

**REQUEST FOR PROPOSAL
FOR
SOLAR ENERGY POWER PURCHASE AGREEMENT
FOR THE
PENN STREET & PRATT STREET GARAGES SOLAR ENERGY PROJECT
AT
UNIVERSITY OF MARYLAND, BALTIMORE**

RFP #23-351-MC

ISSUED: March 23, 2023

**PROCUREMENT/ISSUING
OFFICE:**

Construction and Facilities Strategic Acquisitions
University of Maryland, Baltimore
The Saratoga Building
220 Arch Street, Room 02-100
Baltimore, Maryland 21201-1531

PROJECT MANAGEMENT:

UMB Office of Facilities and Operations
University of Maryland, Baltimore

ACCESS: Anyone requiring special assistance in obtaining a copy of the solicitation, in attending a pre-proposal conference or in delivering a proposal are requested to contact the appropriate person(s) in the Issuing Office per Section 1, Paragraph C. at least 48 hours in advance.

NOTE: All Addenda to this procurement will be posted on the UMB website at <https://www.umaryland.edu/procurement/ebid-board/>

**SOLAR ENERGY POWER PURCHASE AGREEMENT
FOR THE
PENN STREET & PRATT STREET GARAGES SOLAR ENERGY PROJECT
UNIVERSITY OF MARYLAND, BALTIMORE
RFP #23-351 MC**

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ATTACHMENT A (SEE SEPARATE ATTACHMENT)

The following forms are to be submitted by each proposer as indicated in the RFP documents herein:

- Company Profile
- Contractor Relevant Experience Form & References
- Project Approach/Major Milestone Schedule
- Key Personnel Forms & References
- eBuilder Affidavit
- Bid/Proposal Affidavit
- Acknowledgement of Receipt of Addenda Form (if applicable)

ATTACHMENT B:

- Price Proposal Form – to be issued solely to final shortlisted firms

ATTACHMENT C: The following forms are to be submitted/signed by the successful firm:

- University Contract- Power Purchasing Agreement

- Contract Affidavit

ATTACHMENT D Intentionally Omitted

ATTACHMENT E Intentionally Omitted

ATTACHMENT F Intentionally Omitted

ATTACHMENT G Intentionally Omitted

ATTACHMENT H Intentionally Omitted

ATTACHMENT I Procurement Terms and Conditions

**RFP #23-351 MC
SOLICITATION SCHEDULE**

Issue Date:	March 23, 2023
Pre-Proposal Meeting:	Thursday, April 5, 2023 at 10:00 am Refer to Section 00100, Paragraph D for further information.
Questions Regarding Solicitation Due:	Tuesday, April 18, 2023 on or before 3:00 pm (See Section I, Para C.3)
Initial Technical Proposal Due:	Tuesday, May 2, 2023 on or before 2:00 pm (to be submitted electronically via email; see instructions in Section 00100, Paragraph E., required contents are detailed in Section 00300, Article 1.)
Anticipated Date of Notification following the Initial Technical Evaluation regarding shortlist:	June 1, 2023
Oral Discussions (optional) of <u>shortlisted</u> Proposers:	Wednesday, June 7, 2023 from 9:00 am to 4:00 pm (Refer to Section 00300, Article 3, Paragraph A)
Anticipated Date of Notification following the Second Technical Evaluation regarding final shortlist:	June 13, 2023
Site Visit (optional):	Week of June 19-23, 2023, time TBD. Details to be provided to the final shortlisted Proposers. Masks must be worn by attendees.
Anticipated Price Proposal Due:	July 12, 2023 on/before 2:00 pm <u>Only the final shortlisted Proposers</u> will be requested to submit a Price Proposal electronically; Instructions regarding Price Proposal submittal will be

issued via Addendum to the final shortlisted firms.

UMB Notifies Selected Contractor:

Anticipated by July 19, 2023

Contract executed by selected Contractor:

August 9 , 2023 (Projected)

Contract Commencement:

September 1, 2023 (Projected)

Required Contract Completion:

Refer to PPA Section 2.1 "Term"

END OF SOLICITATION SCHEDULE

SECTION 00100

INSTRUCTIONS TO PROPOSERS

SECTION 00100
INSTRUCTIONS TO PROPOSERS

I. INSTRUCTIONS TO PROPOSERS FOR THE CONTRACT

A. **SUMMARY:**

The overall purpose of this RFP is to provide information to the selected vendors in preparing and submitting Proposals to meet the requirements and specifications of the services described herein. By submitting a Proposal in response to this RFP, the firm accepts all terms and conditions set forth in this RFP. The University reserves the right to reject any and all Proposals, in whole or in part, if a Proposer takes exception to any of the terms, conditions, and/or specifications in this RFP.

B. **PROCUREMENT PROCESS:**

This is a phased procurement. For detailed information on the Procurement Phases including the preparation and submittal of proposals see Section 00300 "Proposals, Evaluation, Forms".

C. **ISSUING OFFICE AND QUESTIONS/INQUIRIES:**

1. The Issuing Office is:

University of Maryland, Baltimore
Construction and Facilities Strategic Acquisitions
The Saratoga Building
220 Arch Street, Room 02-100
Baltimore, Maryland 21201-1531

Attn: Michelle Compton
email to: mcompton@umaryland.edu

2. The Issuing Office shall be the **sole** point of contact with the University for purposes of the preparation and submittal of the RFP proposal.
3. All questions on this procurement are to be directed (preferably in writing) to the Issuing Office. Questions are due per the Solicitation Schedule. Items affecting the scope of work or conditions of the contract shall be subject to the conditions of Addenda per Attachment I Procurement Terms and Conditions, Paragraph 7.

D. **PRE-PROPOSAL CONFERENCE:**

1. A **Pre-Proposal Conference** will be conducted in person on **Wednesdat, April 5, 2023 at 10:00 AM at:**

University of Maryland, Baltimore
220 Arch Street
Office Level 2
Room 02-101
Baltimore, MD
21201

2. Attendance is *not mandatory* but is strongly recommended as clarifications may be provided.
3. A walk through of the Project site will be conducted as part of this meeting.

E. TECHNICAL PROPOSALS:

1. **Technical Proposals** must be submitted electronically via email to Proc-oncallbids@umaryland.edu per the Solicitation Schedule in order to be considered. The time that the email is sent by the Proposer will be considered the time.

The subject line of your email is to be: 05/02/23 23-351 MC – Your Company Name.

2. Price Proposals are not requested at this time. These will be requested solely of the shortlisted firms following the technical proposal evaluation. Refer to Section 00300, Article 3 for further details.)
3. LATE PROPOSALS CANNOT BE ACCEPTED.

F. eBUILDER PROJECT MANAGEMENT SOFTWARE

The University Facilities Operations and Maintenance utilizes eBuilder Project Management software to assist in the management of all projects. Use of the eBuilder system involves submission of all documentation through the web-based system. Such documentation includes submissions during design and construction phases, and includes construction document submissions, cost estimates, constructability reviews, reports, requests for information, product submittals, shop drawings, outage requests, invoices and other project related documents. The University of Maryland, Baltimore Design and Construction (UMB D&C) has switched to an eBuilder unlimited licensing plan. This means that the project team (A/E and Contractor) will be required to register for use of the eBuilder system through UMB D&C and will NO LONGER be required to purchase an annual license for each Project Manager under this contract. This is ONLY for projects specifically at or managed by UMB. See eBuilder affidavit for further details.

END OF SECTION 00100

SECTION 00200

INFORMATION AVAILABLE TO PROPOSERS

SECTION 00200
INFORMATION AVAILABLE TO PROPOSERS

II. INFORMATION AVAILABLE TO PROPOSERS

A. **CONTRACT DOCUMENTS:** This RFP #23-351 dated March 23, 2023 consists of the documents noted below.

- All documents in the Solicitation (Refer to the Solicitation Table of Contents for all sections contained **within the RFP document**) along with other documents packaged separately as noted below:

and,

- **Any Addenda**, which may be issued prior to the Proposal Due Date.

All of these materials will be included in the Contract with the University awarded as a result of this solicitation. The Proposer by submitting its proposal agrees that if awarded the Contract that it, as the Contractor, will be bound under the Contract to all the terms and conditions thereof.

B. SET OF DOCUMENTS AVAILABLE TO PROPOSERS: The RFP and Attachments A through I are available on the UMB eBid Board at <https://www.umaryland.edu/procurement/ebid-board/>.

C. AVAILABLE RECORD DOCUMENTS:

1. The University's Facilities Management Office upon written request will make accessible to the Proposers any available record drawings, utility plans, and other data pertinent to existing conditions to the extent that such material is available. The University, however, can offer no assurances that such drawings, property description, or other data are accurate, current or complete.
2. The Proposers shall assume the responsibility for cost of reproduction as well as replacing any damaged documents.

END OF SECTION 00200

SECTION 00300

PROCUREMENT PROCESS AND FORMS

SECTION 00300- Article 1
PROCUREMENT PHASES AND FORMS
Summary of Procurement Phases and Technical Proposal Requirements

III. **INTRODUCTORY SUMMARY OF PROCUREMENT PHASES**: This RFP consists of the following phases:

1. **Technical Proposal Submittal** (see Section D below of this Section 00300 Article 1 for details on the required contents of the Technical Proposal): All Proposers are required to first submit **only a Technical Proposal without a Price Proposal**. Refer to the Solicitation for the due date and time for Technical Proposals and Section 00100 Paragraph E regarding submittal instructions.
2. **Price Proposal Submittal** (see Article 4 of this Section 00300 for details on the Price Proposal): Only those Proposers whose technical proposals remain shortlisted following the Second Phase Technical Evaluation will be requested to submit a Price Proposal. The **anticipated due date** for submission of the **Price Proposal** is set forth in the Solicitation Schedule. The final Price Proposal Form, any required documents, and instructions for submission of the Price Proposals will be issued via Addendum to the final shortlisted Proposers.

A. **TRANSMITTAL LETTER**

A transmittal letter prepared on the Proposer's business stationery must accompany the Technical Proposal Submittal. The purpose of this letter is to transmit the Proposal; therefore, they should be brief, but shall list all items contained within the Technical Proposal. The letter must be signed by an individual who is authorized to bind his firm to all statements, including services and financials, contained in the Proposal. **The letter must also provide a contact name(s), title, email address, and phone number (including extension, if applicable) of the appropriate contact person for the Proposer during the procurement process.**

B. **TECHNICAL PROPOSAL SUBMITTAL**

The Technical Proposal should be prepared in a clear and precise manner. Failure to include any of the items listed below may disqualify your firm's response. Proposers should describe in detail and provide evidence supporting the qualifications requested below. **Technical criteria are listed in order of importance.** All proposers are to compile their Technical Proposals in the order listed and are to paginate the proposal.

The cover page of the Technical Proposal shall have the Proposer's name and address; and the RFP number, project name and project number.

1. Detailed responses to Technical Proposal Criteria, listed in this section;
2. Bid/Proposal Affidavit;
3. eBuilder Affidavit;
4. Acknowledgement of Receipt of Addenda (If addenda are issued prior to the Technical

Proposal due date, this form acknowledging receipt of all addenda MUST be included with your Technical Proposal.), and,

C. FORMS PACKAGE

Forms for each of the items required in the Technical Proposal (except item 3) are furnished under the RFP Number on the eBid board at <https://www.umaryland.edu/procurement/ebid-board/> as a separate document. The forms required for the Technical Proposal are listed as Attachment A in the Forms Package.

The Price Proposal form will be issued via Addendum to only those firms who are shortlisted following the second phase technical evaluation.

D. TECHNICAL PROPOSAL CRITERIA

The following information **must** be furnished in the Technical Proposal. Omission of any of the items noted below may result in the proposal being rejected as unacceptable. Compile the technical proposal in the same order as the Technical Proposal Evaluation Factors listed below. Technical Proposal Evaluation Factors are listed below in relative order of importance.

1. Company Profile

- a. Outline roles, responsibilities and overall qualifications including organization chart that illustrates reporting structure of key members.
- b. Identify any subcontractors the firm intends to employ in the execution of the project and prior work experience with these subcontractors. While subcontractors are expected to be a part of this project, the Contractor should demonstrate substantial ownership of development, design, installation, operation and maintenance of the project.
- c. Identify specific roles and responsibilities of subcontractors and their experience in performing similar work.

2. Experience on Similar or Relevant Projects

- A. Include a brief description of at least two (2) completed and operational solar PV projects in the past five years with at least one project a minimum of 500kW. The description of past projects should be submitted on the forms provided in Attachment A:
 - a. Project Name
 - b. Location
 - c. Customer/Project Owner's name, address, contact name and current telephone number (Note: All references provided will be contacted)
 - d. Proposal's project manager and/or field superintendent for the reference project
 - e. Contract method used (CM, GC, DB, Other)
 - f. Project installed capacity in kWdc; annual capacity factor for last three years (state by year of operation.)
 - g. Brief physical description of project to include equipment manufacture, model, etc. and how the technology used may be applicable to the sites proposed by the Contractor.
 - h. Brief discussion of any challenges and how they were overcome.
 - i. Detailed description of start-up and acceptance testing, including the start date, the original completion date at time of award, and the actual completion date of the project

- j. The proposal price, final project cost, and percentage increase (or decrease) for the construction contract.
- B. List total capacity (in kWdc) of PV systems by project, placed into commercial operation within last five (5) years by Contractor in addition to the projects identified in Item 2.A above.

EVALUATION CRITERIA: *Experience that clearly demonstrates the proposer's knowledge of, and ability to, successfully perform work similar to that contemplated by these specifications. Ability to deliver projects on time. Ability to deliver projects within cost established at award. Highest consideration will be given to projects completed within the past five (5) years.*

3. Project Approach/Major Milestone Schedule

- a. Detailed description of the system to be installed taking into consideration the proposed installation site, available solar resource, installation costs, aesthetics, structural limitations, roof condition and other relevant factors. Please ensure to include the following information:
 - i. Power capacity (DC kW) measured at the inverters' input
 - ii. Power capacity (AC kW) measured at the site interconnection point
 - iii. Guaranteed minimum output AC Kwh production with assumptions for the different seasons regarding sunlight availability and variable weather conditions
 - iv. Estimated capacity factor (%) and annual output (Kwh), with methodology used to develop estimates (include expected PV panel degradation in calculations)
 - v. PV array materials and inverters
 - vi. Other system components
 - vii. In the case of roof mounted systems, determination of structural integrity of building roofs to receive the panels
 - viii. Product warranties
- b. Detailed description of the technology selected for the specific project site and rationale. Equipment details and specifications.
- c. Describe the installation layout.
- d. Describe the electrical grid interconnection requirements.
- e. Operation and Maintenance Plan:
 - i. The Proposer shall provide an Operation & Maintenance Plan consistent with the PPA and License Agreement for the life of the project. The plan shall describe these procedures and include the proposer's experience in providing such services for similar installations. It shall also indicate whether these services are to be provided by the proposer or a third party.
- f. Monitoring Plan:
 - i. The proposer shall provide a plan for monitoring and tracking the solar energy output of the System.
- g. Capital Finance Structure:
 - i. The Proposer shall provide complete information regarding the capital finance structure of the privately-owned Solar PV system, to at least include:
 - 1. Description of the proposed financing structure
 - 2. Identification of funding sources

3. Examples of previously funded third-party owned projects
 4. Commitment letter from anticipated funding source and its credit rating
 5. For members of financing team, provide Moody's, Fitch or Standard and poor credit rating and three years annual report or audited financial statements.
- h. Provide a timeline showing important milestones to achieve operational status within 16 months of contract signing.
 - i. Timeline should include 2 weeks of University review at each design milestone.
 - i. Description of documents/drawings to be submitted to Owner after installation of project.
 - j. Proposer is to demonstrate the ability to obtain all needed permits and licenses to operate and maintain such facility in compliance with all local, state and federal regulations.

4. Key Personnel

- a. Identify and include the Key Personnel Forms (located in Attachment A) of the following Key Personnel:
 - a. Project Manager – individual who is responsible for overseeing the construction of the project.
 - b. Field Superintendent – individual who is responsible for overseeing the on-site construction activities.
 - c. Operations Manager/Account Representative – individual who is responsible for long term relationship with the University for the duration of the PPA term.
- b. Resumes should provide combined experience with designing, installing, and operating similar sized solar installations.
- c. History of past projects that the key team members have successfully implemented within the last ten (10) years.

EVALUATION CRITERIA: *Experience that clearly demonstrates the proposer's knowledge of, and ability to, successfully perform work similar to that contemplated by these specifications. Ability to deliver projects on time. Ability to deliver projects within cost established at award. Highest consideration will be given to projects completed within the past five (5) years.*

5. References

- a. KEY PERSONNEL REFERENCES: Provide two (2) references, as well as one (1) additional for each of the following Key Personnel by completing the Key Personnel
 - a. Reference Form for each (see Attachment A of the Solicitation Document for this form):
 - Project Manager
 - Field Superintendent
 - Operations Manager/Account Representative
- b. FIRM REFERENCES: Provide the following firm references by completing the Firm Reference Form for each (see Attachment A of the Solicitation Document for this form):
 - a. Prime/Proposing Firm: Provide three (3) firm references based on the three (3) submitted

projects.

- c. Additional Firm Project References: Please provide one (1) additional project reference for each firm noted above including the name of company, contact name, phone number, email and applicable project with a brief project description inclusive of dollar size and date completed. These will be used only in the event the University is unable to contact one or more of the references provided for the submitted projects given above.
- d. Reference Notes (applicable to Firm References and Key Personnel References above): Such references are to be from different projects; that is, only one reference per project is allowed. Only one (1) reference may be from the University of Maryland, Baltimore. The University reserves the right to verify all information given if it so chooses, as well as to check any other sources available (including itself if not provided as such.) Please be sure that accurate information is provided and that the contact person is capable of speaking to a firm's and/or key person's capability in performing the services required. References will be held in the strictest of confidence.

EVALUATION CRITERIA: *Positive feedback from references identified by the proposer. Positive feedback from any other reference sources identified by the University. Satisfactory performance of work for the University on past (or active) projects).*

6. **eBuilder Affidavit** – A copy of this eBuilder Affidavit is included in **Attachment A**.
7. **Bid/Proposal Affidavit – Form:** State and USM Procurement Regulations require that each proposal submitted by a firm include a signed Proposal Affidavit. A copy of this Proposal Affidavit is included in **Attachment A**.
8. **Acknowledgement Of Receipt Of Addenda Form:** If any addenda to the solicitation documents are issued prior to the due date and time for Technical Proposal, this form (found in **Attachment A**) is to be completed, signed, and included in the Proposing Contractor's Technical Proposal, **and**

END OF SECTION 00300, ARTICLE 1

SECTION 00300- Article 2
PROCUREMENT PHASES AND FORMS
Initial Evaluation of Technical Proposals

A. Evaluation of the Technical Proposal:

1.1 The University will establish an Evaluation Committee for the purpose of evaluating Technical Proposals submitted in response to this RFP. As the procurement progresses, the Committee may seek input from other appropriate University staff on the proposed services. As well, the Committee may request additional assistance from any source at any time during the procurement

1.2. Qualifying Proposals

The Procurement Officer shall first review each proposal for compliance with the mandatory requirements of this RFP. Failure to comply with any mandatory requirement will normally disqualify a Contractor's proposal. UMB reserves the right to waive a mandatory requirement when it is in its best interest to do so. The Contractor must assume responsibility for addressing all necessary technical and operational issues in meeting the objectives of the RFP. Proposals cannot be modified, supplemented, cured, or changed in any way after the due date and time for technical proposals, unless specifically requested by the UMB.

1.3 Technical Evaluation

The intent of this RFP is to provide companies an opportunity to present their qualifications, experience, and staffing approach to providing the scope of services in relation to the needs of University. The manner in which the proposing team presents their qualifications will be regarded as an indication of how well the Proposer's philosophy, approach, qualifications/expertise, organizational culture, working style and communications style fit with the UMB's. Submittals that concisely present the information requested in the order and the manner requested will be considered more favorably than a submittal from a Proposer of commensurate qualifications that displays a lack of organization, conciseness or attention to detail.

After compliance with the requirements in this RFP has been determined by the Procurement Officer, the Committee shall conduct its evaluation of the technical merit of the proposals in accordance with the Evaluation Criteria. The process involves applying the evaluation criteria contained in the RFP and determining the strengths, weaknesses, advantages, and deficiencies of each Proposal. Proposals are evaluated to determine those proposals that have sufficient qualifications to meet the needs of the University and therefore are evaluated as most advantageous to the UMB. The Committee intends to shortlist based on the evaluation process.

Per Section 00300 Article 1, the order of importance of the technical criteria is as follows:

Company Profile
Experience on Similar or Relevant Projects
Project Approach/Major Milestone Schedule
Key Personnel
References

1.3.1 In general, proposals submitted in response to this Solicitation must demonstrate that the firms and, in particular, the project team will have:

- a. Experience that clearly demonstrates the proposer's and Key Personnel knowledge of, and ability to, successfully perform work similar to that contemplated by these specifications. Higher consideration will be given for experience involving projects most similar to the project proposed by this RFP, in terms of size, scope, setting, and complexity. Ability to deliver projects on time. Ability to deliver projects within cost established at award. Projects provided in an occupied setting, preferably in an Academic Healthcare / Higher Education Urban setting.
- b. Higher consideration will be given to project approaches that are clear and demonstrate that the contractor understands the University's project, the schedule, and challenges.
- c. Higher consideration will be given to proposers whose company profile, construction volume and current workload illustrate that the proposer has the resources available to successfully complete the University's projects on time.

1.4 At the sole discretion of UMB, Contractors who have submitted Technical Proposals may be requested to provide UMB additional technical information to further clarify the Contractor's technical qualifications. If additional information is requested of one or more Contractors, the Procurement Officer will so advise.

1.5 The Evaluation Committee, considering each proposer's response to the Technical Proposal Criteria described herein, will evaluate Technical Proposals and may recommend the best technically qualified proposers for further consideration by the Procurement Officer. Subject to review and approval by the Procurement Officer, the best technically qualified proposers (i.e. shortlisted) will then be classified as technically acceptable.

1.6 Those Contractors that are not shortlisted will not progress in the procurement. Multiple shortlists may result as the procurement progresses. As the procurement progresses and as results of the technical evaluation are determined by UMB, all Contractors will be notified as to the results of the technical evaluation of his/her firm's technical proposal.

1.7 The University will rank the final shortlist.

END OF SECTION III, ARTICLE 2

SECTION 00300- Article 3
PROCUREMENT PHASES AND FORMS
Price Proposals and Final Evaluation

A. PRICE PROPOSAL INFORMATION AND ENCLOSURES

- 1. Only firms that remain shortlisted following the final evaluation of Technical Proposals and Oral Presentations will be requested to submit a Price Proposal.**
2. The Price Proposal form and instructions for submittal will be provided via written Addendum to the final shortlisted Proposers. It is anticipated that Price Proposals will be submitted to the Issuing Office by the due date and time per the Solicitation Schedule.
3. The Price Proposals and all required forms shall be completed in ink or typed; erasures and/or alterations shall be initialed in ink by the signer.
4. The following documents must be submitted with the Price Proposals.
Price Proposal Form (Note: Proposers shall provide prices for all items on price proposal form).
5. Firms shall submit their proposal for pricing on Attachment B, Price Proposal Form. The price proposal form is to be completed in full for each project site and will be incorporated in the resulting Power Purchase Agreement (PPA), Attachment 4.

B. PRICE PROPOSAL INSTRUCTIONS:

1. Cost Proposal Information

Proposers shall complete and submit a Price Proposal form for the separately metered Solar PV sites over a 25-year delivery period. The University will require Green-e RECs in lieu of the project RECs and proposers are to assume 0% annual escalation over life of project (See *Price Proposal Form* in Attachment B). Green-e REC costs will be treated as a pass-through charge. Do not include Green-e REC pricing in the Price Proposal Form. The University will retain any and all Environmental Attributes (other than RECs).

2. The Price Proposal Form consists of the following requested information:
 - Base Year Green-e REC Price for both the Pearl Garage and Penn Garage.
 - One chart with columns for each of the sites, Pearl Garage and Penn Garage. The chart requests Proposers to provide the following information:
 - a. DC Power Capacity (kW dc)
 1. The delivered solar power shall be quoted in DC power capacity basis and connected to the University power distribution system. The term “kW” used in this RFP means Kilowatt (kW) of AC Solar PV capacity delivered to the University. The term “kWh” used in the RFP means kilowatt hour (kWh) of AC Solar PV electricity delivered at each site.

- b. Yield (kWh/kWp)
- c. Minimum Output Performance Guarantee (kWh/yr)
 - 1. Each Proposer must state a quantity of expected electricity generation each year on their Cost Proposal Form. Each proposer must also guarantee a minimum output performance from the solar PV system over the course of each calendar year which shall not be less than 90% of the expected output.
- d. PPA Rate (without Green-e) (\$/kWh)
- e. Total Annual Cost (without Green-e) – the Minimum Output Performance Guarantee (c) multiplied by the PPA Rate (d)

- Other Cost Factors:

- i. Renewable Energy Credits (RECs): The Solar Provider will retain ownership of all RECs throughout duration of contract.
- ii. Proposers should take advantage of any other incentive programs (including the MEA Solar Canopy Grant Program) that can reduce the cost of the system but must be able to verify that the project is eligible to utilize such incentives

- **NOTES:**

- Proposers should make the following assumptions:
 - Assume both Projects are 25-year terms with 0% Escalation
 - Estimated annual degradation shall not exceed 1%

- 2. The Proposer shall offer a Purchase Price and a time period in years subsequent to the commencement of the initial delivery date at the end of which the Purchase Price would be effective for the Buyer, at its option, to purchase the solar equipment and terminate the PPA. This Purchase Price does not reflect an obligation to buy nor does it serve as a basis for calculating damages under a termination or default.
- 3. Additionally, the Proposer shall completed the Estimated Energy Production table for both the Pearl Garage and Penn Garage which have been included in Attachment B.
- 4. Cost proposals shall clearly show the annual cost of electricity over the proposed twenty-five year life of the project.

C. SIGNING OF PRICE PROPOSAL FORMS

The Price Proposal, if submitted by an individual, shall be signed by the individual; if submitted by a partnership or joint venture, shall be signed by such member or members of the partnership or joint venture as have authority to bind the partnership or joint venture; if submitted by a corporation, shall be signed by an officer, and attested by the corporate secretary or an assistant corporate secretary.

If not signed by an officer, there must be attached a copy of that portion of the by-laws or a copy of a board resolution, duly certified by the corporate secretary, showing the authority of the person so signing on behalf of the corporation. Signatures shall be under seal, i.e.: indicated by the word "(Seal)" following signature of individual and partner bidders and indicated by affixing the Corporate Seal at corporate signatures.

D. PRICE PROPOSAL EVALUATION

1. Price Proposals will not be opened publicly.
2. Price Proposals will be evaluated based on the best value provided to the University
3. The resulting contract will be a Power Purchase Agreement which will incorporate the proposed rates into Attachment C Power Purchase Agreement Attachment 3 Energy Payment Rate.
4. Cost proposal Criteria: The University will use the Price Proposal Form in Attachment B to determine the “best value.”
5. The University may elect to request Best & Final Price Proposal(s).

E. FINAL PROPOSAL RATING

1. The final proposal rating will be based on the second (or final, whichever is applicable) phase technical evaluation and the price proposal evaluation.
2. Final selection will be based on ‘best value’ to the University taking into account both the Technical and Financial Proposals. Technical merit will have a greater weight than cost.
3. The Evaluation and Selection Committee will choose from among the highest rated proposals that proposal which will best serve the interests of the University, in accordance with University procurement regulations. The University reserves the right to negotiate or modify any element of the request for proposal evaluation process to secure the best possible arrangement for achieving the stated purpose. The University reserves the right to make an award with or without negotiations. The final decision will not be based upon price alone.
4. Refer to Attachment I Procurement Terms and Conditions, Paragraph 11. Proposal Acceptance.

