

PART II
GENERAL TERMS AND CONDITIONS
OF THE CONTRACT

TABLE OF CONTENTS

**The University of Maryland
General Conditions of the Contract Between
Owner and Contractor**

<u>Section 1: Definitions and Responsibilities</u>		<u>Page</u>
1.01	Definitions	1
1.02	Owner's Responsibilities	4
1.03	Contractor's Responsibilities	4
 <u>Section 2: Contract Documents - Shop Drawings</u>		
2.01	Contract Documents	8
2.02	Shop Drawings	10
 <u>Section 3: Scope of Work</u>		
3.01	Intent of the Contract Documents	13
3.02	General Conditions Controlling	13
3.03	Differing Site Conditions	13
3.04	Site Investigation	13
3.05	Conditions Affecting the Work	14
3.06	Changes	14
3.07	Modification of Contract Price	16
3.08	Force Account Work	20
3.09	Unauthorized Work	22
3.10	Variations in Estimated Quantities	22
 <u>Section 4: Control of the Work</u>		
4.01	Authority of the Architect	24
4.02	Conformity with Contract Requirements	24
4.03	Adjacent Work	24
4.04	Control by the Contractor	25
4.05	Cooperation with Utilities	25
4.06	Authority and Duties of University Inspectors	26
4.07	Inspection of the Work	27
4.08	Removal of Defective Work	27
4.09	Maintenance of Work During Construction	28
4.10	Failure to Maintain the Entire Project	29
4.11	University's Right to do Work	29
 <u>Section 5: Materials</u>		
5.01	General	30
5.02	Storage and Handling of Materials	32
5.03	Substitution	33
5.04	Approved Equals	34

5.05	Contractor's Options	34
5.06	Tests	34
5.07	Buy American Steel	35
5.08	Sales Tax	35

Section 6: Legal Relations and Responsibilities

6.01	Laws to be Observed	36
6.02	Permits and Licenses	36
6.03	Patented Devices, Materials and Processes	37
6.04	Land, Air, and Water Pollution	37
6.05	Insurance Requirements	38
6.06	Assignments	45
6.07	Separate Contracts	46
6.08	Relationship of Contractor to Public Officials and Employees	46
6.09	No Waiver of Legal Rights	47
6.10	Contingent Fee Prohibition	48
6.11	Assignment of Antitrust Claims	48
6.12	Federal Participation	48
6.13	Disputes	49
6.14	Claims	50
6.15	Performance and Payment Bonds	51
6.16	Financial Disclosure	51
6.17	Political Contribution Disclosure	52
6.18	Retention of Records	52
6.19	Compliance with Laws	52
6.20	Cost and Price Certification	53
6.21	Entire Agreement	54

Section 7: Prosecution and Progress of the Work

7.01	Notice to Proceed	55
7.02	Project Signs and Construction Office	55
7.03	Prosecution of the Work	56
7.04	Public Convenience and Safety	56
7.05	Barricades and Warning Signs	57
7.06	Preservation, Protection, and Restoration of Property	58
7.07	Progress Schedule	58
7.08	Progress Photographs	59
7.09	Suspension of Work	60
7.10	Termination for Convenience of the University	60
7.11	Termination for Default-Damages for Delay and Time Extensions	66
7.12	Partial Acceptance	68
7.13	Liquidated Damages	69
7.14	Substantial Completion and Final Inspection	69
7.15	Cleaning-up	69
7.16	Guarantees	70

7.17	Century Compliance Warranty	70
7.18	Notice to University of Labor Disputes	71

Section 8: Payments

8.01	Scope of Payment	72
8.02	Payment of State Obligations	74
8.03	Prompt Payment to Subcontractors	74
8.04	Allowances	75
8.05	Retainage	76
8.06	Deductions for Uncorrected Work	77
8.07	Payments Withheld	78
8.08	Correction of Work Before Final Payment	78
8.09	Acceptance and Final Payment	78
8.10	Electronic Funds Transfer	81
8.11	Audits By the State	81
8.12	Multi-Year Contracts Contingent Upon Appropriations	81

Section 9: Employees, Subcontractor and Worker Conditions

9.01	Employees and Workmanship	83
9.02	Non-Discrimination In Employment	85
9.03	Subcontracts	85
9.04	Relation of Contractor and Subcontractor	86
9.05	Prevailing Wage Rates	88
9.06	Construction Safety and Health Standards	89
9.07	Drug and Alcohol Free Workplace	89
9.08	Sexual Harassment	89
9.09	Non-Hiring of Employees	90
9.10	Contractor Reporting of Suspected Child Abuse and Neglect	90

SECTION 1 - DEFINITIONS AND RESPONSIBILITIES

1.01 DEFINITIONS (FEBRUARY 2007)

- 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.
- B. The Architect: A person registered in the State of Maryland to practice architecture and contracted by the University to prepare the contract documents for the designated project and to assist with bidding of the project and contract administration during the construction phase. The Architect has no independent authority to direct the contractor on behalf of the University.

Should no independent Architect have been appointed to prepare the contract documents or supervise the construction, then the University of Maryland is the agency referred to by the term "Architect". Whenever the contract documents are prepared by a registered Engineer in independent practice, and no architect is employed, all reference to Architect shall be construed to refer to the Engineer.

- C. Change Order: A contract modification signed by the responsible Procurement Officer, directing a Contractor to make changes which the changes clause of a contract authorizes the Procurement Officer to order with or without the consent of the contractor.
- D. Contract: The written agreement executed between the University and the successful bidder, covering the performance of the work and furnishing of labor, services, equipment, and materials, and by which the Contractor is bound to perform the work and furnish the labor, services, equipment and materials, and by which the University is obligated to compensate him therefore at the mutually established and accepted rate or price. The contract shall include the construction bid form, contract forms and bonds, general conditions, specifications, addenda, supplemental specifications, all special provisions, all technical provisions, all plans and notice to proceed, also any written change orders and supplemental agreements that are required to complete the construction of the work in an acceptable manner, including authorized extensions thereof. (Said documents are sometimes referred to as the "contract documents").

SECTION 1 - DEFINITIONS AND RESPONSIBILITIES

- E. The Contractor: The person or organization having direct contractual relation with the University for the execution of the "Work". If the Contractor hereunder is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder. For Construction Management (CM) with GMP/at Risk contracts, the term "Contractor" refers to the "Construction Manager".
- F. Contract Time and Completion Date: The number of working or calendar days shown in the construction bid form indicating the time allowed for the completion of the work contemplated in the contract. In case a calendar date of completion is shown in the proposal, in lieu of the number of working or calendar days, such work shall be completed on or before that date.
- G. Critical Path Method (CPM): A scheduling/management tool showing a network of work elements or activities for a construction project.
- H. "Day" or "day": Means calendar day unless otherwise designated.
- I. "The Owner" or "The University of Maryland" or "The University": Refers to the University of Maryland, an agency and instrumentality of the State of Maryland. In particular, the University refers to the campus or administrative unit of the University or its authorized representative that issues bid information relative to a particular transaction.
- J. Notice to Proceed: A written notice to the Contractor of the date on or before which he shall begin the prosecution of the work to be done under the contract.
- K. Payment Bond: The security in the form approved by the University and executed by the Contractor and his surety, and paid for by the Contractor, as a guarantee that he will pay in full all his bills and accounts for materials and labor used in the construction of the work, as provided by law.
- L. Performance Bond: The security in the form approved by the University and executed by the Contractor and his surety, and paid for by the Contractor, guaranteeing complete performance of the contract.

SECTION 1 - DEFINITIONS AND RESPONSIBILITIES

- M. Plans: The official drawings issued by the University as part of the contract documents, including those incorporated in the contract documents by reference.
- N. Procurement Officer: The person designated by the University to make decisions with respect to the administration of the work. He will be identified at the job initiation conference.
- O. "Repair" or "repair": Where used in these contract documents 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 University. When the word "repair" is used in connection with machinery or mechanical equipment it shall mean, in addition to the above, rendering the equipment completely serviceable and efficient ready for normal use for which it was intended originally.
- P. The Owner" or "State" or "University": The State of Maryland acts only through its Board of Public Works. No action or representation is binding upon the State or the University of Maryland unless it is made by, or ratified by, the Board of Public Works. Actions or representation made by the University do not bind the State or the University unless so provided in law.
- Q. NOT USED
- R. Subcontractor: As employed herein includes only those having a direct contract with the Contractor. It includes one who furnishes material worked to a special design according to the plans and specifications for the "Work". It excludes one who merely furnishes material not so worked. For Construction Management (CM) with GMP/at Risk contracts, the term "Subcontractor" refers to the "Trade Contractor".
- S. Supplemental Agreement: A written agreement covering added

SECTION 1 - DEFINITIONS AND RESPONSIBILITIES

or changed work which is beyond the scope of the contract and the changes clause. A supplemental agreement becomes a part of the contract when approved and properly executed by all parties to the contract.

- T. Surety: The corporate body bound with and for the Contractor, for the full and completed performance of the contract and for the payment of all debts pertaining to the work.
- U. Work: Work shall be understood to mean the furnishing of all labor, materials, equipment, services, utilities and other incidentals necessary to the successful completion of the project and the carrying out of all the duties and obligations imposed upon the Contractor by the contract.
- V. Written Notice: Shall be deemed to have been duly served if delivered in person to the individual or to the member of the firm or to an office of the corporation to whom it is intended, or if delivered to or sent by registered mail, to the last business address known to him who gives notice.

1.02 OWNER'S RESPONSIBILITIES

- A. The Owner shall furnish all surveys describing the physical characteristics, legal limitations, and utility location for the site of the project, and a legal description of the site.
- B. Information or services under the Owner's control shall be furnished by the University with reasonable promptness to avoid delay in the orderly progress of the work.
- C. The Owner shall forward all instructions to the Contractor. Verbal instructions will be confirmed in writing.
- D. The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein and especially those in respect to work by owner or by separate Contractors, payments and completion, and insurance.

1.03 CONTRACTOR'S RESPONSIBILITIES (JANUARY 2002)

- A. The Contractor shall supervise and direct the work, using his best skill and attention. He shall be solely responsible for all construction means, methods, techniques, sequences, and procedures and for coordinating

SECTION 1 - DEFINITIONS AND RESPONSIBILITIES

all portions of the work under the contract.

- B. The Contractor shall be responsible to the University 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 not be relieved from his obligations to perform the work in accordance with the contract documents either by the activities or duties of the architect in his administration of the contract, or by inspections, tests, or approvals required or performed by persons other than the Contractor.
- D. The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, and the contract documents, and shall not unreasonably encumber the site with any materials or equipment.
- E. Cutting and Patching of Work:
 - 1. The Contractor shall be responsible for all cutting, fitting, or patching that may be required to complete the work or to make its several parts fit together properly.
 - 2. The Contractor shall not damage or endanger any portion of the work or the work of the University 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 University or any separate Contractor except with the written consent of the University and of such separate Contractor. The Contractor shall not unreasonably withhold from the University or any separate Contractor his consent to cutting or otherwise altering the work.
- F. The Contractor shall forward all communications to the University through the architect.
- G. The Contractor shall perform all work in accordance with the lines, grades, typical cross sections, dimensions, and other data required by the contract documents 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

SECTION 1 - DEFINITIONS AND RESPONSIBILITIES

of the project in full compliance with the contract documents.

H. Indemnification:

1. To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the University and the State of Maryland 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 bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any one 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 the paragraph.
2. In any and all claims against the University or the State of Maryland or the architect or any of their agents or employees by any employee of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph 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 under worker's or workmen's compensation acts, disability benefit acts or other employee benefit acts.
3. The obligations of the Contractor under this paragraph shall not extend to the liability of the architect, his agents or employees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (2) the giving of or the failure to

SECTION 1 - DEFINITIONS AND RESPONSIBILITIES

give directions or instructions by the architect, his agents or employees providing such giving or failure to give is the primary cause of the injury or damage.

I. Record Logs

1. The Contractor shall maintain and update at least weekly, logs/records, including the following:
 - a. Proposed Change Order Log
 - b. Submittal Log
 - c. Request for Information (RFI) log
 - d. Minority and Disadvantaged Business Enterprises (MBE) Participation Plan
2. Logs shall be maintained in a format acceptable to the University and current (updated) copies shall be made available to the University on request. Updated logs shall be furnished to the University prior to any scheduled progress meeting.
3. Logs shall include key dates to enable analysis of compliance with required response times and to track, via aging reports, the status of outstanding items requiring attention.

END OF SECTION

SECTION 2 - CONTRACT DOCUMENTS

2.01 CONTRACT DOCUMENTS (JUNE 2002)

- A. The contract documents are complementary. That which is called for by any one shall be as binding as if called for by all.
1. Intent of the documents is to include all work necessary for proper completion of the project ready for continual efficient operation. It is not intended, however, to include any work not properly inferable.
 2. Clarification: Prior to submittal of a bid or proposal the Contractor should obtain clarification of all questions which may have arisen as to intent of the contract documents or any actual conflict between two or more items in the contract documents. Should the Contractor have failed to obtain such clarification, then the architect may direct that the work proceed by any method indicated, specified, or required by the contract documents in the interest of maintaining the best construction practice. Such direction by the architect shall not constitute the basis for a claim for extra cost by the Contractor. The Contractor acknowledges that he had the opportunity to request clarification prior to submitting his bid to the University and therefore agrees that he is not entitled to claim extra costs as a result of such clarification.
 3. Jargon: Work described in words that have a well-known technical or trade meaning shall be held to refer to such recognized standard use.
 4. Identification: The contract documents shall be signed in duplicate by the University and the Contractor. In case either party shall fail to sign them then the architect shall identify them.
- B. Drawings: The Contractor shall do no 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.

SECTION 2 - CONTRACT DOCUMENTS

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 at no increased cost to the University.

