) days after, the filing of a notice of a claim, Contractor shall submit the written claim to the Procurement Officer. If Contractor requests, the Procurement Officer, on conditions the Procurement Officer deems satisfactory to the University, may extend the time in which Contractor must submit a claim. An example of when a Procurement Officer may grant an extension includes a situation in which the Procurement Officer finds that contemporaneous or timely cost quantification following the filing of the notice of claim is impossible or impractical.
- B. Except as may otherwise be provided in the Act or COMAR, all disputes arising under or as a result of a breach of this Contract which are not disposed of by mutual agreement shall be resolved in accordance with this Section 6.15.

- C. As used herein, "claim" means a written demand or assertion by one of the parties seeking, as a legal right, the payment of money, adjustment or interpretation of Contract terms or other relief arising under or relating to this Contract.
 - (1) A voucher, invoice, or request for payment that is not in dispute when submitted is not a claim under this Section. However, where the submission subsequently is not acted upon in a reasonable time or disputed as to liability or amount, it may be converted to a claim for the purpose of this Section.
 - (2) A claim by the Contractor shall be made in writing and submitted to the Procurement Officer for decision. A claim by the University shall be the subject of a decision by the Procurement Officer in consultation with the Office of the Attorney General.
- D. When a controversy cannot be resolved by mutual agreement, the Contractor shall submit a written request for final decision to the Procurement Officer. The written request shall set forth all the facts surrounding the controversy.
- E. In connection with any claim under this Section, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of his claim to the Procurement Officer.
- F. The procurement officer shall render a written decision on all claims within 180 days of receipt of the Contractor's written claim; unless the procurement officer determines that a longer period is necessary to resolve the claim. This decision shall be furnished to the Contractor, by certified mail, return receipt requested, or by any other method that provided evidence of receipt. The Procurement Officer's decision shall be deemed the final action of the University. If a decision is not issued within 180 days, the Procurement Officer shall notify the Contractor of the time within which such a decision shall be rendered and the reasons for such time extension.
- G. The procurement officer's decision shall be final and conclusive unless the Contractor files a written appeal with the Maryland State Board of Appeals within thirty (30) days of receipt of said decision.
- H. Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer's decision.
- I. The final decision may award a contract claim only for those expenses incurred not more than thirty (30) days before Contractor was initially required to have filed the notice of claim or sixty (60) days before Contractor was required to have filed the claim initially, even if the Procurement Officer extends the time in which Contractor must submit the claim.

6.16 CLAIMS:

- A. If the Contractor claims that any instructions by drawings or otherwise involve or may involve extra cost under this Contract, he shall give the University written notice thereof within fifteen (15) calendar days after receipt of such instructions or after the occurrence of an emergency. No claim shall be valid unless so made.
- B. Under no circumstances will overhead or profit be permitted as items of a claim (if permitted at all under this Contract) if such overhead or profit is for periods during which a "Stop Work" order is in effect due to an act, error, omission for which the Contractor is responsible.

- C. No profit or overhead which includes rental of equipment and the salaries of supervisory personnel (if permitted at all under this Contract) will be allowed the Contractor for stoppage of work when written notice of such stoppage or impending stoppage is not given reasonably in advance by the Contractor so that the University can take action to prevent such stoppage.
- D. No claim for extra costs will be granted which includes cost of delays or work stoppage due to strikes, lockouts, fire, unusually severe weather, avoidable casualties, or damage or delay in transportation for which the University is not responsible; only time extensions in accordance with Section 7.03 will be granted.
- E. The Contractor and the University agrees that no prejudgment or post judgment interest on any claims asserted by either party will be allowed.
- F. No claim for damage caused by a delay (if permitted at all under the Contract) will be allowed unless the Contractor notifies the University of the existence of the delay within five (5) days of the act or omission causing the delay.
- G. No payment will be made for increased payment or performance bond premiums as a result of any act or omission by the University which results in a claim.

6.17 VARIATIONS IN ESTIMATED QUANTITIES: [21.07.02.03]

Where any quantity of major pay item as defined in this Contract is an estimated quantity and where the actual quantity of such pay item varies more than twenty-five percent (25%) above or below the estimated quantity in the Contract an equitable adjustment of the stated price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above one hundred twenty-five percent (125%) or below seventy-five percent (75%) of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the procurement officer shall, upon receipt of a written request for an extension of time within ten (10) days from the beginning of the delay, or within a further period of time which may be granted by the procurement officer before the date of final settlement of the Contract, ascertain the facts and make the adjustment for extending the completion date as in his judgment the findings justify.

6.18 PRE-EXISTING REGULATIONS: [21.07.01.17]

In accordance with the provisions of Section 11-206 of the State Finance and Procurement Article of the Annotated Code of Maryland, the regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR Title 21) in effect on the date of the execution of this Contract are applicable to this Contract.

6.19 FINANCIAL DISCLOSURE: [21.07.01.19]

The Contractor shall comply with the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which requires that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during the calendar year under which the business is to receive in the aggregate \$100,000 or more, shall, within thirty (30) days of the time when the aggregate value of these contracts, leases or other agreement reaches \$100,000 file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

6.20 POLITICAL CONTRIBUTION DISCLOSURE: [21.07.01.20]

The Contractor shall comply with, and require its officers, director, and partners to comply with Sections 14-101 through 14-108 of the Election Law Article, Annotated Code of Maryland, which requires that every person doing public business (as there defined), and every individual whose contributions are attributable to the person entering into such an agreement, during a calendar year in which the person receives cumulative consideration of \$100,000 or more from public business, shall file with the State Administrative Board of Election Laws a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Administrative Board of Election Laws: (1) before a purchase or execution of a lease or contract by the State, a county, an incorporated municipality, or their agencies, and shall cover the preceding two calendar years; and (2) if the contribution is made after the execution of a lease or contract, then twice a year, throughout the lease or contract term on (a) February 5, to cover the 6-month period ending January 31; and (b) August 5, to cover the 6-month period ending July 31.

6.21 COMPLIANCE WITH LAWS: [21.07.01.22]

The Contractor hereby represents and warrants that:

- A. It is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified.
- B. It is not in arrears with respect to the payment of any monies due and owing to the State of Maryland or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract.
- C. It shall comply with all federal, State, and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and
- D. It shall obtain, at its expense, all licenses, permits, insurance and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

6.22 RECIPROCITY: Intentionally omitted.

6.23 DEWATERING:

The Contractor shall obtain all necessary Water Appropriations and Water Discharge permits prior to activation of dewatering systems.

END OF SECTION 6

SECTION 7: PROSECUTION AND PROGRESS OF THE WORK:

7.01 NOTICE TO PROCEED:

After the Contract has been executed, the University will issue to the Contractor a "Notice to proceed" and this notice will stipulate the date on or before which the Contractor is expected to begin the Work. The specified Contract time shall begin on the day work actually starts (other than the erection of the inspector's office, construction stakeout and mobilization) or on the day stipulated in the "Notice to Proceed" whichever is earlier. Any preliminary work started or materials ordered before receipt of the "Notice to Proceed", shall be at risk of the Contractor.

7.02 PROJECT SIGNS:

A. General -- For all University construction contracts over \$50,000, provide, erect, maintain, and remove upon final acceptance of work, two (2) project signs. Sign locations and mounting systems (ground-supported posts or attached to existing structure) will be established at the Work Initiation Conference by the University's Project Manager. The University-mandated logo, graphic dimensions, state prescribed text (Board of Public Works, Governor; and State Legislature), colors, letter fonts, and size of basic sign panel are either shown on Contract Documents or will be provided at the Work Initiation Conference. Wording of project-specific text shall be directed by the University's Project Manager.

B. Products --

1. Sign Panel--Provide panel five (5) feet high by ten (10) feet long by 3/4" thick, exterior grade, MDO surface on sign face.
2. Posts (if used -- Provide 4"x 4" construction grade lumber, pressure-preservative treated, of sufficient length for minimum 3'- 6" burial into ground and for minimum of 3'- 0" clearance from bottom of sign panel to grade.
3. Fasteners--Provide non-corrosive bolts, nails, screws and other fasteners throughout.
4. Paint--Provide one (1) coat of white primer-sealer and two (2) coats of white semi-gloss for sign background. Paint back and edges of sign panel also.

C. Execution --

1. Submit, for review and approval, shop drawing indicating size, materials, construction, details, color graphics and text.
2. Provide signs by skilled, established sign manufacturer having a minimum of five (5) years' experience in the production of quality signs.

7.03 PROSECUTION OF THE WORK:

- A. Time is an essential element of the Contract and all time limits in the contract documents are of the essence of the Contract. Contractor shall prosecute the Work and its obligations under the contract vigorously until full completion. It is expressly understood and agreed by and between the Contractor and the University that the time for the completion of the work is a reasonable time for completion of the same, taking into consideration the average climatic range and the usual business conditions prevailing in the locality of the project.
- B. The date of commencement of the Work is the date established in a Notice to Proceed authorized by the Procurement Officer, however time limits shall commence pursuant to Section 7.01.
- C. If the Contractor is delayed at any time in the progress of the work by any act or omission of the University or any of its officers, agents, or employees or by any separate Contractor employed by the University, or by any changes ordered in the work, or by labor disputes, fire, unusual delay in transportation, unavoidable casualties, or by a cause which the Procurement Officer determines may justify any delay, then the Contract time will be extended for such time as the Procurement Officer may authorize.
- D. No such extension shall be made for delay occurring more than five (5) days before claim therefore is made in writing to the Procurement Officer. In the case of continuing cause of delay, only one claim is necessary.
- E. Total Float belongs to the Project and shall not be for the exclusive benefit of either party. "Total Float" is the number of days an activity may be delayed before commencement or from its early dates without extending the Contract period. Total Float shall be available to owner or Contractor and is intended to accommodate changes in the Work or to mitigate the effect of events which otherwise may delay Substantial Completion. Use of Total Float shall be monitored by the University's Project Manager. Use of Total Float is available to either party on a first come, first serve basis.

