

PRINCE GEORGE'S COMMUNITY COLLEGE

**MANDATORY
CONSTRUCTION
CONTRACT
CLAUSES**

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MANDATORY CONSTRUCTION CONTRACT CLAUSES

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PRINCE GEORGE'S COMMUNITY COLLEGE
MANDATORY CONSTRUCTION CONTRACT CLAUSES

MCC 1 Introduction

The following clauses are incorporated by reference within each invitation for bid, solicitation, purchase order and contract for the procurement of construction entered into by the Board of Trustees of Prince George's Community College (the "College"), except to the extent, if any, that the College specifies that any particular clause is inapplicable. In these clauses, the word "Contractor" includes "Bidder", where appropriate.

MCC 2 Non-Hiring of Employees

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

MCC 3 Maryland Law Prevails

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

MCC 4 Non-Discrimination in Employment

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry or physical or mental handicap unrelated in nature and extent so as reasonably to preclude the performance of such employment; (b) to include a provision similar to that contained in subsection (a) above, in any subcontract except a subcontract for standard commercial supplies or raw materials, and (c) to post and to cause Subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

MCC 5 Cost and Price Certification

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

The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information, which, as of the date agreed upon between the parties, were inaccurate, incomplete, or not current.

MCC 6 Contingent Fee Prohibition

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

For breach of this warranty, the College shall have the right to annul this Contract without liability or, in its discretion, to deduct from the price or consideration, or otherwise recover, the full amount of such fee, or other consideration.

MCC 7 Multi-Year Contracts

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

MCC 8 Incorporation by Reference

All terms and conditions under the invitation to bid (or solicitation), and any amendments thereto, are made a part of this Contract.

MCC 9 Tax Exemption

The Owner is generally exempt from federal excise taxes, Maryland sales and use taxes, District of Columbia sales taxes, and transportation taxes. Exemption certificates shall be completed upon request. Where a Contractor is required to furnish and install material in the construction or improvement of real property in performance of a contract, the Contractor shall pay the Maryland Sales Tax and the exemption does not apply.

MCC 10 Conflict of Interest Laws

It is unlawful for any State or College officer, employee, or agent to participate personally in his official capacity through decision, approval, disapproval, recommendation, advice, or investigation in any contract or other matter in which he, his spouse, parent, minor child, brother or sister has a financial interest or to which any firm, corporation, association or other organization in which he has a financial interest or in which he is serving as an officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, is a party, unless such officer, employee, or agent has previously complied with the provisions of Article 40A, Section 3-101 et seq. of the Annotated Code of Maryland.

MCC 11 Site Investigation

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

MCC 12 Performance and Payment Bonds

Before the award by the College of a construction contract exceeding \$25,000, the Contractor shall provide payment security and performance security in the amount of the Contract price, except that if the Contract is not greater than \$50,000, each security shall be in the amount of one-half of the Contract price.

1. Payment security or performance security shall be
 - a. a bond executed by a surety company authorized to do business in Maryland;
 - b. cash in an amount equivalent to a bond; or
 - c. other security that is satisfactory to the College
2. The required performance bond shall be in the form attached as PGCC-C3.
3. The required payment bond shall be in the form attached as PGCC-C4.
4. The form of payment security or performance security shall be approved for the College by its attorney.
5. The Contractor shall file the security or evidence of a trust account established as security, payable to the “Board of Trustees of Prince George’s Community College”, in the Office of Procurement and Contracting.
6. At the direction of the College, the Contractor may be required to increase the amount of the security if the Contract price is increased as the result of Contract modification or change order. The reasonable cost of such increase shall be an allowable cost in determining the increase in the Contract price.

MCC 13 Mandatory Disclosure

Contractors providing materials, equipment, supplies or services to the College, which is deemed an agency of the State for this purpose, herewith agree to comply with Article 41, Section 89A of the Annotated Code of Maryland which requires that every business that enters into contracts, leases or other agreements with the State and receives in the aggregate \$100,000 or more during a calendar year shall, within 30 days of the time when the \$100,000 is reached, file with the Secretary of State a list containing the names and addresses of its resident agent, each of its officers, and any individual who is a beneficial owner of 5 percent or more of the contracting business.

MCC 14 Anti-Bribery

Contractors are required to be aware of Article 21, Section 3-405 of the Annotated Code of Maryland, which requires that any person convicted of bribery, attempted bribery, or conspiracy to bribe based upon acts committed after July 1, 1971, in the obtaining of a contract from the State or any of its subdivisions, shall be subject to disqualification pursuant to Article 21, Section 3-405, Annotated Code of Maryland from entering into a contract with the State, or any county or other subdivision of the State, for the supply of materials, supplies, equipment, or services by the person. (For purposes of this clause, the College is deemed a subdivision of the State.)

MCC 15 Registration

Pursuant to Section 7-201 of the Corporations and Associations Article of the Annotated Code of Maryland, corporations not incorporated in the State shall be registered with the State Department of

Assessments and Taxation, 301 West Preston Street, Baltimore, Maryland 21201, before doing any interstate or foreign business in this State. Before doing any intrastate business in this State, a foreign corporation shall qualify with the Department of Assessments and Taxation.

MCC 16 EPA Compliance

Materials, supplies, equipment, or services shall comply in all respects with the Federal Noise Control Act of 1972, where applicable.

MCC 17 Occupational Safety and Health Act

All materials, supplies, equipment or services supplied as a result of this Contract shall comply with the applicable U.S. and Maryland Occupational Safety and Health Act standards.

MCC 18 Patent Infringement

Contractor agrees to indemnify, protect and save harmless the College, its officers, agents, and employees with respect to any claim, action, cost or judgement for patent infringement, arising out of purchase or use of materials, supplies, equipment or services covered by this Contract.

MCC 19 Contractor's Invoices

Contractor agrees to include on the face of all invoices billed to the College, its Federal Tax Identification or Social Security Number.

MCC 20 Bid Security

Unless otherwise specified, the Bidder is required to submit bid security in an amount equal to 5 percent of the amount of the bid.

1. Bid security or evidence of the posting of bid security shall be submitted with the bid. If a Bidder fails to accompany its bid with the required bid security, the bid shall be deemed nonresponsive and rejected except as provided by Section 2.
2. If a bid does not comply with the security requirements of this clause, the bid shall be rejected as nonresponsive, unless the Contract Officer determines that the deficiency in the amount of security provided is insubstantial and acceptance is in the best interests of the College, and that:
 - a. Only one bid or proposal was received and there is insufficient time to rebid the contract;
 - b. The bid security became inadequate as a result of the correction of a mistake in the bid, or as a result of a modification in the bid in accordance with applicable regulations, and the bidder increased the amount of bid security to required limits within 48 hours after the correction or modification; or
 - c. After consideration of the risks involved and the difference between the lowest bid and the next lowest bid, fiscal advantage could reasonably be expected to accrue to the College from acceptance of the lowest bid.
3. If a Bidder is permitted to withdraw a bid before award because of a mistake in the bid or proposal, action may not be taken against the bid security. Otherwise, action may be taken against the bid security of a bidder that withdraws a bid.

Prince George's Community College

**General Conditions
For
Construction
(Short-Form)**

Board of Trustees of
Prince George's Community College
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Prince George's Community College
General Conditions

GC 1. Definitions.

GC 1.1. "Addendum" means that form of Contract Document clarifying, amending or interpreting a Contract Document issued by the Architect prior to the receipt of the bids.

GC 1.2. "Approved Equal" means an item of materials and/or equipment which meets the design requirements and quality as specified after its use in the execution of the Contract has been approved by the College in writing.

GC 1.3. "Architect" means the person registered in the State of Maryland to practice architecture or engineering who is commissioned by the College to prepare the Contract Documents for the designated project. If no independent Architect is appointed to prepare the Contract Documents or observe the construction, "Architect" means the Contract Officer.

GC 1.4. "Contract" means the agreement between the College and Contractor which is formed by and is set out in the Contract Documents.

GC 1.5. "Contract Documents" means the Agreement, these General Conditions, Supplementary Conditions, Special Conditions, Invitations for Bids, Instructions to Bidders, Proposal, Bond, the Drawings and Specifications, Mandatory Procurement Contract Provisions, all Addenda duly issued prior to submission of Bids, all Change Orders duly issued, and any amendments to the contract duly executed by both parties.

GC 1.6. "Contract Officer" means the person or persons representing the college and to whom the College has delegated the authority to take action regarding the Contract. Unless the President of the College designates another person to serve as Contract Officer, the Procurement Officer is the Contract Officer. The Technical Advisor will be the dean of the Facilities Management or his delegate.

GC 1.7. "Contractor" means the person who has entered into the Contract with the College for execution of the "Work."

GC 1.8. "College" means the Board of Trustees of Prince George's Community College.

GC 1.9. "Person" means an individual, partnership, corporation, association, joint venture, or other entity. Although persons are treated in the Contract

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Documents as if each were of the singular number and the masculine gender; they are intended to include the plural number and feminine or neuter gender where applicable.

GC 1.10. "Proposal" means that form of Contract Document in which a Bidder sets forth the lump sum cost of each division or combination of divisions of the Work, the alternates (if any) and the unit prices (if any) as called for.

GC 1.11. "Repair" means to restore after injury, deterioration, or wear; to mend or renovate by such means as appropriate and to supply such materials and labor as necessary to render the item to be repaired sound, solid, true, plumb, square, even, smooth and fully serviceable. Upon completion of such repair the item must be, unless otherwise stated, rendered to such conditions as to present a first class finished work, or in instances where the repaired item serves as a base for additional finish, the repaired work must be such as to permit a first class finish, to be applied without extra cost to the College. When the word "repair" is used in connection with machinery or mechanical equipment it means, in addition to the above, rendering the equipment completely serviceable and efficient ready for normal use for which it was intended originally.

GC 1.12. "Subcontractor" means a person, other than an employee of the Contractor, having a direct contract with the Contractor to perform any of the Work. It includes one who furnishes material worked to a special design according to the plans and specifications for the Work. It excludes one who merely furnishes material not so worked.

GC 1.13. "Time" means calendar days. Time is of the essence in the bidding process and in performance of the Contract.

GC 1.14. "Work" means the completed construction required by the Contract Documents and all labor, tools, material, equipment, and transportation, and any combination thereof, which is necessary to produce or is incorporated within the completed construction.

GC 1.15 "Written Notice" or "Notice in Writing" means notice given by personal delivery of a document to a person or a person's office, and also means delivery of a document to the US Mail, registered or certified mail, with postage prepaid, addressed to a person at the last business address known to one giving notice.

GC 2. Contract Documents.

GC 2.1. The Contract Documents are complimentary. That which is called for by any one shall be as binding as if called for by all.