1. Copies Furnished: The University will furnish the Contractor without cost, three (3) copies of drawings and specifications. Additional copies may be obtained by the Contractor upon payment of the cost of reproduction of the drawings.
 2. Copies At The Site: The Contractor shall keep in the job site office a complete set of all drawings, specifications, shop drawings, schedules, etc., in good order and available to the architect and the University. Additionally, one set of all contract drawings should be maintained as as-built drawings. As-Built drawings shall be marked up by the Contractor in the field on a regular 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 Architect, in a condition satisfactory to him, as a condition precedent to final acceptance of work. Release of final retainage will be subject to receipt of the as-built drawings.
 3. Ownership: All documents remain the property of the University. They must not be used on other work and they shall be returned to the University upon completion of the work.
- C. Large Scale Detail Drawings: The architect shall furnish, when the University 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.

SECTION 2 - CONTRACT DOCUMENTS

- D. Dimensions: The Contractor shall carefully check all dimensions prior to execution of the particular work affected. Whenever inaccuracies or discrepancies are found, the Contractor shall consult the architect prior to any construction or demolition. Should any dimensions be missing, the architect will be consulted and supply them prior to execution of the work. 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 supercedes 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 will be allowed by reason of work requiring adjustments in order to accommodate the particular item of equipment.
- E. Whenever new work, building, addition, or portions thereof are not accurately located by plan dimensions, the architect will supply exact position prior to execution of the work.

2.02 SHOP DRAWINGS (JUNE 2002)

- A. After checking and verifying all field measurements and after complying with applicable procedures specified in the contract documents, Contractor shall submit to architect for review and approval, in accordance with the Contractor's schedule, shop drawings or other submittals which will bear a stamp or specific written indication that the Contractor has satisfied its responsibility under the contract documents with respect to the review of such submissions. Submittal of shop drawings shall be made at least twenty-one (21) days in advance of any required response from the Architect and/or the University in order to provide sufficient time for review. The data on the shop drawing will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to enable the architect and/or the University to review the information as required. These drawings shall be prepared in conformity with the best practice and standards for the trade concerned. Due regard shall be given to speed and economy of fabrication and erection.

SECTION 2 - CONTRACT DOCUMENTS

- B. All shop drawings must show the name of the project and the University contract number.
- C. Size of Drawings: All shop drawings and details submitted to the architect for approval shall be printed on sheets of the same size as the contract drawings prepared by the architect. When a standard of a fabricator is of such size to 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 University. Shop detail supplied on a sheet of letter size 8 1/2" x 11" is acceptable for schedules and small details.
- D. Items For Which Shop Drawings Will Be Required: Shop drawings will be required for all items which are specifically fabricated for the work or when the assembly of several items is required for a working unit. Shop drawings are required for all reinforcing and structural steel, specially made or cut masonry units, miscellaneous metal work, specially made millwork, plaster moulds, or mouldings, marble and slate, special rough hardware, and all heating, ventilating, plumbing, and electrical items requiring special fabrication, or detail connections including refrigeration, elevators, dumb waiters, laboratory equipment, ducts, etc.
- E. Copies Required: Contractor shall supply two (2) copies for the architect's file and two (2) copies for the University, in addition to such copies as the Contractor may desire to be returned for his own use.
- F. Examination and Approval: The architect will examine and return shop drawings with reasonable promptness, noting desired corrections or accepting or rejecting them.
- G. Field Dimensions and Conditions: The architect is not responsible for the check of dimensions or existing conditions in the field. This is the sole responsibility of the Contractor.
- H. Resubmission: When the architect notes desired corrections or rejects the drawings, the Contractor shall resubmit the drawings with corrective changes.
- I. Contractor's Responsibility: Unless the Contractor has, in writing, notified the architect to the contrary, at the time of submission, the University and the architect assume

SECTION 2 - CONTRACT DOCUMENTS

that the drawings are in conformity with the contract documents and do not involve any change in the contract price or any change which will alter the space within the structure or alter the nature of the building from that contemplated in the contract documents.

- J. Architect's Notations: Should the Contractor consider any rejection or architect's notation on the shop drawings to cause an increase in the cost of the work from that contemplated in the contract documents, then the Contractor shall desist from further action relative to the item he questions and shall notify the architect and the University in writing, within five (5) days of the additional or less cost involved. No work shall be executed until the entire matter is clarified and the Contractor is ordered by the University to proceed. Failure of the Contractor to serve written notice as above required shall constitute a waiver of any claim in relation thereto. Similarly, should the architect's notation or change involve less work than is covered by the contract drawings, the Contractor shall allow the University an equitable credit resulting from the change in the work.

END OF SECTION

SECTION 3 - SCOPE OF WORK

3.01 INTENT OF THE CONTRACT DOCUMENTS

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

3.02 GENERAL CONDITIONS CONTROLLING

In event of a conflict between these General Conditions and any other provision of the contract documents, these General Conditions shall prevail unless such other provision expressly provides to the contrary.

3.03 DIFFERING SITE CONDITIONS (USM - FEB 2000)

- A. The Contractor shall promptly, within five (5) days of observing such conditions and before such conditions are disturbed, notify the procurement officer in writing of: (1) subsurface or latent physical conditions at the site differing materially from those indicated in this contract, or (2) unknown physical conditions at the site of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this contract. The procurement officer shall promptly investigate the conditions, and if he finds that such conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the work under this contract, whether or not changed as a result of such conditions, an equitable adjustment shall be made and the contract modified in writing accordingly.
- B. No claim of the Contractor under this clause shall be allowed unless the Contractor has given the notice required in A. above; provided however, the time prescribed therefore may be extended by the University.
- C. No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this contract.

3.04 SITE INVESTIGATION (USM - FEB 2000)

The Contractor acknowledges that he has investigated and satisfied himself as to the conditions affecting the work, including but not restricted to those bearing upon transportation, disposal, handling and storage of materials,

SECTION 3 - SCOPE OF WORK

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

3.05 CONDITIONS AFFECTING THE WORK

The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the work and the general and local conditions which 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 expense to the University. The Contractor agrees not to place any credence in any understanding or representation concerning conditions made by any University employee or agents prior to the execution of this contract, unless such understanding or representation is expressly stated in the contract.

3.06 CHANGES (USM - FEB 2000)

- A. The procurement officer unilaterally 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 State-furnished facilities, equipment,

SECTION 3 - SCOPE OF WORK

materials, services, or site; or

4. Directing acceleration in the performance of the work.
- B. Any other written order or an oral order, including a direction, instruction, interpretation or determination, from the procurement officer that causes any such change, shall be treated as a change order under this clause, provided that the Contractor gives the procurement officer written notice stating the date, circumstances, and source of the order and that the Contractor regards the order as a change order.
 - C. Except as herein provided, no order, statement, or conduct of the procurement officer shall be treated as a change order under this clause or entitle the Contractor to an equitable adjustment hereunder.
 - D. Subject to paragraph (F), below, if any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this contract, whether or not changed by any order, an equitable adjustment shall be made and the contract modified in writing accordingly; provided, however, that except for requests based on defective specifications, no request for any change under B. above, shall be allowed for any costs incurred more than 20 days before the Contractor gives written notice as therein required; and provided further, that in the case of defective specifications for which the University is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with such defective specifications.
 - E. If the Contractor intends to request an equitable adjustment under this clause, he shall, within 30 days after receipt of a written change order under (1) above, or the furnishing of written notice under (A) above, submit to the procurement officer a written statement setting forth the general nature and monetary extent of request, unless this period is extended by the University. The statement requesting an equitable adjustment may be included in the notice under (B) above.
 - F. Each proposed contract modification that affects contract price shall be subject to the prior written approval of the procurement officer and other appropriate authorities and

SECTION 3 - SCOPE OF WORK

to prior certification of the appropriate fiscal authority of fund availability and the effect of the modification on the project budget or the total construction cost. If, according to the certification of the fiscal authority, the contract modification will cause an increase in cost that will exceed budgeted and available funds, the modification may not be made unless sufficient additional funds are made available or the scope of the project is adjusted to permit its completion within the project budget. The procurement officer will promptly notify the contractor if insufficient funds are available to proceed with a contract modification.

- G. No request by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this contract.

3.07 MODIFICATION OF CONTRACT PRICE (FEBRUARY 2007)

When changes in the work require adjustment of the Contract Price, such modification shall be accomplished as follows:

- A. The Contractor shall promptly submit to the University and to the Architect 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.
- B. 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 University or the Architect, proposals from suppliers or other supporting data required to substantiate costs shall be furnished.
- C. Modification of the Contract Price, when required, shall be determined as follows:
 - 1. When unit prices are stated in the Contract or have been subsequently agreed upon, by application of such unit prices.
 - 2. A lump sum price agreed upon by both the University and Contractor.

SECTION 3 - SCOPE OF WORK

3. If job conditions, or the extent or nature of the change, or if the University 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 3.08 FORCE ACCOUNT WORK. Under these conditions, the University shall have the right to issue an order to the Work to be performed and the Contractor shall proceed as directed under the provisions of Section 3.08.
4. If the change involves only a credit, 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 and the subcontractor will be allowed to retain a sum not in excess of three percent (3%) for handling.
5. Re-stocking fees for return of materials or supplies may be allowed on the basis of actual cost to the contractor or five percent (5%) of the original material cost, whichever is less. The University retains the option to purchase excess materials for disposal or use by the University.
6. If the change involves both a credit and debit, both sums shall be shown 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.
7. Unless otherwise specified, the allowable mark-up for combined overhead and profit for work performed by the Contractor with his own forces will be based upon the monetary value of the Work as follows:

Not to exceed fifteen percent(15%) combined overhead and profit.

This mark-up shall be applied to additive and deducted charges in the same manner.
8. For work performed by a subcontractor with his own forces, the percentages for combined overhead and profit for a subcontractor will be as stated in

SECTION 3 - SCOPE OF WORK

Paragraph 7 above. On work partly or solely performed by a subcontractor, the Contractor will be allowed eight percent (8%) of the total cost of the subcontractor's labor, materials, overhead and profit, including taxes and Insurance on labor required by statute. These mark-ups shall be applied to additive and deductive changes in the same manner.

9. The allowable mark-up described in Paragraphs 7 and 8 above shall be applied to work performed by the Contractor and first-tier subcontractors only.
10. For Construction Management at Risk/GMP Contracts, the Construction Manager shall not be entitled to overhead and profit on contract modifications except as allowed in Section V of the CM-RFP Document. The allowable percentages for overhead and profit for "contractor" and "subcontractor" in this section apply to "trade contractor" and "trade subcontractor" respectively.
11. On all changes in the Work, the Contractor will be reimbursed for his expenditures for Workmen's Compensation Insurance, Social Security Taxes and Unemployment Compensation Taxes covering persons actually engaged upon the Work. The actual increased cost of bonds and insurance will be reimbursed. Evidence must be furnished to support the reimbursement of additional bond expense. A fixed percentage mark-up for increased bond expense will not be acceptable. These adjustments shall be applied to additive and deductive changes in the same manner.
12. The cost of foremen and superintendents may be added only when the Change Order makes necessary the hiring of additional supervisory personnel or makes their employment for time additional to that required by the basic contract.
13. 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 University and the Contractor; the rate shall relate generally to the latest as filed by the Associated Equipment Distributors. Reimbursement on rental rates will not

SECTION 3 - SCOPE OF WORK

be authorized if Contractor owned equipment is used. Owned equipment will be reimbursed on the basis of actual cost.

14. The Contractor may be allowed additional time for performance of additional work. Requests for additional time must be supported by an analysis of the schedule, demonstrating that critical path work will be impacted by the additional work. No additional/extended overhead shall be provided, for performance of additional work, other than the mark-ups allowed in the preceding sections of 3.07 C. above.
 15. If the Contractor and the University cannot agree as to the extent the contract time shall be increased for extra work or the extent the Contract time shall be reduced for work omitted by the State, the increase or decrease, as the case may be, shall be determined by the Procurement Officer. Any disagreement with this decision may be appealed by the Contractor under the Disputes Clause.
 16. No order for change at any time or place shall in any manner or to any extent relieve the Contractor of any of his obligations under the contract.
 17. The Architect, with the concurrence from the University, shall have authority to make minor changes in the Work not involving extra cost, and not inconsistent with the purposes of the building. Otherwise, except in any emergency endangering life or property, no extra Work or changes to the Work shall be done unless authorized by the University prior to any such Work or changes to the Work being done.
- D. The allowable percentages of cost for overhead and profit are deemed to include, but not be limited to, the following:
1. Job supervision and field office expense required by the Contract, expenses for timekeepers, clerks and watchmen, cost of correspondence of any kind, and 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

SECTION 3 - SCOPE OF WORK

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.

3.08 FORCE ACCOUNT WORK (FEBRUARY 2007)

- A. When the Contractor is required to perform work as a result of additions or changes to the contract for which there are no applicable unit prices in the contract, the University and Contractor shall make every effort to come to an agreed upon price for the performance of such work. If an agreement cannot be reached, the University may require the Contractor to do such work on a force account basis to be compensated in accordance with the following:
1. Labor: For all labor and for foremen in direct charge of the specific operations, the Contractor shall receive the actual wages for each and every hour that said labor and foremen are actually engaged in such work. The Contractor shall receive the actual costs paid to, or in behalf of, workmen by reason of subsistence and travel allowances, health and welfare benefits, pension fund benefits or other benefits, when such amounts are required by collective bargaining agreement or other employment contract generally applicable to the classes of labor employed on the work.
 2. Materials: For materials accepted by the architect and used, the Contractor shall receive the actual cost of such materials delivered on the work, including transportation charges paid by him (exclusive of machinery rentals as hereinafter set forth).
 3. Equipment: For any machinery or special equipment (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

SECTION 3 - SCOPE OF WORK

of the work (excluding those required for rented equipment) and approved by the University, the Contractor shall receive the actual cost of such materials and supplies used.

