



St. Mary's College of Maryland
at Historic St. Mary's City

**GENERAL CONDITIONS
OF THE CONTRACT BETWEEN
THE ARCHITECT/ENGINEER AND
ST. MARY'S COLLEGE OF MARYLAND**

**OFFICE OF FACILITIES
ST. MARY'S COLLEGE OF MARYLAND
ST. MARY'S CITY, MARYLAND 20686**

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**GENERAL CONDITIONS OF THE ARCHITECT/ENGINEER CONTRACT
BETWEEN THE ARCHITECT/ENGINEER AND
ST. MARY'S COLLEGE OF MARYLAND**

SECTION 1 - DEFINITIONS

Definitions, as used in this document, have the meaning indicated herein.

- A. Architect/Engineer ("A/E") - A person, partnership or corporation, registered in the State of Maryland to practice architecture and/or provide professional engineering services and commissioned by the College to prepare various documents including, but not limited to the plans and specifications ("the documents"), for the designated project. In an Architect/Engineer Contract, this term is synonymous with Architect or the Engineer.
- B. Bid – includes a bid received in connection with an invitation for bids and a proposal received in connection with a request for proposals.
- C. Change Order - A duly authorized written order issued by the College modifying the Contract in accordance with the Change Clause in Section 5 A. herein.
- D. Claim - A complaint by the Architect/Engineer or by the College relating to the Contract.
- E. College - St. Mary's College of Maryland, an agency of the State of Maryland, and its Board of Trustees and authorized representatives.
- F. Contract or Agreement - The written agreement executed by the College and the Architect/Engineer, which describes the services to be provided by the Architect/Engineer to the College, compensation to be paid by the College, and the time provided for its completion. The Contract includes the written agreement executed by the College and the Architect/Engineer, any documents specifically incorporated in the document, including but not limited to the Request for Proposal, contract forms, any addenda, the executed Proposal Affidavit and Contract Affidavit, these General Conditions, program documents, all special conditions and provisions, all technical provisions, and any drawings. The Contract shall include, when issued by a duly authorized representative of the College, all approved submittals and additional documents such as the Notice to Proceed, any executed Change Orders, supplemental written agreements, and written directives.
- G. Contract Time and Completion Date - The number of calendar days (including weekends and holidays) designated in the Contract as the time allowed for the

completion of the work. The contract time shall begin to run from the starting date established in the Notice to Proceed. In case a calendar date of completion is shown in the Contract in lieu of the number of calendar days, the work shall be completed on or before that date.

- H. Day - A calendar day unless otherwise designated.
- I. Associate Vice President of Facilities - The individual defined by the College to be the Associate Vice President of Facilities. The Associate Vice President of Facilities is responsible for providing certain direction and communication with the Architect/Engineer as provided in the Contract. Except as otherwise stated in the Contract, all matters relating to the performance of this Contract shall be referred to the Associate Vice President of Facilities for action. When required by the College's Procurement Policy, the Associate Vice President of Facilities shall seek approval of the appropriate Procurement Officer. At the discretion of the College, his designation can be changed by written notice to the Architect/Engineer provided by the Vice President of Business and Finance, the President of the College or their designee.
- J. Dispute - A disagreement between the parties which has not been resolved by mutual agreement.
- K. Notice to Proceed - A written notice issued by the Associate Vice President of Facilities to the Architect/Engineer after the execution of the Contract which establishes the date on which the work shall commence under the Contract.
- L. Procurement Officer - A person authorized by the College in accordance with law or regulations to formulate, enter into, or administer contracts or make written determinations and findings with respect to them on behalf of the College. The term also includes an authorized representative acting within the limits of authority.
- M. Procurement Policy - That policy established by the St. Mary's College of Maryland Board of Trustees regarding procurement policy, as modified from time to time.
- N. Project Manager - The individual assigned by the Associate Vice President of Facilities to coordinate routine matters with the Architect/Engineer on behalf of the College. At the discretion of the College, the Project Manager may be changed by written notice to the Architect/Engineer by the Associate Vice President of Facilities.
- O. Purchasing Agent - The individual in the College responsible for issuing Change Orders to the Contract, receiving Notices of Dispute(s), and providing administrative support to the Procurement Officer. At the College's sole discretion, the Purchasing Agent may be changed by written notice to the Architect/Engineer by the Vice President of Business and Finance or the President of the College, or designee.
- P. Scope of Services - The Work to be provided by the A/E under the terms of the

Agreement.

- Q. Section - As used in this document, any reference to any section means the specific portion of these General Conditions referenced unless the sentence refers to a section of another document. If a reference to a Section does not include a specific numerical or caption heading, the reference is understood to relate to the Section of these General Conditions in which the reference is placed.
- R. State – the State of Maryland, including the College.
- S. Subcontractor - Individuals and entities other than St. Mary's College of Maryland that have a contractual relationship with the Architect/Engineer for the project. As used in these General Conditions, this term is synonymous with subconsultant.
- T. The Owner - St. Mary's College of Maryland, an agency of the State of Maryland.
- U. Work - The furnishing of any and all labor, materials, equipment, services, and other incidentals necessary to the successful completion of the Scope of Services and the carrying out of all the duties and obligations imposed upon the Architect/Engineer by the Contract.
- V. Written Notice - Written notice shall be deemed to have been duly served on the Architect/Engineer 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 directed, or if delivered or sent by regular mail, certified mail, overnight mail, or by facsimile transmission to the last business address known to the College. Written notice shall be deemed to have been given to the College upon actual receipt of written notice to the authorized representative as defined herein.

