

UNIVERSITY OF MARYLAND, BALTIMORE

STANDARD GENERAL CONDITIONS OF
CONTRACTS FOR MAINTENANCE PROJECTS

DECEMBER 2020 EDITION
("STANDARD MAINTENANCE GENERAL CONDITIONS")

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SECTION 1: DEFINITIONS AND RESPONSIBILITIES

1.01 DEFINITIONS

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

The Architect/Engineer (A/E) -- A person registered in the State of Maryland to practice Architecture or Engineering and commissioned by the University to serve as Architect/Engineer on the project. If the University has not contracted with an independent Architect/ Engineer for a project, then the UMB Office of Facilities and Operations and Operations may be referred to by the term "Architect/Engineer." Whenever the contract documents are prepared by a registered Engineer in independent practice, and a separate Architect is not employed, each reference to "Architect/Engineer" refers to the Engineer. For a Design/Build project, the term "Architect/Engineer" refers to the person registered in the State of Maryland to practice and commissioned by the Design/Build Contractor to serve as Architect/Engineer on the project.

Change Order -- A written order signed by the responsible procurement officer, directing a Contractor to make changes in implementation of the project.

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 the Contractor at the mutually established and accepted rate or price. The Contract shall include the RFP, the Contractor's proposal, contract forms and bonds, these Standard Conditions, and special conditions pertaining to work on the campus involved, specifications, addenda, supplemental specifications, all special provisions, all technical provisions, all plans and notices to proceed, any written change orders that are required to complete the work in an acceptable manner, including authorized extensions, and any other matter agreed to as being part of the contract.

Contract Time and Completion Date -- The number of calendar days shown in the specifications indicating the time allowed for the completion of the Work contemplated in the Contract. 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.

Contractor -- The person or organization having direct contractual relation with the University for the execution of the "Work." If the Contractor is comprised of more than one legal entity, each entity shall be jointly and severally liable.

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

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

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.

Notice to Proceed -- A written notice to the Contractor of the date on which the Contractor shall begin the prosecution of the work to be done under the Contract.

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 Contractor's surety, and paid for by the Contractor, as a guarantee that Contractor will pay in full all bills and accounts for materials and labor used in the project, as provided by law.

Plans -- The official drawings approved by the University for the project.

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

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

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

Repair -- Where used in these 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 it must be, unless otherwise stated, rendered to such conditions as to present a first class finished work, or in instances where the repaired item serves as a base for additional finish, the repaired work must be such as to permit a first class finish to be applied without extra cost to the University. When the word "repair" is used in connection with machinery or mechanical equipment it shall mean, in addition to the above, rendering the equipment completely serviceable and efficient ready for normal use for which it was intended originally.

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

State -- Refers to the State of Maryland.

Solicitation – Refers to the solicitation issued by UMB to procure the Contractor.

Subcontractor -- As used under the Contract Documents includes only those having a direct contract with the Contractor. This term includes one who furnishes material worked to a special design according to the plans and specifications for the "Work." The term excludes one who merely furnishes material not so worked.

Superintendent— The Superintendent is a Contractor employee who will be involved as required by the Project from Notice to Proceed to Construction Close-Out. This person will be responsible for the overall direct supervision of the subcontractors, daily coordination of the work on site, maintenance of the schedule, on site management such as material delivery, outages, etc. The Superintendent should have knowledge of safety hazards and MOSHA requirements and the ability to interpret contract plans and specifications for the subcontractors.

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, Baltimore, a body corporate and an agency and instrumentality of the State of Maryland.

University's Project Manager – The University's representative, generally, but not always, from the Office of Facilities and Operations,, who is involved from Notice to Proceed to Project Close-Out (Completion of the Punch List work included with the Substantial Completion Certificate). This person will be responsible for the University for the overall management, administration, communication and completion of this Project.

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.

1.02 UNIVERSITY'S RESPONSIBILITIES

A. The University shall furnish, upon request, any available record drawings, utility plans and locations, and other data pertinent to existing conditions to the extent that such material is available. However, the University does not provide any assurances that such drawings, property description, or other data are accurate, current or complete.

B. Information or services 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 University and 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 Contract.

1.03 CONTRACTOR'S RESPONSIBILITIES

Notwithstanding anything in the Contract to the contrary, the following items are in addition to the Contractor's obligations set forth elsewhere in the Contract.

A. The Contractor shall supervise and direct the work, using Contractor's best skill and attention. Contractor shall be solely responsible for all 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 Contractor's employees, subcontractors and their agents and employees, and other persons performing any of the work under a Contract with the Contractor.

C. The Contractor shall not be relieved from Contractor's obligation to perform the work in accordance with the Contract documents either by the Contract or by inspections, tests, or approvals required or performed by persons other than the Contractor.

D. The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, and the Contract documents, and shall not unreasonably encumber the site with any materials or equipment. The Contractor shall submit proof of a Confined Space Program to the University's Office of Environmental Safety & Health (ESH), 1000 Hilltop Circle, Baltimore, MD 21250.

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 in accordance with the Contract Documents.

(2) The Contractor shall not alter, damage or endanger any portion of the work of the University or any separate contractors by cutting, patching, or otherwise altering any work or by excavation. The Contractor shall not cut or otherwise alter the work of the University and of such separate Contractor.

(3) The Contractor shall not unreasonably withhold consent to cutting or otherwise altering the work from the University or any separate contractor.

F. The Contractor shall perform all work in accordance with the lines, grades, typical cross sections, dimensions, and other data required by the Contract documents or as modified by written orders, including the furnishing of all materials, services, implements, machinery, equipment, tools, supplies, transportation, labor, and all other items necessary for the satisfactory prosecution and completion 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 and hold harmless the University System of Maryland, the University, the State of Maryland, the

Architect/Engineer, 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:

- (a) is attributable to bodily injury, sickness, disease, or death personal injury or injury to or destruction of tangible property (other than the work itself) including the loss of use resulting there from; and
- (b) 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 it is caused in part by a party indemnified hereunder.

Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph. This obligation is not intended to be or to imply a waiver of the sovereign immunity of the University or the State, 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/Engineer 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 paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or any Subcontractor of 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 paragraph shall not extend to the liability of the Architect/Engineer arising out of:

- (a) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs, or specifications; or
- (b) the giving of or the failure to give directions or instructions by the Architect or the Engineer, or their agents or employees providing such giving or failure to give is the primary cause of the injury or damage.

SECTION 2: AWARD AND EXECUTION OF CONTRACT

2.01 AWARD OF CONTRACT

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. When a Contract is jointly bid, all Contractors bidding will be held jointly and severally responsible for the duties of the Contractor.

2.02 EXECUTION OF CONTRACT

After a Notice of Award has been issued for a project, the University's Construction and Facilities Procurement shall forward the formal contract form and any other applicable forms (i.e., Contract Affidavit, Minority Business Participation Exhibits, Performance and Payment bonds, etc.) to the Contractor for execution, and from time to time shall forward to Contractor the forms required in connection with any contract amendment. The Contractor shall execute the contract form or the contract amendment, as applicable, and other applicable forms and return the forms, along with required certificates of insurance to the Procurement Department within ten (10) days after receipt.

After receipt of the properly executed contract form and other applicable contract forms, the Construction and Facilities Procurement will execute the contract or the contract amendment, as applicable, and forward the Contractor a copy.

The contract or the contract amendment shall not be in effect until and unless the document is executed by all parties and, if applicable, approved by appropriate external parties as may be required by the University and the State.

2.03 PERFORMANCE AND PAYMENT BONDS

This section is applicable when the initial cost for a project exceeds \$100,000, or when otherwise expressly provided in the solicitation document or contract form.

- A. The Contractor shall provide executed performance and payment bonds in the format required by COMAR 21.07.02.10. 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 increase the amount of the bonds from time to time to reflect increases in the contract price. For such additions, the Contractor will be reimbursed by the University for the amount of the actual increased bond cost.
- D. The Contractor shall deliver fully executed 100% Performance and Payment bonds to the University's Procurement Department within ten (10) working days after the contract document is sent to the Contractor.