END OF SECTION 00300 ARTICLE 3

END OF SECTION 00300

SECTION 00400

SCOPE OF WORK

**SECTION 00400
SCOPE OF WORK**

A. INSTITUTIONAL PROFILE OF UMB

The University of Maryland, Baltimore (UMB) is a public university that is a part of the University System of Maryland, a public corporation and an instrumentally of the State of Maryland. The 72-acre research and technology complex encompasses 69 buildings located in West Baltimore; a city that has become a model for urban rebirth and vitality. The UMB complex has over 7,400 faculty members and staff and over 6,700 students enrolled in six nationally ranked professional schools School of Dentistry, School of Law, School of Medicine, School of Nursing, School of Pharmacy, School of Social Work and an interdisciplinary Graduate School.

B. PROJECT BACKGROUND

UMB is committed to creating a more sustainable campus and to this end has taken several steps to realize its climate commitment goals.

The University is specifically seeking a third party to install, own, operate, maintain and finance a solar photovoltaic canopy project on top of two separate parking garages located on the UMB Campus, the Pearl Parking Garage, located at 622 W. Fayette Street, and the Penn Parking Garage, located at 120 Penn Street.

The Solar PV Provider, in response to this RFP must provide a complete solar project including the financing and selling the electricity generated to the University.

C. DEFINITIONS

- **COMAR:** The Code of Maryland Regulations that is maintained by the Division of State Documents
- **Vendor:** Same as Solar Provider
- **Facility:** Any building, parking garage or open site as indicated within this document
- **Photovoltaic Solar System:** A system of solar panels and associated equipment that is used for converting sunlight to usable electricity. The output shall be AC at all facility interfaces; all claims for production of electricity shall be assumed to be AC current.
- **PJM:** The Independent System Operator (ISO) of the local Electric Transmission Grid.
- **PSC –** The State of Maryland Public Services Commission
- **Renewable Energy Credit (REC):** The renewable attributes of one Megawatt hour (MWh) of electricity generated using clean energy resources.
- **Solar Provider (Solar PV Provider, PV Owner, Proposer):** A private

organization that finances, installs, owns and operates on the University of Maryland, Baltimore campus dedicating the sole use of that electricity produced for the benefit of the University.

- **University:** The University of Maryland, Baltimore

D. SCOPE OF SERVICES

D.1 General

- Proposers ought to assume that no prior evaluation was done as to determine the appropriately sized system for the locations and configuration of the sites and its improvements. Each Proposer is expected to make their determination as to site conditions and opportunities for the appropriate system size. The intent is to maximize the solar potential of the sites.
- Ownership and all rights for the use and sale of Renewable Energy Credits (RECs) shall remain the PV Owners for the full term of the PowerPurchase Agreement. The Proposer shall submit proposals with Green-e RECs substituting the Solar RECs (sREC).
- The Proposer shall be responsible for the delivery of electricity to the University under a long-term (25 years) Power Purchase Agreement (PPA).
- The Guaranteed Initial Delivery Date for this project means 16 months from the Effective Date (as defined in the PPA) for the Pearl and Pratt Street Garage.

D.2 Solar Provider Responsibilities

The Solar Provider is required to design, install, operate and maintain a turn-key solar photovoltaic project for the benefit of the University.

D.2.1 Planning and Design

- Provide a Schematic design, a 50% design submission and a final 100% design submission for the University and third-party structural consultant's review. Submission should include system sizing and load analysis including connections to the University power distribution system. (The Campus Medium Voltage Distribution System is included as Exhibit B)
- BGE Interconnection Agreement (IA)– UMB has an existing IA with BGE. The proposer will incur the required BGE Interconnection Application Fee and assist UMB University Counsel with submitting an amendment to the IA.
- Obtain all necessary federal, state local and other permits which may be required to complete the system, including payment of any permit fees.
- Obtain necessary zoning approvals when applicable.
- Comply with all applicable codes and standards with regard to a Solar PV installation.

D.2.2 Construction/Installation

- A. Prepare sites as required for installations.
- B. Install structural and photovoltaic systems to the satisfaction of the University including all panels, inverters, wiring and any other ancillary equipment required for system operation which may include but is not limited to all protective barriers that the University may require.
- C. The University Parking Garages are 24/7/365 Operations and will remain open throughout construction of rooftop Solar PV. Coordinate all survey work and construction of the Solar PV System with the University Project Manager and representatives from Parking and Transportation Services.

D.2.3 Operation and Maintenance

- A. Maintain the system for the stated service life to at least include any cleaning, upgrades, repairs, etc. to ensure continuous delivery of electricity.
- B. Provide adequate and reliable metering that is pre-approved by MD COMAR and the Public Service Commission for Utility Revenue Billing to facilitate the amount of electricity delivered and associated billing.
- C. The University has the Schneider Electric (SE) Ecostruxure Power Monitoring Expert (PME) Metering System. In addition to any private metering needed by the proposer for monthly billing purposes, provide an ION7400 from SE with three (3) digital inputs. Install the meter with the voltage inputs derived from the campus-side of the Solar PV System Isolation Switch and current inputs derived from the Solar PV side of the Isolation Switch and connect a digital input to the meter from the Isolation Switch for remote monitoring of the Solar PV System status. Provide a CAT 6 cable in ¾” EMT with compression fittings to the local Communications closet in the building for connection to the University’s Metering Network.

D.2.4 Financing

- A. Arrange and execute the full financing for the life of the project.
- B. Within 90 days of contract execution, provide a letter of commitment from a financial group that will underwrite the project.
- C. Aggregate all federal, state, local and utility company incentives into the price structure of the cost/kWh delivered.
- D. Aggregate and market all RECs generated by the system(s) to reduce the price/kWh paid by the University. Provide Green-e Certified RECs as a substitute for the annual Solar RECs retained by the Solar Provider. Do not include cost of Green-e RECs in Price Proposal.

D.2.5 Sale of Electricity

- A. All the electricity provided by the System is to be provided to the University.

D.2.6 End of Service Life

The vendor shall execute the following, at the University’s discretion, at the end of the contract term:

- A. Decommission and remove the system from the buildings, parking garages and/or open

sites. There is a possibility the University will request the repowering of the system. Upon decommissioning, the Vendor shall restore disturbed areas of the facilities to their pre-project condition.

- B. Offer the System to the University at a fair market value as determined by an independent appraiser approved by both parties.

D.2.7 University Responsibilities

- A. Provide access to the site for coordination of the Solar PV System installation.
- B. Provide ongoing access for operation and maintenance of the System.
- C. Cooperate with the Solar Provider in the provision of information regarding the power installation and distribution on campus and within the facilities.
- D. Provide any other facility information as required to make the required installations.
- E. Assist the Solar Provider in negotiations with the utility company and MD PSC with regard to connection to campus grid and subsequent metering requirements for compliance with MD COMAR and BGE small generator interconnection requirements.

D.3 SPECIFICATIONS

The design of the Solar PV System shall be the sole responsibility of the Vendor. However, the system must comply with any applicable university guidelines. The section outlines general design requirements and more detailed requirements will become part of an eventual License Agreement.

D.3.1 Modules

- PV modules specified must be accepted or eligible under any applicable Maryland utilities' incentive program for solar generation
- The System must comply with IEEE 1262 – recommended practice for Qualifications of PV Modules

D.3.2 Electric Power Requirements

- Power must be compatible with campus medium voltage distribution system (see Exhibit B)
- Power capacity is to be measured at the inverter AC output using the PVUSA Test
- All systems must be installed in accordance with all applicable requirements of local electric codes and the national electric Code (NEC) with particular reference to Solar PV interconnection.
- Systems must be installed using UL or ETL listed components.
- Modules must be certified to UL 1703 – “Flat plate PV Modules and Panels.”
- Inverters must comply with the following requirements:
 - IEEE 929-2000 “recommended Practice for Utility Interface of PV Systems
 - UL 1741 – “Standard for Static Inverters and Charge Controllers for use in PV Systems
 - Eligible under the Maryland Public Service Commission’s requirements
- Other acceptable PV system listing include ETL Semko and FM Global

- Other technical codes that apply include:
 - AMSE PTC 50 (Solar PV performance)
 - ANSI Z21.83 (Solar PV performance and safety)
 - NFPA 853 (Solar PVs near buildings)
 - NEPA 70 (electrical components)
 - IEEE 1547 (Interconnection)
 - National Electric Safety code – ANSI C2 – 1999
 - All applicable MD Building Codes and requirements
- The balance of the systems components must be suited for conditions under which they will be installed. Inverters and any other power components must be installed in all-weather enclosures (NEMA 4) suitable for exterior location.
- BGE Interconnection Agreement (IA) – As noted in Section 5, the Solar Provider will pay the application fee and coordinate with University Counsel to amend an existing IA with BGE.

D.3.3 Meters

- As noted in Section D2.3, provide a Revenue Meter that is pre-approved by MD COMAR and the Public Service Commission for Utility Revenue Billing to facilitate the amount of electricity delivered and associated billing. Also provide a Schneider Electric ION7400 meter with three (3) digital inputs. Install the meter with the voltage inputs derived from the campus-side of the Solar PV System Isolation Switch and current inputs derived from the Solar PV side of the Isolation Switch and connect a digital input to the meter from the Isolation Switch for remote monitoring of the Solar PV System status. Provide a CAT 6 cable in ¾” EMT with compression fittings to the local Communications closet in the building for connection to the University’s Metering Network. See Section D2.3 for further details.

D.3.4 Structural/Architectural Requirements

- All structures must be designed to meet the relevant dead, live and wind loads for the area.
- The canopy shall be of sufficient structural and architectural integrity to be compatible with applicable codes and within the standards acceptable to the University.
- Components of the arrays must be capable of attaining a minimum 30-year design life.
- The University will contract a 3rd-party to review the Solar Provider’s Structural Design Drawings and oversee the Canopy construction. The Solar Provider must make every effort to accommodate any requests from the University’s Structural Consultant.

D.3.5 Operation and Maintenance

- The Vendor will be responsible for the operation and maintenance of the solar PV system at the Licensee’s own cost and will give the assurance there is no disruption to the University.

- The Vendor shall provide two weeks' notice prior to scheduling any planned maintenance and repairs.
- The Vendor shall provide a minimum of two weeks' notice prior to repairs and maintenance that will result in any service disruption.
- **There shall be no interruption to any of the University's facilities as a result of the installation of the Solar PV System.**

D.4 Proposed Site

See attached campus map (Exhibit A) with location of sites indicated.

E. PROJECT INFORMATION

1. The objective of this project is to select a qualified Electrical Contractor who will also act as the General Contractor to provide all labor, materials, equipment, supplies, supervision, subcontracting and any other necessary resources as required for the Project for the University of Maryland, Baltimore in accordance with this Solicitation.
2. All work is to be performed in accordance with the UMB Construction Standard General Conditions, Section 00700 of this contract in effect as of Notice to Proceed.
3. The Contractor shall complete the work in the time required by the University and in accordance with the requirements stated within the contract.

E. CONTRACTOR USE OF PREMISES

1. General: During the construction period the Contractor shall have full use of the premises for construction operations, including use of the site. The Contractor's use of the premises is limited only by the University's right to perform work or to retain other contractors on portions of the Project. Contractor's use of interior portions of the building shall be limited to those operations necessary for work related to this contract. Interior work shall be scheduled in advance with the Owner and required written authorization.
2. Use of the Site: Limit use of the premises to work in areas indicated. Confine operations to areas within contract limits indicated. Do not disturb portions of the site beyond the areas in which the Work is indicated.
 - (a) University Occupancy: Allow for University occupancy and use by the public. The building will remain in 24 hour operation; access to the building entrances shall be maintained throughout the construction period.
 - (b) Keep area clean, free of debris, and protected from public access. Staff and public access shall be maintained at all times.
 - (c) Driveways and Entrances: Keep driveways and entrances serving the premises clear and available to the University, the University's employees, and emergency vehicles at all times. Do not use these areas for parking or storage of materials. Schedule deliveries to minimize space and time requirements for storage of

materials and equipment on-site.

3. Use of the Existing Buildings: Maintain the existing buildings in a weather-tight condition throughout the construction period. Repair damage caused by construction operations. Take all precautions necessary to protect the buildings and its occupants during the construction period.

F. OCCUPANCY REQUIREMENTS

1. Full University Occupancy: The University will occupy the site and existing building during the entire construction period. Cooperate with the University during construction operations to minimize conflicts and facilitate University usage. Perform the Work so as not to interfere with the University's operations.
2. Perform work as quietly as possible to avoid unnecessary disturbance. Unusual precaution may be necessary in the conduct or work in some areas to achieve satisfactory compliance. Some off hour work may be required due to noise level issues.
3. Coordinate with the Owner to perform work producing high noise levels, dust, or hazards to occupants in occupied areas.

END OF SECTION 00400

SECTION 00500

INTENTIONALLY OMITTED

SECTION 00600

INTENTIONALLY OMITTED

SECTION 00700

GENERAL TERMS AND CONDITIONS FOR CONSTRUCTION

VII. SECTION 00700

UNIVERSITY OF MARYLAND, BALTIMORE

STANDARD GENERAL CONDITIONS OF CONSTRUCTION CONTRACT

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

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SECTION 1: DEFINITIONS AND RESPONSIBILITIES

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

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

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

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

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

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

"Chancellor" -- Refer to definition of The President noted below.

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

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

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

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

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

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

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

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

"Indicated" -- See "As indicated" above

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.02 UNIVERSITY'S RESPONSIBILITIES:

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

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

- A. The Contractor shall supervise and direct the Work, using his best skill and attention. He solely shall be responsible for all construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work under the Contract.
- B. The Contractor shall be responsible to the University for acts and omissions of his employees, his agents or subcontractors and their agents and employees, and other persons performing any of the Work under a contract with the Contractor.

- C. The Contractor shall not be relieved from his obligation to perform the Work in accordance with the contract documents, either by the Contract, or by inspections, tests, or approvals required or performed any person in connection with the Work.
- D. The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, and the contract documents, and shall not encumber the site unreasonably with any materials or equipment. The Contractor shall submit proof of a Confined Space Program to UMB's Office of Environmental Health & Safety (EHS), 714 W. Lombard Street, Baltimore, MD 21201-1041.
- E. Cutting and Patching of Work:
 - (1) The Contractor shall be responsible for all cutting, fitting, or patching that may be required to complete the Work or to make its several parts fit together properly.
 - (2) The Contractor shall not alter damage or endanger any portion of the Work of the University or any separate contractors by cutting, patching, otherwise altering any work or excavation. The Contractor shall not cut or otherwise alter the work of the University and of such separate contractor.
 - (3) The Contractor shall not unreasonably withhold from the University or any separate contractor his consent to cutting or otherwise altering the Work.
- F. The Contractor shall perform the Work in accordance with the lines, grades, typical cross sections, dimensions, and other data required by the contract documents as modified from time to time, including the furnishing of all materials, services, implements, machinery, equipment, tools, supplies, transportation, labor, and all other items necessary for the satisfactory prosecution and completion of the project in full compliance with the requirements of the contract documents.

G. Indemnification:

- (1) To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the University System of Maryland, the University and any Client University, the State of Maryland, the Architect, the Engineer, and the local government of the city or county where the Project is located (if requested by the University), and their agents and employees, from and against all claims, damages, losses, and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of the Work, provided that any such claim, damage, or loss or expense: (1) is attributable to bodily injury, sickness, disease, death, or personal injury or injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent or willful act or omission of the Contractor, any Subcontractor or Sub-subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, regardless of whether or not the claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Section. This obligation is not intended to be or to imply a waiver of the sovereign or governmental immunity of the University, the State, the Client University, or any local jurisdiction where the Project is located.

- (2) In any and all claims against the University or the State of Maryland or the Architect or any of their agents or employees by any employee of the Contractor, any Subcontractor or Sub-subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or any Subcontractor or Sub-subcontractor under worker's or workmen's compensation acts, disability benefit acts or other employee benefit acts

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

END OF SECTION 1

SECTION 2: AWARD AND EXECUTION OF CONTRACT

2.01 AWARD

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

2.02 EXECUTION OF CONTRACT AND AMENDMENT

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

After receipt of the properly executed contract forms, and other applicable forms, the Department of Procurement Services will execute the Contract or the Construction Amendment, as applicable, within sixty (60) days and forward the Contractor a copy. In the event that the University fails to execute the Contract, or the Construction Amendment within the sixty (60) day period, the Contractor will have, as it's only remedy, the option to declare the Contract terminated without any liability by the University or the State of Maryland or to accept an extended period for execution by the University.

The Contract or the Construction Amendment shall not be in effect until and unless it is executed by all parties and approved by the Board of Public Works (if required).

2.03 FAILURE TO EXECUTE CONTRACT:

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

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

2.04 PERFORMANCE AND PAYMENT BONDS:

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

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

2.05 **CERTIFICATIONS REQUIRED BY LAW:**

A. **Cost and Price Certification:** [21.07.01.23]

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

B. **Contingent Fee Prohibition:**

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

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

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

2.06 CONTRACT DOCUMENTS:

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

- (5) Singular or plural references shall mean one or more like terms of work as necessary to complete the Work, unless specifically directed otherwise.
- (6) Typographical and spelling errors in the specifications will be interpreted by the A/E for their meaning and intent.
- (7) The following order of precedence shall be used when there is a conflict in the Contract Documents. When the order of precedence cannot be used to resolve a conflict, then the more expensive labor, material or equipment shall be provided.
 - (a) The written agreement between the University and the Contractor
 - (b) Supplementary Conditions (Section 00800)
 - (c) General Conditions (Section 00700)
 - (d) Specifications, Divisions 1 through 16
 - (e) Drawings, in the following order of precedence:
 - (i) Notes on Drawings in order of scale with largest first
 - (ii) Details in order of scale with largest first
 - (iii) Figured Dimensions
 - (iv) Scaled Dimensions

B. Drawings -- The Contractor shall do no Work without proper drawings and instructions. Drawings are in general drawn to scale and symbols are used to indicate materials and structural and mechanical requirements. When symbols are used those parts of the drawings are of necessity diagrammatic and it is not possible to indicate all connections, fittings, fastenings, etc., which are required to be furnished for the proper execution of the work. Diagrammatic indications of piping, ductwork and conduit, and similar items in the work are subject to field adjustment in order to obtain proper grading, fitting passage over, under or past obstructions, to avoid exposure in finished rooms and unsightly and obstructing conditions. The Contractor shall make these adjustments at no increased cost to the University.

- (1) Copies Furnished -- The University will furnish the Contractor without cost, five (5) sets of drawings and five (5) sets of specifications. Additional copies may be obtained by the Contractor upon payment of the cost of reproduction of documents.

- (2) Copies At The Site -- The Contractor shall keep in the job site office a complete set of all drawings, specifications, shop drawings, schedules, etc., in good order and available to the Architect and the University.
 - (3) Ownership -- All contract documents remain the property of the University. The Contractor shall not use any of them on other work and shall return to the University upon completion of the work.
- C. Large Scale Detail Drawings -- When the University directs, the Architect shall furnish additional instructions, in the form of large scale developments of the drawings used for bidding, or to amplify the specifications for the proper execution of the Work. These shall be true developments of the bidding documents and reasonably inferable therefrom. The Work shall be executed in conformity therewith.
- D. Dimensions -- The Contractor shall carefully check all dimensions prior to execution of the particular portion of the Work affected. Whenever inaccuracies or discrepancies are found, the Contractor shall consult the Architect prior to any construction or demolition. Should any dimensions be missing, the Architect will be consulted and supply them prior to execution of the Work unless, under the specifications, the Contractor is responsible for determining dimensions. Dimensions for items to be fitted into constructed conditions at the job will be taken at the job and will be the responsibility of the Contractor. The obvious intent of the documents or obvious requirement dictated by conditions existing or being constructed supersedes dimensions or notes which may be in conflict therewith. Whenever a stock size manufactured item or place of equipment is specified by its normal size, it is the responsibility of the Contractor to determine the actual space requirements for setting or entrance to the setting space. No extra cost will be allowed by reason of work requiring adjustments in order to accommodate the particular item of equipment
- E. Whenever new work, building, addition, or portions thereof are not accurately located by plan dimensions, the Architect will supply exact position for execution of the Work.

2.07 **SHOP DRAWINGS:**

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

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

END OF SECTION 2

SECTION 3: SCOPE OF THE WORK

3.01 INTENT OF THE CONTRACT DOCUMENTS:

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

3.02 GENERAL CONDITIONS CONTROLLING:

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

3.03 DIFFERING SITE CONDITIONS: [21.07.02.05]

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

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

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

3.05 CONDITIONS AFFECTING THE WORK:

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

3.06 CHANGES IN THE WORK: [21.07.02.02]

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

- E. If the Contractor intends to assert a claim for an equitable adjustment under this Section, it shall within thirty (30) days after receipt of a written Change Order under paragraph A above or the furnishing of written notice under paragraph B above, submit to the procurement officer a written statement setting forth the general nature and monetary extent of such claim unless this period is extended by the University. The statement of claim hereunder may be included in the notice under paragraph B above.
- F. No claim by the Contractor for an equitable adjustment hereunder shall be allowed or asserted after final payment under this Contract.
- G. In order to facilitate review of quotations for extras or credits, all proposals (except those so minor that their propriety can be seen by inspection) shall be accomplished by a complete itemization of costs including labor, materials and Subcontracts. Where major cost items are Subcontracts, they shall also be itemized. In no case will a change involving over \$200.00 be approved without such itemization.
- H. Each Contractor and subcontractor shall furnish labor and materials for any additional work ordered by the University (and for which no pre-agreed price has been fixed) for the net cost of all labor and materials furnished, plus an overhead and profit amount not to exceed 15% on work performed by its own forces. In addition each Contractor and each subcontractor shall be entitled to mark up by an amount not to exceed 10% any invoice received from another subcontractor for work performed by the other subcontractor's forces.
- I. Each contract modification or change order that affects contract price shall be subject to the prior written approval of the Procurement Officer and other appropriate University authorities and to prior certification of the appropriate fiscal authority of fund availability and the effect of the modification or change order on the project budget or the total construction cost. If, according to the certification of the fiscal authority, the contract modification or change order will cause an increase in cost that will exceed budgeted and available funds, the modification or change order may not be made unless sufficient additional funds are made available or the scope of the project is adjusted to permit its completion within the project budget.

3.07 UNAUTHORIZED WORK:

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

END OF SECTION 3

SECTION 4: CONTROL OF THE WORK

4.01 AUTHORITY OF THE ARCHITECT:

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

4.02 CONFORMITY WITH CONTRACT REQUIREMENTS:

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

4.03 ADJACENT WORK:

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

4.04 CONTROL BY THE CONTRACTOR:

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

4.05 COOPERATION WITH UTILITIES:

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

4.06 AUTHORITY AND DUTIES OF UNIVERSITY INSPECTORS:

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

4.07 INSPECTION OF THE WORK:

- A. Work, including the fabrication and source of supply, is subject to observation by the Architect and to the University's Office of Facilities Management's right to inspect specific items.

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

4.08 REMOVAL OF DEFECTIVE WORK:

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

4.09 MAINTENANCE OF WORK DURING CONSTRUCTION:

- A. The Contractor shall maintain the Work during construction and until acceptance. This maintenance shall be continuous and effective, prosecuted with adequate equipment and forces to the end that all parts of the work be kept in satisfactory condition at all times and protected from damage of any kind from external sources.

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

4.10 FAILURE TO MAINTAIN ENTIRE PROJECT:

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

4.11 UNIVERSITY'S RIGHT TO DO WORK:

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

4.12 AUTHORITY OF OFFICE OF ENVIRONMENTAL HEALTH AND SAFETY

- A. The University of Maryland, Baltimore's Office of Environmental Health and Safety ("EHS") is responsible for promoting a safe and healthful work environment for the project and for verifying the Contractor's compliance with Federal and State environmental protection regulations and University safety and health practices. To carry out these responsibilities, EHS is authorized to inspect the project, all work done and being done, and all material to be furnished and being furnished. In the event that EHS learns of an unsafe condition, EHS is authorized to suspend work (after notice to the Procurement Officer and the Office of Facilities Management) until the unsafe condition is cured by the Contractor. "Unsafe condition" shall mean any practice that represents a significant risk of injury or health hazard to University employees, a significant adverse environmental impact or a physical hazard which could result in damage to University property and/or the public. The authority of EHS is in addition to any other rights of the University set forth herein.
- B. Prior to the Contractor proceeding with the Work, he is to submit proof of a Confined Space Program to UMB's Office of Environmental Health and Safety for verification.

4.13 IDENTIFICATION:

- A. The Contractor shall obtain identification for its employees from the University or the Client University where the Project is located. The rules and changes of the institution apply; costs are the Contractor's responsibility. The University Project Manager must approve all applications for campus identification. Employee identification of work persons assigned to the University Project shall be visible at all times.
- B. All vehicles and mobile equipment shall be identified with the Contractor's name displayed in a highly visible manner.

- C. The Contractor shall require all trade contractors' personnel to wear identification badges at all times on campus.

4.14 NOISE CONTROL:

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

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

4.16 KEYS:

- A. Keys needed by Contractor for 7 days or less:

The Contractor must sign out a key from Work Control and return the key each day to Work Control.

- B. Keys needed by Contractor for more than 7 days:

A \$10.00 deposit (amount subject to change without notice) shall be paid to UMAB by the Contractor for each key. The deposit is refundable when the key is returned to Work Control after the project is completed. The deposit is forfeited if the key is lost and cannot be returned.

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

END OF SECTION 4

SECTION 5: MATERIALS

5.01 GENERAL:

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

- H. Standard Specifications -- When no specification is cited and the quality, processing, composition, or method of installation of a thing is only generally referred to, then:
- (1) For items not otherwise specified below, the latest edition of the applicable American Society for Testing Materials specification is the applicable specification.
 - (2) For items generally considered as plumbing and those items requiring plumbing connections, the applicable portions of the latest edition of the B.O.C.A. Code are the applicable specifications.
 - (3) For items generally considered as heating, refrigerating, air-conditioning, or ventilating, the applicable portions of the latest edition of the A.S.H.R.A.E. Handbook published by the American Society of Heating, Refrigerating, and Air- Conditioning Engineers, Inc., are the applicable specifications.
 - (4) For items generally considered as site work, the applicable portions of the Maryland S.H.A. Standard Specifications are the applicable specifications.
 - (5) For items generally considered as electrical, the applicable provisions of the latest edition of the National Electric Code are the applicable specifications.
 - (6) For items generally considered as fire protection, the applicable portions of the latest edition of the National Fire Protection Association Code are the applicable specifications.
- I. The Contractor shall provide the University with Material Safety Data Sheets (MSDS) as required by law. The Contractor shall provide EHS with a material safety data sheet ("MSDS") for all products and materials which (i) contain hazardous chemical and (ii) to which OSHA Regulations (29 CFR, 1910.1200) apply. The Contractor must submit a binder of all applicable MSDS's to EHS within forty-five (45) days of issuance of the Notice to Proceed. EHS will review this binder and return it to the Contractor accordingly. The Contractor shall maintain in its possession on the project site, at all times, a copy of each MSDS required to be submitted in connection with the chemicals, compounds, or materials used in the project. In the event EHS has questions arising from any MSDS, in each instance, notwithstanding anything herein to the contrary, EHS shall have the right to contact the Contractor and the vendor of the chemical, compound or material in question.