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GC 2.1.1. The intent of the Contract Documents is to include all Work necessary for the proper completion of the project ready for continual efficient operation. It is not intended, however, to include any work not properly inferable.

GC 2.1.2. It is assumed that the Contractor, as required in Instructions to Bidders, has obtained clarification of all questions which may have arisen as to intent of the Contract Documents, or assumed, or actual conflict between two or more items in the Contract Documents. Should the Contractor have failed to obtain such clarification as required by the Instructions to Bidders, then the Architect may direct the Work to proceed by any method indicated, specified or required by the Contract Documents in the interest of maintaining the best construction practice. Such direction by the Architect shall not constitute a claim for extra by the Contractor.

GC 2.1.3. Work described in words that have a well-known technical or trade meaning shall be held to refer to such recognized standard use.

GC 2.1.4. The Contract Documents shall be signed in duplicate by the College and the Contractor. In case either party fails to sign them, then the Architect shall identify them.

GC 2.2. The Contractor shall do no Work without proper drawings and/or instructions. Drawings are in general drawn to scale, however, symbols are used to indicate materials and structural and mechanical requirements. When symbols are used, the drawings are of necessity diagrammatic as it is not possible to indicate all connections, fittings, fastenings, etc. which are included as a part of the Work. Diagrammatic indication of mechanical piping, ducts, and conduit within the building is subject to adjustment in order to obtain proper grading, passage over, under or past obstructions, to avoid exposure in finished rooms and unsightly and obstructing conditions. The Contractor shall coordinate these adjustments.

GC 2.2.1 The College will furnish the Contractor without cost, 15 copies of drawings and specifications (the same which were supplied for bidding purposes) and 6 copies of each large scale detail prepared by the Architect.

GC 2.2.2. The Contractor shall keep in the office on the job a complete set of all drawings, specifications, shop drawings, schedules, etc. in good order and available to the Architect and representative of the College.

GC 2.2.3. All Contract Documents, except one set for the Contractor identified pursuant to GC 2.1.4, remain the property of the College. They must not be used on other work but shall be returned to the College upon completion of the Work.

GC 2.3. The Architect shall furnish, when necessary, additional instructions, in

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the form of large scale developments of the drawings used for bidding, or to amplify the specifications for the proper execution of the Work. These shall be true developments of the bidding documents and reasonably inferable therefrom. The Work shall be executed in conformity therewith.

GC 2.4. The Contractor shall submit, for the Architect's review and appropriate action, at such time as agreed, shop drawings (to include setting drawings and schedules) as required for the Work of the various trades. 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. All shop drawings must show the name of the building and job number as assigned by the College.

GC 2.4.1. All shop drawings and details submitted to the Architect for review and appropriate action shall be printed on sheets of the same size as the contract drawings prepared by the Architect. When a standard of a fabricator is of such size to print more than one drawing on a sheet of the size of the Architect's drawings, this is acceptable. Sheets larger than the Architect's drawings will not be accepted except when specifically permitted by the College. (Exception to the above is made when the shop detail is supplied on a sheet of letter size 8-1/2" x 11".)

GC 2.4.2. Shop details shall be supplied for all items which are specifically fabricated for the Work or when the assembly of several items is required for a working unit. Shop drawings are required for all reinforcing and structural steel, specially made or cut masonry units, miscellaneous metal work, specially made millwork, plaster moulds, or mouldings, marble and slate, special rough hardware and all heating, ventilating, plumbing and electrical requiring special fabrication or detailed connections including refrigeration, elevators, dumb waiters, laboratory equipment, ducts, etc.

GC 2.4.3. Seven copies shall be supplied to provide for retention by the Architect of one copy for his own file (2 copies where structural, mechanical or electrical work is involved) and 2 copies for the College.

GC 2.4.4. The Architect shall review shop drawings with reasonable promptness, noting appropriate action.

GC 2.4.4.1. The Architect is not responsible for the checking of dimensions or existing conditions in the field. This is the sole responsibility of the Contractor.

GC 2.4.4.2. When the Architect's notations or corrections are extensive then the Contractor shall resubmit the drawings with changes made on them.

GC 2.4.4.3. Unless the Contractor has in writing notified the Architect to the

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contrary, at the time of the submission, it will be assumed 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 manner of operation from that contemplated in the Contract Documents.

GC 2.4.4.4. Should the Contractor consider any change, notation or drawings received in compliance with this GC 2.4.4.4., as increasing the cost of the Work from that contemplated in the Contract Documents, then the Contractor shall desist from further action relative to the item he questions and shall notify the Architect, in writing, within 5 days of the additional or reduced cost involved. No Work shall be executed until the entire matter is cleared and a Change Order issued if such is granted or the Contractor is ordered by the College to proceed under the provisions of the GC 10. Failure of the Contractor to serve written notice as above required constitutes a waiver of any claim in relation thereto.

Similarly, should the Architect's notation or change involve less work than is covered by the Contract Documents, the Contractor shall allow the College the credit resulting from the Change.

Should the Contractor consider that any notation or change made by the Architect under provisions of this GC 2.4.4.4 or GC 2.3, as involving a complete change in the Subcontractor's relation or the substitution of a material different from that on which the contract was based, then the Contractor shall act as in GC 2.4.4.3 above and this GC 2.4.4.4.

GC 2.4.5. The Contractor shall carefully check all dimensions prior to execution of the particular work effected. Whenever inaccuracies or discrepancies are found, the Contractor shall consult the Architect prior to any construction or demolition. Should any dimensions be missing, the Architect will be consulted and supply them prior to execution of the Work. Dimensions for items to be fitted into constructed conditions at the job will be taken at the job and will be the responsibility of the Contractor. The obvious intent of the documents or obvious requirement dictated by conditions existing or being constructed supersedes dimensions or notes which may be in conflict herewith. Whenever a stock size manufactured item or piece of equipment is specified by its normal size, it is the responsibility of the Contractor to determine the actual space requirements for setting or entrance to the setting space. No extra will be allowed by reason of work requiring adjustments in order to accommodate the particular item of equipment.

Whenever new work, building, addition or portions thereof are not accurately located by plan dimensions, the Architect will supply exact position prior to execution of the Work.

GC 2.4.6. Contractor shall have a continuing duty to read, carefully study and

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compare the Contract Documents and product data with each other and with information furnished by Owner and shall at once report to the Architect and the College errors, inconsistencies, ambiguities and omissions, relating to constructability, discovered before proceeding with the affected work. Contractor shall be liable to the College for damage resulting from errors, inconsistencies or omissions in the Contract Documents, relating to constructability, if Contractor recognized or should have recognized such error, inconsistency, ambiguity or omission and failed to report it to the Architect and to the College. If Contractor performs any construction activity which involves such error, inconsistency, ambiguity or omission in the Contract Documents, relating to constructability, without such notice to the Architect and to the College, Contractor shall assume responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction.

The issuance, or the express or implied approval by the College or Architect of the Contract Documents shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such approval be evidence of Contractor's compliance with the Contract. The College has requested the Architect to prepare Contract Documents for the Project, including the Drawings and Specifications for the Project, which are accurate, adequate, consistent, coordinated and sufficient for Construction. The Contractor acknowledges that the Architect practices in its own specialized field of discipline and training and that the College does not have the duty or knowledge or training necessary to determine the accuracy, adequacy, consistency, coordination or sufficiency for construction of such Contract Documents and that the COLLEGE MAKES NO REPRESENTATION OR WARRANTY OF ANY NATURE WHATSOEVER TO CONTRACTOR CONCERNING THE CONTRACT DOCUMENTS. Contractor acknowledges that its contractual duty to report errors, inconsistencies, ambiguities and omissions to the College is for the sole purpose of keeping the College advised of the Architect's errors or omissions as perceived by the Contractor. By the execution hereof, Contractor acknowledges and represents that it has received, reviewed and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that Contractor has not, does not, and will not rely upon any representation or warranties by the College concerning such documents as no such representation or warranties have been or are hereby made.

GC 2.4.7. The Contractor acknowledges that he has investigated and satisfied himself as to the conditions affecting the work, including but not restricted to those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power, roads and uncertainties of weather, river stages, tides or similar physical conditions at the site, the conformation and conditions of the ground, the character of

equipment and facilities needed preliminary to and during prosecution of the Work. The Contractor further

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acknowledges that he has satisfied himself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the College, as well as from information presented by the drawings and specifications made a part of this contract. Any failure by the Contractor to acquaint himself with the available information may not relieve him from responsibility for estimating properly the difficulty or cost of successfully performing the work. The College assumes no responsibility for any conclusions or interpretations made by the Contractor on the basis of the information made available by the College.

GC 3. Schedules.

GC 3.1. The Contractor shall prepare a schedule, fixing the dates when submittals and shop drawings will be required, reasonable time being allowed the Architect for proper review. Should no such schedule have been prepared, then no claim for extra cost will be recognized due to delay caused in the Work.

GC 3.2. Prior to application for first payment, the Contractor shall submit to the Architect, a schedule of the values of the various parts of the Work, including quantities, aggregating the sum of the Contract. This shall be so divided as to facilitate payments to Subcontractors. The schedule shall be supported by such data as to its correctness as the Architect may reasonably require.

GC 3.3. The Architect shall prepare the paint and color schedules. The Architect, with approval of the College, shall direct the exact color, texture, and finish.

GC 4. Materials.

GC 4.1. Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

GC 4.2. Materials include all manufactured products and processed and unprocessed natural substances required for completion of the Contract. The Contractor, by accepting the Contract, represents that he is 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), or access hole, flashing closure piece, bed or accessory is normally

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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.

GC 4.2.1. All materials are subject to the Architect's approval as to conformity with the specifications, quality, design, color, etc. No work for which approval is necessary shall be contracted for, or used, until written approval is given by the Architect. Approval of a Subcontractor as such is not approval of material which is other than that included in the specifications.

GC 4.2.2. Unless otherwise specified, all materials must be new.

GC 4.2.3 Unless otherwise specified, all materials must be of the best quality of the respective kinds.

GC 4.2.4. The Contractor shall furnish for approval all samples as directed. The Work shall be the same as the approved samples.

GC 4.2.5. The Contractor shall, if requested, furnish satisfactory evidence as to the kind and quality of materials either before or after installation. He shall pay for any tests or inspections called for in the specifications and such as may be deemed necessary in relation to "substitutions."

GC 4.2.6. When several products or manufacturers are named in the specifications for the same purpose or use, then the Contractor may select any of those so named. However, all of the units required for a project must be the same in material and manufacture.