7.04 PUBLIC CONVENIENCE AND SAFETY:

The Contractor at all times shall conduct the Work in such a manner as to create the least practicable obstruction to all forms of traffic. The convenience of the general public, tenants, and of the residents along and/or adjacent to the improvement shall be respected. Material stored upon the project site shall be placed so as to cause a minimum of obstruction to the public. The Contractor shall, unless otherwise specified, provide and maintain in passable condition such temporary access, roads and bridges as may be necessary to accommodate traffic diverted from the project site under construction or using the project under construction and shall provide and maintain in a safe condition temporary approaches to, and crossing of, the project. Existing facilities planned to be removed, but which might be of service to the public during construction are not to be disturbed until other and adequate provisions are made. Fire hydrants on or adjacent to the project shall be kept accessible to fire apparatus at all times, and no materials or obstruction shall be placed within fifteen (15) feet of any such fire hydrant. Work closed down for the winter or at any other times shall be left entirely accessible at all points to fire apparatus. All footways, gutters, sewer inlets, and portions of the project including the work under construction shall not be obstructed more than is absolutely necessary.

7.05 BARRICADES AND WARNING SIGNS:

- A. The Contractor shall provide, erect, and maintain all necessary barricades, suitable and sufficient lights, danger signals, signs, and other control devices, and shall take all necessary precautions for the protection of the work and safety of the public. All highways and other facilities closed to traffic shall be protected by effective barricades, and obstructions shall be illuminated during hours of darkness with electric lights.
- B. The Contractor shall erect warning signs in advance of any place on the project where operations may interfere with the use of the facility by vehicular or pedestrian traffic, and at all other points where the new work crosses or coincides with an existing roadway or traffic lane(s). Such warning signs shall be constructed and erected in accordance with the FHWA Manual on Uniform Traffic Control Devices or as directed.
- C. In cases where the Contractor's sequence of operations results in grade differentials which would be hazardous to vehicular or pedestrian traffic, the Contractor will, at the direction of the University's Office of Facilities Management and at no additional cost to the University, provide suitable substantial guardrail to the extent determined by that office.

7.06 PRESERVATION, PROTECTION, AND RESTORATION OF PROPERTY:

- A. The Contractor shall continuously maintain adequate protection of all his work from damage and shall protect University property from injury or loss arising in connection with this Contract. The Contractor shall repair and indemnify against any such damage, injury, or loss, except such as may be directly due to errors in the Contract documents or caused by agents or employees of the University. The Contractor shall adequately protect adjacent property as provided by law and the Contract documents.
- B. The Contractor shall box all trees along the way of access, also all trees surrounding the Project site which are liable to injury by the moving, storing, and working up of materials. The Contractor shall use no tree for attachment of any ropes or derricks.
- C. The Contractor shall erect and properly maintain at all times, as required by the conditions and progress of the work, all necessary safeguards for the protection of workmen and the hazards created by such features of construction as protruding nails, hod hoists, well holes, elevator hatchways, scaffolding, window openings, stairways, and falling materials.
- D. In any emergency affecting the safety of life or the work or of the adjoining property, the Contractor without special instruction or authorization is hereby permitted to act, at his discretion, to prevent such threatened loss or injury. If is specifically instructed by the University's Office of Facilities Management to do work in an emergency, the Contractor shall do the work and will be paid compensation as outlined in Section 3.06.

7.07 PROGRESS SCHEDULE AND TIME:

- A. The Work under the Contract shall be planned, scheduled, executed and reported by the Contractor in accordance with the Contract Documents for the University's review and approval using the Critical Path Method (CPM) Schedule unless otherwise agreed to in writing by the Procurement Officer in consultation with the University's Project Manager. The University's review and approval of the Contractor's schedule does not constitute an agreement to specific dates, durations or sequences for activities. The purpose of the project schedule shall be to:
 - 1. Assure adequate planning, scheduling and reporting during execution of the Contract;
 - 2. Assure coordination of the Work of the Contractor and the various subcontractors and suppliers;
 - 3. Assist the Contractor in monitoring the progress of the Work and evaluating proposed changes to the Contract and the project schedule; and,
 - 4. Assist the Contractor in the preparation and evaluation of the subcontractors' monthly progress payment requests.
- B. When multiple subcontractors are involved, the Contractor will incorporate the schedules of all subcontractors in its schedule to produce a unified project schedule. The Contractor shall make all submissions required in the Contract Documents.
- C. The CPM schedule diagram shall include, but not necessarily be limited to, the following:
 - 1. The order and interdependencies of the Contractor's and subcontractors' activities and the major points of the interface or interrelation with the activities of others, including specific dates for completion.
 - 2. Activities should be linked between major area separations of the project so that the individual areas do not imply complete independence. The critical path should run through all major areas, since the entire project must be completed.
 - 3. Conformance with and identification of the Specific Dates specified in the Contract Documents.
 - 4. The description of work by activity.
 - 5. Delivery of Owner-furnished material and equipment, if any.
 - 6. Shop fabrication and delivery.
 - 7. Critical Path (or Paths).
 - 8. Testing of equipment and materials.
 - 9. Seasonal weather conditions, utility coordination, no-work periods (if any), expected job learning curves, and other such circumstances to activities of Contractor shall be considered and included in the planning and scheduling of all work. Seasonal weather conditions shall be based upon the preceding ten (10) years records published for the locality by the National Ocean and Atmospheric

Administration (NOAA) and entitled "Local Climatological Data."

- D. The level of detail of the CPM schedule shall be such that activity durations over fifteen (15) working days shall be kept to a minimum except for non-construction activities such as shop drawings and sample submittals, fabrication and delivery of materials and equipment, concrete curing and General Conditions activities.
- E. If the Contractor's schedule shows the University or a separate contractor is to complete an activity by a specific date, or within certain duration, the University or separate contractor under contract with the University shall not be bound to said date or duration unless the University's Project Manager specifically agrees in writing to the same.
- F. It is to be expressly understood and agreed by the Contractor that the project schedule is a working document to be revised from time to time as Project work proceeds. However, the Contractor is responsible for completing the Work within the time frame noted in the Contract. The Contractor agrees that updating the schedule is a key component and will make every reasonable effort to provide current information to the University. Throughout the progress of the Work, the Contractor shall prepare and maintain a two week manual bar chart field schedule reflecting the schedule of work activities accomplished for the previous week and the work scheduled for the forthcoming two weeks. This manual field schedule shall be updated weekly and review and the regularly scheduled progress meetings. The University Project Manager is to be in attendance of all scheduling meetings.
- G. If the Contractor fails to prepare and submit to the University's Office of Facilities Management a schedule before the existence of a delay, then no claim for extra costs due to delay in the work shall be recognized or asserted.
- H. Materials Purchased Under Allowances -- The Contractor with approval of the University will provide schedules for all materials to be purchased from specified allowances. Any unexpended funds shall revert back to the University.

7.08 PROGRESS PHOTOGRAPHS:

The Contractor shall submit photographs monthly to the University's Office of Facilities Management, taken on or about the first of each month showing the status of the Work. Photographs should be sufficient in number to properly record the work. The Contractor shall photograph all disputed items of the Work. Photographs shall be digital date stamped.

7.09 SUSPENSION OF THE WORK: [21.07.02.04]

- A. The procurement officer may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work for a period of time as he may determine to be appropriate for the convenience of the University.
- B. If the performance of all or any part of the work is for an unreasonable period of time, suspended, delayed, or interrupted by an act of the procurement officer in the administration of the Contract, or by his failure to act within the time specified in this Contract (or if no time is specified, within a reasonable time), an adjustment shall be made for any increase in the cost of performance of this Contract (excluding profit) necessarily caused by an unreasonable suspension, delay, or interruption, and the Contract modified in writing accordingly. However, no adjustment shall be made under

this clause for any suspension, delay, or interruption to the extent (1) that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor or (2) for which an equitable adjustment is provided for excluded under any provision of this Contract.

- C. No claim under this clause shall be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the procurement officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of a suspension, delay, or interruption, but not later than the date of final payment under the Contract.

7.10 CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE CONTRACT:

If the work should be stopped under an order of any court, or other public authority, for a period of three (3) months, through no act or fault of the Contractor, or of anyone employed by him, or if the University should fail to issue any certificate for payment within seven (7) days after it is due, then the Contractor may, upon seven (7) days' written notice to the University's Office of Facilities and Operations and Office of Strategic Sourcing and Acquisition Services (attention to the Procurement Officer), stop work or terminate this Contract and receive from the University payment of all completed work in accordance with Section 7.11 of these General Conditions.