2.04 FAILURE TO EXECUTE CONTRACT

As applicable, failure of the Contractor to execute the contract or the contract amendment and file acceptable bonds in a timely manner shall be just cause for the payment of liquidated damages guaranteed by the bid bond or other securities at an amount equal to the increased contract price paid by the University as a result of the failure of the Contractor to execute the contract, or the contract amendment.

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 the University's damages.

2.05 CERTIFICATIONS REQUIRED BY LAW

A. Cost and Price Certification:

(1) The Contractor by submitting cost or price information certifies that, to the best of Contractor's 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 University.

(2) The price under the contract and any change order modification, 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.

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 Contractor has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent or paid consideration to any person which is contingent upon the making of the contract.

C. Corporate Registration and Tax Payment Certification:

The Contractor, represents and warrants, and shall truthfully execute a certificate on a form provided by the University during the solicitation process: (1) that Contractor is qualified to do business in the State of Maryland and that Contractor will take such action as, from time to time may be necessary, to remain qualified; and (2) that Contractor 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, including but not limited to the payment of taxes and employee benefits, and Contractor 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 document shall be as binding as if called for by all.

(1) The 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. The documents are not intended, however, to include any work not reasonably inferable that is not explicitly described in the contract document.

(2) 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 fail to obtain 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 practice. Direction by the University shall not constitute the basis for a claim for extra costs by the Contractor. The Contractor acknowledges that the Contractor has the opportunity to request clarification prior to submitting a price to the University, and therefore agrees that Contractor is not entitled to claim extra costs as a result of failure to obtain clarification.

(3) Work described in words that have a well-known technical or trade meaning shall be held to refer to such recognized standard use.

(4) 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 the meaning and intent, if the specification is unclear as a result of the error.

(7) The following order of precedence shall be used when there is a conflict in the bidding or 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

(c) General Conditions

(d) Project Specifications

(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 electronically furnish the Contractor, without cost, one (1) set of reproducible drawings and one (1) set of specifications at 100% 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/Engineer and the University.

(3) Ownership -- All documents remain the property of the University. Documents may not be used on other work and shall be returned to the University upon completion of the work.

C. Large Scale Detail Drawings -- At the University's direction, the Architect/Engineer 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 large scale drawings shall be true developments of the bidding documents and the Work shall be executed in conformity to the drawings.

D. Dimensions -- The Contractor shall carefully check all dimensions prior to execution of the particular work affected. Whenever inaccuracies or discrepancies are found, the Contractor shall consult the Architect/Engineer prior to any Work. Should any dimensions be missing, the Architect/Engineer will be consulted and supply the dimensions 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. 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 are not accurately located by plan dimensions, the Architect/Engineer will supply exact position to execution of the work.

2.07 SHOP DRAWINGS

The Specifications for a particular project shall determine if shop drawings are required for a project. This section applies to projects that require shop drawings.

A. As required by the University or the Architect/Engineer for the work of the various trades, the Contractor shall submit shop drawings, including setting drawings, and schedules for the Architect/Engineer's approval at such time as agreed in the Contractor's schedule. 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. Submittal of Drawings -- All shop drawings and details submitted to the University and the Architect/Engineer for approval shall be submitted in a manner as directed by the University. (Refer to Paragraph 2.08 regarding use of eBuilder.)

D. Items for which Shop Drawings will be Required -- Shop drawings will be required for all items which are specifically fabricated for the work or when the assembly of several items is required for a working unit. Shop drawings are required for all reinforcing and structural steel, specially made or cut masonry units, miscellaneous metal work, specially made millwork, plaster 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. Shop drawings are also required for any items listed in the submittal section of the specifications.

E. Examination And Approval -- The Architect/Engineer will examine shop drawings with reasonable promptness, noting desired corrections or granting approval or rejecting them.

F. Field Dimensions And Conditions -- The Architect/Engineer is not responsible for the check of dimensions or existing conditions in the field. This is the sole responsibility of the Contractor.

G. Resubmission -- When the Architect/Engineer notes desired corrections or rejects the drawings, the Contractor shall resubmit the drawings promptly with corrective changes, without additional compensation.

H. Contractor's Responsibility -- Unless the Contractor has, in writing, notified the Architect/Engineer to the contrary, at the time of submission, the University and the Architect/Engineer may and will assume that the drawings are in conformity with the contract documents and do not involve any change in the Contract price or any change which will alter the space within the structure or alter the nature of the building from the contemplated in the Contract documents.

I. University's and Architect/Engineer's Notations -- Should the Contractor consider any rejection of the University's and Architect/Engineer'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 the Contractor questions and shall notify the University and Architect/Engineer, 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. Similarly, should the University's and Architect/Engineer'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.

2.08 eBUILDER PROJECT MANAGEMENT SOFTWARE

The University Facilities and Operations 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.

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 DIFFERING SITE CONDITIONS

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 the Contract; or (2) unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract. The Procurement Officer shall promptly investigate the conditions, and if the Procurement Officer finds that conditions do materially differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the work under the Contract, whether or not changed as a result of such conditions, an equitable adjustment shall be made and the Contract modified in writing accordingly.

B. No claim of the Contractor under this clause shall be allowed unless the Contractor has provided prompt notice, as required; however, the time prescribed for the project 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.

3.03 SITE INVESTIGATION

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

The Contractor acknowledges that the Contractor 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, 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 the Contractor is satisfied 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 become acquainted with the available information may not relieve the Contractor 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.

3.04 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. Any failure by the Contractor to do so will not relieve the Contractor 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 the Contract unless such understanding or representation is expressly stated in the Contract.

3.05 CHANGES IN THE WORK

A. A procurement officer in the University's Department of Procurement & Strategic Sourcing 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
- (4) Directing acceleration in the performance of the Work.

B. If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under the Contract, whether or not changed by and any order, an equitable adjustment shall be made and the Contract modified in writing accordingly.

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

D. 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. A change involving over \$2000.00 will not be approved without itemization.

E. The 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 the following percentage for overhead and profit:

Not to exceed 10% mark up for additional work performed by a subcontractor;

Not to exceed 5% mark up for materials; and,

Not to exceed 15% mark up on work performed by the Contractor's own forces.

F. Each contract modification or Change Order that affects contract price shall be subject to the prior written approval of the Procurement Officer and other appropriate authorities and to prior certification of the appropriate fiscal authority of fund availability and the effect of the modification or Change Order on the project budget or the total 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.

3.06 UNAUTHORIZED WORK

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

SECTION 4: CONTROL OF THE WORK

4.01 AUTHORITY OF THE ARCHITECT/ENGINEER

A. Under the direction of the University, the Architect/Engineer shall be the initial interpreter of any drawings included among the Contract documents. The A/E will furnish with reasonable promptness such clarifications as the A/E may deem necessary for the proper execution of the Work; such clarifications to be consistent with the intent of the Contract documents. The A/E is the agent of the University only to the extent provided in the Contract documents. The A/E may be authorized in special circumstances 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/Engineer'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 determine 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 other contractors and carefully fit Contractor's own work to such other as may be directed by the University.

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 Contractor 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 best skill and coordinating ability. Contractor shall carefully study and compare all drawings, specifications, and other instructions and check them against conditions existing, or being constructed, on the project. Contractor shall at once report to the University and the Architect/Engineer any error, inconsistency, or omission which is discovered.

B. On applicable projects, the Contractor shall schedule and conduct regular progress meetings every other week, and as directed by the University, at which Subcontractors, University, Architect/Engineer, and other designated representatives, and the Contractor can discuss such matters as progress, scheduling, and work-related issues. The Contractor is responsible for taking meeting notes and distributing the notes 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 the notes is not deemed to be acceptance as to accuracy.

4.05 COOPERATION WITH UTILITIES

A. It is understood and agreed that the Contractor has considered in Contractor's 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 Contractor due to any interference from utility appurtenances, the operation of moving them, or the making of new connections, 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 the utility companies in achieving the desired results. All damage to utility facilities caused by the Contractor's operations shall be the responsibility of the Contractor.