SECTION 2 – COLLEGE RESPONSIBILITIES

As appropriate, the College will furnish to the A/E in a timely fashion or, where provided for in the Scope of Services, compensate the A/E for the reasonable cost of furnishing:

- A. A complete and comprehensive written program.
- B. All necessary survey and topographic information, including pertinent data concerning all applicable rights of way, easements, restrictions, etc.
- C. Test borings, samples, rock cores and other sub-surface information as requested by the A/E and agreed to by the College.
- D. Laboratory or other tests required by the College to obtain basic data.

- E. The construction budget for the completion of all construction work to be accomplished under the Project.
- F. All notices and/or advertisements advising the A/E of the College's receipt of construction bids.
- G. Tabulation of all bids and recommendations for award.
- H. All contract forms and change order forms.
- I. All necessary approvals for the orderly progress of the A/E's services and of the Scope of Services as scheduled under the Contract.

SECTION 3 - SCOPE OF THE WORK

- A. General: The A/E's services shall normally consist of six (6) separate principal phases, as required by the Scope of Services; (1) Schematic Design Phase, (2) Design Development Phase, (3) Construction Documents Phase, (4) Bidding Phase, (5) Construction Phase and (6) Post Construction Phase. In rendering these services the A/E shall:
 - 1. Be solely responsible for the technical completeness and sufficiency of all Construction Documents, consisting of drawings and specifications and other documents setting forth in detail the requirements for the construction of the project.
 - 2. Perform work as may be necessary to correct errors, defects, and omissions in the services required under this contract, without undue delays and without cost to the State. The acceptance of the work set forth herein by the College shall not relieve the A/E of the responsibility of subsequent correction of such errors.
 - 3. Exercise reasonable care to comply with the most current Maryland Building Performance Standards as amended to date, and other pertinent Federal, State, Local and College regulations or statutes.
 - 4. Design for accessibility by the physically disabled in conformance with applicable provisions of Federal, State and local building codes and ADA Title II, 28 CFR Part 35, as may be amended.
 - 5. Advise the Procurement Officer of the identity of any professional consultants proposed to be engaged prior to the execution of the Agreement, and upon receipt of the Procurement Officer's approval of such consultants, to engage the same. Such engagement shall not constitute an engagement of such

consultant by the College. In all instances, the term "A/E" includes action by consultants as appropriate and all consultants engaged by the A/E shall be bound by the terms of the Agreement.

6. Attend conferences with the College, as expressed in the Scope of Services for the Project and necessary to execute the various phases of the Project.
 7. Render to the College those studies as required in the Scope of Services. Whenever special studies or special consultants are required, beyond those included in the Scope of Services, the Procurement Officer may direct the A/E to undertake or engage the same and in such case, the A/E shall be compensated for the same in accordance with the Changes clause of these General Conditions.
 8. Achieve value in construction by simplification in design, by standardization in materials and the like where appropriate.
 9. Develop the required documents in accordance with the schedule established in the Scope of Services.
 10. Be responsible directly to the Project Manager, the duly authorized representative of the College, to whom the A/E shall direct all communication and submit all documents for approval and from whom the A/E shall receive all directions concerning the Project and approval, in writing, of all documents. In the event the documents submitted by the A/E in satisfaction of the Schematic Design Phase, Design Development Phase, Construction Documents Phase, and Bidding Phase are not approved in the form submitted, the A/E at its own expense, shall revise the same until approved by the College; provided, however, if the nature of the revision required to be made by the A/E is caused by revising previously approved drawings and/or specifications to accomplish changes initiated by the College and not through the fault of the A/E, then the A/E may be paid for effecting such revisions as hereinafter provided.
 11. Make no press releases without the prior approval of the College.
 12. Use the title of the Project and the Contract Number on all drawings, documents and correspondence as shown above. The A/E shall also date all documents, including drawings, to indicate the date submitted.
- B. Schematic Design Phase: In rendering professional services for preparation and furnishing of the Schematic Design Phase requirements, the A/E shall:
1. Visit the site of the Project and familiarize itself fully with the use, operational conditions and limitations of said site. The A/E will obtain measurements and other information relative to existing improvements as required by the Scope of

Services.

2. Based upon the information provided under Section 2, A through D inclusive, of these General Conditions, prepare and submit for the College's approval, documents to illustrate the size and relationship of the Project components, as follows:
 - a. A sketch site plan showing the Project structures, as related to the existing and proposed utility lines, roads, walks, grades, parking facilities and other structures in the immediate vicinity, as well as the relationship of the Project to future improvements which are not a part of this Project, but which are intended to become a part of a larger and more comprehensive development of the site upon which this Project is to be located and become a part.
 - b. Photographs of the Project site, adjacent structures and surrounding area to generally record the nature and character of the environment.
 - c. Schematic dimensioned single line floor plans indicating the general space layout, block elevations, sections and a narrative description of the structural, mechanical and electrical systems.
 - d. A statement of probable construction cost in a format approved by the College, based upon the Schematic Design Documents, applying the area, volume and other unit costs currently prevailing in the geographical region where the Project is to be built.
 - e. When directed by the College, the above data shall be presented to the College Board of Trustees or its authorized agents in accordance with the Scope of Services.
- C. Design Development Phase: The Design Development Phase will commence with the A/E's receipt of the Procurement Officer's written approval of the documents comprising the Schematic Design Phase. Upon receipt of this notice, the A/E shall prepare:
 1. Drawings and other data which are a development of the documents comprising the Schematic Design Phase, including all floor plans, elevations and cross sections.
 2. A site development plan indicating the Project structures as related to the existing and proposed utility lines, roads, walks, grades, parking facilities and other structures in the immediate vicinity.
 3. Outline specifications stating the proposed materials, methods and systems, including structural, mechanical and electrical, to be incorporated in the