7.11 UNIVERSITY'S RIGHT TO TERMINATE FOR ITS CONVENIENCE: [21.07.02.09]

- A. The performance of work under this Contract may be terminated by the University in accordance with this clause in whole or in part from time to time, whenever the procurement officer shall determine that such termination is in the best interest of the University, a Client University, or the State. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination issued by the Procurement Officer specifying the extent to which performance of work under the Contract is terminated and the date upon which such termination becomes effective.
- B. After receipt of a Notice of Termination and except as otherwise directed by the procurement officer, the Contractor shall:
 - (1) Stop work under the Contract on the date and to the extent specified in the Notice of Termination;
 - (2) Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of the portion of the work under the Contract as is not terminated;
 - (3) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;
 - (4) Assign to the University in the manner, at the times, and to the extent directed by the procurement officer, all of the right, title, and interest of the Contractor under the orders and subcontractor so terminated, in which case the University shall have the right, in its direction, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
 - (5) Settle all outstanding liabilities and all claims arising out of such terminations or

orders and subcontracts, with the approval or ratification of the procurement officer to the extent he may require, which approval or ratification shall be final for all the purpose of this clause;

- (6) Transfer title and deliver to the University in the manner, at the times, and to the extent, if any directed by the procurement officer, (a) the fabricated or unfabricated parts, work in process, completed work, supplies, and (b) other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and other property which, if the Contract had been completed, would have been required to be furnished to the University.
 - (7) Use its best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Procurement Officer, any property of the types referred to in (6) above; provided, however, that the Contractor (a) shall not be required to extend credit to any purchaser, and (b) may acquire any such property under the conditions prescribed by and at a price or prices approved by the procurement officer; and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the University to the Contractor under this Contract or shall otherwise be credited to the price or cost of the work covered by this Contract or paid in such other manner as the procurement officer may direct;
 - (8) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and,
 - (9) Take any action that may be necessary, or as the Procurement Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the State has or may acquire an interest. The Contractor may submit to the Procurement Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the procurement officer and may request the University to remove such items or enter into a storage agreement covering the same; provided, that the list submitted shall be subject to verification by the Procurement Officer upon removal of the items or, if the items are stored, within 45 days from the date of submission of the list. Any necessary adjustment to correct the list as submitted shall be made prior to final settlement;
- C. After receipt of a Notice of Termination, the Contractor shall submit to the Procurement Officer his termination claim, in the form and with certification prescribed by the procurement officer. Such claim shall be submitted promptly but in no event later than one year from the effective date of termination, unless one or more extensions in writing are granted by the procurement officer, upon request of the Contractor made in writing within such one year period or authorized extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Procurement Officer may determine on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.
- D. Subject to the provisions of paragraph C, the Contractor and the Procurement Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done;

provided that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Contract price as reduced by the amount of payments otherwise made and as further reduced by the Contract price of work not terminated. The Contract shall be amended accordingly and the Contractor shall be paid the agreed amount. Nothing in paragraph E. of this clause, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the Procurement Officer to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this paragraph.

E. In the event of the failure of the Contractor and the Procurement Officer to agree, as provided in paragraph D., upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, the Procurement Officer shall pay the Contractor the amounts determined by the procurement officer as follows, but without duplication of any amounts agreed upon in accordance with paragraph D:

- (1) With respect to all Contract work performed prior to the effective date of the Notice of Termination, the total (without duplication of any items) of:
 - (a) The cost of the work;
 - (b) The cost of settling and paying claim arising out of the termination of work under subcontracts or orders as provided in paragraph B (5) above, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the subcontractor before the effective date of the Notice of Termination of work under this Contract, which amounts shall be included in the cost on account of which payment is made under (a) above; and
 - (c) A sum, as profit on (a) above, determined by the procurement officer to be fair and reasonable provided, however, that if it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, no profit shall be included or allowed under this subdivision (c) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss.
- (2) The reasonable cost of the preservation and protection of property incurred pursuant to paragraph B (9) and any other reasonable cost incidental to termination of work under this Contract, including expense incidental to the determination of the amount due to the Contractor as the result of the termination of work under this Contract.

The total sum to be paid to the Contractor under (1) above shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the Contract price of work not terminated. Except for normal spoilage and except to the extent that the University shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor under (1) above, the fair value, as determined by the procurement officer, of property which is destroyed, lost, stolen, or damaged so as to be undeliverable to the University, or to a buyer pursuant to paragraph B (7).

F. Costs, claimed, agreed to, or determined pursuant to C, D, E, and I hereof shall be in accordance with COMAR 21.09 as in effect on the date of the Contract.

- G. The Contractor shall have the right of appeal, under the clause of this Contract entitled "Disputes," from any determination made by the procurement officer under paragraph C, E, or I hereof, except that if the Contractor has failed to submit his claim within the time provided in paragraph C or I thereof, and has failed to request extension of such time, he shall have no such right of appeal. In any case where the procurement officer has made a determination of the amount due under paragraph C, E, or I hereof, the University shall pay to the Contractor the following: (i) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the procurement officer, or (ii) if an appeal has been taken, the amount finally determined on such appeal.
- H. In arriving at the amount due the Contractor under this clause there shall be deducted (i) all unliquidated advances or other payments or account theretofore made to the Contractor, applicable to the terminated portion of the Contract, (ii) any claim which the University may have against the Contractor in connection with this Contract; and (iii) the agreed price for, or the proceeds of sale of any materials, supplies, or other things acquired by the Contractor or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to the University.
- I. If the termination hereunder be partial, the Contractor may file with the Procurement Officer a claim for or an equitable adjustment of the price or prices specified in the Contract relating to the continued portion of the Contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices. Any claim by the Contractor for an equitable adjustment under this clause shall be asserted within ninety (90) days from the effective date of the termination notice, unless an extension is granted in writing by the procurement officer.
- J. The University, may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor whenever in the opinion of the Procurement Officer the aggregate of such payments shall be within the amount to which the Contractor shall be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the University upon demand together with interest computed at the legal rate for the period from the date such excess payment is received by the Contractor to the date on which the excess is repaid to the University; provided, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of the retention or disposition, or a later date as determined by the Procurement Officer by reason of circumstances.
- K. Unless otherwise provided for in this Contract or by applicable stature, the Contractor shall, from the effective date of termination until the expiration of three (3) years after the final settlement under this Contract, preserve and make available to the University at all reasonable times at the office of the Contractor but without direct charge to the University, all his books, records, documents, and other evidence bearing on the costs and expenses of the Contractor under this Contract and relating to the word terminate hereunder, or to the extent approved by the procurement officer, photographs, or other authentic reproductions thereof.

7.12 TERMINATION FOR DEFAULT -- DAMAGES FOR DELAY -- TIME EXTENSIONS:
[21.07.02.07]

- A. If the Contractor refuses or fails to prosecute the work or any separable part thereof, with such diligence as shall insure its completion within the time specified in this Contract or any extension thereof or fails to complete said work within this time, the University may, by written notice to the Contractor, terminate his right to proceed with the work or the part of the work as to which there has been delay. In this event, the University may take over the work and prosecute the same to completion, by Contract or otherwise, and may take possession of and utilize in completing the work, the materials, appliances, and plant as may be on the site of the work and necessary therefore. Whether or not the Contractor's right to proceed with the work is terminated, he and his sureties shall be liable for any damage to the University resulting from his refusal or failure to complete the work within the specified time.
- B. If fixed and agreed liquidated damages are provided in the Contract and if the University so terminates the Contractor's right to proceed, the resulting damage shall consist of such liquidated damages until a reasonable time as may be required for final completion of the work together with any increased costs occasioned for the University in completing the work.
- C. If fixed and agreed liquidated damages are provided in the Contract and if the University does not so terminate the Contractor's right to proceed, the resulting damage shall consist of these liquidated damages until the work is completed or accepted.
- D. The Contractor's right to proceed may not be so terminated nor the Contractor charged with resulting damages if:
 - (1) The delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God, acts of the public enemy, acts of the University or State in either their sovereign or contractual capacity, acts of another contractor in the performance of a Contract with the University, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or delays of subcontractor or suppliers arising from unforeseeable causes beyond the control of and without the fault or negligence of both the Contractor and the subcontractor or suppliers; and
 - (2) The Contractor, within 10 days from the beginning of any such delay (unless the procurement officer grants a further period of time before the date of final payment under the Contract), notifies the procurement officer in writing of the causes of delay. The procurement officer shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in his judgment, the findings of fact justify such an extension, and his findings of fact shall be final and conclusive on the parties, subject only to appeal as provided in the "Disputes" clause of this Contract.
- E. If, after notice of termination of the Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provision of this clause, or that the delay was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the Contract contains a clause providing for termination for convenience of the University, be the same as if the notice of termination had been issued pursuant to that clause. If, in the foregoing circumstances, this Contract does not contain a clause providing for termination for convenience of the

State, the Contract shall be equitably adjusted to compensate for the termination and the Contract modified accordingly; failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this Contract entitled "Disputes."

- F. The rights and remedies of the University provided in this clause are in addition to any other rights and remedies provided by law or under this Contract.
- G. As used in paragraph D (1) of this clause, the term "subcontractors or suppliers" means subcontractors or suppliers at any tier.

7.13 PARTIAL ACCEPTANCE:

- A. If during the construction of work the University desires to occupy any portion of the project, the University shall have the right to occupy and use those portions of the project which in the opinion of the procurement officer can be used for their intended purposes; provided that the conditions of occupancy and use are established and the responsibilities of the Contractor and the University for maintenance, heat, light, utilities, and insurance are mutually agreed to by the Contractor and the University.
- B. Partial occupancy shall in no way relieve the Contractor of his responsibilities under the Contract.

7.14 FAILURE TO COMPLETE ON TIME/LIQUIDATED DAMAGES:

- A. This Section #7.14 is in addition to provisions concerning liquidated damages set forth elsewhere in the Contract.
- B. For each day that any work shall remain uncompleted beyond the time(s) specified elsewhere in the Contract, the Contractor shall be liable for liquidated damages in the amount of \$750.00 per day or, if an amount is stated in the solicitation documents, that amount provided, however, that due account shall be taken of any adjustment of specified completion time(s) for completion of work as granted by approved change orders or contract amendments..
- C. The University shall have the right to deduct/retain offset and recoup out of the monies due to or become due to the Contractor hereunder the amount of damages, and in case the amounts due the Contractor are less than the amount of such damages, the Contractor shall be liable to the University for the difference.