5. Bond, Insurance, and Tax: For bond premiums, property damage, liability, and workmen's compensation insurance premiums unemployment insurance contributions, and social security taxes on the force account work, the Contractor and University shall determine an equitable percent to be applied against the labor cost (premium pay and fringes excluded).
6. Subcontractors: For work done solely by a subcontractor, the subcontractor's cost shall be determined as stipulated in 3.08, A.1 through 5. The allowable percentages for combined overhead and profit for the subcontractor shall be as stipulated hereinafter under Sub-paragraph 8. The Contractor shall be entitled to an allowance of eight percent (8%) 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.
8. Contractor's Overhead and Profit: The Contractor will be paid for a work done performed by his own forces a percentage thereof, as his overhead and profit, as follows:

Not to exceed fifteen (15%) combined overhead and profit.

- B. Compensation: The compensation as set forth above shall be received by the Contractor as payment in full for the work done on a force account basis. At the end of each day, the Contractor's representative and the University shall compare records of the cost of work as ordered on a force account basis.
- C. Statements: No payment will be made for work performed on a force account basis until the Contractor furnishes the architect duplicate itemized statements of the cost of such force account work detailed as to the following:

SECTION 3 - SCOPE OF WORK

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. Transportation of materials.
5. Cost of property damage, liability, and workmen's compensation insurance premiums, unemployment insurance contributions, and social security tax.
6. Payments of items under Paragraphs 3. and 4. shall be accompanied by original receipted invoices for materials used and transportation charges. If, however, the materials used in the force account work are not specifically 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 are claimed represent actual cost.

3.09 UNAUTHORIZED WORK

The Contractor shall not be paid for any work not authorized in writing by the University.

3.10 VARIATIONS IN ESTIMATED QUANTITIES (USM - FEB 2000)

Mandatory provision for only those construction contracts that contain estimated quantity items:

Where the quantity of a pay item in this contract is an estimated quantity and where the actual quantity of such pay item varies more than twenty-five percent (25%) above or below the estimated quantity stated in this contract, an equitable adjustment in the contract price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above one hundred twenty-five percent (125%) or below seventy-five percent (75%) of the estimated quantity. If the quantity variation is such as

SECTION 3 - SCOPE OF WORK

to cause an increase in the time necessary for completion, the procurement officer shall, upon receipt of a written request for an extension of time within ten (10) days from the beginning of the delay, or within a further period of time which may be granted by the procurement officer before the date of final settlement of the contract, ascertain the facts and make the adjustment for extending the completion date as in his judgment the findings justify.

(Note: Applies only to construction contracts that contain estimated quantity items.)

END OF SECTION

SECTION 4 - CONTROL OF THE WORK

4.01 AUTHORITY OF THE ARCHITECT (JUNE 2002)

- A. The Architect shall advise the University on matters involving interpretation of the plans and specifications. The Architect does not have authority to provide direction to the Contractor except as described herein. He will furnish with reasonable promptness such clarifications as he may deem necessary for the proper execution of the Work; such clarifications to be consistent with the contract documents and when in special instances he is authorized by the University so to act, he 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 documents, all of the architect's recommendations are subject to review and approval by the University.

4.02 CONFORMITY WITH CONTRACT REQUIREMENTS (JUNE 2002)

- A. All work performed and all materials furnished shall be in conformity with the contract requirements.
- B. In the event the University finds the materials or the finished product in which the materials are used or the work performed are not in complete conformity with the contract requirements and have resulted in an inferior or unsatisfactory product, the work or materials shall be removed and replaced or otherwise corrected by and at the expense of the Contractor.
- C. In the event the University finds materials or the finished product in which the materials are used are not in complete conformity with the contract requirements, but have resulted in a satisfactory product the University shall then make a determination if the work shall be accepted. In this event, the University will document the basis of acceptance by issuing a contract modification which will provide for an appropriate adjustment in the contract price.

4.03 ADJACENT WORK

- A. The University 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

SECTION 4 - CONTROL OF THE WORK

State agency. The Contractor shall cooperate fully with such other Contractors and carefully fit his own work to such other work as may be directed by the architect.

- B. The Contractor agrees that in event of dispute as to cooperation or coordination with adjacent Contractors the University will act as referee and decisions made by the University will be binding. The Contractor agrees to make no claims against the University or the State of Maryland for any inconvenience, delay, or loss experienced by him because of the presence and operations of other Contractors.

4.04 CONTROL BY THE CONTRACTOR

The Contractor shall constantly maintain efficient supervision of the Work, using his best skill and coordinating ability. He shall carefully study and compare all drawings, specifications, and other instructions, and check them against conditions existing or being constructed on the project. He shall at once report to the architect any error, inconsistency, or omission which he may discover.

4.05 COOPERATION WITH UTILITIES (JUNE 2002)

- A. It is understood and agreed that the Contractor has considered in his bid and his schedule all of the permanent and temporary utility appurtenances in their present or relocated positions, and that no additional compensation (time or cost) will be allowed for delays, inconvenience, or damage sustained by him due to any interference from the said utility appurtenances, the operation of moving them, or the making of new connections thereto if required by the contract documents.
- B. The Contractor shall have responsibility for notifying all affected utility companies prior to performing any work on their utilities and shall cooperate with them in achieving the desired results. All damage to utility facilities caused by the Contractor's operations shall be the responsibility of the Contractor.
- C. At points where the Contractor's operations are adjacent to properties of railway, telegraph, telephone, water, and power companies, or are adjacent to other property, damage to which might result in expense, loss, or inconvenience, work shall not be commenced until all arrangements

SECTION 4 - CONTROL OF THE WORK

necessary for the protection thereof have been made by the Contractor.

- D. The Contractor shall cooperate with the owners of any underground or overhead utility lines in their removal and rearrangement operations in order that these operations may progress in a reasonable manner, that duplication or rearrangement work may be reduced to a minimum and that services rendered by those parties will not be unnecessarily interrupted.
- E. In the event of interruption to utility services as a result of accidental breakage or as a result of being exposed or unsupported, the Contractor shall promptly notify the proper authority and shall cooperate with the said authority in the restoration of service. No work shall be undertaken around fire hydrants until provisions for continued service have been approved by the local fire authority.

4.06 AUTHORITY AND DUTIES OF UNIVERSITY INSPECTORS

- A. University inspectors shall be authorized to inspect all work done and all material furnished. Such inspection may extend to all or any part of the work and to the preparation, fabrication, or manufacture of the materials to be used. The inspector is not authorized to revoke, alter or waive any requirements of the contract, nor is he authorized to approve or accept any portion of the complete project. He is authorized to call the attention of the Contractor to any failure of the work or materials to conform to the contract. He is authorized to reject materials or suspend the work until any questions at issue can be referred to and decided by the architect. Inspectors shall perform their duties at such times and in such times and in such manner as will not unnecessarily impede progress on the contract.
- B. The inspector shall in no case act as foremen or perform other duties for the Contractor, nor interfere with the management of the work by the latter.
- C. Any advice which the inspector may give the Contractor shall not be construed as binding the University in any way or releasing the Contractor from fulfilling all of the terms of the contract. The duty of the inspector on the project is to observe the progress of the work and to

SECTION 4 - CONTROL OF THE WORK

report any deviations from the requirements of the contract documents; however, should the inspector fail to report any such deviation from the contract requirements, this does not release the Contractor from fulfilling all of the terms of the contract.

- D. Where there is disagreement between the Contractor and the inspector, the inspector will immediately direct the architect's attention to the issues of disagreement, and if the Contractor still refuses to make corrections, comply or suspend work, the architect will advise the owner who will prepare and deliver in writing to the Contractor, by mail or otherwise, a written order suspending the work and explaining the reason for such shutdown. As soon as the inspector is advised of the delivery of the shutdown order, the inspector shall immediately leave the site of the work and any work performed during the inspector's absence will not be accepted or paid for and may be required to be removed and disposed of at the Contractor's expense.

4.07 INSPECTION OF THE WORK

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

4.08 REMOVAL OF DEFECTIVE WORK

- A. All work and materials which do not conform to the requirements of the contract will be considered unacceptable.

SECTION 4 - CONTROL OF THE WORK

- B. Any unacceptable or defective work, whether the result of poor workmanship, use of defective materials, damage through carelessness or any other cause, found to exist shall be removed and replaced by work and materials which shall conform to the contract requirements or shall be remedied otherwise in an acceptable manner authorized by the architect.
- C. Upon failure on the part of the Contractor to comply promptly with any order of the architect, made under provisions of this section, the architect shall have authority to cause 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 any monies due or to become due the Contractor under this contract.

4.09 MAINTENANCE OF WORK DURING CONSTRUCTION (JUNE 2002)

- 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 until final acceptance shall be included in the base bid and the Contractor will not be paid any additional amount for such work.
- D. In the event that the Contractor's work is halted by the University or the architect for failure to comply with the

SECTION 4 - CONTROL OF THE WORK

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 damages to the work, either partially or totally completed, until final acceptance of the work, or (if applicable) final acceptance of relevant phases of the work by the University.

4.10 FAILURE TO MAINTAIN ENTIRE PROJECT

Failure on the part of the Contractor, at any time, to comply with the provisions of Paragraph 4.09 shall result in the University notifying the Contractor to comply with the required maintenance provisions. In the event that the Contractor fails to remedy unsatisfactory maintenance within twenty four (24) hours after receipt of such notice, the University will immediately proceed with adequate forces and equipment to maintain the project, and the entire cost of this maintenance will be deducted from monies due the Contractor.

4.11 UNIVERSITY'S RIGHT TO DO WORK

If the Contractor should neglect to prosecute the Work properly or fail to perform any provision of this contract, the University after three (3) days' written notice to the Contractor may make good such deficiencies and may deduct the cost thereof from the monies then or thereafter due the Contractor.

END OF SECTION

SECTION 5 - MATERIALS

5.01 GENERAL (JUNE 2002)

- A. All materials shall meet all quality requirements of the contract. In order to expedite the inspection and testing of materials, the Contractor shall notify the architect in writing of the sources from which he proposes to obtain all materials requiring approval, testing, inspection, or certification prior to incorporation into the work as soon possible after receipt of notification of award of the contract.
- B. Materials include all manufactured products and processed and unprocessed natural substances required for completion of the contract. The Contractor, in accepting the contract, is assumed to be thoroughly familiar with the materials required and their limitations as to use, and requirements for connection, setting, maintenance, and operation. Whenever an article, material, or equipment is specified and a fastening, furring, connection (including utility connections), access hole, flashing closure piece, bed, or accessory is normally considered essential to its installation in good quality construction, such shall be included as if fully specified. Nothing in these specifications shall be interpreted as authorizing any Work in any manner contrary to applicable laws, codes, or regulations.
- C. Approval: All materials are subject to the 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 material which is other than that included in the specifications.
- D. New Materials: Unless otherwise specified, all materials shall be new. Old materials must not be used as substitutes for new, regardless of condition or repair, unless approved in writing by the architect.
- E. Quality: Unless otherwise specified, all materials shall be of the best quality of the respective kinds.
- F. Samples: The Contractor shall furnish for approval all samples as directed. The materials used shall be the same as the approved samples.

SECTION 5 - MATERIALS

- G. Proof of Quality: The Contractor shall, if requested, furnish satisfactory evidence as to the kind and quality of materials either before or after installation. He shall pay for any tests or inspections called for in the specifications and such tests as may be deemed necessary for "substitutions", as set forth in paragraph 5.03 of these General Conditions.
- H. Standard Specifications: When no specification is cited and the quality, processing, composition, or method of installation of a thing is only generally referred to, then:
1. For items not otherwise specified below, the latest edition of the applicable American Society for Testing Materials specification is the applicable specification.
 2. For items generally considered as plumbing and those items requiring plumbing connections, the applicable portions of the latest edition of the International Building Code (IBC) are the applicable specification.
 3. For items generally considered as heating, refrigerating, air conditioning, or ventilating, the applicable portions of the latest edition of the A.S.H.R.A.E. Handbook published by the American Society of Heating, Refrigerating, and Air Conditioning Engineers, Inc., are the applicable specification.
 4. For items generally considered as site work, the applicable portions of the Maryland S.H.A. Standard Specifications are the applicable specification.
 5. For items generally considered as electrical, the applicable provisions of the latest edition of the National Electrical Code are the applicable specification.
 6. For items generally considered as fire protection, the applicable portions of the latest edition of the National Fire Protection Association Code are the applicable Specification.

SECTION 5 - MATERIALS

5.02 STORAGE AND HANDLING OF MATERIALS

- A. Materials shall be so stored as to assure the preservation of their quality and acceptability for the work. Stored materials, even though approved before storage, may again be inspected prior to their use in the work. Stored materials shall be located so as to facilitate their prompt inspection. Approved portions of the project site may be used for storage purpose 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.
- (1) 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.
- B. Materials shall be handled in such a manner as to preserve their quality and acceptability for the work.
- C. Contractor shall confine his tools and equipment and the storage of materials to the area delineated in the contract documents as the "Limit of Contract".
- D. He shall not load or permit any part of the structure to be loaded with a weight that will endanger the safety of the structure or any part thereof.
- E. Explosives:
1. Explosives shall not be stored upon any property

SECTION 5 - MATERIALS

belonging to the University.

2. Should the Contractor desire to use explosives on any project he shall first receive written approval of the University. The approval will stipulate time, place, and quantity to be used and manner of use.
4. 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, regulations, and restrictions in relation to the use of explosives.

F. Paints:

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

5.03 SUBSTITUTIONS

- A. Should the Contractor desire to substitute another material for one or more specified by name he shall apply, in writing, for such permission and state the credit or extra cost involved by the use of such material. The architect will not consider the substitution of any material different in type or construction methods unless such substitution effects a benefit to the University.
- B. Contractor shall not submit for approval materials other than those specified without a written statement that such a substitution is proposed. Approval of a "substitute material", by architect when the Contractor has not designated such material as a "substitute", shall not be binding on the University, nor release Contractor from any obligations of his contract unless the University approves such "substitution" in writing.