Project.

4. A statement of probable construction costs in a format approved by the Procurement Officer based upon a labor and material take-off which the A/E shall make from the Design Development Documents, applying costs currently prevailing in the geographical region where the Project is to be built.
5. A professionally prepared color perspective rendering in a suitable medium when required in the Scope of Services. The rendering shall include related existing improvements, which have a bearing upon the aesthetic design of the Project.
6. A professionally prepared model at a scale determined by the College, when required in the Scope of Services. Said model shall include topography, walks, roads, etc. and suggested plantings.

D. Construction Document Phase: The Construction Documents Phase will commence upon the A/E's receipt of the College's written approval of the documents comprising the Design Development Phase. Upon receipt of this notice, including any further adjustments in the previously communicated budget or the scope of the project, the A/E shall:

1. Prepare the required set of architectural, site, structural, mechanical and electrical drawings, specifications, and other documents when required by the Scope of Services. The various drawings and specifications shall be carefully coordinated by the A/E so as not to conflict one with the other. Drawings and specifications shall be made in accordance with the best professional practice and shall be complete and shall indicate clearly, accurately and precisely in such detail as may be necessary, what is to be furnished, where it is to be furnished and the final results to be obtained as to architectural detail, structural strength, clearances, mechanical and electrical sufficiency, and dimensional accuracy. The drawings and specifications shall meet the College's aesthetic, functional and operational objectives; shall be fit and proper for the purpose intended; and, shall comply with all applicable laws, statutes, rules and regulations of any Federal, State or local agency in effect at the time the construction documents are submitted to the College.
2. Prepare an estimate of the probable construction costs of the Project as contemplated by such Construction Documents based on detailed labor and material take off applying costs currently prevailing in the geographical region where the Project is to be built.
3. Notify the College, in writing, if in the exercise of the A/E's professional judgment, the probable construction costs will exceed the construction budget previously communicated by the College with the approval of the Design Development Phase. If the A/E is unable to effect cost reduction revisions in

the Construction Documents without deviating from the design and intent of the previously approved documents comprising the Design Development Phase, the A/E shall advise the College to such effect in writing, cease all work under this Agreement and await instructions which the College shall issue to the A/E concerning future action to be taken under this Agreement.

4. Upon completion of Construction Documents, submit originals and copies thereof to the College for review and signature. The number of copies to be submitted shall be in accordance with the requirements set forth in the Scope of Services.
5. Prepare a Construction Bid Form in accordance with the Standard Form supplied by the College.
6. Furnish to the College specifications and bid packages for inspection services and, separately, specifications and bid packages for testing services for the construction of the project.
 - a. The inspection and testing specifications should indicate the specific services to be provided by independent inspection and testing firms during the construction phase. The bid packages should indicate the estimated quantity of each service to be provided. The specifications should include all requirements relative to the inspection and testing to be performed such as:
 - Qualifications of inspectors and testing firms
 - Scope of Work
 - Applicable standard test methods and procedures
 - Compliance and acceptance criteria
 - Reports
 - Submittals
 - b. The A/E shall provide draft inspection and testing specifications at the 50% Construction Document stage. The College will review and provide comment on the draft specifications. The A/E will submit final specifications and bid packages 30 days prior to the submission of the final Construction Documents.

E. Bidding Phase: The Bidding Phase will commence with the A/E's receipt of the College's written approval of the documents comprising the Construction Documents Phase. Upon receipt of the appropriate notice, the A/E shall provide the following services:

1. For bidding and construction purposes, provide copies of any or all documents as set forth in the Scope of Services.

2. Interpret documents during the bidding period.
3. Prepare any addenda as required to clarify, modify, or change the bid documents prior to receipt of bids by the College. After receipt of bids and at the direction of the College, without additional compensation, revise the Construction Documents to incorporate any and all addenda.
4. On the date the bids for the general construction of the Project are to be received by the College, attend the bid opening at the designated time and place.
5. Analyze the bids when received and make such recommendations as are called for by the College relative to the construction contract award.
6. If the project is bid no later than 120 days after the scheduled date established in the Scope of Services or as subsequently extended by change order, and should the lowest acceptable bid exceed the budget amount as stipulated in the Agreement or subsequently amended by the College for the construction of the Project, the A/E, without additional compensation, shall analyze the bids and make recommendations to the College as to ways and methods to reduce the costs of constructing the Project to a sum which does not exceed said budget amount. However, such recommendation shall not include any deletions which render the Project incomplete or unfinished and thereby necessitate expenditure of funds in excess of the budget amount communicated by the College; and
 - a. After consultation with the College, at no additional compensation, the A/E shall alter or redraft the documents as necessary to accomplish the necessary reduction in cost; and
 - b. Repeat as necessary or appropriate the services as described in Section 3 A.8 and Section 3 E.1 through E.5, above, at no additional compensation.