C. At points where the Contractor's operations are adjacent to properties of railway, telegraph, telephone, water, and power companies, or are adjacent to other property, damage to which might result in expense, loss, or inconvenience, work shall not be commenced until all arrangements for necessary protection 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. The Contractor shall promptly notify the proper authority in the event of interruption to utility services as a result of accidental breakage, or as a result of being exposed or unsupported, and shall cooperate with the 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 and Operations. 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 the request includes 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 the inspector authorized to approve or accept any portion of the complete Project. The inspector is authorized to call the attention of the Contractor to any failure of the work or materials to conform to the contract, and authorized to reject materials or suspend the Work 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/Engineer's attention to the issues of disagreement, and if the Contractor still refuses to make corrections, comply or suspend work, the University will prepare and deliver in writing to the Contractor, by mail or otherwise, a written order suspending the Work and explaining the reason for such shutdown. as soon as the inspector shall immediately leave the site of the Work and any Work performed during the inspector's absence will not be accepted or paid for and may be required to be removed and disposed of at 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/Engineer and to the University's Office of Facilities and Operations '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 and Operations' instructions, law, ordinances, or any public authority require any work to be specially tested or approved, the Contractor shall give the Office of Facilities and Operations 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 and Operations 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/Engineer or the Office of Facilities and Operations, be uncovered, and then recovered, for examination at the Contractor's expense.

4.08 REMOVAL OF DEFECTIVE WORK

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

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 THE PROJECT

A. The Contractor shall maintain the Work during the Project 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 the project 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.

F. If the Contractor shall at any time, fail to comply with these provisions, the University shall immediately notify the Contractor. 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 will 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.

4.10 UNIVERSITY'S RIGHT TO DO WORK

If the Contractor should neglect to prosecute the work properly or fail to perform any provision of the 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 the University is entitled by law or under the Contract.

4.11 AUTHORITY OF OFFICE OF ENVIRONMENTAL HEALTH AND SAFETY

A. The University of Maryland, Baltimore's Office of Environmental Health & Safety (EHS) is responsible for promoting a safe and healthful work environment and for assuring compliance with

Federal and State environmental protection regulations and University safety and health practices. To carry out these responsibilities, EHS shall be 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 uncovers an unsafe condition, EHS is authorized to suspend work, after notice to the Procurement Officer and the Office of Facilities and Operations, until the unsafe condition is cured by the Contractor. The "unsafe condition" shall mean any practice that represents a significant risk of injury or health hazard to University or Contractor employees or subcontractors, a significant adverse environmental impact, or a physical hazard which could result in damage to University property or the public. The authority of EHS is in addition to any other rights of the University.

B. If the Work will require entry into a confined space as defined by OSHA, the Contractor shall submit proof of a Confined Space Program to The University's Office of Environmental Health & Safety for verification at least ten (10) days prior to the start of the project.

C. Contractor must provide UMB Environmental Health and Safety (EHS) with their Fall Protection Plan. Plan must include your employees training procedures and rescue procedures. Work may not be permitted until Fall Protection Plan has been signed off by UMB Environmental Health and Safety (EHS).

4.12 IDENTIFICATION

A. The Contractor shall obtain identification for employees and subcontractor employees from the University. Applicable costs for identification are the Contractor's responsibility. The University Project Manager shall approve all applications for campus identification. Employee identification shall be visible at all times while on campus.

B. All vehicles and mobile equipment shall be identified with the Contractor's name displayed in a highly visible manner.

4.13 NOISE CONTROL

A. The Contractor shall execute the Work as quietly as practicable to avoid unnecessary disturbances. Use of audio devices will not be allowed on the project site other than two-way communication radios.

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.

4.14 PARKING:

Parking of employees of the Contractor and/or subcontractor(s) is the responsibility of the applicable Contractor and/or subcontractor. UMB's Parking and Transportation Services 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.

4.15 Temporary use of Keys by Contractors:

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

4.16 PRESS RELEASES

The Contractor may not issue any press release for any printed or digital publication, including newspaper or media, without obtaining the prior written approval of the issuance and the text of the release from University in each instance.

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/Engineer in writing of the sources from which the Contractor 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 work for which approval is necessary shall be used until written approval is given by the University and Architect/Engineer. 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 may not be used as substitutes for new, regardless of condition or repair, unless approved in writing by the University.

E. Quality -- Unless otherwise specified, all materials shall be of the best quality of the respective kinds.

F. Samples -- The Contractor shall furnish for approval all samples as directed. The materials used shall be the same as the approved samples.

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. Contractor shall pay for any tests or inspections called for in the specifications and any tests as may be deemed necessary for "substitutions".

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 portion of the latest edition of the National Fire Protection Association Code are the applicable specifications.

I. Upon request, the Contractor shall provide the University with Safety Data Sheets for any products or materials being used on University premises.

5.02 STORAGE AND HANDLING OF MATERIALS

A. Materials shall be stored in a manner 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 Contractor's expense. If off-site storage is used, Contractor shall provide the necessary copy of the insurance policy with the University as the certificate holder.

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

C. Contractor shall confirm the apparatus and the storage of materials to the area delineated in the Contract documents as the "Limit of Contract."

D. Explosives --

(1) Explosives may not be stored upon any property belonging to the University.

(2) Should the Contractor desire to use explosives on any projection University property, the Contractor shall first receive written approval of the President. The approval will be coordinated through the University's Project Manager and 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 or transportation of explosives, as well as comply with any and all ordinances, regulations, and restrictions in relation to the use of explosives.

E. Oil base paints and inflammable liquids may not be stored in large quantities on the project. Containers shall be limited to five (5) gallon size. Any liquid with a flash of 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 may not be used. Oily rags, waste, etc., shall be removed from the work site at the close of each working day.

5.03 SUBSTITUTIONS

A. Should the Contractor desire to substitute another material for one or more specified by name, the Contractor shall apply to the University, in writing, for permission and state the credit or extra cost involved by the use of the substituted material. The University will not consider the substitution of any material different in type or construction methods unless the substitution affects a benefit to the University.

B. The Contractor may not submit for approval materials other than those specified without a written statement that such a substitution is proposed. Approval of a "substitute material" by Architect/Engineer 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 this Contract, unless the University approves such "substitution" in writing. The University, at its discretion, may approve a "substitute material" as a Substitution after the fact. Such approval, if given, shall be set out in writing.

C. A material which is an approved equal is not defined as a substitution under this clause.

5.04 APPROVED EQUALS

The terms "Or Equal", "Equal", and "Approved Equal" are used as synonyms throughout the specifications and 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 and Operations 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 between of the named products or manufacturers. However, after a selection is made for a project, the same material or manufacturer shall then be used for all of the required units.

5.06 TESTS

A. If the Contract documents, laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction require any portion of the work to be inspected, tested, or approved, the Contractor shall provide the University and the Architect/Engineer timely notice of the work's readiness so the Architect/Engineer 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 provide timely notice of readiness. If such special inspection or testing reveals a failure of the work to comply with the requirements of the Contract documents, the Contractor shall be responsible for all costs to correct the failure, including compensation for the Architect/Engineer's additional services made necessary by such failure or for any costs paid by the University.

C. Required certificate of inspection, testing, or approval shall be secured by the Contractor and promptly delivered by the Contractor to the University and the Architect/Engineer.

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 shall have determined that the cost of such steel products is unreasonable or inconsistent with the public interest. The provisions of this Section shall not apply where the provisions are in conflict with any Federal grant or regulation affecting the project.

5.08 SALES TAX

Supplies and materials purchased by a Contractor or subcontractor in connection with University Maintenance Projects are not 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 a project.

C. Contractor shall remove any and all materials covered under the hazardous waste regulations upon completion of the project.

D. It is assumed that hazardous materials are not present within the areas of work in the existing buildings unless expressly indicated by the University in the scope or work or specifications for a particular project, 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 project.

SECTION 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. Contractor shall at all times observe and comply with all such laws, ordinances, regulations, orders, and decrees. Contractor shall protect and indemnify the 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, Contractor's employees, or subcontractors.

B. The Contractor shall comply with the provisions of the Workmen's Compensation Act and Federal, State, and County laws relating to hours of labor.

C. The provisions of this Contract shall be governed by the Laws of Maryland.

D. The Contractor shall give all notices and comply with all State and Federal laws, ordinances, rules,

and regulations bearing on the conduct of the work as drawn and specified.