SECTION 5 - MATERIALS

5.04 APPROVED EQUALS

The terms "Or Equal", "Equal", "Approved Equal" are used as synonyms throughout the specifications. They are implied in reference to all named manufacturers in the specifications unless otherwise stated. Only materials fully equal in all details will be considered. The University is the final judge as to equality. The University does not represent or warrant under any circumstances, including by use of the words "or equal", that there exists an equal to any item specified.

5.05 CONTRACTOR'S OPTIONS

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, all of the units required for, and used in, the project must be the same in material and manufacture.

5.06 TESTS

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

SECTION 5 - MATERIALS

5.07 BUY AMERICAN STEEL

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

5.08 SALES TAX

Suppliers, equipment and materials purchased in connection with the project/contract will **not** be tax exempt. The Contractor must include all applicable taxes in the bid response.

END OF SECTION

SECTION 6 - LEGAL RELATIONS AND RESPONSIBILITIES

6.01 LAWS TO BE OBSERVED

A. PRE-EXISTING REGULATIONS (USM - FEB 2000)

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 USM Procurement Policies and Procedures in effect on the date of execution of this Contract are applicable to this Contract.

- B. The Contractor shall keep fully informed of all Federal, State, and Local laws, ordinances, and regulations and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any manner affect those engaged or employed on the Work, or in which any way affect the conduct of the Work. He shall at all times observe and comply with all such laws, ordinances, regulations, orders, and decrees. He shall protect and indemnify the University and its representatives against such claim or liability arising from or based on the violation of any law, ordinance, regulation, order, or decree, whether by himself or his employees or subcontractors.
- C. The Contractor must comply with the provisions of the Workmen's Compensation Act and Federal, State, and City laws relating to hours of labor.
- D. The laws of Maryland shall govern the interpretation and enforcement at this contract.
- E. The Contractor shall give all notices and comply with all State and Federal laws, ordinances, rules, and regulations bearing on the conduct of the Work as drawn and specified.
- F. If the Contractor observes that the drawings and specifications are at variance with any law, he shall promptly notify the architect, 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, he shall bear all costs arising therefrom.

6.02 PERMITS AND LICENSES (JUNE 2002)

- A. The University will file with the appropriate local authority, drawings and specifications and any pertinent data reasonably proper for their information. The

SECTION 6 - LEGAL RELATIONS AND RESPONSIBILITIES

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 documents and he shall include the cost of said fees in his base bid or proposal.

- B. The Contractor must be licensed as required by the Laws of the State of Maryland (Art.56, Sec. 180, Annotated Code of Maryland) and shall provide a copy of its current license to the University with its bid or proposal.

6.03 PATENTED DEVICES, MATERIALS, AND PROCESSES

- A. The Contractor shall pay for all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall save the State harmless from loss on account thereof.
- B. When a particular process or the product of a particular manufacturer or manufacturers is specified that may be an infringement of a patent, the Contractor will at his option: (1) procure for the State the right to use the applicable process or product; (2) replace the process or product with a non-infringing process or product complying with the specifications; or (3) modify the process or product so it becomes non-infringing and performs in a similar manner to the original item.

6.04 LAND, AIR, AND WATER POLLUTION

- A. The Contractor shall incorporate all permanent erosion control features into the work at the earliest practicable time. Temporary pollution control measures will be used to correct conditions that develop during construction that were not foreseen during design, that are needed prior to installation of permanent pollution control features, or that are needed temporarily to control erosion that develops during normal construction practices, but are not associated with permanent control features on the project.
- B. 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 University 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.

SECTION 6 - LEGAL RELATIONS AND RESPONSIBILITIES

- C. In case of failure on the part of the Contractor to control erosion pollution, and/or siltation, the University reserves the right to employ outside assistance or to use its own forces to provide the necessary corrective measures. All expenses incurred by the University in the performance of such duties for the Contractor shall be withheld from monies becoming due to the Contractor.
- D. The Contractor must submit evidence to the University that the governing Federal, State, and Local Air Pollution criteria will be, and were, met. This evidence and related documents will be retained by the University 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, the procurement officer, at the request of the Contractor, shall determine whether the order is due in any part to the acts or omissions of the Contractor required. If it is determined that the order is due in any part to acts or omissions of the Contractor required under the terms of this contract, such suspension, delay, or interruption shall be considered as if ordered by the Procurement Officer in the administration of this contract under the terms of the "Suspension of Work" clause of this contract. The period of such suspension, delay, or interruption shall be considered reasonable, and an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) as provided in that clause, subject to all the provisions thereof.
- F. The term "environmental litigation", as used herein, means a lawsuit alleging that the work will have an adverse effect on the environment or that the University has not duly considered, either substantively or procedurally, the effect of the work on the environment.

6.05 INSURANCE - CONSTRUCTION CONTRACTS (NOVEMBER 2013)

- A. General Requirements:
 - 1. Insurance required to protect the Contractor and the University from liability and all insurance required in accordance with applicable laws and regulations is addressed herein. These provisions apply to all

SECTION 6 - LEGAL RELATIONS AND RESPONSIBILITIES

delivery methods (e.g. General Contracting, Construction Management at Risk and Design-Build) except as noted herein.

2. The amount of insurance coverage specified herein shall be the minimum amount of insurance available to satisfy claims. The Contractor and his subcontractors (as applicable) shall purchase and maintain such insurance with limits of liability as specified herein; or as specified by the Procurement Officer for the project; or as required by law; whichever is greater.
3. A policy which allows the costs associated with investigating, management or defense of any claim, or any other cost incurred by the insured or the insurance carrier, to be deducted from the policy limits is not acceptable.
4. Required insurance shall be purchased and maintained with a company or companies lawfully authorized to do business in the State of Maryland. Insurance companies providing coverage herein shall have an AM Best rating of A-VII or better. All policies, except Professional Liability, shall name the University of Maryland, College Park as "Additional Insured".
5. 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.
6. Required insurance policies shall be endorsed to provide sixty (60) days (ten(10) days if cancelled due to non-payment) prior written notice by certified mail of any material change, cancellation or non-renewal to:

University of Maryland
Department of Procurement and Supply
Construction & Facilities Procurement
0410 Service Building
College Park, MD 20742

7. Prior to commencement of the work, proof of the

SECTION 6 - LEGAL RELATIONS AND RESPONSIBILITIES

required insurance and endorsements shall be provided to the Procurement Officer by submission of certificates of insurance. Updated certificates shall be furnished at least annually and upon renewal of policies. Certificates shall cite the contract number and project title and location. The University may upon written request, demand full certified copies of the insurance policies required under this contract.

8. The required coverage shall be maintained until final completion of the project as evidenced by final payment to the Contractor, with the exception of Builder's Risk coverage which shall cease upon the University's written determination of the date of Substantial Completion.
9. The Contractor shall defend, indemnify and hold harmless the University System of Maryland and the University of Maryland, College Park and their respective officers, employees and agents from any and all claims, liability, losses and causes of action which may arise out of the performance by the Contractor, its employees or agents, of the work covered by this contract.

B. Coverage Required:

1. Insurance coverage shall include:
 - a. Commercial General Liability ("CGL"): Coverage for general liability claims arising from operations of the Contractor, subcontractors and suppliers, with terms and conditions of the CGL coverage to be provided through the use of ISO Coverage Form CG-00-01-1001 or its equivalent, and shall include at minimum the following:
 1. \$2,000,000 Per Occurrence Limit;
 2. \$4,000,000 General Aggregate Limit;
 3. \$4,000,000 Products/Completed Operations Limit;
 4. Additional Insureds endorsement ISO CG 20 10 and CG 20 37 or their equivalents. As Additional Insured, The University of Maryland, College Park shall have coverage for liability arising out of the

SECTION 6 - LEGAL RELATIONS AND RESPONSIBILITIES

Contractors' ongoing and completed operations performed for the University.

5. Waiver of Subrogation in favor of the University of Maryland, College Park.
 6. Policy to be primary and noncontributory as respects the coverage afforded the University of Maryland, College Park.
 7. No exclusion for X, C and U hazards;
 8. No exclusion for third party action over claims;
 9. No exclusion for punitive damages;
 10. Blanket Written Contractual Liability covering all Indemnity;
 11. CGL coverage written on an occurrence form;
 12. If the project encroaches within 50 feet of the centerline of a railroad, the policy shall include ISO Endorsement CG 24 17 or its equivalent.
- b. Automobile Liability: Coverage for third party legal liability claims arising from bodily injury and/or damage to the property of others from the ownership, maintenance or use of any motor vehicle, both on-site and off-site. Coverage shall include all owned, hired and non-owned vehicles for claims arising out of their use or operation. The minimum limits of such coverage shall be:
1. \$1,000,000 Combined Single Limit;
 2. Coverage shall provide a Waiver of Subrogation in favor of the University of Maryland, College Park;
 3. Coverage shall name the University of Maryland, College Park as Additional Insured;
 4. If the project encroaches with 50-feet of the centerline of a railroad, Coverage shall include endorsement ISO CA 20 70 or its equivalent.
- c. Excess Liability / Umbrella Liability: Coverage for third party legal liability claims against the Contractor that exceed the per occurrence or general aggregate of these underlying policies: General Liability, Employers Liability and Automobile Liability. The minimum limits for such coverage are

SECTION 6 - LEGAL RELATIONS AND RESPONSIBILITIES

assigned below, based on the value of the specific agreement under which the Contractor is employed by the University:

<u>Contract Value</u>	<u>Excess / Umbrella Limit</u>
Less than \$10,000,000	\$ 5,000,000 per Occurrence
\$10,000,001 to \$25,000,000	\$10,000,000 per Occurrence
\$25,000,001 to \$50,000,000	\$25,000,000 per Occurrence
Over \$50,000,000	\$50,000,000 per Occurrence or as specified by the Procurement Officer.

1. The University of Maryland, College Park shall be named an Additional Insured;
 2. Waiver of Subrogation in favor of the University of Maryland, College Park;
 3. Policy to be primary and noncontributory as respects the coverage afforded the University of Maryland, College Park.
- d. Workers' Compensation: Coverage for claims arising from Workers' Compensation statutes or other Employers Liability or third party legal liability claims arising from bodily injury, disease, or death of Contractor's employees. Contractor shall provide Workers' Compensation coverage for all employees and require their subcontractors to provide Workers' Compensation in accordance with statutory requirements of the jurisdiction in which the work is being performed. Waiver of Subrogation in favor of the University of Maryland, College Park is required for Part B: Employers Liability. The minimum limits of such coverage shall be:
- a) Part A: Statutory
 - b) Part B: Employers Liability
 - \$1,000,000 Each Accident
 - \$1,000,000 Disease, Each Employee
 - \$1,000,000 Disease, Policy Limit
- e. Builder's Risk: The Contractor shall purchase and maintain property insurance (Builders' 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

SECTION 6 - LEGAL RELATIONS AND RESPONSIBILITIES

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 University, the Contractor and all subcontractors as their interest may appear.

1. Coverage sub-limits for earthquake, flood and windstorm damage shall not apply;
2. Coverage shall apply to materials in transit and in storage at off-site locations;
3. There shall be no exclusion for damage to existing property;
4. There shall be no exclusion for hot testing of any kind;
5. Terrorism coverage (TRIA) shall be included;
6. The Contractor is solely responsible for any deductibles required by the Builders Risk policy. The deductible shall not be greater than \$25,000.
7. The Contractor shall include with the property insurance or otherwise purchase and maintain boiler and machinery insurance, which shall specifically cover such insured objects during installation and until final acceptance by the University. This insurance shall include the interest of the University, Contractor and subcontractors (at any tier), all of which shall be named insureds.
8. Partial use or partial occupancy shall not commence until the companies providing property have consented to such partial use or occupancy by endorsement or otherwise. The University and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

SECTION 6 - LEGAL RELATIONS AND RESPONSIBILITIES

- f. Builders Risk - Optional Coverage: The University at its option and expense may require the Contractor to purchase and maintain coverage for loss of use of the University's property due to fire or hazards, however caused. Coverage shall include soft costs such as swing space rental costs, housing costs, storage costs or other costs incurred by the University.
- g. Contractors' Property: The Contractor, including its employees or agents, assumes sole responsibility for its own rented, leased or owned equipment and tools, including all property. The University, its employees and agents are not obligated to the loss of such property. A Waiver of Subrogation is required in favor of the University of Maryland, College Park.
- h. Optional Coverages: The following optional coverages may apply. If required, these provisions will be specified in the solicitation by the Procurement Officer:
- 1) Pollution or Environmental Liability coverage.
 - 2) Projects in/around navigable waterways require United States Longshore and Harbor Workers USL&H) coverage endorsement WC 00 01 06 A or its equivalent.
 - 3) Jones Act coverage endorsement WC 00 02 01 A and WC 00 02 03 or their equivalents.
- i. Professional Liability: (Applies to Design-Build (DB) contracts only)

The Design-Build Contractor ("DBC") shall obtain and maintain from and after the date of the Contract the following insurance: Professional Liability ("PL") Insurance on an occurrence basis to protect the University against liability for errors and omissions in design work performed by the DBC or any member of the DBC's team providing professional architectural and engineering design services. Coverage limits are required as follows (unless otherwise specified by the Procurement Officer):

SECTION 6 - LEGAL RELATIONS AND RESPONSIBILITIES

<u>Project Construction Cost</u>	<u>PL Coverage Required</u>
Under \$10,000,000	\$2,000,000 per occurrence
\$10,000,001-\$50,000,000	\$5,000,000 per occurrence
\$50,000,001-\$150,000,000	\$10,000,000 per occurrence
Over \$150,000,001	\$20,000,000 per occurrence

1. The DBC shall furnish evidence demonstrating the limits of coverage stated above are available and unencumbered by previous losses on the policy. If during execution of the contract, the available limits in aggregate fall below 50% the DBC shall notify the University, and take action to restore the limits to the required level.
2. Deductibles shall be the responsibility of the DBC and may not exceed \$25,000 without approval of the University.
3. There shall be no exclusion for environmental claims arising out of the performance of professional services.
4. Firms performing work under a Joint Venture agreement must furnish evidence in the form of an endorsement by the insurer the Joint Venture is insured under the policy.
5. If the policy is written on a Claims Made basis, the insurance must be maintained for a period of no less than 10 years after the project is completed, and the retroactive date must be listed as prior to, or on the date the contract is executed. If the policy is to be cancelled, non-renewed or not replaced prior to the ten (10) years, an Extended Reporting Period (Tail) must be purchased to contemplate the exposures past the cancellation date.