If through no fault of the A/E the Project is bid 120 days later than the scheduled date established in the Scope of Services or as subsequently extended by change order and this causes a bid in excess of the budget amount as stipulated in the Agreement or subsequently amended by the College for the construction of the Project and if the A/E is required by the College to make changes to the Agreement then the A/E shall be compensated on the basis of a negotiated fee as agreed to by the College.

- F. Construction Phase: The Construction Phase, if required in the Scope of Services, will commence with the award of the contract for the general construction work required for the Project, during which period the A/E shall:

1. Consult with the College as the construction work progresses. Unless otherwise provided within this Agreement, all of the A/E's instructions to the construction Contractor shall be issued to the construction Contractor by the College.
2. Attend all project construction progress meetings and make periodic visits to the site appropriate to the progress of the work or as the College may reasonably require. During any visit to the site, the A/E shall familiarize itself generally with the progress and quality of the work and determine in general if the work is proceeding in accordance with the Contract Documents. The foregoing provisions of this subparagraph notwithstanding, the A/E shall not be responsible for: construction means, methods, techniques, sequences and procedures, or for safety precautions and programs in connection with the work; the construction Contractor's failure to carry out the work in accordance with the Contract Documents; and the acts or omissions of the construction Contractor or any his subcontractors, or any of the construction Contractor's or his subconsultant's agents or employees, or any persons performing any of the work. In making such periodic visits to the site and on the basis of such on-site observations the A/E shall exercise the utmost care and diligence to guard the College against defects and deficiencies in the work of the construction Contractor and shall report to the College any observed defect or observed deficiency. Within Seventy two (72) hours after each visit, the A/E shall submit a written report to the Procurement Officer which shall include a brief summary of the A/E's activities, observations and communications; and, list and describe any potential problems or deficiencies in the quality and/or progress of the work.
3. As requested by the College, assist the Project Manager in; a) interpreting the requirements of the Contract Documents, b) responding to the construction Contractor's requests for information, c) in making decisions on all claims and disputes of the construction Contractor relating to the execution and progress of the work, d) and on all other matters or questions related thereto.
4. Recommend to the College rejection of work which does not in the A/E's opinion conform to the Contract Documents and further recommend that the Project Manager require the construction Contractor to stop the work whenever in the A/E's reasonable opinion it may be necessary for the proper performance of the Project. In discharging the foregoing responsibility, the A/E shall act through the College and issue such recommendations to the College in writing.
5. Review and approve shop drawings, samples and other submissions of the construction Contractor for conformance with the general design concept of the project and for compliance with the information given in the Contract

documents.

6. Review construction Contractor proposed "substitutions" and recommend to the College acceptance or rejection based on the A/E's evaluation of the performance, quality and value of any such substitution.
7. Assist the College to administer the inspection and testing services by reviewing inspection reports and test results and advise the College of any deficient work or materials provided by the construction Contractor.
8. Authorize minor changes in the work, not involving an adjustment in the Contract price or an extension of Contract time, which are not inconsistent with the intent of the Contract Documents.
9. The A/E shall assist in the preparation of change orders and construction change directives by providing supporting documentation and data to the College. In preparation of change order documentation, the A/E shall:
 - a. Provide drawings, specifications, and other supporting documentation and data.
 - b. Provide a written cost estimate which independently verifies that the construction Contractor's cost and time proposal is fair, reasonable, and accurately reflects the proposed change.
 - c. Provide a justification of why the change is required.

Compensation for services in connection with change orders and change directives shall not entitle the A/E to additional compensation except in those instances where the change order is required through no fault of the A/E and requires substantial revision to the documents which requires the A/E or the A/E consultants to provide professional services.

10. Issue certificates of payment related to any contract pertaining to the construction of the Project.
11. Make visits to the Project when substantial completion has been achieved and submit written reports to the College of any defects or deficiencies observed in the construction, or any deviation from drawings and specifications.
12. Prepare at completion of the Project a full set of record drawings showing the "as-built" condition of the Project and including the locations of all utilities based on his own records and upon information supplied by the construction Contractor. These drawings will consist of the original working drawings and the original of supplemental drawings and details modified to show the "as-built" conditions. "As-built" drawings shall be turned over to the College within

two (2) months of receipt by the A/E from the construction Contractor; final payment of the A/E's fee shall not be due until "as-built" drawings are submitted to the College. The amount retained from the A/E's fee for record drawings shall be the fee for the record drawings as established in the A/E Price Proposal or, if not specified in the Price Proposal, at a sum equal to 2% of the total fee to be paid by this Contract.

