



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

GENERAL CONDITIONS
OF THE CONTRACT BETWEEN
THE CONTRACTOR 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 CONTRACT
BETWEEN THE CONTRACTOR AND ST. MARY'S COLLEGE OF MARYLAND**

SECTION 1 - DEFINITIONS AND RESPONSIBILITIES

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

A. Approved Equal - Those supplies or services, or compatible items of construction whose quality, design or performance characteristics are functionally equal or superior to an item specified and meet all salient characteristics and other requirements of the Contract as determined by the Associate Vice President of Facilities.

B. Architect - A person, partnership or corporation, registered in the State of Maryland to practice architecture and commissioned by the College to prepare various documents including, but not limited to the plans and specifications ("the documents"), for the designated project. Whenever the documents are prepared by an individual, corporation or partnership ("the entity") other than a College employee or an architect commissioned by the College, all reference to the Architect shall be construed to refer to the entity. Should no architect have been commissioned by the College to prepare the documents and/or provide construction phase architectural or engineering services, then St. Mary's College of Maryland is the agency referred to as the Architect and the Associate Vice President of Facilities will be designated as the Architect for the College when no Architect has been appointed.

C. As-Builts - A set of drawings annotated by the Contractor to record all changes in the work as they occur, and the specific location of all elements of the work as installed.

D. Change Order - A duly authorized written order issued by the College's Purchasing Agent modifying the Contract in accordance with the Change Clause in Section 3.04 herein.

E. Claim - A complaint by the Contractor or by the College relating to the Contract.

F. College - The Board of Trustees of St. Mary's College of Maryland or its authorized representative(s) as defined in Trustee established policy(s).

G. College Inspector - An authorized individual representing the College to observe the performance of the Contractor.

H. Contract - The written Agreement executed by the College Procurement Authority and the Contractor, which describes the services to be provided by the Contractor, compensation to be paid by the College, and the time provided for its completion. The Contract includes the written agreement executed by the College Procurement Authority and the Contractor, any documents specifically incorporated in the document, including but not limited to the construction bid form, contract forms and bonds, Instructions to Bidders, any addenda, the executed Bid/Proposal Affidavit and Contract Affidavit, General Conditions, specifications, supplemental conditions and specifications, all special conditions and provisions, all technical provisions, and all 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.

I. The Contractor - The person or organization having direct contractual relation with the College for the execution of the work.

J. 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.

K. Critical Path Method (CPM) - A scheduling/management tool showing a network of work elements or activities for a construction project as commonly used in the construction industry.

L. Day - A calendar day unless otherwise designated.

M. 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 Contractor 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 Authority. At the discretion of the College, his designation can be changed by written notice to the Contractor provided by the Vice President of Business and Finance, the President of the College or their designee.

N. Dispute - A disagreement between the parties which has not been resolved by mutual agreement.

O. Notice to Proceed - A written notice issued by the Associate Vice President of Facilities to the Contractor after the execution of the Contract which establishes the date on which the work shall commence under the Contract.

P. Payment Bond - Security in a form approved by the Purchasing Agent and executed by the Contractor and his surety, and paid for by the Contractor, to assure payment(s) as required by law to all person(s) supplying labor or material(s) for the completion of the work under the Contract.

Q. Performance Bond - Security in a form approved by the Purchasing Agent, executed by the Contractor and his surety, and paid for by the Contractor to protect the College from loss due to the Contractor's failure to complete the Contract as agreed.

R. Plans and Specifications - The documents and any addendum, if any, provided by the College for the purpose of establishing a contract price with the Contractor which describe in detail the scope of services to be provided under the Contract and the materials to be utilized.

S. Procurement Authority - The entities and/or individual(s) authorized to enter into the Contract and execute Change Orders as provided by College Procurement Policy.

T. 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.

U. Procurement Review Committee (PRC) - The Committee authorized by the College as provided by the College Procurement Policy, as may be amended from time to time, and also with authority as set forth in these General Conditions.

V. Project Manager - The individual assigned by the Associate Vice President of Facilities to coordinate routine matters with the Contractor on behalf of the College. At the discretion of the College, the Project Manager may be changed by written notice to the Contractor by the Associate Vice President of Facilities.

W. 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 Authority and Procurement Review Committee. At the College's sole discretion, the Purchasing Agent may be changed by written notice to the Contractor by the Vice President of Business and Finance or the President of the College, or designee.

X. 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.

Y. Subcontractor - Individuals and entities other than St. Mary's College of Maryland that have a contractual relationship with the Contractor for the project.

Z. The Owner - St. Mary's College of Maryland, a unit of the State of Maryland.

AA. Work - The furnishing of any and all labor, materials, equipment, services, utilities and other incidentals and the manufacture or fabrication of materials or equipment necessary to the successful completion of the project and the carrying out of all the duties and obligations imposed upon the Contractor by the Contract.

BB. Written Notice - Written notice shall be deemed to have been duly served on the Contractor 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.

1.02 College's Responsibilities

A. If appropriate, the College may furnish the most recent survey it may have describing physical characteristics, legal boundaries, other known restrictions, and a legal description of the site. The College does not warrant the accuracy of the survey information.

B. The College will, with reasonable promptness, respond to the Contractor's request for information and approval.

1.03 Contractor's Responsibilities

A. The Contractor shall supervise and direct the work. He shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the work under the Contract. The Contractor must aggressively and diligently pursue completion of the Contract within the contract time.

B. The Contractor shall be responsible to the College for the acts and omissions of his employees, subcontractors and their agents and employees, and other persons performing any of the work under a contract with the Contractor.

C. The Contractor shall be responsible for the performance of the work in accordance with the Contract and may not be relieved of such responsibilities by the activities or duties of the Architect, or by inspections, tests or approvals required or performed by persons other than the Contractor.

D. The Contractor shall perform all work in accordance with the lines, grades, typical cross sections, dimensions, and other data required by the Contract or as modified by written orders, 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.

E. The Contractor is required to maintain on site at all times when work is in progress a qualified individual who is authorized to represent the Contractor. This individual must be responsible for the entire project, and must be able to communicate with the College's representatives.

F. The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract and shall not unreasonably encumber the site with any materials or equipment.

G. If at any time the Contractor, during the performance of work on this Contract, finds or has reason to suspect the presence of asbestos in any areas, he shall immediately notify the Associate Vice President of Facilities in writing setting forth his observations or suspicions and requesting instructions. At the same time the Contractor shall withdraw all his personnel from the potentially contaminated area.

H. 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 damage or endanger any portion of the work or the work of the owner or any separate contractors by cutting, patching or otherwise altering any work, or by excavation. The Contractor shall not cut or otherwise alter the work of the owner or any separate contractor except with the written consent of the owner. The Contractor shall not unreasonably withhold from the owner or any separate contractor his consent of cutting or otherwise altering the work.

1.04 Performance Evaluations

A. The College may perform for the benefit of itself evaluations of the performance of the Contractor and Subcontractors and Suppliers.

B. Unsatisfactory performance of this Contract (or any part of it), whether or not the Contract is terminated for default may result in a determination that the Contractor is not a responsible bidder or offeror on future projects and/or revoke pre-qualification status if previously established.

SECTION 2 - CONTRACT, SHOP DRAWINGS AND SUBMITTALS

2.01 Contract

A. The Contract documents are complementary. That which is called for by any one shall be as binding as if called for by all. Technical or trade jargon or terms may be used in the Contract and shall be construed, unless defined herein, to have the standard meaning recognized by the industry. The intent of the documents is to include all work necessary for proper, efficient and timely completion of the project. It is not intended, however, to include any work not properly inferable.

B. Clarification: Prior to bidding, the Contractor shall obtain clarification of all questions which may have arisen as to intent of the Contract, or any actual conflict between two or more items in the Contract. Should the Contractor have failed to obtain such clarification, then the Associate Vice President of Facilities may direct that the work proceed by any method indicated, specified or required or reasonably inferable by the Contract. Such direction shall not constitute the basis for a claim for extra time or costs by the Contractor. The Contractor acknowledges that he had the opportunity to request clarification prior to submitting his bid to the College and therefore agrees that he is not entitled to claim extra costs as a result of such clarification.

C. Drawings: The Contractor shall not do any work without proper drawings and/or 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, duct work 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 provided that such adjustments do not alter the design performance of the work, at no increased cost to the College.

- (1) Copies Furnished: Copies of the drawings and specifications may be obtained by the Contractor by requesting copies from the reproduction company at the Contractor's expense unless otherwise provided in the bid documents.
- (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 College. Additionally,

one set of all contract drawings should be maintained as record (As-Built) drawings. As-Built drawings shall be marked up by the Contractor in the field on an ongoing basis to record all changes in the work as they occur, and the exact location of all exposed and concealed pipe runs, valves, plugged outlets cleanouts and other control points including electrical conduits and ducts, in such manner as will provide a complete, accurate As-Built record. The location of pipes or control points concealed underground, under concrete, in chases or above hung ceiling shall be dimensioned. As-Built drawings shall be delivered to the College with a copy to the Architect, in a condition satisfactory to the College, as a condition precedent to final acceptance of work. Release of final retainage will be subject to receipt of the as-built drawings by the College.

- (3) Ownership: All documents remain the property of the College. They must not be used on other work and they shall be returned to the College upon completion of the work.

D. Large Scale Detail Drawings: The Architect shall furnish, when the College directs, 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.

E. Dimensions: The Contractor shall carefully check all dimensions prior to execution of the particular work. Whenever inaccuracies or discrepancies are found, the Contractor shall immediately consult the Associate Vice President of Facilities prior to any construction or demolition. Should any dimensions be missing, the Associate Vice President of Facilities will be consulted and supply them prior to execution of the work. 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 piece 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 costs or time extensions will be allowed by reason of work requiring adjustments in order to accommodate the particular item of equipment.

F. Whenever new work, building, addition or portions thereof is not accurately located by plan dimensions, the Associate Vice President of Facilities will supply exact position prior to execution of the work upon the request of the Contractor.

2.02 Submittals: Shop Drawings, Product Data Documents and Samples

A. Submittals: Shop drawings, product data documents, samples and any other information required by the Contract to be submitted by the Contractor for review and approval by the Architect and/or the College are commonly referred herein as submittals.

B. Submission Requirements: After checking and verifying all field measurements and after complying with applicable procedures specified in the Contract, the Contractor shall submit to Architect for review and approval, with a copy to the Project Manager, in accordance with the

Contractor's schedule, submittals which will bear a stamp or specific written indication that the Contractor has satisfied its responsibility under the Contract with respect to the review of such submittals. The data on the documents submitted by the Contractor shall be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to enable the Architect and the College to review the information. These documents shall be prepared in conformity with the best practice and highest standards for the trade concerned. Due regard shall be given to speed and economy of fabrication and erection. All submittals must show the name of the project, the date submitted, and the College contract number.

C. Size of Shop Drawings: All shop drawings and details submitted to the Architect for approval shall be printed on sheets of the same size as the contract plans or drawings. When a standard of a fabricator is of such size to print more than one drawing on a sheet of the size of the Architect's drawings, this is acceptable. Sheets larger than the Architect's drawings will not be accepted except when specifically permitted by the College. Shop details supplied on a sheet of letter size 8-1/2" x 11" is acceptable for product schedules and small details.

D. Items for which shop drawings will be required: Shop drawings shall 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 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 fabrication or detailed connections including refrigeration, elevators, dumb waiters, laboratory equipment, ducts, etc.

E. Copies Required: The Contractor shall supply two copies of submittals for the Architect's file and two copies for the College (send to the Project Manager), in addition to such copies as the Contractor may desire to be returned for his own use.

F. Samples: Samples should be provided as required by the Contract. Samples must remain on the project site until final closeout unless the Contractor obtains written permission by the Project Manager for removal.

G. Examination and Approval: The Architect will examine all submittals with reasonable promptness, noting required corrections, or accepting or rejecting them. Review of Contractor proposed "Substitutions" and "Equals" will require sufficient time for the Architect and College to fully evaluate the characteristics of the proposed "substitution" or "equal" product.

H. 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.

I. Resubmission: When the Architect notes required corrections, or rejects submittals, the Contractor shall timely resubmit with corrective changes. Any delays to the project, in whole or in part, caused as a result of the Contractor needing to resubmit submittals in order to obtain approval of the Architect or College are the responsibility of the Contractor.

J. Contractor's Responsibility: Unless the Contractor has, in writing, explicitly notified the Architect and the Associate Vice President of Facilities to the contrary, at the time of the submission, the College and the Architect assume that the submittals are in conformity with the Contract and do not involve any change in the contract price or time or any change which will alter the space within the structure or alter the nature of the work from that required by the Contract, or

constitute a substitution of materials or equipment. Failure of the Contractor to serve written notice as above required shall constitute a waiver by the Contractor of any claim in relation thereto.

K. Architect's Notations: Should the Contractor consider any rejection or Architect's notation on the submittals to cause an increase in the cost of the work from that required by the Contract, then the Contractor shall desist from further action relative to the item he questions and shall notify both the Architect and the Associate Vice President of Facilities, in writing, within three days of determination there is additional or less cost involved. No work on this matter shall be executed until the Contractor is ordered by the Associate Vice President of Facilities to proceed. Failure of the Contractor to serve written notice as required above shall constitute a waiver by the Contractor of any claim in relation thereto. Similarly, should the Architect's notation or change involve less work than is covered by the Contract, the Contractor shall allow the College an equitable credit resulting from the change in the work.

L. Approval: Approval of the submittals by the Architect will not relieve the Contractor from conforming to the requirements of the Contract.

SECTION 3 - SCOPE OF THE WORK

3.01 Differing Site Conditions

A. The Contractor shall immediately, and before such conditions are further disturbed, notify the Associate Vice President of Facilities orally, and followed within 3 days in writing, of: (1) subsurface or latent physical conditions at the site differing materially from those indicated in the Contract, or (2) unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract. The Associate Vice President of Facilities, or designee, 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 the 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 3.01A above provided, however, the time for notice prescribed therefore may be extended by the Associate Vice President of Facilities in writing.

C. No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under the Contract.

3.02 Site Investigation

The Contractor acknowledges that he has investigated and satisfied himself as to the conditions affecting the work, including but not limited 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 materials, 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, which shall include the presence of lead or other substances classified by EPA as hazardous materials or controlled substances and the requirements for their removal and disposal, 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 College, as well as from information presented by the drawings and specifications made a part of this Contract. Any failure by the Contractor to acquaint himself with the available information will not relieve him from responsibility for estimating properly the difficulty or cost or time of successfully performing the work. The College assumes no responsibility for any conclusions or interpretations made by the Contractor on the basis of the information made available by the College.

3.03 Conditions Affecting The Work

The Contractor shall be responsible for taking steps reasonably necessary to ascertain the nature and location of the work and the general and local conditions which can 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 Contract Time or expense to the College. The Contractor agrees not to rely on any understanding or representation concerning conditions made by any College employee or agents prior to the execution of this Contract, unless such understanding or representation are expressly stated in the Contract.

3.04 Changes In The Work

A. Except as herein provided, no order, statement, action, inaction, or conduct of any College representative or agent, shall be treated as a contract modification or entitle the Contractor to an adjustment in the contract price, time or quality.

B. The Procurement Authority or its authorized representative 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 College-furnished facilities, equipment, materials, services or site;
- (4) or, directing acceleration or suspension in the performance of the work.

C. Change Directives:

- (1) The Procurement Authority or its designee, as per the chart below, may direct the Contractor to add or reduce services prior to issuance of a formal Change Order, through the issuance of a written Change Directive signed by the designees below. A Change Directive is used when time is of the essence. A Change Directive does not modify the Contract. The Procurement Authority makes the following designations for purposes of signing Change Directives:

<u>Amount</u>	<u>Designated Signature Authority</u>
\$0 - \$10,000	Associate Vice President of Facilities AND Project Manger
Between \$10,000 & \$100,000	Vice President of Business and Finance AND Associate Vice President of Facilities
Greater than \$100,000	Not Applicable-can only be modified via Change Order

- (2) When all necessary approvals are obtained, the College will issue a Change Order to the Contract associated with a duly authorized Change Directive within a reasonable time period, provided the Contractor fulfills all its obligations in providing complete information as may be required per Section 3.04. Under certain conditions, the College must obtain approval from the Maryland State Board of Public Works prior to issuance of a Change Order. Authorized Change Orders to this Contract will be conveyed to the Contractor by the Purchasing Agent of the College. Services completed under a Change Directive to this Contract may not be invoiced by the Contractor until issuance of the actual Change Order and shall not be payable before that time.