6.06 ASSIGNMENTS (JUNE 2002)

The Contractor shall not assign the contract. Unless otherwise specified in this Agreement, or otherwise authorized in writing by the University, the Contractor shall not sublet it as a whole or sublet it by trades or the portions in any amount of more than eighty five percent (85%) of the monetary value of the contract. The remaining fifteen (15%) shall be executed by the Contractor with labor and materials directly purchased and paid for by the Contractor. Costs of insurance, overhead, supervision, etc., may not be claimed as a portion of the fifteen percent (15%) mentioned above. The execution of the work by a subsidiary of the Contractor may or may not be considered direct employment at the

SECTION 6 - LEGAL RELATIONS AND RESPONSIBILITIES

discretion of the University. The Contractor shall not assign any monies due or to become due to him hereunder, without the previous written consent of the University.

6.07 SEPARATE CONTRACTS

- A. The University reserves the right to let other contracts in connection with this Work. 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.
- B. If any part of the Contractor's Work depends on proper execution or results upon the Work of any other Contractor, the Contractor shall inspect and promptly report to the architect 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 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 (JUNE 2002)

- A. In carrying out any of the provisions of the contract, or in exercising any power or authority granted to them by or within the scope of the contract, there shall be no liability upon the Procurement Officer or other authorized representatives of the University, it being understood that in all such matters they act solely as agents and representatives of the University.
- B. The University may terminate the rights of the Contractor to proceed under this contract if it is found by the Procurement Officer that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the University with a view toward securing a contract or securing

SECTION 6 - LEGAL RELATIONS AND RESPONSIBILITIES

favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract; the facts upon which the Procurement Officer makes such findings may be reviewed in any competent court.

- C. In the event this contract is terminated as provided in paragraph B hereof, the University shall be entitled (1) to pursue the same remedies against the Contractor as it could pursue in the event of a default of the contract by the Contractor, and (2) in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Procurement Officer) which shall be not less than three nor more than ten times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee.
- D. The rights and remedies of the University provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.
- E. Conflict of Interest: No employee of the University or the State of Maryland or any department, commission, agency, or branch thereof, whose duties as such employee include matters relating to or affecting the subject matter of this contract, shall, while such employee, become or be an employee of the party or parties hereby contracting with the said University or the State of Maryland or any department, commission, agency, or branch thereof.

6.09 NO WAIVER OF LEGAL RIGHTS

- A. The University and the State of Maryland shall not be precluded or estopped by any measurement, estimate, or certificate made either before or after the completion and acceptance of the Work and payment therefor, from showing the true amount and character of the Work performed and materials furnished by the Contractor, or from showing that any such measurement, estimate, or certificate is untrue or is incorrectly made, or from showing that the Work or materials do not in fact conform to the requirements of the contract. The University and the State of Maryland shall not be precluded or estopped, notwithstanding any such measurement, estimate, or certificate, and payment from recovering from the Contractor or his sureties, or both, such damage as it may sustain by reason of his failure to

SECTION 6 - LEGAL RELATIONS AND RESPONSIBILITIES

comply with the terms of the contract. Neither the acceptance by the University or any representative of the University, nor any payment for or acceptance of the whole or any part of the work, nor any extension of time, nor any possession taken by the University shall operate as a waiver of any portion of the contract or of any power herein reserved, or of any right to damages.

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

6.10 CONTINGENT FEE PROHIBITION (USM - FEB 2000)

The contractor, architect, or engineer (as applicable) warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the contractor, 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 or agent, any fee or any other consideration contingent on the making of this agreement.

6.11 ASSIGNMENT OF ANTITRUST CLAIMS

The Contractor sells, transfers, and assigns to the University and 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 him or the University 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.

6.12 FEDERAL PARTICIPATION

When the United States Government pays all or any portion of the cost of a project, the work shall be subject to the inspection of the appropriate Federal Agency. Such inspection shall in no sense make the Federal Government a party to this contract, and will not interfere, in any way, with the rights of either party hereunder.

SECTION 6 - LEGAL RELATIONS AND RESPONSIBILITIES

6.13 DISPUTES (USM - FEB 2000)

- A. This contract is subject to the USM Procurement Policies and Procedures.
- B. Except as otherwise provided in this contract or by law, all disputes arising under or as a result of a breach of this contract that are not disposed of by mutual agreement shall be resolved in accordance with this clause.
- C. As used herein, claim means a written demand or assertion by one of the parties seeking, as a legal right, the payment of money, adjustment or interpretation of contract terms, or other relief, arising under or relating to this contract. A voucher, invoice, or request for payment that is not in dispute when submitted is not a claim under this clause. However, if the submission subsequently is not acted upon in a reasonable time, or is disputed as to liability or amount, it may be converted to a claim for the purpose of this clause.
- D. Within thirty (30) days after contractor knows or should have known of the basis for a claim relating to this contract, contractor shall file a written notice of claim with the procurement officer.
- E. Contemporaneously with, or within 30 days after, the filing of a notice of claim, contractor shall submit the written claim to the procurement officer. If contractor so requests, the procurement officer, on conditions the procurement officer deems satisfactory to the unit, may extend the time in which contractor must submit the claim. An example of when a procurement officer may grant an extension includes situations in which the procurement officer finds that a contemporaneous or timely cost quantification following the filing of the notice of claim is impossible or impractical.
- F. The claim shall set forth all the facts surrounding the controversy. Contractor, at the discretion of the procurement officer, may be afforded an opportunity to be heard and to offer evidence in support of the claim.
- G. The procurement officer shall mail or deliver written notification of the final decision within:
 - (1) Ninety (90) days after the procurement officer

SECTION 6 - LEGAL RELATIONS AND RESPONSIBILITIES

receives the claim if the claim is an amount for which the Appeals Board accelerated procedure, set forth in COMAR 21.10.06.12, may be used;

- (2) One hundred eighty (180) days after the procurement officer receives the claim for a claim not covered under 'G(1) of this regulation; or
 - (3) A longer period that the procurement officer and contractor agree to in writing.
- H. The final decision may award a contract claim only for those expenses incurred not more than twenty (20) days before contractor was initially required to have filed the notice of claim.
- I. The procurement officer's decision is the final action of the University. If the procurement officer fails to render a final decision within the time required, contractor may deem the failure to be a final decision not to pay the claim.
- J. If the final decision grants the claim in part and denies the claim in part, the University shall pay contractor the undisputed amount. Payment of the partial claim is not an admission of liability by the University and does not preclude the University from recovering the amount paid if a subsequent determination modifies the final decision.
- K. Contractor may file a written appeal with the Maryland State Board of Contract Appeals within thirty (30) days of receipt of notice of the decision.
- L. Pending resolution of a claim, contractor shall proceed diligently with the performance of the contract in accordance with the procurement officer's decision.

6.14 CLAIMS (JUNE 2002)

- A. If the Contractor claims that any instructions by drawings or otherwise involve or may involve, extra cost under this contract, he shall give the University written notice thereof within fifteen (15) calendar days after receipt of such instructions or occurrence of an emergency. No claim shall be valid unless so made.
- B. Under no circumstances will overhead or profit be permitted

SECTION 6 - LEGAL RELATIONS AND RESPONSIBILITIES

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, omission for which the Contractor is responsible.

- C. No claim for extra costs will be granted which includes cost of delays or work stoppage due to strikes lockouts, fire, unusually severe weather, avoidable casualties, or damage or delay in transportation for which the University or its agents are responsible.
- D. No claim for damage caused by a delay will be allowed unless, within five (5) days of the act or omission causing the delay, the Contractor notifies the University of the existence of the delay.
- E. No payment will be made for increased payment or performance bond premiums as a result of any act or omission by the University which results in a claim.

6.15 PERFORMANCE AND PAYMENT BONDS (USM - FEB 2000)

- A. Performance and Payment Bonds shall be furnished in the form specified and provided by the University with the solicitation.
- B. Performance and Payment Bonds are mandatory for all construction contracts exceeding One Hundred Thousand Dollars (\$100,000) and may be required for contracts of lesser value if so stated in the solicitation.
- C. Performance and Payment Bonds shall be furnished by the Contractor in an amount equal to one-hundred percent (100%) of the total contract amount, including any contract modifications issued.

6.16 FINANCIAL DISCLOSURE (USM - FEB 2000)

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

SECTION 6 - LEGAL RELATIONS AND RESPONSIBILITIES

information to include disclosure of beneficial ownership of the business.

6.17 POLITICAL CONTRIBUTION DISCLOSURE (USM - FEB 2000)

The Contractor shall comply with Article 33, Sections 30-1 through 30-4 of the Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State, a county, or an incorporated municipality, or their agencies, during a calendar year in which the person receives in the aggregate \$100,000 or more, shall file with the State Administrative Board of Election Laws a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Administrative Board of Election Laws:

- a. before a purchase or execution of a lease or contract by the University, a county, an incorporated municipality, or their agencies, and shall cover the preceding two calendar years; and
- b. if the contribution is made after the execution of a lease contract, then twice a year, throughout the contract term, on 1) February 5, to cover the 6-month period ending January 31; and (2) August 5, to cover the 6-month period ending July 31.

6.18 RETENTION OF RECORDS (USM - FEB 2000)

The Contractor shall retain and maintain all records and documents relating to this Contract for three years after final payment by the University hereunder or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the University, including the procurement officer or designee, at all reasonable times.

6.19 COMPLIANCE WITH LAWS (USM - FEB 2000)

The Contractor hereby represents and warrants that:

- a. It is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
- b. It is not in arrears with respect to the payment of any

SECTION 6 - LEGAL RELATIONS AND RESPONSIBILITIES

moneys 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. It shall comply with all federal, State, and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and
- d. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

6.20 COST AND PRICE CERTIFICATION (USM - FEB 2000)

(Note: Mandatory provision for all contracts and contract modifications (excluding real property leases and architectural services or engineering services contracts if the contract or modification exceeds \$100,000 or a smaller amount determined by the procurement officer under State Finance and Procurement Article, Section 13-220.)

The Contractor by submitting cost or price information certifies that, to the best of its knowledge, the information submitted is accurate, complete, and current as of a mutually determined specified date prior to the conclusion of any price discussions or negotiations for:

- a. A negotiated contract, if the total contract price is expected to exceed \$100,000, or a smaller amount set by the procurement officer; or
- b. A change order or contract modification, expected to exceed \$100,000, or a smaller amount set by the procurement officer.
- c. 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 the date agreed upon between the parties, was inaccurate, incomplete, or not current.

6.21 ENTIRE AGREEMENT

- A. The contract constitutes the entire agreement between the

SECTION 6 - LEGAL RELATIONS AND RESPONSIBILITIES

parties hereto and other communications between the parties prior to the execution of the Contract, whether written or oral, with reference to the subject matter of the contract, are superseded by the agreements contained herein. The Contract may not be modified, amended, changed or altered except by written instrument executed by the parties hereto and approved by the Procurement Officer.

- B. Except as otherwise provided by law, any action permitted or required under the contract documents to be taken by the procurement officer, may be taken by his duly authorized representative.

END OF SECTION

SECTION 7 - PROSECUTION AND PROGRESS OF THE WORK

7.01 NOTICE TO PROCEED

After the contract has been executed, the University will issue to the Contractor a "Notice to Proceed" and this notice will stipulate the date on or before which the Contractor is expected to begin 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.

7.02 PROJECT SIGNS AND CONSTRUCTION OFFICE

- A. General: The University shall provide one project sign for each major entrance to the project. The Contractor shall be responsible for transportation of the sign from its place of origin, placement and maintenance of the signs.
- B. Installation: Posts for sign(s) shall be supplied by the Contractor and made of 4 x 6 inch construction grade lumber, pressure-preservative treated, ten feet (10') 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 (3'- 6") with the bottom of the signs two feet six inches (2'-6") above the ground.
- C. Removal: The University shall be responsible for removing the sign(s) after final acceptance of the work.
- D. Construction Office: Contractor shall provide and maintain a suitable field office of adequate size to provide office space for use of representatives of the State and inspection agency furnished by the State and for conducting progress meetings. A table and chairs and/or benches shall be provided to accommodate a progress meeting of approximately fifteen people, or as directed by the University. Each office shall be provided with heat, electric lighting, air-conditioning, toilet and lavatory, telephone, file racks for storage of drawings, storage shelves, and desk. The Contractor shall also furnish janitor service to keep the office clean. On projects over \$1,000,000 a separate office shall be furnished by the Contractor for his own use with a touchtone telephone, FAX

SECTION 7 - PROSECUTION AND PROGRESS OF THE WORK

and photocopying machines.

7.03 PROSECUTION-OF-THE-WORK

- A. All time limits in the contract documents are of the essence of the contract.
- B. The date of commencement of the work is the date established in a notice to proceed signed by the Procurement Officer.
- C. The Contractor agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by it for any delays or hindrances from any Contractor cause whatsoever during the progress of any portion of the work specified in this Contract.
- D. Time extension will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another Contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.
- E. It is expressly understood and agreed by and between the Contractor and the University that the time for the completion of the work is a reasonable time for completion of the same, taking into consideration the average climatic range and the usual business conditions prevailing in the locality of the project.