GC 4.2.7. The terms "Or Equal", "Equal", and "Approved Equal" are used as synonyms throughout the specifications. They are implied in reference to all named manufacturers unless otherwise stated. Only materials fully equal in all details will be considered. The Owner is the final judge as to equality.

GC 4.2.8. If the Contractor desires to substitute another material for one or more specified by name, he shall apply, in writing, to the College, via the Architect, for such permission and state the credit or extra involved by the use of such material.

GC 4.2.8.1. The Architect will not consider the substitution of any material different in type or construction methods unless such substitution effects a benefit to the College.

GC 4.2.8.2. The Contractor shall not submit for approval materials other than those specified without a written statement that such a substitution is proposed.

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Approval of a “substitute material” by the Architect, when the Contractor has not designated such material as a “substitute”, shall not be binding on the College, nor release Contractor from any obligations of his contract, unless the College approves such “substitution” in writing.

GC 4.2.8.3. The College’s decision whether to accept a substitution is final.

GC 4.2.9. Old materials must not be used as substitutes for new, regardless of condition or repair, without prior written approval of the College.

GC 4.2.10. When no specification is cited and the quality, processing, composition or method of installation of a thing is only generally referred to, then:

(a) For items not otherwise specified below, the edition of the BOCA Code, adopted by Prince George’s County at the time of the execution of the Contract.

(b) For items covered by the applicable portions, the National Fire Protection Association (NFPA) requirements.

(c) For items generally considered as plumbing and those items requiring plumbing connections, the applicable portions of the latest edition of the Washington Suburban Sanitary Commission (WSSC) Plumbing and Gas Fitting Regulations;

(d) For items generally considered as heating, refrigerating, air conditioning or ventilating, the applicable portions of the edition of the BOCA Code adopted by Prince George’s County at the time of the execution of the Contract.

(e) For items generally considered as electrical, the applicable National Electric Code (NEC) requirements; and

(f) Items must also comply with local jurisdictional codes.

GC 4.2.11. The Contractor shall confine his apparatus and the storage of materials to the “offroad” area delineated as the “Limit of Contract”. He shall not load or permit any part of the structure to be loaded with a weight that will endanger the safety of the structure or any part thereof.

GC 4.3. Explosives.

Explosives shall not be stored upon any property belonging to the College.

Should the Contractor desire to use explosives on any project on the College's property, he shall first receive written approval of the College, which, approval will

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stipulate time, place, and quantity to be used and manner of use.

The Contractor shall assume all responsibility for injury to persons or property damage which may result from the use, storage or transportation of explosives, as well as complying with any and all ordinances, regulation and restriction in relation to the use of explosives.

GC 4.4. Paints, etc.

Oil base paints and inflammable liquids shall not be stored in large quantities in the building. Containers shall be limited to 5 gallon size. Any liquid with a flash point of less than 100 degrees shall be contained in safety cans, UL approved. Liquid with a higher flash point shall be stored in rigid cans. Glass containers shall not be used. Oily rags, waste, etc. must be removed from buildings at the close of each working day.

GC 5. Employees and Workmanship.

GC 5.1. Only personnel thoroughly trained and skilled in the task assigned them may be employed on any portion of the Work. Any employee found to be unskilled or untrained in his work shall be removed from the Work.

GC 5.1.1. When municipal, county, state, or Federal laws require that certain personnel (electricians, plumbers, etc.) be licensed, then all such personnel on the Work shall be so licensed.

GC 5.2. The Contractor shall employ on the Work, at all times, sufficient personnel to complete the Work within the time stated in his bid.

GC 5.3. The Contractor shall confine the operations of his employees to the limits as provided by law, ordinance, permits or directions of the College. Generally, the "offroad" area will be the same as the "Limit of Contract" line.

GC 5.4. Methods and Quality.

GC 5.4.1. All workmanship shall be of good quality. Whenever the method of the Work or manner of procedure is not specifically stated or shown in the Contract Documents, then it is intended that the best standard practice shall be adhered to.

GC 5.4.2. Recommendations from the manufacturers of approved materials shall be considered as a part of these specifications and all materials shall be applied, installed, connected, erected, used, cleaned and conditioned as so called for thereby. This, however, does not remove any requirement in these specifications which adds to the manufacturer's recommendations.

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GC 5.4.3. 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.

GC 5.4.4. All methods and procedure and results are subject to the Architect's approval as to finished result to be obtained. However, this is not to be interpreted as placing upon the Architect any responsibility for the Work management, which is solely the responsibility of the Contractor.

GC 5.5. Joining of Work (Cutting, Patching, and Digging)

GC 5.5.1. The Contractor shall so schedule the Work as to insure efficient and uninterrupted progress and to hold to an absolute minimum the cutting and patching of new work. All cutting, patching, and digging necessary to the execution of the Work is included.

GC 5.5.2. The Contractor shall so schedule the construction performed by each group or trade, including Subcontracts, so that each installation or portion of the construction shall member with and join with every other new or old Work as required for a complete installation, all according to accepted good construction practice.

GC 5.6. The Contractor shall keep on site, at all times during progress of the Work, a competent Superintendent and any necessary assistants, all approved by the College. Prior to commencement of the Work, the Contractor shall submit in writing to the College the name of the person it is intended to employ as Superintendent for the execution of this Contract with a statement of the proposed Superintendent's qualifications. This data will be reviewed by the College and an approval or rejection given in writing. Persons who have previously proved unsatisfactory on work executed for the College, or who are without proper qualifications, will not be approved. Should it be necessary to change the Superintendent this procedure will be repeated. A single Superintendent will be permitted to superintend two or more jobs only when approved by the College in writing. The Superintendent shall represent the Contractor. All directions given to the Superintendent shall be as binding as if given to the Contractor. Important directions shall be confirmed in writing to the Contractor. Other directions shall be so confirmed on written request in each case.

The College may require the Contractor to remove a Superintendent for cause. In that event, a new Superintendent shall be obtained and approved as described above.

GC 5.7. The Contractor shall at all times enforce strict discipline and good order among his employees, Subcontractors and Subcontractor employees shall not employ or permit to remain on the Work any unfit person. He shall enforce all instructions relative to

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use of water, heat, power, no smoking, and control and use of fires as required by law, the institution, or the College. Employees must not be allowed to loiter on the premises before or after job working hours. All Contractor and Subcontractor personnel shall conduct themselves in accordance with the College's "Code of Conduct" and "Personnel Action Rules."

GC 5.8. The Contractor shall take all necessary precautions for the safety of employees on the Work, and shall comply with all applicable provisions of municipal, State and Federal safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the Work is being performed.

The Contractor shall designate a responsible member of his organization, on the site, whose duty it shall be, in addition to his other duties, to prevent accidents. The name and position of the person designated shall be reported to the College and the Architect prior to the commencement of the Work.

GC 5.9 Contractor represents that it is fully experienced and properly qualified to perform the class of Work provided for herein, and that it is properly equipped, organized and financed to perform such Work. Contractor represents that at the time of submission of its quotation for performance of the Work, it was properly licensed for the Work to be performed and qualified to do business in all governmental jurisdictions in which the Work is to be performed, and that it will maintain such license and qualification throughout the performance of the Contract. Upon written request by the College, Contractor shall furnish to the College such evidence as the College may require relating to Contractor's ability to fully perform the Contract in the manner and within the time required by the College. Nothing contained in the Contract or any contract awarded by the Contractor shall create any contractual relationship between any subcontractor and the College. Contractor specifically agrees that Contractor is an independent Contractor and an employing unit subject as an employer to all applicable unemployment compensation, worker's compensation, occupational safety and health, or similar statutes so as to relieve the College of any responsibility or liability for treating their safety or of keeping records, making reports or paying of any payroll taxes or contribution; and Contractor agrees to indemnify and hold the College harmless and reimburse it for any expense or liability incurred under said statutes in connection with employees of the Contractor. Contractor further agrees, as regards the items set forth below, that it will keep and have available all necessary records and make all payments, reports, collections and deductions and otherwise do any and all things so as to fully comply with all federal, state and local laws, ordinances and regulations as they affect performance of this Contract, all so as to fully relieve and protect the College from any and

all responsibility or liability therefore or in regard thereto: (1) the production, purchase and sale, furnishing and delivering, pricing, and use or consumption of materials, supplies and equipment; (2) the hire, tenure or conditions of employment of employees and their hours of work and rates of the payment of their rate, and (3) the keeping of records, making of reports, and payment of their rate, and (4) the keeping of records, making of reports, and the

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payment, collection and/or deduction of federal, state, and local taxes, contributions, pension funds, welfare funds, or similar assessments.

In addition to all implied warranties, Contractor warrants that all materials and equipment incorporated in the Work shall conform to the Specifications, Drawings, samples and other descriptions set forth in the Contract Documents, merchantable, new and of the grade and workmanship specified in the Contract Documents and free from defects. Work, materials, and equipment not conforming to these requirements, including substitutions not properly authorized and approved, may be considered defective. All labor and workmanship shall be the best grade of their respective kinds for the purpose, and shall at minimum meet or exceed industry standards in effect at the time the Work is performed and free from defect so that the product of such labor will yield only first-class results.

All warranties shall run to the College and its assigns. All warranties and obligations of the Contractor set forth above and elsewhere in this Contract are not intended as a limitation but are in addition to all other express warranties set forth in the Contract and such other warranties as are implied by law, custom, and usage of trade. Contractor and its surety or sureties, if any, shall be liable for the satisfaction and full performance of the warranties set forth herein. These warranties and obligations shall survive acceptance of the Work under the Contract and termination of the Contract. The Contractor's warranty excludes remedy for damage or defects caused by abuse and/or modifications and/or improper operation by persons other than the Contractor, its Subcontractors and agents or normal wear and tear under normal usage. If required by the Architect or the College, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

GC 6. Laws, Permits, and Regulations.

GC 6.1. Prior to award, the Architect will apply for the building permit, and will file with appropriate authorities all drawings and specifications reasonably proper for their information.

GC 6.2. The Contractor, within 7 days after receipt of the notice to proceed, will apply for and will file with appropriate authorities all additional pertinent data reasonably proper for their information to obtain the building permit and other required permits, and will pay all fees necessary for permits, licenses, inspections, or the privilege or right to execute the Work, including reimbursement to the College for any fees paid by it at the time of initial filing under GC 6.1.

GC 6.3. The Contractor must be licensed as required by Laws of the State of Maryland (Art. 56 Sec. 180, Annotated Code of Maryland), and Prince George's County, and must be qualified by submission and approval of a Qualification Questionnaire when requested.

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GC 6.4. 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. If the Contractor observes that the drawings and specifications are at variance therewith, he shall promptly notify the Architect, in writing, and any necessary changes shall be adjusted as provided in the Contract for changes in the Work. If the Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Architect, he shall bear all costs arising therefrom.