D. When changes in the work require modification of the contract price and/or time, such modification shall be accomplished using the following procedures:

- (1) When unit prices are stated in the Contract or have been subsequently agreed upon, the change in contract price shall be based on the unit prices as applied to the quantity of work approved by the Project Manager.
- (2) When unit prices are not applicable, then the modification of the contract price shall be a lump sum price agreed upon by both the Associate Vice President of Facilities and Contractor.

The Contractor shall promptly submit to the Associate Vice President of Facilities with a copy to the Project Manager and Architect a Change Proposal which includes a fully itemized breakdown of the quantities and prices 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.

For all changes in the work to be performed by a Subcontractor, the Contractor shall furnish the Subcontractor's fully itemized breakdown of quantities and prices which shall bear the original signature of a representative of the Subcontractor authorized to act for the Subcontractor. If requested by the College or its representatives or the Architect, proposals from Suppliers or other supporting data required to substantiate costs shall be furnished.

- (a) Modification of the Contract as to price shall be proposed as follows:

- (i) If the change involves only a credit, as to the College, the contract price will be reduced by the amount it would have cost the Contractor if the work omitted had not been eliminated; including overhead and profit, however, the Contractor will be allowed to retain a sum not in excess of three percent (3%) for handling.
- (ii) If the change involves both a credit and a debit, both sums shall be shown on the change proposal and the two sums balanced to determine the adjusted total cost or credit. No allowance to the Contractor shall be made or allowed for loss of anticipated profits on account of any changes in the work.
- (iii) Unless otherwise specified, the allowable mark-up for combined overhead and profit for work performed by the Contractor with his own forces will be 15% based upon the monetary value of the work.
- (iv) For work performed by a Subcontractor with his own forces, the percentages for combined overhead and profit for a Subcontractor will be 15% based upon the monetary value of the work. On work partly or solely performed by a Subcontractor, the Contractor will be allowed five percent (5%) of the total cost of the Subcontractor's labor, materials overhead and profit, including taxes and insurance on labor required by statute.
- (v) For labor costs, unless otherwise specified, the Contractor will be reimbursed for his normal usual rates to include direct hourly rates and his expenditures for Worker's Compensation Insurance, Social Security Taxes and Unemployment Compensation Taxes covering persons actually engaged in the work and the actual increased cost of bonds.
- (vi) The cost of foremen and superintendents may be added only when the Associate Vice President of Facilities determines it was necessary for the Contractor to hire additional supervisory personnel or makes the Contractor's employment for time additional to that required by the basic contract.
- (vii) The Contractor shall be allowed the actual cost for rental of machine power tools or special equipment, including fuel and lubricants which are necessary to execute the work required on the change, but no percentages shall be added to this cost. The rental rate is to be agreed upon by the College and the Contractor; the rate shall relate generally to the latest as filed by the Associated Equipment Distributors.

- (viii) The allowable percentages of cost for overhead and profit are deemed to include any and all such costs, but not limited to, job supervision and field office expense required by the Contract; expenses for timekeepers; clerks and watchmen; cost of correspondence of any kind; insurance not specifically mentioned herein; all expenses in connection with the maintenance and operation of the field office; use of small tools; and cost of small trucks generally used for transporting either workmen, materials, tools or equipment to job location; and incidental job burdens. No percentage allowances will be made for maintenance or operation of Contractor's regularly established principal office, branch office or similar facilities.
 - (ix) Under no circumstances will overhead or profit be permitted as items of a claim when such overhead or profit are for periods during which a "Stop Work" order is in effect due to an act, error or omission for which the Contractor is responsible.
 - (x) No profit or overhead which includes rental of equipment and the salaries of supervisory personnel will be allowed the Contractor for stoppage of work when written notice of such stoppage, or impending stoppage, is not given reasonably in advance to prevent such stoppage.
- (3) Request for Time Extension: If the Contractor contends that any Change Order, potential Change Order, Change Directive, proposal for a Change Order or other order issued under Section 3.04 will or may cause an increase in the time required for performance, or damages, additional overhead, or costs to the Contractor or his Subcontractor or Supplier at any tier, the Contractor must include the specific additional time, if any, and compensation claimed to be due in the Contractor's change order proposal.

In the event that the Contractor seeks an adjustment in contract time as a result of delays, suspensions or for any other reasons, he shall submit a written request for time extension to the Associate Vice President of Facilities within 15 days of the Contractor's knowledge of the event or the resolution of the event, whichever is later. Failure to timely submit the request shall constitute a waiver of claim as to all matters related thereto. The written request for time extension shall be in addition to any notice(s) of delay as may be required in other Sections of these General Conditions.

The Contractor is entitled to no additional costs or extensions of the completion time or damages for which he has failed to file a timely notice, or the request for time extension itself, in the proper form and supported by complete and proper documentation, as required by this Section 3.04 and Sections 7.02 and 7.03 and all other applicable provisions of the Contract.

The request for time extension shall include:

- (a) A justification as to the circumstances and cause of the work, delay or other event that is the basis for the request for additional time. The Contractor shall also provide specific reference to the section of these General Conditions for which his request is based;
- (b) A reasonably detailed description of the effect of the event on the adjusted as-planned/as-built critical path;
- (c) A specific proposed number of days to be added/deducted to the contract time based on the information provided above;
- (d) Copy of his timely notice of delay, if any; and
- (e) Any other documentation required to support the request for time extension.

The burden is on the Contractor to substantiate the merits of any request for time extension. Upon receipt of a written request for time extension, the Associate Vice President of Facilities may require any supplemental information reasonably required to ascertain the facts and to make a determination. The mere existence of a change order or other event does not entitle the Contractor to an extension of time, compensation for delay, or damages or costs associated with delay. The Contractor's entitlement thereto shall be subject to the requirements of Sections 7.02 and 7.03. A change order granting a time extension may provide (a) that the contract completion date will be extended only for specific critical activities, (b) that the remaining contract completion date(s) for all other portions of the work will not be altered, and/or (c) for an equitable adjustment of liquidated damages under the new required completion dates.

- (4) If the College and the Contractor fail to agree upon a lump sum price or the application of unit prices to determine the cost of any proposed change, the work shall be done on the basis of a Force Account as hereinafter stated under Section 8.02, Force Account Work. Under these conditions, the College shall have the right to issue a Change Directive for the work to be performed and the Contractor shall promptly proceed as directed under the provisions of Section 8.02.
- (5)
 - (a) If the Contractor and the Associate Vice President of Facilities cannot agree as to the scope or price for any proposed change, then the Contractor shall request a Final Decision by the Associate Vice President of Facilities. Any disagreement with this Final Decision may be appealed by the Contractor under the Disputes Clause.
 - (b) If the Contractor and the Associate Vice President of Facilities cannot agree as to the extent the Contract time shall be modified, then the Contractor shall request a Final Decision by the Associate

Vice President of Facilities. Any disagreement with this Final Decision may be appealed by the Contractor under the Disputes Clause of this Contract.

- E. (1) If the Contractor 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 (defined here to be a Potential Change Order), causes an increase in the Contractor's cost of, or time required for, the performance of any part of the work under this Contract, the Contractor must take the following action:
- (a) The Contractor must, while continuing the Work, provide written notice to the Associate Vice President of Facilities, and simultaneously send a copy to the Purchasing Agent, 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 Contractor as a Potential Change Order, within 14 days of the written or oral order, and
 - (b) the Contractor must then follow the procedure for modification of the contract time and or price as is described in Section 3.04D.
- (2) Should the College agree to modify the Contract it will issue a Change Order. If in the judgment of the Associate Vice President of Facilities, the Potential Change Order does not increase or decrease the Contractor's cost of, or time required for, performance of any part of the work or is not in fact a material change in the terms and conditions stipulated under the Contract he may direct the Contractor to proceed with the work, in writing, with no adjustment in compensation or contract time. If the Contractor and the Associate Vice President of Facilities cannot resolve to mutual satisfaction whether a Potential Change Order shall result in an adjustment in the Contractor's cost or time for performance, then the Contractor can only seek recourse under the Disputes Section of this Contract. Failure by the Contractor to provide written notice within the stated time period explicitly stating that the Contractor has encountered a Potential Change Order will result in the Contractor forfeiting any rights to seek compensation or additional time arising from the Potential Change Order .
- (3) Upon receipt of a written order of the Associate Vice President of Facilities under this Section 3.04E, the Contractor shall comply with the order promptly, within the requirements of the completion schedule, whether or not the Contractor agrees with the terms of the order. Failure to comply with the order in a timely manner shall constitute a breach of contract and grounds for termination for default or any other remedy available to the College.

F. The Architect, with the concurrence of the Project Manager, shall have authority to make minor changes in the work not involving extra cost or additional time, and not inconsistent

with the purposes of the project. Otherwise, except in any emergency endangering life or property, no extra work or changes to the work shall be done unless authorized by the College in accordance with the Changes Clause of this Contract prior to any such work or changes to the work being done.

3.05 Unauthorized Work

The Contractor shall not be paid or granted additional performance time for any work not authorized in writing by the College.

SECTION 4 - CONTROL OF THE WORK

4.01 Authority Of The Architect

A. Under the direction of the College, the Architect shall be the initial interpreter of the Plans and Specifications. He will furnish with reasonable promptness such clarifications as he may deem necessary for the proper execution of the work. Such clarifications are to be consistent with the intent of the Contract. When in special instances he is authorized in writing by the Associate Vice President of Facilities to act, the Architect has authority 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, all the Architect's decisions are subject to approval by the College.

C. In the event that the Contractor and Architect can not reach mutual agreement on a decision by the Architect involving submittals, clarifications, etc., then the Contractor shall appeal the Architect's decision to the Associate Vice President of Facilities for determination.

4.02 Conformity With Contract Requirements

A. All work performed and all materials furnished shall be in conformity with the Contract.

B. In the event the Architect or College finds the materials or the finished product in which the materials are used are not in complete conformity with the contract requirements, then the Associate Vice President of Facilities shall make a determination whether the work shall be accepted. If accepted, a Change Order will be issued to provide for an appropriate decrease in the contract price, if any.

C. In the event the Architect or College 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 the Associate Vice President of Facilities determines that the work is not acceptable, the work or materials shall be removed and replaced or otherwise corrected by and at the expense of the Contractor.

4.03 Adjacent Work

A. The College shall have the right, at any time, to contract for and/or perform other

work on, near, over or under the work covered by this 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 and schedule to such other work as may be directed by the College.

B,. The Contractor agrees that in event of dispute as to cooperation or coordination with adjacent Contractors the College will attempt to mediate any such dispute. All decisions made by the College will be binding on all Contractors, their Subcontractors and Suppliers. The Contractor agrees to make no claims against the College for any inconvenience, delay or loss experienced 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. The Contractor shall furnish labor and services (1) which expeditiously, economically and properly complete its particular scope of the work in the manner most consistent with the College's interests and objectives, (2) in accordance with the Contract, and (3) in accordance with the highest standards currently practiced by persons and entities performing comparable labor and services on projects of similar size and complexity.

B. The Contractor 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, in writing, to the Associate Vice President of Facilities with a copy to the Project Manager and Architect any error, inconsistency or omission which he may discover.

4.05 Cooperation With Utilities

A. The Contractor warrants he has considered in his bid all of the permanent and temporary utility appurtenances in their present or relocated positions and that no additional compensation or time 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.

B. The Contractor shall have responsibility for providing timely written notice in advance to the College Project Manager and all affected utility companies prior to performing any work on or near utilities and shall cooperate with them in achieving the desired results. In no case shall this notice be provided less than seven days prior to starting this work. All damage or interruption to utility facilities caused by the Contractor's operations shall be the responsibility of the Contractor. In such cases, the Contractor shall promptly notify the Associate Vice President of Facilities and shall immediately take necessary action at its own cost to repair, replace or reimburse for the damaged utility to the complete satisfaction of the utility company.

C. At points where the Contractor's operations are on College property or adjacent to properties which have on them railway, telegraph, telephone, cable, fiber optics, water, sewer, power, or other utilities 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 the project progresses in a reasonable manner, that duplication or rearrangement work may be reduced to a minimum and that utility 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 Associate Vice President of Facilities and shall cooperate with said authority in the restoration of service.

F. No work shall be undertaken around fire hydrants until provisions for continued service have been approved by the College. The Contractor is responsible for seeking and obtaining the necessary approvals.

G. Certain utilities are owned and operated directly by the College. In such cases, the Contractor shall cooperate with the College in accordance with the above requirements.

4.06 Authority And Duties Of College Inspectors

A. College Inspector(s) ("Inspector") 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, modify or waive any requirements of the Contract, nor is he authorized to approve or accept any portion of the project. He is authorized, but not required, to call to the attention of the Contractor any failure of the work or materials to conform to the Contract. He is authorized to recommend to the Associate Vice President of Facilities to reject materials or temporarily suspend the work, at no additional cost to the College, until any questions at issue can be referred to the Architect and College and decided by the Associate Vice President of Facilities. Inspectors shall perform their duties at such times and in such manner as will not unnecessarily impede progress on the Contract. In the case where the College does not assign an Inspector to the project, the Project Manager shall assume all responsibilities of the Inspector.

B. The Inspector shall in no case act as foreman or perform other duties for the College or 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 College in any way, or releasing the Contractor from fulfilling all of the terms of the Contract. The duty of the Inspector on the project is to observe the progress of the work and to report to the College any deviations from the requirements of the Contract.

D. Where there is disagreement between the Contractor and the Inspector, the Inspector will immediately direct the Architect's and Associate Vice President of Facilities attention to the issues of disagreement. The Associate Vice President of Facilities will make a determination as to the conformance of the work. If such work is determined to be in nonconformance, the Associate Vice President of Facilities will prepare and deliver in writing to the Contractor, by mail or otherwise, a written order directing the Contractor to correct the work or to suspend the work and explaining the reason for such direction. As soon as the Inspector is advised of the delivery of a shutdown order, the Inspector shall immediately leave the site of the work. Any work performed during the Inspector's absence will not be accepted or paid for and the Contractor may be required

to have such work removed and disposed of at the Contractor's expense.

4.07 Inspection Of The Work And Tests

A. All work, including the fabrication and source of supply, is subject to inspection by the Architect and the various College representatives, and those agencies required by law to inspect specific items.

B. The Contractor shall provide at its own cost accommodations for access and inspection as required by the College.

C. If the Contract, the College's instructions, laws, ordinances, or any public authority require any work to be specially tested or approved, the Contractor shall give the College and the Architect timely notice of its readiness for inspection, and if the inspection is by another authority, the date fixed for such inspection. Inspections by the College shall be made promptly and where practicable at the source of supply. Any work covered without approval of the Architect or other agency with authority to perform inspections must, if required by the Architect or the College, be uncovered for examination at the Contractor's expense. The Contractor is responsible for arranging and obtaining all necessary inspections and approvals.

The Contractor shall arrange and coordinate all inspections required and shall give the College and the Architect timely notice of its readiness so the College or the Architect may observe such inspection, testing or approval. The Contractor shall bear all costs of such inspections, tests or approvals.

D. If the Associate Vice President of Facilities determines that any work requires special inspection, testing, or approval which the Contract does not include, the Architect will, upon written authorization from the College, instruct the Contractor to order such special inspection, testing or approval, and the Contractor shall give notice as provided in C above. If such special inspection or testing reveals a failure of the work to comply with the requirements of the Contract, the Contractor shall bear all costs thereof, including compensation for the Architect's additional services made necessary by such failure and any other costs incurred by the College.

E. Required certificates of inspection, testing, approval or occupancy shall be obtained and paid for by the Contractor and promptly delivered by him to the Architect. Required inspections and certificates shall include, but not be limited to an electrical certificate from an independent (non-governmental) electrical inspection agency approved by the State Fire Marshal. This certificate must be submitted to the College prior to or with the Contractor's invoice for final payment. Also, 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.

F. The College may charge the Contractor any additional cost of inspection when work is not ready at the time specified by the Contractor, or when prior rejection makes reinspection necessary.