7.04 PUBLIC CONVENIENCE AND SAFETY

The Contractor at all times shall conduct the work in such a manner as to create the least practicable obstruction to all forms of traffic. The convenience of the general public, tenants, and of the residents along and/or adjacent to the improvement shall be respected. Material stored upon the project shall be placed so as to cause a minimum of obstruction to the public. Sprinkling shall be performed at the direction of the Procurement Officer. The Contractor shall, unless otherwise

SECTION 7 - PROSECUTION AND PROGRESS OF THE WORK

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 fifteen (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 the work under construction shall not be obstructed more than is absolutely necessary.

7.05 BARRICADES AND WARNING SIGNS

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

SECTION 7 - PROSECUTION AND PROGRESS OF THE WORK

7.06 PRESERVATION PROTECTION AND RESTORATION OF PROPERTY

- A. The Contractor shall continuously maintain adequate protection of all his work from damage and shall protect the University 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 documents or caused by agents or employees of the University. He shall adequately protect adjacent property as provided by law and the contract documents.
- B. The Contractor shall box all trees which are liable to injury by the moving, storing, and working up of materials. He shall use no tree for any attachment or anchorage.
- 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 Procurement Officer to do work in an emergency, the Contractor shall do the work and will be paid compensation as outlined in Section 3.06.
- E. No such extension shall be made for delay occurring more than five (5) days before claim therefor is made in writing to the architect. In the case of continuing cause of delay, only one claim is necessary.

7.07 PROGRESS SCHEDULE (JANUARY 2002)

- A. The Contractor shall prepare a construction schedule (Critical Path Method) in accordance with the requirements of the Specifications. If no additional specification is included, the schedule shall be prepared using software acceptable to the University and shall comply with all requirements specified in this section.

SECTION 7 - PROSECUTION AND PROGRESS OF THE WORK

- B. The Contractor shall submit a Preliminary Construction Schedule in the specified format and covering the first three (3) months of work, within fourteen (14) calendar days of the date established for commencement for the work. A Detailed Construction Schedule shall be submitted within the timeframe required in the Specifications, or prior to the submittal of the first invoice, whichever is earlier.
- C. The construction schedule shall be coordinated with the schedule of values and the schedule of submittals.
- D. The Contractor shall submit monthly updates of the construction schedule with each application for payment.
- E. If the Contractor fails to prepare and submit to the University a schedule before the existence of a delay, then no claim for extra cost due to delay in the work shall be recognized or asserted.
- F. Using the cost assigned to each activity of the Detailed Construction Schedule, the Contractor shall develop a cash flow analysis in graphic form depicting estimated cash draw down in aggregate by month, over the life of the project. The cash flow projections shall be updated every month to show a forecast of remaining payments and actual payments to date and submitted with the updated Detailed Construction Schedule.

7.08 PROGRESS PHOTOGRAPHS (January 2002)

- A. The Contractor shall submit two (2) sets of photographs monthly to the University, taken on or about the first of each month showing the status of the Work. Photos may be developed via processed film or from digital photography. The photos shall be taken on or about the same day of each month, from at least six (6) different locations. Locations shall be coordinated with the University.
- B. Photographs shall represent actual conditions in the field and shall not be altered in any way. A date/time stamp shall be imprinted on the face of each photograph.
- C. The Contractor shall photograph all disputed items of work and provide copies to the University if requested.

SECTION 7 - PROSECUTION AND PROGRESS OF THE WORK

7.09 SUSPENSION OF WORK (USM - FEB 2000)

- A. The Procurement Officer unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work for a period of time as he may determine to be appropriate for the convenience of the University. The Contractor shall take reasonable and appropriate action during the period of suspension of work to minimize expenses incurred as a result of the suspension order.

- B. If the performance of all or any part of the work is for an unreasonable period of time, suspended, delayed, or interrupted by an act of the Procurement Officer in the administration of the contract, or by his failure to act within the time specified in this contract (or if no time is specified, within a reasonable time), an equitable adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by an unreasonable suspension, delay, or interruptions, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruptions 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.

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

7.10 TERMINATION FOR CONVENIENCE OF THE UNIVERSITY (USM - FEB 2000)

- A. The performance of work under this contract may be terminated by the University in accordance with this clause in whole or from time to time in part, whenever the procurement officer shall determine that such termination is in the best interest of the University. Any such

SECTION 7 - PROSECUTION AND PROGRESS OF THE WORK

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 Officer, the Contractor shall:
1. Stop work under the contract on the date and to the extent specified in the Notice of Termination;
 2. Place no further orders on subcontracts for materials, services, or facilities except as may be necessary for completion of the portion of the work under the contract as is not terminated;
 3. Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;
 4. Assign to the University in the manner, at the times, and to the extent directed by the procurement officer, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the University 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 such termination or orders and subcontracts, with the approval or ratification of the Procurement Officer to the extent he may require, which approval or ratification shall be final for all the purposes of this clause;
 6. Transfer title and deliver to the University in the manner, at the times, and to the extent, if any, directed by the procurement officer, (a) the fabricated or unfabricated parts, work in progress, 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,

SECTION 7 - PROSECUTION AND PROGRESS OF THE WORK

would have been required to be furnished to the University;

7. Use his best effort to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the procurement officer, any property of the types referred to in (6) above; provided, however, that the Contractor (a) shall not be required to extend credit to any purchaser, and (b) may acquire any such property under the conditions prescribed by and at a price or prices approved by the procurement officer; and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the University to the Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the procurement officer may direct;
8. Complete performance of such part of the work as may not have been terminated by the Notice of Termination; and
9. Take such action as may be necessary or as the procurement officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the University has or may acquire an interest. The Contractor may submit to the procurement officer a list, certified as to quantity and quality, of any or all items of termination inventory not quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the procurement officer, and may request the University to remove such items or enter into a storage agreement covering them. Not later than 15 days thereafter, the University 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 officer 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.

SECTION 7 - PROSECUTION AND PROGRESS OF THE WORK

- C. After receipt of a Notice of Termination, the Contractor shall submit to the Procurement Officer his termination claim, in the form and with certification prescribed by the procurement officer. Such claim shall be submitted promptly but in no event later than one year from the effective date of termination, unless one or more extensions in writing are granted by the procurement officer, upon request of the Contractor made in writing within such one year period or authorized extension thereof. However, if the procurement officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such one year period or any extension thereof. Upon failure of the Contractor to submit his termination claim with the time allowed, the Procurement Officer may determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.
- D. Subject to the provisions of Paragraph C, the Contractor and the procurement officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done; provided that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total contract price of work not terminated. The contract shall be amended accordingly and the Contractor shall be paid the agreed amount. Nothing in Paragraph E. of this clause, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the procurement officer to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this paragraph.
- E. In the event of the failure of the Contractor and the procurement officer to agree, as provided in Paragraph D, upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, the procurement officer shall pay to the Contractor the amounts determined by the procurement officer as follows, but without duplication of any amounts agreed upon in accordance with Paragraph D.

SECTION 7 - PROSECUTION AND PROGRESS OF THE WORK

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 paragraph B.5 above, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the subcontractor before the effective date of the Notice of Termination of work under this contract, which amounts shall be included in the cost on account of which payment is made under a. above and;
 - c. A sum, as profit on a. above, determined by the procurement officer, to be fair and reasonable; provided, however, that if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this subdivision c. and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and
2. The reasonable cost of the preservation and protection of property incurred pursuant to Paragraph B. 9. and any other reasonable cost incidental to termination of work under this Contract, including expense incidental to the determination of the amount due to the Contractor as the result of the termination of work under this contract.

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

SECTION 7 - PROSECUTION AND PROGRESS OF THE WORK

to the University, or to a buyer pursuant to paragraph B.7.

- F. Costs claimed, agreed to, or determined pursuant to C., D., E. and I. hereof shall be in accordance with the USM Policies and Procedures 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 officer under Paragraph C., E., or I. hereof, except that if the Contractor has failed to submit his claim within the time provided in Paragraph C. or I. hereof, and has failed to request extension of such time, he shall have no such right of appeal. In any case where the procurement officer has made a determination of the amount due under paragraph C., E., or I. hereof, the University shall pay to the Contractor the following: (i) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Procurement Officer, or (ii) if an appeal has been taken, the amount finally determined on such appeal.
- H. In arriving at the amount due the Contractor under this clause there shall be deducted (i) all unliquidated advance or other payments or account theretofore made to the Contractor, applicable to the terminated portion of this contract, (ii) any claim which the University may have against the Contractor in connection with this contract, and (iii) the agreed price for, or the proceeds of sale of any materials, supplies, or other things acquired by the Contractor or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to the University.
- I. If the termination hereunder be partial, the Contractor may file with the procurement officer a claim for an equitable adjustment of the price or prices specified in the contract relating to the continued portion of the contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices. Any claim by the Contractor for an equitable adjustment under this clause shall be asserted within ninety (90) days from the effective date of the termination notice, unless an extension is granted in writing by the procurement officer.

SECTION 7 - PROSECUTION AND PROGRESS OF THE WORK

- J. The University, may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of this contract whenever in the opinion of the procurement officer the aggregate of such payments shall be within the amount to which the Contractor shall be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the University on demand, together with interest computed at the legal rate for the period from the date of such excess payment is received by the Contractor to the date on which the excess is repaid to the University; provided, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of the retention or disposition, or such later date as determined by the procurement officer by reason of the circumstances.
- K. Unless otherwise provided in this contract or by applicable statute, the Contractor shall, from the effective date of termination until the expiration of three (3) years after final settlement under this contract, preserve and make available to the University at all reasonable times at the office of the Contractor but without direct charge to the University all his books, records, documents, and other evidence bearing on the costs and expenses of the Contractor under this contract and relating to the work terminated hereunder or to the extent approved by the Procurement Officer, photographs, or other authentic reproductions thereof.

7.11 TERMINATION FOR DEFAULT-DAMAGES FOR DELAY--TIME EXTENSIONS (USM - FEB 2000)

- A. If the Contractor refuses or fails to prosecute the Work or any separable part thereof, with such diligence as shall insure its completion within the time specified in this contract or any extension thereof or fails to complete said work within this time, the University may, by written notice to the Contractor, terminate his right to proceed with the work or the part of the work as to which there has been delay. In this event, the University may take over the work and prosecute the same to completion, by contract or

SECTION 7 - PROSECUTION AND PROGRESS OF THE WORK

otherwise, and may take possession of and utilize in completing the work, the materials, appliances, and plant as may be on the site of the work and necessary therefor. Whether or not the Contractor's right to proceed with the work is terminated, he and his sureties shall be liable for any damage to the University resulting from his refusal or failure to complete the work within the specified time.

- B. If fixed and agreed liquidated damages are provided in the contract and if the University so terminates the Contractor's right to proceed, the resulting damage shall consist of such liquidated damages until a reasonable time as may be required for final completion of the work together with any increased costs occasioned the University in completing the work.
- C. If fixed and agreed liquidated damages are provided in the contract and if the University does not so terminate the Contractor's right to proceed, the resulting damage shall consist of these liquidated damages until the work is completed or accepted.
- D. The Contractor's right to proceed may not be so terminated nor the Contractor charged with resulting damages if:
 - 1. The delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the University in either its sovereign or contractual capacity, acts of another Contractor in the performance of a contract with the University, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or delays of 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; and
 - 2. The Contractor, within ten (10) days from the beginning of any such delay (unless the procurement officer grants a further period of time before the date of final payment under the contract), notifies the procurement officer in writing of the causes of delay. The procurement officer shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in his judgement, the

SECTION 7 - PROSECUTION AND PROGRESS OF THE WORK

findings of fact justify such an extension, and his findings of fact shall be final and conclusive on the parties, subject only to appeal as provided in the "Disputes" clause of this contract.

- E. If, after notice of termination of the Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the Contractor was not in fault under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the University, be the same as if the notice of termination had been issued pursuant to the termination for convenience clause. If, in the foregoing circumstances, this contract does not contain a clause providing for termination for convenience of the University, the contract shall be equitably adjusted to compensate for the termination and the contract modified accordingly; failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes".
- F. The rights and remedies of the University provided in this clause are in addition to any other rights and remedies provided by law or under this contract.
- G. As used in Paragraph D.1 of this clause, the term "subcontractors or suppliers" means subcontractors or suppliers at any tier.

7.12 PARTIAL ACCEPTANCE

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

SECTION 7 - PROSECUTION AND PROGRESS OF THE WORK

7.13 LIQUIDATED DAMAGES (USM - FEB 2000)

- A. Time is an essential element of the contract and it is important that the work be vigorously prosecuted until completion.
- B. For each day that any work shall remain uncompleted beyond the time(s) specified elsewhere in the contract, the Contractor shall be liable for liquidated damages in the amount(s) provided for in the solicitation, provided, however, that due account shall be taken of any adjustment of specified completion time(s) for completion of work as granted by approved change orders.

7.14 SUBSTANTIAL COMPLETION AND FINAL INSPECTION

- A. When the work is substantially completed, the Contractor shall notify the Procurement Officer and the architect in writing that the work will be ready for final inspection and test on a definite date. Sufficient notice shall be given to permit the architect and the Procurement Officer to schedule the final inspection.
- B. On the basis of the inspection, if the architect and the Procurement Officer determine that the work is substantially complete and the project can be occupied or used for its intended purpose, the Procurement Officer shall establish the date of substantial completion and shall state the responsibilities of the University and the Contractor for maintenance, heat, utilities, and insurance, and shall fix the time for which the guarantee will begin.
- C. The Procurement Officer shall fix the time within which the Contractor shall complete any remaining items of work which he indicated on a list prepared by the architect and the Procurement Officer. If the Contractor fails to complete the remaining items so listed in the time stipulated the University shall have the undisputed right without further notice to complete the work and deduct any cost incurred from any monies retained under the contract.
- D. Final payment shall not be made until all contract work is complete to the satisfaction of the University.