GC 6.5. The Contractor must comply with the provisions of the Workmen's Compensation Act and Federal, State and Local laws relating to hours of labor.

GC 6.6. The Contractor shall not, under any circumstances, cause or permit, in connection with the Work to be performed hereunder, the discharge, emission or release of any hazardous substance and/or waste, pollutant, contaminant or other substance in violation of any applicable laws, rules or regulations which are now or hereafter promulgated by federal, state and/or local authorities. Contractor shall comply with all environmental requirements applicable to the Work performed under the Contract and shall be responsible for compliance with all hazardous waste laws, rules and regulations and the Resource Conservation and Recovery Act and (relevant state laws) and all subsequent amendments thereto. "Hazardous waste" includes all substances which are or may be identified as such in 40 C.F.R. Part 261 or other applicable laws or regulations. As an inducement to the Contract, Contractor warrants full compliance and that it will adhere to all applicable project hazardous waste procedures. Contractor agrees that it will notify the College/Division of Environmental Health and Safety when hazardous waste is first generated. The Contractor will arrange for disposal through the Division of Environmental Health and Safety for waste generated in the Project by the Contractor at the Contractor's expense. Other payment arrangements must be by prior written agreement with the College. Contractor further agrees that it will not generate any hazardous waste materials unless that fact was disclosed by it in the College's request for bid. Contractor agrees to take at its expense all actions necessary to protect third parties, including without limitation, employees, officers and representatives of the College from any exposure to, or hazards of, hazardous and/or toxic wastes or substances generated or utilized in the Contractor's operations. Contractor agrees to report immediately to the College all discharges, releases and spills of hazardous substances and/or wastes required to be reported by law.

The Contractor shall immediately notify the College of any visit by a representative of a regulatory agency, claim, charge or potential charge against it for an alleged violation of law, rule or regulation pertaining to pollution or environmental contamination. The Contractor

shall not make any admission of responsibility or guilt to any authority regarding its performance of the Work without the College's prior consent. Contractor shall keep the College fully apprised and cooperate fully with the College during the course of any investigation of claims, charges, or potential charges of alleged violation of such laws or regulations.

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In addition to the duties described above, if fines or legal costs are assessed against the College by a governmental agency due to non-compliance by the Contractor with any of the laws or regulations referred to in the preceding paragraphs, or if the Work of Contractor or any part thereof, is stopped by order of a governmental agency due to the Contractor's noncompliance with any such laws or regulations or if the College incurs any loss or liability due to any violation of the Contractor's obligations, Contractor will indemnify and hold harmless the College, and its board of trustees, president, officers and employees, against any and all losses, liabilities, damages, claims, costs, and attorney's fees suffered or incurred on account of the failure of Contractor to comply therewith.

GC 7. Protection of Work and Property.

GC 7.1. The Contractor shall continuously maintain adequate protection of all his work from damage and shall protect the College's property from injury or loss arising in connection with this Contract. He shall make good 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 College. He shall adequately protect adjacent property as provided by law and the Contract Documents.

GC 7.2. The Contractor shall box all trees along the way of access, also all trees surrounding the building which are liable to injury by the moving, storing, and working up of materials. He shall use no permanent tree for attachment of any ropes or derricks. He shall replace and put in good condition every public way and private way, catch basin, conduit, trees, fence or things injured in carrying out this Contract, unless the same shall be permanently done away with by order of the Architect.

GC 7.3. The Contractor shall erect and properly maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for the protection of workmen and the public and shall post danger signs warning against the hazards created by holes, elevator hatchways, scaffolding, window openings, stairways, and falling materials.

GC 7.4. In any emergency affecting the safety of life, or of the Work, or of the adjoining property, the Contractor, without special instruction or authorization is hereby permitted to act, at his discretion, to prevent such threatened loss or injury. However, if he is specifically instructed by proper authority he shall so act, without appeal. Any compensation claimed by the Contractor on account of emergency work shall be determined as outlined in GC 10.

GC 8. Inspection and Supervision of Work.

GC 8.1. All Work, including the fabrication and source of supply, is subject to observation by the Architect and the Contract Officer and such other agencies as are named in these General Conditions and/or Specifications and those agencies required by law to inspect specific items.

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GC 8.2. The Work will be executed under the supervision and inspection of the Contract Officer and such inspectors as he may designate, who may include the Architect.

GC 8.3. The Contractor shall provide facilities for access and inspection as required in GC 8.1. and 8.2. above.

GC 8.4. If the specifications, the College's instructions, laws, ordinances or any public authority require any work to be specially tested or approved, the Contractor shall give the College timely notice of its readiness for inspection, and if the inspection is by another authority, the date fixed for such inspection. Inspections by the College shall be made promptly and where practicable at the source of supply. Any work covered without approval of the Architect must, if required by the Architect, or College, be uncovered for examination at the Contractor's expense.

GC 9. Differences and Inconsistencies.

GC 9.1. Differing Drawings and Specifications.

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

GC 9.2. Differing Site Conditions.

GC 9.2.1. The Contractor shall promptly, and before such conditions are disturbed, notify the Contract Officer in writing of: (1) subsurface or latent physical conditions at the site differing materially from those indicated in this Contract, or (2) unknown physical conditions at the site of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in this Contract.

GC 9.2.2. No claim of the Contractor under this clause shall be allowed unless the Contractor has given the notice required in GC 9.2.1. above; provided, however, the time prescribed therefore may be extended by the College.

GC 9.2.3. No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under the Contract.

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GC 10. Changes in the Work.

GC 10.1. The Contract Officer unilaterally may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make any change in the Work within the general scope of the Contract, including but not limited to changes:

- (a) In the specifications (including drawings and designs);
- (b) In the method or manner of performance of the Work;
- (c) In the College furnished facilities, equipment, materials, services, or site;
- or
- (d) Directing acceleration in the performance of the Work.

GC 10.2. Any other written order or an oral order, including a direction, instruction, interpretation or determination, from the Contract Officer, that causes any such change, shall be treated as a change order under this clause, provided that the Contractor gives the Contract Officer written notice stating the date, circumstances, and source of the order and that the Contractor regards the order as a change order.

GC 10.3 Except as herein provided, no order, statement, or conduct of the Contract Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment hereunder.

GC 10.4. Subject to GC 10.6., if any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the Work under this Contract, whether or not changed by any order, an equitable adjustment shall be made and the Contract modified in writing accordingly; provided, however, no claim for any change under GC 10.2. shall be allowed for any costs incurred more than 20 days before the Contractor gives written notice as therein required.

GC 10.5. If the Contractor intends to assert a claim for an equitable adjustment under this clause, he shall, within 15 days after receipt of a written change order under GC 10.1 or the furnishing of written notice under GC 10.2., submit to the Contract Officer a written statement setting forth the general nature and monetary extent of such claim, unless this period is extended by the College. The statement of claim hereunder may be included in the notice under GC 10.2.

GC 10.6. Each Contract modification or change order that affects contract price shall be subject to the prior written approval of the Contract 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 construction cost. If, according to the certification of the fiscal authority, the Contract modification or change

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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.

GC 10.7. No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this Contract.

GC 10.8. A written request for a change in the work may be made by the Supervisor of Construction, the Architect, or the Contractor, but only the Owner shall authorize and approve the change. The change will be issued in the form of written "Change Order Form PGCC-C5", signed by the Owner and the Contractor, which authorizes the change in the Work, indicates the mutually agreed upon price which shall be added or deducted from the contract price, and the extent to which the contract time shall be increased or decreased.

GC 10.9. The Contractor shall furnish in duplicate to the Owner and the Architect a fully itemized breakdown of the quantities and prices used in computing the value of any change that might be requested. All written requests for a change in the Work must include the full explanation and justification for the change regardless of its nature.

GC 10.10. For all work to be performed by a sub-contractor, the Contractor shall furnish the sub-contractor's itemized proposal which shall contain original signature by an authorized representative of the sub-contracting firm. If requested by the Owner or Architect, proposals from suppliers or other supporting data to substantiate the Contractor's of the sub-contractor's cost shall be furnished.

GC 10.11. All proposals and breakdowns shall be submitted promptly.

GC 10.12. When changes, alterations, deductions or additions are so ordered, the value of such work will be determined in the following ways:

GC 10.12.1. When unit prices are stated in the contract or have been subsequently agreed upon, by application of those unit prices.

GC 10.12.2. A lump sum price agreed to by both the Owner and the Contractor or

GC 10.12.3. If job conditions or the extent of the change prohibit the use of either 10.12.1. or 10.12.2., a price arrived at by performing the Work on a cost plus not to exceed basis.

GC 10.12.4. If a change involves merely a credit, the contract price will be reduced by the amount it would have cost the Contractor if the omitted item or work had not been eliminated; including overhead and profit, however, the Contractor and sub-contractor will be allowed to retain a sum not in excess of three percent (3%) for handling.

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GC 10.12.5. If a change involves both an extra and a credit, both sums shall be shown and the two sums balanced to determine the adjusted total cost or credit. No allowance to the Contractor shall be made or allowed for loss of anticipated profits on account of any changes in the work.

GC 10.12.6. Unless otherwise specified, the allowable mark-up for combined overhead and profit for work performed by the Contractor with his own forces will not exceed fifteen percent (15%) on the monetary value of the work.

GC 10.12.7. For work performed by a sub-contractor with his own organization, the percentage for combined overhead and profit will not exceed fifteen percent (15%). On work partly or solely performed by a sub-contractor, the Contractor will be allowed a mark-up not to exceed six percent (6%) of total cost of the sub-contractor's labor, materials, overhead, and profit only.

GC 10.13. When the Contractor and the Owner shall fail to agree upon a lump sum price or method as outlined in "10.12", the Owner shall have the right to issue an order for the work to be accomplished on a time and material basis and a correct account shall be kept by the Contractor and approved by the Owner of the actual cost of all labor and materials as directed by the Owner, to which shall be added percentage allowances for overhead and profit as stated in "10.12". Receipted invoices shall be submitted to the Owner to validate the cost of all shop fabricated material and cost of all other materials supplied. Certified payrolls shall be submitted for labor costs.

GC 10.14. On all work as defined in GC 10.21. Claims for Extra Cost, no sub-contractor will be allowed any expenses, overhead or profit for employment of another sub-contractor to perform work for him.

GC 10.15. In addition, on work covered by a Change Order, the Contractor will be reimbursed for his expenditures for Workmen's Compensation Insurance, Social Security Taxes, and Unemployment Compensation covering men actually engaged upon the work and the actual increased cost of bond, without any percentage added.