G. Inspections by the College or the Architect are for the sole benefit of the College. Inspections by the College or the Architect, or the presence or absence of a College Inspector or

the Architect at any inspection, or the failure of the College Inspector or Architect to report any deviation by the Contractor from contract requirements shall not: (1) relieve the Contractor of responsibility for adequate quality control measures, compliance with contract requirements, or damage to or loss of material: (2) constitute or imply acceptance of any work: or (3) affect the continuing rights of the College to hold Contractor responsible for failure to meet contract requirements.

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 except as provided in Section 4.02B.

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 without undue delay by the Contractor and replaced by the Contractor with work and materials which shall conform to the Contract or shall be remedied otherwise in an acceptable manner authorized by the Associate Vice President of Facilities. The cost and time to perform any work required to correct or remedy unacceptable or defective work will be the responsibility of the Contractor. The acceptance of the work set forth herein by the College shall not relieve the Contractor of the responsibility of subsequent correction of such unacceptable or defective work.

C. Upon failure on the part of the Contractor to comply promptly with any order of the Associate Vice President of Facilities, made under the provisions of this Section, the Associate Vice President of Facilities shall have authority to take any action he deems appropriate including, but not limited to causing defective or unacceptable work to be remedied or removed and replaced and unauthorized work to be removed and to cause the costs to be deducted from the contract price via a unilateral Change Order.

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 water, and material carried by such waters and such 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 College or other agency with

jurisdiction for failure to comply with any 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 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 College.

4.10 Failure To Maintain Entire Project

Failure on the part of the Contractor, at any time, to comply with the provisions of Section 4.09 shall result in the Associate Vice President of Facilities or Project Manager notifying the Contractor in writing 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 College may immediately proceed with adequate forces and equipment to maintain the project, and the entire cost of this maintenance will be deducted from monies due the Contractor. In addition, the Contractor will be held responsible for all costs to repair deterioration or damage to any portion of the work found to be the result of the Contractor's failure to properly maintain the project.

4.11 College's Right To Do Work

If the Contractor should neglect to prosecute the work properly or diligently, fail to correct any deficiency, or fail to perform any provision of this Contract, the College may after three days' written notice from the Associate Vice President of Facilities to the Contractor, correct such deficiencies and deduct the cost thereof from the monies then or thereafter due the Contractor. In cases where life safety may be at risk, the College may take immediate actions to reduce such risk.

SECTION 5 - MATERIALS

5.01 General

A. Definition and Appropriate Use: Materials include all manufactured products and processed and unprocessed natural substances required for completion of the Contract. In accepting the Contract, the Contractor warrants he is thoroughly familiar with the materials required and their limitation 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, blocking, bed or accessory is normally considered essential to its installation in good quality construction, such shall be included as if fully specified. Nothing in the Contract shall be interpreted as authorizing any work in any manner contrary to applicable laws, codes, and/or regulations.

B. Quality: All materials shall meet all quality requirements of the Contract. If not specified, all materials shall be of the best quality of the respective kinds. In order to expedite the inspection and testing of materials, the Contractor shall notify in writing the Associate Vice

President of Facilities with a copy to the Architect 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. The Contractor shall, if requested, either before or after installation, furnish satisfactory evidence as to the kind and quality of materials. The Contractor shall pay for any tests or inspections called for in the specifications and such tests as may be deemed necessary for "substitutions" and "approved equals" as set forth in Section 5.03 and 5.04 of these General Conditions.

C. Approval: All materials are subject to the Architect's approval as to conformity with the specifications, quality, design, color, etc. No work for which approval is necessary shall be used until written approval is given by the 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. Used or old materials must not be used as substitutes for new, regardless of condition or repair, unless approved in advance in writing by the Associate Vice President of Facilities.

E. Samples: The Contractor shall furnish for approval all samples as required by the Contract. The materials used in the project shall be the same as the approved samples. All samples shall be retained on the project site until final approval of the project.

F. Standard Specifications: When no specification is cited and the quality, processing, composition or method of installation of an item 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 BOCA Code are the applicable specification.
- (3) For items generally considered as heating, refrigerating, air conditioning or ventilation, 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 specification.
- (4) For items generally considered as site work, i.e., lawns, planting, etc., the applicable portions of the Maryland S.H.A. Standards and Specifications is the applicable specification.
- (5) For items generally considered as electrical, the applicable provisions of the latest edition of the BOCA Code and National Electric Code are the applicable specification.
- (6) For items generally considered as fire protection, the applicable portion of the latest edition of the State Fire Prevention Code and the National Fire Protection Association Code is the applicable specification.

5.02 Storage And Handling Of Materials

A. Materials shall be stored so 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.

B. All mechanical and/or electrical equipment delivered to the job site shall be stored on pedestals, above ground and under roof or other approved covering. All enclosures for equipment shall be weatherproof. Any motors, which are not totally enclosed, and dry type transformers that are involved in the work, shall be stored in a heated area with a minimum temperature of fifty degrees Fahrenheit (50° F). All valves shall be stored under roof on wood pedestals, above ground. All insulation shall be stored under roof or in trailers, adequately protected from the weather. The Contractor shall follow all written instructions and recommendations of the manufacturer and all requirements of the Architect on oiling, protection and maintenance of equipment during storage. It shall be the Contractor's complete responsibility for the storage and care of the equipment and materials. Material not properly stored prior to installation shall not be considered for payment.

C. Materials shall be handled in such a manner as to preserve their quality and acceptability for the project.

D. The Contractor shall confine his tools and equipment and the storage of materials to the area delineated in the contract as the location for storage of materials. If no location is provided in the Contract, the Contractor shall request a location for storage of tools and equipment from the Associate Vice President of Facilities.

E. Explosives.

- (1) Explosives shall not be stored upon any property belonging to the College.
- (2) Should the Contractor desire to use explosives on any project he shall first receive written approval of the Associate Vice President of Facilities and obtain all permits required by law, at the Contractor's expense.
- (3) The Contractor shall assume all responsibility for injury to persons or property damage which may result from the use or transportation of explosives, as well as complying with any and all ordinances, regulation and restriction in relation to the use of explosives.

F. Paints.

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

- G. Contractor shall not load or permit any part of a structure to be loaded with a weight that will endanger the safety of the structure or any part thereof.

5.03 Substitutions

A. Should the Contractor desire to: a) substitute another material for one or more specified by name or b) substitute a product or material different in any way from that specified, then he shall apply, in writing to the Associate Vice President of Facilities and to the Architect, for such permission and state the credit or extra cost involved by the use of such material and the impact on the contract time, if any. The Contractor shall also provide complete technical information on the proposed substitution to allow the Architect and College to adequately evaluate the substitution. The Associate Vice President of Facilities will not consider any substitution unless such substitution effects a benefit to the College. The Associate Vice President of Facilities retains the right to accept any substitution and to establish any credit or extra cost.

B. The Contractor shall not submit for approval materials, other than those specified, without a clear, express, written statement that such a substitution is proposed. Approval in any form or by any means of a "substitute material" when the Contractor has not designated such material as a "substitute" shall not be binding on the College nor release Contractor from any obligations of his contract, unless the Associate Vice President of Facilities approves such "substitution" in writing.

C. Any additional architectural or other costs and fees incurred by the College required to consider or evaluate a substitution will be deducted from the contract amount due the Contractor.

D. When the specifications specifically limit a product or material to one or several manufacturers, any submittal proposed by the Contractor utilizing a manufacturer not listed shall be considered a substitution and must be submitted per Section 5.03(A) above.

5.04 Approved Equals

A. 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 equal in all details will be considered. The College is the final judge as to equality. The College does not warrant under any circumstances, including by use of the words "or equal," that there exists an equal to any item specified.

B. It is the Contractor's responsibility to provide sufficient information on proposed "Equal" products to facilitate the review of the product as an acceptable equal. Failure by the Contractor to provide sufficient information to evaluate all pertinent details of a proposed "Equal" will result in the proposed material being rejected as an equal. The Contractor may submit the product as a substitution. If the Associate Vice President of Facilities accepts the product as a substitution, an appropriate price reduction will be made.

5.05 Consistency Of Products

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

5.06 Buy American Steel

Only steel products made in the United States shall be used or supplied in the performance of this Contract or any subcontract thereunder. 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 College shall have determined that the cost of such steel products is unreasonable or inconsistent with the public interest. The provisions of this Section shall not apply where they are in conflict with any Federal or State grant, law, or regulation affecting this Contract.

SECTION 6 - LEGAL RELATIONS AND RESPONSIBILITIES

6.01 Legal Obligations

A. Maryland Law Prevails, Jurisdiction, and Waiver of Jury Trial: The place of performance of this Contract shall be in St. Mary's City, Maryland. This Contract shall be construed, interpreted, and enforced according to the laws of the State of Maryland. The Contractor consents that all claims and disputes following a final decision of the Procurement Authority can only be brought to court in the State of Maryland only in either the District Court of St. Mary's County, Maryland or the Circuit Court for St. Mary's County, Maryland. The parties by contract waive their right to a jury trial.

B. Precedence of Contract Documents: (1) In the event of a conflict between any of the Contract Documents, the documents shall prevail in the following order unless a provision of the Agreement expressly provides to the contrary:

- (a) The Agreement
 - (b) Instructions to Bidders
 - (c) The General Conditions
 - (d) The Specifications
 - (e) The Plans
- (2) The Associate Vice President of Facilities has the right to decide the order of priority of Contract Documents not specifically addressed above.
- (3) Notwithstanding the precedence above, if any Contract Document contains a more detailed and stringent provision as to the Contractor's responsibilities

than another Contract Document, the more detailed and stringent provision will control.

- (4) Whenever the Contract is determined to be ambiguous, it shall be construed or interpreted in the College's favor.

C. Non-Discrimination: 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, sexual orientation, 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 Section (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.

D. Pre-Existing Regulations: In accordance with the provisions of Section 11-206 of the State Finance and Procurement Article, Annotated Code of Maryland, the regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR Title 21) which are applicable to St. Mary's College of Maryland, and all other regulations and policies of St. Mary's College of Maryland in effect on the date of execution of this Contract or as later amended, are applicable to this Contract.

E. Indemnification:

- (1) To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the College and the Architect 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 actual or threatened bodily injury, sickness, disease or death, or to actual or threatened injury to or destruction of tangible property including the loss of use resulting therefrom, and including but not limited to purely economic loss, and (2) is caused in whole or in part by any failure by the Contractor or its Subcontractors or Suppliers at any tier to perform any requirement of the Contractor by any negligent act or omission on the part of the Contractor, its Subcontractors or Suppliers at any tier, or 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 it 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.
- (2) In any and all claims against the College or the Architect or any of their agents or employees by any employee of the Contractor, any Subcontractor or supplier at any tier, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them are 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 supplier under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.
- (3) The College has no obligation to provide legal counsel or defense to the Contractor or its Subcontractors in the event that a suit, claim or action of any character is brought by any person not party to this Contract against the Contractor or its Subcontractors as a result of or relating to the Contractors

obligations under this Contract. The College has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its Subcontractors as a result of or relating to the Contractor's obligations under this contract. The Contractor shall immediately notify the Purchasing Agent by phone with a follow-up in writing within two days of any claim or suit made or filed against the Contractor or its Subcontractors regarding any matter resulting from or relating to the Contractor's obligations under the Contract. The Contractor 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 Contractor's performance under this Contract.

F. Assignment: The Contractor shall not sell, transfer, sublease, or otherwise assign its obligation under this Contract or any portion thereof, or any of its rights, title, or interest therein, without the prior written consent of the College.

G. Novation: Recognition of a Successor in Interest Novation. When in the best interest of the College, a successor in interest may be recognized in a novation agreement in which the transferor and the transferee shall agree that:

- (1) The transferee assumes all of the transferor's obligations;
- (2) The transferor waives all rights under the Contract as against the College; and
- (3) Unless the transferor guarantees performance of the Contract by the transferee, the transferee shall, if required, furnish a satisfactory performance bond.

H. Compliance with Laws: 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, may be necessary to remain so qualified; b) it is not in arrears with respect to the payment of any monies due and owing 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) the Contractor shall keep fully informed of all Federal, State, and Local laws, ordinances, and College regulations as well as 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; he shall protect and indemnify the College and its representatives against any such claim or liability arising from or based on the violation of any law, ordinance, regulation, order, or decree, whether by himself or his employees or Subcontractors; d) the Contractor must comply with the provisions of the Workmen's Compensation Act and Federal, State and City laws relating to hours and conditions of labor and e) it shall procure, at its expense, all licenses, permits, insurance and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

I. Notification of Non-Compliance: If the Contractor observes that the drawings and specifications are at variance with any law, he shall promptly notify in writing, the Architect and the Associate Vice President of Facilities, 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 Architect and the College, he shall bear all costs arising therefrom.

J. College Policies, Rules, and Regulations: The Contractor agrees to abide by all applicable College policies, rules and regulations as may be amended from time to time while working on the campus.

K. Contingent Fees:

- (1) The Contractor, Architect, or 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 Contractor, Architect, or 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. Further, except as provided in Section (a) of this Section, unless a person is a bona fide employee, bona fide salesperson, or commercial selling agency working for the Contractor, the person may not offer or agree to solicit or secure a procurement contract under this subtitle if the person's fee is contingent on, or results from, the making of the procurement contract.
 - (a) A regulated lobbyist, who is described in Section 15-701 (a) (1), (2), or (3) of the State Government Article, may not offer or agree to solicit or secure a procurement contract under this subtitle if the lobbyist's fee is contingent on, or results from, the making of the procurement contract. Except as provided in Section (b) of this Section, a Contractor may not offer to pay a fee or other consideration that is contingent on the making of a procurement contract under this article.
 - (b) This Section does not apply to a payment to a bona fide employee, bona fide salesperson, or commercial selling agency working for the Contractor.
- (2) An employee of a unit of Maryland State Government may not solicit or secure or offer to solicit or secure a procurement contract under this article between the unit and any other person for which the employee is paid or is to be paid a fee or other consideration that is contingent on the making of the procurement contract.

L. Non-Availability of Funding: If funds are not appropriated or 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 new 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 Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the College from future performance of the 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 nonrecurring costs incurred but not amortized in the price of the Contract. The College 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.

M. 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 Contractor, the Contractor shall be responsible, irrespective of the cost to the Contractor, for recreating such lost data or records.

N. Cost and Price Certification: By submitting cost or price information, the Contractor certifies to the best of its knowledge that the information submitted is accurate, complete, and current as of two months of the submission of the cost or price information. The price under this Contract and any change order or modification hereunder, 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 two months of the submission of the cost or price information referenced above, was inaccurate, incomplete, or not current.

O. Taxes: The Contractor shall be responsible for all applicable Federal, State and local taxes and all payroll related taxes.

P. [Paragraph Deleted]

Q. Drug and Alcohol Free Workplace: The Contractor warrants that the Contractor shall comply with COMAR 21.11.08 Drug and Alcohol Free Workplace and requires his Subcontractors to do the same, and that the Contractor and his Subcontractors shall remain in compliance throughout the term of the Contract.

R. Century Compliance Warranty: The Contractor warrants that the products provided or systems developed under this Contract are century compliant. "Century Compliant" means that the product:

- (1) Is able to process date data accurately - including date data century recognition, calculations that accommodate same century and multi-century formulas and date values (including leap year factors), and date data interface values that reflect the century - when used either in a stand-alone configuration or in combination with other century compliant products used by the College.
- (2) Will not abnormally terminate its function or provide or cause invalid or incorrect results due to incompatibility with the calendar year.
- (3) In addition to any other warranties applicable to this Contractor any remedies otherwise available to the College, the Contractor agrees to promptly repair or replace any product furnished under this Contract that is not century compliant, provided the College gives notice within a reasonable time following discovery of such failure.

S. 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. Contractor shall not be entitled to

additional compensation for unanticipated costs of complying with any such actions, orders or interpretations.

T. The College shall not be precluded or estopped by any measurement, estimate, change order, contract modification, certificate of payment, or payment from showing the true amount and character of the work furnished by the Contractor or from showing that any measurement, estimate, change order, contract modification, certificate of payment, or payment is untrue or was incorrectly made, or from showing that the work does not in fact conform to the Contract. The College may recover from the Contractor or his sureties, or both, such damages, loss, or additional expense incurred as a result of any such error in measurement, estimate, change order, contract modification, certificate of payment, or payment as a result of such failure to conform to the Contract. The College's rights in this respect shall not be waived or barred by any inspection, acceptance or approval of the work, or by payment therefore, or by granting an extension of time, or by taking possession, or by execution of a change order based on the erroneous measurement, estimate or change order, contract modification, certificate of payment, or payment.