7.15 CLEANING UP

The Contractor shall at all times keep the construction area,

SECTION 7 - PROSECUTION AND PROGRESS OF THE WORK

including storage areas used by him, free from accumulations of waste materials 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 University. Upon completion of the construction, the Contractor shall leave the work and premises in a clean, neat, and workmanlike condition satisfactory to the Procurement Officer.

7.16 GUARANTEES (FEBRUARY 2002)

The Contractor guarantees for a two (2) year period (unless a longer period is specified), commencing on the date of substantial completion unless an alternate date is established by mutual agreement between the contractor and the University.

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

7.17 CENTURY COMPLIANCE WARRANTY

The contractor warrants that the products provided or systems developed under this contract are century compliant. A Century Compliant means that the product:

- A. 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 State.

SECTION 7 - PROSECUTION AND PROGRESS OF THE WORK

- B. Will not abnormally terminate its function or provide or cause invalid or incorrect results due to incompatibility with the calendar year. In addition to any other warranties applicable to this contract or any remedies otherwise available to the State, the contractor agrees to promptly repair or replace any product furnished under this contract that is not century compliant, provided the State gives notice within a reasonable time following discovery of such failure.

7.18 NOTICE TO UNIVERSITY OF LABOR DISPUTES

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

END OF SECTION

SECTION 8 - PAYMENTS

8.01 SCOPE OF PAYMENT (JUNE 2002)

- A. Payments are made on the valuation of Work accomplishment and on account of materials delivered on the site, for incorporation in the Work which are suitably stored and protected.
- B. Payments shall also be made on account of materials or equipment for incorporation in the Work but stored at some off-site location agreed upon by the University; such payment to be conditioned upon submission by the Contractor of bills of sale or such other procedures satisfactory to the University to establish the University's title to such materials or equipment or otherwise protect the University's interest including applicable insurance and transportation to site.
- C. Prior to application for first payment, the Contractor shall submit to the University and the architect a Schedule of Values of the various parts of the Work, including quantities, aggregating the total sum of the contract. This schedule shall be so divided as to facilitate payments to subcontractors. The form of this submission shall be as the Contractor and the University have agreed upon and shall be supported by such evidence as to its correctness as the University may direct. 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 or about the 25th day of each month but not less than thirty (30) days after the "Work Initiation Conference" nor before ten (10) days of job operation (job shut-down days excluded).
- E. In applying for payments the Contractor shall submit a statement, based upon the Schedule of Values, (C. above) itemized in such form and supported by such evidence as the University may require, showing the Contractor's right to the payment claimed. Each invoice shall prominently display the Contractor's Federal Employers Tax Identification Number or (if he has no such number) his social security number, the contract number and the project number.
 - 1. In applying for all payments the Contractor shall pay all subcontractors, vendors and material suppliers within ten (10) calendar days of having received

SECTION 8 - PAYMENTS

payment from the University/State. The Contractor shall submit in addition to the above a certificate that he will pay:

- a. All labor to date.
 - b. All vendors and material suppliers in full for all items received.
 - c. All subcontractors in full, less the retained amount.
2. In applying for the final payment, the Contractor shall submit in addition to the statement required in the first part of Paragraph E. above, the following:
- a. In all cases, the University may demand such evidence as will establish the University's title to materials.
 - b. An electrical certificate from an independent (non-governmental) electrical inspection agency approved by the State of Maryland Fire Marshall must be submitted to the University prior to or with the final payment invoice. The Contractor must make application for the inspection, coordinate same, and pay the required inspection fees. The independent electrical inspection agencies are not considered local authorities.
 - c. All other guarantees as called for by the contract.
 - d. All equipment manuals and parts lists.
 - e. Complete set of all drawings indicating as-built conditions to the project architect.
- F. If the Contractor has made application as above, the University shall, not later than the date when such payment falls due, issue to the Contractor a certificate for such amount as it decides to be properly due, less any retainage held by the University.
- G. No certificate issued nor payment made to the Contractor nor partial or entire use or occupancy of the work by the University shall be an acceptance of any work or materials

SECTION 8 - PAYMENTS

not in accordance with this contract.

8.02 PAYMENT OF UNIVERSITY OBLIGATIONS (USM FEB 2000)

Payments to the Contractor pursuant to this contract shall be made no later than thirty (30) days after the University's receipt of a proper invoice from the Contractor. Charges for late payment of invoices, other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, are prohibited.

8.03 PROMPT PAYMENT TO SUBCONTRACTORS (JANUARY 2002)

A contractor shall pay a subcontractor an undisputed amount to which the subcontractor is entitled within 10 days of receiving a progress or final payment from the University as prescribed by Section 15-226 of the State Finance and Procurement Article, Annotated Code of Maryland. A subcontractor shall promptly pay to a lower tier subcontractor any undisputed amount to which the lower tier subcontractor is entitled. "Undisputed Amount" means an amount owed by a contractor to a subcontractor for which there is no good faith dispute, including any retainage withheld.

- (1) If a contractor withholds payment from a subcontractor, within the time period in which payment normally would be made, the contractor shall:
 - (a) notify the subcontractor in writing and state the reason why payment is being withheld; and
 - (b) provide a copy of the notice to the procurement officer.
- (2) If a subcontractor does not receive a payment within the required time period, the subcontractor may give written notice of the nonpayment to the procurement officer. Within 2 business days of receipt of written notice from a subcontractor, the procurement officer shall verbally contact the contractor to ascertain whether the amount withheld is an undisputed amount.
- (3) If the procurement officer decides that a part or all of the amount withheld is an undisputed amount, the procurement officer shall instruct the contractor to pay the subcontractor the undisputed amount within 3 business days.

SECTION 8 - PAYMENTS

- (4) If the subcontractor notifies the procurement officer under subsection (3) of this section that payment has not been made, the procurement officer shall schedule a meeting to discuss the dispute with the unit's project manager, the contractor, and the subcontractor not later than 10 days after receiving notice from the subcontractor. If the procurement officer determines that the contractor is delinquent in payment of an undisputed amount to the subcontractor, further progress payments to the contractor may be withheld until the subcontractor is paid.
- (5) If payment is not paid to the subcontractor within 7 days after the procurement officer determines that the contractor is delinquent in paying the subcontractor, the procurement officer shall schedule a second meeting to address the dispute not later than 5 days after the close of the 7-day period.
- (6) If, at the completion of the second meeting, the procurement officer determines that the contractor continues to be delinquent in payments owed to the subcontractor, the procurement officer:
 - (a) shall order that further payments to the contractor not be processed until payment to the subcontractor is verified;
 - (b) may order that work under the contract be suspended based on the failure of the contractor to meet obligations under the contract; and
 - (c) may require that the contractor pay a penalty to the subcontractor, in an amount not exceeding \$100 per day, from the date that payment was required.
- (7) A contractor or a subcontractor may appeal a decision under this section to the procurement officer.
- (8) The contractor shall require inclusion of a similar provision to the above within each subcontract at any tier.

8.04 ALLOWANCES (JANUARY 2002)

Whenever an allowance is mentioned in the specifications, then the Contractor shall include in his contract sum the entire amount of such specified allowances. The expenditure of these allowances is at the University's direction. However, the

SECTION 8 - PAYMENTS

allowance expenditure is limited to items properly inferable from the title of the allowance and as included within the scope and purpose identified in the specifications. Unexpended balances are to revert to the University. Prior to receiving authorization from the University to expend funds covered by an allowance, the contractor shall submit a detailed cost proposal outlining all costs, including labor, material, overhead and profit.

8.05 RETAINAGE (JANUARY 2002)

- A. As prescribed by Section 13-225 of the State Finance and Procurement Article, Annotated Code of Maryland the University may elect to withhold retainage against payments otherwise due the contractor. In this section the following words have the meanings indicated.
- (1) "Payment security" has the meaning stated in 17-101 of the State Finance & Procurement Article.
 - (2) "Performance security" has the meaning stated in 17-101 of the State Finance & Procurement Article.
- B.
- (1) If a contractor has furnished 100% payment security and 100% performance security in accordance with Title 17, Subtitle 1 of the State Finance & Procurement Article under a State procurement contract for construction, the percentage specified in the contract for retainage may not exceed 5% of the total amount.
 - (2) In addition to retainage, a primary procurement unit may withhold from payments otherwise due a contractor any amount that the unit reasonably believes necessary to protect the University's interest.
 - (3) Retainage withheld by a primary procurement unit may be deposited in an interest-bearing escrow account in accordance with 15-108 of the State Finance & Procurement Article. If the contract provides for retainage, any such retainage that remains with the University after release of the semi-final payment shall be deposited with the University's Escrow Agent. Such retainage shall accrue interest in the name of the Contractor at a rate or rates to be determined by the University's Escrow Agent. In order for the Contractor's retainage to be placed in an account with the University's Escrow Agent, the Contractor shall be required to complete the Internal Revenue Service's

SECTION 8 - PAYMENTS

Form W-9, "Payer's Request for Taxpayer Identification Number." The Form W-9 shall be provided by the University to the Contractor at the time semi-final payment is approved.

- C.
 - (1) A contractor may not retain a percentage of payments due a subcontractor that exceeds the percentage of payments retained by the primary procurement unit.
 - (2) Paragraph (1) of this subsection may not be construed to prohibit a contractor from withholding any amount in addition to retainage if the contractor determines that a subcontractor's performance under the subcontract provides reasonable grounds for withholding the additional amount.
- D.
 - (1) A subcontractor may not retain a percentage of payments due a lower tier subcontractor that exceeds the percentage of payments retained from the subcontractor.
 - (2) Paragraph (1) of this subsection may not be construed to prohibit a subcontractor from withholding any amount in addition to retainage if the subcontractor determines that a lower tier subcontractor's performance under the subcontract provides reasonable grounds for withholding the additional amount.
- E. If retainage has been placed in escrow under 15-108 of the State Finance and Procurement Article, each payment of retainage shall include a pro rata portion of interest earned.
- F. This section may not be construed to limit the application of the provisions of Title 17, Subtitle 1 of the State Finance & Procurement Article.

8.06 DEDUCTIONS FOR UNCORRECTED WORK

If the University deems it inexpedient to correct work injured or done not in accordance with the contract, an equitable deduction from the contract price shall be made therefore.

SECTION 8 - PAYMENTS

8.07 PAYMENTS WITHHELD

- A. The University may withhold or, on account of subsequently discovered evidence, nullify the whole or part of any certificate to such extent as may be necessary to protect the University from loss on account of:
1. Defective work not remedied.
 2. Claims filed or reasonable evidence indicating probable filing of claims.
 3. Failure of the Contractor to make payments properly to subcontractors for material or labor.
 4. A reasonable doubt that the contract can be completed for the balance then unpaid.
 5. Damage to another Contractor.
- B. When the above grounds are removed, payment shall be made for amounts withheld because of them.

8.08 CORRECTION OF WORK BEFORE FINAL PAYMENT

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

8.09 ACCEPTANCE AND FINAL PAYMENT

- A. When the Contractor has completed the work and it has been

SECTION 8 - PAYMENTS

finally accepted, the University will promptly proceed to make any necessary final surveys and complete any necessary computation of quantities. This tabulation shall be accompanied by a statement setting forth (1) the additional work performed under change orders and/or supplemental agreements, (2) the authorized extension of time, (3) the number of days which have been charged against the Contractor having been used to complete contract and (4) any deductions, charges or liquidated damages which have been made or imposed, and (5) any remaining retainage plus interest, less adjustments for any administrative or other costs for maintaining the Escrow Account. Payment for the full apparent value of the contract thus determined shall become due and payable to the Contractor within **thirty (30) days** after acceptance of the project by the University for maintenance, as hereinafter provided. As a condition precedent to final payment, the Contractor shall be required to execute a general release of all claims against the University arising out of or in any way connected with this contract.

- B. The Contractor shall then have a period of ten (10) calendar days, dating from the date upon which he received the aforementioned tabulation from the University, in which (1) to decide whether or not he will accept final payment upon such basis, and (2) to notify the University, in writing, of his decision. The Contractor may request an additional period up to ten (10) calendar days in which to notify the University of his decision. In the event the Contractor notifies the University that he protests final payment on such basis, that notification shall outline the reason(s) for said protest.
- C. Upon acceptance of the project by the University, the Contractor shall prepare the Final Payment forms and submit them to the University. These forms shall show all data noted in Paragraph A above, together with deductions for all prior payments. Once received, the University shall obtain the Using Agency's approval and then make payment. If the contract provides for retainage, the Contractor will receive the full amount of retainage plus accrued interest from the date retainage is deposited with the University's Escrow Agent. Interest on said retainage shall accrue at a rate determined by the Escrow Agent. Such action shall be deemed to constitute Acceptance and Final Payment.
- D. If, under the provisions of Paragraph B. above, the

SECTION 8 - PAYMENTS

Contractor notifies the University of his protest and non-acceptance of the data submitted to him, the University shall pay the Contractor a Semi- Final Estimate, or an Additional Semi-Final Estimate in the event a Semi-Final Estimate has already been paid in accordance with the information noted in Paragraph A. above, with deductions for all prior payments and a retainage equal to 1-1/2% of the total value of the contract. The acceptance of such Semi-Final Estimate, or additional Semi-Final Estimate, shall not be considered as a waiver on the part of the Contractor of his right to pursue his protest and press for Acceptance and Final Payment.

- E. In the event the Contractor does not accept the data submitted to him as described in Paragraph A. above and/or has outstanding a claim filed with the architect, the architect and the Contractor shall confer at mutually convenient times and endeavor to reconcile all points of disagreement expeditiously. If such reconciliation is accomplished, the University will promptly proceed with Acceptance and Final Payment on the reconciled basis and in accordance with the provisions of Paragraph C. above.