E. If the Contractor observes that the drawings and specifications are at variance with any law, Contractor shall promptly notify the Architect/Engineer, and any necessary changes shall be adjusted as provided in the Contract for changes in the work. If the Contractor performs any work knowing the performance to be contrary to such laws, ordinances, rules, and regulations, and without such notice to the Architect/Engineer, Contractor shall bear all costs arising as a result of the performance, including without limitation fines, penalties, and correction or replacement of work and materials.

6.02 PERMITS AND LICENSES

A. The University shall 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 (1) any permits required in the specifications and (2) Cutting & Welding permit.

B. Any permits required for work on non-University property are the responsibility of the Contractor in terms of the permit acquisition, associated cost, 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, associated cost, and all obligations and liability under the permit.

D. Before any welding, burning, pipe sweating or brazing is started a CUTTING & WELDING PERMIT must be obtained from The University's EHS, 714 W. Lombard Street, Baltimore, MD 21201-1041. This permit must be requested from EHS at least two (2) 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.

6.03 PATENTED DEVICES, MATERIALS, AND PROCESSES

The Contractor shall pay for all royalties and license fees. Contractor shall defend all suits or claims for infringement of any patent rights and shall save the University and the State of Maryland harmless from loss on account thereof, except that the 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 Contractor as the University's responsibility; however, if the Contractor has information that the process or articles specified is an infringement of a patent, Contractor shall be responsible for such loss unless Contractor promptly provides 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 the project that were not foreseen during design, that are needed prior to installation of permanent pollution control features, or that are needed temporarily to control erosion that develops during normal construction practices, but are not associated with permanent control features on the project.

B. The Contractor's attention is directed to the fact that temporary pollution control may include measures outside the project site where such work is necessary as a direct result of the project. The University's Office of Facilities and Operations shall be kept advised of all such off-site control measures taken by the Contractor. This advise shall not relieve the Contractor of the basic responsibilities for such work.

C. In case of failure on the part of the Contractor to control erosion, pollution, and siltation, the University's Office of Facilities and Operations reserves the right to employ outside assistance or to use its own forces to provide the necessary corrective measures. All expenses incurred by the University's Office of Facilities and Operations in the performance of such duties for the Contractor shall be withheld from monies due to the Contractor.

D. The Contractor shall submit evidence to the University's Office of Facilities and Operations that the governing Federal, State, and Local Air Pollution criteria will be, and were, met. This evidence and related documents will be retained by the University's Office of Facilities and Operations for onsite examination.

E. If the performance of all or any part of the Work is suspended, delayed, or interrupted due to an order of a court of competent jurisdiction as a result of environmental litigation, as defined below, the Procurement Officer, at the request of the Contractor, shall determine whether the order is due in any part to the acts or omissions of the Contractor required by the University 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" clause of this Contract. The period of such suspension, delay, or interruption shall be considered reasonable, and an adjustment shall be made for any increase in the cost of performance of this Contract (excluding profit) as provided in the suspension of work clause.

F. The term "environmental litigation", as used herein, means a lawsuit alleging that the Work will have an adverse effect on the environment or that the University has not duly considered, either substantively or procedurally, the effect of the Work on the environment.

6.05 CONTRACTOR'S LIABILITY INSURANCE

A. Upon Contract execution, the Contractor shall purchase and maintain at Contractor's own expense insurance 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, the University System of Maryland, and the State of Maryland as an additional insured.

B. The insurance coverage shall be written for not less than the following limits of liability unless authorized by the Procurement Officer based on the specifics of a particular project.

(1) Worker's Compensation Insurance and Unemployment as required by the laws of the State of Maryland.

(2) Employer's liability insurance - - \$1,000,000 each accidental injury or disease, and \$2,000,000 aggregate.

(3) 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

(4) Property damage liability insurance with a limit of not less than \$2,000,000 for each accident

(5) Business automobile
(a) bodily injury liability with limits of not less than \$1,000,000 for each person and \$2,000,000 for each accident
(b) property damage liability insurance, with a limit of not less than \$2,000,000 for each accident

(6) Umbrella excess liability - - \$5,000,000 limit.

Limits of insurance may be achieved either singularly, or by combination of applicable coverage, as long as limits are met without reducing another insurance's required limits.

The Comprehensive General Liability Insurance for bodily injury and property damage, including loss of use of property, arising out of any occurrence shall include the following extensions:

(1) Products and completed operations coverage for a period of at least two years;

(2) Personal injury liability coverage (including contractual coverage);

- (3) Contractual liability insurance to cover the Contractor's obligation to the University, USM, and the State of Maryland;
- (4) Broad form property damage (including completed operations);
- (5) Independent contractor's coverage;
- (6) "X", "C", and "U" coverage applying to explosion, collapse of other structures and underground foundations; and
- (7) If the work involves containment or removal of asbestos, pollution liability (environmental protection liability) coverage.

The business automobile liability insurance shall pay for liabilities arising out of accidents involving the ownership, operation, maintenance or use including the loading or unloading of any automobile.

C. Satisfactory proof of purchase of required insurance shall be furnished on the Accord format for certificates 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. Certificates shall also be provided prior to commencement of a particular project upon request of the procurement officer. Certificates shall be amended to indicate: "Should any of the described policies be canceled before the expiration date thereof, or non-renewed, the issuing company will provide thirty (30) days prior written notice to the certificate holder," each Certificate should indicate the insurer, the appropriate policy number, the policy expiration date, the limits of liability in effect, and the Best's rating and financial rating of the insurer. A certificate shall 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 policyholders' rating and Class IX for the financial rating. Insurers must be authorized to do business under the laws of the State of Maryland. The University reserves the right to request in writing a complete copy of any Contractor's insurance policy inclusive of declarations and riders, and if so requested, the Contractor shall comply within ten (10) days of the request.

E. No work shall be started at the site until appropriate certificates of insurance are filed with and approved by the procurement officer.

F. 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 the 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.

6.06 BUILDER'S RISK INSURANCE

A. For projects with a value greater than \$500,000 or otherwise required by the Solicitation, the Contractor shall purchase and maintain builder's risk insurance naming as additional insured the University of Maryland, Baltimore, 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 and 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 a project under 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 is 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 shall 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 shall 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 shall not apply to damage resulting there from.

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. Satisfactory proof of purchase of required insurance shall be furnished to the University prior to commencement of the project, 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 thirty (30) days prior written notice to the University. At the Procurement Officer's sole discretion, upon written request, Contractor shall deliver to the University a copy of any policy of the required insurance.

G. 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 or 10% of the original Contract value, whichever is greater. 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 certificates that reflect the increase or decrease within ten (10) working days of the request of the Procurement Officer.

6.07 ASSIGNMENTS

The Contractor shall not assign the Contract or any monies due or to become due without the prior consent of the University.

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 Contractor's 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. Contractor's failure to inspect and report shall constitute an acceptance of the other contractor's work as fit and proper for the reception of Contractor's work, except as to the defects which may develop in the other contractor's work after the execution of Contractor's work.

C. To insure the proper execution of Contractor's subsequent work, the Contractor shall measure work already in place and shall immediately 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 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 fails to pay promptly, subcontractors 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 clause.

6.10 RELATIONSHIP OF CONTRACTOR TO PUBLIC OFFICIALS AND EMPLOYEES

A. In carrying out any of the provisions of the Contract, or in exercising any power or authority granted to them by or within the scope of the Contract, there shall be no 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. Prohibition Against Gratuities -- The University may terminate the right of the Contractor to proceed under the 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 the 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 for cause under this section, the University shall be entitled to pursue the same remedies against the Contractor as the University could pursue in the event of a breach of the Contract by the Contractor. In addition to any other damages to which it may be entitled by law, the University may pursue exemplary damages in an amount as determined by the Procurement Officer which shall be not less than three (3) nor more than ten (10) times the costs incurred by the Contractor in providing any gratuities to any 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 the Contract.

E. Conflict of Interest -- An official or employee of the State of Maryland whose duties include matters relating to or affecting the subject matter of the Contract, may not 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 for a project under the Contract.