GC 10.16. The cost of foremen and superintendents may be added only when the Change Order makes necessary the hiring or additional supervisory personnel or makes their employment for time additional to that required by the basic contract.

GC 10.17. The Contractor shall be allowed the actual cost for rental or machine power tools or special equipment, including fuel and lubricants which are necessary to execute the work required on the change, but no percentages shall be added to this cost. The rental rate is to be agreed upon by the Owner and the Contractor; the rate generally to be the latest as filed by the Associated Equipment Distributors.

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GC 10.18. If the Contractor and the Owner cannot agree as to the extent the contract time shall be increased for extra work or the extent the contract time shall be reduced for work omitted by the Owner, the increase or decrease, as the case may be, shall be in the same proportion of the original contract as the cost of the additional work; including overhead and profit or the amount of the omitted work, including overhead, would have cost as aforesaid bears to the total contract price.

GC 10.19 No order for change at any time or place shall in any manner or to any extent relieve the Contractor of any of his obligations under the contract.

GC 10.20 The Architect with the concurrence from the Owner shall have authority to make minor changes in the work not involving extra cost, and not inconsistent with the purposes of the building. Otherwise, except in any emergency endangering life or property, no extra work or change shall be made unless a written order from the Owner has been received by the Contractor. No claim for addition to the contract sum or time of completion shall be valid unless so ordered.

GC 10.21. Claims for Extra Cost.

GC 10.21.1. If the Contractor claims that any instructions by drawings or otherwise involve, or may involve, extra cost under this Contract, he shall give the Architect written notice thereof within fifteen (15) calendar days after receipt of such instructions (see GC 2., and GC 10.2., and GC 26.) or occurrence of an emergency. No claim shall be valid unless so made. The method of payment for such claim, if approved, shall be as detailed in 10.2.

GC 10.21.2. Under no circumstances will overhead or profit be permitted as items of a claim when such overhead or profit are for periods during which a "Stop Work" order is in effect due to an act, error or omission for which the Contractor is responsible.

GC 10.21.3. No profit or overhead which includes rental of equipment and the salaries of supervisory personnel will be allowed the Contractor for stoppage of work when written notice of such stoppage, or impending stoppage, is not given reasonably in advance to prevent such stoppage.

GC 10.21.4. No claim for extra will be granted which includes cost of delays or work stoppage due to strikes, lockouts, fire, avoidable casualties or damage or delay in transportation for which the Owner or its agents are not responsible.

GC 11. Deductions for Uncorrected Work.

If the College chooses to accept Work which is defective, incomplete, or not in accordance with the requirements of the Contract Documents, the College may do so. In such event, the Contract Sum shall be reduced by the greater of (a) the reasonable cost of removing, correcting, and/or completing the defective, nonconforming, and/or incomplete Work, and

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(B) the difference between the fair market value of the Project as constructed and the fair market value of the Project had it not been constructed in such a manner as to include defective or nonconforming Work. If the remaining portion of the unpaid Contract Sum if any is insufficient to compensate the College for its acceptance of defective or nonconforming Work, the Contractor shall, upon written demand from the College, pay the College such remaining compensation for accepting defective, incomplete, or nonconforming Work. Such adjustment shall be effected whether or not final payment has been made.

GC 12. Termination for Default--Damages for Delay--Time Extensions.

GC 12.1. If the Contractor refuses or fails to prosecute the Work, or any separable part thereof, with such diligence as shall insure its completion within the time specified in this Contract, or any extension thereof, or fails to complete said Work within this time, the College may, by written notice to the Contractor, terminate his right to proceed with the Work or the part of the Work as to which there has been delay. In this event, the College may take over the Work and prosecute the same to completion, by contract or otherwise, and may take possession of and utilize in completing the work the materials, appliances, and plant as may be on the site of the Work and necessary therefore. Whether or not the Contractor's right to proceed with the Work is terminated, he and his sureties shall be liable for any damage to the College resulting from his refusal or failure to complete the Work within the specified time.

GC 12.2. If fixed and agreed liquidated damages are provided in the Contract and if the College so terminates the Contractor's right to proceed, the resulting damage shall consist of such liquidated damages until a reasonable time as may be required for final completion of the Work together with any increased costs occasioned by the College in completing the Work.

GC 12.3. If fixed and agreed liquidated damages are provided in the Contract and if the College does not so terminate the Contractor's right to proceed, the resulting damage shall consist of these liquidated damages until the Work is completed or accepted.

GC 12.4. The Contractor's right to proceed may not be so terminated nor the Contractor charged with resulting damages if:

(a) 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 State, acts of the College, acts of another Contractor in the performance of a contract with the College, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or delays of Subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the Subcontractors or suppliers; and

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(b) The Contractor, within 10 days from the beginning of any such delay (unless the Contract Officer grants a further period of time before the date of final payment under the Contract), notifies the Contract Officer in writing of the causes of delay. The Contract Officer shall ascertain the facts and extent of the delay and extend the time for completing the Work when, in his judgment, the findings of fact justify such an extension, and his findings of fact shall be final and conclusive on the parties, subject only to appeal as provided in GC 41.5.

GC 12.5. If, after notice of termination of the Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the College, be the same as if the notice of termination had been issued pursuant to the clause. If, in the foregoing circumstances, this contract does not contain a clause providing for termination for convenience of the College, the contract shall be equitably adjusted to compensate for the termination and the contract modified accordingly; failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

GC 12.6. The rights and remedies of the College provided in this clause are in addition to any other rights and remedies provided by law or under this Contract.

GC 12.7. As used in GC 12.4. (a), the term "subcontractors or suppliers" means subcontractors or suppliers at any tier.

GC 12.8. The Contractor acknowledges that the College will in no instance be responsible for or pay to the Contractor, subcontractors or others performing work on site sums in addition to those quoted and approved in individual change orders resulting from unforeseen delay, interference or increased costs, either direct or indirect through site or home office overhead, as such costs or other adjustments were intended by the parties to be recognized, contemplated, priced and included within the change orders.

GC 12.9. In addition to GC 12.1., the College may terminate the Contract and be entitled to all remedies set forth in GC 12. if the Contractor:

- (a) refuses or fails to supply enough properly-skilled workers or proper materials; or
- (b) fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between Contractor and Subcontractors; or
- (c) disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or
- (d) otherwise is guilty of substantial breach of a provision of the Contract Documents; or

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(e) institutes or consents to proceedings requesting relief under the federal bankruptcy laws or similar laws or acknowledges in writing the inability to pay its debts generally as they become due, or if Contractor makes a general assignment for the benefit of its creditors.

GC 12.10. When the College terminates the Contract as set forth in GC 12., the Contractor shall not be entitled to receive further payment until the work is finished.

GC 13. Liquidated Damages.

Time is an essential element of the Contract and it is important that the Work be vigorously prosecuted until completion.

For each day that any Work shall remain uncompleted beyond the time(s) specified elsewhere in the Contract, the Contractor shall be liable for liquidated damages in the amount(s) provided for in the solicitation, provided however, that due account shall be taken of any adjustment of specified completion time(s) for completion of Work as granted by approved change orders.

GC 14. Termination for Convenience.

GC 14.1. The performance of Work under this Contract may be terminated by the College in accordance with this clause in whole, or from time to time in part, whenever the Contract Officer shall determine that such termination is in the best interest of the College. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of Work under the Contract is terminated, and the date upon which such termination becomes effective.

GC 14.2. After receipt of a Notice of Termination, and except as otherwise directed by the Contract Officer, the Contractor shall:

- (a) Stop work under the Contract on the date and to the extent specified in the Notice of Termination;

(b) Place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of the portion of the Work under the Contract as is not terminated;

(c) Terminate all orders and subcontracts to the extent that they relate to the performance of Work terminated by Notice of Termination.

(d) Assign to the College in the manner, at the times, and to the extent directed by the Contract Officer, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in the case the College shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

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(e) Settle all outstanding liabilities and all claims arising out of the termination of orders and Subcontracts, with the approval or ratification of the Contract Officer, to the extent he may require, which approval or ratification shall be final for the purposes of this clause;

(f) Transfer title and deliver to the College, in the manner, at the times and to the extent, if any, directed by the Contract Officer, (i) 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 (ii) the completed or partially completed plans, drawings, information, and other property which, if the Contract had been completed, would have been required to be furnished to the College.

(g) Use his best effort to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contract Officer, any property of the types referred to in (f) above; provided, however, that the Contractor (i) shall not be required to extend credit to any purchaser, and (ii) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Contract Officer; and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the College to the Contractor under this Contract or shall otherwise be credited to the price or cost of the Work covered by this Contract or paid in such other manner as the Contract Officer may direct;

(h) Complete performance of such part of the Work as may not have been terminated by the Notice of Termination; and

(i) Take such action as may be necessary, or as the Contract Officer may direct, for the protection and preservation of the property related to this Contract which is in the possession of the Contractor and in which the College has or may acquire an interest. The Contractor may submit to the Contract 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 Contract Officer, and may request the College to remove such items or enter into a storage agreement covering them. Not later than 15 days thereafter, the College shall accept title to such items and remove them or enter into a storage agreement covering the same; provided, that the list submitted shall be subject to verification by the Contract Officer upon removal of the items, or if the items are

stored, within 45 days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

GC 14.3. After receipt of a Notice of Termination, the Contractor shall submit to the Contract Officer his termination claim, in the form and with certification prescribed by the Contract Officer. Such claim shall be submitted promptly but in no event later than one year from the effective date of termination, unless one or more extensions in writing are granted by the Contract Officer, upon request of the Contractor made in writing within such one year period or authorized extension thereof. However, if the Contract Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such one year period or any extension thereof. Upon failure of the Contractor to

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submit his termination claim within the time allowed, the Contract Officer may determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

GC 14.4. Subject to the provisions of paragraph GC 14.3., the Contractor and the Contract Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of Work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done; provided, that such agreed amount or amounts exclusive of settlement costs, shall not exceed the total Contract price as reduced by the amount of payments otherwise made and as further reduced by the Contract price of Work not terminated. The Contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in GC 14.5, prescribing the amount to be paid to the Contractor in the event of the failure of the Contractor and the Contract Officer to agree upon the whole amount to be paid to the Contractor by reason of the termination of Work pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this paragraph.

GC 14.5. In the event of the failure of the Contractor and the Contract Officer to agree, as provided in GC 14.4., upon the whole amount to be paid to the Contractor by reason of the termination of Work pursuant to this clause, the Contract Officer shall pay to the Contractor the amounts determined by the Contract Officer as follows, but without duplication of any amounts agreed upon in accordance with GC 14.4.