7.15 SUBSTANTIAL COMPLETION AND FINAL INSPECTION:

- A. When the Contractor reasonably believes the Work satisfies the requirements of 7.15B, the Contractor shall notify the University's Project Manager in writing that the Work will be ready for Substantial Completion Inspection and testing on a definite date. Reasonable notice shall be given by the Contractor to schedule the Substantial Completion Inspection. The Contractor shall not request Substantial Completion Inspection until the Work is in fact substantially complete. The Contractor shall deliver to the Project Manager, on the scheduled Substantial Completion Inspection date, a complete, comprehensive set of field mark-up drawings accurately documenting the As-Built Project and all of the Operation and Maintenance (O&M) Manuals required under the Contract and shall have completed all required training and demonstration of equipment as required by the Contract Documents.
- B. The University's Project Manager shall establish the date of Substantial Completion and shall fix the time(s) at which the warranties will begin if, on the basis of the Substantial Completion Inspection, the University determines that, at a minimum and in accordance with the Contract Documents:
 - (1) all electrical, mechanical, and life safety systems have been completed and successfully tested and successfully inspected for conformity to all requirements of the Contract Documents and all applicable codes and standards;
 - (2) complete, comprehensive field mark-up drawings of the As-Built Project, and all of the O&M Manuals required under the contract, have been delivered to the University's Project Manager;
 - (3) all other requirements for substantial completion, including the completion of required training and demonstration of equipment, have been met; and
 - (4) the Project is able to be occupied and usable for its intended purpose.
- C. The Work shall not be deemed substantially complete if, in the absolute discretion of the University's Project Manager, completion of unfinished works, whether called punch list work or otherwise, would cause inconvenience to or interfere with the use of the Premises by University personnel or others using the Premises.
- D. If the University's Project Manager determines that Substantial Completion has been achieved, the University's Project Manager shall fix the time within which the Contractor shall complete any remaining items of work which will be indicated on a list (the "punch list"). All punch list work shall be completed within thirty (30) days after the date of Substantial Completion determined by the University, unless the University establishes a different period for completion of the punch list work. If the Contractor fails to complete the remaining items so listed in the time stipulated the University shall have the undisputed right to complete the Work at the Contractor's expense. The Contractor may be required to complete multiple punch lists, which may be prepared by the University or by the architect, until the Contract is performed in its entirety. Failure to complete punch list work in a timely manner shall constitute grounds for termination of the Contract for default.

- E. Prior to the determination of Substantial Completion by the University, the Architect and/or the University may prepare lists of work requiring completion as a prerequisite to the determination of Substantial Completion. These "work lists" shall not constitute punch lists and shall not be construed as indicating that the Work has been completed to the extent that it is substantially complete.
- F. Final payment shall not be made until all Contract work including all punch list work is complete to the satisfaction of the University.
- G. Acceptance of the Work as substantially complete shall not excuse or waive any failure of the Contractor to complete the Contract as required by the Contract Documents.

7.16 CLEANING-UP:

The Contractor shall at all times keep the construction area, including storage areas used by him, free from accumulation of waste materials or rubbish and prior to completion of work, shall remove from the premises any rubbish and all tools, scaffolding, equipment, and materials, not the property of the University. Upon completion of the construction, the Contractor shall leave the work and premises in a clean, neat, and workmanlike condition satisfactory to the University's Office of Facilities Management.

7.17 GUARANTEES:

The Contractor guarantees and warranties for a two (2) year period (unless another period is specified which shall not be less than two (2) years), commencing on the date of substantial completion as established by the University:

- A. That the work contains no faulty or imperfect material or equipment or any imperfect, careless, or unskilled workmanship.
- B. That all mechanical and electrical equipment, machines, devices, etc., shall be adequate for the use to which they are intended, and shall operator, with ordinary care and attention, in a satisfactory and efficient manner.
- C. That he will re-execute, correct, repair, or remove and replace with proper work, without cost to the University, any work found not to be as guaranteed by this Section. The Contractor shall also make good all damages caused to other work or materials in the process of complying with this Section.
- D. That the entire work shall be water-tight and leak-proof in every particular.

The guarantee and warranty set forth herein is in addition to any implicit or explicit guaranty and warranty provided by law, if any.

7.18 NOTICE TO UNIVERSITY OF LABOR DISPUTES:

- A. Whenever the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the Contractor shall immediately give notice thereof, including all relevant information with respect thereto, to the procurement officer.
- B. The Contractor agrees to insert the substance of this clause, including this paragraph B., in any subcontract hereunder, at any tier, as to which a labor dispute may delay the timely performance of this Contract; except that each such subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify his next higher tier subcontractor, or the prime Contractor, as the case may be, of all relevant information with respect to such dispute.

END OF SECTION 7

SECTION 8: PAYMENTS:

8.01 SCOPE OF PAYMENT: [21.07.01.03]

- A. Payments are made on the valuation of work accomplishment and on account of materials delivered on the site, for incorporation in the work which are suitably stored and protected. The Contractor is to submit a Schedule of Values (SOV) for the University's approval within ten (10) working days of the issuance of the Notice to Proceed. The SOV must be approved by the University prior to the Contractor's use in applying for payment. The SOV will be submitted in a format as prescribed by and to the level of detail specified by the University inclusive of the following:
1. The sum of the parts of the SOV shall total to the Contract amount.
 - a. Labor will be separate from material/equipment.
 - b. Round amounts off to the nearest whole dollar.
 2. The minimum level of breakdown and order on the application for payment include, but are not limited to, the following:
 - a. Bond costs, if applicable.
 - b. General Conditions:
 1. Mobilization/Demobilization
 2. Submittals/Shop Drawings
 3. Schedule/Schedule Updates
 4. On site staff reimbursable costs
 5. Safety
 6. Clean-up
 7. Hoisting
 8. Punch List
 9. As-built Drawings
 10. Warranties and Operations & Maintenance Manuals
 11. Close out Documentation
 - c. Division 1 cost breakdown as requested/required.
 - d. Major trade work shall be broken down into labor and material line items.
 - e. A listing of approved/fully executed change orders/contract amendments, if any, in sequential order.
 3. SOV items shall have a direct and understandable relation to the Project construction schedule.
 4. Overhead and profit shall be distributed into each item of work.
 5. Once approved, the SOV shall be the basis for the Contractor's application for payment except as noted below in #6.
 6. The University shall have the right to require the Contractor to alter the value or add/delete categories on the SOV at any time for the following reasons:

- a. The SOV appears to be incorrect or unbalanced.
 - b. A revision of the segregation of values is required due to the Contractor revising the sequence of construction or assembly of building components.
 - c. Change orders/contract amendments are issued to the Contractor and shall be incorporated into the SOV as a separate line item at the bottom of the SOV.
- 7. The Contractor is required to correlate the documentation for payment of stored materials requested in the application for payment against the agreed upon breakdown of the SOV and provide the necessary certificate of insurance for offsite storage with the University as the certificate holder.
- B. Payments shall also be made on account of materials or equipment or incorporation in the work delivered by the Contractor but stored at some off-site location agreed upon by the University; such payment to be conditioned upon submission by the Contractor of bills of sale or other procedures satisfactory to the University's Office of Facilities Management to establish the University's title to such materials or equipment or otherwise protect the University's interest, including applicable insurance certificate(s) and transportation to site.
- C. Prior to application for first payment, the Contractor shall submit to the University a schedule of values of the various parts of the work, including quantities, aggregating the total sum of the Contract. This schedule shall be so divided as to facilitate payments to subcontractors. The form of this submission shall be as the Contractor and the University have agreed upon and shall be supported by such evidence as to its correctness as the University may direct. Unless at a later date found to be in error, this schedule shall be used as a basis for certificates of payments.
- D. Application for payment shall be submitted on or about the 25th day of each month but not less than thirty (30) days after the "Work Initiation Conference" nor before ten (10) days of job operation (job shut-down days excluded).
- E. In applying for payments the Contractor shall submit a statement, based upon the schedule of values prepared under subparagraph C above, itemized in such form and supported by such evidence as the University may require, showing the Contractor's right to the payment claimed. Payment will be for work in place by the 25th of the billing month; no projection to the month's end is to be included. Each invoice shall prominently display the Contractor's Federal Employers Tax Identification Number or (if no such number) his social security number.
 - (1) In applying for all payments, excluding the first payment and final payment, the Contractor shall submit in addition to the above a certificate he has paid:
 - (a) All labor to date;
 - (b) All vendors and material suppliers in full for all items received; and
 - (c) All subcontractors in full, less the retained amount.
 - (2) In applying for the final payment, the Contractor shall submit in addition to the statement required in E (1), the following:

- (a) Such evidence as the University may demand as will establish the University's title to materials and give reasonable assurance that claims against materials and claims for labor and other items by others do not exist;
- (b) An electric certificate from an independent (non-governmental) electrical inspection agency approved by the State of Maryland Fire Marshal. The Contractor must make application for the inspection, coordinate same, and pay the required inspection fees. The independent electrical inspection agencies are not considered local authorities;
- (c) All other guarantees are called for by the Contract;
- (d) All equipment manuals and parts lists.