6.11 NO WAIVER OF LEGAL RIGHTS

A. The University and the State of Maryland may 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, from showing the true amount and character of the work performed and materials furnished by the Contractor, or from showing that any such measurement, estimate, or certificate is untrue or is incorrectly made, or from showing that the work or materials do not in fact conform to the requirements of the Project. The University and the State of Maryland may not be precluded or estopped, notwithstanding any such measurement, estimate, or certificate, and payment from recovering from the Contractor or Contractor's sureties, or both, any damage as the University may sustain by reason of the Contractor's failure to comply with the terms of the Contract. The acceptance by the University or any representative of the University may not operate as a waiver of any portion of the Contractor's responsibilities or of any power of the University or of any right to damages.

B. The waiver by the University of any breach of the Contractor may not be held to be a waiver of any other or subsequent breach.

6.12 COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that the Contractor 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 the Contract, and that the Contractor 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 the 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 of and in to any cause of action arising at any time before the date of this assignment or during the performance of the 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 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 the Contract. The Contractor certifies that the causes of action are lawfully owned and that no previous assignment has been made nor has 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 applicable work under the Contract shall be subject to inspection by the appropriate federal agency. Such inspection will not make the Federal government a party to the Contract and will not interfere in any way with the rights of either party.

6.15 DISPUTES

A. The Contract is subject to the USM Procurement Policies and Procedures in effect on the date of execution of the Contract.

B. Except as otherwise provided in the Contract or by law, all disputes arising under or as a result of a breach of the Contract which are not disposed of by mutual agreement shall be resolved in accordance with this section.

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 the Contract. An invoice, or request for payment that is not in dispute when submitted is not a claim under this section. However, if the submission subsequently is not acted upon in a reasonable time or is disputed as to liability or amount, the submission may be converted to a claim for the purpose of this section.

D. Within 30 days after the Contractor knows or should have known of the basis for a claim relating to the Contract, the Contractor shall file a written notice of claim with the Procurement Officer.

E. Contemporaneously with, or within 30 days after, the filing of a notice of claim, the Contractor shall submit the written claim to the Procurement Officer. Upon request, the Procurement Officer may extend the time in which the Contractor may submit the claim on conditions the Procurement Officer deems satisfactory to the University.

F. The claim shall set forth all the facts surrounding the controversy. At the discretion of the Procurement Officer, the Contractor may be afforded an opportunity to be heard and to offer evidence in support of the claim.

G. The Procurement Officer shall provide a written decision within:

- (1) 90 days after the Procurement Officer receives the claim if the claim is an amount for which the Appeals Board accelerated procedure, as set forth in COMAR 21.10.06.12, may be used;
- (2) 180 days after the Procurement Officer receives the claim for a claim not covered under the accelerated procedure; or
- (3) a longer period of time agreed upon in writing by the Procurement Officer and the Contractor.

H. The final decision may award a contract claim only for those expenses incurred not more than thirty (30) days before the Contractor was initially required to have filed the notice of claim.

I. The Procurement Officer's decision is the final action of the University. If the Procurement Officer fails to render a final decision within the time required, the Contractor may deem the failure to be a final decision not to pay the claim.

J. If the final decision grants the claim in part and denies the claim in part, the University shall pay the Contractor the undisputed amount. Payment of a partial claim is not an admission of liability by the University and does not preclude the University from recovering the amount paid if a subsequent determination modifies the final decision.

K. The Contractor may file a written appeal with the Maryland State Board of Appeals within thirty (30) days of receipt of notice of the final decision.

L. Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer's decision.

6.16 CLAIMS

A. If the Contractor claims that any instructions by drawings or otherwise involve or may involve extra cost under this Contract, Contractor shall provide the University written notice within fifteen (15) calendar days after receipt of such instructions or after the occurrence of an emergency. No claim shall be valid unless notice is provided within the required time frame.

B. Under no circumstances will overhead or profit be permitted as items of a claim, if permitted at all under the Contract, when such overhead or profit is for periods during which a "Stop Work" order is in effect due to an act, error, or 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 the Contract, will be allowed the Contractor for stoppage of work when written notice of such stoppage or impending stoppage is not given reasonable 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 will be granted.

E. The Contractor and the University agrees that no prejudgment or post judgement 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

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 the findings justify in the Procurement Officer's judgment.

6.18 PRE-EXISTING REGULATIONS

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

6.19 FINANCIAL DISCLOSURE

The Contractor shall comply with the provisions of Section 13-221 of the State Finance and Procurement Article, 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 \$200,000 or more, shall, within thirty (30) days of the time when the aggregate value of these contracts, leases or other agreement reaches \$200,000 file with the Maryland Secretary of State certain specified information to include disclosure of beneficial ownership of the business.

6.20 POLITICAL CONTRIBUTION DISCLOSURE

The Contractor shall comply with, and require its officers, director, and partners to comply with Title

14 of the Election Law Article, Annotated Code of Maryland, which requires that every person doing public business, 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 \$200,000 or more from public business, shall file with the State Board of Elections 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.

6.21 COMPLIANCE WITH LAWS

The Contractor hereby represents and warrants that:

- A. It is qualified to do business in the State of Maryland and that it will take such action as, from time to time 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 DEWATERING

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

SECTION 7: PROSECUTION AND PROGRESS OF THE WORK

7.01 NOTICE TO PROCEED

For each project performed under this contract, the University will issue a "Notice to Proceed". This notice to proceed may be provided in a variety of formats, including a task order contract, a formal letter, or some other document. The notice will stipulate the date on or before which the Contractor is expected to begin work, and shall start the specified time for the project. Any preliminary work started or materials ordered before receipt of the notice to proceed, shall be at the Contractor's risk.

7.02 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.
- B. The date of commencement of Work is the date established in a Notice to Proceed.
- 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. 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.

E. No extension shall be made for delay occurring more than five (5) days before a claim is made in writing to the University. In the case of continuing cause of delay, only one claim is necessary.

F. 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 the project's early dates without extending the Contract period. Total Float shall be available to University or Contractor and is intended to accommodate changes in the Work or to mitigate the effect of events which otherwise may delay Substantial Completion. Use of Total Float shall be monitored by the University's Project Manager. Use of Total Float is available to either party on a first come, first serve basis.

7.03 PUBLIC CONVENIENCE AND SAFETY

At all times, the Contractor 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 or adjacent to the improvement shall be respected. Material stored upon the project shall be placed so as to cause a minimum of obstruction to the public. The Contractor shall, unless otherwise specified, provide and maintain in passable condition such temporary access, roads, and bridges as may be necessary to accommodate traffic diverted from the project under construction or using the project under construction, and shall provide and maintain in a safe condition temporary approaches to, and 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 hydrant. Work closed down for the winter, or at any other time, 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.

7.04 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. 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 and Operations and at no additional cost to the University, provide suitable substantial guardrail to the extent determined by that office.

7.05 PRESERVATION, PROTECTION, AND RESTORATION OF PROPERTY

A. The Contractor shall continuously maintain adequate protection of all Contractor's work from damage and shall protect University property from injury or loss arising in connection with a project. 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. 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, as well as all trees surrounding the work which are liable to injury by the moving, storing, and working up of materials. A tree may not be used by the Contractor 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, 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 Contractor's discretion, to prevent such threatened loss or injury. If Contractor is specifically instructed by the University's Office of Facilities and Operations to do work in an emergency, the Contractor shall do the work and will be paid compensation as a change order.

7.06 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 Work;

(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 project 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 Contractor's schedule to produce a unified project schedule. The Contractor shall make all submissions required in the Contract Documents.

C. Activities within the schedule 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. 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) Conformance with and identification of the specific dates specified in the project documents;

(3) The description of work by activity;

(4) Delivery of Owner-furnished material and equipment, if any;

(5) Shop fabrication and delivery;

(6) Any Critical Paths; and

(7) Testing of equipment and materials.

Seasonal weather conditions, utility coordination, no-work periods (if any), expected job learning curves, and other such circumstances to activities 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 a certain duration, the University or separate contractor under contract with the University may not be bound to the specific date or duration unless the University's Project Manager specifically agrees in writing to the same.

F. It is expressly understood and agreed by the Contractor that the project schedule is a working document to be revised from time to time as progress proceeds; however, the Contractor is responsible for completing the Work within the time frame noted for the project. 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's Project Manager is to be in attendance at all scheduling meetings.

G. If the Contractor fails to prepare and submit to the University's Office of Facilities and Operations 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.