5.02 **STORAGE AND HANDLING OF MATERIALS:**

- A. Materials shall be so stored as to assure the preservation of their quality and acceptability for the Work. Stored materials, even though approved before storage, may again be inspected prior to their use in the Work. Stored materials shall be located so as to facilitate their prompt inspection. Approved portions of the project site may be used for storage purposes and for the placing of the Contractor's plant and equipment. Such storage areas must be restored to their original condition by the Contractor at his expense. If off-site storage is used, Contractor shall provide the necessary copy of the insurance policy with the University as the certificate holder. See Section 6.05 and Section 6.06 for further details.
- B. Materials shall be handled in such a manner as to preserve their quality and acceptability for the Work.
- C. Contractor shall confirm his apparatus and the storage of materials to the area delineated in the Contract documents as the "Limit of Contract."
- D. Explosives:
 - (1) Explosives shall not be stored upon any property belonging to the University.
 - (2) Should the Contractor desire to use explosives on any University property he shall first receive written approval of the University. The approval will stipulate time, place, and quantity to be used and manner of use.
 - (3) The Contractor shall assume all responsibility for injury to persons or property damage which may result from the use and/or transportation of explosives. The Contractor must comply with any and all ordinances, regulations, and restrictions in relation to the use of explosives.
- E. Paints
 - (1) Oil base paints and liquids shall not be stored in large quantities on the project site. Containers shall be limited to five (5) gallon size. Any liquid with a flash point of less than one hundred (100) shall be contained in safety cans, UL approved. Liquid with a higher flash point shall be stored in rigid cans. Glass containers shall not be used.
 - (2) Oily rags, waste, etc., must be removed from the work site at the close of each working day.

5.03 SUBSTITUTION:

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

5.04 APPROVED EQUALS:

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

5.05 CONTRACTOR'S OPTIONS:

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

5.06 TESTS:

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

5.07 BUY AMERICAN STEEL:

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

5.08 SALES TAX:

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

5.09 HAZARDOUS MATERIALS:

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

END OF SECTION 5

SETTING 6: LEGAL RELATIONS AND RESPONSIBILITIES

6.01 LAWS TO BE OBSERVED:

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

6.02 PERMITS AND LICENSES:

- A. The University will file with the appropriate local authority drawings and specifications and any pertinent data reasonably proper for their information. No permits are applicable for work on University property with the exception of (i) any permits required in the specifications as noted in 6.02, C. below and (ii) Cutting & Welding permit noted in 6.02, D. below.

- B. Any permits required for work on non-University property are the responsibility of the Contractor in terms of the permit acquisition, cost thereof and all obligations and liability under the permit.
- C. Any permits required by the specifications (i.e., Air and Radiation Management Administration boiler permits, etc.) are the responsibility of the Contractor in terms of the permit acquisition, cost thereof and all obligations and liability under the permit.
- D. Before any welding, burning, pipe sweating or brazing is started at the University of Maryland, Baltimore, a "CUTTING & WELDING PERMIT" must be obtained from EHS, 714 W. Lombard Street, Baltimore, MD 21201-1041, or for a Project at a Client University from the appropriate office there. This permit must be requested from EHS at least two days prior to the anticipated hot work. The cardboard portion of the permit shall be secured to either the cutting or welding equipment. At the end of the requested time, the cardboard portion of the permit must be returned to EHS.
- E. The Contractor must be licensed as required by the Laws of the State of Maryland (Art. 56, Sec. 180, Annotated Code of Maryland) and must be qualified by submission and approval of a qualification Questionnaire when requested.

6.03 PATENTED DEVICES, MATERIALS, AND PROCESSES:

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

6.04 LAND, AIR, AND WATER POLLUTION:

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

- F. The term "environmental litigation", as used herein, means a lawsuit alleging that the work will have an adverse effect on the environment or that the University has not duly considered, either substantively or procedurally, the effect of the Work on the environment, or that the University and/or Contractor has not complied with applicable environmental laws and regulations.

6.05 CONTRACTOR'S LIABILITY INSURANCE:

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

- (1) Worker's or Workmen's Compensation Insurance.
- (2) Employer's Liability Insurance.
- (3) Comprehensive General Liability Insurance for bodily injury and property damage, including loss of use of property, arising out of any occurrence. This insurance should include the following extensions:
 - (a) Products and completed operations coverage for a period of at least two years (see Section 00700, #7.17 Guarantees for further information and/or details regarding the guarantee period).

- (b) Personal injury liability coverage (including contractual coverage);
 - (c) Contractual liability insurance to cover the Contractor's obligation to the University and the State of Maryland under Section 1.03 G.
 - (d) Broad form property damage (including completed operations);
 - (e) Independent contractor's coverage.
 - (f) "X", "C", and "U" coverage applying to explosion, collapse of other structures and underground foundations;
 - (g) If the work involves containment or removal of asbestos, pollution liability (environmental protection liability) coverage.
- (4) Business automobile liability insurance which will pay for liabilities arising out of accidents involving the ownership, operation, maintenance or use including the loading or unloading of any automobile.
- (5) Umbrella liability
- B. The coverage listed in paragraph 6.05 A shall be written for not less than the following limits of liability.
- (a) Comprehensive general liability insurance including all extensions –
 - \$2,000,000 each occurrence;
 - \$2,000,000 personal injury;
 - \$2,000,000 products/completed operations;
 - \$2,000,000 general aggregated
 - (b) Worker's Compensation Insurance and Unemployment Insurance as required by the laws of the State of Maryland.
 - (c) Employer's liability insurance - - \$1,000,000 each accidental injury or disease and \$2,000,000 aggregate.
 - (d) Property damage liability insurance with a limit of not less than \$2,000,000 for each accident.
 - (e) Business automobile bodily injury liability insurance with limits of not less than \$1,000,000 for each person and \$2,000,000 for each accident, and property damage liability insurance, with a limit of not less than \$2,000,000 for each accident.

- (f) Umbrella liability - - \$5,000,000 limit.
- C. Satisfactory proof of purchase of required insurance shall be furnished on the Accord format for certificates prior to execution of the Contract and upon renewal of any policy, and upon obtaining any new insurance policy. Certificates must be amended to indicate: "Should any of the described policies be canceled before the expiration date thereof, or non-renewed, the issuing company will give forty-five (45) days prior written notice to the certificate holder," each Certificate should indicate the insurer, the appropriate policy number(s), the policy expiration date(s), the limits of liability in effect, and the Best's rating and financial rating of the insurer. A certificate will be accepted only if signed by an authorized representative of the insurer.
- D. Insurance certificates will be accepted only from an insurer having a minimum Best's rating of Class A for the policy holders' rating and Class IX for the financial rating. Insurers must be authorized to do business under the laws of the State of Maryland.
- E. No work shall be started at the site until appropriate certificates of insurance are filed with and approved by the procurement officer.

6.06 BUILDER'S RISK INSURANCE:

- A. The Contractor shall purchase and maintain at its own expense builder's risk insurance naming as additional insured the University of Maryland, Baltimore, any Client University, the University System of Maryland, the State of Maryland, the Contractor, any subcontractor, or anyone directly or indirectly employed by any of them. The University, the Client University and the State shall be loss payees as their interests may appear.
- B. The builder's risk policy shall cover any and all materials, equipment, machinery, and supplies of any nature whatsoever, intended to be used in or incidental to the completion of the Contract, but coverage shall apply to property on the Project site, property in transit, and property in temporary storage at locations other than the Project site which property is designated to become a permanent part of the insured project.
- C. The limits of insurance (without any coinsurance conditions applying) shall be the full value of the project when completed. Deductibles are allowed only if reported to the University, which shall not unreasonably withhold consent. The Contractor shall be responsible for paying the amount of the deductible to the University or State in the event of a claim by either or both of them which are within the coverage of the builder's risk policy. Coverage shall be on a full replacement cost basis with no deductions for actual physical depreciation.

- D. Insurance should be against all risks of direct physical loss of or damage to the insured property including theft; earthquake; flood; and settling, shrinkage or expansion of buildings or foundations other than normal settling shrinkage or expansion. Any fault, defect, error or omission exclusion should not apply to damage resulting from such fault, defect, error or omission in the design plans or specifications. Any faulty or defective workmanship or internal exclusion clause should not apply to damage resulting therefrom.
- E. The term of the builder's risk insurance shall continue until issuance of the substantial completion certificate on the project by the University.
- F. Contractor shall deliver to University a copy of each policy of the required insurance prior to execution of the Contract, upon execution of the Contract amendment and upon renewal of any policy, and upon obtaining any new insurance policy. All policies of insurance shall provide that the policy shall not be subject to cancellation, termination, or reduction in coverage, except after forty-five (45) days' prior written notice to University.
- G. Upon request, Contractor shall also furnish a certificate(s) of the required insurance. Certificates must be amended to indicate: Should any of the described policies be canceled before the expiration date thereof, or non-renewal, the issuing company will give thirty (30) days prior written notice to certificate holder." Each certificate should indicate the insurer, the appropriate policy number(s), the policy expiration date(s), limits of liability in effect, and the Best's rating and financial rating of the insurer. A certificate will be accepted only if signed by an authorized representative of the insurer.
- H. Insurance will be accepted only from an insurer having a minimum best's rating of Class A for the policy holders' rating and Class IX for the financial rating. Insurers must be authorized to do business under the laws of the State of Maryland.
- I. No work shall be started at the site until appropriate policies of insurance are filed with and approved by the Procurement Officer. Policies and certificates of insurance shall be submitted to the Procurement Officer for review and approval and shall be held by the Procurement Officer for the duration of the Contract. The University shall have the absolute right to terminate the Contract if a required policy of insurance is canceled at any time for any reason and a new policy effective immediately thereafter is not obtained by the Contractor and approved by the Procurement Officer.

- J. The Contractor shall adjust the amount of the builders risk insurance from time to time to reflect any increase or decrease in the Project over the amount of \$100,000.00. For any such additions, the Contractor will be reimbursed by the University in the amount of the actual amount of the increased insurance cost. For any decrease, the Contractor will credit the University the actual amount of the decreased insurance cost. The Contractor shall provide updated certificate that reflect the increase or decrease within ten (10) working days of the fully executed contract modification.

6.07 ASSIGNMENTS:

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

6.08 SEPARATE CONTRACTS:

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

6.09 PAYMENT OF SUBCONTRACTORS:

- A. Neither the final payment or any part of the retained percentage shall become due until the Contractor shall deliver to the University receipt for full payment to all subcontractors and any principal suppliers identified by the University.

- B. If any subcontractor or supplier refuses to provide a receipt for payment, the Contractor may obtain final payment by providing the University with a bond satisfactory to the University for payment to subcontractors or suppliers as a condition of fulfilling any contractual obligation (including warranties) or losses resulting from subcontractors' or suppliers' failure to fulfill such obligations. Under the bond the Contractor shall refund the University all monies paid to subcontractors or losses incurred, including all costs and reasonable attorney's fees.
- C. The contractor shall promptly pay a subcontractor (and shall cause Subcontractors to pay Sub-subcontractors) any undisputed amount to which the subcontractor (or Sub-subcontractor) is entitled for work under this contract within 10 days of receiving a progress or final payment from the University. In the event the contractor (or Subcontractor) fails to pay promptly, a subcontractor (or Sub-subcontractor) may request remedy in accordance with COMAR 21.10.08. In each subcontract under this contract, the contractor shall include a clause that contains substantially the same provisions as this Section.

6.10 RELATIONSHIP OF CONTRACTOR TO PUBLIC OFFICIAL AND EMPLOYEES:

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

- D. The rights and remedies of the University provided in this Section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
- E. Conflict of Interest - No official or employee of the State of Maryland whose duties as such official or employee include matters relating to or affecting the subject matter of this contract, shall during the pendency and term of this contract and while serving as an official or employee of the State become or be an employee of the contractor or any entity that is a subcontractor on this contract.

6.11 NO WAIVER OF LEGAL RIGHTS:

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

6.12 COVENANT AGAINST CONTINGENT FEES: [21.07.01.09]

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

6.13 ASSIGNMENT OF ANTITRUST CLAIMS:

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

6.14 FEDERAL PARTICIPATION:

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

6.15 DISPUTES: [21.07.01.06]

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

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

- I. The final decision may award a contract claim only for those expenses incurred not more than thirty (30) days before Contractor was initially required to have filed the notice of claim or sixty (60) days before Contractor was required to have filed the claim initially, even if the Procurement Officer extends the time in which Contractor must submit the claim.

6.16 CLAIMS:

- A. If the Contractor claims that any instructions by drawings or otherwise involve or may involve extra cost under this Contract, he shall give the University written notice thereof within fifteen (15) calendar days after receipt of such instructions or after the occurrence of an emergency. No claim shall be valid unless so made.
- B. Under no circumstances will overhead or profit be permitted as items of a claim (if permitted at all under this Contract) if such overhead or profit is for periods during which a "Stop Work" order is in effect due to an act, error, omission for which the Contractor is responsible.
- C. No profit or overhead which includes rental of equipment and the salaries of supervisory personnel (if permitted at all under this Contract) will be allowed the Contractor for stoppage of work when written notice of such stoppage or impending stoppage is not given reasonably in advance by the Contractor so that the University can take action to prevent such stoppage.
- D. No claim for extra costs will be granted which includes cost of delays or work stoppage due to strikes, lockouts, fire, unusually severe weather, avoidable casualties, or damage or delay in transportation for which the University is not responsible; only time extensions in accordance with Section 7.03 will be granted.
- E. The Contractor and the University agrees that no prejudgment or post judgment interest on any claims asserted by either party will be allowed.
- F. No claim for damage caused by a delay (if permitted at all under the Contract) will be allowed unless the Contractor notifies the University of the existence of the delay within five (5) days of the act or omission causing the delay.
- G. No payment will be made for increased payment or performance bond premiums as a result of any act or omission by the University which results in a claim.

6.17 VARIATIONS IN ESTIMATED QUANTITIES: [21.07.02.03]

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

6.18 PRE-EXISTING REGULATIONS: [21.07.01.17]

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

6.19 FINANCIAL DISCLOSURE: [21.07.01.19]

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

6.20 POLITICAL CONTRIBUTION DISCLOSURE: [21.07.01.20]

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

6.21 COMPLIANCE WITH LAWS: [21.07.01.22]

The Contractor hereby represents and warrants that:

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

6.22 **RECIPROCITY**: As set out in the Specifications, if the Contractor is an out-of – state firm from a state which gives a preference to in-state firms when evaluating their price proposals, the University has applied a corresponding preference to price proposals from Maryland firms that competed with the Contractor. Contractor warrants that it fully and accurately described price preferences of its home state during the procurement process.

6.23 **DEWATERING**

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

END OF SECTION 6

SECTION 7: PROSECUTION AND PROGRESS OF THE WORK

7.01 NOTICE TO PROCEED:

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

7.02 PROJECT SIGNS:

- A. General -- For all University construction contracts over \$50,000, provide, erect, maintain, and remove upon final acceptance of work, two (2) project signs. Sign locations and mounting systems (ground-supported posts or attached to existing structure) will be established at the Work Initiation Conference by the University's Project Manager. The University-mandated logo, graphic dimensions, state prescribed text (Board of Public Works, Governor; and State Legislature), colors, letter fonts, and size of basic sign panel are either shown on Contract Documents or will be provided at the Work Initiation Conference. Wording of project-specific text shall be a directed by the University's Project Manager.
- B. Products --
1. Sign Panel--Provide panel five (5) feet high by ten (10) feet long by 3/4" thick, exterior grade, MDO surface on sign face.
 2. Posts (if used -- Provide 4"x 4" construction grade lumber, pressure-preservative treated, of sufficient length for minimum 3'- 6" burial into ground and for minimum of 3'- 0" clearance from bottom of sign panel to grade.
 3. Fasteners--Provide non-corrosive bolts, nails, screws and other fasteners throughout.
 4. Paint--Provide one (1) coat of white primer-sealer and two (2) coats of white semi-gloss for sign background. Paint back and edges of sign panel also.

C. Execution --

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

7.03 PROSECUTION OF THE WORK:

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

7.04 PUBLIC CONVENIENCE AND SAFETY:

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

7.05 BARRICADES AND WARNING SIGNS:

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

7.06 PRESERVATION, PROTECTION, AND RESTORATION OF PROPERTY:

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

7.07 PROGRESS SCHEDULE AND TIME:

- A. The Work under the Contract shall be planned, scheduled, executed and reported by the Contractor in accordance with the Contract Documents for the University's review and approval using the Critical Path Method (CPM) Schedule unless otherwise agreed to in writing by the Procurement Officer in consultation with the University's Project Manager. The University's review and approval of the Contractor's schedule does not constitute an agreement to specific dates, durations or sequences for activities. The purpose of the project schedule shall be to:
 - 1. Assure adequate planning, scheduling and reporting during execution of the Contract;

2. Assure coordination of the Work of the Contractor and the various subcontractors and suppliers;
 3. Assist the Contractor in monitoring the progress of the Work and evaluating proposed changes to the Contract and the project schedule; and,
 4. Assist the Contractor in the preparation and evaluation of the subcontractors' monthly progress payment requests.
- B. When multiple subcontractors are involved, the Contractor will incorporate the schedules of all subcontractors in its schedule to produce a unified project schedule. The Contractor shall make all submissions required in the Contract Documents.
- C. The CPM schedule diagram shall include, but not necessarily be limited to, the following:
1. The order and interdependencies of the Contractor's and subcontractors' activities and the major points of the interface or interrelation with the activities of others, including specific dates for completion.
 2. Activities should be linked between major area separations of the project so that the individual areas do not imply complete independence. The critical path should run through all major areas, since the entire project must be completed.
 3. Conformance with and identification of the Specific Dates specified in the Contract Documents.
 4. The description of work by activity.
 5. Delivery of Owner-furnished material and equipment, if any.
 6. Shop fabrication and delivery.
 7. Critical Path (or Paths).
 8. Testing of equipment and materials.

9. Seasonal weather conditions, utility coordination, no-work periods (if any), expected job learning curves, and other such circumstances to activities of Contractor shall be considered and included in the planning and scheduling of all work. Seasonal weather conditions shall be based upon the preceding ten (10) years records published for the locality by the National Ocean and Atmospheric Administration (NOAA) and entitled "Local Climatological Data."
- D. The level of detail of the CPM schedule shall be such that activity durations over fifteen (15) working days shall be kept to a minimum except for non-construction activities such as shop drawings and sample submittals, fabrication and delivery of materials and equipment, concrete curing and General Conditions activities.
- E. If the Contractor's schedule shows the University or a separate contractor is to complete an activity by a specific date, or within certain duration, the University or separate contractor under contract with the University shall not be bound to said date or duration unless the University's Project Manager specifically agrees in writing to the same.
- F. It is to be expressly understood and agreed by the Contractor that the project schedule is a working document to be revised from time to time as Project work proceeds. However, the Contractor is responsible for completing the Work within the time frame noted in the Contract. The Contractor agrees that updating the schedule is a key component and will make every reasonable effort to provide current information to the University. Throughout the progress of the Work, the Contractor shall prepare and maintain a two week manual bar chart field schedule reflecting the schedule of work activities accomplished for the previous week and the work scheduled for the forthcoming two weeks. This manual field schedule shall be updated weekly and review and the regularly scheduled progress meetings. The University Project Manager is to be in attendance of all scheduling meetings.
- G. If the Contractor fails to prepare and submit to the University's Office of Facilities Management a schedule before the existence of a delay, then no claim for extra costs due to delay in the work shall be recognized or asserted.
- H. Materials Purchased Under Allowances -- The Contractor with approval of the University will provide schedules for all materials to be purchased from specified allowances. Any unexpended funds shall revert back to the University.

7.08 PROGRESS PHOTOGRAPHS:

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

7.09 SUSPENSION OF THE WORK: [21.07.02.04]

- A. The procurement officer may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work for a period of time as he may determine to be appropriate for the convenience of the University.
- B. If the performance of all or any part of the work is for an unreasonable period of time, suspended, delayed, or interrupted by an act of the procurement officer in the administration of the Contract, or by his failure to act within the time specified in this Contract (or if no time is specified, within a reasonable time), an adjustment shall be made for any increase in the cost of performance of this Contract (excluding profit) necessarily caused by an unreasonable suspension, delay, or interruption, and the Contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent (1) that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor or (2) for which an equitable adjustment is provided for excluded under any provision of this Contract.
- C. No claim under this clause shall be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the procurement officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of a suspension, delay, or interruption, but not later than the date of final payment under the Contract.

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

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

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

- A. The performance of work under this Contract may be terminated by the University in accordance with this clause in whole or in part from time to time, whenever the procurement officer shall determine that such termination is in the best interest of the University, a Client University, or the State. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination issued by the Procurement Officer specifying the extent to which performance of work under the Contract is terminated and the date upon which such termination becomes effective.
- B. After receipt of a Notice of Termination and except as otherwise directed by the procurement officer, the Contractor shall:
 - (1) Stop work under the Contract on the date and to the extent specified in the Notice of Termination;
 - (2) Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of the portion of the work under the Contract as is not terminated;
 - (3) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;

- (4) Assign to the University in the manner, at the times, and to the extent directed by the procurement officer, all of the right, title, and interest of the Contractor under the orders and subcontractor so terminated, in which case the University shall have the right, in its direction, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- (5) Settle all outstanding liabilities and all claims arising out of such terminations or orders and subcontracts, with the approval or ratification of the procurement officer to the extent he may require, which approval or ratification shall be final for all the purpose of this clause;
- (6) Transfer title and deliver to the University in the manner, at the times, and to the extent, if any directed by the procurement officer, (a) the fabricated or unfabricated parts, work in process, completed work, supplies, and (b) other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and other property which, if the Contract had been completed, would have been required to be furnished to the University.
- (7) Use its best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the procurement officer, any property of the types referred to in (6) above; provided, however, that the Contractor (a) shall not be required to extend credit to any purchaser, and (b) may acquire any such property under the conditions prescribed by and at a price or prices approved by the procurement officer; and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the University to the Contractor under this Contract or shall otherwise be credited to the price or cost of the work covered by this Contract or paid in such other manner as the procurement officer may direct;
- (8) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and,

(9) Take any action that may be necessary, or as the procurement officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the State has or may acquire an interest. The Contractor may submit to the procurement officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the procurement officer and may request the University to remove such items or enter into a storage agreement covering the same; provided, that the list submitted shall be subject to verification by the procurement officer upon removal of the items or, if the items are stored, within 45 days from the date of submission of the list. Any necessary adjustment to correct the list as submitted shall be made prior to final settlement;

- C. After receipt of a Notice of Termination, the Contractor shall submit to the procurement officer his termination claim, in the form and with certification prescribed by the procurement officer. Such claim shall be submitted promptly but in no event later than one year from the effective date of termination, unless one or more extensions in writing are granted by the procurement officer, upon request of the Contractor made in writing within such one year period or authorized extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the procurement officer may determine on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

- D. Subject to the provisions of paragraph C, the Contractor and the procurement officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done; provided that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Contract price as reduced by the amount of payments otherwise made and as further reduced by the Contract price of work not terminated. The Contract shall be amended accordingly and the Contractor shall be paid the agreed amount. Nothing in paragraph E. of this clause, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the procurement officer to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this paragraph.
- E. In the event of the failure of the Contractor and the procurement officer to agree, as provided in paragraph D., upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, the procurement officer shall pay the Contractor the amounts determined by the procurement officer as follows, but without duplication of any amounts agreed upon in accordance with paragraph D:

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

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

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

- G. The Contractor shall have the right of appeal, under the clause of this Contract entitled "Disputes," from any determination made by the procurement officer under paragraph C, E, or I hereof, except that if the Contractor has failed to submit his claim within the time provided in paragraph C or I thereof, and has failed to request extension of such time, he shall have no such right of appeal. In any case where the procurement officer has made a determination of the amount due under paragraph C, E, or I hereof, the University shall pay to the Contractor the following: (i) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the procurement officer, or (ii) if an appeal has been taken, the amount finally determined on such appeal.
- H. In arriving at the amount due the Contractor under this clause there shall be deducted (i) all unliquidated advances or other payments or account theretofore made to the Contractor, applicable to the terminated portion of the Contract, (ii) any claim which the University may have against the Contractor in connection with this Contract; and (iii) the agreed price for, or the proceeds of sale of any materials, supplies, or other things acquired by the Contractor or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to the University.
- I. If the termination hereunder be partial, the Contractor may file with the procurement officer a claim for or an equitable adjustment of the price or prices specified in the Contract relating to the continued portion of the Contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices. Any claim by the Contractor for an equitable adjustment under this clause shall be asserted within ninety (90) days from the effective date of the termination notice, unless an extension is granted in writing by the procurement officer.
- J. The University, may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor whenever in the opinion of the procurement officer the aggregate of such payments shall be within the amount to which the Contractor shall be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the University upon demand together with interest computed at the legal rate for the period from the date such excess payment is received by the Contractor to the date on which the excess is repaid to the University; provided, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of the retention or disposition, or a later date as determined by the procurement officer by reason of circumstances.

- K. Unless otherwise provided for in this Contract or by applicable statute, the Contractor shall, from the effective date of termination until the expiration of three (3) years after the final settlement under this Contract, preserve and make available to the University at all reasonable times at the office of the Contractor but without direct charge to the University, all his books, records, documents, and other evidence bearing on the costs and expenses of the Contractor under this Contract and relating to the word terminate hereunder, or to the extent approved by the procurement officer, photographs, or other authentic reproductions thereof.

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

- A. If the Contractor refuses or fails to prosecute the work or any separable part thereof, with such diligence as shall insure its completion within the time specified in this Contract or any extension thereof or fails to complete said work within this time, the University may, by written notice to the Contractor, terminate his right to proceed with the work or the part of the work as to which there has been delay. In this event, the University may take over the work and prosecute the same to completion, by Contract or otherwise, and may take possession of and utilize in completing the work, the materials, appliances, and plant as may be on the site of the work and necessary therefore. Whether or not the Contractor's right to proceed with the work is terminated, he and his sureties shall be liable for any damage to the University resulting from his refusal or failure to complete the work within the specified time.
- B. If fixed and agreed liquidated damages are provided in the Contract and if the University so terminates the Contractor's right to proceed, the resulting damage shall consist of such liquidated damages until a reasonable time as may be required for final completion of the work together with any increased costs occasioned for the University in completing the work.
- C. If fixed and agreed liquidated damages are provided in the Contract and if the University does not so terminate the Contractor's right to proceed, the resulting damage shall consist of these liquidated damages until the work is completed or accepted.

- D. The Contractor's right to proceed may not be so terminated nor the Contractor charged with resulting damages if:
- (1) The delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God, acts of the public enemy, acts of the University or State in either their sovereign or contractual capacity, acts of another contractor in the performance of a Contract with the University, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or delays of subcontractor or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractor or suppliers; and
 - (2) The Contractor, within 10 days from the beginning of any such delay (unless the procurement officer grants a further period of time before the date of final payment under the Contract), notifies the procurement officer in writing of the causes of delay. The procurement officer shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in his judgment, the findings of fact justify such an extension, and his findings of fact shall be final and conclusive on the parties, subject only to appeal as provided in the "Disputes" clause of this Contract.
- E. If, after notice of termination of the Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provision of this clause, or that the delay was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the Contract contains a clause providing for termination for convenience of the University, be the same as if the notice of termination had been issued pursuant to that clause. If, in the foregoing circumstances, this Contract does not contain a clause providing for termination for convenience of the State, the Contract shall be equitably adjusted to compensate for the termination and the Contract modified accordingly; failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this Contract entitled "Disputes."
- F. The rights and remedies of the University provided in this clause are in addition to any other rights and remedies provided by law or under this Contract.
- G. As used in paragraph D (1) of this clause, the term "subcontractors or suppliers" means subcontractors or suppliers at any tier.