8.02 **FORCE ACCOUNT WORK:**

- A. When the Contractor is required to perform or have performed work as a result of additions or changes to the Contract for which there are no applicable unit prices in the Contract, the University's Office of Facilities Management and the Contractor shall make every effort to come to an agreed upon price for the performance of such work. If an agreement cannot be reached, the University's Office of Facilities Management may require the Contractor to do or have done such work on a force account basis to be compensated in accordance with the following:
 - (1) Labor -- For all labor and for foremen in direct charge of the specific operations, the Contractor shall receive the actual wages for each and every hour that said labor and foremen are actually engaged in such work. The Contractor shall receive the actual costs paid to, or in behalf of, workmen by reason of subsistence and travel allowances, health, welfare benefits, pension fund benefits, or other benefits, when such amounts are required by collective bargaining agreement or other employment Contract generally applicable to the classes of labor employed on the work.
 - (2) Materials -- For materials accepted by the Architect and used, the Contractor shall receive the cost paid by it (net any available special or trade discounts, whether or not taken and whether or not shown on "pick tickets" or invoices) for materials delivered on the work, including transportation charges paid by him (exclusive of machinery rentals as hereinafter set forth).
 - (3) Equipment -- For any machinery or special equipment rented (other than small tools, whether rented or owned), the Contractor shall receive the rates agreed upon in writing before such work is begun, or the Contractor shall receive those rates which may be specified elsewhere in the Contract. For purposes of definition, equipment with a new cost of \$1,000 or less will be considered small tools.
 - (4) Materials and Supplies Not Incorporated in the Work -- For materials and supplies expended in the performance of the work (excluding those required for rented equipment) and approved by the Architect, the Contractor shall receive the actual cost of such materials and supplies used (net any available special or trade discounts, whether or not taken and whether or not shown on "pick tickets" or invoices).

- (5) Bond, Insurance, and Tax -- For bond premiums, property damage, liability, and workmen's compensation insurance premiums, unemployment insurance contributions, and social security taxes on the force of account work, the Contractor and University shall determine an equitable percent to be applied against the labor cost (premium pay and fringes excluded).
- (6) Subcontractors -- The Contractors shall receive the actual cost of work performed by a subcontractor. Subcontractor's cost is to be determined as in A (1-5) above. An allowance will be made to the Contractor for subcontractor's overhead and profit in an amount to be determined in accordance with Section VII. 8.02 A (8).
- (7) Superintendence -- No additional allowance shall be made for general superintendence, the use of small tools, or other costs for which no specific allowance is herein provided. The cost of Supervisory Personnel may be added only when the procurement officer finds that the modification makes necessary the hiring of additional supervisory personnel or makes necessary their employment for additional time to that required by the Contract.
- (8) Subcontractor's Overhead and Profit -- The allowance to the subcontractor for his overhead and profit will be at the following scale:

Value of Work Combined Overhead and Profit

\$ 0 - \$1,000	25%
\$ 1,001 - \$ 5,000	20%
\$ 5,001 - \$10,000	17%
\$10,001 - \$25,000	15%
over - \$25,000	negotiated, but not more than 15%

- B. Compensation -- The compensation as set forth above shall be received by the Subcontractor as payment in full for the work done on a force account basis. At the end of each day, the Subcontractor's representative and the Architect shall compare records of the cost of work as ordered on a force account basis.
- C. Statements -- No payment will be made for work performed on a force account basis until the Subcontractor furnishes the University duplicate itemized statements of the cost of such force account work detailed as to the following:
 - (1) Name, classification, date, daily hours, total hours, rate, and extension for laborers and foremen.
 - (2) Designation dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment rented (other than small equipment).
 - (3) Quantities and prices of materials.
 - (4) Changes for transportation of materials paid by the Contractor.
 - (5) Cost of property damage, liability, and workmen's compensation insurance premiums, unemployment insurance contributions, and social security tax.
 - (6) Statements for payments of items under paragraphs (3) and (4) shall be accompanied by original receipted invoices for materials used and transportation charges. If, however, the materials used in the force account work are not specifically purchases for such work but are taken from the Contractor's stock,

then in lieu of the original invoices the statements shall contain or be accompanied by an affidavit of the Subcontractor which shall certify that such materials were taken from his stock, that the quantity claimed was actually used and that the price and transportation of the materials as are claimed represent actual cost, not all discounts. Proof of cost of items in stock will be furnished upon the procurement officer's request.

8.03 CASH ALLOWANCES:

Whenever an allowance is mentioned in the specifications, then the Contractor shall include in his Contract Sum the entire amount of such specified allowances. The expenditure of these allowances is at the University's direction. However, the allowance expenditure is limited to items properly inferable from the title of the allowance. Unexpended balances are to revert to the University. The costs of installation of materials purchased are not included in the allowance. The Contractor shall have installed (through subcontractors) all material purchased under allowances and shall include in the Contract sum a sufficient amount, in addition to the allowance, to cover the installation, other costs, and profit.

8.04 CERTIFICATES OF PAYMENT:

- A. If the Contractor has made application as above, the University shall, not later than the date when such payment falls due; issue to the Contractor a certificate for such amount as it decides to be properly due. In approving such partial payments, there shall be an amount retained pursuant to Section 00400 of the Request for Proposal document until completion and acceptance of all work covered by the Contract.
- B. The University shall provide the Contractor with the payment forms to be used by the Contractor.
- C. No certificate issued nor payment made to the Contractor nor partial or entire use or occupancy of the work by the University shall be an acceptance of any work or materials not in accordance with this Contract.
- D. Retainage cannot exceed 5% of the contract amount.
- E.
 - (1) In addition to retainage, a primary procurement unit may withhold from payments otherwise due a contract an amount that the unit reasonably believes is necessary to protect the State's interest.
 - (2) A contractor may not retain from a payment due a subcontractor a percentage of the payment greater than the percent for retainage retained by the University.
 - (3) A subcontractor may not retain from a payment due a lower-tier subcontractor a percentage of the payment greater than the percent for retainage retained by the University.
 - (4) A contractor and a subcontractor are not, however, prohibited from withholding an amount in addition to retainage if the contractor or subcontractor determines that a subcontractor's performance provides reasonable grounds for withholding the additional amount.

- F.
- (1) A contractor may elect to have retainage placed in an escrow account.
 - (2) An escrow agreement would be applicable signed by the contractor, the escrow agent and, if applicable, the surety.
 - (3) The escrow agent shall be selected from among the banks approved by the State Treasurer's office.
 - (4) The Contractor is solely liable to the escrow agent for the payment of fees and charges associated with the escrow account.
 - (5) Retained funds may only be released as directed by the University.
 - (6) At the time of final payment, the University shall direct the escrow agent to settle the escrow account by paying funds as directed.
 - (7) Until payment is made, escrow accounts are State funds and are not subject to any liens.

8.05 DEDUCTIONS FOR UNCORRECTED WORK:

If the University deems it inexpedient to correct work injured or done in accordance with the Contract, an equitable deduction from the contract price shall be made therefore.

8.06 PAYMENTS WITHHELD:

- A. The University may withhold or, on account of subsequently discovered evidence, nullify the whole or part of any certificate to such extent as may be necessary to protect the University from loss on account of:
- (1) Defective work not remedied;
 - (2) Claims filed or reasonable evidence indicating probable filing of claims;
 - (3) Failure of the Contractor to make payments properly to subcontractor for material or labor;
 - (4) A reasonable doubt that the Contract can be completed for the balance then unpaid; or
 - (5) Damage to another contractor.
 - (6) Liquidated Damages or other damages or compensation due the University for claims of the University against the Contractor.
 - (7) Any claim of the University or State against the Contractor on a debt or obligation owed the University of the State or claim by the University or the State to be owed by the Contractor to the University or State arising from any other cause or contract;
 - (8) Retainage as provided in Section 8.04;

- (9) Failure to maintain as-built drawings as required by Section 7.15
 - (10) Failure to update schedules properly as required by Section 7.07 and Section 400 of the RFP; or
 - (11) The cost of completing unfinished warranty work.
- B. When the above grounds are removed, payment shall be made for amount withheld because of them.

8.07 CORRECTION OF WORK BEFORE FINAL PAYMENT:

- A. The Contractor shall have promptly removed from the premises all materials condemned by the Architect or the University as failing to conform to the Contract, whether incorporated in the work or not. The Contractor shall have promptly replaced and re-executed his own work in accordance with the Contract and without expense to the University and shall bear the expense of making good all work of other Contractors destroyed or damaged by such removal or replacement.
- B. If the Contractor does not have such condemned work and materials removed within a reasonable time, fixed by written notice, the University may remove them and may store the materials at the expense of the Contractor. If the Contractor does not pay the expense of such removal within ten (10) days' time thereafter, the University may, upon ten (10) days' notice, sell such materials and shall account for the net proceeds thereof, after deducting all the costs and expenses that should have been borne by the Contractor.

8.08 ACCEPTANCE AND FINAL PAYMENTError! Bookmark not defined.:

- A. Upon completion of the Work, the Contractor shall prepare final payment forms and submit them. The University will promptly proceed to make any necessary final surveys, to complete any necessary computations of quantities, and to complete other activities necessary to determine the Contractor's right to final payment. The Project Manager will then reply to the Contractor's request for final payment, informing the Contractor of all deductions, damages, costs, back charges, and other charges assessed against the Contractor by the University and the reasons therefor.
- B. Notwithstanding Section 8.08 A, prior to or in the absence of a request from Contractor for final payment, the Procurement Officer may determine under Section 8.08 A(2) the amount of the final payment to the Contractor.
- C. If the Contractor disputes the amount determined by the Procurement Officer to be due the Contractor, then the Contractor shall initiate a claim under the Disputes procedures.
- D. Acceptance by the Contractor of any payment identified by the Procurement Officer as being final payment shall operate as an accord and satisfaction and a general release of all claims of the Contractor against the University arising out of or connected with the Contract, except as may be expressly agreed otherwise in writing between the Contractor and the Procurement Officer.

- E. No claims by the Contractor may be asserted for the first time after final payment is made by the University.

8.09 INTERESTError! Bookmark not defined.:

- A. Contractor and the University such agree that neither is entitled to any interest on any payment or judgment due it from the other.