7.07 PROGRESS PHOTOGRAPHS

If the project value exceeds \$500,000, the Contractor shall take photographs on or about the first of each month showing the status of the work and submit the photographs every month to the University's Office of Facilities and Operations. The University shall determine if the photographs shall be in print or digital format. Photographs shall be sufficient in number to properly record the work and shall be digitally date stamped. The Contractor shall also photograph all disputed items of the work. The University reserves the right to waive this requirement or to apply it to certain projects less than \$500,000 as specified in the project documents.

7.08 SUSPENSION OF THE WORK

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 the Procurement Officer may determine to be appropriate for the convenience of the University.

B. If the performance of all or any part of the Work is suspended, delayed, or interrupted for an unreasonable period of time due to a failure to act by the University, an adjustment may be made for any increase in the cost of performance of the Work, 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 that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other provision of the Contract.

C. A claim may not be made under this section for any costs incurred more than 20 days prior to the

Contractor's written notification to the Procurement Officer of the unreasonable delay or interruption. A written notification is not required for a claim resulting from a suspension order. The amount of the claim shall be asserted in writing as soon as practicable after the end of a suspension, delay, or interruption, but not later than the date of final payment for the project.

7.09 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 anyone employed by Contractor, then the Contractor may, upon seven (7) days' written notice to the University's Office of Facilities and Operations, stop work or terminate the Contract and receive payment from the University for all complete work.

7.10 UNIVERSITY'S RIGHT TO TERMINATE FOR ITS CONVENIENCE

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 or the State. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the Contract is terminated and the date upon which such termination becomes effective.

B. After receipt of a Notice of Termination and except as otherwise directed by the Procurement 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 enter into subcontracts for materials, services, or facilities except as may be necessary for completion of the portion of the work under the Contract that is not terminated;
- (3) Terminate all orders and subcontracts to the extent that the orders and subcontracts relate to the performance of work terminated by the Notice of Termination;
- (4) Assign to the University in the manner, at the times, and to the extent directed by the Procurement Officer, all of the right, title, and interest of the Contractor under the orders and subcontracts that have been terminated;
- (5) Settle all outstanding liabilities and all claims arising out of such terminations of orders and subcontracts, with the approval or ratification of the Procurement Officer to the extent the Procurement Officer 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, the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and other property

which, if the project had been completed, would have been required to be furnished to the University.

(7) Use Contractor's best efforts to sell any parts, supplies, or other material, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Procurement Officer, and apply the proceeds of the disposition to reduce any payments to be made by the University to the Contractor for the project;

(8) Determine if the Contractor would like to acquire any parts, supplies, or other material at a price agreed upon by the Procurement Officer and provide a credit to the University or otherwise reduce payments to be made to the Contractor; and

(9) Take any action as may be necessary or as the Procurement Officer may direct, for the protection and preservation of the property related to the Contract which is in the possession of the Contractor and in which the University has or may acquire an interest.

The Contractor may submit to the Procurement Officer a list, certified as to quantity and quality, of any or all items of termination inventory not 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.

The Contractor shall also complete performance of such part of the work as shall not have been terminated by the Notice of Termination.

C. After receipt of a Notice of Termination, the Contractor shall submit to the Procurement Officer a termination claim. The Procurement Officer may determine the nature of the form and documentation necessary for the claim, as applicable, as well as any necessary certification to be made by the Contractor. 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 a termination claim within the time allowed, the Procurement Officer may determine on the basis of information available to the Procurement Officer, 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. 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.

E. For any work that the Procurement Officer and the Contractor are unable to agree on the amount to

be paid, the Procurement Officer shall pay as follows:

(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, which includes the amounts paid or payable on account of supplies or materials delivered or furnished by subcontractors before the effective date of the Notice of Termination of work under the Contract;

(b) The cost of settling and paying claims arising out of the termination of work under subcontracts or orders; and

(c) A sum, as profit for work performed before the effective date of the Notice of Termination, 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 project had it been completed, no profit shall be included or allowed under 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 by the Contractor and any other reasonable cost incidental to termination of work under the Contract, including expense incidental to the determination of the amount due to the Contractor as the result of the termination of work under the Contract.

The total sum to be paid to the Contractor may 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, 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, shall be excluded from the amounts payable to the Contractor.

F. Costs, claimed, agreed to, or determined 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 disputes clause, from any determination made by the Procurement Officer, except that if the Contractor has failed to submit Contractor's claim within the required time period, and has failed to request extension of such time, Contractor shall have no such right of appeal. In any case where the Procurement Officer has made a determination of the amount due, 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 of work is only partial in nature, 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 work (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 the University 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 is entitled. 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 the 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 the 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 of Contractor's books, records, documents, and other evidence bearing on the costs and expenses of the Contractor under the Contract and relating to the terminated work, or to the extent approved by the Procurement Officer, photographs, or other authentic reproductions.

7.11 TERMINATION FOR DEFAULT

A. If the Contractor refuses or fails to prosecute the work, or any separable part, with such diligence as shall insure the work's completion within the time specified for the project or any extension, or fails to complete said work within this time, the University may terminate the Contractor's right to proceed with the work or the part of the work as to which there has been delay by providing written notice to the Contractor. In this event, the University may take over the work and prosecute the work 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 for completion. Whether or not the Contractor's right to proceed with the work is terminated, the Contractor and Contractor's sureties shall be liable for any damage to the University resulting from the Contractor's 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 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. These liquidated damages shall apply until the work is completed or accepted.

C. The Contractor's right to proceed may not be 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, notifies the Procurement Officer in writing of the causes of delay, unless the Procurement Officer grants a further period of time before the date of final payment under the Contract. The Procurement Officer shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in the Procurement Officer's judgment, the findings of fact justify such an extension, and the Procurement Officer's findings of fact shall be final and conclusive on the parties, subject only to appeal as provided under the disputes clause.

D. 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, or that the delay was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued for the University's convenience.

7.12 PARTIAL ACCEPTANCE

A. If during the construction of work the University desires to occupy any portion of the project, the University shall have the right to occupy and use those portions of the project which in the opinion of the procurement officer can be used for their intended purposes. University occupancy may only occur if 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 responsibilities under the Contract.

7.13 FAILURE TO COMPLETE ON TIME/LIQUIDATED DAMAGES

A. For each day that any work shall remain uncompleted beyond the time specified for the project, the Contractor shall be liable for liquidated damages in the amount of \$1,000 per day provided, however, that due account shall be taken of any adjustment of specified completion time for completion of work as granted by approved change orders.

B. The University may collect liquidated damages through deduction or through offset from any amount due or to become due to the Contractor. If the amount of damages is greater than the amount due to the Contractor, the Contractor shall pay the University for the difference.

7.14 SUBSTANTIAL COMPLETION AND FINAL INSPECTION

A. The University's Project Manager shall establish the date of Substantial Completion. When the Contractor reasonably believes the Work satisfies the Substantial Completion requirements, the Contractor shall notify the University's Project Manager and the Architect/Engineer that the work will be ready for the final inspection and test on a definite date. Reasonable notice shall be provided prior to the date to permit the Architect/Engineer and the University to schedule the final inspection. The Contractor shall not request a Substantial Completion inspection until the Work is in fact substantially complete.

B. On the scheduled Substantial Completion Inspection date, the Contractor shall deliver to the University's Project Manager 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. All required training and demonstration of equipment as required by the Contract Documents shall have also been completed.

C. The date of Substantial Completion that is established by the University's Project Manager shall be used as the time at which the warranties begin if the University determines, on the basis of the Substantial Completion Inspection, the following minimum requirements have been met and are in accordance with the Contract Documents:

- (1) all electrical, mechanical, and life safety systems have been completed and successfully tested and successfully inspected for conformity to all requirements of the Contract Documents and all applicable codes and standards;
- (2) complete, comprehensive field mark-up drawings of the As-built Project, and all of the O&M Manuals required under the Contract, have been delivered to the University's Project Manager;
- (3) all other requirements for Substantial Completion, including the completion of required training and demonstration of equipment, have been met; and,
- (4) the Project is able to be occupied and usable for its intended purpose.

D. The Work shall not be deemed substantially complete if, in the absolute discretion of the University's Project Manager, completion of unfinished works, whether called punch list work or otherwise, would cause inconvenience to or interfere with the use of the Premises by University personnel or others using the Premises.