7.13 PARTIAL ACCEPTANCE:

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

7.14 FAILURE TO COMPLETE ON TIME/LIQUIDATED DAMAGES:

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

7.15 SUBSTANTIAL COMPLETION AND FINAL INSPECTION:

- A. When the Contractor reasonably believes the Work satisfies the requirements of 7.15B, the Contractor shall notify the Project Manager in writing that the Work will be ready for Substantial Completion Inspection and testing on a definite date. Reasonable notice shall be given by the Contractor to schedule the Substantial Completion Inspection. The Contractor shall not request Substantial Completion Inspection until the Work is in fact substantially complete. The Contractor shall deliver to the Project Manager, on the scheduled Substantial Completion Inspection date, a complete, comprehensive set of field mark-up drawings accurately documenting the As-Built Project and all of the Operation and Maintenance (O&M) Manuals required under the Contract and shall have completed all required training and demonstration of equipment as required by the Contract Documents.
- B. The Project Manager shall establish the date of Substantial Completion and shall fix the time(s) at which the warranties will begin if, on the basis of the Substantial Completion Inspection, the University determines that, at a minimum and in accordance with the Contract Documents:
- (1) all electrical, mechanical, and life safety systems have been completed and successfully tested and successfully inspected for conformity to all requirements of the Contract Documents and all applicable codes and standards;
 - (2) complete, comprehensive field mark-up drawings of the As-Built Project, and all of the O&M Manuals required under the contract, have been delivered to the Project Manager;
 - (3) all other requirements for substantial completion, including the completion of required training and demonstration of equipment, have been met; and
 - (4) the Project is able to be occupied and usable for its intended purpose.
- C. The Work shall not be deemed substantially complete if, in the absolute discretion of the Project Manager, completion of unfinished works, whether called punch list work or otherwise, would cause inconvenience to or interfere with the use of the Premises by University personnel or others using the Premises.

- D. If the Project Manager determines that Substantial Completion has been achieved, the Project Manager shall fix the time within which the Contractor shall complete any remaining items of work which will be indicated on a list (the "punch list"). All punch list work shall be completed within thirty (30) days after the date of Substantial Completion determined by the University, unless the University establishes a different period for completion of the punch list work. If the Contractor fails to complete the remaining items so listed in the time stipulated the University shall have the undisputed right to complete the Work at the Contractor's expense. The Contractor may be required to complete multiple punch lists, which may be prepared by the University or by the architect, until the Contract is performed in its entirety. Failure to complete punch list work in a timely manner shall constitute grounds for termination of the Contract for default.
- E. Prior to the determination of Substantial Completion by the University, the Architect and/or the University may prepare lists of work requiring completion as a prerequisite to the determination of Substantial Completion. These "work lists" shall not constitute punch lists and shall not be construed as indicating that the Work has been completed to the extent that it is substantially complete.
- F. Final payment shall not be made until all Contract work including all punch list work is complete to the satisfaction of the University.
- G. Acceptance of the Work as substantially complete shall not excuse or waive any failure of the Contractor to complete the Contract as required by the Contract Documents.

7.16 CLEANING-UP:

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

7.17 GUARANTEES:

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

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

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

7.18 NOTICE TO UNIVERSITY OF LABOR DISPUTES:

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

END OF SECTION 7

SECTION 8: PAYMENTS

8.01 SCOPE OF PAYMENT: [21.07.01.03]

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

3. SOV items shall have a direct and understandable relation to the Project construction schedule.
 4. Overhead and profit shall be distributed into each item of work.
 5. Once approved, the SOV shall be the basis for the Contractor's application for payment except as noted below in #6.
 6. The University shall have the right to require the Contractor to alter the value or add/delete categories on the SOV at any time for the following reasons:
 - a. The SOV appears to be incorrect or unbalanced.
 - b. A revision of the segregation of values is required due to the Contractor revising the sequence of construction or assembly of building components.
 - c. Change orders/contract amendments are issued to the Contractor and shall be incorporated into the SOV as a separate line item at the bottom of the SOV.
 7. The Contractor is required to correlate the documentation for payment of stored materials requested in the application for payment against the agreed upon breakdown of the SOV and provide the necessary certificate of insurance for offsite storage with the University as the certificate holder.
- B. Payments shall also be made on account of materials or equipment or incorporation in the work delivered by the Contractor but stored at some off-site location agreed upon by the University; such payment to be conditioned upon submission by the Contractor of bills of sale or other procedures satisfactory to the University's Office of Facilities Management to establish the University's title to such materials or equipment or otherwise protect the University's interest, including applicable insurance certificate(s) and transportation to site.
- C. Prior to application for first payment, the Contractor shall submit to the University a schedule of values of the various parts of the work, including quantities, aggregating the total sum of the Contract. This schedule shall be so divided as to facilitate payments to subcontractors. The form of this submission shall be as the Contractor and the University have agreed upon and shall be supported by such evidence as to its correctness as the University may direct. Unless at a later date found to be in error, this schedule shall be used as a basis for certificates of payments.

- D. Application for payment shall be submitted on or about the 25th day of each month but not less than thirty (30) days after the "Work Initiation Conference" nor before ten (10) days of job operation (job shut-down days excluded).
- E. In applying for payments the Contractor shall submit a statement, based upon the schedule of values prepared under subparagraph C above, itemized in such form and supported by such evidence as the University may require, showing the Contractor's right to the payment claimed. Payment will be for work in place by the 25th of the billing month; no projection to the month's end is to be included. Each invoice shall prominently display the Contractor's Federal Employers Tax Identification Number or (if no such number) his social security number.
- (1) In applying for all payments, excluding the first payment and final payment, the Contractor shall submit in addition to the above a certificate he has paid:
- (a) All labor to date;
 - (b) All vendors and material suppliers in full for all items received; and
 - (c) All subcontractors in full, less the retained amount.
- (2) In applying for the final payment, the Contractor shall submit in addition to the statement required in E (1), the following:
- (a) Such evidence as the University may demand as will establish the University's title to materials and give reasonable assurance that claims against materials and claims for labor and other items by others do not exist;
 - (b) An electric certificate from an independent (non-governmental) electrical inspection agency approved by the State of Maryland Fire Marshal. The Contractor must make application for the inspection, coordinate same, and pay the required inspection fees. The independent electrical inspection agencies are not considered local authorities;
 - (c) All other guarantees are called for by the Contract;
 - (d) All equipment manuals and parts lists.

8.02 FORCE ACCOUNT WORK:

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

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

Value of Work Combined Overhead and Profit

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

- B. Compensation -- The compensation as set forth above shall be received by the Subcontractor as payment in full for the work done on a force account basis. At the end of each day, the Subcontractor's representative and the Architect shall compare records of the cost of work as ordered on a force account basis.
- C. Statements -- No payment will be made for work performed on a force account basis until the Subcontractor furnishes the University duplicate itemized statements of the cost of such force account work detailed as to the following:
 - (1) Name, classification, date, daily hours, total hours, rate, and extension for laborers and foremen.

- (2) Designation dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment rented (other than small equipment).
- (3) Quantities and prices of materials.
- (4) Changes for transportation of materials paid by the Contractor.
- (5) Cost of property damage, liability, and workmen's compensation insurance premiums, unemployment insurance contributions, and social security tax.
- (6) Statements for payments of items under paragraphs (3) and (4) shall be accompanied by original receipted invoices for materials used and transportation charges. If, however, the materials used in the force account work are not specifically purchases for such work but are taken from the Contractor's stock, then in lieu of the original invoices the statements shall contain or be accompanied by an affidavit of the Subcontractor which shall certify that such materials were taken from his stock, that the quantity claimed was actually used and that the price and transportation of the materials as are claimed represent actual cost, not all discounts. Proof of cost of items in stock will be furnished upon the procurement officer's request.

8.03 CASH ALLOWANCES:

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

8.04 CERTIFICATES OF PAYMENT:

- A. If the Contractor has made application as above, the University shall, not later than the date when such payment falls due; issue to the Contractor a certificate for such amount as it decides to be properly due. In approving such partial payments, there shall be an amount retained pursuant to Section 00400 of the Request for Proposal document until completion and acceptance of all work covered by the Contract.

- B. The University shall provide the Contractor with the payment forms to be used by the Contractor.
- C. No certificate issued nor payment made to the Contractor nor partial or entire use or occupancy of the work by the University shall be an acceptance of any work or materials not in accordance with this Contract.
- E. Retainage cannot exceed 5% of the contract amount.
- E. (1) In addition to retainage, a primary procurement unit may withhold from payments otherwise due a contract an amount that the unit reasonably believes is necessary to protect the State's interest.
- (2) A contractor may not retain from a payment due a subcontractor a percentage of the payment greater than the percent for retainage retained by the University.
- (3) A subcontractor may not retain from a payment due a lower-tier subcontractor a percentage of the payment greater than the percent for retainage retained by the University.
- (4) A contractor and a subcontractor are not, however, prohibited from withholding an amount in addition to retainage if the contractor or subcontractor determines that a subcontractor's performance provides reasonable grounds for withholding the additional amount.
- F. (1) A contractor may elect to have retainage placed in an escrow account.
- (2) An escrow agreement would be applicable signed by the contractor, the escrow agent and, if applicable, the surety.
- (3) The escrow agent shall be selected from among the banks approved by the State Treasurer's office.
- (4) The Contractor is solely liable to the escrow agent for the payment of fees and charges associated with the escrow account.
- (5) Retained funds may only be released as directed by the University.
- (6) At the time of final payment, the University shall direct the escrow agent to settle the escrow account by paying funds as directed.
- (7) Until payment is made, escrow accounts are State funds and are not subject to any liens.

8.05 DEDUCTIONS FOR UNCORRECTED WORK:

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

8.06 PAYMENTS WITHHELD:

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

- (1) Defective work not remedied;
- (2) Claims filed or reasonable evidence indicating probable filing of claims;
- (3) Failure of the Contractor to make payments properly to subcontractor for material or labor;
- (4) A reasonable doubt that the Contract can be completed for the balance then unpaid; or
- (5) Damage to another contractor.
- (6) Liquidated Damages or other damages or compensation due the University for claims of the University against the Contractor.
- (7) Any claim of the University or State against the Contractor on a debt or obligation owed the University of the State or claim by the University or the State to be owed by the Contractor to the University or State arising from any other cause or contract;
- (8) Retainage as provided in Section 8.04;
- (9) Failure to maintain as-built drawings as required by Section 7.15
- (10) Failure to update schedules properly as required by Section 7.07 and Section 400 of the RFP; or
- (11) The cost of completing unfinished warranty work.

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

8.07 CORRECTION OF WORK BEFORE FINAL PAYMENT:

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

8.08 ACCEPTANCE AND FINAL PAYMENT:

- A. Upon completion of the Work, the Contractor shall prepare final payment forms and submit them. The University will promptly proceed to make any necessary final surveys, to complete any necessary computations of quantities, and to complete other activities necessary to determine the Contractor's right to final payment. The Project Manager will then reply to the Contractor's request for final payment, informing the Contractor of all deductions, damages, costs, back charges, and other charges assessed against the Contractor by the University and the reasons therefor.
- B. Notwithstanding Section 8.08 A, prior to or in the absence of a request from Contractor for final payment, the Procurement Officer may determine under Section 8.08 A(2) the amount of the final payment to the Contractor.
- C. If the Contractor disputes the amount determined by the Procurement Officer to be due the Contractor, then the Contractor shall initiate a claim under the Disputes procedures.

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

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

8.09 INTEREST:

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

8.10 AUDITS BY THE UNIVERSITY:

- A. The Contractor agrees that the University or any part of its duly authorized representatives shall, until expiration of three (3) years after final payment under this Contract or after any applicable statute of limitations, whichever is longer, have access to and the right to examine any directly pertinent books, documents, papers, and records (including all records in electronic media) of the Contractor involving transactions to this Contract.

- B. The Contractor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that the University or any of its duly authorized representatives shall, until the expiration of three (3) years after final payment under the subcontract or after any applicable statute of limitations, whichever is longer, have access to and the right to examine any directly pertinent books, documents, papers, and records (including all records in electronic media) of such subcontractor, involving transactions related to the subcontract.

- C. The Contractor shall retain and maintain all records and documents relating to this Contract for the period specified in paragraph A and shall make them available for inspection and audit by authorized representatives of the State of Maryland, including the University or designee at all reasonable times. [21.07.01.21]

8.11 MULTI-YEAR CONTRACTS: [21.07.01.10]

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

8.12 PAYMENT OF STATE OBLIGATIONS:

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

END OF SECTION 8

SECTION 9: EMPLOYEES, SUBCONTRACTORS, AND WORK CONDITIONS

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

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

- (3) All methods and procedures and results are subject to the University's and Architect's approval as to finished result to be obtained. However, this is not to be interpreted as placing upon the University or the Architect any responsibility for the "Work" management of the Work which is solely the responsibility of the Contractor.
- (4) Whenever the method of work or manner of procedure is not specifically stated in the Contract Documents, the best practice shall be followed. Unless the Contract Documents expressly require stricter standards for application, installation, connection, erection, use, cleaning or conditioning, recommendations of the manufacturers of approved materials shall be considered as a part of the specifications and all materials shall be applied, installed, connected, erected, used, cleaned and conditioned as called for by the recommendations. If any such manufacturer's recommendations are defective, faulty, inaccurate, or negligently made, Contractor shall be responsible for all loss resulting therefrom, including liability for loss incurred by the University.

F. Scheduling: The obligations in this Section 9.01 F shall be in addition to the scheduling provision set forth elsewhere in the Contract.

- (1) The Contractor shall so schedule the Work as to ensure efficient and uninterrupted progress and to hold to an absolute minimum the cutting and patching of new work. All cutting, patching and digging necessary to the execution of the work is included.
- (2) The Contractor shall schedule the construction performed by each group or trade so that each installation or portion of the construction shall member with and join with every other new or old work required for a complete installation, all according to accepted good construction practice.

- G. Superintendent -- The Contractor shall keep on site at all times when any of the Work is being performed, a competent Superintendent (fluent in English) and any necessary assistants, all approved by the University's Office of Facilities Management prior to the commencement of the Work and from time to time prior to the assignment of any person to that position. The contractor shall submit in writing to the Office of Facilities Management, from time to time, the name of the person it intends to employ as superintendent for the execution of this Contract with a statement of the proposed superintendent's qualifications. This data will be reviewed by the University's Office of Facilities Management and an approval or rejection will be given in writing. Persons who have previously proved unsatisfactory on work executed for the University or the at State of Maryland or who are without proper qualifications will not be approved. Should it be necessary to change the superintendent, this procedure will be repeated. A single Superintendent will be permitted to superintend two or more jobs located at the same institution or close to each other only when approved by the University's Office of Facilities Management in writing. The Superintendent shall represent the Contractor. All directions given to the Superintendent shall be as binding as if given to the Contractor. Other directions shall be so confirmed on written request in each case. Should the Superintendent be complained of by the University's Office of Facilities Management for cause, he shall be removed from the work and a new Superintendent obtained and approved as described above.
- H. Discipline -- The Contractor shall at all times enforce strict discipline and good order among its employees and its subcontractors' employees and shall not employ or permit to remain on the work any unfit person. He shall enforce all instructions relative to use of water, heat, power, no smoking, and control and use of fires as required by law and by the University. Employees must not be allowed to loiter on the premises before or after working hours.
- I. Employee Safety -- The Contractor shall designate a responsible member of his organization, on the work, whose duty it shall be, in addition to his other duties, to prevent accidents and to enforce the standards of Section 9.07. The name and position of the person so designated shall be reported to the University's Office of Facilities Management with a copy to the Architect, by the Contractor at the commencement of the work.
- J. Supervisory Personnel: All supervisory personnel of the Contractor must be direct employees of the Contractor, unless otherwise approved in writing, in advance, by the University.

9.02 NON-DISCRIMINATION-EMPLOYMENT POLICIES:

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

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

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

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

- (1) Notification of established community organizations of employment opportunities, and the maintenance of records on responses by such organizations and their disposition.
- (2) Maintenance of records, including names and address, of woman and members of minority groups applying or referred for employment. The records shall indicate what disposition was made of the application. If such an applicant was not sent to a union hiring hall for referral or if such an applicant was not employed by the Contractor, the records shall indicate the reasons therefore.
- (3) Notification by the Contractor to the University if any union or unions with whom the Contractor has a collective bargaining agreement has not referred to the Contractor a woman or member of a minority group sent by the Contractor, or if the Contractor has other information that the union referral process is impeding efforts for the utilization of women and members of minority groups.
- (4) Participation in training programs, including those funded by the United States Government.
- (5) Procedures for disseminating notice of the Contractor's equal employment opportunity policy by publicizing it through company newspapers and annual reports, conducting staff, employee and union representatives' meetings, posting, and by specific review with employees who are women or members of minority groups.
- (6) Procedures for disseminating notice of the Contractor's equal employment opportunity policy externally through review with all recruitment sources, advertising in news media, and discussion with subcontractors and suppliers.
- (7) Recruitment efforts directed at minority organizations, schools with minority students, and minority recruitment and training organizations.
- (8) Validation of all specifications, selection requirements, and tests relating to employment.
- (9) Procedures for promoting after-school, summer, and vacation employment to minority youth.
- (10) Programs for the development of on-the-job training opportunities and participation and assistance in any association or employer group training programs.

- (11) Programs for evaluating women and minority personnel for promotion opportunities and encouragement of such employees to seek those opportunities.
 - (12) Review of seniority practices and job classifications to insure that they do not have an improper discriminatory effect.
 - (13) Monitoring of personnel activities to insure that the Contractor's equal employment opportunity policy is being carried out.
 - (14) Proposals for soliciting bids for subcontracts for available minority subcontractors engaged in the trades covered by the bid conditions.
- H. The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or physical or mental handicap unrelated in nature and extent so as reasonably to preclude the performance of such employment; (b) to include a provision similar to that contained in subsection (a), above, in any subcontract for standard commercial supplies or raw materials; and, (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

9.03 SUBCONTRACTS:

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

9.04 RELATION OF CONTRACTOR AND SUBCONTRACTOR:

- A. The Contractor agrees to bind every subcontractor and will see that every subcontractor agrees to be bound by the terms of the Contract and Contract Documents and each of these as far as applicable to his work, unless specifically noted to the contrary in a subcontract approved in writing as adequate by the University's Office of Facilities Management.
- B. The Contractor agrees to include the following provisions in all subcontracts and supply contract, applicable to the work:
 - (1) Subcontractor agrees to be bound to the Contractor by the terms of the Contract and the Contract Documents and each of these, and to assume toward the Contractor all obligations and responsibilities that the Contractor, by those documents, assumes toward the University.
 - (2) The subcontractor agrees to submit to the Contractor applications for payment in such reasonable time as to enable the Contractor to apply for payment under Section 8 of the Standard Conditions.
 - (3) The subcontractor agrees to make all claims for extras, for extensions of time, and for damages for delays or otherwise, to the Contractor in the manner provided in the Standard Conditions for like claims by the Contractor upon the University except that the time for making claims for extra cost is five (5) days.
 - (4) The subcontractor agrees, upon completion of his work to promptly pay all labor, material suppliers, vendors, subcontractors, and others, and to permit simultaneous final payment by the Contractor and execution of the "Waiver of Liens" by the subcontractor.
- C. The Contractor agrees to be bound to the subcontractor by all the obligations that the University assumes to the Contractor under the Contract, the Contract Documents and each of these, and all the provisions thereof affording remedies and redress to the Contractor from the University. The Contractor also agrees:
 - (1) To pay the subcontractor, upon the presentation of certificates, if issued under the schedule of values prescribed in Section 8 of these Standard Conditions, the amount allowed to the Contractor on account of the subcontractor's work to the extent of the subcontractor's interest herein.
 - (2) To pay the subcontractor, upon the presentation of certificates, so that at all times his total payments shall be as large in proportion to the value of the work done by him as the total amount certified to the Contractor is to the value of the work done by him.
 - (3) To pay the subcontractor to such extent as may be provided by the Contract documents or the subcontract, if either of these provides for earlier or larger payments than the above.

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

9.05 MINORITY BUSINESS ENTERPRISE UTILIZATION:

- A. The provisions of this Section are applicable to Contracts with a value of \$50,000 or more. The Contractor shall structure his procedures for the performance of the construction services required by this Contract to achieve the result that a minimum of 30 percent (30%) minority business enterprise (MBE) participation of the total contract award is achieved. Such performance by MBE's shall be in accordance with this Section.
- B. Definitions:
- (1) "Socially or Economically Disadvantaged Individual" - A member of a socially or economically disadvantaged group, which for purposes of this Section includes African-Americans, Hispanics, American Indians, Native Americans, Asians, women, and the physically or mentally disabled.
 - (2) "Minority Business Enterprise" (MBE) -- Any legal entity, except a joint venture, (a) organized to engage in commercial transactions, (b) at least 51 percent (51%) owned and controlled by one or more individuals who are socially or economically disadvantaged; and (c) managed by, and the daily operations of which are controlled by, one or more of the socially or economically disadvantaged individuals who own it. Also, a nonprofit entity organized to promote the interests of physically or mentally disabled individuals. All MBEs must be certified by the State of Maryland or the State of Maryland's Department of Transportation with applicable certification numbers provided for each MBE firm applicable on this project by the Contractor.
 - (3) Ownership:
 - (a) For a sole proprietorship to be deemed an MBE, the sole proprietor must be a socially or economically disadvantaged individual. For a partnership to be deemed an MBE at least 51 percent (51%) of the partnership's assets or interests must be owned by a socially or economically disadvantaged individual or persons who are socially or economically disadvantaged. For a corporation to be deemed an MBE, legal and equitable ownership of at least 51 percent (51%) of each class of stock, bonds, and other securities issued by the corporation must be owned by a person or persons who are socially or economically disadvantaged.
 - (b) For purposes of this definition, any interest held by a person who is socially or economically disadvantaged, but subject to an option in that interest held by a person not socially or economically disadvantaged, or a business entity not an MBE, affecting the incidents of ownership, operation and control, shall not qualify as being an interest held by any person who is a socially or economically disadvantaged individual.

- (4) Control -- Control means that the primary power, direct, or indirect, to influence the management of an MBE shall rest with persons who are socially or economically disadvantaged. In addition, this term shall be construed to mean that the business enterprise is not subject to any formal or informal restrictions which would limit the customary discretion of the proprietor, partners, or the stockholders, as the case may be. In addition, the term "control" shall be construed to mean that there are no restrictions through bylaw provisions, partnership agreements, or charter requirements for cumulative voting rights, or otherwise, which would prevent the proprietor, partners, or stockholders, without the cooperation or vote of any co-owner, partner, or stockholders who are not socially or economically disadvantaged individuals, from abrogating a business decision of the enterprise which otherwise favors the proprietor's, partner's, or stockholder's share of said enterprise.

C. Contractor Responsibilities:

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

- (7) A request for waiver of the goal or part thereof, by the apparent successful bidder or offerer, shall be processed in accordance 21.11.03.11 of the State Procurement Regulations.
- (8) The Contractor shall cooperate with the University in any reviews of the Contractor's procedures and practices with respect to minority business enterprises which the University may from time to time conduct.

D. Records and Reports:

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

E. Enforcement:

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

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

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

9.06 PREVAILING WAGE RATES:

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

9.07 APPRENTICESHIP REQUIREMENTS FOR PUBLIC WORKS CONTRACTS

- A. Effective July 1, 2013, the State Apprenticeship and Training Fund law requires that contractors performing work on public work contracts \$500,000 or more and subcontractors performing work \$100,000 or more for a covered project are required to make contributions toward apprenticeship.
- B. The contractor and subcontractor shall individually provide written verification to the Procurement Officer of one of the below three options of contribution prior to commencement of performance under the procurement contract. (1) Participates in an apprenticeship training program for each covered craft in which it will employ persons for the covered project.
- (2) Will make payments to the Fund.
- (3) Will make payments in amounts determined under §17-605 of the State Finance and Procurement Annotate Code, to a registered apprenticeship program or to an organization that has registered apprenticeship programs for the purpose of supporting these programs.
- C. Contractors shall include this requirement for written verification by the subcontractor in all of its contracts \$100,000 or more with subcontractors under a covered project.
- D. It is the responsibility of the contractor and its subcontractors to review Title 17, Subtitle 6, Annotate Code of Maryland, State Finance and Procurement, as well as Code of Maryland Regulations 21.11.12 for implementation and compliance with the law.
- E. Contractors and subcontractors who hire subcontractors performing work valued at \$100,000 or more on a covered project subject to the Maryland Prevailing Wage Law shall provide the subcontractors written notice of the following:
- (1) Subcontractors shall complete the registration process at the Division of Labor and Industry's website at <https://www.dlir.state.md.us/PrevWage/ERegistration.aspx?Type=ContractorReg/>.
- (2) Prior to commencement of the work, a subcontractor shall log onto the Division of Labor and Industry's website at <https://www.dlir.state.md.us/prevwage> and complete the required project log information.
- (3) Subcontractors performing work on a covered project are required to make payments to approved apprenticeship programs or to the Fund for each employee employed in classifications listed on the prevailing wage determination.
- F. The contractor shall use the affidavit prescribed in Attachment F entitled "**Apprenticeship Training Fund Verification Contractor Affidavit**" and the subcontractor shall use the affidavit prescribed in Attachment F entitled "**-Apprenticeship Training Fund Verification Contractor Affidavit**" to provide written verification to the Procurement Officer.

9.08 CONSTRUCTION SAFETY AND HEALTH STANDARDS:

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

END OF SECTION 9

END OF UMB STANDARD GENERAL CONDITIONS FOR CONSTRUCTION

ATTACHMENT A
Technical Proposal Forms
SEE SEPARATE ATTACHMENT

The following forms must be included within the Technical Proposal. However, please refer to Section 00300 for further required contents of the technical proposal. Completion of these forms is not the entire technical proposal.

- Transmittal Letter (Mandatory)
- Company Profile
 - Attach Parent/Branch Organizational Chart
- Contractor Relevant Experience Form and References (3)
- Project Approach/ Major Milestone Schedule
- Key Personnel Forms and References
 - One (1) Project Manager
 - One (1) Field Superintendent
 - One (1) Operations Manager/Account Representative
- eBuilder Affidavit
- Bid Proposal Affidavit
- Acknowledgement of Amendment(s) (if any)

It is the Proposer's responsibility to thoroughly review the RFP documents, in particularly Section 300, to ensure all required contents are submitted.

The forms required to be submitted in the Technical Proposal are provided as a separate WORD file.

**ATTACHMENT B
PRICE PROPOSAL FORMS**

The Price Proposal form will be issued to the final shortlisted Proposers.

ATTACHMENT B – PRICE PROPOSAL FORM

1. Assume both Projects are 25-year terms with 0% Escalation
2. Base Year Green-e REC Price for both sites (\$/kWh): \$ _____

		Pearl Garage	Penn Garage
a.	DC Power Capacity (kW dc)		
b.	Yield (kWh/kWp)		
c.	Minimum Output Performance Guarantee (kWh/yr)		
d.	PPA Rate (without Green-e) (\$/kWh)	\$	\$
e.	(c) Annual Production x (d) PPA Rate = Annual Cost (without Green-e) (\$)	\$	\$

3. Estimated annual degradation shall not exceed 1%
4. Purchase Price (Terminal Value of Project after 5 and 10 years; including transfer of REC ownership to the University):

Purchase Price Year 5	
Purchase Price Year 10	

**ESTIMATED ENERGY PRODUCTION
Penn Street Parking Garage**

Select one: Site I – Penn Street Parking Garage, 120 Penn Street
 Site II – Pearl Street Parking Garage, 622 West Fayette Street

Capacity (kW DC): _____

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEPT	OCT	NOV	DEC
01:00												
02:00												
03:00												
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20:00												
21:00												
22:00												
23:00												
24:00												
MWhrs												

Annual MWhrs: _____

**ESTIMATED ENERGY PRODUCTION
Pearl Street Parking Garage**

Select one: Site I – Penn Street Parking Garage, 120 Penn Street
 Site II – Pearl Street Parking Garage, 622 West Fayette Street

Capacity (kW DC): _____

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEPT	OCT	NOV	DEC
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23:00												
24:00												
MWhrs												

Annual MWhrs: _____

**ATTACHMENT C
CONTRACT FORMS**

1. University Contract – Power Purchasing Agreement

2. Contract Affidavit

SOLAR POWER PURCHASE AGREEMENT

Between

University of Maryland, Baltimore

(UMB) And

_____.

dated as of

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SOLAR POWER PURCHASE AGREEMENT

This Solar Power Purchase Agreement (“Agreement”) is made and entered into as of this ____ day of _____, 2023 (the “Effective Date”), between, _____ (“Provider”), and, University of Maryland, Baltimore (“Host”; and, together with Provider, each, a “Party” and together, the “Parties”).