8.10 AUDITS BY THE UNIVERSITY:

- A. The Contractor agrees that the University or any part of its duly authorized representatives shall, until expiration of three (3) years after final payment under this Contract or after any applicable statute of limitations, whichever is longer, have access to and the right to examine any directly pertinent books, documents, papers, and records (including all records in electronic media) of the Contractor involving transactions to this Contract.
- B. The Contractor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that the University or any of its duly authorized representatives shall, until the expiration of three (3) years after final payment under the subcontract or after any applicable statute of limitations, whichever is longer, have access to and the right to examine any directly pertinent books, documents, papers, and records (including all records in electronic media) of such subcontractor, involving transactions related to the subcontract.
- C. The Contractor shall retain and maintain all records and documents relating to this Contract for the period specified in paragraph A and shall make them available for inspection and audit by authorized representatives of the State of Maryland, including the University or designee at all reasonable times. [21.07.01.21]

8.11 MULTI-YEAR CONTRACTS: [21.07.01.10]

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the University's rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of this Contract hereunder will be to discharge both the Contractor and the University from future performance of this Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not authorized in the price of the contract. The University shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this contract for each succeeding fiscal period beyond the first.

8.12 PAYMENT OF STATE OBLIGATIONS:

- A. Payments to the Contractor pursuant to the Contract shall be made no later than thirty (30) days after the State's receipt of a proper invoice from the Contractor. Charges for late payment of invoices, other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, or by the Public Service Commission of Maryland with respect to regulated public utilities, as applicable are prohibited. [21.07.01.18]
- B. Electronic funds transfer will be used by the State to pay Contractor for this Contract and any other University payments due Contractor unless the State Comptroller's Office grants Contractor an exemption.

END OF SECTION 8

SECTION 9: EMPLOYEES, SUBCONTRACTORS, AND WORK CONDITIONS:

9.01 EMPLOYEES AND WORKMANSHIP: The following provisions in Section 9.01 are in addition to provisions relating to these matters set forth elsewhere in the Contract.

- A. Qualification of Employees -- Only personnel thoroughly trained and skilled in the task assigned them may be employed on any portion of the Work. Any employee found by the Contractor, the Architect, or the University's Office of Facilities Management to be unskilled or untrained in his work shall be removed from the Work.
- B. Licensed Employees -- When Municipal, County, State, or Federal laws require that certain personnel (electricians, plumbers, etc.) be licensed, then all such personnel employed on the Work shall be so licensed.
- C. Quantity of Labor -- The Contractor shall employ on the Work, at all times sufficient personnel to complete the Work within the time stated in the Contract.
- D. Work Areas -- The Contractor shall confine the operations of his employees to the limits as provided by law, ordinance, permits, or directions of the University's Office of Facilities Management. Generally, the work area will be the same as indicated in the contract documents.
- E. Methods and Quality:
 - (1) All workmanship shall be of good quality. Whenever the method of the Work or manner of procedure is not specifically stated in the contract documents, then it is intended that the best standard practice shall be followed. Recommendations of the manufacturers of approved materials shall be considered as a part of these specifications and all materials shall be applied, installed, connected, erected, used, cleaned, and conditioned as called for thereby. This, however, does not remove any requirement in these specifications to add to the manufacturer's recommendations.
 - (2) All materials shall be accurately assembled, set, etc., and when so required in good construction, shall be true to line, even, square, plumb, level, and regularly spaced, coursed, etc. Under no circumstances, either in new or cold work, shall any material be applied over another which has not been thoroughly cleaned, sanded, or otherwise treated so as not to impair the finish, adhesion, or efficiency of the next applied item.
 - (3) All methods and procedures and results are subject to the University's and Architect's approval as to finished result to be obtained. However, this is not to be interpreted as placing upon the University or the Architect any responsibility for the "Work" management of the Work which is solely the responsibility of the Contractor.
 - (4) Whenever the method of work or manner of procedure is not specifically stated in the Contract Documents, the best practice shall be followed. Unless the Contract Documents expressly require stricter standards for application, installation, connection, erection, use, cleaning or conditioning, recommendations of the manufacturers of approved materials shall be considered as a part of the specifications and all materials shall be applied, installed, connected, erected, used, cleaned and conditioned as called for by the recommendations. If any such

manufacturer's recommendations are defective, faulty, inaccurate, or negligently made, Contractor shall be responsible for all loss resulting therefrom, including liability for loss incurred by the University.

- F. Scheduling: The obligations in this Section 9.01 F shall be in addition to the scheduling provision set forth elsewhere in the Contract.
- (1) The Contractor shall so schedule the Work as to ensure efficient and uninterrupted progress and to hold to an absolute minimum the cutting and patching of new work. All cutting, patching and digging necessary to the execution of the work is included.
 - (2) The Contractor shall schedule the construction performed by each group or trade so that each installation or portion of the construction shall member with and join with every other new or old work required for a complete installation, all according to accepted good construction practice.
- G. Superintendent -- The Contractor shall keep on site at all times when any of the Work is being performed, a competent Superintendent (fluent in English) and any necessary assistants, all approved by the University's Office for Facilities and Operations prior to the commencement of the Work and from time to time prior to the assignment of any person to that position. The Superintendent must be the person named within the Contractor's Response to the University's Solicitation, if applicable. Changes to named Superintendents must be requested in writing **prior to the change being made** by following the same process within the Solicitation. If approved by the University, the Procurement Office will issue a Contract Amendment accordingly.
- In the event, the Solicitation did not require a Superintendent to be named, the Contractor shall submit in writing to the Office for Facilities and Operations, from time to time, the name of the person it intends to employ as superintendent for the execution of this Contract with a statement of the proposed superintendent's qualifications. This data will be reviewed by the University's Office for Facilities and Operations and an approval or rejection will be given in writing. Persons who have previously proved unsatisfactory on work executed for the University or the State of Maryland or who are without proper qualifications will not be approved. Should it be necessary to change the superintendent, this procedure will be repeated.
- A single Superintendent may be permitted by the University to superintend two or more jobs located at the same institution or close to each other only when approved in writing by the University's Office for Facilities and Operations. If only one Superintendent was proposed in the Contractor's Response to the University's Solicitation (if applicable) and the Contractor subsequently requests the Superintendent handle two or more jobs, upon approval by the University, a Contract Amendment will be issued by the Procurement Officer.
- The Superintendent shall represent the Contractor. All directions given to the Superintendent shall be as binding as if given to the Contractor. Other directions shall be so confirmed on written request in each case. Should the Superintendent be complained of by the University's Office for Facilities and Operations for cause, he shall be removed from the work and a new Superintendent obtained and approved as described above.
- H. Discipline -- The Contractor shall at all times enforce strict discipline and good order among its employees and its subcontractors' employees and shall not employ or permit

to remain on the work any unfit person. He shall enforce all instructions relative to use of water, heat, power, no smoking, and control and use of fires as required by law and by the University. Employees must not be allowed to loiter on the premises before or after working hours.

- I. Employee Safety -- The Contractor shall designate a responsible member of his organization, on the work, whose duty it shall be, in addition to his other duties, to prevent accidents and to enforce the standards of Section 9.07. The name and position of the person so designated shall be reported to the University's Office of Facilities Management with a copy to the Architect, by the Contractor at the commencement of the work.
- J. Supervisory Personnel: All supervisory personnel of the Contractor must be direct employees of the Contractor, unless otherwise approved in writing, in advance, by the University.

9.02 NON-DISCRIMINATION-EMPLOYMENT POLICIES:

- A. Acceptance of a Contract based on the University's specifications constitutes agreement by the Contractor to comply with State policy as established by Joint Resolution No. 16 of the General Assembly of 1958, which is:

That on all public works being paid for in whole or in part with State or other public funds, preference shall be given to available persons who have been residents of Maryland for a period of at least six (6) months immediately prior to availability of positions for employment of laborers, mechanics, and others not including supervisory personnel, not to exceed ten percent (10%) of the total working force.

- B. As required by Section 13-219 of the State Finance and Procurement Article, the Contractor:
 - a. Shall not discriminate in any manner against any employee or applicant for employment because of sex, race, age, creed, color, or national origin and shall include a similar clause in every subcontract, except a subcontract for standard commercial supplies or raw materials. In addition, the Contractor and subcontractor shall post conspicuously a notice that sets forth the provisions of this Section in a place that is available to employees and applicants for employment.
 - b. If the Contractor fails to include the required clause in a subcontract, the University may declare the Contract void. In that event, the Contractor is entitled to the reasonable value of work that has been performed and materials that have been provided.
 - c. If the Contractor willfully fails to comply with the above non-discrimination provisions the University may, if the contract is partly executory, compel continued performances of the contract, but the University shall be liable only for the reasonable value of services performed and materials supplied from the date that the breach of contract was discovered or should have been discovered, and any sums previously paid by the State under the Contract, shall be set off against the sums to become due as the contract is performed.