- (1) The activities of the Architect and College personnel respecting this Contract, including inspection of the work, review of submittals, monitoring of progress, and so forth are for the benefit of the College only and are not for the benefit of the Contractor. The College's failure to bring to the attention of the Contractor deficiencies in the work or the Contractor's performance will not constitute waiver or excuse of the Contractor's failure to comply strictly with contract requirements.
- (2) The waiver by the Procurement Authority or Associate Vice President of Facilities of any breach of contract by the Contractor shall not operate as a waiver of any other or subsequent breach.
- (3) The rights and remedies of the College and the obligations of the Contractor under various provisions of the Contract and under provisions of applicable law are cumulative and not exclusive.
- (4) For any claim or cause of action accruing to the College as a result of or arising out of this Contract, the College may collect damages of any kind, including, but not limited to, consequential damages and damages for purely economic loss.

U. State Property Not Subject to Lien: Neither the Contractor nor any Subcontractor or Supplier at any tier may have or acquire any lien against the State of Maryland and/or St. Mary's College property.

V. St. Mary's Not Subject to Limitations: The College is not bound by laches or any statute of limitation or repose, and Contractor may not assert laches, limitations, or a statute of repose as a defense against any claim or action brought by the College or the State.

W. Notices: All notices to the College, unless specifically stated otherwise, shall be in writing and given by the Contractor to:

Associate Vice President of Facilities
St. Mary's College of Maryland
St. Mary's City, MD 20686

6.02 Certifications Required By Law

A. Cost and Price Certification. 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 him by the College; said certificate will provide, in relevant part, that the Contractor's price and cost information is accurate, complete and current as of a mutually determined date prior to the change order.

B. Corporate Registration and Tax Payment Certification. At the time the parties execute the Contract, if not sooner, the Contractor, if it is a corporation, shall truthfully execute a certification on the Contract/Bid Affidavit provided by the College certifying that it is a properly registered corporation and that it has and will pay all appropriate taxes prior to final settlement.

6.03 Permits And Licenses

A. When required by law, regulation, or the Contract, the College or its authorized representative will file with the appropriate local authority, drawings and specifications and any pertinent data reasonably proper for their information. The Contractor will be required to pay all necessary fees to local authorities for inspection or for the privilege or right to execute the work as called for in the Contract and he shall include the cost of said fees in his base bid. The College shall not be responsible for the actions or interpretations of county, municipal, or other local agencies or officials respecting the application of Federal, State, or local laws, rules, ordinances, regulations, codes, or policies to the work.

B. The Contractor must be licensed as required by Laws of the State of Maryland as required by Title 17, Subtitle 6 or Title 8 of the Business Regulation Article, Annotated Code of Maryland.

6.04 Patented Devices, Materials And Processes

A. The Contractor assumes the responsibilities that any materials, equipment, processes, or other items required under the Contract furnished by the Contractor (including CPM software furnished to the College under Section 7.04) are subject to any patent, copyright, trademark, trade secret or other property rights of another. The Contractor shall pay for all royalties and license fees and shall obtain all necessary licenses or permits to permit use of any such item by the College. Contractor shall defend all suits or claims of infringement of any patent, copyright, trademark, trade secret or other property rights of another and shall save the College harmless from loss or expense on account thereof.

B. When an item specified by the College or furnished by the Contractor infringes or is alleged to infringe any patent, copyright, trademark, trade secret or other property right of another, the Contractor will, at his option, and at no additional cost to the College, (1) procure for the College the right to use the item; (2) replace the item with an approved, non-infringing equal; or (3) modify the item so it becomes non-infringing and performs substantially the same as the original item.

6.05 Land, Air And Water Pollution, And Erosion Control

A. The Contractor shall incorporate all permanent erosion control features into the work at the earliest practicable time and shall maintain them in proper condition during the course of the Contract. 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. The Contractor's attention is directed to the fact that temporary pollution control may include measures outside the project site where such work is necessary as a direct result of project construction. The College Project Manager shall be kept advised of all such off-site control measures taken by the Contractor. This shall not relieve the Contractor of the basic responsibilities for such work.

C. In case of failure on the part of the Contractor to control erosion, pollution and/or siltation, the College reserves the right to employ outside assistance or to use its own forces to provide the necessary corrective measures. All expenses incurred by the College in the performance of such duties for the Contractor shall be withheld from monies becoming due to the Contractor and may be deducted from the contract price.

D. The Contractor must submit evidence to the Associate Vice President of Facilities 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 College for on-site 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, or by the order of any State or Federal agency or official enforcing applicable laws, such suspension, delay, or interruption shall be considered as if ordered by the Associate Vice President of Facilities. If it is determined that the suspension, delay, or interruption is due wholly or in part to acts or omissions of the Contractor in breach or violation of the terms of this Contract or acts of the Contractor not required by this Contract, Contractor shall be responsible for all additional costs and delays resulting from such acts or omissions.

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 College has not duly considered, either substantively or procedurally, the effect of the work on the environment.

6.06 Insurance Requirements

A. Insurance During Construction:

- (1) The Contractor and his Subcontractors shall purchase and maintain comprehensive third-party legal liability insurance and other such insurance as is appropriate for the work to be performed on the project. Further, the Contractor shall be responsible for the maintenance of this insurance whether the work is performed directly by the Contractor, by any Subcontractor, by any person employed by the Contractor or any

Subcontractor, or by anyone for whose acts the Contractor may be liable. This insurance shall include protection for:

- (a) Claims arising from Worker's Compensation statutes or similar employee benefit acts, or third-party legal liability claims arising from bodily injury, sickness and disease, or death of Contractor's employees. The minimum limits of such coverage shall be as required by law.
 - (b) Third-party legal liability claims against the Contractor arising from the operations of the Contractor, Subcontractors and Suppliers with such protection extended to provide comprehensive coverage, including personal injury, completed operations, explosion and collapse hazard, and underground hazard. The minimum-combined limit for personal injury and property damage liability shall be \$1,000,000 per occurrence and \$2,000,000 in the aggregate, unless higher limits are stated elsewhere in the Contract.
 - (c) Third-party legal liability claims arising from bodily injury and/or damage to property of others from the ownership, maintenance or use of any motor vehicle, both on-site and off-site. The minimum combined limit for personal injury and property damage liability shall be: \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
- (2) The Contractor shall purchase and maintain property insurance (Builder's Risk) covering the project, including improvements to real property and goods and materials on the site to be incorporated into the project. Such property insurance shall be for the full insurable value of the property covered and shall be written on an "All Risk" basis covering physical loss and damage including theft, vandalism and malicious mischief, collapse, water damage, and such other perils as may be applicable to the project. Such insurance shall include the interest of the owner, the General Contractor and all Subcontractors as their interests may appear.
 - (3) If any of the work under this contract is subcontracted, the Contractor shall require the subcontractors, or anyone directly or indirectly employed by any of them, to procure and maintain the same insurance coverage in the same amounts specified above.

B. General: All insurance required shall be purchased and maintained with a company or companies lawfully authorized to do business in the State of Maryland. 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:

Purchasing Agent
St. Mary's College of Maryland
St. Mary's City, Md. 20686

Prior to commencement of the work, proof of the required insurance and endorsements shall be made by submission to the College, of certificates of insurance and endorsements satisfactory to

the College. All required insurance shall be maintained until the College has fully accepted the work required under the Contract. Failure to obtain or to maintain the required insurance or to submit the required proof of insurance shall be grounds for termination of the Contract for default.

6.07 Separate Contracts

A. The College reserves the right to let other contracts in connection with this work or work adjacent to the project. The 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. The Contractor is not entitled to any overhead, profit, or other compensation for work done for the College by other contractors.

B. If any part of the Contractor's work depends on proper execution or results of work of any other contractor, the Contractor shall inspect and promptly report to the Architect and the Project Manager any defects in such work that render it unsuitable for such proper execution and results. His failure to so inspect and report shall constitute an acceptance of the other Contractor's work as fit and proper for the reception of his work, except as to the defects which may develop in the other contractor's work after the execution of his work.

C. To insure the proper execution of his subsequent work, the Contractor shall measure work already in place and shall at once report to the Architect any discrepancy between the executed work and the drawings.

6.08 Relationship Of Contractor To Public Officials 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 individual liability upon the Procurement Authority, or other authorized representatives of the College, it being understood that in all such matters they act solely as agents and representatives of the College.

B. The College may terminate the right of the Contractor to proceed under this Contract if it is found by the College 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 College with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such contract.

C. In the event this Contract is terminated as provided in Section B hereof, the College 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 Authority) which shall be not less than three 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 College provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

E. Non-Hiring of Employees: No employee of the College whose duties as such employee include matters relating to or affecting the subject matter of this Contract shall, while such employee, or within six months after termination of employment with the College, become or be an employee of the party or parties hereby contracting with the College.

6.09 Assignment Of Antitrust Claims

The Contractor sells, transfers and assigns to St. Mary's College of Maryland, a unit of the State of Maryland, all rights, title and interest of, and in and to any causes 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 St. Mary's College or 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 agreement. The Contractor hereby certifies that the above causes of action are lawfully owned and that no previous assignment of same has been made nor has the same heretofore been attached or pledged in any manner whatsoever.

6.10 Federal Participation

When the United States Government pays all or any portion of the cost of a project, the work may be subject to the inspection of the appropriate Federal Agency. In such case, the Contractor shall comply with the Federal inspection which will be in addition to other inspection requirements of the Contract. Such Federal inspection shall in no sense make the Federal Government a party to this Contract.

6.11 Claims And Disputes

A. This Contract is subject to the jurisdiction of the Procurement Review Committee of the College. Claims or other matters in question between the Contractor and the College arising out of or relating to this agreement or breach thereof, which cannot be resolved by mutual agreement by the Contractor and the Associate Vice President of Facilities shall be resolved in accordance with this clause.

B. If the Contractor and the Associate Vice President of Facilities cannot reach mutual agreement on the resolution of a claim the Contractor shall request, in writing from the Associate Vice President of Facilities, a Final Decision. The Associate Vice President of Facilities' Final Decision shall be the final decision of the College under the Contract unless the Contractor files a timely written notice of dispute in accordance with this Section. A Final Decision of the Associate Vice President of Facilities shall be prima facie evidence of the correctness of the decision. On any appeal from a decision of the Associate Vice President of Facilities, the Contractor will have the burden of proof and the burden of going forward with the evidence of all issues, including the propriety of a termination for default.

C. Unless a lesser period is provided by applicable statute, regulation, or this Contract, the Contractor must file a written Notice of Dispute with the Purchasing Agent within thirty (30) days after the rendering of a Final Decision by the Associate Vice President of Facilities. If the Associate Vice President of Facilities does not issue a Final Decision within 180 days of the

Contractor's first written request, then the Contractor will have thirty (30) days from the expiration of the 180 day period to file the Notice of Dispute with the Purchasing Agent.

D. Contemporaneously with or within thirty (30) days of the filing of a Notice of Dispute, the Contractor must submit to the Procurement Authority via the Purchasing Agent its written dispute which must contain the following information:

- (1) An explanation of the dispute, including reference to all contract provisions upon which it is based;
- (2) The amount disputed;
- (3) The facts upon which the dispute is based;
- (4) All pertinent data and correspondence that the Contractor relies upon to substantiate the dispute;
- (5) A copy of the Associate Vice President of Facilities Final Decision; and
- (6) Certification by a senior official, officer, or general partner of the Contractor that, to the best of the person's knowledge and belief, the dispute is made in good faith, supporting data are accurate and complete, and the amount requested accurately reflects the contract adjustment for which the person believes the College is liable.

E. The Procurement Review Committee shall render a written decision on all disputes within ninety (90) days of receipt of the Contractor's complete written dispute, unless the PRC determines that a longer period is necessary to resolve the dispute. The PRC's decision shall be deemed the final action of the College. This Contract is not subject to the Maryland State Board of Contract Appeals.

F. Pending resolution of a dispute, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Associate Vice President of Facilities' decision.

G. As used in this Section, "Subcontractor" includes Subcontractor and Suppliers of the Contractor at any tier. The College shall have no liability to the Contractor for any claim of a Subcontractor against the Contractor if the Contractor has no liability therefor to the Subcontractor or if the Contractor has a valid defense against the claim of the Subcontractor. Any agreement between the Contractor and the Subcontractor making liability on the part of the Contractor to the Subcontractor contingent upon a determination of liability on the part of the College to the Contractor shall not make the College liable to the Contractor for the claim of the Subcontractor if the Contractor would not otherwise be liable therefor. The purpose of this provision is to adopt the Severin doctrine, without exception, as a matter of contract between the College and the Contractor.

SECTION 7 - PROSECUTION AND PROGRESS OF THE WORK

7.01 Notice To Proceed

A. After the Contract has been executed, the Associate Vice President of Facilities 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 work. The specified contract time shall begin on the day work (other than the erection of the inspector's office, construction stakeout, and mobilization) actually starts 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 the risk of the Contractor, however, in no case shall the Contractor perform any work without the insurance required by this Contract.

B. Except as provided in Section C below, if the College fails to issue a Notice to Proceed within 90 days following execution of the Contract, the Contractor will have as its sole remedy the option of (a) declaring the Contract void without any liability or obligation on the part of the College or (b) accepting an extended period, at no additional cost to the College for issuance of a Notice to Proceed.

C. If the failure of the College to issue a Notice to Proceed within 90 days following completion of award is caused, wholly or in part, by breach or default of the Contractor or other fault of the Contractor or his Subcontractors or Suppliers at any tier, the Contractor shall be entitled to no relief under Section B above based on delay in issuance of the Notice to Proceed. In such a case, the Contractor shall be bound to perform the Contract within the time allowed following actual issuance of the Notice to Proceed, at no additional cost to the College.

7.02 Contract Time

A. All time limits in the Contract are of the essence of the Contract. The deadline for the completion of the work will be that deadline as defined in the written Agreement. No deadline may be extended except by written Change Order issued pursuant to the Changes Clause, Section 3.04.

B. Contractor and the College agree that the time stated in the Contract for the completion of the work is a reasonable time, considering the climatic range and the usual business conditions prevailing in the locality of the project. The contract time shall be the full time allowed or required for completion of every task involved in completion of the work, including lead-time for ordering and fabrication of equipment and materials.

C. This project is subject to limited funding and tight budgeting. The College's budgeting, including budgeting for expenses of operation after completion and for payment to the Architect and others working on the project, is based on the Contract extending for the full time allowed by the Contract for completion. The College is not obligated (a) to accept an early completion schedule from the Contractor, or (b) to accept the project prior to the completion date stated in the Contract. The College will not be liable for any claims based on the Contractor's assertion of an intention to finish early.

D. Requests for time extensions must be filed and supported as provided in Section 3.04 and other applicable provisions of the Contract. Failure of the Contractor to request a time

extension as required by Section 3.04 and this Section 7.02, or provide proper notice as required by Sections 7.03H, shall constitute a waiver of Contractor's right to an extension of the required completion date and any damages for delay to which he might be entitled.

E. Except as may be expressly agreed otherwise by the Associate Vice President of Facilities in writing, no action or inaction by the College or its representatives shall constitute a grant of an extension of the completion date or the waiver of a delay or other default by the Contractor or agreement of the College to pay for alleged delays or acceleration of construction, including: (1) a request for a revised schedule, a recovery schedule, or an anticipated completion date from Contractor; (2) allowance, approval or acceptance of any schedule; (3) failure to terminate for default at an earlier date; or (4) demand that the Contractor finish the project by the required completion date or by any subsequent date promised by the Contractor.

F. An equitable adjustment in contract time or price for delay shall be subject to the requirements and conditions set forth in Section 3.04, 7.03 and 7.04.

7.03 Delays

A. The term "delay" shall mean any act, omission, occurrence, event, or other factor which necessarily results in the extension of the time reasonably required for completion of the Contract. This Section covers every such act, omission, occurrence, event, or other factor, whether called delay, disruption, interference, impedance, hindrance, suspension, constructive suspension, extension or otherwise.