E. If the University's Project Manager determines that Substantial Completion has been achieved, the University's Project Manager shall fix the time within which the Contractor shall complete any remaining items of work which may be indicated on a list (the 'punch list') prepared by the

Architect/Engineer and the University. 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 in the time stipulated, the University shall have the undisputed right to complete the Work at the Contractor's expense by deducting any cost incurred from any monies retained under the Contract. The Contractor may be required to complete multiple punch lists, which may be prepared by the University or by the Architect/Engineer, 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.

F. Prior to the determination of Substantial Completion by the University, the Architect/Engineer 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.

G. Final payment shall not be made until all Contract work is complete to the satisfaction of the University.

H. 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.

7.15 CLEANING-UP

The Contractor shall at all times keep the project area, including storage areas used by Contractor, 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 project, the Contractor shall leave the work and premises in a clean, neat, and workmanlike condition satisfactory to the University's Office of Facilities and Operations.

7.16 GUARANTEES

The Contractor guarantees and warrants the following:

A. That the work contains no faulty or imperfect material or equipment or any imperfect, careless, or unskilled workmanship;

B. That all mechanical and electrical equipment, machines, devices, etc., shall be adequate for the use to which they are intended, and shall operate, with ordinary care and attention, in a satisfactory and efficient manner;

C. That Contractor 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, and shall make good all damage caused to other work or materials in the process of complying; and

D. That the entire work shall be water-tight and leak-proof in every particular.

These guarantees and warranties shall be in place for a two (2) year period commencing on the date of

substantial completion as established by the University, unless another period is specified in the project documents, which shall not be less than two (2) years. These guarantees are in addition to any implicit or explicit guaranty provided by law, if any.

7.17 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 a project, the Contractor shall immediately provide notice to the Procurement Officer, to include all relevant information.

B. The Contractor agrees to insert the substance of this clause in any subcontract as to which a labor dispute may delay the timely performance of the Work; except that each 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 the next higher tier subcontractor, or the prime Contractor, as the case may be, of all relevant information with respect to such dispute.

SECTION 8: PAYMENTS

8.01 SCOPE OF PAYMENT

For projects \$200,000 or less, the University's Project Manager will direct the Contractor on the application for payment process. For projects greater than \$200,000 the following applies if the project documents do not provide an alternative payment process:

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. 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 divided in such a manner 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.

B. If materials are stored at an off-site location agreed upon by the University, 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. The Contractor shall also provide bills of sale or other documentation satisfactory to the University's Office of Facilities and Operations to establish the University's title to the materials or equipment or otherwise protect the University's interest, including any applicable aspects regarding transportation to site.

C. Application for payment shall be submitted on or about the 25th day of each month.

D. In applying for payments the Contractor shall submit a statement, based upon the schedule of values, 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.

E. To the extent the University requires for a particular project, in applying for all payments, excluding the first payment and final payment, the Contractor shall submit a certificate that the Contractor has paid:

- (1) All labor to date;
- (2) All vendors and material suppliers in full for all items received; and
- (3) All subcontractors in full, less the retained amount.

F. In applying for the final payment, the University may also require the Contractor to submit the following:

- (1) Any evidence that 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;
- (2) 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;
- (3) All other guarantees as required by the project; and
- (4) 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 project for which there are no applicable unit prices in the Contract, the University's Office of Facilities and Operations 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 and Operations 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/Engineer and used, the Contractor shall

receive the actual cost of such materials delivered on the work, including transportation charges paid by Contractor.

(3) Equipment -- For any machinery or special equipment rented, 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. Equipment with a new cost of \$500 or less will be considered small tools and are excluded from this provision, whether rented or owned.

(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/Engineer, the Contractor shall receive the actual cost of such materials and supplies used.

(5) Bond, Insurance, and Tax -- For bond premiums, property damage, liability, and workmen's compensation insurance premiums, unemployment insurance contributions, and social security taxes on the force of account work, the Contractor and University shall determine an equitable percent to be applied.

(6) Subcontractors -- The Contractors shall receive the actual cost of work performed by a subcontractor. Subcontractor's cost is to be determined in the same manner as Contractor's costs. An allowance will be made to the Contractor for subcontractor's overhead and profit.

(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 provided.

(8) Subcontractor's Overhead and Profit -- The allowance to the subcontractor for subcontractor's 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 shall be received by the Contractor as payment in full for the work done on a force account basis. At the end of each day, Contractor's representative and the Architect/Engineer shall compare records of the cost of work as ordered on a force account basis.

C. Statements -- No payment will be made for work performed on a force account basis until the Contractor furnishes the 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;

(3) Quantities and prices of materials;

(4) Changes for transportation of materials paid by the Contractor; and

(5) Cost of property damage, liability, and workmen's compensation insurance premiums, unemployment insurance contributions, and social security tax.

Statements for payments for materials 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 Contractor which shall certify that such materials were taken from Contractor's stock, that the quantity claimed was actually used, and that the price and transportation of the materials as are claimed represent actual cost. These requirements shall apply to any applicable cost of work for a subcontractor.

8.03 CASH ALLOWANCES

Whenever an allowance is mentioned in the specifications, then the Contractor shall include in Contractor's price proposal the entire amount of 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 cost of installation of materials purchased are not included in the allowance but shall be included in the Contractor's price proposal. The Contractor shall have installed, as applicable through subcontractors, all material purchased under allowances and shall include in the project 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 for payment, the University shall issue to the Contractor a certificate for such amount as the University determines to be properly due. The certificate may not be issued later than the date when such payment falls due. At the University's discretion, and if notice is provided to the Contractor in writing, in approving partial payments, there may be an amount retained until completion and acceptance of all work covered by the Contract.

B. As applicable, the University may provide the Contractor with the payment form 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 the Contract.

D. If retainage is held for a project, retainage may not exceed 5% of the contract amount.

(1) 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.

(2) 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.

(3) 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.

E. In addition to retainage, the Procurement Officer may withhold an amount that the Procurement Officer reasonably believes is necessary to protect the University's interest.

F. A Contractor may elect to have retainage placed in an escrow account. In this instance, an escrow agreement would be signed by the Contractor, the escrow agent and, if applicable, the surety, and a fully executed copy of the agreement provided to the University. The escrow agent shall be selected from among the banks approved by the State Treasurer's office. The Contractor is solely liable to the escrow agent for the payment of fees and charges associated with the escrow account. Retained funds may only be released from the escrow account as directed by the University. At the time of final payment, the University shall direct the escrow agent to settle the escrow account by paying funds as directed. 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 not completed in accordance with the Contract, an equitable deduction from the Contract price may be made.

8.06 PAYMENTS WITHHELD

A. The University may withhold or, on account of subsequently discovered evidence, nullify the whole or part of any payment 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;

(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 or 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 of contract;

(8) Retainage;

(9) Failure to maintain as-built drawings;

(10) Failure to update schedules properly; or

(11) The cost of completing unfinished warranty work.

B. Payment shall be made for the withheld amount when the applicable situation has been corrected or resolved.

8.07 CORRECTION OF WORK BEFORE FINAL PAYMENT

A. The Contractor shall promptly remove from the premises all materials condemned by the Architect/Engineer or the University as failing to conform to the Contract, whether incorporated in the work or not. The Contractor shall promptly replace and re-execute Contractor's 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, the University may 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 the forms to the University. The University shall promptly proceed to make any necessary final surveys and complete any necessary activities, including computation of quantities, to determine the Contractor's right to final payment. The University's Project Manager will then reply in writing 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 associated reasons.

B. Prior to or in the absence of a request from Contractor for final payment, the Procurement Officer may determine 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 project, except as may be expressly agreed otherwise in writing between the Contractor and the Procurement Officer.

E. After final payment is made by the University, the Contractor may not assert a claim for the first time.

8.09 INTEREST

Contractor and the University agree that neither party is entitled to any interest on any payment due from the other.

8.10 AUDITS BY THE UNIVERSITY

A. The Contractor agrees that the University or any part of the University's 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 of the Contractor involving transactions under this Contract.

B. The Contractor further agrees to include a provision in all of Contractor's subcontracts to the effect that the subcontractor agrees that the University or any of the University's 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 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 three (3) years or any applicable statute of limitations 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.