- d. If a subcontractor willfully fails to comply with the non-discrimination provisions above, the Contractor may void the subcontract and shall be liable only for the reasonable value of the services performed and materials supplied.
 - e. Any person, including an employee, prospective employee with information concerning violations of the requirements of this section may inform the Board of Public Works which shall cause an immediate investigation of the charges. If the Board concludes that the charges are true it may invoke any remedy available by law.
- C. The Governor's Executive Order pertaining to the Code of Fair Practices, dated July 9, 1976 bars discrimination by State Contractors on account of political or religious opinion or affiliation in addition to the discrimination listed above.
- D. The provisions of the Civil Rights Act of 1964 are hereby included in this Contract to the end that no person in the United States shall, on the ground of race, color, or natural origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under this Agreement.
- E. The Contractor, subcontractor(s), or their agents, insofar as possible, insofar as possible, shall secure labor through the Maryland State Employment Service of the Maryland Department of Human Resources. Where the Contractor has entered into a collective bargaining agreement under which labor is to be provided by a union, the Contractor is not required to conform to these provisions unless the Contractor and the union arrange with the Maryland State Employment Service for referral of such labor as they may mutually agree shall be referred. The Contractor shall be the sole judge of the competency or fitness for satisfactory service of any labor referred to him by the Maryland State Employment Service.
- F. Each Contractor with the University will submit to the Board of Public Works, at the Board's request, information as to the composition of the Contractor's work force. This information will be furnished on a form to be prescribed by the Board of Public Works.
- G. The Contractor and all subcontractors will develop and maintain an Affirmative Action Plan directed at increasing the utilization of women and members of minority groups on State Public Works projects. Approval of the plan by the Board of Public Works shall be a prerequisite to the award of any Contract for Public Works by the State or any agency of the State. The Affirmative Action Plan referred to in the preceding sentence shall contain written provisions and procedures for each of the following:
 - (1) Notification of established community organizations of employment opportunities, and the maintenance of records on responses by such organizations and their disposition.
 - (2) Maintenance of records, including names and address, of woman and members of minority groups applying or referred for employment. The records shall indicate what disposition was made of the application. If such an applicant was not sent to a union hiring hall for referral or if such an applicant was not employed by the Contractor, the records shall indicate the reasons therefore.
 - (3) Notification by the Contractor to the University if any union or unions with whom

the Contractor has a collective bargaining agreement has not referred to the Contractor a woman or member of a minority group sent by the Contractor, or if the Contractor has other information that the union referral process is impeding efforts for the utilization of women and members of minority groups.

- (4) Participation in training programs, including those funded by the United States Government.
 - (5) Procedures for disseminating notice of the Contractor's equal employment opportunity policy by publicizing it through company newspapers and annual reports, conducting staff, employee and union representatives' meetings, posting, and by specific review with employees who are women or members of minority groups.
 - (6) Procedures for disseminating notice of the Contractor's equal employment opportunity policy externally through review with all recruitment sources, advertising in news media, and discussion with subcontractors and suppliers.
 - (7) Recruitment efforts directed at minority organizations, schools with minority students, and minority recruitment and training organizations.
 - (8) Validation of all specifications, selection requirements, and tests relating to employment.
 - (9) Procedures for promoting after-school, summer, and vacation employment to minority youth.
 - (10) Programs for the development of on-the-job training opportunities and participation and assistance in any association or employer group training programs.
 - (11) Programs for evaluating women and minority personnel for promotion opportunities and encouragement of such employees to seek those opportunities.
 - (12) Review of seniority practices and job classifications to insure that they do not have an improper discriminatory effect.
 - (13) Monitoring of personnel activities to insure that the Contractor's equal employment opportunity policy is being carried out.
 - (14) Proposals for soliciting bids for subcontracts for available minority subcontractors engaged in the trades covered by the bid conditions.
- H. The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or physical or mental handicap unrelated in nature and extent so as reasonably to preclude the performance of such employment; (b) to include a provision similar to that contained in subsection (a), above, in any subcontract for standard commercial supplies or raw materials; and, (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

9.03 SUBCONTRACTS:

- A. The Contractor shall, as soon as practicable and before the execution of the Contract, notify the Architect and the University's Office for Facilities and Operations in writing of the names of subcontractors proposed for the principal parts of the work and for such others as the Architect may direct and shall not employ any that the Architect or the University's Office for Facilities and Operations may object to as incompetent, unfit, or irresponsible.
- B. The Contractor agrees that he is as fully responsible to the University for the acts and omissions of his subcontractor and of persons directly employed by them as he is for the acts and omissions of persons directly employed by him.
- C. Nothing contained in the Contract documents shall create any contractual relation between any subcontractor at any tier, and the University and nothing in the contract documents is intended to make the subcontractor a beneficiary of the Contract between the University and the Contractor.

9.04 RELATION OF CONTRACTOR AND SUBCONTRACTOR:

- A. The Contractor agrees to bind every subcontractor and will see that every subcontractor agrees to be bound by the terms of the Contract and Contract Documents and each of these as far as applicable to his work, unless specifically noted to the contrary in a subcontract approved in writing as adequate by the University's Office of Facilities Management.
- B. The Contractor agrees to include the following provisions in all subcontracts and supply contract, applicable to the work:
 - (1) Subcontractor agrees to be bound to the Contractor by the terms of the Contract and the Contract Documents and each of these, and to assume toward the Contractor all obligations and responsibilities that the Contractor, by those documents, assumes toward the University.
 - (2) The subcontractor agrees to submit to the Contractor applications for payment in such reasonable time as to enable the Contractor to apply for payment under Section 8 of the Standard Conditions.
 - (3) The subcontractor agrees to make all claims for extras, for extensions of time, and for damages for delays or otherwise, to the Contractor in the manner provided in the Standard Conditions for like claims by the Contractor upon the University except that the time for making claims for extra cost is five (5) days.
 - (4) The subcontractor agrees, upon completion of his work to promptly pay all labor, material suppliers, vendors, subcontractors, and others, and to permit simultaneous final payment by the Contractor and execution of the "Waiver of Liens" by the subcontractor.
- C. The Contractor agrees to be bound to the subcontractor by all the obligations that the University assumes to the Contractor under the Contract, the Contract Documents and each of these, and all the provisions thereof affording remedies and redress to the Contractor from the University. The Contractor also agrees:

- (1) To pay the subcontractor, upon the presentation of certificates, if issued under the schedule of values prescribed in Section 8 of these Standard Conditions, the amount allowed to the Contractor on account of the subcontractor's work to the extent of the subcontractor's interest herein.
 - (2) To pay the subcontractor, upon the presentation of certificates, so that at all times his total payments shall be as large in proportion to the value of the work done by him as the total amount certified to the Contractor is to the value of the work done by him.
 - (3) To pay the subcontractor to such extent as may be provided by the Contract documents or the subcontract, if either of these provides for earlier or larger payments than the above.
 - (4) To pay the subcontractor on demand for his work or materials as far as executed and fixed in place, less the retained percentage, at the time a certificate should be issued, even though the Architect fails to issue it for any cause not the fault of subcontractor.
 - (5) To pay the subcontractor a just share of any fire insurance money received by the Contractor.
 - (6) To make no demand for liquidated damages or penalty for delay in any sum in excess of such amount as may be specifically named in the subcontract.
 - (7) To give the subcontractor an opportunity to be present and to submit evidence in any matter involving his rights.
- D. Contractor may not withhold from subcontractor or supplier, wholly or in part, any payment otherwise due and owing to the subcontractor or supplier for labor or material furnished for this Contract, on account of (1) any claim of the Contractor against the subcontractor, or supplier or (2) any debt owed or claimed to be owed by the subcontractor, or supplier to the Contractor to the extent the claim or debt arose out of contracts, disputes, or other transactions between the Contractor and subcontractor or supplier which did not arise out of this Contract.
- E. When the University withholds money from the Contractor under Section 8.06 for delays or other causes, the Contractor may withhold payment from a Subcontractor or supplier, on account of the amount withheld by the University from the Contractor, only to the extent that the Subcontractor or supplier contributed to the delay or other cause for which the University withheld payment from the Contractor. For example, if the University withholds from the Contractor liquidated damages for delay, the Contractor may withhold payment only from the Subcontractor, or suppliers that caused or contributed to the delay; all other Subcontractor, or suppliers shall be paid promptly by the Contractor notwithstanding the University's withholding from the Contractor.
- F. No claim for services rendered or materials furnished by the Contractor to the subcontractor shall be valid unless written notice thereof is given by the Contractor to the subcontractor during the first ten (10) days of the calendar month following that in which the claims originated.
- G. The Contractor and the subcontractor agree that nothing in this section shall create any obligation on the part of the University to pay to or to see to the payment of any sums to

any subcontractor.

9.05 MINORITY BUSINESS ENTERPRISE UTILIZATION:

- A. The provisions of this Section are applicable to Contracts with a value of \$50,000 or more. The Contractor shall structure his procedures for the performance of the construction services required by this Contract to achieve the result that the minimum minority business enterprise (MBE) participation percentage of the total contract award required by the Contract is achieved. Such performance by MBE's shall be in accordance with this Section and Attachment G of the Solicitation.
- B. Definitions:
- (1) "Socially or Economically Disadvantaged Individual" - A member of a socially or economically disadvantaged group, which for purposes of this Section includes African-Americans, Hispanics, American Indians, Native Americans, Asians, women, and the physically or mentally disabled.
 - (2) "Minority Business Enterprise" (MBE) -- Any legal entity, except a joint venture, (a) organized to engage in commercial transactions, (b) at least 51 percent (51%) owned and controlled by one or more individuals who are socially or economically disadvantaged; and (c) managed by, and the daily operations of which are controlled by, one or more of the socially or economically disadvantaged individuals who own it. Also, a nonprofit entity organized to promote the interests of physically or mentally disabled individuals. All MBEs must be certified by the State of Maryland or the State of Maryland's Department of Transportation with applicable certification numbers provided for each MBE firm applicable on this project by the Contractor.
 - (3) Ownership:
 - (a) For a sole proprietorship to be deemed an MBE, the sole proprietor must be a socially or economically disadvantaged individual. For a partnership to be deemed an MBE at least 51 percent (51%) of the partnership's assets or interests must be owned by a socially or economically disadvantaged individual or persons who are socially or economically disadvantaged. For a corporation to be deemed an MBE, legal and equitable ownership of at least 51 percent (51%) of each class of stock, bonds, and other securities issued by the corporation must be owned by a person or persons who are socially or economically disadvantaged.
 - (b) For purposes of this definition, any interest held by a person who is socially or economically disadvantaged, but subject to an option in that interest held by a person not socially or economically disadvantaged, or a business entity not an MBE, affecting the incidents of ownership, operation and control, shall not qualify as being an interest held by any person who is a socially or economically disadvantaged individual.
 - (4) Control -- Control means that the primary power, direct, or indirect, to influence the management of an MBE shall rest with persons who are socially or economically disadvantaged. In addition, this term shall be construed to mean that the business enterprise is not subject to any formal or informal restrictions which would limit the customary discretion of the proprietor, partners, or the stockholders, as the case

may be. In addition, the term "control" shall be construed to mean that there are no restrictions through bylaw provisions, partnership agreements, or charter requirements for cumulative voting rights, or otherwise, which would prevent the proprietor, partners, or stockholders, without the cooperation or vote of any co-owner, partner, or stockholders who are not socially or economically disadvantaged individuals, from abrogating a business decision of the enterprise which otherwise favors the proprietor's, partner's, or stockholder's share of said enterprise.