GC 14.5.1. With respect to all contract work performed before the effective date of the Notice of Termination, the total (without duplication of any items) of:

- (a) The cost of the Work;
- (b) The cost of settling and paying claims arising out of the termination of Work under subcontracts or orders as provided in GC 14.2.(e), exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the Subcontractor before the effective date of the Notice of Termination of Work under this

Contract, which amounts shall be included in the cost on account of which payment is made under (a) above; and

(c) A sum, as profit on (a) above, determined by the Contract Officer, to be fair and reasonable; provided, however, that if it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, no profit shall be included or allowed under this subdivision (c) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and

GC 14.5.2. The reasonable cost of the preservation and protection of property, incurred pursuant to GC 14.2(i); and any other reasonable cost incidental to termination of Work under this Contract, including expense incidental to the determination of the amount due to the Contractor as the result of the termination of Work under this Contract.

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GC 14.5.3. The total sum to be paid to the Contractor under GC 14.5.1. shall not exceed the total Contract price as reduced by the amount of payments otherwise made and as further reduced by the Contract price of Work not terminated. Except for normal spoilage, and except to the extent that the College shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor under GC 14.5.1., the fair value, as determined by the Contract Officer, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the College, or to a buyer pursuant to GC 14.2.(g).

GC 14.6 Costs claimed, agreed to, or determined pursuant to GC 14.3., 14.4., 14.5., and 14.9. hereof shall be in accordance with COMAR 21.09 as in effect on the date of this Contract, copy attached, with the same force and effect as if the College was a unit of State government subject to COMAR 21.09.

GC 14.7. The Contractor shall have the right of appeal, under the clause of this Contract entitled "Disputes", from any determination made by the Contract Officer under GC 14.3., 14.4., 14.5., or 14.9., except that if the Contractor has failed to submit his claim within the time provided in GC 14.3., or 14.9., and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Contract Officer has made a determination of the amount due under GC 14.3., 14.5., or 14.9., the College shall pay to the Contractor the following: (a) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contract Officer, or (b) if an appeal has been taken, the amount finally determined on such appeal.

GC 14.8 In arriving at the amount due the Contractor under this clause there shall be deducted (a) all unliquidated advance or other payments or account theretofore made to the Contractor, applicable to the terminated portion of this Contract, (b) any claim which the College may have against the Contractor in connection with this Contract, and (c) the agreed price for, or the proceeds of sale of any materials, supplies, or other things acquired by the Contractor or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to the College.

GC 14.9. If the termination hereunder be partial, the Contractor may file with the Contract Officer a claim for an equitable adjustment of the price or prices specified in the Contract relating to the continued portion of the Contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices. Any claim by the Contractor for an equitable adjustment under this clause shall be asserted within 90 days from the effective date of the termination notice, unless an extension is granted in writing by the Contract Officer.

GC 14.10. The College may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of this Contract whenever in the opinion of the Contract Officer the aggregate of such payments shall be within the amount to

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which the Contractor shall be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the College upon demand, together with interest computed at the legal rate for the period from the date such excess payment is received by the Contractor to the date on which the excess is repaid to the College; provided, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until 10 days after determined by the Contract Officer by reason of the circumstances.

GC 14.11. Unless otherwise provided for in this Contract, or by applicable statute, the Contractor shall, from the effective date of termination until the expiration of 3 years after final settlement under this Contract, preserve and make available to the College at all reasonable times at the office of the Contractor but without direct charge to the College, all his books, records, documents, and other evidence bearing on the costs and expenses of the Contractor under this Contract and relating to the Work terminated hereunder, or, to the extent approved by the Contract Officer, photographs, microphotographs, or other authentic reproductions thereof.

GC 15 . Correction of Work Before Final Payment.

GC 15.1. The Contractor shall promptly remove from the premises all materials condemned by the Architect as failing to conform to the Contract, whether incorporated in the Work or not. The Contractor shall promptly replace and re-execute his own work in accordance with the Contract and without expense to the College and shall bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement.

GC 15.2. If the Contractor does not remove such condemned work and materials within a reasonable time, fixed by written notice, the College 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 10 days time thereafter, the College may, upon 10 days notice sell such

materials at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs and expenses that should have been borne by the Contractor.

GC 16. Correction of Work After Final Payment.

GC 16.1. The Contractor guarantees all work as called for under this contract for the specified period, or for a one-year period after the date of final payment if none other is specified.

GC 16.2. The Contractor guarantees that the work contains no faulty or imperfect material or equipment or any imperfect, careless or unskilled workmanship.

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GC 16.3. The Contractor guarantees 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.

GC 16.4. If within one year after the Work or designated accepted portion thereof is placed into service and occupied by the College for the purpose intended, or after the date for commencement of warranties established elsewhere in this Contract, or by terms of an applicable special warranty required by the Contract Documents, the College gives written notice of any breach of warranty, including, but not limited to, notice of Work found to be defective, incomplete, or not in accordance with the requirements of the Contract Documents, the affected part or parts of the Work thereof shall be promptly repaired, corrected, or replaced by the Contractor, and the Contractor shall perform such tests as the College may require to verify that such repairs, corrections, and replacements comply with the requirements of this Contract. The Contractor warrants such repaired, corrected, or replaced work against defective materials and workmanship for an additional period equal to the aforementioned warranty period, from and after acceptance of such warranty Work by the College. All costs incidental to any required redesign by Architect, repair, correction, replacement and testing, including the removal, replacement and reinstallation of equipment necessary to gain access, and all other costs incurred as the result of breach of warranty shall be borne by the Contractor. Should the Contractor fail to make the necessary repairs, corrections, replacements, and test promptly, the College may perform or cause to be performed the necessary services and Work at the Contractor's expense, and the Contractor shall promptly pay all such sums incurred by the College. The Contractor shall also defend, indemnify, and save harmless the College from any and all loss, damages, costs, expenses, and attorney's fees suffered or incurred on account of any breach of aforesaid warranties, obligations, and covenants. These obligations of the Contractor shall be regardless of whether the Work or applicable portion thereof was furnished or performed by the Contractor or by its subcontractor of any tier and shall also survive acceptance of the Work under the Contract and termination of the Contract.

GC 17. Suspension of Work.

GC 17.1. The Contract Officer unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of the Work for such period of time as he may determine to be appropriate for the convenience of the College.

GC 17.2. If the performance of all or any part of the Work is for an unreasonable period of time, suspended, delayed, or interrupted by an act of the Contract Officer in the administration of this Contract or by his failure to act within the time specified in this Contract (or if no time is specified, within a reasonable time), an adjustment shall be made for any increase in the cost of performance of this Contract (excluding profit) necessarily caused by an unreasonable suspension, delay, or interruption to the extent (1) that

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performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor or (2) for which an equitable adjustment is provided for or excluded under any other provision of this Contract.

GC 17.3. No claim under this clause shall be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contract Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent (1) that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor or (2) for which an equitable adjustment is provided for or excluded under any other provision of this Contract.

GC 18. Contractor's Right to Stop Work or Terminate Contract.

GC 18.1. If, for a period of 3 months, the Work should be suspended by the Contract Officer or stopped under an order of any court, or other public authority, through no act or fault of the Contractor or of anyone employed by him or of any Subcontractor, or if the Owner should fail to pay the Contractor within 7 days after the time for payment established in GC 23, then the Contractor may, upon 7 days written notice to the College and the Architect, stop work or terminate this Contract and receive from the College payment as if the College had then terminated the Contract for convenience.

GC 18.2. In any event, the Contractor shall not have the right to stop the work or terminate the Contract if the College tenders payment within 7 days after receipt of written notice given under GC 18.1.

GC 19. Variations in Estimated Quantities. (This clause applies if the Contract contains estimated quantity items.)

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

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GC 20. Applications for Payment.

GC 20.1. Prior to application for his first payment, the Contractor shall submit to the College and the Architect a schedule of values of the various parts of the Work, including quantities, aggregating the total sum of the Contract. This Schedule shall be so divided as to facilitate payments to Subcontractors. The form of this submission shall be as the Contractor and the College have agreed upon and shall be supported by such evidence as to its correctness as the College may direct. This Schedule when approved by the College shall be used as a basis for certificates of payments unless at a later date found to be in error.

GC 20.2. Application for payment shall be submitted on or about the 25th day of each month but not less than 30 days after the "Work Initiation Conference" nor before 10 days of job operation (job shut-down days excluded).

In applying for payments, the Contractor shall submit a statement based upon the Schedule itemized in such form and supported by such evidence as the College may require, showing the Contractor's right to the payment claimed.

GC 20.3. At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect and the College an itemized Application for Payment for operations completed in accordance with the schedule of values. Such application shall be notarized and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage if provided for elsewhere in the Contract Documents.

GC 20.4. Such applications may include requests for payment on account of changes in the Work which have been properly authorized by Construction Change Directives but not yet included in Change Orders.

GC 20.5. Such applications may not include requests for payment of amounts the Contractor does not intend to pay to a Subcontractor or material supplier because of a dispute or other reason.

GC 20.6. Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the College, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the College to establish the College's title to such materials and equipment or otherwise protect the College's interest, and shall include applicable insurance, storage, and transportation to the site for such materials and equipment stored off the site.

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GC 20.7. The Contractor warrants that title to all Work covered by an Application for Payment will pass to the College no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the College shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work.

GC 20.8.1. In applying for all payments, the Contractor shall submit in addition to the above, a waiver of liens and a sworn affidavit that he has paid:

- (a) All labor to date;
- (b) All vendors and materials suppliers in full to include all items included in his previous statement and for which he has been paid by the College, and;
- (c) All Subcontractors in full, less the retained percentage to the amount included in his previous statement and for which he received payment from the College.

GC 20.8.2. In applying for the final payment, the Contractor shall submit in addition to the Certificate required by GC 20.8.1. above, the following:

- (a) Such evidence, including waiver of liens, as the College may reasonably require to establish the College's title to materials and give reasonable assurance that causes for liens by labor and others do not exist; and,
- (b) All guarantees as called for by the Contract.

GC 21. Certificates for Payments.

GC 21.1. If the Contractor has made application for payment in accordance with GC 20., the Architect, within 10 days, shall present to the College a certificate for such amount as the Architect decides to be properly due. In approving such partial payments, 10 percent of the estimated amount due shall be retained until final completion and acceptance of all Work covered by the Contract.

GC 21.2. The issuance of a Certificate for Payment will constitute a representation by the Architect to the College, based on the Architect's observations at the site and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed

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by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified.

GC 21.3. No certificate issued nor payment made to the Contractor, nor partial or entire use or occupancy of the Work by the College, shall be an acceptance of any Work or materials not in accordance with the Contract.

The acceptance of the final payment shall constitute as a waiver of all claims by the Contractor, except those previously made and specified as unsettled.

GC 22. Payments Withheld.