8.11 MULTI-YEAR CONTRACTS

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of the Contract succeeding the first fiscal period, the Contract or an applicable project 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 the Contract. The effect of termination of the Contract or project will be to discharge both the Contractor and the University from future performance of the Contract or project, 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 for the project. The University shall notify the Contractor as soon as the University has knowledge that funds may not be available for the continuation of the Contract or project 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 University's receipt of a proper invoice from the Contractor. Charges for late payment of invoices, other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, or by the Public Service Commission of Maryland with respect to regulated public utilities as applicable, are prohibited.

B. Electronic funds transfer will be used by the State to pay Contractor for projects performed under the Contract and any other University payments due Contractor unless the State Comptroller's Office grants Contractor an exemption.

SECTION 9: EMPLOYEES, SUBCONTRACTORS, AND WORK CONDITIONS

9.01 EMPLOYEES AND WORKMANSHIP

A. Qualification of Employees -- Only personnel thoroughly trained and skilled in the task assigned may be employed on any portion of the work. Any employee found by the Contractor, the Architect/Engineer, or the University's Office of Facilities and Operations to be unskilled or untrained for the assigned task shall be removed from the work.

B. Licensed Employees -- Personnel shall be licensed as required by municipal, county, State, or Federal law.

C. Quantity of Labor -- The Contractor shall employ sufficient personnel for the project at all times to complete the work within the time stated in the Contract.

D. Work Areas -- The Contractor shall confine the operations of Contractor's employees to the limited area directed by the University's Office of Facilities and Operations, or as provided by law, ordinance, or permits. Generally, the work area will be the same as the "Limits of Contract" line indicated in the 100% project 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 the specifications and all materials shall be applied, installed, connected, erected, used, cleaned, and conditioned as recommended. This inclusion of the manufacturers recommendations does not remove any requirement in the specifications to add to the manufacturer's recommendations, when applicable.

(2) All materials shall be accurately assembled, set, etc., and when so required in good construction, shall be true to line, even, square, plumb, level, and regularly spaced, coursed, etc. Under no circumstances, either in new or old work, shall any material be applied over another which has not been thoroughly cleaned, sanded, or otherwise treated so as not to impair the finish, adhesion, or efficiency of the next applied item.

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

F. Scheduling -- The Contractor shall schedule the work to ensure efficient and uninterrupted progress and to hold to an absolute minimum the cutting and patching of new work. The Contractor shall schedule the work performed by each group or trade so that each installation or portion of the work 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. Project Manager and Superintendent – As applicable, the Project Manager and Field Superintendent are to be those named in the Contractor's Technical Proposal submitted in response to the University's Solicitation and as approved by the University's Department of Procurement & Strategic Sourcing. Persons who have previously proved unsatisfactory on work executed for the University or the State of Maryland or who are without proper qualifications will not be approved.

Unless specified otherwise in the University's Solicitation or in the project's specifications, the Project Manager may work off-site.

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. A single Superintendent will be permitted to superintend two or more jobs located close to each other only when approved by the University's Office of Facilities and Operations in writing.

The Project Manager and the Superintendent shall represent the Contractor. All directions given to the Project Manager or the Superintendent shall be as binding as if given to the Contractor. If the Project Manager or the Superintendent is removed from the work, a new Project Manager or new Superintendent shall be obtained and approved by the University at no additional cost to the University.

H. Discipline -- The Contractor shall at all times enforce strict discipline and good order among Contractor's employees and shall not employ or permit to remain on the work any unfit person. The Contractor 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 may not be allowed to loiter on the premises before or after working hours.

I. Employee Safety -- The Contractor shall designate a responsible member of Contractor's organization, on the work, whose duty it shall be, in addition to the member's other duties, to prevent accidents and to enforce the standards required by the Contract. The name and position of the person designated as responsible shall be reported to the University's Office of Facilities and Operations, with a copy to the Architect/Engineer, 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 POLICIES

A. Contractors shall comply with all pertinent State and Federal laws and regulations prohibiting discrimination against any employee or applicant for employee, including the provisions of Title 19 of the State Finance and Procurement Article. Contractors shall also require all subcontractors to comply with these mandates.

B. If the Contractor fails to comply with non-discrimination employee laws or regulations, 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. As provided in Title 19 of the State and Finance Procurement Article, as a condition of entering into the Contract, upon the request of the Commission on Civil Rights, and only after the filing of a complaint against the Contractor under Title 19 of the State Finance and Procurement Article, as amended from time to time, the Contractor 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 Contractor 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 Contractor 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 Contractor understands and agrees that violation of this clause shall be considered a material breach of the Contract and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions.

9.03 SUBCONTRACTS

A. The Contractor shall, as soon as practicable and before the issuance of a notice to proceed, notify the Architect/Engineer and the University's Office of Facilities and Operations in writing of the names of subcontractors proposed for the principal parts of the work and for such others as the Architect/Engineer may direct and shall not employ any that the Architect/Engineer or the University's Office of Facilities and Operations may object to as incompetent, unfit, or irresponsible.

B. The Contractor agrees that Contractor is as fully responsible to the University for the acts and omissions of subcontractors and of persons directly employed by subcontractors as Contractor is for the acts and omissions of persons directly employed by the Contractor.

C. Nothing contained in the contract documents shall create any contractual relation between any subcontractor and the University and nothing in the contract documents is intended to make the subcontractor a beneficiary of the Contract between the University and the Contractor.

9.04 RELATION OF CONTRACTOR AND SUBCONTRACTOR

A. The Contractor agrees to bind every subcontractor and ensure 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 the subcontractor's work, unless specifically noted to the contrary in a subcontract approved in writing as adequate by the University's Office of Facilities and Operations.

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

(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 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 subcontractors 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 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, the amount allowed to the Contractor on account of the subcontractor's work to the extent of the subcontractor's interest.

(2) To pay the subcontractor, upon the presentation of certificates, so that at all times the subcontractors total payments shall be as large in proportion to the value of the work done by the subcontractor as the total amount certified to the Contractor is to the value of the work done by the subcontractor.

(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 subcontractors work or materials as far as executed and fixed in place, less the retained percentage, at the time to certificate should be issued, even though the Architect/Engineer 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 subcontractors 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 a project, 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 the subcontractor or supplier which did not arise out of the project.

E. When the University withholds money from the Contractor 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; all other subcontractors 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

The University shall establish Minority Business Enterprise (MBE) requirements as applicable to each project. The Contractor shall comply with all established requirements for the project and promptly submit prescribed forms to the University.

9.06 PROJECT SAFETY AND HEALTH STANDARDS

It is a condition of the Contract and shall be made a condition of each subcontract entered into pursuant to the Contract, that the Contractor and any subcontractor may 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 the individual's health or safety, as determined under construction safety and health standards, laws, and regulations of the locality in which the work is done, the State, and the Federal government.

9.07 MANDATED CONTRACTOR REPORTING OF SUSPECTED CHILD ABUSE & NEGLECT

The University of Maryland, Baltimore (UMB) and the University System of Maryland (USM) are committed to protecting the safety and welfare of children who come into contact with the UMB community. Maryland law contains mandatory reporting requirements for all individuals who suspect child abuse or neglect, as provided in Title 5, Subtitle 7 of the Family Law Article of the Annotated Code of Maryland.

Contractors performing work on campus shall comply with USM Board of Regents (BOR) VI-1.50 – *Policy on the Reporting of Suspected Child Abuse and Neglect*. Specifically, contractors performing work on campus must report suspected child abuse or neglect to the local department of social services or law enforcement agency and the UMB President’s Designee, if the suspected child abuse or neglect: (i) took place in UMB facilities or on UMB property; (ii) was committed by a current or former employee or volunteer of the USM; (iii) occurred in connection with a UMB sponsored, recognized, or approved program, visit, activity, or camp, regardless of location; or (iv) took place while the victim was a registered student at UMB.

UMB reserves the right to terminate the Contract if Contractor fails to comply with reporting requirements, or if, in the judgment of UMB, termination is necessary to protect the safety and welfare of children who come into contact with the UMB community.

END OF UMB MAINTENANCE PROJECT GENERAL CONDITIONS