B. In the event that a delay is excusable as provided in Section 7.03D below, or is otherwise not the responsibility of the Contractor, the Contractor must take all reasonable action to avoid and/or mitigate the effects of the delay, including but not limited to:

- (1) Rescheduling or resequencing the work,
- (2) Accepting other work, and/or
- (3) Reassigning personnel.

Such action by the Contractor excludes any action that causes an increase in the Contractor's cost to perform the work unless such costs are authorized or directed by the College in accordance with Section 3.04.

C. In the event that a delay is the responsibility of the Contractor, the Contractor must take action to accelerate construction, work overtime, add additional shifts or manpower, work on weekends, or to do anything else reasonably necessary in order to finish on time, at no additional cost to the College. The Contractor does not have the unilateral right to complete the work late and pay liquidated or other damages.

D. Excusable Delays: The Contractor shall be entitled to an extension of the contract time for delay if all of the conditions listed below in (1) through (6) are met:

- (1) The delay in the completion arises from either:

- (a) 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 College in either its sovereign or contractual capacity, acts of another Contractor in the performance of a contract with the College, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or delays of Subcontractors or Suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the Subcontractors or Suppliers, or
- (b) A suspension of the work as provided in Section 7.03E; and
- (2) The Contractor provides the Associate Vice President of Facilities proper notice per Section 7.03H;
- (3) The delay impacts the critical path identified on the Contractor's schedule per Section 7.04H;
- (4) The Contractor is reasonably unable to mitigate the impact of the delay as required by Section 7.03B;
- (5) The Contractor properly requests an extension of time in accordance with Sections 3.04 and 7.02; and
- (6) The Associate Vice President of Facilities, having ascertained the facts based on information provided by the Contractor as required in the General Conditions and any other information he may obtain, extends the time for completing the work when, in his judgment, the findings of fact justify such an extension, through a change order. The determination by the Associate Vice President of Facilities shall be final and conclusive on the parties, subject only to appeal as provided in the "Disputes" clause of this Contract.

E. Suspension of the Work:

- (1) The Associate Vice President of Facilities or the Vice President of Business and Finance may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work for a period of time as it may determine to be appropriate for the convenience of the College.
- (2) 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 College in the administration of the Contract, or by its 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 direct jobsite cost of performance of this Contract (in accordance with Sections 3.04) 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 or excluded under any other provision of this Contract.

- (3) No claim under this clause shall be allowed: (1) unless the Contractor provides proper notice and meets all other procedural requirements of these General Conditions, (2) for any costs incurred more than 10 days before the Contractor shall have notified the Associate Vice President of Facilities 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 provided under Section 7.03E(1) above), (3) unless the Contractor is entitled to an extension of the Contract time per section 7.03D, and (4) unless the claim, in an amount stated, is asserted in writing within 30 days after the termination of a suspension, delay, or interruption.

F. Damages for Delay:

- (1) Whenever the College shall be liable to the Contractor for an equitable adjustment for delay, the amount of the equitable adjustment shall be determined in accordance with Section 3.04 and this Section 7.03.
- (2) Only the following items may be recoverable by the Contractor as compensation or damages for delay: (a) direct costs, consisting of (i) actual additional salaried and non-salaried on-site labor expenses; (ii) actual additional costs of materials; (iii) actual additional equipment costs, based solely on actual ownership costs of owned equipment or actual reasonable costs of rented or leased equipment; (iv) actual additional extended field office expenses, excluding those which are to be included in overhead; (v) actual additional reasonable costs of Subcontractors and Suppliers at any tier for which the Contractor is liable, subject to Section 3.04; (b) actual additional costs, proven by clear and convincing evidence, resulting from labor or other inefficiencies; and (c) an additional percentage, determined in accordance with Section 3.04 of the total of items (a)(i) through (v) above, for overhead and profit.
- (3) No other compensation or damages are recoverable by the Contractor for compensable delays or extensions of the completion time except as expressly stated in this Section 7.03F . In particular, the College will not be liable for the following (by way of example and not of limitation) whether claimed by the Contractor or by a Subcontractor or supplier at any tier: (a) profit in excess of that provided herein; (b) loss of profit; (c) home office or other overhead in excess of that provided herein; (d) overhead calculated by use of the Eichleay formula or similar formulae; (e) consequential damages of any kind, including loss of additional bonding capacity, loss of bidding opportunities, and insolvency; (f) indirect costs or expenses of any nature except those expressly provided for herein; and (g) attorney's, accountant's or consultant's fees, costs of claims preparation and presentation, and fees and costs of litigation.

- (4) There shall be deducted from the compensation payable to the Contractor under this section for delay any and all costs, expenses, and overhead recovered or recoverable by the Contractor under change orders issued to the Contractor or otherwise recovered or recoverable by the Contractor.

G. Delays set forth in Section 7.03D(1)(a) shall be noncompensable even if an extension of time is granted.

H. The Contractor shall be entitled to no time extensions, compensation or damages for delay unless:

- (1) the Contractor satisfies all requirements stipulated in these General Conditions; and
- (2) the Contractor notifies the Associate Vice President of Facilities in writing, within five (5) calendar days of the act, omission, occurrence, event or other factor alleged to have caused the delay of:
 - (a) the alleged delay and its anticipated duration, and
 - (b) the act, omission, occurrence, event or other factor allegedly causing the delay.
- (3) Knowledge on the part of the College of the act, omission, occurrence, event, or other factor, or of the delay allegedly resulting therefrom, shall not excuse Contractor's failure to give the College the notice required by this Section 7.03H.

I. Weather:

- (1) Definition of rain days and drying days should be as follows unless otherwise agreed by the Associate Vice President of Facilities.
 - (a) Rainfall sufficient to result in a workday being potentially lost due to rain (rain day) shall be defined as liquid precipitation greater than .10 inch.
 - (b) It shall be considered normal for the workday immediately following a rain day of precipitation greater than 1.00 inch to potentially be lost due to wet ground conditions (drying day). The Associate Vice President of Facilities may allow additional drying days if deemed reasonable, in his discretion.
- (2) Unusually severe weather - rain.

To qualify as unusually severe weather due to rain, the number of actual weekdays lost due to rain days and drying days must be greater than that calculated for the month in question using the following procedure:

- (a) Using the last ten (10) years of weather data from the weather

station at Patuxent Naval Air Station, Contractor shall compute the average number of weekdays lost due to rain days and drying days for the month in question and one standard deviation from the average.

- (b) Contractor shall then add the average number of weekdays lost to the value of one standard deviation. The sum (the average plus one standard deviation) shall be considered normal for the month in question.
 - (c) Actual weather impact shall be calculated by first determining the actual lost rain weekdays during each month in question. If any of the following conditions existed on a given weekday, the day will be deducted from the total actual rain days or drying days for the month to determine the net number of weekdays lost to rain:
 - (i) rainfall occurred on a non-work weekday such as a holiday;
 - (ii) rainfall occurred at a time when no weather-dependent work was in progress or occurred during planned or unplanned shutdowns due to other (non-weather) circumstances such as equipment failure, strikes, delays, etc.; or
 - (iii) Contractor was still working or able to work on all weather dependent activities to the extent that production was or could have been within actual normal levels established on the project.
 - (d) Time adjustments for rain. If the net number of weekdays lost to rain is less than the normal number in question (average rain days and drying days plus one standard deviation), no time adjustment will be made. If the net number of weekdays lost to rain are more than the normal number for the month in question, an excusable and noncompensable time extension will be granted. No adjustments will be made for the time between the starting time stated in the Notice to Proceed and the first day of the following month or for the last partial month.
- (3) Other weather conditions. Time extensions for delays due to unusual weather conditions other than rain (such as snow; extreme cold or heat; high winds, etc.) will be considered only to the extent Contractor can prove (a) conditions were unusually severe, and (b) they caused actual delay to the adjusted as-planned/as-built critical path.

7.04 Schedules

A. Preliminary Progress Schedule:

- (1) Unless the Contract expressly state otherwise, the Contractor is to furnish a

preliminary progress schedule.

- (2) Within 14 days of the execution of the Contract, the Contractor must submit a preliminary progress schedule outlining activities for the first 90 days of construction. A skeleton diagram for each significant construction activity for the remainder of the work shall be included on the preliminary schedule. This preliminary progress schedule must be approved prior to the first requisition being processed. Include each significant construction activity. Each activity in the preliminary progress schedule shall be coordinated with all other activities. Each construction activity shall be in proper sequence.
- (3) The Contractor shall include with submission of the preliminary progress schedule, a tabulation by date of submission of submittals required during the first 90 days of construction. All submittals required to maintain orderly progress of the work, and those required early because of long lead time for manufacture or fabrication shall be clearly identified.
- (4) The preliminary progress schedule shall be distributed to all parties that need to know about construction activities that are scheduled early, including the Architect and the Project Manager.

B. Completion Schedule:

- (1) Within 45 days after contract execution and at such other times as required herein, the Contractor shall submit a schedule indicating the time allocated by the Contractor for the performance of each portion of the work, and the submittal information required by Section 7.04C. When CPM scheduling is required, the schedule shall also include the dollar value of each work item (dollar loading) properly and reasonably sequenced, and the Contractor's labor requirements (labor loading) for achieving each task shown on the schedule. The schedule shall show completion of the work within the contract time.
- (2) (a) The Contractor shall also submit, with the schedule required under (1) above, the following whenever CPM scheduling is required:
 - (i) A written narrative explaining the bases of the Contractor's determinations of durations and prices for major work activities and describing the Contractor's approach for meeting the interim and final completion dates;
 - (ii) A listing of the major items of construction equipment planned for use on the project (including type, number of units, unit capacities, and a schedule showing the proposed time each piece of equipment will be on the job, keyed to the activities on which the equipment will be used);
 - (iii) Identification of activities which may be expedited by use of overtime or additional shifts;

- (iv) Identification of sequencing and other restraints such as manpower, material, and equipment; and
 - (v) A listing of the proposed work days, holidays and any special non-work days being used for the computer reports (schedules and updates).
- (b) If required by the Associate Vice President of Facilities, such explanation shall include (at no additional cost to the College) estimated quantities and production rates, hours per shift which are proposed, unit prices of materials, and prices of installed equipment.

C. Submittal Schedule:

- (1) The Contractor's schedule shall include as separate work activities, all necessary activities relating to submittals, including but not limited to the work or materials covered by the submittal, the Subcontractor involved, the submittal required, the activity or event number as shown in the CPM schedule (if required), and all necessary dates for submittal, review and response, resubmittal (if necessary), and final approval by the Architect and/or the College.
- (2) In the event that the Contractor intends to submit "substitute" or "equal" products, he must include sufficient time for the Architect and College to fully evaluate the submittal. Any delays to the project resulting from the Architect's and College's review of substituted or equal" products will be the responsibility of the Contractor.

D. The Contractor shall submit with each application for payment a revised schedule and accompanying written report accurately updated to reflect all: (1) revisions to the schedule; (2) changes made or planned in the construction sequence; (3) actual construction activities to date including (i) commencement and completion dates for activities started or completed during the reporting period, (ii) current progress of activities started in prior reporting periods including completion dates for activities completed during the reporting period; (4) delays and their effects on the critical path (whether or not a CPM schedule is required); (5) extensions of time granted by the College; (6) the Contractor's planned schedule for completing remaining activities; and (7) when CPM schedules are required, adjustments to the dollar loading and labor loading associated with items (1) through (6) above. This required schedule update shall be furnished monthly whether or not the Contractor submits an application for payment in that month.

E. All of the Contractor's schedules, including monthly schedule updates and recovery schedules under Section 7.04G, shall be reviewed by the Architect and the College and shall be approved or disapproved by the Associate Vice President of Facilities. Approval by the College of any schedule submitted under this Section 7.04 shall constitute approval of the schedule only for general conformity with contract requirements and shall not constitute approval, acceptance, or admission of the reasonableness, accuracy, achievability, or feasibility of the schedule or of the Contractor's ability to meet the schedule, or waiver or excuse of default or delay by the Contractor, extension of the time for completion, waiver or modification of contract requirements, admission of fault or responsibility for delay on the part of the College or the Architect, or acceptance or admission on the part of the College of any liability or responsibility for the schedule or for

acceleration or for other costs or delay damages of the Contractor which are inferable from the Contractor's schedule or update.

F. The Contractor agrees that accurate schedules and updates are critical to completion of the project efficiently and economically; to the College's ability to judge the impact of alleged delays, differing site conditions, change orders and other events; in order to deal fairly with the Contractor. If the Contractor fails to submit reasonable and accurate preliminary progress schedules, completion schedules or revisions, including recovery schedules under Section 7.04G, as required by the Contract, then (1) the College is not obligated to pay the Contractor for work completed until proper, accurate schedules, and updates are furnished as required; and (2) the College is not liable for and the Contractor is not entitled to damages, compensation, or time extensions for delays starting, occurring or continuing during the period when an accurate and reasonable schedule or update was due but not furnished by the Contractor.

G. Whenever the project shall be behind schedule or alleged by either party to be behind schedule, the Associate Vice President of Facilities may require the Contractor to furnish, at no additional cost to the College, a revised schedule (hereinafter called a "recovery schedule") showing how the Contractor will finish the project by the contract completion date. This recovery schedule shall include all of the information required under Sections B and D above, subject to the requirements of Section 7.04 I, if CPM schedules are required.

H. The Contractor's construction schedule shall begin with the date of issuance of Notice to Proceed and conclude with the required date of final completion of the project as stated in the contract. Float or slack time available in the schedule at any time shall not be for the exclusive use or benefit of either the Contractor or the College but is jointly owned. Delay for which the College is responsible in any portion of the work shall not automatically mean that the extension of the completion date is warranted or due the Contractor. The Contractor agrees that a delay in any given activity at any given time may not necessarily affect critical activities and may not necessarily cause noncritical activities to become critical. The effect of any given delay may be only to absorb float and may not necessarily delay critical activities. Subject to Sections 7.02 and 7.03, extensions of time for delays for which the College is responsible will be granted only to the extent that affected activities exceed the total float along their paths on the current adjusted as-planned/as-built schedule.

I. CPM Scheduling

- (1) Unless the contract expressly permits the Contractor to use a schedule other than a CPM schedule, the schedules to be furnished by the Contractor under this Section 7.04 shall be CPM schedules. The Contractor's CPM schedule must be submitted with 45 days after the Contract is executed. Following rejection by the College or conditional approval subject to correction, Contractor shall make the necessary corrections, and resubmit proper schedules within 14 calendar days. Contractor may use only CPM schedule software approved by the College.
- (2) (a) Scheduling of construction is the responsibility of the Contractor. CPM scheduling is required to assure adequate planning and execution of the work and to assist the College, the Architect, and the Contractor in evaluating the progress of the work and the impact on the schedule of events which could affect the completion date.

- (b) Logic or network diagrams shall show the order and interdependence of activities and the sequence in which the work is to be accomplished as planned by the Contractor. These diagrams must show how the start of a given activity is dependent on preceding activities and how its completion restricts the start of following activities.
- (c) Detailed logic or network activities shall include, in addition to construction activities, the submittal and approval of samples of materials and shop drawings, the procurement of critical materials and equipment and their installation and testing. All activities of the College and the Architect that affect progress and Contract required dates for completion of all or part of the work will be shown.
- (d) The selection and number of activities shall be subject to College approval. Logic or network diagrams need not be time scaled but shall be drafted to show continuous flow from left to right with no arrows from right to left. The following information shall be shown on the diagrams for each activity: preceding and following event number, description of the activity, cost loading, labor loading, and activity duration in calendar days. Schedules shall be plotted so they can be displayed on a wall eight feet high. A summary schedule plotted on a single sheet, shall be provided also.
- (e) The mathematical analysis of the network shall include a tabulation of each activity. The following information will be furnished, at a minimum, for each activity:
 - (i) I, J numbers if Arrow Diagramming Method (ADM) is used
 - (ii) Activity and Precedence relationships if Precedence Diagramming Method (PDM) is used
 - (iii) Activity Description
 - (iv) Estimated duration of activity (in calendar days)
 - (v) Percent of activity completed
 - (vi) Earliest start date (by calendar date)
 - (vii) Earliest finish date (by calendar date)
 - (viii) Actual start date (by calendar date)
 - (ix) Actual finish date (by calendar date)
 - (x) Latest start date (by calendar date)
 - (xi) Latest finish date (by calendar date)
 - (xii) Float or slack (by calendar date)
 - (xiii) A monetary value of each activity
 - (xiv) Subcontractor responsible for each activity
 - (xv) Labor requirements for each activity
- (f) Work elements should be broken down into activities of durations of from 1 to 21 days. No activity should ever represent more work than can be accomplished in 21 calendar days.