WITNESSETH:

WHEREAS, Host either leases or owns, directly or indirectly the Premises (as hereafter defined);

WHEREAS, Host desires that Provider install and operate a solar photovoltaic system at the Premises for the purpose of providing Solar Services (as hereafter defined), and Provider is willing to undertake to do the same;

WHEREAS, Provider desires to sell, and Host desires to purchase, such Solar Services at the Premises, pursuant to the terms and conditions set forth herein; and

NOW THEREFORE, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. DEFINITIONS.

‘1.1 Definitions. In addition to other terms specifically defined elsewhere in this Agreement, where capitalized, the following words and phrases shall be defined as follows:

- “Actual Monthly Production” means the amount of Energy recorded by Provider’s metering equipment during each calendar month of the Term, pursuant to Section 4.5.
- “Affiliate” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under common control with such first Person. For the purposes of this definition, “control” and its derivatives mean, with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or otherwise. “Control” may be deemed to exist notwithstanding that a Person owns or holds, directly or indirectly, less than 50% of the beneficial equity interest in another Person.
- “Agreement” means this Solar Power Purchase Agreement, including the preamble and the Attachments attached hereto which are integral parts hereof and incorporated herein by reference.
- “Applicable Law” means, with respect to any Person, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, Governmental Approval, consent or requirement of any Governmental Authority having jurisdiction over such Person or its property, enforceable at law or in equity, including the interpretation and administration thereof by such Governmental Authority.

- “Assignment” has the meaning set forth in Section 14.1.
- “Business Day” means any day other than Saturday, Sunday or any other day on which banking institutions in New York, New York are required or authorized by Applicable Law to be closed for business.
- “COMAR” refers to the Code of Maryland Regulations that is maintained by the Division of State Documents and can be accessed at: <http://www.dsd.state.md.us/COMAR/ComarHome.html>
- “Completion Notice” has the meaning set forth in Section 4.2(b).
- “Confidential Information” has the meaning set forth in Section 17.1.
- “Contract” has the meaning set forth in Section 1.3.
- “Contract Price” has the meaning set forth in Section 6.1.
- “Credit Rating” means, with respect to any Person, the rating then assigned to such Person's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) by a Rating Agency.
- “Defaulting Party” has the meaning set forth in Section 11.1.
- “Delay Damages” has the meaning set forth in Section 11.7.
- “Delivery Point” means the physical location where the System connects to Host’s electrical System at the Premises.
- “Early Termination Date” has the meaning set forth in Section 2.1.
- “Effective Date” has the meaning set forth in the preamble hereof.
- “Energy” means three-phase, 60-cycle alternating current electric energy.
- “Energy Charge” has the meaning set forth in Section 6.1
- “Environmental Attributes” has the meaning set forth in Section 5.3.
- “Event of Default” has the meaning set forth in Section 11.1.
- “Expected Energy Production” has the meaning set forth in Section 5.2.
- “Expiration Date” has the meaning set forth in Section 2.1.
- “FERC” means the Federal Energy Regulatory Commission.
- “Force Majeure Event” has the meaning set forth in Section 10.1.

- "GAAP" or "Generally Accepted Accounting Principles" refers to a common set of accounting rules, standards, and procedures issued by the Financial Accounting Standards Board (FASB). Public companies in the U.S. must follow GAAP when their accountants compile their financial statements.
- "Generator Attribute Tracking System" or "GATS" means the system operated by PJM Environmental Information Services, Inc. in accordance with the GATS Operating Rules to provide environmental and emissions attributes reporting and tracking services to its subscribers.
- "Governmental Approval" means any approval, consent, franchise, permit, certificate, resolution, concession, license, or authorization issued by or on behalf of any applicable Governmental Authority.
- "Governmental Authority" means any federal, state, regional, county, town, city, or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government.
- "Guaranteed Initial Delivery Date" means 16 months from the Effective Date (as noted in the preamble) for all of the sites described in Attachment 1.
- "Guarantor" means any Person that: (a) guarantees Provider's financial obligations under the Agreement pursuant to a Guaranty; (b) is an Affiliate of Provider; (c) has a Credit Rating from at least two (2) of the Rating Agencies; (d) has no Credit Rating from any Rating Agency less than the Minimum Acceptable Credit Rating; and (e) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction.
- "Guaranty" means a Guaranty Agreement pursuant to Section 15.3: (a) in favor of Host; (b) executed and delivered by a Guarantor to Host; (c) to secure payment and performance by Provider under this Agreement; and (d) in the form that is acceptable to Host.
- "Host" has the meaning set forth in the preamble hereof. "Host Act" has the meaning set forth in Section 11.12.
- "Host Event of Default" has the meaning set forth in Section 11.3.
- "Host Indemnified Parties" has the meaning set forth in Section 18.1.
- "Initial Cure Period" has the meaning set forth in Section 11.1(b).
- "Initial Delivery Date" means the date set forth in Section 4.2(c).
- "Initial Term" has the meaning set forth in Section 2.1.
- "Installation Work" means the construction and installation of the System and the start-up, testing and acceptance (but not the operation and maintenance) thereof, all performed by or for Provider at the Premises.

- “Invoice Date” has the meaning set forth in Section 6.2.
- “Law” means any applicable statute, law, treaty, convention, rule, regulation, ordinance, code, Permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction issued, adopted, administered or implemented by a court or Governmental Authority, including any of the foregoing that are enacted, amended or issued after the Effective Date, and any binding interpretations of any of the foregoing.
- “Lender” means, if applicable, any Person who has made or will make a loan to Provider to help finance the System.
- “Letter of Credit” means an irrevocable, standby letter of credit in favor of Host issued by a Qualified Institution, in a form pursuant to Exhibit 1 of the RFP.
- “Liens” has the meaning set forth in Section 7.1(d).
- “Local Electric Utility” means the local electric distribution owner and operator providing electric distribution and interconnection services to Host at the Premises.
- “Losses” means all losses, liabilities, claims, demands, suits, causes of action, judgments, awards, damages, cleanup and remedial obligations, interest, fines, fees, penalties, costs and expenses (including all attorneys’ fees and other costs and expenses incurred in defending any such claims or other matters or in asserting or enforcing any indemnity obligation).
- “Maryland PSC” means the Maryland Public Service Commission.
- “Minimum Acceptable Credit Rating” means a Credit Rating equal to or better than: (a) “BBB-” by Standard & Poor’s; and (b) “Baa3” by Moody’s.
- “Notice of Termination” has the meaning set forth in Section 2.3(a)
- “Party” or “Parties” has the meaning set forth in the preamble hereof.
- “Permit” means any permit, authorization, license, order, consent, waiver, exception, exemption, variance or other approval by or from, and any filing, report, certification, declaration, notice or submission to or with, any Governmental Authority required to authorize action, including any of the foregoing relating to the ownership, sitting, construction, operation, use or maintenance of the System under any applicable Law.
- “Person” means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, firm, or other entity, or a Governmental Authority.
- “Premises” means the premises described in Attachment 1.

- “Procurement Officer” means the Host’s Director of Purchasing, Office of Procurement.
- “Property” means the building(s) described in Attachment 1.
- “Provider” has the meaning set forth in the preamble hereof.
- “Provider Events of Default” has the meaning set forth in Section 11.2.
- “Qualified Assignee” has the meaning set forth in Section 14.3(b)v.
- “Qualified Institution” means a U.S. commercial bank (or a foreign bank with a U.S. branch) having total assets of at least \$10 billion and a Credit Rating equal to or better than “A-” by S&P and an equivalent Credit Rating by Moody's or Fitch.
- “Qualified Provider” means a Provider that, as of a specified date, has a Credit Rating equal to or better than the Minimum Acceptable Credit Rating.
- “Rating Agency” or “Rating Agencies” shall mean, individually or collectively, S&P, Moody's and Fitch.
- “Renewable Energy Credit” or “REC” has the meaning set forth in Public Utility Companies Article, Section 7-701(n) of the Annotated Code of Maryland.
- “Renewable Energy Portfolio Standard” or RPS has the meaning set forth in Public Utility Companies Article Section 7-701(o) of the Annotated Code of Maryland.
- “Renewal Rate” means, as of the beginning of any Renewal Term, the fair market value for the provision of Solar Services at the Premises during such Renewal Term, as agreed between the Parties prior to the beginning of such Renewal Term. Upon the establishment of any Renewal Rate(s), Schedule 4 to Exhibit A shall be amended to reflect such Renewal Rate(s).
- “Renewal Term” has the meaning set forth in Section 2.1.
- “RFP” means the Request for Proposals referred to in Section 1.3.B.
- “Solar Services” means the supply of on-site electrical energy output from the System together with certain peak load coincident reductions
- “S&P” means Standard & Poor’s.
- “State” means the State of Maryland.
- “Stated Rate” means a rate per annum equal to the lesser of (a) nine percent (9%) and (b) the maximum rate allowed by Applicable Law, including, as applicable, by Title 15, Subtitle 1, of the State Finance and Procurement Article of the Annotated Code of Maryland.

- “Supplemental Cure Period” has the meaning set forth in Section 11.1(b).
- “System” means the integrated assembly of photovoltaic panels, mounting assemblies, inverters, converters, metering, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wiring devices and wiring, more specifically described in Attachment 2 and interconnected with the Local Electric Utility, owned or leased by Provider and installed at the Premises.
- “System Acceptance Testing” has the meaning set forth in Section 4.2(a).
- “System Disruption Time” has the meaning set forth in Section 11.12.
- “System Lessor” means, if applicable, any Person, with the exception of the Host, to whom Provider has sold or conveyed the System.
- “System Operations” means the operation, maintenance and repair of the System performed by or for Provider during the Term, as more particularly described in Section 4.3.
- “System Test Requirements” has the meaning set forth in Section 4.2(b).
- “Term” has the meaning set forth in Section 2.1.

1.2 Interpretation.

The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement. Words in this Agreement that impart the singular connotation shall be interpreted as plural, and words that impart the plural connotation shall be interpreted as singular, as the identity of the parties or objects referred to may require. All references made in this Agreement in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders. The words “include”, “includes”, and “including” mean include, includes, and including “without limitation” and “without limitation by specification.” The words “hereof”, “herein”, and “hereunder” and words of similar import refer to this Agreement as a whole and not to any particular provision of this Agreement. References to Persons include their respective successors and permitted assigns. Except as the context otherwise indicates, all references to “Attachments”, “Exhibits”, “Articles” and “Sections” refer to Attachments, Exhibits, Articles and Sections of this Agreement.

1.3. Contract Documents.

The Contract between Provider and Host consists of the matters identified in this Section 1.3 (the “Contract Documents”), all of which are part of the Contract as if fully set forth herein (all as amended from time to time):

- A. This Agreement as defined in Section 1.1;
- B. Exhibit A: Request for Proposal No. [REDACTED] for Solar Energy Power Purchase Agreement dated [REDACTED] as amended by Amendments [REDACTED];
- C. Exhibit B: Provider’s Technical Proposal dated [REDACTED] and Financial Proposal

dated [REDACTED] (the "Proposal"; the RFP and the Proposal collectively being the "Solicitation Documents"); and

D. Exhibit C: Contract Affidavit (the "Affidavit")

The obligations, representations, terms and conditions set forth in the Contract Documents are provisions of this Contract. The official copy of the Contract Documents, which shall govern for all purposes related to this Agreement and in the event of any dispute arising under this Agreement, shall be housed in a dedicated library section at:

UMB Construction and Facilities Strategic Acquisitions:

University of Maryland, Baltimore
220 Arch Street, 02-100
Baltimore, Maryland 21201

If there are any inconsistencies between or among the Contract Documents listed in Paragraphs A, B, C and D, the Contract Documents shall control in the following order of priority: the Agreement, then Exhibit A, then Exhibit B and then Exhibit C.

1.4 Service Contract. The Parties intend that this Agreement be treated as a "service" contract within the meaning of Section 7701(e) of the Internal Revenue Code.

2. TERM AND TERMINATION.

21 Term. The initial term of this Agreement shall commence on the Effective Date and shall continue for a period of twenty-five (25) years after the Initial Delivery Date (the "Initial Term"), unless and until terminated earlier pursuant to the provisions of this Agreement. The first "Agreement Year" shall commence on the Initial Delivery Date and shall end at the close of the twelfth full calendar month following the commencement of the Term; thereafter, each Agreement Year shall consist of successive periods of twelve calendar months. After the Initial Term, this Agreement may be renewed by Host for successive one (1) year terms (each, a "Renewal Term"), up to a maximum of five (5) such Renewal Terms. Any such renewal by Host shall be accomplished by providing written notice to Provider at least sixty (60) days prior to the expiration of the Initial Term or then applicable Renewal Term. The Initial Term and all subsequent Renewal Terms, if any, are referred to collectively as the "Term." During any Renewal Term, either Party may terminate this Agreement upon sixty (60) days' prior written notice to the other Party. The date on which this Agreement terminates by reason of expiration of the then applicable Term is hereafter referred to as the "Expiration Date." Any other date on which this Agreement terminates in accordance with the terms hereof is hereafter referred to as the "Early Termination Date."

22 Cancellation Due to Non-Availability of Funds. If the Maryland General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Agreement succeeding the first fiscal period, this Agreement shall be cancelled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that such cancellation shall not affect either the Host's rights or the Provider's rights under any termination section in this Agreement. The effect of termination of the Agreement

hereunder shall be to discharge both the Provider and the Host from future performance of the Agreement, but not from their rights and obligations existing at the time of termination. The Provider shall be reimbursed for the reasonable value of any non-recurring costs as of the date of termination not amortized in the price of the Agreement. The Host shall notify the Provider as soon as it has knowledge that funds may not be available for the continuation of this Agreement for each succeeding fiscal period beyond the first.

23 Termination for Convenience.

- (a) The performance of work under the Contract may be terminated by Host in accordance with this clause in whole, or from time to time in part, whenever Host shall determine that such termination is in the best interest of the State. Any such termination shall be effected by delivery to Provider of a notice of termination (“Notice of Termination”) specifying the extent to which performance of work is terminated and the time when such termination becomes effective.
- (b) After receipt of a Notice of Termination, and except as otherwise directed by the Procurement Officer, Provider shall:
 - (i) stop work as specified in the Notice of Termination;
 - (ii) place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of the portion of the work under the Contract as is not terminated;
 - (iii) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;
 - (iv) settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Procurement Officer, to the extent she may require, which approval or ratification shall be final for all the purposes of this clause; and
 - (v) take any action that may be necessary, or as the Procurement Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of Provider and in which Host has or may acquire an interest.
- (c) After receipt of a Notice of Termination, Provider shall submit to the Procurement Officer its termination claim, in the form and with certification prescribed by the Procurement Officer. This claim shall be submitted promptly but in no event later than one (1) year from the effective date of termination, unless one or more extensions in writing are granted by the Procurement Officer, upon request of Provider made in writing within the one-year period or authorized extension thereof. However, if the Procurement Officer determines that the facts justify such action, she may receive and act upon any such termination claim at any time after the one-year period or any extension thereof. Upon failure of Provider to submit its termination claim within the time allowed, the Procurement Officer may at her sole discretion determine the claim at any time after the one-year period or any extension thereof. Upon failure of Provider to submit its termination claim within the time allowed, the Procurement Officer may determine, on the basis of

information available to her, the amount, if any, due to Provider by reason of the termination and shall thereupon pay to Provider the amount so determined.

- (d) Subject to the provisions of paragraph (c), Provider and the Procurement Officer may agree upon the whole or any part of the amount or amounts to be paid to Provider by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done; provided, that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Contract Price as reduced by the amount of payments otherwise made and as further reduced by the Contract Price of work not terminated. The Contract shall be amended accordingly, and Provider shall be paid the agreed amount. Nothing in paragraph (e) of this clause, prescribing the amount to be paid to Provider in the event of failure of Provider and the Procurement Officer to agree upon the whole amount to be paid to Provider 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 that may be agreed upon to be paid to Provider pursuant to this paragraph.
- (e) In the event of the failure of Provider and the Procurement Officer to agree as provided in paragraph (d) upon the whole amount to be paid to Provider by reason of the termination of work pursuant to this clause, the Procurement Officer shall pay to Provider the amounts determined by the Procurement Officer as follows, but without duplication of any amounts agreed upon in accordance with paragraph (d):
 - (i) for completed supplies or services accepted by Host and for which payment has not theretofore been made, a sum equivalent to the aggregate price for the supplies or services computed in accordance with the price or prices specified in the Contract, appropriately adjusted for any saving of freight or other charges;
 - (ii) the total of:
 - (1) the costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but exclusive of any costs attributable to supplies or services paid or to be paid for under paragraph (e)(i) hereof;
 - (2) the cost of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph (b)(v) above, which are properly chargeable to the terminated portion of the Contract (exclusive of amounts paid or payable on account of supplies or materials delivered or services furnished by subcontractors or vendors before the effective date of the Notice of Termination, which amounts shall be included in the costs payable under (1) above); and
 - (3) a sum, as profit on (1) above, determined by the Procurement Officer to be fair and reasonable; provided, however, that if it appears that Provider would have sustained a loss on the entire Contract had it

been completed, no profit shall be included or allowed under this subdivision

(3) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and

- (iii) the reasonable cost of settlement accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination and settlement of subcontracts thereunder.

The total sum to be paid to Provider under (i) and (ii) of this paragraph 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.

- (f) Costs claimed, agreed to, or determined pursuant to (c), (d) and (e) hereof shall be in accordance with COMAR 21.09, *et seq* (Contract Cost Principles and Procedures) as in effect on the Effective Date.
- (g) Provider shall have the right of appeal, under Section 12 of this Agreement, from any determination made by the Procurement Officer under paragraph (c), (e), or (i) hereof, except that if Provider has failed to submit its claim within the time provided in paragraph (c) or (i) hereof, and has failed to request extension of the time, it shall have no 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, Host shall pay to Provider 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 Provider under this clause there shall be excluded, and if included, then deducted: (i) all advance or other payments on account theretofore made to Provider, applicable to the terminated portion of this Contract; (ii) any claim which Host may have against Provider in connection with this Contract which has not been contested by Provider or which has gone through the appeal process under Section 12 of this Agreement; and (iii) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by Provider or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to Host.
- (i) If the termination hereunder is partial, Provider 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 Provider for an equitable adjustment under this clause shall be asserted within ninety (90) days from the effective date of the Notice of Termination unless an extension is granted in writing by the Procurement Officer.
- (j) Host may from time to time, under such terms and conditions as it may prescribe,

make early partial payments and payments on account against costs incurred by Provider 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 Provider 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 Provider to Host upon demand, together with interest computed at the prime rate established by the State Treasurer for the period from the date such excess payment is received by Provider to the date on which such excess is repaid to Host.

- (k) Unless otherwise provided for in this Contract, or by applicable statute, Provider shall—from the effective date of termination until the expiration of three years after final settlement under this Contract—preserve and make available to Host at all reasonable times at the office of Provider but without direct charge to Host, all its books, records, documents and other evidence bearing on the costs and expenses of Provider under this Contract and relating to the work terminated hereunder, or, to the extent approved by the Procurement Officer, reproductions thereof.

24 Purchase Option. On any date so long as a Host Default shall not have occurred and be continuing, Host has the option to purchase the System for a purchase price (the “Option Price”) to be negotiated in good faith, and as may be agreed upon by the Parties (except that the Option Price with effect from Agreement Year 11 shall be XXX which represented a fair market value at the time of the Effective Date.) To exercise its purchase option, Host shall, not less than sixty (60) days prior to the Purchase Date, provide written notice to Provider of Host’s intent to exercise its option to purchase the System on such date (“Purchase Date”). Upon receipt of Host’s notice, Provider and Host shall have a period of sixty (60) days after notification to negotiate in good faith the Option Price. In the event Host confirms its exercise of the purchase option at the Option Price to Provider, (i) the Parties will promptly execute all documents necessary to (A) cause title to the System to pass to Host, free and clear of any Liens immediately subsequent to the Expiration Date or the Early Termination Date (as applicable), and (B) assign all warranties for the System to Host, and (ii) Host will pay the Option Price to Provider, such payment to be made in accordance with any previous written ins

25 Removal of System at Expiration. Upon the expiration or earlier termination of this Agreement according to its terms, Provider shall, at Provider’s expense, remove all of its tangible property comprising the System from the Premises on a mutually convenient date but in no case later than sixty (60) days after the Expiration Date or Early Termination Date. At Provider’s expense, Provider shall leave the Premises in a neat and clean order and return the Premises to its original condition, except for ordinary wear and tear. In no case shall Provider’s removal of the System affect the integrity of the roof or structure or electrical distribution system (close off and make safe any exposed panel or box openings due to removal of conduit/wire), which shall be as leak proof as it was prior to removal of the System (other than ordinary wear and tear). Provider shall be responsible for, and indemnify, defend and hold harmless Host for the cost of any damages incurred as a result of Provider’s removal of the System. For purposes of Provider’s removal of the System, Host’s covenants pursuant to Section 7.2 shall remain in effect until the date of actual removal of the System. If Provider fails to remove or commence substantial efforts to remove the System by such agreed upon date, Host shall have the right, at its option, to

remove the System to a public warehouse or other storage location and restore the Premises to its original condition (other than ordinary wear and tear) at Provider's reasonable cost.

- 26 Conditions of Provider's Obligations Prior to Initial Delivery Date. In the event that any of the following events or circumstances occurs prior to the Initial Delivery Date, Provider may terminate the Agreement, in which case neither Party shall have any liability to the other except for any such liabilities that may have accrued prior to such termination:

Host has not delivered a fully executed interconnection agreement, if applicable, by the Initial Delivery Date.

- 27 Conditions of Host's Obligations Prior to Initial Delivery Date. In the event that any of the following events or circumstances occurs, Host may terminate the Agreement, in which case neither Party shall have any liability to the other except for any such liabilities that may have accrued prior to such termination:

- (a) Provider has not commenced Installation Work at the Premises within three (3) months following the Effective Date; or
- (b) Initial Delivery Date has not occurred within six (6) months of the Guaranteed Initial Delivery Date, in which case Provider shall remove (at its cost) any equipment and materials located at the Premises and return the Premises to its original condition.

3. CONDITIONS PRECEDENT.

- 3.1 Initial Delivery Date. The Initial Delivery Date shall occur upon the satisfaction or waiver in writing by Host of the following conditions precedent:

- (a) Provider shall have obtained (and demonstrated possession of) all Permits required for the lawful operation of the System and for Provider to perform its obligations under the Contract, including but not limited to Permits related to environmental matters and Certificate of Public Convenience and Necessity, as necessary;
- (b) no Provider Default or Event of Default shall be occurring;
- (c) the System shall have been qualified and certified by the Maryland PSC as a Solar Renewable Energy Facility pursuant to the Maryland RPS;
- (d) Provider shall have made all filings and applications required for accreditation of the System in GATS and for the registration, origination and transfer of RECs from the System that are eligible for origination, registration and transfer under GATS;
- (e) Provider shall have obtained all necessary authorizations from FERC to sell Energy at market-based rates as contemplated by the Agreement and shall be in compliance with such authorization;
- (f) Provider shall be in compliance with the security requirements of Sections 15.1(a) and (b), 15.2(a)(c)(d)(e) and (g), and 15.4;

- (g) Provider shall have provided Host with written evidence that all of the preceding conditions have been satisfied.

4. SYSTEM INSTALLATION, TESTING AND OPERATIONS.

4.1 Installation. Host hereby grants to Provider a commercial non-exclusive license coterminous with the Term of this Agreement containing all the rights necessary for Provider to use and occupy portions of the Premises for the installation, operation and maintenance of the System pursuant to the terms of this Agreement. At its sole cost and expense, Provider will cause the System to be designed, engineered, installed and constructed in accordance with the terms of this Agreement and with a targeted generating capacity as more specifically described in Attachment 2. Host shall have the right to review and approve all construction plans including engineering evaluations of the impact of the System on (i) the Premises and (ii) the then current Local Electric Utility's equipment and service. Host's approval shall not be deemed as making Host responsible, and Host shall not be responsible, for the design or construction of the System. Provider shall perform the Installation Work at the Premises, in a manner that minimizes inconvenience to and interference with Host's and Host's invitees.

Provider shall provide Host reasonable notice of the progress of the installation of the System and shall provide reasonable prior written notice to Host of the Initial Delivery Date. Promptly following the execution of this Agreement, Provider shall commence pre-installation activities relating to the System, which shall include, without limitation, the following:

- (a) obtain financing for installation of the System;
- (b) submit application for Maryland's Clean Energy Incentive Tax Credit for operation of the System, if applicable;
- (c) obtain all Permits and contracts and agreements required for installation and operation of the System and the sale and delivery of Energy to Host;
- (d) effect the execution of all agreements required for interconnection of the System with applicable Local Electric Utility.

4.2 System Acceptance Testing

- (a) Provider shall conduct testing of the System ("System Acceptance Testing") in accordance with the requirements of Section E of Exhibit C hereof (the Request for Proposals, No).
- (b) If the results of such System Acceptance Testing indicate that the System is capable of generating electric energy (at the forecasted hourly volumes shown in Attachment 4) for four (4) continuous hours over five consecutive days (the "System Test Requirements"), using such instruments and meters as have been installed for such purposes, the System has been approved for interconnected operation by the Local Electric Utility, and the conditions set forth in Section 3.1. have been satisfied or waived in writing by Host, then Provider shall send a written notice to that effect to Host (a "Completion Notice").

(c) The “Initial Delivery Date” shall be the date on the Completion Notice.

43 Provider as Owner and Operator. The System will be owned by Provider or System Lessor and will be operated by Provider at its sole cost and expense. “System Operations” means all actions, including monitoring and maintaining the System, necessary for Provider to fulfill its covenants under Section 7.1. Any repair or maintenance of the System will be commenced and completed in a reasonably prompt manner by or for Provider, at its sole cost and expense.

44 Malfunctions and Emergencies.

(a) Malfunctions. Host and Provider each shall notify the other within twenty-four (24) hours following their discovery of any material malfunction in the operation of the System or of their discovery of an interruption in the supply of Solar Services. Provider shall restore the supply of Solar Services as soon as reasonably possible after notice or upon its discovery of a material malfunction in the operation of the System or of an interruption in the supply of Solar Services

(b) Emergencies. Provider and Host each shall notify the other Party upon the discovery of an emergency condition in the System. If an emergency condition exists, Provider shall promptly dispatch the appropriate personnel immediately to perform the necessary repairs or corrective action in an expeditious and safe manner.

(c) Personnel. For routine and emergency repairs, Host shall contact Provider with contacts for each listed in Attachment 5 – Emergency Contact Information. Provider and Host shall each designate personnel and establish procedures such that each Party may provide notice of emergency conditions, as contemplated in Section 4.4(b), requiring Provider’s repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays.

45 Metering. Provider shall install and maintain a utility grade kilowatt-hour (kWh) meter that is pre-approved by MD COMAR and the Public Service Commission for Utility Revenue Billing for the measurement of electrical energy provided by the System at the Delivery Point. The University has the Schneider Electric (SE) Ecostruxure Power Monitoring Expert (PME) Metering System. In addition to any private metering needed by the Provider for monthly billing purposes, provide an ION7400 Electrical Meter from SE with three (3) digital inputs. Install the meter with the voltage inputs derived from the campus-side of the Solar PV System Isolation Switch and current inputs derived from the Solar PV side of the Isolation Switch and connect a digital input to the meter from the Isolation Switch for remote monitoring of the Solar PV System status. Provide a CAT 6 cable in ¾” EMT with compression fittings to the local Communications closet in the building for connection to the University’s Metering Network.

5. SALE OF ENERGY

5.1 Purchase Requirement. Host agrees to purchase one hundred percent (100%) of the Solar Services provided by Provider to Host during each relevant month of the Term. The payment for Solar Services is calculated to include all of the defined services in the Energy Payment Rate in Attachment 3. Neither Party may claim that by this Agreement, Provider

is an electric utility subject to regulation as an electric utility or subject to regulated electricity rates. Provider shall not claim to be providing electric utility services to Host.