C. Contractor Responsibilities:

- (1) The Contractor must submit the Certified MBE Utilization and Fair Solicitation Affidavit and MBE Participation Schedule (MBE Attachment H-1A) with its technical proposal/offer.
- (2) The Contractor must assure that MBEs shall have the maximum practical opportunity to compete for subcontractor work under the Contract.
- (3) The Contractor shall comply with all requirements set forth in Schedule MBE Minority Business Enterprise Requirements regarding the MBE requirements.
- (4) The Contractor must enter into an agreement or award subcontracts or procure supplies and services with MBEs, or take other appropriate action, to achieve the result that a minimum of 30 percent (30%), or other amount stipulated by the solicitation, of the total dollar value of the Contract is performed by MBEs.
- (5) The Contractor must submit an MBE subcontractor project participation statement signed by both the bidder or offeror and each MBE listed in the schedule of participation which shall include the following:
 - (a) A statement of intent to enter into a contract between the prime contractor and each subcontractor or supplier if a contract is executed between the procurement agency and the prime contractor, or if the prime contract has been awarded, copies of the subcontractor agreement or agreements; and,
 - (b) The amount and type of bonds required of MBE subcontractors or suppliers, if any.
- (6) If the Contractor will be unable to enter into an agreement or subcontract with, or procure supplies and materials from MBEs as required by paragraph 5, above, the Contractor must submit with his Procurement Response a request for a waiver to the minimum percent requirement or part thereof, using the Certified MBE Utilization and Fair Solicitation Affidavit.
- (7) A request for waiver of the goal or part thereof, by the apparent successful bidder or offerer, shall be processed in accordance 21.11.03.11 of the State Procurement Regulations.
- (8) The Contractor shall cooperate with the University in any reviews of the Contractor's procedures and practices with respect to minority business enterprises which the University may from time to time conduct.

D. Records and Reports:

- (1) The Contractor shall maintain such records as are necessary to confirm compliance with its MBE utilization obligations. These records shall indicate the identity of minority and non-minority subcontractors employed on the Contract, the type of work performed by each, and the actual dollar value of work, services, and/or supplies and materials secured by the Contractor from each MBE subcontract and/or supplier.
- (2) The Contractor shall submit information with its monthly cost breakdown for progress payments which indicates dollar value of Contracts awarded to minority business enterprises as a supplement to the Cost Breakdown for Progress Payments. Failure of the Contractor to submit the required supplementary MBE participation information may result in delays in processing progress payments.
- (3) All records concerning MBE participation must be retained by the Contractor for a period of three (3) years after final completion of the Contract, or termination of the Contract, whichever is later, and will be available for inspection by the University or its representatives.

E. Enforcement:

- (1) The University is responsible for conducting inspections to confirm compliance with the terms of this Section. If the University determines that the Contractor is not in compliance with this Section, the University will notify the Contractor of those measures which cure default. If the Contractor or subcontractor fails to take corrective action, the University may report the noncompliance to the Board of Public Works for appropriate action.
- (2) If the documentary material submitted by the Contractor to determine MBE status contains false, misleading information, or other misrepresentations, the matter will be referred to the Attorney General of the State for appropriate action.
- (3) Attachment H -6, Liquidated Damages Provisions for Construction Contracts Containing MBE Participation Goals, shall apply to the Contract.

F. Contractor Assistance -- Contractors requiring assistance in locating minority business enterprises are encouraged to contact the following offices:

Minority Business Officer
Maryland State Department of Transportation
P. O. Box 8755, 10 Elm Road
BWI Airport, Maryland 21240-0755
410-859-7328
www.maryland.mdot.gov

9.06 PREVAILING WAGE RATES:

- A. All Contracts in the base bid amount of \$500,000 or more shall be subject to the provisions of Sections 17-201 to 17-226, State Finance & Procurement Article, Annotated Code of Maryland. If the original Contract is in an amount less than \$500,000, the cited terms shall not apply even where subsequent change orders shall increase the total Contract in excess of \$500,000. Wage rates applicable to projects of \$500,000 or more are bound into the specifications under Section entitled "Prevailing Wage Rates." Federal Wage Rates shall be in effect where applicable.
- B. The Contractor shall submit two (2) complete copies of its payroll records and the payroll records of each of his subcontractors - one (1) copy to the University's Office of Facilities Management and the second to the Commissioner of Labor and Industry, 1100 N. Eutaw Street, Room 607, Baltimore, Maryland 21201, where they will be available for inspection during regular business hours. These payroll records must be submitted within two weeks after each payroll period, and shall contain the following employee information: Name, address, and social security number, work classification, hours straight time and overtime worked each day, total hours worked, rate of pay, and gross amount earned. The Contractor shall be responsible for the submission of all subcontractors' payroll records covering work performed directly at the work site. Each copy of the payroll records shall be accompanied by a statement signed by the Contractor or the subcontractor, as the case may be, indicating that the payroll records are correct, that the wage rates contained therein are not less than those established by the Commissioner as set forth in the Contract; that the classification set forth for each employee conforms with the work performed by that employee; and that the Contractor or the subcontractor, as in the case may be, has complied with the provisions of this section and the requirements of section 17-220, State Finance and Procurement Article, Annotated Code of Maryland.
- C. If the Contractor is delinquent in submitting his or any of his subcontractor's payroll records, processing of partial payment estimates may be held in abeyance pending receipt of the payroll records. In addition, if the Contractor is delinquent in submitting his or any subcontractor's payroll records, the Contractor shall be liable to the University for Liquidated Damages. The liquidated damages shall constitute the sum of ten dollars (\$10.00) for each calendar day that the payroll records are late.
- D. The Contractor shall follow any guidelines of the State Department of Labor, Licensing and Regulation in effect at the time of the Contract.

9.07 APPRENTICESHIP REQUIREMENTS FOR PUBLIC WORKS CONTRACTS

- A. Effective July 1, 2013, the State Apprenticeship and Training Fund law requires that contractors performing work on public work contracts \$500,000 or more and subcontractors performing work \$100,000 or more for a covered project are required to make contributions toward apprenticeship.

- B. The contractor and subcontractor shall individually provide written verification to the Procurement Officer of one of the below three options of contribution prior to commencement of performance under the procurement contract.
 - (1) Participates in an apprenticeship training program for each covered craft in which it will employ persons for the covered project.

 - (2) Will make payments to the Fund.

 - (3) Will make payments in amounts determined under §17-605 of the State Finance and Procurement Annotate Code, to a registered apprenticeship program or to an organization that has registered apprenticeship programs for the purpose of supporting these programs.

- C. Contractors shall include this requirement for written verification by the subcontractor in all of its contracts \$100,000 or more with subcontractors under a covered project.

- D. It is the responsibility of the contractor and its subcontractors to review Title 17, Subtitle 6, Annotate Code of Maryland, State Finance and Procurement, as well as Code of Maryland Regulations 21.11.12 for implementation and compliance with the law.

- E. Contractors and subcontractors who hire subcontractors performing work valued at \$100,000 or more on a covered project subject to the Maryland Prevailing Wage Law shall provide the subcontractors written notice of the following:
 - (1) Subcontractors shall complete the registration process at the Division of Labor and Industry's website at <https://www.dllr.state.md.us/PrevWage/ERegistration.aspx?Type=ContractorReg/>.

 - (2) Prior to commencement of the work, a subcontractor shall log onto the Division of Labor and Industry's website at <https://www.dllr.state.md.us/prevwage> and complete the required project log information.

 - (3) Subcontractors performing work on a covered project are required to make payments to approved apprenticeship programs or to the Fund for each employee employed in classifications listed on the prevailing wage determination.

- F. The contractor shall use the affidavit prescribed in Attachment F entitled “**Apprenticeship Training Fund Verification Contractor Affidavit**” and the subcontractor shall use the affidavit prescribed in Attachment F entitled “-**Apprenticeship Training Fund Verification Contractor Affidavit** to provide written verification to the Procurement Officer.

9.08 CONSTRUCTION SAFETY AND HEALTH STANDARDS:

It is a condition of this Contract and shall be made a condition of each subcontract and lower tier subcontract entered into pursuant to this Contract, that the Contractor and any subcontractor shall not require any laborer or mechanical employed in performance of the Contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health or safety, as determined under construction safety and health standards, laws and regulations of the locality in which the work is done, the State, and the Federal government. Further, the Contractor and each Subcontractor at any tier consent to inspection of work conditions at any time by the University and the State.

END OF SECTION 9

END OF UMB STANDARD GENERAL CONDITIONS FOR CONSTRUCTION