- (g) The analysis shall list the activities in sorts or groups as follows:
 - (i) By the preceding event number from lowest to highest and then in order of the following event number;
 - (ii) by the amount of float, then in order of preceding event number;
 - (iii) In order of latest allowable start dates, then in order of preceding event numbers; and
 - (iv) In order of latest allowable finish dates, then in order of preceding event numbers.

- (h) In addition to the requirements of Section 7.04D, updates shall show the activities or portions of activities completed during the reporting period and their total value as basis for the Contractor's periodic request for payment. Payments made to the Contractor will be based on the total value of such activities completed or partially completed after verification by the College and the Architect, and this updated schedule analysis shall be used as a basis for partial payment. The update will state the percentage of the work actually completed and scheduled as of the report date and the progress along the critical path in terms of days ahead or behind the allowable dates. If the project is behind schedule, progress along other paths with negative float shall also be reported. The Contractor also shall submit a narrative report with the updated analysis which shall include, but not be limited to, a description of the problem areas, current and anticipated, delaying factors and their impact, and an explanation of corrective actions taken or proposed.

- (i) Sheet size of diagrams shall be 30 x 42 inches. Each updated copy shall show a date of the latest revision, and the date of the latest updating.

- (j) All schedules, including the initial schedule, recovery schedules, and monthly updates, shall be submitted in three (3) paper copies and, if requested, one (1) copy on diskette.

- (k) The Contractor shall be prepared to effect schedule revisions in the network in response to changes to the Contract under the terms thereof, at the direction of the College. In the event that change orders are experienced, they shall be reflected as new activities in the network, or as changes in logic and/or time framing of existing activities. They shall be introduced at the next updating after receipt of a change order, and shall be subject to the approval of the College. Change order logic shall affect only those intermediate activities and performance dates directly concerned. Adjustments required in completion dates for those intermediate dates, or for the Contract as a whole, will be considered only to the extent that there is not sufficient remaining float to absorb the additional time which may be authorized for completion of individual activities.

- (l) When the first schedule is furnished, the Contractor shall also furnish to the College for the College's permanent use and retention, the CPM scheduling software used by the Contractor for scheduling the project and one copy of an operating and user's manual for using the software.
- (3) (a) CPM schedules and updates, including recovery schedules, shall include the following: (a) lists of activities showing early and late start and finish dates; (b) a brief time-impact comparison in graph form (preferably on one page) comparing the critical path as-built to date and as-planned for the remainder of the work (as shown on the Contractor's last schedule or update) with the critical path as-built and as-planned as of the time of the schedule or update currently being submitted; and (c) all other information normally provided in a reasonable CPM schedule or update.
- (b) Logic or network diagrams must be furnished (1) with the first schedule submitted under this Section 7.04 I; (2) with recovery schedules submitted under Section 7.04G; (3) if requested by the College with each monthly update submitted under Section 7.04D; and (4) whenever the Contractor changes the sequence of work, whether diagrams are requested by the College or not.

7.05 Progress Meetings

The Contractor shall meet with the College and the Architect (unless the Architect's absence is excused by the College) at least monthly to discuss the progress of the job and to discuss in detail the contractor's updating of the schedule, the necessity for revisions or corrections in the schedule or updates, and all other issues or matters relating to the scheduling of the project and the Contractor's obligations under the project respecting scheduling. The Project Manager may require progress meetings to be held more frequently than monthly at no additional costs. Minutes of progress meetings will be prepared and circulated by the Architect.

7.06 Project Signs

A. The Contractor may provide one project sign for each major entrance to the project. The Contractor shall be responsible for installation, at a location directed by the College, and maintenance of the signs(s).

B. Posts for sign(s) shall be supplied by the Contractor and made of 4x4 inch construction-grade lumber, pressure preservative treated, 10 feet long. The sign(s) shall be bolted to the posts using at least two 1/2 inch bolts per post. Washers shall be used between the bolts and the sign faces and the posts and nuts. The posts shall be set into the ground to a depth of three feet, six inches with the bottom of the signs two feet six inches above the ground.

C. The Contractor shall be responsible for removing the sign(s) after final acceptance of the work and shall dispose of the sign(s) off campus as directed by the College's authorized representative. The Contractor shall also restore site to its original condition.

7.07 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 shall be placed so as to cause a minimum of obstruction to the public. Sprinkling shall be performed at the direction of the College. 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 under construction, or using the project under construction and shall provide and maintain in a safe condition temporary approaches to, and crossings 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 material or obstruction shall be placed within 15 feet of any such 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 under construction shall not be obstructed more than is absolutely necessary.

7.08 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. State Highway Administration Standards will be followed as applicable.

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 College and at no additional cost to the College provide suitable substantial guardrail to the extent determined by the College.

7.09 Preservation, Protection And Restoration Of Property

- A. (1) The Contractor shall continuously maintain adequate protection of all his work from damage and shall protect the College property from injury or loss arising in connection with this Contract. He shall repair and indemnify against any such damage, injury or loss, except such as may be directly due to errors in the Contract or caused by agents or employees of the College. He shall adequately protect adjacent property as provided by law and the

Contract.

(2) Repair - Where used in the Contract, repair 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 it 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 College. 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.

(3) Cutting And Patching of Work:

(a) 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.

(b) The Contractor shall not damage or endanger any portion of the work or the work of the owner or any separate contractors by cutting, patching or otherwise altering any work, or by excavation. The Contractor shall not cut or otherwise alter the work of the owner or any separate contractor except with the written consent of the owner and of such separate contractor. The Contractor shall not unreasonably withhold from the owner or any separate contractor his consent to cutting or otherwise altering the work.

(c) The Contractor shall continuously maintain adequate protection of all his work from damage and shall protect the College property from injury or loss arising in connection with this Contract. The Contractor shall make any and all repairs for damages to adjacent property caused as a result of work on this Contract and he must restore conditions to their previously existing state to the satisfaction of the College.

B. The Contractor shall box and protect to the drip line, all trees which are liable to injury to either their limbs, trunk or roots, by the moving, storing and working up of materials. He shall use no tree for any attachment or anchorage. Protection shall also include avoiding over compaction of the root zone, trenching or infiltration of substances hazardous to the health of the tree.

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 public and shall post danger signs warning against 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 of 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 he is specifically instructed by the Associate Vice President of Facilities or the Vice President of Business and Finance to do work in an emergency, the Contractor shall do the work and will be paid compensation as outlined in Section 3.04.

7.10 College's Right to Terminate For Its Convenience

A. 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 Procurement Authority shall determine that such termination is in the best interest of the College. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination 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 Authority, 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 College in the manner, at the times, and to the extent directed by the Procurement Authority, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the College shall have the right, in its discretion, 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 the termination of orders and subcontracts, with the approval or ratification of the Procurement Authority to the extent that it may require, which approval or ratification shall be final for all the purposes of this clause;
- (6) Transfer title and deliver to the College in the manner, at the times, and to the extent, if any, directed by the Procurement Authority, the following:
 - (a) the fabricated or unfabricated parts, works in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of the work terminated by the

Notice of Termination, and

- (b) the completed or partially completed plans, drawings, information, and other property which, if the Contract had been completed, would have been required to be furnished to the College;
- (7) When directed by the Procurement Authority, the Contractor shall use his 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 Authority, 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 Authority. The proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the College 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 Authority may direct;
- (8) Complete performance of such part of the work as may not have been terminated by the Notice of Termination; and
- (9) Take such action as may be necessary or as the Procurement Authority 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 College has or may acquire an interest. The Contractor may submit to the Procurement Authority 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 Authority, and may request the College to remove such items or enter into a storage agreement covering them. Not later than 15 days thereafter, the College shall accept title to such items and remove them or enter into a storage agreement covering the same; provided that the list submitted shall be subject to verification by the Procurement Authority upon removal of the items, or if the items are stored, within 45 days from the date of submission of the list, and 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 Authority his termination claim, in the form and with certification prescribed by the Procurement Authority. Such claim shall be submitted promptly but in no event later than 90 days from the effective date of termination, unless one or more extensions in writing are granted by the Procurement Authority, upon request of the Contractor made in writing within such 90 day period or authorized extension thereof. However, if the Procurement Authority determines that the facts justify such action, the Contractor may receive and act upon any such termination claim at any time after such 90 day period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Procurement Authority may determine, on the basis of information available to it, 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 Section 7.10C, the Contractor and the Procurement Authority 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 of work 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 Section 7.10 of this clause, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the Procurement Authority 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 Section 7.10D.

E. In the event of the failure of the Contractor and the Procurement Authority to agree, as provided in Section 7.10D, upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, the Procurement Authority may pay to the Contractor the amounts determined by the Procurement Authority as follows, but without duplication of any amounts agreed upon in accordance with Section 7.10D.

- (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 such work;
 - (b) The cost of settling and paying claims arising out of the termination of work under subcontracts or orders as provided in Section 7.10B(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 Authority, 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; and
- (2) The reasonable cost of the preservation and protection of property incurred pursuant to Section 7.09, 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 College 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 Authority, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the College, or to a buyer pursuant to Section 7.10 B(7) and (2).

F. Costs claimed, agreed to, or determined pursuant to Section 7.10C, D, E, and I hereof shall be in accordance with COMAR 21.09 as in effect on the date of this 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 Authority under Section 7.10C, E, or I hereof, except that if the Contractor has failed to submit his claim within the time provided in Section 7.10C or I hereof, and has failed to request extension of such time he shall have no such right of appeal. In any case where the Procurement Authority has made a determination of the amount due under Sections 7.10C, E, or I, hereof, the College shall pay to the Contractor the following: (1) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Procurement Authority, or (2) 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 (1) all unliquidated advances or other payments on account theretofore made to the Contractor, applicable to the terminated portion of this Contract, (2) any claim which the College may have against the Contractor in connection with this Contract, and (3) 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 College.

I. If the termination hereunder be partial, the Contractor may file with the Associate Vice President of Facilities a claim for 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 Authority.

J. The College 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 in connection with the terminated portion of this Contract whenever in the opinion of the Procurement Authority 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 College upon demand, together with interest computed at the legal rate for period from the date such excess payment is received by the Contractor to the date on which the excess is repaid to the College; 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 such retention or disposition, or such later date as determined by the Procurement Authority by reason of the circumstances.

K. Unless otherwise provided for in this Contract, or by applicable statute, the Contractor shall, from the effective date of termination until the expiration of three years after final settlement under this Contract, preserve and make available to the College at all reasonable times

at the office of the Contractor but without direct charge to the College all his books, records, documents and other evidence bearing on the costs and expenses of the Contractor under this Contract and relating to the work terminated hereunder or, to the extent approved by the Procurement Authority, photographs, microphotographs or other authentic reproductions thereof.

7.11 Termination For Default - General

A. If the Contractor fails to fulfill its obligations in whole or part under this Contract properly and on time, or otherwise violates any provision of the Contract, the College may terminate the Contract in whole or in part by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the College's option, become College property. The College shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the College can affirmatively collect damages.

B. The College may terminate for default under Sections 7.11 and 7.12 at any time when the Contractor is in default or breach of any material obligation of the Contract, including after substantial completion, such as for failure in a timely manner to complete a punch list, to perform warranty work, or to perform any other substantial requirement of the Contract.

7.12 Termination For Default - Damages For Delay - Liquidated Damages

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, as may have been modified by executed change orders, or fails to complete said work within this time, the Procurement Authority may, by written notice to the Contractor, terminate his right to proceed (Termination for Default) with the work in full or in part or the part of the work as to which there has been delay. In this event the College 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 including materials stored off-site, 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 College resulting from his refusal or failure to complete the work within the specified time.

B. The Contractor's right to proceed may not be so terminated nor the Contractor charged with resulting damages if the delay in the completion of the work is determined to be an excusable delay in accordance with Section 7.03D.

C. Liquidated Damages:

- (1) For each day that the work shall be uncompleted after the contract completion date, as may be extended through a Change Order, the Contractor shall be liable for liquidated damages in the amount specified in the contract. Prior to and after expiration of the contract completion time, the College may withhold an amount equal to liquidated damages whenever the progress of construction is such that, due to the fault or responsibility of the

Contractor, the Contractor, in the judgment of the Associate Vice President of Facilities, is behind schedule so as not reasonably to be able to complete the Contract on time. Due account shall be taken of excusable delays, any extensions of time reasonably due the Contractor for completion of additional work under change orders, and for delays for which the College is responsible, provided that the Contractor has properly requested, in writing, time extensions therefor. After submission of a bid, the Contractor may not contest the reasonableness of the amount of liquidated damages stated in the contract.

- (2) Liquidated damages will be assessed from the date specified as the contract completion date, as may be adjusted by an executed Change Order, per the following:
 - (a) If fixed and agreed liquidated damages are provided in the Contract and if the College 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 the College in completing the work.
 - (b) If fixed and agreed liquidated damages are provided in the Contract and if the College 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.
 - (c) The College shall deduct and retain out of the contract amount due to the Contractor hereunder the amount of liquidated damages, and if the amounts due the Contractor are less than the amount of such damages, the Contractor shall be liable to the College for the difference.

D. If, after notice of termination for default 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 provisions of Section 7.11 and/or 7.12, or that the delay was excusable under the provisions of Section 7.03, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to a termination for convenience of the College.

E. The rights and remedies of the College provided in this Section are in addition to any other rights and remedies provided by law or under this Contract.

F. As used in this Section, the term "Subcontractors or Suppliers" means Subcontractors or Suppliers at any tier.

G. If the Contract includes several completion dates for different portions of the work, then the provisions of this Section shall apply to each completion date.

7.13 Partial Acceptance

A. If during the construction of work the College, in its sole discretion, desires to occupy any portion of the project, the College shall have the right to occupy and use those portions of the project which in the written opinion of the Associate Vice President of Facilities can be used for their intended purpose; provided that (1) the conditions of occupancy and use are established by the Associate Vice President of Facilities and (2) the responsibilities of the Contractor and the College for maintenance, heat, light, utilities, and insurance are mutually agreed to in writing by the Contractor and the Associate Vice President of Facilities. If no agreement can be reached, the College may move into the facility and the matter of the responsibility of the Contractor and College for maintenance of heat, lights, utilities, and insurance may be decided by the Procurement Review Committee pursuant to Section 6.11. The Contractor has the duty to advise the College of any reasons which may make partial occupancy unsafe.

B. Partial occupancy shall in no way relieve the Contractor of his responsibilities under the Contract.

C. When the College occupies the project in portions or accepts the work in portions, if the beneficial use of any accepted portion or of the project as a whole depends on substantial completion or beneficial use of any other portion, then: (1) warranties on the accepted portions do not begin to run until substantial completion of all portions on which beneficial use of the whole project depends, and (2) substantial completion of the whole project shall not be deemed to be achieved until substantial completion of all portions on which beneficial use of the whole depends.

7.14 Substantial Completion And Final Inspection

A. When the work is substantially completed, the Contractor shall notify the College and the Architect that the work will be ready for final inspection by the Architect and College and test on a definite date. Sufficient notice shall be given to permit the Architect and the Associate Vice President of Facilities to schedule the final inspection.

B. Final inspection shall not be scheduled until after the Contractor has obtained all permits or approvals from outside agencies (Fire Marshall, electrical, etc.) as required for use and occupancy.

C. On the basis of the inspection, if the Architect and the College determine that the work is substantially complete and the project can be occupied or used for its intended purpose, the Associate Vice President of Facilities shall establish the date of substantial completion in writing and shall state the responsibilities of the College and the Contractor for maintenance, heat, utilities, and insurance and shall fix the time for which the guarantee will begin.

D. The Associate Vice President of Facilities shall fix the time within which the Contractor shall complete any remaining items of work which will be indicated on a punch list prepared by the Architect and/or the College. If the Contractor fails to complete the remaining items so listed in the time stipulated by the College, the College shall have the undisputed right to complete the work and deduct any cost incurred from any monies retained under the Contract. The Contractor may be required to complete multiple punch lists 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. At all times during the period in which punch work is to be completed, the Contractor

shall keep up to date a copy of the punch list on site indicating completed work.