- G. Post Construction Phase: The Post-Construction Phase will commence upon the College's written determination of substantial completion for the Project during which phase the A/E and its design team (including engineers, architects, special consultants, etc.) shall:
1. Unless otherwise specified in the Scope of Services, make visits at 6, 12, and 23 months after substantial completion to inspect the project for latent defects or other previously undiscovered deficiencies and to review the status of existing punch lists and warranty items. Such visits shall be scheduled by the College and will include representatives of the College. Also, it is further understood that, in addition to these stated visits, visits to deal with unforeseen matters which may occur will require additional visits by the A/E or appropriate subconsultant.
 2. A written report, including minutes of the visit and indicating the results of the visit, shall be submitted to the College.

SECTION 4 – SPECIAL PROVISIONS

- A. Ownership of Documents: All documents which are prepared by the A/E and form a part of its services shall, upon completion of the drawings, become the property of the College and shall be delivered to the Project Manager. The A/E shall be responsible for the protection and/or replacement of any Contract Document in its possession. The College shall receive all original drawings and specifications and the A/E shall retain a reproducible copy.
- B. Non Assignment: The A/E may not assign or transfer any interest in this Agreement except with the written approval of the Procurement Officer. In the event that death or other cause necessitates substitution by the College of another A/E in place of the party hereto in order to complete the services called for by the Agreement, the Procurement Officer shall determine the division of the fee between the substitution and the A/E who is party hereto. Any approved subcontract or assignment shall be subject to any terms and conditions that the College deems necessary to protect the interests of the College. The College shall not be responsible for the fulfillment of the A/E's obligations to its sub-consultants.
- C. Notice of Organizational Changes: The A/E must notify the Procurement Officer

immediately of any major changes in his organization or personnel by submitting revised Standard Form Number 254.

- D. Debarment, Convictions: In the event the A/E, or any of its officers, partners, principals or employees, is debarred or subject to debarment under Maryland Law or convicted of a crime arising out of or in connection with the procurement of work or payment, then this Agreement shall, in the discretion of the Procurement Officer, be terminated. Upon such termination the A/E shall be paid only the earned value of work performed to the date of termination and shall refund any and all profits, or fixed fee, realized under the Agreement, and the A/E shall be liable to the College for any costs incurred by the College, over and above the maximum amount payable to the A/E as set forth in this Agreement, in completing the work undertaken by the A/E in the Agreement. The sanctions provided hereunder shall as appropriate, in the discretion of the Procurement Officer, be applicable to any such conviction after the expiration of the term of the Agreement as well. The rights and remedies set forth herein shall be in addition to, and the exercise thereof shall in no way be considered or construed as a waiver of, any other rights or remedies granted or available to the College.
- E. Retention of Records:
1. The A/E shall retain and maintain all records and documents relating to the performance of this Agreement for three years after final acceptance and payment by the College hereunder, or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the Procurement Officer and designee, at all reasonable times.
 2. The College or its authorized representative shall have the right to access and audit the A/E's records and/or documents which are necessary to verify that A/E has complied with all the terms and conditions of the Agreement. These documents and/or records which the College shall have the right of access include, but are not limited to, insurance certificates denoting liability as specified in the Agreement, where applicable, evidence of payment and performance bond coverage.
 3. In the event of a claim or dispute by the A/E against the College, the College shall have the right to access and audit all of the A/E's records, accounts, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the claim or dispute.
- F. Insurance Requirements: The A/E shall carry and maintain in full force and effect for the duration of this contract, and any amendment or renewal thereof, the insurance coverage specified below. The A/E shall submit to the Purchasing Agent a certification of insurance indicating the existence of the coverage required by this provision. All required insurance shall be purchased and maintained with a

company or companies lawfully authorized to do business in the State of Maryland. All required policies are to include "The State of Maryland and St. Mary's College of Maryland, including their officers, trustees, agents and employees as an additional named insured." All required insurance policies shall be endorsed to provide thirty (30) days prior written notice by certified mail of any material change, cancellation, or non-renewal to the Purchasing Agent. Such insurance shall be kept in full force and effect until all work has been satisfactorily completed and accepted by the College. Any policy exclusions must be shown on the face of the Certificate of Insurance. The Certificate of Insurance shall be accompanied by a document (a copy of State License or letter from insurer) which indicates that the agent signing the certificate is an authorized agent of the insurer. Certificates evidencing all required insurance coverage shall be filed with the Purchasing Agent prior to the execution of this agreement.

1. Comprehensive General Liability Insurance. Occurrence Form of Comprehensive General Liability Insurance with Comprehensive Broad Form endorsement including, but not limited to, coverage for damage to persons or property arising out of or relating to the performance of work under this contract by the A/E, its subcontractors, employees and agents, in an amount not less than \$1,000,000/\$2,000,000.
 2. Professional Liability Insurance. Professional Liability Insurance Policy which covers the Indemnification Clause of this contract as it relates to errors, omissions, negligent acts or negligent performance in the work performed under this contract by the A/E, its subcontractors, employees and agents, in an amount not less than \$1,000,000/\$2,000,000.
 3. Workmen's Compensation Insurance and Unemployment Insurance as required by the laws of the State of Maryland.
 4. Comprehensive Automobile Liability Insurance. Comprehensive Business Automobile Liability covering use of any motor vehicle to be used in conjunction with this contract, including hired automobiles and non-owned automobiles.
- G. Liability for Loss of Data: In the event of loss of any data or records necessary for the performance of the Contract where such loss is due to the error or negligence of the Architect/Engineer, the Architect/Engineer shall be responsible, irrespective of the cost to the Architect/Engineer, for recreating such lost data or records.