The Architect may decide not to certify payment and may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the College, if in the Architect's opinion the representations to the College required by GC 21.1. cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and the College as provided in GC 21.1. If the Contractor and the Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the College. The Architect may also decide not to certify payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the College from loss because of:

- (a) Defective Work not remedied;
- (b) Third party claims filed or reasonable evidence indicating probable filing of such claims;
- (c) Failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;

(d) Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

(e) Damage to the College or another contractor;

(f) Reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or

(g) Persistent failure to carry out the Work in accordance with the Contract Documents.

GC 23. Time of Payments.

GC 23.1. Payments to the Contractor pursuant to this Contract shall be made no later than 30 days:

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(a) after the day on which the College receives a proper invoice or other document, with an Architect's Certificate, the receipt of which is a condition for payment under the Contract; or

(b) if later, and if payment for the Work, or any part of the Work, is to be made by the College from funds to be provided by the State of Maryland and/or Prince George's County and/or any other governmental authority to the College, after the College's actual receipt of the funds.

The College, when feasible and deemed in its best interests, will take advantage of reasonable prompt payment discounts offered by the Contractor. The College will pay no charges for late payment 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.

GC 23.2. The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the College, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in similar manner.

GC 24. Indemnification.

GC 24.1. To the fullest extent permitted by law, the Contractor shall be liable for and hereby agrees to defend, discharge, fully indemnify and hold the College and the College's trustees, officers, employees and agents harmless of, from and against any and all claims, liens, demands, damages, liability, actions, causes of action, losses, judgments, costs and expenses of every nature (including investigation costs and expenses, settlement costs, and

attorney's fees and expenses incident thereto) sustained by or asserted against the College arising out of, resulting from, or attributable to the performance or non-performance of any work on the project (collectively "Claim") including but not limited to any Claim for:

(a) any personal or bodily injury, illness or disease, including death at any time resulting therefrom, of any person, including, but not limited to, employees of the College, contractor, any sub-contractor and any supplier or

(b) any loss, damage or destruction of any property or damage to the College's operations or

(c) any additional payments as compensation for delay or acceleration or

(d) any defects in material or equipment furnished hereunder provided that the Contractor shall not be liable hereunder to indemnify the College against liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence or willful misconduct of the College, its agents or employees.

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GC 25. Contractor's Liability Insurance.

GC 25.1. The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

(a) claims under workers or workmen's compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;

(b) claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees.

(c) claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees.

(d) claims for damages insured by usual personal injury liability coverage which are sustained (1) by a person as a result of an offense directly or indirectly related to employment of such person by the Contractor, or (2) by another person.

(e) claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

(f) claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; and

(g) claims involving contractual liability insurance applicable to the Contractor's obligations under Paragraph 24.1.

GC 25.1.2. The limits on liability shall be not less than 1,000,000/3,000,000; that is 1,000,000 is the limit for an individual claim, and 3,000,000 is the limit for total claims that arise from the same occurrence. Said policy or policies shall be written on an occurrence

basis, i.e.; covering all losses occurring during the term of the policy regardless of when the claim is made.

GC 25.1.3. The above policies for Bodily Injury and Property Damage Liability

Insurance shall be so written as to include Contingent Bodily Injury and Property Damage Liability insurance to protect the Contractor against claims from the operations of Subcontractors.

GC 25.1.4. Certificates of the Contractor's insurance containing evidence of the Hold Harmless Clause, GC 24.1, protecting the College shall be filed with the College and shall be subject to their approval for adequacy of protection. These certificates of insurance and the policies themselves shall contain a provision that coverages afforded under the policies will not be cancelled, allowed to expire or have reduction in coverage, until at least 30 days prior written notice has been given to the College.

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The College reserves the right to disapprove of a proposed insurance carrier if the carrier is reasonably deemed to be in financial risk of failure, or is not legally registered to conduct business in the State of Maryland.

GC 25.1.5. The cancellation or expiration of a policy or a reduction of coverage of a policy during the Work shall be considered a material breach of the Contract allowing the College to terminate the Contract pursuant to Paragraph GC 12.

GC 25.2. Fire and Extended Coverage Insurance.

GC 25.2.1. The Contractor shall carry, at his own expense, Builder's Risk Insurance for the full contract amount against all perils, subject only to the minimum standard deductibles currently filed with the State Insurance Department. The College shall provide no coverage during the construction period. All policies are to be written jointly in the name of the College and that of the Contractor, as their respective interests may appear.

GC 25.2.2. The policy shall contain endorsements substantially reading as follows:

(a) This policy also covers as part of the provisional amount, Architect's Engineer's, and Contractor's fees;

(b) Permission is hereby granted for occupancy in whole or in part, pending acceptance by the College;

(c) It is the intent of this insurance to cover specifically all the Work being done under the Contract and as to such Work this policy shall be primary insurance and shall not require or claim contribution from any other insurance being carried, which by its terms, would also cover the property covered hereunder in the absence of this insurance;

(d) Coverage afforded under this policy will not be cancelled until at least 30 days prior written notice has been given to the College.

GC 25.3. Certificates of Insurance shall be submitted to the College for review and approval and shall be held by the College for the duration of the Contract. The rights and obligations set forth in Paragraph GC 25.1.5. shall apply with equal force regarding Builder's Risk Insurance.

GC 25.4. The above insurance shall remain in full force and effect until such time as the College shall finally and fully accept in writing the Work covered by this Contract.

GC 26. Damages.

GC 26.1. If either party to this Contract should suffer damages in any manner because of the wrongful act or neglect of the other party or of anyone employed by him, then he shall be reimbursed by the other party for such damage, provided, however, that any liability of the College shall be in accordance with and subject to the limitations of the Maryland Local Government Tort Claims Act, MD Code, C & J Article, Section 5-401 through 5-404.

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GC 26.2. Claims under this clause shall be made in writing to the party liable within a reasonable time at the first observance of such damage and not later than the time of final payment, except as expressly stipulated otherwise in the case of faulty work or materials, and shall be adjusted by agreement.

GC 26.3. Should the Contractor cause damage to any separate contractor on the Work, the Contractor agrees, upon due notice, to settle with such contractor by agreement or to refer the matter to the College who will, in consultation with the Architect, render a decision after hearing all evidence in the matter. The Contractor shall pay or satisfy such decision.

GC 26.4. The College shall not be liable in any action for tort, contract or otherwise for any acts or omissions of the Contractor arising out of this Contract. In any event, the College's liability for tort shall be in accord with and to the extent of the limits set out in the Maryland Local Government Tort Claims Act, MD Code, C & J Article, Section 5-401 through 5-404.

GC 27. Assignment.

The Contractor shall not assign the Contract, nor shall he sublet it as a whole.

GC 28. Separate Contracts.

GC 28.1. The College reserves the right to let other contracts in connection with the Work. The Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate his work with theirs.

GC 28.2. If any part of the Contractor's work depends on proper execution or

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

GC 28.3. To insure the proper execution of his subsequent work, the Contractor shall measure work already in place and shall at once report to the Architect any discrepancy between the executed Work and the drawings.

GC 29. Subcontracts.

GC 29.1. The Contractor, as soon as practicable and before the execution of the Contract, shall notify the Architect and the College, in writing, of the names of

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Subcontractors proposed for the principal parts of the work and for such others as the Architect may direct and shall not employ any that the Architect or the College may object to as incompetent or unfit.

GC 29.2. The Architect may, on request, furnish to any Subcontractor, wherever practicable, evidence of the amounts certified on his account.

GC 29.3. The Contractor agrees that he is as fully responsible to the College for the acts and omissions of his Subcontractors and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.

GC 29.4. Nothing contained in the Contract Documents shall create any contractual relation between any Subcontractor and the College.

GC 30. Relation of the Contractor and Subcontractor.

GC 30.1. The Contractor agrees to bind every Subcontractor, and every Subcontractor agrees to be bound by the terms of the Contract which apply to his work, including the following provisions of GC 30.2., unless specifically noted to the contrary in a Subcontract approved in writing by the College.

GC 30.2. Each Sub-Contractor agrees:

(a) To be bound to the Contractor by the terms of the Contract Documents and to assume toward him all obligations and responsibilities that he, by those documents, assumes toward the College;

(b) To submit to the Contractor applications for payment in such reasonable time as to enable the Contractor to apply for payment under GC 20.;

(c) To make all claims for extras, for extensions for payment in such reasonable time as to enable the Contractor to apply for payment under GC 20.; and

(d) Upon completion of his work, to promptly pay all labor, material suppliers, vendors, sub-Subcontractors and others, to permit simultaneous final payment by the Contractor and execution of a waiver of liens by the Subcontractor.

GC 30.3. The Contractor agrees:

(a) To be bound to the Subcontractor by all the obligations that the College assumes to the Contractor under the Contract Documents and by all the provisions thereof affording remedies and redress to the Contractor from the College;

(b) To pay the Subcontractor, upon the payment of certificates, if issued under the schedule of values described in GC 20., the amount allowed to the Contractor on account of the Subcontractor's work to the extent of the Subcontractor's interest therein;

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(c) To pay the Subcontractor, upon the payment of certificates, if issued otherwise than as in (b), so that at all times his total payments shall be as large in proportion to the value of the work done by him as the total amount certified to the Contractor is to the value of the work done by him;

(d) 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;

(e) To pay the Subcontractor on demand for his work or materials as far as executed and fixed in place, less the retained percentage, at the time the certificate should be issued, even though the Architect fails to issue it for any cause not the fault of the Subcontractor;

(f) To pay the Subcontractor a just share of any fire insurance money received by him, the Contractor, under GC 25.;

(g) 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;

(h) That no claim for services rendered or materials furnished by the Contractor shall be valid unless written notice thereof is given by the Contractor to the Subcontractor during the first 10 days of the calendar month following that in which the claim originated; and

(i) To give the Subcontractor an opportunity to be present and to submit evidence in any matter involving his rights.

GC 30.4. The Contractor and the Subcontractor agree that nothing in this Article shall create any obligation on the part of the College to pay to or see to the payment of any sums to any Subcontractor.

GC 31. Architect's Status.

GC 31.1. Under the direction and with approval of the College, the Architect shall be the initial interpreter of the Contract Documents. He will furnish with reasonable promptness

such clarifications as he may deem necessary for the proper execution of the Work; such clarifications to be consistent with the over-all intent of the Contract Documents. He is the agent of the College only to the extent provided in the Contract Documents and when in special instances he is authorized by the College so to act. In such instances he shall upon request show the Contractor written authority. He has authority to recommend that the Contract Officer stop work whenever such stoppage may be necessary to insure the proper execution of the Contract.