52 Expected Energy Production. The annual estimate of Solar Services with respect to the System for any given month as determined pursuant to this Section shall be the “Expected Energy Production.” The Expected Energy Production for each month of the Initial Term commencing on the Initial Delivery Date for the System shall be as set forth in Attachment 4.

53 Environmental Attributes and Financial Incentives and Tax Benefits.

- (a) Commencing on the Initial Delivery Date and for the remainder of the Term:
 - (i) Provider shall retain any and all SRECs associated with the System during such period of time, and (ii) consistent with Attachment 3, Host’s purchase of Solar Services shall include any and all Environmental Attributes (other than RECs) associated with the System during such period of time.
- (b) Commencing on the Initial Delivery Date and throughout the remainder of the Term:
 - (i) Consistent with Attachment 3, Host’s purchase of Solar Services shall include the equivalent number of Green-e® Energy RECs associated with the System and invoiced by the Provider during such period of time; and (ii) Host shall retain any and all Environmental Attributes (other than RECs) associated with the System during such period of time.
- (c) Other than as set forth in paragraphs (a) and (b) above, during the Term Provider shall retain, and Host’s purchase of Solar Services shall not include, any and all Financial Incentives and Tax Benefits associated with the System.
- (d) For purposes of this Agreement:
 - (1) “Renewable Energy Credits” means a tradable, contractual instrument that represents the full suite of attributes of one (1) Megawatt-hour of renewable energy generation on the electricity grid.
 - (2) “SRECs” means a tradable, environmental commodity that represents one (1) Megawatt-hour of solar energy generated by an eligible solar renewable energy system.
 - (3) “Environmental Attributes” means, without limitation, carbon trading credits, Renewable Energy Credits or certificates, production-based incentives, emissions reduction credits, emissions allowances, green tags, tradable renewable credits, and Green-e® products, whether existing as of the Effective Date or thereafter and whether available to Producer as producer of Energy from the System or available to Host as the purchaser or user of such Energy.
 - (4) “Financial Incentives and Tax Benefits” means, without limitation, any and all federal, state or local rebates, tax credits, energy production credits, or

depreciation incentives related to any renewable portfolio standard or other renewable energy purchase requirement or otherwise, whether existing as of the Effective Date or enacted thereafter and whether available to Producer as producer of Energy from the System or available to Host as the purchaser or user of such Energy.

(5) “Green-e[®] Energy RECs” means RECs certified under the Green-e[®] Renewable Energy Standard for Canada and the United States, as may be amended from time to time.

(e) This provision shall survive the termination of this Agreement and any subsequent sale of the System.

5.4 Title to System. Throughout the duration of this Agreement, Provider or System Lessor shall be the legal and beneficial owner of the System at all times, and the System shall remain the personal property of Provider or System Lessor and shall not attach to or be deemed a part of, or fixture to, the Premises. The System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. Host covenants that it will use reasonable commercial efforts to place all parties having an interest in or lien upon the real property comprising the Premises on notice of the ownership of the System and the legal status or classification of the System as personal property. If there is any mortgage or fixture filing against the Premises which could reasonably be construed as attaching to the System as a fixture of the Premises, Host shall provide a disclaimer or release from such lien holder. Host consents to the filing at Provider’s expense of a disclaimer of the System as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction of the Premises.

6. PRICE AND PAYMENT.

6.1 Consideration. Host shall pay to Provider a monthly payment (the “Energy Charge”) for the Solar Services produced by the System during each calendar month of the Term equal to the product of (x) Actual Monthly Production for the System for the relevant month at the Delivery Point multiplied by (y) the price per kWh for Energy relating to the System for the relevant year as specified in Attachment 3 – Energy Payment Rate. For actual monthly production exceeding 110% of expected monthly production, the price per kWh will be 50% of the relevant Contract price. The sum of all Energy Charges paid (and remaining to be paid) during the Term shall be the “Contract Price” under this Agreement. Except as may be otherwise expressly provided in this Agreement, no other fees or charges shall be due from Host to Provider.

6.2 Payment. Provider shall invoice Host on or about the fifth day of each month (each, an “Invoice Date”), commencing on the first Invoice Date to occur after the Initial Delivery Date, stating the Actual Monthly Production delivered to Host during the preceding calendar month and calculating the Energy Charge. The last invoice shall include production only through the Expiration Date. Each invoice shall identify this Agreement and set forth Provider’s employment identification number.

6.3 Time of Payment. Host shall pay all undisputed amounts due hereunder within thirty (30) days after the date of the applicable Invoice Date.

64 Method of Payment. Host shall make all payments under this Agreement by electronic funds transfer in immediately available funds to the account designated in writing by Provider. Subject to Title 15, Subtitle 1, of the State Finance and Procurement Article of the Annotated Code of Maryland, all payments that are not paid when due shall bear interest accruing from the date becoming past due until paid in full at a rate equal to the Stated Rate. All payments made hereunder shall be non-refundable, be made free and clear of any tax, levy, assessment, duties or other charges.

7. GENERAL COVENANTS.

7.1 Provider's Covenants. As a material inducement to Host's execution and delivery of this Agreement, Provider covenants and agrees to the following:

- (a) System and Premises Condition. Provider shall take all actions reasonably necessary to ensure that the System is capable of providing Solar Services at a commercially reasonable continuous rate. Notwithstanding the generality of the foregoing, Provider shall cause the System to be operated and maintained at Provider's sole expense throughout the Term of this Agreement. Provider warrants that all of its operating and maintenance personnel will be adequately qualified and trained throughout the Term of this Agreement. Provider shall also be responsible for any maintenance and repairs to the Premises if such repairs are necessary as a result of Provider's use of the Premises. Provider shall not do or permit to be done anything which will invalidate any insurance policy covering the Premises or Property.

If the System is located on a rooftop, provider shall, at its sole cost and expense, examine and repair the rooftop to the reasonable satisfaction of Host to ensure that the warranty for the roof is not invalidated and to ensure that the roof remains watertight throughout the Term of this Agreement.

If the System is located on an exposed structure, i.e. Parking Garage, the Provider shall, at its sole cost and expense, repair the structure to the reasonable satisfaction of the Host to ensure the integrity of the structure throughout the Term of this Agreement.

During the course of any construction, installation, maintenance, or repair, Provider shall (a) cause the Premises and Property to be kept reasonably clean and free of trash and building debris; (b) immediately upon the completion of such activity, cause all such trash and debris, and machinery and equipment, to be removed from the Premises and Property; and (c) refrain from discarding or depositing any dirt, trash or other debris upon the Premises and Property. After construction, installation, maintenance or repair, Host shall leave the Premises and Property in a safe condition, and at its sole cost and expense, restore all areas of the Premises or Property impacted by the construction, installation, maintenance or repair to its original condition, except for ordinary wear and tear.

Provider shall be responsible for, and indemnify, defend and hold harmless Host for the cost of any damages incurred as a result of Provider's damage to the roof and/or structure, or removal, storage, or re-installation of the System.

If Provider shall fail to comply with its maintenance and repair obligations herein,

- Host shall give Provider notice in writing to do such maintenance and repair as are required in Host's sole discretion under this Agreement. If within ten (10) days thereafter, Provider fails to commence and diligently attempt to complete the maintenance and repair, then in addition to its other remedies under this Agreement, Host shall have the right to have such work performed and expend such funds at the expense of Provider as are required to perform such work. Provider shall promptly reimburse any amount so expended by Host upon Host's submittal of the work invoices to Provider. Host shall be entitled to draw on any Letter of Credit, Guaranty or cash provided by Provider pursuant to Article 15 hereof to satisfy any obligation or liability of Provider arising pursuant to this Section 7.1.(a).
- (b) **Governmental Approvals.** While providing the Installation Work, Solar Services, and System Operations, Provider shall obtain and maintain and secure all Governmental Approvals required to be obtained and maintained and secured by Provider and to enable Provider to perform such obligations. Provider shall deliver copies of all Governmental Approvals obtained pursuant to this section to Host.
 - (c) **Health and Safety.** Provider shall take all necessary and reasonable safety precautions with respect to providing the Installation Work, Solar Services, and System Operations that shall comply with all Applicable Laws pertaining to the health and safety of persons and real and personal property. Provider shall immediately report to Host any death, lost time injury, or property damage to Host's property that occurs on the Premises or as part of Provider's operation of the System on the Premises.
 - (d) **Liens.** Other than Lender or System Lessor's security interest in or ownership of the System, Provider shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics', labor or materialman's lien), charge, security interest, encumbrance or claim of any nature ("Liens") on or with respect to the Premises or any interest therein. Provider also shall pay promptly before a fine or penalty may attach to the Premises any taxes, charges or fees of whatever type of any relevant Governmental Authority, relating to any work performed hereunder by Provider or its agents and subcontractors on the Premises. If Provider breaches its obligations under this Section, it shall (i) immediately notify Host in writing, (ii) promptly cause such Lien to be discharged and released of record without cost to Host, and (iii) defend, hold harmless and indemnify Host against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien.
 - (e) **No Infringement.** The System and Provider's services hereunder, including the Installation Work, Solar Services and System Operations, shall not infringe any third party's intellectual property or other proprietary rights.
 - (f) **Security.** Provider shall provide and take reasonable measures for security of the System as necessary to prevent injury to persons in the vicinity of the System. Host shall not be responsible for any loss of, or damage to, any portion of the System or any of Provider's personal property, except to the extent caused by Host's gross negligence or willful misconduct.

- (g) Maintenance of Records. Provider shall maintain energy production and other records and documents relating to this Agreement as reasonably necessary to demonstrate its compliance with its obligations under this Agreement. Provider shall retain and maintain all such records and documents for three years after final payment by Host hereunder or any applicable statute of limitations, whichever is longer. Provider will make such records available for inspection and audit by authorized representatives of Host or its designee, at reasonable times and locations.

72 Host's Covenants. As a material inducement to Provider's execution and delivery of the Agreement, Host covenants and agrees as follows:

- (a) Health and Safety. Host shall at all times maintain the Premises consistent with all Applicable Laws pertaining to the health and safety of persons and property, except that Provider shall repair any damage to the Premises as provided in Section 7.1(a).
- (b) Notice of Damage. Host shall promptly notify Provider of any matters it is aware of pertaining to any damage to or loss of the use of the System or that could reasonably be expected adversely to affect the System.
- (c) Liens. Host shall not directly or indirectly cause, create, incur, assume or suffer to exist any Liens on or with respect to the System or any interest therein. If Host breaches its obligations under this Section, it shall immediately notify Provider in writing and shall promptly cause such Lien to be discharged and released of record without cost to Provider.
- (d) Consents and Approvals. At Provider's sole cost and expense, Host shall reasonably assist Provider in obtaining, maintaining, and securing any necessary approvals, permits, and authorizations related to the installation of the System, including, but not limited to, providing any authorizations needed for the above and signing applications for permits, local utility grid interconnection applications and rebate applications and processing. Host shall ensure that any authorizations required of Host are provided in a reasonably timely manner. To the extent that only Host is authorized to obtain or issue any necessary approvals, permits, rebates or other financial incentives, Host shall deliver to Provider copies of said consents, approvals, permits, and authorizations relating to the performance of Host's obligations and the rights granted by Host hereunder and that are required by the terms, conditions or provisions of any restriction or any agreement or instrument to which Host is a party or by which Host is bound.
- (e) Access to Premises, Grant of License. Host shall provide Provider with access to the Premises as reasonably necessary to allow Provider to perform the Installation Work, System Operations and System removal, including ingress and egress rights to the Premises for Provider and its employees, contractors and subcontractors and access to electrical panels and conduits to interconnect or disconnect the System with the Premises' electrical wiring. Host hereby covenants that Provider shall have access to the Premises and System during the Term of this Agreement and for so long as needed after termination to remove the System pursuant to the applicable provisions herein. Host and its authorized representatives shall at all times have

access to and the right to observe the Installation Work or System removal but shall not interfere or handle any Provider equipment or the System without written authorization from Provider; provided, however, in the event of a material malfunction or emergency as specified in Section 4.4, Host shall be permitted to take those actions necessary to prevent injury.

- (f) Temporary storage space during installation or removal. Host shall use commercially reasonable efforts to provide sufficient space for the temporary storage and staging of tools, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers and facilities reasonably necessary during the Installation Work, System Operations or System removal, and access for rigging and material handling. Host shall provide Provider a reasonable area for construction laydown.

8. WARRANTIES.

81 Warranties Relating to Agreement Validity. In addition to any other representations and warranties contained in this Agreement, each Party represents and warrants to the other as of the Effective Date that:

- (a) it is duly organized and validly existing and in good standing in the jurisdiction of its organization;
- (b) it has the full right and authority to enter into, execute, deliver, and perform its obligations under this Agreement;
- (c) it has taken all requisite corporate or other action to approve the execution, delivery, and performance of this Agreement;
- (d) this Agreement constitutes its legal, valid and binding obligation enforceable against such Party in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws now or hereafter in effect relating to creditors' rights generally;
- (e) there is no litigation, action, proceeding or investigation pending or, to the best of its knowledge, threatened before any court or other Governmental Authority by, against, affecting or involving any of its business or assets that would affect its ability to carry out the transactions contemplated herein; and
- (f) its execution and performance of this Agreement and the transactions contemplated hereby do not constitute a breach of any term or provision of, or a default under, (i) any contract or agreement to which it or any of its Affiliates is a party or by which it or any of its Affiliates or its or their property is bound, (ii) its organizational documents, or
(iii) any Applicable Laws.

82 PUHCA. Provider represents and warrants as of the Effective Date that (a) it has taken all required actions, if any, necessary to comply with the Public Utility Holding Company Act of 2005, as amended and (b) it is not subject to rate regulation by any Governmental Authority.

- 83 Requisite Standards. The System shall be installed with due care by qualified employees, representatives, agents or contractors of Provider and shall conform to applicable industry standards and practices and Applicable Law. If Provider fails to meet any of the foregoing standards, Provider shall perform at its own cost, and without additional charge to Host, the professional services necessary to correct errors and omissions, including any necessary replacement of the System, that are caused by Provider's failure to comply with the above standard so that the System is capable of providing Solar Services at a reasonably continuous rate.
- 84 Anti-Bribery. Provider warrants that neither it nor any of its officers, directors, or partners nor any of its employees who are directly involved in obtaining or performing contracts with any public body has been convicted of bribery, attempted bribery, or conspiracy to bribe under the laws of any state or of the federal government or has engaged in conduct since July 1, 1977, which would constitute bribery, attempted bribery, or conspiracy to bribe under the laws of any state or the federal government
- 85 Compliance Issues. Provider hereby represents and warrants that:
- (a) It is qualified to do business in the State of Maryland and that it will take such actions 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 moneys due to 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 Agreement; and
 - (c) It shall comply with all federal, State, and local laws, regulations, and ordinances applicable to its activities and obligations under this Agreement.
- 86 Conflict of Interest. Provider represents that no State officer, employee, or agent who has participated personally in his official capacity through decision, approval, disapproval, recommendation, advice, or investigation in respect of this Agreement nor any spouse, parent, minor child, brother, or sister of such State officer, employee or agent, has a financial interest in the transactions contemplated by this Agreement or in Provider.
- 87 Contingency Fee Prohibition. Provider 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 Provider, 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.
- 88 Differing Site Conditions. Provider shall promptly, and before such conditions are disturbed, notify Host in writing of: (1) subsurface or latent physical conditions at the Premises differing materially from those indicated in this Agreement, or (2) unknown physical conditions at the site of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in this Agreement. Provider acknowledges that it has investigated and satisfied itself as to the conditions affecting the work to be done or services to be provided

under this Agreement including but not restricted to those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power, roads and uncertainties of weather, river stages, tides or similar physical conditions at the site, the conformation and conditions of the Premises, the character of equipment and facilities needed preliminary to and during prosecution of the work and provision of the services. Provider further acknowledges that it has satisfied itself as to the character, quality and quantity of obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the Premises or from information, if any, presented by the drawings and specification made a part of the Contract. Any failure by Provider to acquaint itself with the available information may not relieve it from responsibility for any conclusions or interpretations made by Provider on the basis of the information made available by Host.

- 8.9 Drug and Alcohol-Free Workplace. Provider warrants that Provider shall comply with COMAR 21.11.08 Drug and Alcohol-Free Workplace, and that Provider shall remain in compliance throughout the Term.
- 8.10 EPA Compliance. Materials, supplies, equipment, or services provided under this Agreement shall comply in all respects with the Federal Noise Control Act of 1972, where applicable as well as all other federal or state environmental laws and regulations.
- 8.11 Financial Disclosure. Provider shall comply with the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland (as may be amended), which requires 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 from the State of Maryland in the aggregate of \$100,000 or more, shall, within 30 days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information including, but not limited to disclosure of beneficial ownership of the business.
- 8.12 Non-Discrimination in Employment. The Provider 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.
- 8.13 Non-Hiring of Employees. No employee of 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 Agreement shall, while so employed, become or be an employee of Provider.
- 8.14 O.S.H.A. All materials, supplies, equipment or services supplied as a result of this Contract shall comply with the applicable U.S. and Maryland Occupational Safety and Health Act standards.
- 8.15 Political Contributions Disclosure. The Provider shall comply with Annotated Code of

Maryland, Election Law §14-101, *et seq.*, which requires that every person that enters into contracts, leases, or other agreements with the State, a county, or any incorporated municipality, or their agencies, during a calendar year in which the person received in the aggregate \$100,000 or more from the State, a county, incorporated municipality, or agency, 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 or contract, then twice a year, throughout the 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.

8.16 Registration. Pursuant to 7-201 *et seq.* of the Corporations and Associations Article of the Annotated Code of Maryland, corporations not incorporated in the State shall be registered with the Maryland Department of Assessments and Taxation, 301 West Preston St., Baltimore, Maryland 21201, before doing any interstate or foreign business in this State. Before doing any intrastate business in this State, a foreign corporation shall qualify with the Maryland Department of Assessments and Taxation.

8.17 Subcontracting. Provider may not subcontract any portion of the services provided under this Contract without obtaining the prior written approval of the University, which approval shall not be unreasonably withheld. Any such subcontract shall be subject to any terms and conditions that the University reasonably deems necessary to protect its interests. The University shall not be responsible for the fulfillment of Provider's obligations to the subcontractors.

8.18 Compliance with State's Commercial Nondiscrimination Policy. As a condition of entering into this Agreement, the Provider represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As part of such compliance, the Provider may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall the Provider retaliate against any person for reporting instances of such discrimination. The Provider shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. The Provider understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the Provider from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

As a condition of entering into this Agreement, upon the request of the Maryland

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

9. TAXES AND GOVERNMENTAL FEES.

Provider shall be responsible for all income, gross receipts, ad valorem, personal property or real property or other similar taxes and any and all franchise fees or similar fees assessed against it due to its ownership of the System. If Host is assessed any taxes or fees related to the existence of the System on the Premises, Host shall immediately notify Provider. Host and Provider shall cooperate in contesting such assessment; *provided, however,* that Host shall pay such taxes to avoid any penalties on such assessments subject to reimbursement by Provider. If, after resolution of the matter, a tax is imposed upon Host related to the improvement of real property by the existence of the System on the Premises, Provider shall reimburse Host for such tax. Provider shall not be obligated for any taxes payable by or assessed against Host based on or related to Host's overall income or revenues. Nothing contained in this Agreement shall be deemed to constitute a waiver of any immunity to which Host may be entitled under the laws of the State.

10. FORCE MAJEURE.

10.1 Definition. "Force Majeure Event" means any act or event that prevents the affected Party from performing its obligations in accordance with this Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party and such Party had been unable to overcome such act or event with the exercise of due diligence (including the expenditure of reasonable sums). Subject to the foregoing conditions, "Force Majeure Event" shall include without limitation the following acts or events: (a) natural phenomena, such as storms, hurricanes, floods, lightning and earthquakes; (b) explosions or fires arising from lightning or other causes unrelated to the acts or omissions of the Party seeking to be excused from performance; (c) acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemic, terrorist acts, or rebellion; (d) strikes or labor disputes; (e) action by a Governmental Authority, including a moratorium on any activities related to this Agreement; and (f) the impossibility for one of the Parties, despite its reasonable efforts, to obtain, in a timely manner, any Governmental Approval necessary to enable the affected Party to fulfill its obligations in accordance with this Agreement, provided that the delay or non-obtaining of such Governmental Approval is not attributable to the Party in question and that such Party has exercised its reasonable efforts to obtain such Permit.

10.2 Excused Performance. Except as otherwise specifically provided in this Agreement, neither Party shall be considered in breach of this Agreement or liable for any delay

or failure to comply with the Agreement (other than the failure to pay amounts due hereunder), if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure Event; *provided* that the Party claiming relief under this Section 10 shall immediately (a) notify the other Party in writing of the existence of the Force Majeure Event, (b) exercise all reasonable efforts necessary to minimize delay caused by such Force Majeure Event, (c) notify the other Party in writing of the cessation or termination of said Force Majeure Event and (d) resume performance of its obligations hereunder as soon as practicable thereafter. If Provider claims relief pursuant to a “Force Majeure Event,” the obligation of Host to make a payment for Solar Services to Provider on any payment date shall be suspended until Provider resumes performance of its obligations under this Agreement at which time such payment for Solar Services shall become immediately due and payable; *provided, however*, that Host shall not be excused from making any payments and paying any unpaid amounts due in respect of Solar Services delivered to Host prior to the Force Majeure Event performance interruption.

- 103 Termination in Consequence of Force Majeure Event. If a Force Majeure Event shall have occurred that has affected Provider’s performance of its obligations hereunder and that has continued for a period of one hundred twenty (120) consecutive days or one hundred eighty (180) days in the aggregate, then Host shall be entitled to terminate this Agreement upon ninety (90) days’ prior written notice to Provider. If at the end of such ninety (90) day period such Force Majeure Event shall still continue, this Agreement shall automatically terminate. Upon such termination for a Force Majeure Event, neither Party shall have any liability to the other, subject to Section 20.6; *provided, however*, that Host shall not be excused from making any payments and paying unpaid amounts due in respect of Solar Services delivered to Host prior to the Force Majeure Event performance interruption. By mutual agreement of the Parties, any System damaged or destroyed by a Force Majeure Event may be replaced by Provider within the time frames set forth above and, subsequent to replacement and upon commencement of operation of the replacement System, all terms and conditions of this Agreement will remain in effect, including the remaining Term of this Agreement.

11. EVENTS OF DEFAULT; REMEDIES.

- 11.1 Events of Default. An “Event of Default” shall mean, with respect to a Party (“Defaulting Party”), the occurrence of any of the following:
- (a) any representation or warranty made by such Party herein shall be false in any material respect and shall remain uncured for a period of thirty (30) days after written notice thereof is received;
 - (b) the failure to perform any material covenant or obligation set forth in the Agreement (except to the extent constituting a separate Event of Default): (A) if such failure is not remedied within thirty (30) days after written notice thereof is received if such failure can be cured within thirty (30) days after receipt of written notice of such failure (the “Initial Cure Period”), or (B) if such failure is not reasonably capable of being cured within such Initial Cure Period, such failure is not remedied within the Supplemental Cure Period, as set forth herein. If such a failure to perform is not reasonably capable of being cured within the Initial Cure Period, the Defaulting Party shall (i) commence and diligently pursue a cure within such Initial Cure Period, and (ii) if the Defaulting Party is Provider, submit to Host

for review and approval no later than the last day of the Initial Cure Period a plan to complete the cure within an additional reasonable period of time, not to exceed sixty (60) days (“Supplemental Cure Period”). Host’s consent, which shall not be unreasonably withheld, is required to initiate a Supplemental Cure Period if the Defaulting Party is Provider;

- (c) such Party becomes Bankrupt;
- (d) such Party assigns the Agreement or any rights, interests or obligations hereunder without the prior written consent of the other Party when such consent is required; and
- (e) any Permit necessary for a Party to be able to perform as contemplated by the Agreement is not received, expires or is revoked or suspended and is not renewed or reinstated within a reasonable period of time following the expiration, revocation or suspension thereof, by reason of the action or inaction of such Party and such expiration, revocation or suspension creates a material adverse impact on the other Party.
- (f) Section 2.3 of the Agreement shall not apply to any termination of the Agreement by Host pursuant to this Section 11.1.

112 Provider Events of Default. Any of the following events shall constitute a “Provider Event of Default”:

- (a) the failure by Provider to provide a Letter of Credit or Guaranty as required by Section 15;
- (b) the transfer by Provider of all or substantially all of its assets to another Person without the prior written consent of Host;
- (c) during the 12-month period immediately preceding any anniversary of the Initial Delivery Date, the System generated less than eighty percent (80%) of the applicable Expected Energy Production, except to the extent due to a Force Majeure Event; and
- (d) the Initial Delivery Date does not occur within six (6) months of the Guaranteed Initial Delivery Date and such delay is not directly attributable to a Force Majeure Event (as reasonably determined by Host).

113 Host Event of Default. The following event shall constitute a “Host Event of Default”:

Host unreasonably refuses to sign authorizations needed to obtain any Environmental Attribute contemplated in Section 5.3, unreasonably refuses to sign or purposefully breaches any term of the interconnection agreement required by the Local Electrical Utility for interconnection of the System.

114 General Remedies for Default. If an Event of Default has occurred and is continuing with respect to a Defaulting Party, the other Party (the “Non-Defaulting Party”) shall have the right to: (a) suspend performance under the Agreement; (b) terminate the Agreement

and/or (c) exercise any remedies available at law. Without limiting the generality of the foregoing, upon a Provider Event of Default, Host shall have the right to exercise its remedies under any Letter of Credit or the Guaranty.

- 115 **Actions to Prevent Injury.** If any Host Default creates an imminent risk of damage or injury to any Person or any Person’s property, then in any such case, in addition to any other right or remedy that Provider may have, Provider may (but shall not be obligated to) take such action as Provider deems appropriate to prevent such damage or injury. Such action may include disconnecting and removing all or a portion of the System, in compliance with the conditions of Section 2.5 herein, or suspending the supply of Solar Services to Host.
- 116 **Removal of System.** Upon any termination of this Agreement pursuant to this Section 11, Provider will remove the System pursuant to Section 2.5 hereof.
- 117 **Delay Damages.** In the event the Initial Delivery Date does not occur on or prior to the Guaranteed Initial Delivery Date and such delay is not directly attributable to a Force Majeure Event (as reasonably determined by Host), for each day beginning with two (2) months after the Guaranteed Initial Delivery Date, through and including the date on which the Initial Delivery Date actually occurs, Host's exclusive remedy shall be payment by Provider of daily liquidated damages (“Delay Damages”) defined as the amount (\$/kWh/Day) in the Damages Matrix below times the corresponding daily Expected Energy Production (kWh) (as identified on Attachment 4.) In the event the Initial Delivery Date does not occur within six (6) months of the Guaranteed Initial Delivery Date, Host shall have the right to terminate this Agreement without liability and, in the event of termination, shall also be entitled to receive the amount of the security referenced in Section 15.2 (a). The Parties acknowledge and agree that: (a) calculation of actual damages that Host would suffer as a result of a delay in the Initial Delivery Date would be difficult or impossible to ascertain; (b) obtaining an adequate remedy may be difficult; and (c) the amount of Delay Damages constitutes a fair and reasonable approximation of the damages Host will incur as a result of delay in the Initial Delivery Date and is not intended as, nor shall it be deemed, a penalty. The rights set forth pursuant to this Section 11.7 and in connection with Section 15.2 shall be Host's exclusive remedy for Provider's delay in achieving the Guaranteed Initial Delivery Date.