SECTION 5 – CHANGES, DISPUTES, AND TERMINATION

A. Changes in the Work

1. Except as herein provided, no order, statement, action, inaction, or conduct of the Procurement Officer or any College representative or agent, shall be treated as a contract modification or entitle the A/E to an adjustment in the contract price, time or quality.
2. The College or its authorized representative may unilaterally, at any time, by written order designated or indicated to be a change order, make any change in the work within the general scope of the Contract.
3. In submission of a proposal for a modification to the contract, the A/E shall submit to the Procurement Officer, with a copy to the Project Manager, a Change Proposal which includes a fully itemized breakdown of the costs used in computing the value of the requested change along with a detailed explanation and justification for the proposed change regardless of the nature of the change.
4. If the A/E and the Procurement Officer cannot agree as to the scope or price for any proposed change, or to the extent the Contract time shall be modified, then the A/E shall submit a Claim under the Disputes Clause.
5. If the A/E believes that a written or oral order, direction, instruction, interpretation or determination issued by a College representative or agent, or some other material change in the terms or conditions stipulated under the Contract causes an increase in the A/E's cost of, or time required for, the performance of any part of the work under this Contract, the A/E must, while continuing the Work, provide written notice to the Procurement Officer, and simultaneously send a copy to the Purchasing Agent, within 14 days of the written or oral order, that such written or oral order, direction, instruction, interpretation or determination or other material change in the terms or conditions stipulated under the Contract is regarded by the A/E as a Change in the Work.

B. Amendments to the Contract: Except as provided in Section 5.A. above, this Contract may be amended only with the written consent of both parties.

C. Disputes

1. Except as otherwise may be provided by law, all disputes arising under or as a result of a breach of this contract that are not disposed of by mutual agreement shall be resolved in accordance with this Disputes clause and in accordance with SMCM Procurement Policies and Procedures, Section 8, "Protests and Appeals."
2. 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. A voucher, invoice, or request for payment that is not in dispute when submitted is not a claim under this clause. However, if the submission subsequently is not acted upon in a reasonable time, or is disputed as to liability or amount, it may be converted to a claim for the purpose of this clause.

3. Prior to filing a contract claim, the A/E shall contact the Procurement Officer and attempt, in good faith, to resolve by mutual agreement any disputes or disagreements that arise in connection with the Contract. When a dispute cannot be resolved by mutual agreement, the contractor shall submit a written contract claim to the Procurement Officer for a decision, made in consultation with the Office of the Attorney General. The claim shall be filed with the Procurement Officer within thirty (30) days of when the basis of the claim was known or should have been known, whichever is earlier.
 4. The Procurement Officer's decision shall be final and conclusive unless the A/E mails or otherwise files a written appeal as provided by SMCM Procurement Policies and Procedures, Section 8, "Protests and Claims" within 30 days of receipt of the decision.
 5. Pending resolution of a claim, the A/E shall proceed diligently with the performance of the contract in accordance with the Procurement Officer's decision.
- D. Unauthorized Work: The Architect/Engineer shall not be paid or granted additional performance time for any work not authorized in writing by the College.
- E. Termination for Convenience: The performance of work under this contract may be terminated by the College in accordance with this clause in whole, or from time to time in part, whenever the College shall determine that such termination is in the best interest of the State. The College will pay all reasonable costs associated with this contract that the A/E has incurred up to the date of termination and all reasonable costs associated with termination of the Contract. However, the A/E shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12A(2).
- F. Termination for Default: If the A/E fails to fulfill its obligation under this contract properly and on time, or otherwise violates any provision of the contract, the College may terminate the contract by written notice to the A/E. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the A/E shall, at the College's option, become the College's property. The College shall pay the A/E fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by A/E's breach. If the damages are more than the compensation

payable to the A/E, the A/E will remain liable after termination and the College can affirmatively collect damages. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11(B).

- G. Multi-year Contracts Contingent upon Appropriations: 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 College's rights or the A/E's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the A/E and the College from future performance of the Contract but not from their rights and obligations existing at the time of termination. The A/E shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the Contract. The College shall notify the A/E as soon as it has knowledge that funds might not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

SECTION 6 – LEGAL OBLIGATIONS

- A. Maryland Law Prevails:
The laws of Maryland shall govern the interpretation and enforcement of this Contract.
- B. Financial Disclosure: The A/E shall comply with the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, as may be amended, which requires in part that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more, shall, within 30 days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.
- C. Political Contribution Disclosure: The A/E shall comply with the provisions of Section 14-101 et seq. of the Election Law Article of the Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State of Maryland or a political subdivision of the State, including its agencies, during a calendar year in which the person receives in the aggregate \$100,000 or more, shall file with the State Administration Board of Election Laws a statement disclosing certain campaign or political contributions in excess of \$500.