F. 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.

G. The work shall not be considered substantially complete until (1) all electrical, mechanical, and life safety systems shall be completed and successfully inspected for conformity to all requirements of the Contract and all applicable codes and standards, (2) all training, demonstrations, and owner's manuals, as required by the Contract, are satisfactorily provided, (3) As-Builts are delivered and (4) all other requirements for substantial completion are met.

7.15 Cleaning-up

The Contractor shall at all times keep the construction area, including storage areas used by it, free from accumulations of waste material or rubbish and prior to completion of the work remove any rubbish from the premises and all tools, scaffolding, equipment, and materials not the property of the College. Upon completion of the construction, the Contractor shall leave the work and premises in a clean, neat and workmanlike condition satisfactory to the Associate Vice President of Facilities.

At the end of each work day the Contractor shall remove from areas outside his controlled construction area, at his expense, all trash and debris resulting from work on this Contract. At all times rubbish, trash, dirt and debris generated from this Contract shall be kept clear of vehicle and pedestrian circulation throughout the site.

Prior to final acceptance all areas shall be thoroughly cleaned by sweeping and or washing. Any defacement or stains shall be removed at no additional cost to the College. All construction equipment, excess materials, tools, rubbish and debris shall be removed from the site.

7.16 Guarantees

A. The Contractor guarantees the following for a two year period (unless a greater period is specified in the Contract) commencing on the date of substantial completion of the project as a whole except as provided in Sections 7.13 and/or 7.14 :

- (1) That the work contains no faulty or imperfect material or equipment or any imperfect, careless, or unskilled workmanship;
- (2) That all mechanical and electrical equipment, machines, devices, etc. shall be adequate for the use to which they are intended, and shall operate with ordinary care and attention in a satisfactory and efficient manner;
- (3) That he will expeditiously re-execute, correct, repair, or remove and replace with proper work, without cost to the College, 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;

- (4) That the entire work shall be water-tight and leak-proof in every particular; and
- (5) That method of installation or workmanship by the Contractor will not result in a lessening of manufacturers warrantee for installed item.

B. During the guarantee period, the Contractor is bound to replace work in addition to being liable for failure to perform the Contract in accordance with its terms. Nothing herein releases or limits the Contractor's liability for latent defects or for any substantial failure to perform the work in accordance with the Contract, even if such defects or failures are discovered after the expiration of the warranty period provided by this section.

7.17 Notice To College 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 Associate Vice President of Facilities.

B. The Contractor agrees to insert the substance of this clause, including this Section B., in any subcontract hereunder 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.

SECTION 8 - PAYMENTS

8.01 Invoicing

A. For this Section 8, the terms "invoice", "pay requests", and "application for payment" are interchangeable.

B. To the extent of the then current contract amount as it has been modified by executed change orders, if any, the Contractor may only invoice the College for:

- (1) The value of work accomplished.
- (2) On account of materials or equipment delivered on the site which are suitably stored and protected.
- (3) On account of materials or equipment stored at an approved off-site location agreed upon by the College; conditioned upon submission by the Contractor of bills of sale or such other procedures satisfactory to the College to establish the College's title to such materials or equipment or otherwise protect the College's interest including applicable insurance, transportation to site, and freedom from liens and security interests.

C. Prior to application for the first payment, the Contractor shall submit to the College and the Architect a schedule of values of the various parts of the work, including quantities, aggregating the total sum of the Contract. The form of this submission shall be as the Contractor and the College have agreed upon and shall be supported by such evidence as to correctness as the College may direct. This schedule shall be used as a basis for certificates of payments unless at a later date found to be in error.

D. Application for payment shall be submitted on a monthly basis.

E. In applying for payments the Contractor shall submit an invoice, based upon the schedule of values (see C above) itemized in such form and supported by such evidence as the College may require. In addition, no payments will be made to the Contractor without the proper submission of the following:

- (1) In applying for all payments, excluding the first payment, the Contractor shall submit, in addition to the above an affidavit that he has paid:
 - (a) All labor to date.
 - (b) All vendors and material suppliers to date for all items received.
 - (c) All Subcontractors to date, less the retained amount.
- (2) The Contractor shall also submit with each pay request, excluding the first pay request, an affidavit signed by each of the Subcontractors that they have been paid, less any retainages, for all pay requests to date.
- (2) The Contractor shall also submit with each pay request a certification that record drawings ("As-Builts") are current and up to date. Prior to the College's approval of the pay request the Contractor shall review the record drawings with the Architect and obtain the Architect's concurrence that the record drawings are satisfactorily maintained and up to date.
- (4) The Contractor will also submit with each pay request updated schedule reports which indicate the current progress and, as appropriate, revise the schedule for remaining work. Schedules are to be updated per Section 7.02.
- (5) Contractor will also submit with each pay request all MBE Progress reports as specified in Section 10, if applicable.

F. Payments of College Obligations: The Contractor agrees to include on the face of all invoices billed to the College both the Contract Number and the Firm's Federal ID number or Contractor's Social Security Number. The Contractor shall mail invoices with all supporting documents required herein to: Accounts Payable, St. Mary's College of Maryland, St. Mary's City, MD 20686, and, simultaneously will submit a complete copy to the Architect and Project Manager for approval.

G The Contractor will review the pay request with the Architect and the Project Manager and obtain their written approval. After obtaining approval by the Architect and the Project Manager, the Project Manager will authorize Accounts Payable to process the invoice.

H. Payments made to the Contractor pursuant to this Contract shall be made no later

than thirty (30) days after the College has received and approved 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.

I. In addition to any other available remedies if, in the opinion of the Associate Vice President of Facilities, the Contractor fails to perform in a satisfactory and timely manner, the Associate Vice President of Facilities may refuse to allow or limit approval of any invoice for payment, and may cause payments to the Contractor to be reduced or withheld until such time as the Contractor meets performance standards as established by the Associate Vice President of Facilities.

8.02 Force Account Work

A. When the Contractor is required to perform work on a Force Account basis, as directed through issuance of a Change Directive, per Section 3.04, the basis for compensation shall be in accordance with this Section. The compensation as set forth herein shall be received by the Contractor as payment in full for the work done on a force account basis.

- (1) Labor. For all labor and for foremen in direct charge of the specific operations, the Contractor shall receive the actual wages and usual prorated benefits and indirect costs, for each and every hour that said labor and foremen are actually engaged in Force Account work.
- (2) Materials. For materials accepted by the Architect and Project Manager and used, the Contractor shall receive the actual cost of such materials delivered on the work, including transportation paid by him (exclusive of machinery rentals as hereinafter set forth).
- (3) Equipment. For any machinery or special equipment (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 purpose of definition, equipment with a new cost of \$500 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 (and Project Manager), the Contractor shall receive the actual cost of such materials and supplies used.
- (5) Bond, Insurance, and Tax. For bond premiums, if an increase in the bonds is required by the College, and insurance premiums for property damage and liability, the Contractor and Associate Vice President of Facilities shall determine an equitable percent to be applied.
- (6) Subcontractors. For work done solely by a Subcontractor, the Subcontractor's cost shall be determined as stipulated in Section 8.02 A(1)

through (5). The allowable percentages for combined overhead and profit for the Subcontractor shall be a reasonable amount not to exceed 15% of the Subcontractor's cost. . The Contractor shall be entitled to an allowance of five percent (5%) of the Subcontractor's total cost of doing the work.

- (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 foremen may be considered only when the modification makes necessary the hiring of additional supervisory personnel or makes necessary their employment for time additional to that required by the Contract.
- (8) Contractor's Overhead and Profit. The Contractor will be paid for completed work performed by his own forces, a percentage thereof to cover his overhead and profit which shall be a reasonable amount not to exceed 15% of the Contractor's cost.

B. Daily Accounting: At the end of each day, the Contractor shall submit to the Project Manager his records of the cost of work performed that day as ordered on a force account basis.

C. Final Accounting: Upon completion of the Force Account work, or sooner as may be requested by the Project Manager, the Contractor shall furnish the records supporting his actual costs in performance of the Force Account work. The Contractor shall include the following:

- (1) Name, classification, date, daily hours, total hours, rate, and extension for such laborer, foreman;
- (2) Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment;
- (3) Quantities of materials, prices, and extensions;
- (4) Costs of transportation of materials; and
- (5) Cost of property damage, liability and Workmen's compensation insurance premiums, unemployment insurance contributions, and social security tax.
- (6) Items under Sections (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 purchased 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 Contractor 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 material as claimed represent actual cost.
- (7) Force Account work performed by Subcontractors shall be in accordance with Sections (1) through (6) above.

D. Upon review and approval by the Associate Vice President of Facilities of the

information provided in Section 8.02C above, the College will issue a Change Order.

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 Contractor's expenditure of these allowances is at the Associate Vice President of Facilities direction. However, the allowance expenditure is limited to items properly inferable from the title and description of the allowance. Unexpended balances are to revert to the College via the change in work procedure (Section 3.04). The cost of installation of materials purchased with these specified allowances and other expenses, and Contractor's profit are not included in the allowance. The Contractor shall install all material purchased under allowances and shall include in the contract bid a sufficient amount, in addition to the allowance to cover the installation, other costs and profit.

8.04 Payments Withheld

A. The College may withhold or, on account of subsequently discovered evidence, nullify or reduce the whole or part of any certificate or payment to such extent as may be necessary to protect the College from loss on account of any of the following:

- (1) Defective work not remedied
- (2) Claims filed or reasonable evidence indicating probable filing of claims against the College for which the Contractor may be liable to the College
- (3) Failure of the Contractor to make payments properly to Subcontractors or Suppliers for material or labor
- (4) A reasonable doubt that the Contract can be completed for the balance then unpaid
- (5) Damage to another Contractor caused by the Contractor
- (6) Liquidated damages or other damages or compensation due to the College for claims of the College against the Contractor
- (7) Failure to maintain As-Builts
- (8) Retainage
- (9) Failure to update progress schedules
- (10) Estimated or actual cost of completing unfinished punch list or warranty work.

B. When the above grounds are removed, payment shall be made for amounts withheld because of them.

C. Retainage: The College will withhold ten (10) percent retainage from all payments until final payment. Reduction of the retainage percentage may be allowed at the discretion of the Associate Vice President of Facilities. Retainage is in addition to any deductions, charges, back charges, or liquidated damages as may be imposed by the Associate Vice President of Facilities in accordance with Section 8.04 A.

8.05 Acceptance And Final Payment

- A. (1) Upon final completion of the work, the Contractor shall prepare final payment forms and submit them.
- (2) The College 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 Associate Vice President of Facilities will then reply to the Contractor's request for final payment, informing the Contractor of the amount of final payment considered to be due the Contractor. Such reply shall inform the Contractor of all deductions, damages, costs, backcharges, and other charges assessed against the Contractor by the College and the reasons therefor.
- (3) Final payment shall not be made until all contract work, including punch list, is complete to the satisfaction of the College. In no case shall final payment to the Contractor be made without the Contractor providing the following:
- (a) Such evidence as will establish the College's title to materials and give reasonable assurance that causes for liens by labor and other do not exist;
 - (b) All permits, certificates, etc. from inspecting agencies as required by the Contract;
 - (c) All other guarantees as called for by the Contract;
 - (d) All required equipment, operation, training, maintenance and other equipment manuals and parts lists; and
 - (e) Complete set of all drawings indicating as-built conditions to the College with a copy to the Architect.

B. Notwithstanding Section 8.05A(1) above, prior to or in the absence of a request from Contractor for final payment, the Associate Vice President of Facilities may determine under Section 8.05A(2) the amount of the final payment it considers to be due the Contractor. In such case, the Associate Vice President of Facilities shall notify the Contractor in writing of his determination.

C. If the Contractor disagrees with the Associate Vice President of Facilities reply regarding final payment due after the Associate Vice President of Facilities issues his reply, the

Contractor has up to thirty (30) days to provide notice of such disagreement. If following notice the Contractor and Associate Vice President of Facilities cannot agree on the final payment due, the Contractor shall request a Final Decision in accordance with Section 6.11. At its option, the College may withhold final payment pending completion of the Dispute process. If the Contractor fails to file a notice with the Associate Vice President of Facilities that the Contractor disagrees with the Associate Vice President of Facilities' computation of the final payment due within the thirty (30) day period, the Associate Vice President of Facilities may initiate final payment.

D. Acceptance by the Contractor of any payment identified by the College as being final payment shall operate as an accord and satisfaction and a general release of all claims of the Contractor against the College arising out of or connected with the Contract, except as may be expressly agreed otherwise in writing between the Contractor and the Procurement Authority.

E. No claims by the Contractor may be asserted for the first time after application is made by the Contractor for final payment or after final payment is made by the College.

F. All prior partial estimates and payments shall be subject to correction at the time of Acceptance and Final Payment and if the Contractor has been previously overpaid, the amount of such overpayment shall be set forth in the Final Payment forms and the Contractor hereby agrees that he will reimburse the College for such overpayment within forty-five (45) days of receipt of such advice, and his surety will not be granted release from obligations under the terms of the Contract until reimbursement has been made in full.

8.06 Retention Of Records - Audits By The College

A. The Contractor and his Subcontractors and Suppliers at any tier shall retain and maintain all records and documents relating to this Contract for three years after final 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 College including the Associate Vice President of Facilities, at all reasonable times.

B. If Contractor or his Subcontractors or Suppliers at any tier fail to retain for the period of time required by this section original documents used, made, or relating to the preparation or calculation of Contractor's bid to the College or of bids, quotes, estimates of Subcontractors or Suppliers at any tier, Contractor shall be entitled to no damages, compensation, or equitable adjustments (including time extensions) for any claims based on calculations, assumptions, understandings or beliefs allegedly made at the time of preparation of such bids, quotes, or estimates.

C. In the event a claim is initiated under Section 6.11, the Contractor and his Subcontractors or Suppliers at any tier shall retain such books, papers, records and any other documents until expiration of the aforesaid three-year period or until final, unappealable resolution of the claim or dispute, whichever is later.

SECTION 9 - EMPLOYEES, SUBCONTRACTORS AND WORK CONDITIONS

9.01 Employees And Workmanship

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 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 College. Generally, the work area will be as indicated in the construction documents.

E. Methods and Quality:

- (1) Whenever the method of the work or manner of procedure is not specifically stated in the Contract, then it is intended that the highest standard of practice shall be followed. Unless the Contract expressly require stricter standards, 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 so called for thereby. If any manufacturer's recommendations are defective, faulty, inaccurate or negligently made, the Contractor shall be responsible for any loss resulting therefrom, including liability for loss incurred by the College.
- (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 old 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, procedure and results are subject to the Architect's and Associate Vice President of Facilities' approval as to finished result to be obtained. However, this is not to be interpreted as placing upon the Architect or Associate Vice President of Facilities any responsibility for the work management which is solely the responsibility of the Contractor.

F. Scheduling and Coordination:

- (1) The Contractor shall so schedule and coordinate the work as to ensure expeditious, 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 should be included in the schedule.
- (2) The Contractor shall so schedule the construction performed by each group

or trade that each installation or portion of the construction shall member with and join with every other new or old work as required for a complete installation, all according to accepted best construction practice.

G. Superintendent. The Contractor shall keep on the work, at all times during its progress, a competent Superintendent who is able to communicate with the College and its representatives and any necessary assistants, all of whom shall be approved by the College prior to commencement of the work. The Contractor shall submit in writing to the College 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 College and an approval or rejection given in writing. Persons who have previously proved unsatisfactory on work executed for the College 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 will be permitted to superintend two or more projects only when approved by the Associate Vice President of Facilities in writing. The Superintendent shall represent the Contractor. All directions given to the Superintendent shall be as binding as if given to the Contractor. Should the Associate Vice President of Facilities request removal of the Superintendent, he shall be immediately removed from the work and a new Superintendent shall immediately obtained by the Contractor and approved as described above.