Damages Matrix	
Month 1	\$0.075 /kWh/Day
Months 2 and 3	\$0.150 /kWh/Day
Thereafter until Initial Delivery Date is achieved or Termination is declared.	\$0.3 / kWh/Day

- 118 **Damages on Termination.**
 - (a) Upon a termination of the Agreement by Host based on a Provider Default, Host shall be entitled to recover the net present value of the replacement cost of Energy, capacity (as applicable), RECs and Environmental Attributes supplied from a

similar facility less the cost of the Energy, RECs and Environmental Attributes that Host would have incurred at the Energy Payment Rate, assuming the System produced Energy at the current Expected Energy Production quantities for the remaining Term; *provided however*, that for any termination of the Agreement prior to the Initial Delivery Date based on a Provider Default, Provider's liability shall be limited to the amount of security pursuant to Section 15.2 (a) and the removal costs of the System.

- (b) Upon a termination of the Agreement by Provider based on a Host Default, Provider shall be entitled to recover the net present value of the price of Energy, capacity, RECs and Environmental Attributes at the Energy Payment Rate less the market price of Energy, capacity, RECs and Environmental Attributes supplied from a similar facility, assuming the System produced Energy at the current Expected Energy Production quantities for the remaining Term as well as the cost to move remove and reinstall the System at a new site location.
- (c) The Parties acknowledge and agree that: (i) a renewable energy generating resource has an inherent value greater than the value of other forms of Energy; (ii) the inherent value of Energy supplied from a renewable energy resource is a primary reason Host is entering into the Agreement; (iii) in the event of termination of the Agreement based on a Provider Event of Default, Host will likely be required to replace the Energy that would have been provided hereunder with Energy supplied from another renewable energy generating resource; (iv) in the event of termination of the Agreement by Provider based on a Host Event of Default, Provider will likely sell the Energy that would have been sold hereunder to a Party seeking Energy supplied from a renewable energy generating resource; and (v) the formulations of damages described in this Section 11.8 are fair and reasonable approximations of the damages each Party would incur upon a termination based on an Event of Default and are not intended to be, nor should they be interpreted to result in, a penalty.

11.9 Cumulative Remedies. The remedies provided for in this Article 11 shall be without prejudice and in addition to any right of set-off, combination of accounts, Lien or other right to which any Party is at any time otherwise entitled (whether by operation of Law, contract or otherwise).

11.10 Lender's Right to Cure. In the event Provider notifies Host of the contact information for a System Lender: (i) Host shall provide notice of any Provider Event of Default to such Lender; and (ii) Host shall accept a cure of any Provider Event of Default by the Lender, so long as the cure is accomplished within the applicable cure periods set forth in the Agreement.

11.11 EXCLUSION OF CONSEQUENTIAL DAMAGES. HOST SHALL NOT BE LIABLE TO THE PROVIDER FOR SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS, LOST REVENUE OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT, IN CONTRACT OR OTHERWISE, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT. NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, HOST'S MAXIMUM LIABILITY TO THE PROVIDER UNDER THIS AGREEMENT SHALL BE LIMITED, IN THE AGGREGATE, TO THE

CONTRACT PRICE.

- 11.12 Disruption of System Operations. In the event that any act or omission of Host or Host's employees, agents or subcontractors (collectively, a "Host Act") results in a disruption or outage in System production, Host shall (i) make all payments for the Solar Services as if the disruption had not occurred, (ii) reimburse Provider for any damages Provider suffers resulting from reduced production of Environmental Attributes (if applicable) during the period the System's production is curtailed as a result of the Host Act (the "System Disruption Time") and, (iii) should the Host Act require Provider to temporarily disassemble or move the System, pay Provider for all work required by Provider to perform such move or disassembly. For the purpose of calculating payments for Solar Services during such System Disruption Time, Solar Services shall be deemed to have been produced at the same applicable pro rata rate based on the Expected Energy Production for the first twelve (12) months of service and thereafter the cumulative Actual Monthly Production for the preceding twelve (12) months, as applicable, as if there had been no Solar Services disruption.

12. DISPUTE RESOLUTION.

Disputes arising hereunder shall be resolved in accordance with the procedures described in Attachment 6 – Dispute Resolution. The Parties hereby consent to the exclusive personal and subject matter jurisdiction of the Maryland State Board of Contract Appeals and the federal and state courts of the State of Maryland in any dispute arising under this Agreement. If an appeal to the Maryland State Board of Contract Appeals is not available under Applicable Law, then either Party shall file an action in the Maryland State Circuit Court. The Parties waive trial by jury in any action or proceeding between them or to which they are parties arising out of or in any way pertaining to this Agreement. This waiver is knowingly, willingly and voluntarily made by the Parties, who hereby represent and warrant that no representations of fact or opinion have been made to induce this waiver of trial by jury or to in any way modify or nullify its effect.

13. INTENTIONALLY DELETED.

14. ASSIGNMENT.

- 14.1 Assignment by Provider. Except for the provisions in Section 14.3, Provider shall not sell, transfer or assign (collectively, an "Assignment") this Agreement or any interest therein, without the prior written consent of Host; provided, however, that, without the prior consent of Host, Provider may (i) make an Assignment to an Affiliate of Provider (provided that such Assignment, unless such assignment is made prior to the date that is ninety (90) days after the Initial Delivery Date, shall not release Provider from its obligations hereunder without the consent of Host); (ii) make an Assignment through, reorganization merger, consolidation or sale of all or substantially all of Provider's stock or assets, provided that such surviving entity or assignee (a) has comparable experience in operating and maintaining photovoltaic solar systems comparable to the System and providing services comparable to the Solar Services; and (b) has the financial capability to maintain the System and provide the Solar Services in the manner required by this Agreement; (iii) sell, transfer, assign or pledge all or a part of its interest in the System or any monies due under this Agreement (provided that Host will not pay to a third party any monies owed hereunder without the advance written direction of Provider); or (iv) take such actions as provided in Section 14.3 hereof. Host's consent to any other Assignment shall not be unreasonably withheld if Host has been provided with reasonable

proof that the proposed assignee: (a) has comparable experience in operating and maintaining photovoltaic solar systems comparable to the System and providing services comparable to the Solar Services; and (b) has the financial capability to maintain the System and provide the Solar Services in the manner required by this Agreement. A direct assignee from Provider of this Agreement shall assume in writing, in form and content reasonably satisfactory to Host, the due performance of all Provider's obligations under this Agreement, including any accrued obligations at the time of the Assignment and including the provision of all representations and warranties under this Agreement, including, but not limited to the representations and warranties contained in Sections 8.4, 8.5, 8.6 and 8.7. A copy of the Assignment agreement, fully executed and acknowledged by the assignee, together with a certified copy of a properly executed corporate resolution (if the assignee be a corporation) authorizing such Assignment agreement shall be sent to Host not less than ten (10) days before the effective date of such Assignment.

- 142 Assignment by Host. With the exception of assignments to other State entities, Host shall not assign its interests in this Agreement, nor any part thereof, without Provider's prior written consent, which consent shall not be unreasonably withheld.
- 143 Lender Accommodations. Host acknowledges that Provider may be financing the acquisition and installation of the System either through a System Lessor, Lender and/or with financing accommodations from one or more financial institutions and that Provider may sell or assign the System or may secure Provider's obligations by, among other collateral, a pledge or collateral assignment of this Agreement and a senior security interest in the System. In order to facilitate such necessary sale, conveyance, or financing, and with respect to any Lender or System Lessor, as applicable, Host agrees as follows:
- (a) Consent to Collateral Assignment. Host consents to the sale of the System to System Lessor and the collateral assignment to the Lender or System Lessor of the Provider's right, title and interest in and to this Agreement. Written notice shall be provided to Host of such sale and collateral assignment, together with the appropriate contact information for the Lender or System Lessor.
 - (b) Rights Upon Event of Default. Notwithstanding any contrary term of this Agreement:
 - i. The System Lessor, as owner of the System, or the System Lessor or Lender as collateral assignee of this Agreement, respectively, shall be entitled to exercise, in the place and stead of Provider, any and all rights and remedies of Provider under this Agreement in accordance with the terms of this Agreement. The System Lessor or Lender shall also be entitled to exercise all rights and remedies of owners or secured parties, respectively, generally with respect to this Agreement and the System.
 - ii. The System Lessor or Lender shall have the right, but not the obligation, to pay all sums due under this Agreement and to perform any other act, duty or obligation required of Provider thereunder or cause to be cured any default of Provider thereunder in the time and manner provided by the terms of this Agreement. Nothing herein requires the System Lessor or Lender to cure any default of Provider under this Agreement or (unless the System Lessor or Lender has succeeded to Provider's interests under this Agreement) to perform any act, duty or obligation of Provider under this Agreement, but Host hereby gives it the option to do so.

- iii. Upon the exercise of remedies under its security interest in the System, including any sale thereof by the System Lessor or Lender, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Provider to the System Lessor or Lender (or any Qualified Assignee of the System Lessor or Lender as defined below) in lieu thereof, the System Lessor or Lender shall give notice to Host of the transferee or assignee of this Agreement. Such transferee or assignee shall assume in writing, in form and content reasonably satisfactory to Host, the due performance of all Provider's obligations under this Agreement and including the provision of all representations and warranties under this Agreement (other than Sections 8.2 and 8.3), including, but not limited to the representations and warranties contained in Sections 8.4, 8.5, 8.6 and 8.7. Any such exercise of remedies shall not constitute a default under this Agreement. Provider shall provide written notice to Host in the event that Provider receives written notice from its System Lessor or Lender that Provider is in default under its financing agreements with respect to the System or that Provider's System Lessor or Lender intends to exercise the remedies under its security interest in the System.
 - iv. Upon any rejection or other termination of this Agreement pursuant to any process undertaken with respect to Provider under the United States Bankruptcy Code, at the request of System Lessor or Lender made within ninety (90) days of such termination or rejection, Host shall enter into a new agreement with System Lessor or Lender or its Qualified Assignee having substantially the same terms and conditions as this Agreement and including the provision of all representations and warranties under this Agreement, including, but not limited to, the representations and warranties contained in Section 8.4 and 8.5.
 - v. For purposes of this section, a "Qualified Assignee" must be a business organization with experience comparable with Provider's in the operation and management of commercial solar generating systems and with the financial capability to maintain the System and provide the Solar Services in the manner required by this Agreement.
- (c) Intentionally Deleted.
- (d) Right to Cure.
- i. Host will not exercise any right to terminate or suspend this Agreement unless it shall have given the System Lessor or Lender prior written notice of its intent to terminate or suspend this Agreement, as required by this Agreement, specifying the condition giving rise to such right, and the System Lessor or Lender shall not have caused to be cured the condition giving rise to the right of termination or suspension within thirty (30) days after such notice or (if longer) the periods provided for in this Agreement; *provided* that if such Provider Default reasonably cannot be cured by the System Lessor or Lender within such period and the System Lessor or Lender commences and continuously pursues cure of such default within such period, such period for cure will be extended for a reasonable period of time under the circumstances, such period not to

exceed additional ninety (90) days. The Parties' respective obligations will otherwise remain in effect during any cure period.

- ii. If the System Lessor or Lender or its Qualified Assignee (including any purchaser or transferee), pursuant to an exercise of remedies by the System Lessor or Lender, shall acquire title to or control of Provider's assets and shall, within the time periods described in Section 14.3(d)i. above, cure all defaults under this Agreement existing as of the date of such change in title or control in the manner required by this Agreement and which are capable of cure by a third person or entity, then such person or entity shall no longer be in default under this Agreement, and this Agreement shall continue in full force and effect.
- (e) Host acknowledges and agrees that Provider may change the System Lessor or Lender at any time, in Provider's sole discretion, and Host shall abide by such new contact information and payment directions as instructed by Provider.

15. SECURITY REQUIREMENTS.

15.1 Provider Credit.

- (a) If Provider is not a Qualified Provider at the time of the Effective Date, or in the event Delay Damages become due pursuant to Section 11.7, the Provider, at its sole discretion, shall provide either a Letter of Credit pursuant to Section 15.2 or Guaranty pursuant to Section 15.3 below. For any period after the Effective Date during which Provider can demonstrate that it has been a Qualified Provider for a period of no less than three (3) consecutive months, Provider may request that that the Host reduce or release the Letter of Credit or Guaranty, which request shall be granted or declined at Host's sole discretion.
- (b) In the event of a downgrade from Qualified Provider status at any time during the Term of the Agreement, Provider shall have three (3) Business Days to deliver a Letter of Credit pursuant to Section 15.2 or Guaranty pursuant to Section 15.3 below. Any such Letter of Credit or Guaranty issued due to such a downgrade shall not be eligible for reduction or an early release pursuant to this Section 15.1.

15.2 Letters of Credit.

- (a) Provider shall deliver to Host a Letter of Credit at the time of the Effective Date, in the amount of \$250,000 and remain in full force and effect for the duration of the Term, unless modified or removed at Host's discretion pursuant to Section 15.1, until the Expiration Date or prior termination of the Agreement, subject to satisfaction of all of Provider's obligations and liabilities arising pursuant to the Agreement, including payments due at, or as a result of, any termination.
- (b) For any period of the Term during which Provider provides a Letter of Credit, the amount of the Guaranty (if previously posted) shall be reduced by the amount of the Letter of Credit.
- (c) Each Letter of Credit shall be free and clear of all Liens, security interests (except security interests in favor of Host), claims and encumbrances.

- (d) Provider shall renew or replace each Letter of Credit required pursuant to this Section 15.2: (i) no later than thirty (30) days prior to the stated expiration date of such Letter of Credit; (ii) within five (5) Business Days of the issuer of such Letter of Credit ceasing to be a Qualified Institution; and (iii) within three (3) Business Days of the issuer of such Letter of Credit failing to honor Host's request to draw on such Letter of Credit. If Host does not receive a replacement Letter of Credit within the time specified in the preceding sentence, it may: (A) draw on the full available amount of such Letter of Credit; (B) hold the proceeds thereof in an interest bearing account; and (C) apply all or any portion of such proceeds to satisfy any obligation or liability of Provider under the Agreement (whether or not the Agreement has been terminated).
- (e) All costs and expenses of establishing, renewing, substituting, canceling, increasing, modifying, reducing or otherwise administering any Letter of Credit shall be borne by Provider.
- (f) Host shall be entitled to draw on any Letter of Credit to satisfy any obligation or liability of Provider arising pursuant to the Agreement (whether or not the Agreement has been terminated) that is not paid when due by Provider.
- (g) In the event Host draws on any Letter of Credit to fulfill any of Provider's obligations under the Agreement, Provider shall promptly, and in any event within three (3) Business Days of such draw, replenish the amount of such Letter of Credit to the level required pursuant to this Section 15.2.

15.3 Guaranty.

- (a) Provider shall deliver to Host a Guaranty at the time of the Effective Date which shall be issued by the Guarantor in the amount of \$250,000 and remain in full force and effect for the duration of the Term, unless released at Host's discretion pursuant to Section 15.1, until the Expiration Date or prior termination of the Agreement, subject to satisfaction of all of Provider's obligations and liabilities arising pursuant to the Agreement, including payments due at, or as a result of, any termination.
- (b) For any period of the Term during which Provider provides a Letter of Credit, the amount of the Guaranty (if previously posted) shall be reduced by the amount of the Letter of Credit.
- (c) Each Guaranty shall be in the form in Attachment 7 or other form acceptable to Host and shall be free and clear of all Liens, security interests (except security interests in favor of Host), claims and encumbrances.
- (d) Provider shall replace each Guaranty with a Letter of Credit required pursuant to Section 15.2: (i) no later than thirty (30) days prior to any expiration or termination of such Guaranty; (ii) within five (5) Business Days of the issuer of such Guaranty ceasing to fulfill the requirements for the definition of a Guarantor; and (iii) within three (3) Business Days of the Guarantor failing to honor Host's request for payment from the Guarantor. Failure by Host to receive a replacement Letter of

Credit within the time specified in the preceding sentence shall be an Event of Default.

- (e) All costs and expenses of establishing, renewing, substituting, canceling, increasing, modifying, reducing or otherwise administering any Guaranty shall be borne by Provider.

154 Supporting Information. For any period of the Term (a) Provider shall notify Host of any change to the Credit Rating of Provider or Guarantor, as applicable, no later than two (2) Business Days after the date of such change; (b) Provider shall provide Host with written financial information regarding Provider or Guarantor, as applicable, including audited annual reports, balance sheets, financial statements and quarterly balance sheets (each prepared in accordance with GAAP) and schedules of long term debt (including maturity dates).

155 Release of Security. Host shall return all Letters of Credit and Guarantees promptly after the first to occur of the following: (a) the Term shall have expired; (b) the Agreement shall have terminated; or (c) Host's exercises its discretion to release the security pursuant to Section 15.1; provided in each instance, all obligations and liabilities of Provider arising pursuant to the Agreement, including payments due at, or as a result of, any termination shall have been paid in full.

156 No Limit of Liability. Except to the extent expressly stated in the Agreement, the required amounts of any Letters of Credit or Guaranty shall not be deemed to be a limitation of Provider's liability.

16. NOTICES.

16.1 Notice Addresses. Unless otherwise provided in this Agreement, all notices and communications concerning this Agreement shall be in writing and addressed to the other Party as follows:

If to Provider: Company:
 Address:
 City, State, Zip Code
 Attention:
 Email:

If to Host: Name:
 Construction and Facilities Strategic
 Acquisitions
 University of Maryland, Baltimore
 220 Arch Street, 02-100
 Baltimore, MD 21201
 Telephone:410-706-7197
 Email:

With a copy to: Chief Counsel
 Educational Affairs Division

Office of the Attorney
General
200 St. Paul Place
Baltimore, Maryland 21202
Tel:
Fax:
Email:

or at such other address as may be designated in writing to the other Party.

- 162 Notice. Unless otherwise provided herein, any notice provided for in this Agreement shall be hand delivered, sent by registered or certified U.S. Mail, postage prepaid, or by commercial overnight delivery service, or transmitted by facsimile and shall be deemed delivered to the addressee or its office when received at the address for notice specified above when hand delivered, upon confirmation of sending when sent by facsimile (if sent during normal business hours or the next Business Day if sent at any other time), on the Business Day after being sent when sent by overnight delivery service (Saturdays, Sundays and legal holidays excluded), or five (5) Business Days after deposit in the mail when sent by U.S. mail.
- 163 Notices of Default. Host will deliver to the System Lessor or Lender, concurrently with delivery thereof to Provider, a copy of each notice of default given by Host under this Agreement, inclusive of a reasonable description of Provider Default. No such notice will be effective absent delivery to the System Lessor or Lender. Host will not mutually agree with Provider to terminate this Agreement without the written consent of the System Lessor or Lender.
- 164 Address for Invoices. All invoices under this Agreement shall be sent to the address provided by Host. Invoices shall be sent by regular first-class mail postage prepaid.

17. CONFIDENTIALITY.

- 17.1 Confidentiality Obligation. If either Party provides confidential information, including business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the financing, design, operation and maintenance of the System or of Host's business ("Confidential Information") to the other or, if in the course of performing under this Agreement or negotiating this Agreement a Party learns Confidential Information regarding the facilities or plans of the other, subject to Maryland Public Information Act (Title 10, Subtitle 6, Part III of the State Government Article of the Annotated Code of Maryland) (the "Public Information Act"), the receiving Party shall (a) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (b) refrain from using such Confidential Information, except in the negotiation and performance of this Agreement. Notwithstanding the above, a Party may provide such Confidential Information to its officers, directors, members, managers, employees, agents, contractors and consultants, and Affiliates, lenders, and potential assignees of this Agreement or acquirers of Provider (provided and on condition that such potential assignees be bound by a written agreement restricting use and disclosure of Confidential Information), in each case whose access is reasonably necessary to the negotiation and/or performance of this

Agreement. Each such recipient of Confidential Information shall be informed by the Party disclosing Confidential Information of its confidential nature and shall be directed to treat such information confidentially and shall agree to abide by these provisions. In any event, each Party shall be liable (with respect to the other Party) for any breach of this provision by any entity to whom that Party improperly discloses Confidential Information. The terms of this Agreement (but not its execution or existence) shall be considered Confidential Information for purposes of this Article, except as set forth in Section 17.2. All Confidential Information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed after the receiving Party's need for it has expired or upon the request of the disclosing Party.

172 Permitted Disclosures. Notwithstanding any other provision herein, neither Party shall be required to hold confidential any information that:

- (a) becomes publicly available other than through the receiving Party;
- (b) is required to be disclosed by a Governmental Authority, under Applicable Law, including but not limited to the Public Information Act, or pursuant to a validly issued subpoena or required filing, but a receiving Party subject to any such requirement shall promptly notify the disclosing Party of such requirement unless such requirement is contained in the Public Information Act;
- (c) is independently developed by the receiving Party; or
- (d) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality.

173 Goodwill and Publicity. Neither Party shall use the name, trade name, service mark, or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of this Agreement, and each Party shall have the right to promptly review, comment upon, and approve any publicity materials, press releases, or other public statements by the other Party that refer to, or that describe any aspect of, this Agreement; provided that no such publicity releases or other public statements (except for filings or other statements or releases as may be required by Applicable Law) shall be made by either Party without the prior written consent of the other Party. At no time will either Party acquire any rights whatsoever to any trademark, trade name, service mark, logo or other intellectual property right belonging to the other Party.

18. INDEMNITY.

18.1 Provider's Indemnity. Provider agrees that it shall indemnify, defend and hold harmless Host, its permitted successors and assigns and their respective directors, officers, members, shareholders and employees (collectively, the "Host Indemnified Parties") from and against any and all Losses incurred by the Host Indemnified Parties to the extent arising from or out of the following: (a) any claim for or arising out of any injury to or death of any Person or loss or damage to property of any Person to the extent arising out of Provider's negligence or willful misconduct or (b) any infringement or improper use of patents or the improper use of other proprietary rights by Provider or its employees or

representatives that may occur in connection with the performance of the Installation Work, Solar Operations or Solar Services and the ownership and use of the System. Provider shall not, however, be required to reimburse or indemnify any Host Indemnified Party for any Loss to the extent such Loss is due to the negligence or willful misconduct of any Host Indemnified Party.

19. INSURANCE.

- 19.1 Generally. Provider recognizes that Host claims sovereign immunity to the extent that it has not been waived by statute, and that Host and its officers and employees fall within the scope and coverage of the Maryland Tort Claims Act and the Maryland State Self-Insurance Program. Provider shall maintain the following insurance coverages in full force and effect throughout the Term either through insurance policies or acceptable self-insured retentions: (a) Workers' Compensation Insurance as may be from time to time required under applicable federal and state law, and (b) Commercial General Liability Insurance with limits of not less than \$2,000,000 general aggregate, \$1,000,000 per occurrence. Additionally, Provider shall carry adequate property loss insurance on the System which need not be covered by the Host's property coverage. The amount and terms of insurance coverage will be determined at Provider's sole discretion.
- 19.2 Certificates of Insurance. Provider shall furnish an original or a signed duplicate copy of each policy or current certificates evidencing in a manner reasonably satisfactory to Host that the insurance required under Section 19.1 is being maintained, including a receipt or other evidence reasonably satisfactory to Host indicating that all required premiums have been paid. Provider's insurance policy provided hereunder shall contain a provision whereby the insured agrees to give Host thirty (30) days' written notice before the insurance is cancelled or materially altered.
- 19.3 Additional Insureds. Provider's insurance policy shall be written on an occurrence basis and shall include Host as an additional insured as its interest may appear.
- 19.4 Insurer Qualifications. All insurance maintained hereunder shall be maintained with companies either rated no less than A- as to Policy Holder's Rating in the current edition of Best's Insurance Guide (or with an association of companies each of the members of which are so rated) or having a parent company's debt to policyholder surplus ratio of 1:1.

20. MISCELLANEOUS.

- 20.1 Integration; Attachments. This Agreement including the Attachments attached hereto constitutes the entire agreement and understanding between Provider and Host with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Attachments attached hereto are integral parts hereof and are made a part of this Agreement by reference. In the event of a conflict between the Attachments and the body of this Agreement, the body of this Agreement shall prevail, and such Attachment shall be corrected accordingly.
- 20.2 Amendments. This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Provider and Host.
- 20.3 Industry Standards. Except as otherwise set forth herein, for the purpose of this Agreement the normal standards of performance within the solar photovoltaic power generation industry in the relevant market shall be the measure of whether a Party's performance is

reasonable and timely. Unless expressly defined herein, words having well-known technical, or trade meanings shall be so construed.

- 204 Cumulative Remedies. Except as set forth to the contrary herein, any right or remedy of Provider or Host shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not.
- 205 Limited Effect of Waiver. The failure of Provider or Host to enforce any of the provisions of this Agreement, or the waiver thereof, shall not be construed as a general waiver or relinquishment on its part of any such provision, in any other instance or of any other provision in any instance.
- 206 Survival. The obligations under Sections 2.5, Section 5.3, Section 5.4, Section 7.1(d), Article 8., Article 9, Article 12, Article 15, Article 16, Article 17, Article 18, Article 19, and Article 20, or pursuant to other provisions of this Agreement that, by their sense and context, are intended to survive termination of this Agreement shall survive the expiration or termination of this Agreement for any reason.
- 207 Governing Law. The Contract shall be governed by and construed in accordance with the domestic laws of the State of Maryland. 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 University System of Maryland Procurement Policies and Procedures in effect at the time of execution of this Agreement (approved by the University System of Maryland Board of Regents on September 28, 1988; as amended on December 3, 1999, and approved by the Board of Public Works on February 9 2009, available at <http://www.usmd.edu/regents/bylaws/SectionVIII/VIII300.html>)(USM Procurement Policies) are applicable to the Contract.
- 208 Severability. If any term, covenant or condition in this Agreement shall, to any extent, be invalid or unenforceable in any respect under Applicable Law, the remainder of this Agreement shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by Applicable Law and, if appropriate, such invalid or unenforceable provision shall be modified or replaced to give effect to the underlying intent of the Parties and to the intended economic benefits of the Parties.
- 209 Relation of the Parties. The relationship between Provider and Host shall not be that of partners, agents, or joint ventures for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including federal income tax purposes. Provider and Host, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk.
- 2010 Successors and Assigns. This Agreement and the rights and obligations under this Agreement shall be binding upon and shall inure to the benefit of Provider and Host and their respective permitted successors and assigns.
- 2011 Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.

- 20.12 Facsimile Delivery. This Agreement may be duly executed and delivered by a Party by execution and facsimile delivery of the signature page of a counterpart to the other Party, and, if delivery is made by facsimile, the executing Party shall promptly deliver, via overnight delivery, a complete original counterpart that it has executed to the other Party, but this Agreement shall be binding on and enforceable against the executing Party whether or not it delivers such original counterpart.
- 20.13 Additional Action. Notwithstanding anything to the contrary in the Agreement, Host is responsible to take whatever actions are necessary to remedy a breach of any term or provision of, or to remedy a default under, any document recorded in the land records of the county and state to which its property is bound, which breach or default affects Provider's ability to perform under this Agreement.
- 20.14 Provider hereby represents and warrants that: (A) it is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified; (B) it is not in arrears with respect to the payment of any monies due and owing 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 Agreement; (C) it shall comply with all federal, State, and local laws, regulations, and ordinances applicable to its activities and obligations under this Agreement; and (D) it shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations hereunder.
- 20.15 Provider shall retain and maintain all records and documents relating to this Agreement for three (3) years after the end of the Term and any extensions or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of Tenant, including the procurement officer or designee, at all reasonable times.
- 20.16 Provider 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 \$200,000 or more, shall, within thirty (30) days of the time when the aggregate value of these contracts, leases or other agreements reaches \$200,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.
- 20.17 Provider shall comply with Election Law Article Sections 14-101 through 14-108 of the Annotated Code of Maryland, which requires that every person making contracts with one or more governmental entities during any 12 month period of time involving cumulative consideration in the aggregate of \$200,000 or more to file with the State Board of Elections a statement disclosing certain campaign or election contributions.

IN WITNESS WHEREOF and in confirmation of their consent to the terms and conditions contained in this Agreement and intending to be legally bound hereby, Provider and Host have executed this Agreement as of the Effective Date.