- D. Compliance with Laws: The A/E hereby represents and warrants that:
1. 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;
 2. It is not in arrears with respect to the payment of any monies due and owing the College or 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;
 3. It shall comply with all Federal, State and local laws, regulations, and ordinances applicable to its activities and/or obligations under this Contract; and
 4. 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.
- E. Non-Hiring of Employees: No employee of the State of Maryland or any unit thereof, whose duties as such employee include matters relating to or affecting the subject matter of this contract shall, while so employed, become or be an employee of the party or parties hereby contracting with the State of Maryland or any unit thereof.
- F. Contract Affidavit: The A/E shall execute a contract affidavit in substantially the same form as contained in the College's Procurement Policies.
- G. Non-Discrimination: The A/E 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 except a 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.
- H. Pre-Existing Regulations: The regulations set forth in the College's Procurement Policies and Procedures in effect on the date of execution of this Contract are applicable to this Contract.
- I. Prohibition Against Contingent Fees:
1. The Architect/Engineer warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide

employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the Architect/Engineer, to solicit or secure this agreement, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide salesperson, or commercial selling agency, any fee or other consideration contingent on the making of this Agreement.

2. The A/E acknowledges that this certification is made to the Procurement Officer, in connection with this agreement. The A/E also acknowledges that for breach of the warranty set forth herein the Procurement Officer shall have the right to terminate this agreement in accordance with the provisions of Section 5 F, of these General Conditions. The A/E further acknowledges that, in its discretion, the College shall have the right to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, brokerage, contingent fee, contribution, donation or other consideration of any kind. The A/E acknowledges that this certification is subject to applicable State laws, both criminal and civil.

J. Truth-In-Negotiation Certification: The A/E by submitting cost or price information, including wage rates or other factual unit costs, certifies to the best of its knowledge, information and belief, that:

1. The wage rates and other factual unit costs supporting the firm's compensation as set forth in the proposal, are accurate, complete and current as of the contract dates;
2. If any of the items of compensation were increased due to the furnishing of inaccurate, incomplete or non-current wage rates or other units of costs, the College is entitled to an adjustment in all appropriate items of compensation, including profit or fee, to exclude any significant sum by which the price was increased because of the defective data. The College's right to adjustment includes the right to a price adjustment for defects in costs or pricing data submitted by a prospective or actual subcontractor; and
3. If additions are made to the original price of the contract, such additions may be adjusted to exclude any significant sums where it is determined the price has been increased due to inaccurate incomplete or non-current wage rates and other factual costs.

K. Indemnification: To the fullest extent permitted by law, the A/E shall indemnify, hold harmless, and, if requested, defend the State of Maryland, the College, and their officers, trustees, employees, and agents from and against any and all claims, damages, losses and expenses, including but not limited to attorneys fees, settlements made in good faith and arbitration awards, arising out or resulting from the A/E's performance of this Contract, including any acts or omissions of the A/E, the A/E's subcontractors, or anyone directly or indirectly employed by them or

anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnification which would otherwise exist as to any party or person.

The College shall not assume any obligation to indemnify, hold harmless, or pay attorneys' fees that may arise from or in any way be associated with the performance or operation of this Contract. The College has no obligation to provide legal counsel or defense to the A/E or its subcontractors in the event that a suit, claim or action of any character is brought by any person not a party to this Contract against the A/E or its subcontractors as a result of or relating to the A/E's obligations under this Contract. The College has no obligation for the payment of any judgments or the settlement of any claims against the A/E or its subcontractors as a result of or relating to the A/E's obligations under this Contract.

The A/E shall immediately notify the Purchasing Agent of any claim or suit made or filed against the A/E or its subcontractors regarding any matter resulting from or relating to the A/E's obligations under the Contract. The A/E will cooperate, assist, and consult with the College in the defense or investigation of any claim, suit, or action made or filed against the College as a result of or relating to the A/E's performance under this Contract, including providing services in connection with a public hearing, arbitration proceeding, or any legal proceeding. If the claim, suit, or action involve any decisions or actions made or taken by the A/E, then any cooperation, assistance and/or consultation will be included as a basic service whether or not the A/E is named as a party to the proceedings. If the proceedings do not involve any decisions made or taken by the A/E, then the A/E will be entitled to additional reasonable compensation as to be agreed upon by the A/E and the College.

- L. Commercial Nondiscrimination Clause: As a condition of entering into this Agreement, A/E represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As part of such compliance, A/E may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall A/E retaliate against any person for reporting instances of such discrimination. A/E shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. A/E understands that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of A/E from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any

third party.

As a condition of entering into this Agreement, upon the Maryland Human Relations Commission's request, and only after the filing of a complaint against A/E under Title 19 of the State Finance and Procurement Article, as amended from time to time, A/E agrees to provide within 60 days after the request a complete list of the names of all subcontractors, vendors, and suppliers that A/E has used in the past 4 years on any of its contracts that were undertaken within the state of Maryland, including the total dollar amount paid by A/E on each subcontract or supply contract. A/E further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, and to provide any documents relevant to any investigation that is requested by the State. A/E understands that violation of this clause is a material breach of this Agreement and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions.

SECTION 7 – PROGRESS AND PROSECUTION OF THE WORK

- A. Schedule: Within thirty (30) days after the date of this Agreement, the Procurement Officer and the A/E shall mutually agree upon a written schedule of specific dates for the completion of the several Phases of the A/E's services, all within the overall schedule established in the Scope of Services as herein after provided. Time extensions for the completion of the various phases shall only be made with the written approval of the Procurement Officer.
- B. Delays and Extensions of Time: The A/E agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by it for any delays or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract.

Time extensions may be granted by the Procurement Officer only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the A/E, including but not restricted to, acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the A/E or its subcontractors or suppliers.