H. The Contractor shall at all times enforce strict discipline and good order among his employees and Subcontractors 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, the College, and the State. Employees must not be allowed to loiter on the premises before or after working hours. The Contractor's employees shall not fraternize with individuals at or around the project site not having an official responsibility in connection with this project. The Associate Vice President of Facilities shall have the right to require the Contractor to remove any individual from his workforce or the workforce of his Subcontractors who fails to conduct himself/herself in a professional manner.

I. The Contractor shall designate a responsible member of his organization, on the work site, whose duty it shall be, in addition to his other duties, to prevent accidents and to enforce the standards of Section 9.05. The name and position of the person so designated shall be reported to the Associate Vice President of Facilities with a copy to the Architect, by the Contractor at the commencement of the work.

9.02 Non-discrimination In Employment Policies

A. The contents of Section 13-219 of the State Finance & Procurement Article of the Annotated Code of Maryland, is adopted by the College, and is called to the attention of the Contractor and Subcontractors as follows:

- (1) A contract subject to this Article may not be awarded to any Contractor unless the Contract contains provisions obligating the Contractor not to discriminate in any manner against any employee or applicant for employment because of sex, race, creed, color, national origin or age and obligating the Contractor to include a similar clause in all subcontracts, except subcontracts for standard commercial supplies or raw materials. In addition, the Contractor and Subcontractor agree to post in conspicuous

places, available to employees and applicants for employment, notices setting forth the provisions of the nondiscrimination clause.

- (2) Failure to include such a contract provision renders any contract void *ab initio*, but any party shall be entitled to the reasonable value of services performed and materials supplied. However, the College may elect to compel the performance of any contract under this section not containing the nondiscrimination provisions, but recovery against the proper party shall be limited to the reasonable value of services performed and materials supplied.
- (3) Where the Contractor willfully fails to comply with the nondiscrimination provisions the College may, where the Contract is still executory in part, compel continued performances of the Contract, but it 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 College under the Contract, shall be set off against the sums to become due as the Contract is performed.
- (4) If the Subcontractor willfully fails to comply with the nondiscrimination provisions, the Contractor may void the contract note and shall be liable only for the reasonable value of the services performed and materials supplied.

B. It is understood that the provisions of the Civil Rights Act of 1964 as amended are hereby included in this Contract to the end that no person in the United States shall, on the ground of race, color, sex, religion or natural origin, be excluded from participation in, be denied the benefits of, or otherwise subjected to discrimination under this Agreement.

C. If requested, each Contractor with the College will submit to the Purchasing Agent of the College information as to the composition of the Contractor's work force. This information will be furnished in a form to be prescribed by the College.

D. 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 College projects.

9.03 Subcontracts

A. The Contractor shall, as soon as practicable and before the execution of the Contract, notify the Architect and the College in writing, of the names of subcontractors proposed for the principal parts of the work and for such others as the Associate Vice President of Facilities may direct and shall not employ any that the Architect or the College may reasonably object to as incompetent or unfit.

B. The Contractor agrees that he is as fully responsible to the College for the acts and omissions of his Subcontractors and of persons either directly employed by them, as he is for the acts and omissions of persons directly employed by him.

C. Nothing contained in the Contract shall create any contractual relation between any Subcontractor and the College, and nothing in the Contract is intended to make the Subcontractor a beneficiary of the Contract between the College and the Contractor.

9.04 Relation Of Contractor To Subcontractor And Suppliers

A. The Contractor agrees to bind every Subcontractor and Supplier and will see that every Subcontractor agrees to be bound by the terms of the Agreement, the General Conditions, the Drawings and Specifications as far as applicable to his work and any documents incorporated by the Agreement, unless specifically noted to the contrary in a subcontract approved in writing as adequate by the College.

B. The Contractor agrees to include the following provisions in all subcontracts and supply contracts applicable to the work:

- (1) Subcontractor and Supplier agrees to be bound to the Contractor by the terms of the Contract and any other documents incorporated thereto, and to assume toward him all obligations and responsibilities that he, by those documents, assumes toward the College;
- (2) The Subcontractor and Supplier 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 these General Conditions;
- (3) The Subcontractor and Supplier 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 General Conditions for like claims by the Contractor upon the College, except that the time for making claims by the Subcontractor or Supplier to the General Contractor for extra cost is five days; and
- (4) The Subcontractor and Supplier agrees, upon completion of his work, to promptly pay all labor, material suppliers, vendors, subcontractors and others, to permit simultaneous final payment by the Contractor.

C. The Contractor shall not be relieved of any obligation to the College under the Contract by any action, inaction, delay, default, breach, omission, or neglect, on the part of Contractor's Subcontractors and Suppliers at any tier or by any effect in their materials, whether the Subcontractors, Suppliers, or materials were selected or specified by the College or by the Contractor.

D. The Contractor also agrees:

- (1) To pay the Subcontractors, upon the payment of certificates, if issued under the schedule of values described in Section 8 of these General Conditions, the amount allowed to the Contractor on account of the Subcontractor's work to the extent of the Subcontractor's or Supplier's interest therein;
- (2) To pay the Subcontractor or Supplier, upon the payment by the College , so

that all at times the Subcontractor or Supplier 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 or Supplier promptly to such extent as may be provided by the Contract or the subcontract between the Contractor and Subcontractor or Supplier, 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 the certificate should be issued, whether or not payment is made wholly or in part by the College, unless the College's failure to issue payment is due to the fault or unsatisfactory work or material of the Subcontractor or Supplier;
- (5) To pay the Subcontractor an equitable share of any fire or other insurance money received by the Contractor to which the Subcontractor is rightly due;
- (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; and
- (7) To give the Subcontractor an opportunity to be present and to submit evidence in any matter involving his rights.

E. Every Subcontractor, supplier, or other entity at any tier furnishing any work, labor, services, materials or supplies to or for use in the project, by virtue of furnishing same shall be bound to and does accept and agree to all terms and provisions of the Contract between Contractor and the College.

F. The Contractor agrees that 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 days of the calendar month following that in which the claim originated.

G. The Contractor and the Subcontractor agree that nothing in this section shall create any obligation on the part of the College to pay to or to see to the payment of any sums to any Subcontractor.

9.05 Construction Safety And Health Standards

A. It is a condition of the Contract, and shall be made a condition of each subcontract entered into pursuant to this Contract, that the Contractor and any Subcontractor shall not require any laborer or mechanic 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, and laws and regulations of the locality in which the work is done, the State, and the Federal government.

B. The Contractor shall provide and maintain work environments and procedures which

will:

- (1) Safeguard the public, workers on the site, and College students and personnel, property, materials, supplies, and equipment exposed to Contractor operations and activities;
- (2) Avoid interruptions of College operations, utilities, and delays in project completion dates;
- (3) Control costs in the performance of this Contract; and
- (4) Maintain the work to the highest standards of quality.

C. For these purposes, the Contractor shall:

- (1) Provide appropriate safety barricades, signs, and signal lights;
- (2) Comply with the provisions of the Maryland Occupational Safety and Health Act;
- (3) Comply with the standards issued by the Secretary of Labor at 29 CFR Part 1926 and 29 CFR Part 1910; and
- (4) Comply with all requirements of the Contract and any additional safety measures the Associate Vice President of Facilities may determine to be reasonably necessary.

SECTION 10 - MINORITY BUSINESS ENTERPRISE UTILIZATION

10.01 Purpose

The Contractor shall attempt to achieve the result that a minimum of ten (10%) percent of the total dollar value of the Contract is performed directly or indirectly by certified minority business enterprises. Such performance by a Certified Minority Business Enterprises shall be in accordance with this section. The provisions of this section are applicable to contracts with a value of \$100,000 or more. The Contractor agrees to use his best efforts to carry out the requirements of this section consistent with the efficient performance of the project.

10.02 Definitions

As used in this section, the following words have the meanings indicated.

A. **Certification:** means a determination by the Maryland Department of Transportation that a legal entity is a Minority Business Enterprise for the purpose of the regulations. Contractors seeking to be certified for procurements solicited by designated departments or procurement agencies shall apply to the Department of Transportation. All reference to Minority Business Enterprise in the Contract refers to only those Minority Business Enterprise hereinafter MBE certified by the Maryland department of Transportation.

B. MBE Administrator: The College employee responsible for monitoring and reporting compliance with the College regulations regarding MBE participation. The Purchasing Agent is identified as the College MBE administrator.

C. Solicitation notice: means public notice of a solicitation for bids, offers, or expressions of interest which contains the nature of the procurement, relevant dates, the availability of solicitation documents, if any, and other pertinent information. The notice may consist of but is not limited to:

- (1) Legal advertisement;
- (2) Newspaper notice;
- (3) Bid Board notice; or
- (4) Bid or proposal documents including the invitation for bids or request for proposals.

10.03 Contractor Responsibilities

A. An MBE participation goal of a minimum of ten percent (10%) of the Contract has been established for this procurement. The Contractor agrees that he will make every effort to achieve this amount of the Contract being performed by certified Minority Business Enterprises. Good faith efforts to achieve the MBE goal must be demonstrated to the College's satisfaction prior to award of this Contract.

B. As of July 1, 1995, the contractor cannot obtain the entire MBE goal using the cost of the products/supplies purchased for a project. Only the fee received by the certified MBE supplier or distributor can be counted toward the MBE goal. No portion of the price of the supplies can be counted toward the MBE goal.

- C. (1) An MBE prime contractor responding to the solicitation shall, if awarded the contract, accomplish an amount of work not less than the MBE subcontract goal with his own work force, MBE subcontractors, or both in combination. The documentation requirements of D below are applicable only if MBE subcontractors are to be utilized in the performance of the contract. The MBE prime contractor shall, however, be certified in accordance with D (4) below.
- (2) A contractor shall, prior to bidding:
- (a) Identify specific work categories appropriate for subcontracting;
 - (b) At least 10 days before bid opening, solicit through written notice and attempt to make personal contact with minority business enterprises:
 - (i) describing the categories of work under item (a) of this Section; and
 - (ii) providing information regarding the type of work being solicited and specific instruction on how to submit a bid;

- (c) Assist minority business enterprises to fulfill bonding requirements or to obtain a waiver of those requirements; and
 - (d) In order to publicize contracting opportunities to Minority Business Enterprises, attend prebid meetings or other meetings scheduled by the College.
- (3) Upon request and prior to contract award the Contractor shall provide the College with a list of MBE's with whom the Contractor negotiated, including price quotes from minority and non-minority firms.

D. The following documentation shall be part of the Contract and shall be furnished by the apparent low bidder to the College prior to award of contract.

- (1) (Form SMC-MBE-01A) MBE Utilization Affidavit. Each bid or offer submitted in response to this solicitation shall be accompanied by a completed MBE Utilization Affidavit whereby the Contractor acknowledges the MBE participation goal and commits to make a good faith effort to achieve the goal.
- (2) (Form SMC-MBE-02B) - Schedule For Participation. Name each MBE who will participate in the project, describes the contract items to be performed or furnished by the MBE, the prices agreed to be paid to each MBE for the work or supply.
- (3) (Form SMC-MBE-03C) - Minority Contractor Unavailability Certificate. If the apparent low bidder or offerer is unable to award subcontracts to, or procure supplies and services from MBE's with a value that is equal to the minimum goal established, the apparent successful bidder or offerer will request in writing, a waiver to this requirement. No award shall be made until all matters relating to MBE participation have been met and documented by the Contractor. The justification for the waiver shall include, but not be limited to, the following:
 - (a) A detailed statement of the efforts made to select portions of the work proposed to be performed by MBEs in order to increase the likelihood of achieving the stated goal;
 - (b) A detailed statement of the efforts made to contact and negotiate with MBEs including the names, addresses, dates and telephone number of MBEs contacted, and a description of the information provided to MBE's regarding the plans, specifications, and anticipated time schedule for portions of the work to be performed;
 - (c) As to each MBE that placed a subcontract quotation which the apparent low bidder considers not to be acceptable, a detailed statement of the reasons for this conclusion. The College considers failure of an MBE firm to submit the lowest bid to the General Contractor an acceptable reason for not selecting that particular MBE firm; and

- (d) A list of MBE subcontractors found to be unavailable. This should be accompanied by the Minority Contractor Unavailability Certificate (form SMC-MBE-03C) signed by each Minority Business Enterprise contacted or a statement from the apparent low bidder that the minority business refused to give the written certification.
- (4) (Form SMC-MBE-04D) - Statement of Intent. MBE subcontractor project participation statement signed by both the bidder and each MBE listed in the schedule of participation which shall include:
- (a) A Statement of Intent to enter into a contract between the prime Contractor and each Subcontractor if a contract is executed between the College and the prime Contractor, or, if the prime contract has been awarded, copies of the subcontract agreement or agreements;
 - (b) The prices agreed to be paid to each MBE for the work or supply;
 - (c) The amount and type of bonds required of MBE Contractors, if any; and
 - (d) A description of work/services to be performed or furnished by the MBE.
- (5) (Form SMC-MBE-06F) - Solicitation Affidavit. Completed and signed by the apparent low bidder stating that, in the solicitation of subcontract quotations, certified MBE subcontractors were provided not less than the same information and amount of time to respond as were non-MBE subcontractors, and that the solicitation process was conducted in such a manner as to otherwise not place MBE subcontractors at a competitive disadvantage to non-MBE subcontractors.
- (6) (Form SMC-MBE-07G) - Minority Business Enterprise Monthly Cost Breakdown for Progress Payments. This form shall include a list of all MBE subcontractors and the amounts paid them for that period. Copies of each invoice submitted by the MBE subcontractor for work completed or supplies delivered shall be attached to the back. This form shall be submitted with each invoice submitted to the College by the prime contractor. To assure that the minority participation goal is being met the contractor's retainer will be held at the completion of the project until proof is provided that the agreed MBE participation percentage is paid as agreed to in the MBE's Statement of Intent.
- (7) (Form SMC-MBE-08G) - Contract Compliance Certification. This information should be completed, certified and submitted monthly to the Purchasing Agent for the College. The certified documents, will be made part of the Contract file and will be subject to confirmation audits by the College. If during the confirmation audit the information given is found to be untrue, the signatories to the certification will be subject to:
- (a) termination of the contract; and/or

(b) referral to the office of the Attorney General for appropriate action.

E. The College reserves the right to request any other documentation considered appropriate to ascertain bidder responsibility in connection with the contract MBE participation goal. No award shall be made until all requirements relating to MBE participation have been met and documented by the Contractor.

F. The Contractor, by submitting its bid or offer, consents to provide such documentation as requested by the College.

10.04 Additional Records And Reports

A. The Contractor shall maintain such records as are necessary to confirm compliance with its minority business enterprise 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 procurement achieved by each contractor and subcontractor.

B. For construction contracts, the Contractor shall submit supplemental information with his Monthly Cost Breakdown for Progress Payments (SMC-MBE-07G) which indicates the dollar value of contracts awarded to Minority Business Enterprises as the contract work occurs. This information will be submitted as a supplement to the Monthly Cost Breakdown For Progress Payments.

C. Failure of the Contractor to submit the required supplementary MBE participation information may result in delays in processing progress payments.

D. All records concerning MBE participation must be retained by the Contractor and will be available for inspection by the College for a period of three years after final completion of the contract.

10.05 Enforcement

A. The College retains the right to conduct inspections to confirm compliance with the terms of section 10. The Contractor will have the following available for inspection:

- (1) Copies of purchase orders and subcontracts containing Equal Opportunity clauses;
- (2) Records to indicate the number, names, dollar value of the certified business, subcontracts, the amount and dates, and the scheduled times for each Certified business to be on the job site; and
- (3) Any other appropriate documents.

B. If the College determines that the Contractor or Subcontractors are not in compliance with this section, the College will notify the Contractor of those measures which must be taken to restore the Contract to a state of compliance. If the Contractor or Subcontractor fails to take corrective action it shall be reported to the Procurement Authority for appropriate action.

C. If the documentary material submitted by the Contractor or Subcontractor to determine minority business status contains false, misleading information or other misrepresentations, the matter will be referred to the Attorney General for appropriate action.

10.06 Contractor Assistance

The State of Maryland Minority Business Enterprise Directory is available to Contractors at both the College Purchasing Office, (301) 862-0307, and the Maryland Department of Transportation, Fair Practice Division, P.O. Box 8755, BWI Airport, Maryland-21240, (800) 544-6056 The Directory contains information about currently certified Minority Business Enterprises.

Approved this _____ day of _____ for form and legal sufficiency.

Assistant Attorney General