[Signatures on Following Page]

PROVIDER:

By: _____

Name: _____

Signature: _____

Title: _____

Date: _____

HOST:

By: _____

Name: _____

Signature: _____

Title: _____

Date: _____

APPROVED FOR FORM AND LEGAL SUFFICIENCY FOR HOST

By: _____

Date: _____

Name:

Title: ASSISTANT ATTORNEY GENERAL, STATE OF MARYLAND

There are two (2) project sites included in this solicitation for the University of Maryland, Baltimore (UMB). They are as follows:

1. Site I – Penn Street Parking Garage, 120 Penn Street; 21201
2. Site II – Pearl Street Parking Garage, 622 West Fayette Street; 21201

The goal is to maximize the capacity of the solar photovoltaic systems on both sites. Grant funds from the Maryland Energy Administration's (MEA) Parking Lot Solar PV Canopy with Electric Vehicle Chargers Grant Program may be available to offset the initial cost of the project. Payment of any grant funds will be made to the Contractor once the system(s) are operational after testing and acceptance. Contractor proposal must meet all requirements and terms and conditions of the MEA grant AND this solicitation.

While both of the parking garages are available for scheduled construction upon execution of contracts, UMB requests construction scheduling to minimize impact to the campus community to the extent possible while striving to meet milestone construction and operational dates.

UMB Map included on next page

UMB CAMPUS MAP

AUGUST 2019



Map Key

- Academic Building
- Patient Care Building
- Support Building
- UMB Parking Garage
- Open Green Space
- Community Resource
- Building Entrance
- Future Development Site
- Emergency Room Entrance
- One-Way Street
- Public Parking
- Permit Parking

Public Safety

Police Safe Walk/Safe Ride & Non-Emergency 410-708-6882

Emergency Dial 911

- Emergency Phones

- Safe Ride Boundaries (3 p.m. to 1 a.m.)
- Safe Ride Boundaries Dedicated Morning Service (7 a.m. to noon)
- Safe Walk Boundaries (24 hours a day)

Public Transportation

- Metro Subway Lexington Market Stop

- MARC Train Camden Station

- Light Rail Tracks

Light Rail Stops

- Lexington Market
- University Center/ Baltimore Street
- Convention Center
- Camden Yards

UM Shuttle Stops

- 702 Mount Vernon
- 703 Federal Hill
- 704 Canton/Fells Point

University Parking

- Lexington Garage
- Koester's Lot
- Saratoga Street Garage
- Administration Lot
- Pearl Street Garage
- Fine Lot
- Baltimore Grand Garage
- Plaza Garage
- Penn Street Garage
- Pratt Street Garage
- BioPark Garage

ATTACHMENT 2 – SYSTEM DESCRIPTIONS
Penn Street Parking Garage

Select one: Site I – Penn Street Parking Garage, 120 Penn Street
 Site II – Pearl Street Parking Garage, 622 West Fayette Street

Solar PV System Size (kW DC): ____ kW DC
Guaranteed Initial Delivery Date: _____ for completion of both sites
System Description (including electric vehicle charging stations if applicable):
Inverter(s) description:
Panels description:
Inclusions/Exclusions: Inclusions –

ATTACHMENT 2 – SYSTEM DESCRIPTIONS
Pear Street Parking Garage

Select one: Site I – Penn Street Parking Garage, 120 Penn Street
 Site II – Pearl Street Parking Garage, 622 West Fayette Street

Solar PV System Size (kW DC): ____ kW DC
Guaranteed Initial Delivery Date: _____ for completion of all four sites
System Description (including electric vehicle charging stations if applicable):
Inverter(s) description:
Panels description:
Inclusions/Exclusions: Inclusions –

ATTACHMENT 3 - ENERGY PAYMENT RATE

1. Total Installed Capacity for both site locations (kW dc): _____ kW DC

Penn Garage (___ kW DC); Pearl Garage (_____ kW DC)

2. Below pricing does not include equivalent Green-e® Energy RECs, where one Green-e® Energy REC equals one MWh of System output for the Term. However, Green-e® Energy RECs shall be acquired and retired by Provider. Provider shall provide Host a confirmation of the volume of Green-e® RECs retired on behalf of the Host for the prior Green-e® Energy Year.

Site Location	Fixed-Rate Pricing with 0% Escalation and NO Green-e® RECs	Term (yrs)
Penn Garage	\$0.____/kWh	25
Pearl Garage	\$0.____/kWh	25

3. Any monthly production exceeding 110% of those listed in Attachment 3 – Expected Hourly Production by Month will be invoiced at a 50% discount.

4. Estimated annual degradation must not exceed 1%.

**ATTACHMENT 4 – ESTIMATED ENERGY PRODUCTION
Penn Street Parking Garage**

Select one: Site I – Penn Street Parking Garage, 120 Penn Street
 Site II – Pearl Street Parking Garage, 622 West Fayette Street

Capacity (kW DC): _____

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEPT	OCT	NOV	DEC
01:00												
02:00												
03:00												
04:00												
05:00												
06:00												
07:00												
08:00												
09:00												
10:00												
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16:00												
17:00												
18:00												
19:00												
20:00												
21:00												
22:00												
23:00												
24:00												
MWhrs												

Annual MWhrs: _____

**ATTACHMENT 4 – ESTIMATED ENERGY PRODUCTION
Pearl Street Parking Garage**

Select one: Site I – Penn Street Parking Garage, 120 Penn Street
 Site II – Pearl Street Parking Garage, 622 West Fayette Street

Capacity (kW DC): _____

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEPT	OCT	NOV	DEC
01:00												
02:00												
03:00												
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21:00												
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23:00												
24:00												
MWhrs												

Annual MWhrs: _____

ATTACHMENT 5 – EMERGENCY CONTACT INFORMATION

HOST	PROVIDER
<u>Primary Contact</u> Name: Mike Krone Phone: 410-706-2686 Cell: 410-977-3679 Email: mkrone@umaryland.edu	<u>Primary Contact</u> Name: Phone: Cell: Email:
<u>Secondary Contact: Work</u> Control: 410-706-7570	<u>Secondary Contact</u>

ATTACHMENT 6 – DISPUTE RESOLUTION

- A. Except as otherwise provided in this Agreement or by law, all disputes arising under or as a result of a breach of this Agreement that are not disposed of by mutual agreement shall be resolved in accordance with this Attachment 6.
- B. 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 Agreement. 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.
- C. Within 30 days after Provider knows or should have known of the basis for a claim relating to this Agreement, Provider shall file a written notice of claim with the Procurement Officer.
- D. Contemporaneously with, or within 30 days after, the filing of a notice of claim, Provider shall submit the written claim to Host. If Provider so requests, Host may, on conditions the Procurement Officer deems satisfactory to Host, extend the time in which Provider must submit the claim.
- E. The claim shall set forth all the facts surrounding the controversy. Provider, at the discretion of Host, may be afforded an opportunity to be heard and to offer evidence in support of the claim.
- F. Host shall mail or deliver written notification of the final decision within:
 - i. 90 days after Host receives the claim which is for an amount for which the Appeals Board accelerated procedure, set forth in COMAR 21.10.06.12, may be used;
 - ii. 180 days after the Host reserves the claim for a claim not covered under paragraph F(i); or
 - iii. A longer period that the Procurement Officer and Provider agree to in writing.
- G. If the final decision grants the claim in part and denies the claim in part, Host shall pay Provider the undisputed amount. Payment of the partial claim is not an admission of liability by Host and does not preclude Host from recovering the amount paid if a subsequent determination modifies

the final decision.

- H. Provider may file a written appeal with the Maryland State Board of Contract Appeals within 30 days of receipt of notice of the decision.
- I. Pending resolution of a claim, Provider shall proceed diligently with the performance of the Agreement in accordance with Host's decision.

ATTACHMENT 7 – GUARANTY

GUARANTY

This Guaranty is executed as of the ___ day of _____, 2023 between Vendor Name, a (state) corporation (the “Guarantor”) and _____ (the “Counterparty”).

Whereas, Vendor Name, a (state)corporation (the “Company”) and an indirect subsidiary of Guarantor, and the Counterparty have entered into the Solar Power Purchase Agreement dated _____ (the “Agreement”). As an inducement to the Counterparty to enter into the Agreement, and for other good and valuable consideration, receipt of which is hereby acknowledged, the Guarantor agrees as follows:

1. Subject to the limits set forth herein, Guarantor hereby absolutely and unconditionally guarantees the prompt payment of sums due under the Agreement (the "Obligations"), pursuant to the terms and conditions of the Agreement that are now or may hereafter become payable to Counterparty, including interest and expenses of all collection and counsel fees incurred by Counterparty by reason of Company’s default. This is a guaranty of payment and not of collection.

2. The obligation of Guarantor is a primary and unconditional obligation and covers all the Obligations of Company to Counterparty that arise under the Agreement. This obligation shall be enforceable before or after proceeding against Company and shall be effective regardless of the solvency or insolvency of Company at any time, or the extension or modification of the indebtedness of Company by operation of law.

3. This guaranty shall be in effect as of the date hereof and remain in full force and effect until the earlier of: (a) the expiration of the period of twenty-one (21) years from the date hereof, and (b) the early termination of the Agreement, unless in either case released or terminated by the Counterparty at its discretion pursuant to Section 15.1 of the Agreement.

4. The Guarantor waives notice of: (a) acceptance of this guaranty; (b) diligence; (c) presentment; (d) demand; (e) default; (e) protest; (f) dishonor; (g) modification or amendments of the Agreement, any extension of time of payment or renewal of any of the Obligations under the Agreement, with Company; and (h) any agreement with Company to extend, renew, pay, compromise, discharge or release any of the obligations under the Agreement in whole or in part.

5. Guarantor expressly consents and agrees that Counterparty, in its sole discretion, may at any time, without in any way impairing or affecting this Guaranty: (a) extend the time of payment of or renew any of the Obligations, (b)

make any agreement with Company or any other party liable on the Obligations to extend, renew, pay, compromise, discharge or release any of the Obligations (in whole or in part), or (c) modify any of the terms of the Obligations or any agreement between Counterparty and Company.

6. Upon making any payment hereunder, the Guarantor shall be subrogated to the rights of Counterparty against the Company with respect to such payment, provided that Guarantor shall not enforce any right or receive any payment by way of subrogation until all of the obligations of Company to Counterparty under the Agreement then due shall have been paid in full, and Counterparty agrees to take, at Guarantor's expense, such steps as the Guarantor may reasonably request to implement such subrogation.

7. Guarantor represents and warrants as follows: (a) Guarantor is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has full corporate power to execute, deliver and perform this Guaranty; (b) the execution, delivery and performance of this Guaranty have been and remain duly authorized by all necessary corporate action and do not contravene Guarantor's constitutional documents or any contractual restriction binding on Guarantor or its assets; and (c) this Guaranty constitutes the legal, valid and binding obligation of Guarantor enforceable against Guarantor in accordance with its terms, subject, as to enforcement, to Guarantor's bankruptcy, insolvency, reorganization and other laws of general applicability relating to or affecting Guarantor's creditor's rights and to general equity principles.

8. Nothing in this Guaranty is intended to deny to Guarantor, and it is expressly agreed that the Guarantor shall have and may assert, any and all defenses, setoffs, counterclaims, and other rights with regard to any of the Obligations under the Agreement, including without limitation, any defense based upon the payment or satisfaction by Company of the Obligations, except that Guarantor shall not have and may not assert defenses that Company may have or assert relating to (i) the lack of validity of enforceability of the Agreement arising from the defective formation of Company, (ii) ultra vires or other defense relating to Company's lack of authority to enter into or perform under the Agreement, (iii) Company's lack of good standing or qualification to do business in any applicable jurisdiction within the United States, or (iv) Company's insolvency, bankruptcy, moratorium, reorganization, fraudulent conveyance or similar laws affecting Company's creditors' rights generally.

9. Any waiver, modification, variation, release, termination or surrender of this Guaranty, in whole or in part, shall be enforceable against Guarantor or Counterparty only if such waiver, modification, variation, release, termination or surrender is contained in a written instrument signed by the party against which it is to be enforced. No failure by Counterparty to exercise its rights under this Guaranty shall give rise to any estoppel against Counterparty or excuse Guarantor from performing under this Guaranty. No waiver by Counterparty of performance by Guarantor under any provision of this Guaranty shall be construed as a waiver of

any subsequent performance by Guarantor under the same or any other provisions of this Guaranty.

10. Notwithstanding anything in this guaranty to the contrary, Guarantor's liability under this guaranty and the Counterparty's total right of recovery, including costs of collection, (including attorney's fees relating to enforcing this Guaranty) and interest, shall be limited to an aggregate amount of Two Hundred and Fifty Thousand and 00/100 Dollars (\$250,000.00). Guarantor's liability hereunder shall be and is specifically limited to payments expressly required to be made under the Agreement (even if such payments are deemed to be damages); and in no event, shall Guarantor be subject hereunder to consequential, exemplary, equitable, loss of profits, punitive or other damages, except to the extent specifically provided in the Agreement to be due from Company.

11. Any demand for payment under this Guaranty and all other notices shall be in writing and delivered by mail, overnight courier, or personal delivery to the address set forth below. All demands for payment shall be effective when received by Guarantor and shall be paid within seven (7) business days of receipt. Guarantor or Counterparty may change the address to which demands for payment and notices are to be sent upon written notice to the other party.

Guarantor:
Company Name
Address
Attention: Name & Title
Fax:
Email:

12. This Guaranty is binding upon Guarantor, its successors and assigns, and inures to the benefit of Counterparty and its permitted successors and assigns. This Guaranty may not be pledged, mortgaged, assigned or otherwise transferred to any person or entity by either Counterparty or Guarantor without the prior written consent of the other.

13. This Guaranty is the complete and exclusive statement of the terms of this Guaranty and supersedes all prior oral or written representations, understandings and agreements between Guarantor and Counterparty with respect to the Obligations.

14. The representative signing this Guaranty on behalf of Guarantor represents and warrants that he or she is authorized to do so on behalf of the Guarantor and by so signing to bind Guarantor under the terms of this Guaranty.

In witness whereof, the Guarantor has caused this guaranty to be executed as of the date first written above.

Vendor Name

By:
Name
Title

CONTRACT AFFIDAVIT

A. AUTHORITY

I HEREBY AFFIRM THAT:

I, (print name) _____ possess the legal authority to make this Affidavit.

**B. CERTIFICATION OF REGISTRATION OR QUALIFICATION WITH THE STATE
DEPARTMENT OF ASSESSMENTS AND TAXATION**

I FURTHER AFFIRM THAT:

The business named above is a (check applicable items):

- (1) Corporation - ___ domestic or ___ foreign;
- (2) Limited Liability Company - ___ domestic or ___ foreign;
- (3) Partnership - ___ domestic or ___ foreign;
- (4) Statutory Trust - ___ domestic or ___ foreign;
- (5) ___ Sole Proprietorship

and is registered or qualified as required under Maryland Law.

I further affirm that the above business is in good standing both in Maryland and (IF APPLICABLE) in the jurisdiction where it is presently organized, and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation. The name and address of its resident agent (IF APPLICABLE) filed with the State Department of Assessments and Taxation is:

Name and Department ID

Number: _____ Address: _____

and that if it does business under a trade name, it has filed a certificate with the State Department of Assessments and Taxation that correctly identifies that true name and address of the principal or owner as:

Name and Department ID Number: _____

Address: _____.

C. FINANCIAL DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, the provisions of State Finance and Procurement Article, §13-221, Annotated Code of Maryland, which require the business to file with the Secretary of State of Maryland certain specified information, including disclosure of beneficial ownership of the business, within 30 days of the date the aggregate value of any contracts, leases, or other agreements that the business enters into with the State of Maryland or its agencies during a calendar year reaches \$200,000.

D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, Election Law Article, Title 14, Annotated Code of Maryland, which requires that every person that enters into a procurement contract with the State, a county, a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the amount of \$200,000 or more shall file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contributions in a cumulative amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on: (i) May 31, to cover the six (6) month period ending April 30; and (ii) November 30, to cover the six (6) month period ending October 31.

E. DRUG AND ALCOHOL FREE WORKPLACE

(Applicable to all contracts unless the contract is for a law enforcement agency and the agency head or the agency head's designee has determined that application of COMAR 21.11.08 and this certification would be inappropriate in connection with the law enforcement agency's undercover operations.)

I CERTIFY THAT:

- (1) Terms defined in COMAR 21.11.08 shall have the same meanings when used in this certification.
- (2) By submission of its bid or offer, the business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the business shall:
 - (a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;
 - (b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;
 - (c) Prohibit its employees from working under the influence of drugs or alcohol;
 - (d) Not hire or assign to work on the contract anyone who the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;
 - (e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;
 - (f) Establish drug and alcohol abuse awareness programs to inform its employees about:
 - (i) The dangers of drug and alcohol abuse in the workplace;
 - (ii) The business's policy of maintaining a drug and alcohol free workplace;
 - (iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and
 - (iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;
 - (g) Provide all employees engaged in the performance of the contract with a copy of the statement required by §E(2)(b), of this regulation;
 - (h) Notify its employees in the statement required by §E(2)(b), of this regulation, that as a condition of continued employment on the contract, the employee shall:
 - (i) Abide by the terms of the statement; and

(ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction;

(i) Notify the procurement officer within 10 days after receiving notice under §E(2)(h)(ii), of this regulation, or otherwise receiving actual notice of a conviction;

(j) Within 30 days after receiving notice under §E(2)(h)(ii), of this regulation, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:

(i) Take appropriate personnel action against an employee, up to and including termination; or

(ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and

(k) Make a good faith effort to maintain a drug and alcohol free workplace through implementation of §E(2)(a)-(j), of this regulation.

(3) If the business is an individual, the individual shall certify and agree as set forth in §E(4), of this regulation, that the individual shall not engage in the unlawful manufacture, distribution, dispensing, possession, or use of drugs or the abuse of drugs or alcohol in the performance of the contract.

(4) I acknowledge and agree that:

(a) The award of the contract is conditional upon compliance with COMAR 21.11.08 and this certification;

(b) The violation of the provisions of COMAR 21.11.08 or this certification shall be cause to suspend payments under, or terminate the contract for default under COMAR 21.07.01.11 or 21.07.03.15, as applicable; and

(c) The violation of the provisions of COMAR 21.11.08 or this certification in connection with the contract may, in the exercise of the discretion of the Board of Public Works, result in suspension and debarment of the business under COMAR 21.08.03.

F. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or

acknowledgements contained in that certain Bid/Proposal Affidavit dated _____, 20____, and executed by me for the purpose of obtaining the contract to which this Exhibit is attached remains true and correct in all respects as if made as of the date of this Contract Affidavit and as if fully set forth herein.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: _____

By: _____ (printed name of Authorized Representative and affiant)

_____ (signature of Authorized Representative and affiant)

ATTACHMENT I
UNIVERSITY OF MARYLAND, BALTIMORE SOLICITATION TERMS AND CONDITIONS FOR
CONSTRUCTION/MAINTENANCE PROJECTS
RFP 23-351 MC

1. Due Date and Time

The Technical Proposal shall be submitted via email to the email address provided in the Solicitation schedule with the 'sent' email time log no later than the date and time indicated in the Solicitation Schedule.

Price Proposals will only be requested from those proposers who are shortlisted following the second phase technical evaluation per the RFP. The due date for Price Proposals will be set upon completion of the technical evaluation, however, the University anticipates the price proposal due date to be as provided in the Solicitation Schedule.

Proposers shall allow sufficient time in submitting responses to the RFP to ensure timely receipt by the Issuing Office via the email site. **Due to file size constraints (25 MB), multiple files may need to be submitted by the Proposer. Any email attachment, or cumulative email attachments, at or exceeding 25 MB in size will not be accepted by the University email system. Proposers are permitted to submit separate email attachments into multiple, clearly labeled, emails.** Proposals or unsolicited amendments to proposals arriving after the due date and time will not be considered.

Proposals (i.e. both the Technical Proposal and the Price Proposal combined) are to be valid for one hundred and twenty days (120 days) following the receipt of the Price Proposal.

2. Late Proposals

Any proposal, request for modification, or request for withdrawal that is not received at the designated location, time, and date set forth in the Solicitation Schedule will be deemed late and will not be considered. Delivery of the proposal to the specified location at the prescribed time and date is the sole responsibility of the proposer.

3. Multiple/Alternative Proposals

Proposers may not submit more than one (1) proposal nor may proposers submit an alternate to this RFP. (Refer to Section I and Section III of the Solicitation for instructions on how to respond the scope of service categories.)

4. Modifications and Withdrawals of Proposals

Withdrawal of, or modifications to, proposals are effective only if written notice is filed to the Issuing Office prior to the time proposals are due. A notice of withdrawal or modification to a proposal must be signed by an officer with the authority to commit the company.

Withdrawal of, or modifications to, price proposals are effective only if written notice is filed to

the Issuing Office prior to the time price proposals are due. A notice of withdrawal or modification to a price proposal must be signed by an officer with the authority to commit the firm.

Withdrawal or modifications to proposals received by the University after the time proposals are due may not be accepted.

5. Pre-Proposal Conference – Refer to Solicitation Section 00100

6. Issuing Office and Questions during the Procurement – Refer to Solicitation Section 00100

7. Questions, Inquiries, Clarifications, and Addenda

Questions and inquiries shall be submitted to the Issuing Office no later than the date and time indicated in the Solicitation Schedule.

Should a Proposer find discrepancies in the RFP documents or be in doubt as to the meaning or intent of any part thereof, the Proposer must, prior to the question deadline listed in the Solicitation Schedule, request clarification in writing from the Issuing Office, who will issue a written Addendum to the Contract. Failure to request such clarification is a waiver to any claim by the Proposer for expense made necessary by reason of later interpretation of the RFP documents by the University. Requests shall include the RFP number and name.

Oral explanations or instructions will not be binding; only written Addenda will be binding. Any Addenda resulting from these requests will be posted on the University's bid board. The Proposer shall acknowledge the receipt of all addenda in the Acknowledgement of Receipt of Addenda Form.

8. Site Investigation

By submitting a proposal, the Proposer acknowledges that the Proposer has investigated and been satisfied as to the conditions affecting the work, including but not restricted to those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, and electric power. Any failure by the Proposer to become acquainted with the available information will not relieve the Proposer from responsibility for estimating properly the cost of successfully performing the work. The University shall not be responsible for any conclusions or interpretations made by the Proposer of the information made available by the University.

9. Right to Reject Proposals and Waive Irregularities

The University reserves the right to reject either all proposals after the opening of the proposals but before award, or any proposal, in whole or part, when it is in the best interest of the State of Maryland. For the same reason, the University reserves the right to waive any minor irregularity in a proposal.

10. Cancellation of the RFP

The University may cancel this RFP, in whole or in part, at any time.

11. Proposal Acceptance

The University reserves the right to accept or reject any and all proposals, in whole or in part, received as a result of this RFP; to waive minor irregularities; or to negotiate with all responsible proposers, in any manner necessary, to serve the best interest of the University. Further, the University reserves the right to make a whole award, multiple awards, a partial award, or no award at all.

12. Confidential/Proprietary Information

Proposers should give specific attention to the identification of those portions of their proposals which they deem to be confidential, proprietary information or trade secrets, and provide any justification of why such materials, upon request, should not be disclosed by the State under the Public Information Act, General Provisions Article, Title 4 of the Annotated Code of Maryland. Proposals are not publicly opened. Proposers must clearly indicate each and every section that is deemed to be confidential, proprietary or a trade secret. It is not sufficient to preface the entire proposal with a proprietary statement.

13. Financial Disclosure by Persons Doing Business with the State

Proposers providing materials, equipment, supplies or services to the University must comply with Section 13-221 of the State Finance & Procurement Article of the Annotated Code of Maryland which requires that every business which enters into contracts, leases or other agreements with the University and receives in the aggregate \$200,000, or more, during a calendar year shall, within 30 days of the time when the \$200,000 is reached, file with the Secretary of State a list containing the names and address of its resident agent, each of its officers, and any individual who has beneficial ownership of the contracting business.

14. Arrearages

By submitting a response to this solicitation, a firm shall be deemed to represent that it is not in arrears in the payment of any obligation due and owing the State of Maryland, including the payment of taxes and employee benefits and that it shall not become so in arrears during the term of the contract if selected for contract award.

15. Incurred Expenses

The University will not be responsible for any costs incurred by any firm in preparation and submittal of a proposal.

16. Debriefing of Unsuccessful Proposers

A debriefing of an unsuccessful proposer shall be conducted upon written request submitted to the procurement officer within 10 days after the proposer knew or should have known its proposal was unsuccessful. The debriefing shall be limited to discussion of the unsuccessful

proposer's proposal only and shall not include a discussion of a competing proposer's proposal. Debriefings shall be conducted at the earliest feasible time. A summarization of the procurement officer's rationale for the selection may be given.

17. Maryland Public Ethics Law

The Maryland Public Ethics Law prohibits, among other things: State employees or officials (and in some cases, former employees) and businesses in which such an individual is employed or holds a financial interest from (i) submitting a bid or proposal, (ii) negotiating a contract, and (iii) entering into a contract with the governmental unit with which the individual is affiliated per the Maryland Code, General Provisions Article, Title 5, Subtitle 5.

If the proposer has any questions concerning application of the State Ethics Law to the proposer's participation in this procurement, it is incumbent upon the proposer to seek advice from the State Ethics Commission: Executive Director, State Ethics Commission, 45 Calvert Street, 3rd Floor, Annapolis, Maryland 21401, 410-260-7770, 877-669-6085.

The procurement officer may refer any issue raised by a bid or proposal to the State Ethics Commission. The procurement officer may require the proposer to obtain advice from the State Ethics Commission and may reject a bid or proposal that would result in a violation of the Ethics Law.

The resulting contract is cancelable in the event of a violation of the Maryland Public Ethics Law by the vendor or any State of Maryland employee in connection with this procurement.

18. Use of Affiliates to Avoid Taxation on Income from State Contracts

Contractor agrees that it will not reduce its income subject to tax by claiming a deduction for royalty or similar payments for trademarks, trade names, or intangible property that shift income from the contractor to an affiliated entity that does not file Maryland income tax returns. Contractor agrees that any affiliated entity receiving such payments is doing business in Maryland and is required to file Maryland income tax returns. Contractor agrees that during the course of this contract: (1) it shall not make any such royalty or similar payments to any affiliated company; but (2) if any such royalty or similar payments are made, contractor and the affiliated company shall file separate Maryland income tax returns and pay their respective Maryland income taxes in such a manner that contractor may claim a deduction against Maryland income tax for such payments only if the affiliated company receiving the royalty or similar payment files its Maryland income tax return and pays Maryland tax, under a formula that reasonably apportions the income of the affiliated company among the states, including Maryland, in which the contractor does business. Contractor agrees that it is authorized to bind its affiliated entities to the terms hereof.

19. Payments to Contractors by Electronic Funds Transfer

If the annual dollar value of this contract will exceed \$200,000.00, the Proposer is hereby advised that electronic funds transfer (EFT) will be used by the State to pay the Contractor for this Contract and any other State payments due Contractor unless the State Comptroller's Office

grants the Contractor an exemption.

By submitting a response to this solicitation, the Proposer agrees to accept payments by EFT. The selected Proposer shall register using form COT/GAD X-10 Vendor Electronic Funds (EFT) Registration Request Form. Any request for exemption must be submitted to the State Comptroller's Office for approval at the address specified on the COT/GAD X-10 form and must include the business identification information as stated on the form and include the reason for the exemption.

The form is available as a pdf file on the web site of the General Accounting Division of the Comptroller of Maryland:

http://comptroller.marylandtaxes.gov/Vendor_Services/Accounting_Information/Static_Files/GADX10Form20150615.pdf

21. Insurance Requirements – Refer to Section 00700 Paragraph 6.05.

22. Performance and Payment Bonds – Refer to Section 00700 Section 2.04 Performance and Payment Bonds.

END OF ATTACHMENT I