- C. Suspension of Work: The Procurement Officer unilaterally may order the A/E in writing to suspend, delay, or interrupt all or any part of the work for such period of time as he may determine to be appropriate for the convenience of the College.

SECTION 8 – FEES AND PAYMENTS

- A. The extent of the A/E's services required by this Agreement shall govern and determine the method and amount of compensation to be paid by the College to the A/E as set forth within this Agreement. The A/E may apply to the Procurement Officer for periodic payment monthly; however, the granting of any such application in whole or in part, is discretionary solely with the Procurement Officer, who may refuse such application and may require the A/E to complete the documents required for any particular Phase and any revisions thereto as hereinbefore provided and secure the approval of such documents as a prerequisite to the A/E's entitlement to payment of said compensation. The granting of the A/E's application for such periodic payments by the Procurement Officer and the remittance thereof shall not constitute, in any sense, approval by the College for the percentage of work completed for such Phase, or any part thereof, such approval being expressly reserved to the Procurement Officer upon the completion of each of said Phases as provided in Section 3 A.10.

When required by the Procurement Officer to substantiate the degree of completion claimed in any such application for periodic payments, the A/E shall furnish the Procurement Officer with copies of the documents evidencing the degree of completion claimed.

- B. Preparation of documents required for additive or deductive bid alternates shall not normally entitle the A/E to additional compensation; however, where the nature of the alternate bids requires the extensive preparation of separate drawings and/or specifications, the Procurement Officer shall determine whether the extent of such separate drawings and/or specifications shall entitle the A/E to additional compensation.
- C. When the Scope of Services to be performed by the A/E under this Agreement includes the Construction Phase, applications by the A/E for periodic payments of his compensation under this Phase shall correspond to and be based upon the percentage of completion of the services provided by the A/E during this phase. Payment for construction site visits shall be in accordance with the provisions in the Scope of Services.
- D. Any additional construction work not requiring the professional services of the A/E shall not occasion any additional compensation to the A/E.
- E. Any construction work deleted from the Project or substantially revised during the Construction Phase, excluding deletions or revisions to the work which are required as a result of any errors or omissions by the A/E, which deletion or revision requires

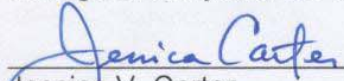
the A/E to render additional professional services, beyond the Scope of Services as herein defined, shall entitle the A/E to additional compensation for such services, as may be agreed upon in writing with the Procurement Officer.

- F. The compensation payable to the A/E under this Agreement may be reduced by reason of additional costs of constructing the Project incurred by the College as a result of errors in, and improper coordination of, the drawings and specifications comprising the Construction Documents. The amount of such reduction in compensation, if any, shall not exceed the amount of such additional costs of constructing the Project.
- G. The College may deduct from and set-off against any amounts due and payable to the A/E any back charges or damages sustained by the College by virtue of any breach of this contract by the A/E or by virtue of the failure or refusal of the A/E to perform the services or any part of the services in a satisfactory manner. Nothing herein shall be construed to relieve the A/E of liability for additional costs resulting from a failure to satisfactorily perform the services.
- H. Should the Project be abandoned or curtailed or should the College cancel this Agreement at any time, the A/E shall be paid a proportionate part of the compensation due and payable to him at the completion of the Phase, wherein said abandonment, curtailment or cancellation occurs. Notice of abandonment, curtailment or cancellation may be verbal, but shall be confirmed in writing within 30 days by the Procurement Officer at which time the A/E shall immediately file with the Procurement Officer prints and other data substantiating the status of the professional services performed to the date of such action. However, no fee shall be due should this Agreement be canceled by the Procurement Officer due to the inability of the A/E to produce a satisfactory solution to the Schematic Design and/or Design Development Phases of this Agreement.
- I. Upon all applications for periodic payments of compensation, excepting only the first such application, the A/E shall certify in writing to the Procurement Officer, under penalty of perjury, that all consultants, the extent of whose work comprised a portion of the prior application for periodic payment, were paid in full to the extent of such, as was approved by the Procurement Officer, within ten (10) days next succeeding the date on which the A/E received payment from the College for such prior application. All A/E invoices to the College shall set forth the Contract Number and the A/E's Federal Employer Identification Number or his Social Security number. Invoices shall be mailed to: Accounts Payable, St. Mary's College of Maryland, St. Mary's City, MD 20686.
- J. Reimbursable expenses, if any, will not exceed the estimated amounts as provided

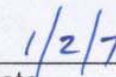
in the A/E's approved price proposal, unless specifically approved in writing by the Procurement Officer.

- K. Payments to the A/E pursuant to this Contract shall be made no later than thirty (30) days after the College's receipt of a proper invoice from the A/E. Charges for late payments of proper 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.
- L. The College is not responsible for the actions, orders or interpretations of Federal, county, municipal, or other local officials or representatives respecting the application to the work of Federal, State, or local laws, ordinances, regulations or codes. Architect/Engineer shall not be entitled to additional compensation for unanticipated costs of complying with any such actions, orders or interpretations.

These General Conditions of the Contract between the Architect/Engineer and St. Mary's College of Maryland are approved for form and legal sufficiency.



Jessica V. Carter
Assistant Attorney General



Date