If reconciliation is not accomplished within thirty (30) days, (a) the architect shall submit to the Procurement Officer the Final Estimate and Final Payment forms he is then recommending, together with whatever data the Contractor may have submitted to him in support of his protest(s) regarding the various factors in dispute, (b) copy of letter of transmittal will be sent to Contractor by registered mail. The Contractor shall submit to the architect, within 10 days after receipt of said registered mail, a written statement for review and final action. The decision of the architect shall be final and no further appeal will be considered. Such decision by the architect and payment by the University shall be deemed to constitute Acceptance and Final Payment.

- 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 University for such overpayment within six months of receipts of such advise, and his surety will not be granted release from obligations under the terms of the contract the contract until reimbursement has been made in

SECTION 8 - PAYMENTS

full.

8.10 ELECTRONIC FUNDS TRANSFER (JANUARY 2002)

The Contractor may elect to authorize the State to disburse payments through an electronic payment method. Electronic Funds Transfer (EFT) may not be available for all source funding used for a contract and may not necessarily result in expedited payment. The University makes no representations to the contrary. The Contractor shall request EFT by submitting State of Maryland, Form R*STARS X-9, Electronic Funds Transfer Request Authorization, to the University with the first application for payment.

8.11 AUDITS BY THE STATE

- A. The Contractor agrees that the State or any of its duly authorized representatives shall, until the expiration of three years after final payment under this contract have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to this contract.
- B. The Contractor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that the University or any of its duly authorized representatives shall, until the expiration of three years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, involving transactions related to the subcontract.

8.12 MULTI-YEAR CONTRACTS CONTINGENT UPON APPROPRIATIONS (USM - FEB 2000)

Mandatory provision for all contracts and contract modifications to be effective in more than one fiscal year:

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the University's rights or the Contractor's rights under any termination clause in this

SECTION 8 - PAYMENTS

Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the University 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 non-recurring costs incurred but not amortized in the price of the Contract. The University shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

END OF SECTION

SECTION 9 - EMPLOYEES, SUBCONTRACTORS & WORK CONDITIONS

9.01 EMPLOYEES AND WORKMANSHIP (JUNE 2002)

- 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 personal (electricians, plumbers, etc.) be licensed, then all such personal employed on the work shall be so licensed.
- C. Quantity Of Labor: The Contractor shall employ on the work, at all times, sufficient personnel to complete the Work within the time stated in the contract.
- D. Work Areas: The Contractor shall confine the operations of his employees to the limits as provided by law, ordinance, permits, or directions of the University. Generally, the work area will be the same as the "Limit of Contract" line indicated in the construction documents.
- E. Methods and Quality:
1. All workmanship shall be of good quality. Whenever the method of the Work or manner of procedure is not specifically stated in the contract documents, then it is intended that the best standard practice shall be followed. Recommendations of the manufacturers of approved materials shall be considered as a part of these specifications and all materials shall be applied, installed, connected, erected, used, cleaned, and conditioned as so called for thereby. This, however, does not remove any requirement in these specifications to add to the manufacturer's recommendations.
 2. All materials shall be accurately, assembled, set, etc., and when so required in good construction, shall be true to line, even, square, plumb, level, and regularly spaced, coursed, etc. Under no circumstances, either in new or 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.

SECTION 9 - EMPLOYEES, SUBCONTRACTORS & WORK CONDITIONS

3. All methods and procedures and results are subject to the architect's approval as to finished result to be obtained. However, this is not to be interpreted as placing upon the architect any responsibility for the "Work" management which is solely the responsibility of the Contractor.

F. Scheduling:

1. The Contractor shall so schedule the Work as to ensure efficient and uninterrupted progress and to hold to an absolute minimum the cutting and patching of new Work. All cutting, patching, and digging necessary to the execution of the Work is included.
2. The Contractor shall 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 good construction practice.

- G. Project Manager and Superintendent: The Contractor shall keep on the Work, at all times during its progress, a competent English-speaking Superintendent and any necessary assistants, all approved by the University prior to commencement of the Work. The Contractor shall also provide a Project Manager dedicated to each project awarded to the contractor by the University. The Contractor shall submit in writing to the University the names of the persons it intends to employ as project manager and superintendent for the execution of this contract with a statement of each individual's qualifications. This data will be reviewed by the University and an approval or rejection given in writing. Persons who have previously proved unsatisfactory on work executed for the University or the State of Maryland or who are without proper qualifications, will not be approved. Should it be necessary to change the project manager or the superintendent, this procedure will be repeated. A single Project Manager or Superintendent will be permitted to manage two or more jobs located at the same institution or close to each other only when approved by the University in writing. The Project Manager and the Superintendent shall represent the Contractor. All directions given to the Project Manager or the Superintendent shall be as binding as if given to the Contractor. Important directions shall be confirmed in

SECTION 9 - EMPLOYEES, SUBCONTRACTORS & WORK CONDITIONS

writing to the Contractor. Other directions shall be so confirmed on written request in each case.

- H. Discipline: The Contractor shall at all times enforce strict discipline and good order among his employees and shall not employ or permit to remain on the work any unfit person. He shall enforce all instructions relative to use of water, heat, power, no smoking, and control and use of fires as required by law, and the University. Employees must not be allowed to loiter on the premises before or after working hours.
- I. Employee Safety: The Contractor shall designate a responsible member of his organization, on the Work, whose duty it shall be, in addition to his other duties, to prevent accidents and to enforce the standards of 9.06 of these conditions. The name and position of the person so designated shall be reported to the University with a copy to the architect, by the Contractor at the commencement of the work.
- J. Removal of Employees: Should any employee of the Contractor, or its subcontractors and suppliers, be complained of by the University for cause, the Contractor shall remove the employee from the work and replace the employee with an individual acceptable to the University and qualified in all respects to perform the work.

9.02 NON-DISCRIMINATION IN EMPLOYMENT (USM - FEB 2000)

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 subsection (a), above, in any subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

9.03 SUBCONTRACTS

- A. The Contractor shall, as soon as practicable and before the execution of the contract, notify the architect and the

SECTION 9 - EMPLOYEES, SUBCONTRACTORS & WORK CONDITIONS

University in writing, of the names of subcontractors proposed for the principal parts of the work and for such others as the architect may direct and shall not employ any that the architect or the University may object to as incompetent or unfit.

- B. The Contractor agrees that he is as fully responsible to the University for the acts and omissions of his subcontractor 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 documents shall create any contractual relation between any subcontractor and the University and nothing in the contract documents is intended to make the subcontractor a beneficiary of the contract between the University and the Contractor.

9.04 RELATION OF CONTRACTOR AND SUBCONTRACTOR

- A. The Contractor agrees to bind every subcontractor and will see that every subcontractor agrees to be bound by the terms of the Agreement, the General Conditions, the Drawings, and Specifications as far as applicable to his work, unless specifically noted to the contrary in a subcontract approved in writing as adequate by the University.
- B. The Contractor agrees to include the following provisions in all subcontracts and supply contracts applicable to the work: Subcontractor agrees to be bound to the Contractor by the terms of the Agreement, General Conditions, Drawings, and Specifications, and to assume toward him all obligations and responsibilities that he, by those documents, assumes toward the University.
 - 1. The subcontractor agrees to submit to the Contractor applications for payment in such reasonable time as to enable the Contractor to apply for payment under Section 8 of these General Conditions.
 - 2. The subcontractor agrees to make all claims for extras, for extensions of time, and for damages for delays or otherwise, to the Contractor in the manner provided in the General Conditions for like claims by the Contractor upon the University except that the time for making claims for extra cost is five (5)

SECTION 9 - EMPLOYEES, SUBCONTRACTORS & WORK CONDITIONS

days.

3. The subcontractor 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 agrees to be bound to the subcontractor by all the obligations that the University assumes to the Contractor under the Agreement, General Conditions, Drawings, and Specifications, and by all the provisions thereof affording remedies and redress to the Contractor from the University. In addition to the requirements of Section 8.03 of these General Conditions (PROMPT PAYMENT OF SUBCONTRACTORS):
1. The Contractor also agrees to pay the subcontractor, 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 interest therein.
 2. To pay the subcontractor, upon the payment of certificates, so that all times his total payments shall be as large in proportion to the value of the Work done by him as the total amount certified to the Contractor is the value of the Work done by him.
 2. To pay the subcontractor to such extent as may be provided by the contract documents or the subcontract, if either of these provides for earlier or larger payments than the above.
 3. To pay the subcontractor within ten (10) calendar days of having received payment from the University/State 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, even though the architect fails to issue it for any cause not the fault of the subcontractor.
 5. To pay the subcontractor a just share of any fire insurance money received by the Contractor.
 6. To make no demand for liquidated damages or penalty for delay in any sum in excess of such amount as may be specifically named in the subcontract.

SECTION 9 - EMPLOYEES, SUBCONTRACTORS & WORK CONDITIONS

7. To give the subcontractor an opportunity to be present and to submit evidence in any matter involving his rights.
- D. 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 (10) days of the calendar month following that in which the claim originated.
- E. The Contractor and the subcontractor agree that nothing in this section shall create any obligation on the part of the University to pay any sums to any subcontractor.

9.05 PREVAILING WAGE RATES

- A. All contracts in the amount of \$500,000 or more shall be subject to the provisions of State Finance & Procurement Article, Sections 17-201, et seq, Annotated Code of Maryland. Where an original contract is in an amount less than \$500,000 the terms of State Finance & Procurement Article, Sections 17-201, shall not apply, even where subsequent change orders shall increase the total contract in excess of \$500,000. Wage rates applicable to projects of \$500,000 or more are attached to the specification. Federal wage rates shall be in effect where applicable.
- B. The Contractor shall submit a copy of his payroll records and the payroll records of each of his subcontractors to the Commissioner of Labor and Industry, 1100 N. Eutaw Street, Room 607, 6th Floor, Baltimore, Maryland 21201, where they will be available for inspection during regular business hours. These payroll records must be submitted within two weeks after each payroll period, and shall contain the following employee information: name, address and social security number, work classifications, hours straight time and overtime worked each day, total hours worked, rate of pay and gross amount earned. The Contractor shall be responsible for the submission of all subcontractors' payroll records covering work performed directly at the work site. Each copy of the payroll records shall be accompanied by a statement signed by the Contractor or the subcontractor indicating that the payroll records are correct, that the wage rates contained therein are not less than those established by the Commissioner as set forth in the contract, that the classification set

SECTION 9 - EMPLOYEES, SUBCONTRACTORS & WORK CONDITIONS

forth for each workman or apprentice conforms with the work he performed and that the Contractor or the subcontractor has complied with the provisions of this section.

9.06 CONSTRUCTION SAFETY AND HEALTH STANDARDS

It is a condition of this 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, laws and regulations of the locality in which the work is done, the State, and the Federal Government.

9.07 DRUG AND ALCOHOL FREE WORKPLACE

The Contractor warrants that the Contractor shall comply with COMAR 21.11.08 Drug and Alcohol Free Workplace, and that the Contractor shall remain in compliance throughout the term of the Contract.

9.08 SEXUAL HARASSMENT (JUNE 2002)

1. University of Maryland at College Park is committed to maintaining a working and learning environment in which students, faculty, and staff can develop intellectually, professionally, personally, and socially. Such an environment must be free of intimidation, fear, coercion, and reprisal. The Campus prohibits sexual harassment. Sexual harassment may cause others unjustifiable offense, anxiety, and injury. Sexual harassment threatens the legitimate expectation of all members of the Campus community that academic or employment progress is determined by the publicly stated requirements of job and classroom performance, and that the Campus environment will not unreasonably impede work or study.
2. Sexual harassment by University faculty, staff, and students is prohibited. This constitutes Campus policy. Sexual harassment may also constitute violations of criminal and civil laws of the State of Maryland and the United States. For the purpose of this Campus policy, sexual harassment is defined as: (1) unwelcome sexual advances; or (2) unwelcome requests for sexual favors; and (3) other behavior of a sexual nature where:

SECTION 9 - EMPLOYEES, SUBCONTRACTORS & WORK CONDITIONS

- a. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or participation in a University-sponsored educational program or activity; or
 - b. Submission to or rejection of such conduct by an individual is used as the basis for academic or employment decisions affecting that individual; or
 - c. Such conduct has the purpose or effect of unreasonably interfering with an individual's academic or work performance, or of creating an intimidating, hostile, or offensive educational or working environment.
3. The policy described above will apply to all contractors, subcontractors, suppliers and others employed to do work on the campus for purpose of this project. In addition to the policies stated above, the University will not tolerate.
- a. lewd remarks on suggestive sounds, such as whistling or wolf calls.
 - b. unwanted physical contact.
 - c. persistent and offensive sexual jokes or comments.
4. Acts of sexual harassment will not be tolerated from any persons related to the performance of this contract. Persons exhibiting such behavior will be immediately removed by the Contractor from the job site as directed by the University and will be replaced with competent personnel by the contractor at no additional cost to the University.

9.09 NON-HIRING OF EMPLOYEES (USM - FEB 2000)

No official or employee of the State of Maryland or any unit thereof, whose duties as such official or employee include matters relating to or affecting the subject matter of this contract, shall, while serving as an official or employee of the State, become or be an employee of the party or parties hereby contracting with the State of Maryland or any unit thereof.

9.10 CONTRACTOR REPORTING OF SUSPECTED CHILD ABUSE AND NEGLECT (FEB 2014)

1. Maryland law requires persons who suspect child abuse or

SECTION 9 - EMPLOYEES, SUBCONTRACTORS & WORK CONDITIONS

neglect to report it. Contractors must comply with the University System of Maryland Board of Regents VI-1.50 Policy on the Reporting of Suspected Child Abuse and Neglect. This policy, available at

<http://president.umd.edu/policies/vi-150.html>, is incorporated into the Contract.

2. The University reserves the right to terminate the Contract if the Contractor fails to comply with this policy or, if the University judges Contract termination to be necessary to protect a child's safety or welfare.

END OF SECTION