GC 31.2. In case of the termination of the employment of the Architect, the College shall appoint a capable and reputable Architect whose status under the Contract shall be that of the former Architect; or at its own discretion the College may assume the role of the Architect.

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GC 32. Architect's Decisions.

Except as otherwise specifically provided in the Contract Documents, all of the Architect's decisions are subject to review by the College.

GC 33. Cash Allowances.

Whenever an allowance is mentioned in the specifications then the Contractor shall include in his Contract sum the entire amount of such specified allowances. The expenditure of these allowances is at the Architect'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 College. The cost of installation of materials purchased with these specified allowances and other expenses, and Contractor's profit are not included in the allowance. The Contractor shall install all material purchased under allowances and shall include in the Contract sum a sufficient amount, in addition to the allowance, to cover the installation, other costs and profit.

GC 34. Progress Photographs.

Unless waived by the College in writing, the Contractor shall submit monthly to the College 8" x 10" photographs taken on or about the first of each month showing the status of the Work. Only one print of each negative is necessary but the negative should be sufficient in number to properly record the Work. (Not more than 6 successful negatives will be required per month.)

GC 35. Interlocking Contracts.

The attention of the Contractor and of all Subcontractors is specifically called to the necessity of reading the specifications covering items of the Work which connect with or are dependent upon the work specified under each heading, and each Contractor executing the Work called for thereunder shall be responsible for arranging for proper provision for connection and coordinating his work with such other items.

GC 36. Sanctions Upon Improper Acts.

GC 36.1. In the event the Contractor, or any of its officers, partners, principals or employees, is convicted of a crime arising out of, or in connection with, the procurement of work to be done or payment to be made under this Contract, the Contract, in the discretion of the College, may be terminated.

GC 36.2. Section 3-405 of Article 21 of the Annotated Code, and COMAR 21.08.01, which relate to contracts with persons convicted of bribery, attempted bribery or conspiracy to bribe are incorporated in this Contract by reference.

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GC 36.3. Section 3-404 of Article 21 and COMAR 21.08.02 relating to disqualification for unfair labor practices are incorporated into this Contract by reference.

GC 36.4. Section 3-901 of Article 21 and COMAR 21.08.02 relating to collusion for purposes of defrauding the State are incorporated into this Contract by reference.

GC 37 . Buy American Steel Act.

The provisions of COMAR 21.11.02 pertaining to implementation of the “Buy American Steel” Act (Subtitle 7 of Title 8 of Article 21 of the Annotated Code of Maryland) are incorporated in this Contract by reference.

GC 38. Progress and Completion.

GC 38.1. All time limits stated in the Contract Documents are of the essence of the Contract.

GC 38.2. The “date of commencement” of the Work is the date established in a “notice to proceed” signed by the president of the College or his designated representative.

GC 38.3. The Contractor shall begin the Work on the date of commencement as defined in GC 38.2. He shall carry the Work forward expeditiously with adequate forces and shall complete it within the Contract time.

GC 38.4. It is expressly understood and agreed by and between the Contractor and the College that the “Contract Time” (the time specified for the completion of the Work) is a

reasonable time, taking into consideration the average climatic range and the usual industrial conditions prevailing in the locality of the project.

GC 39. Substantial Completion.

GC 39.1. Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the College can occupy or utilize the Work for its intended use.

GC 39.2. When the Contractor considers that the Work, or a portion thereof which the College agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect and the Contract Officer, a comprehensive list of items to be completed or corrected. The Contractor shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of the Contractor's list, the Architect and the Contract Officer will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the

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inspection discloses any item, whether or not included on the Contractor's list, which is not in accordance with the requirements of the Contract Documents, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect and/or the Contract Officer. The Contractor shall then submit a request for another inspection by the Architect and the Contract Officer to determine Substantial Completion. When the Work or designated portion thereof is substantially complete, the Architect and Contract Officer will prepare a Certificate of Substantial Completion and the Contract Officer shall establish the date of Substantial Completion, shall establish responsibilities of the College and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. If the Contractor fails to complete the remaining items so listed in the time stipulated, the College shall have the undisputed right to complete the Work and deduct any cost incurred from any monies retained under the Contract, and in case the amounts due to the Contractor are less than the costs incurred, the Contractor shall be liable to the College for the difference.

GC 39.3. Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect and the Contract Officer will promptly make such inspection and, when the Architect and the Contract Officer finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's observations and inspections, the Work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in said final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that

conditions listed in GC 39.4. as precedent to the Contractor's being entitled to final payment have been fulfilled.

GC 39.4. Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the College or the College's property might be responsible or encumbered (less amounts withheld by the College) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least 30 days prior written notice has been given to the College, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, and (5) if required by the College, other data establishing payment or satisfaction of obligations, such

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as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the College. If a Subcontractor refuses to furnish a release or waiver required by the College, the Contractor may furnish a bond satisfactory to the College to indemnify the College against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the College all money that the College may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

GC 39.5. Guarantee and warranty periods shall begin to run upon the date of final payment.

GC 40. Partial Acceptance.

If during the construction of work, the College desires to occupy any portion of the project, the College shall have the right to occupy and use those portions of the project which in the opinion of the Contract Officer can be used for their intended purpose; provided that the Contract Officer equitably establishes the conditions of occupancy and the respective responsibilities of the Contractor and the College for maintenance, heat, light, utilities, and insurance.

Partial Occupancy shall in no way relieve the Contractor of his responsibilities to fully perform and complete the Contract and shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

GC 41. Disputes.

GC 41.1. Except as otherwise may be provided by law, all disputes arising under or as a result of a breach of this Contract that are not disposed of by mutual agreement shall be resolved in accordance with this clause.

GC 41.2. As used herein, “claim” means a written demand or assertion by one of the parties seeking, as a legal right, the payment of money, adjustment or interpretation of contract terms, or other relief, arising under or relating to this Contract.

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

GC 41.3. Filing of Claim by Contractor.

GC 41.3.1. The Contractor shall file a notice of claim with the Contract Officer

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within 30 days after the basis for the claim is known, or should have been known. The notice shall be in writing.

GC 41.3.2. Contemporaneously with or within 30 days of the filing of a notice of claim, but no later than the date that final payment is made, the Contractor shall submit the claim to the Contract Officer. The claim shall be in writing and shall contain:

(a) An explanation of the claim, including reference to all Contract provisions on which it is based;

(b) The amount of the claim;

(c) The facts upon which the claim is based;

(d) All pertinent data and correspondence that the Contractor relies upon to substantiate the claim; and

(e) A certification by a senior official, officer, or general partner of the Contractor that, to the best of the Contractor’s knowledge and belief, the claim is made in good faith, supporting data are accurate and complete, and the amount requested accurately reflects the contract adjustment for which the Contractor believes the College is liable.

GC 41.3.3. A notice of claim or a claim that is not filed within the time prescribed in GC 41.3.1. shall be dismissed.

GC 41.4. Review, Investigation, and Disposition of Contractor Claim.

GC 41.4.1. Upon receipt of a Contractor’s claim, the Contract Officer:

(a) shall investigate and review the facts pertinent to the claim; and

(b) may request additional information or substantiation through any appropriate procedure.

GC 41.4.2. The Contract Officer may conduct discussions or negotiations regarding the claim and, subject to approval by the College president, may settle the claim. The settlement agreement shall be written, shall provide for an appropriate release, and shall be supported by a written determination of the Contract Officer that the settlement is in the best interests of the College.

GC 41.4.3. If discussions or negotiations are not conducted or if the claim is not settled, the Contract Officer shall render a written decision on the claim, which should normally contain:

- (a) A description of the claim;
- (b) A reference to pertinent contract provisions;
- (c) A statement of the factual areas of agreement or disagreement;
- (d) A statement of the decision, with supporting rationale; and

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(e) A paragraph substantially as follows: “This decision is final and conclusive unless you mail or otherwise file a written request for informal review with the Administrator of the College’s General Grievance Rule within 30 days from the date you receive this decision.”

GC 41.4.4. The Contract Officer shall render a written decision on all claims within 180 days of receipt of the Contractor’s written claim, unless the Contract Officer determines that a longer period is necessary to resolve the claim. If a decision is not issued within 180 days, the Contract Officer shall notify the Contractor at the time within which a decision shall be rendered and the reasons for such time extension. The decision shall be furnished to the Contractor, by certified mail, return receipt requested, or by any other method that provides evidence of receipt.

GC 41.5. Appeal.

The Contract Officer’s decision shall be final and conclusive unless the Contractor mails or otherwise files a written request for informal review with the Administrator of the College’s General Grievance Rule within 30 days of receipt of the decision. Any decision rendered through this rule shall be final and binding on both parties.

GC 41.6. Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Contract Officer’s decision.

GC 41.7. Arbitration.

At the sole discretion of the College any dispute or claim arising out of or related to the Contract may be referred to binding arbitration in accordance with the Construction Industry Rules of the American Arbitration Association whose ruling shall be final and binding on the parties.

GC 41.8. College's Enforcement of Contract.

The College shall have the right to seek enforcement of the Contract either through arbitration or litigation in the appropriate state or federal courts which ever it deems appropriate. All costs, including attorneys fees, incurred by the College in enforcing its rights under the Contract shall be recoverable against the Contractor.

GC 42. Non-Hiring of Employees.

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

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GC 43. Applicable Law.

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

GC 44. Nondiscrimination in Employment.

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or physical or mental handicap unrelated in nature and extent so as reasonably to preclude the performance of such employment; (b) to include a provision similar to that contained in subsection (a), above, in any subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

GC 45. Contingent Fee Prohibition.

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

GC 46. Multi-Year Contracts Contingent Upon Appropriations.

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

GC 47. Financial Disclosure.

The Contractor shall comply with the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which requires that every business

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that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more, shall, within 30 days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

GC 48. Political Contribution Disclosure.

The Contractor shall comply with the provisions of Article 33, Sections 30-1 through 30-4 of the Annotated Code of Maryland, which require that every person that enters into contracts, leases, or other agreements with the State of Maryland, including its agencies, or a political subdivision of the State, during a calendar year under which the person receives in the aggregate \$10,000 or more, shall on or before February 1 of the following year, file with the Secretary of State of Maryland certain specified information to include disclosure of political contributions in excess of \$100 to a candidate for elective office in any primary or general election.

GC 49. Retention of Records.

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

GC 50. 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 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.

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GC 51. Cost and Price Certification.

GC 51.1. The Contractor by submitting cost or price information certifies that, to the best of its knowledge, the information submitted is accurate, complete, and current as of a mutually determined specified date prior to the conclusion of any price discussions or negotiations for:

(a) A negotiated contract, if the total contract price is expected to exceed \$100,000, or a smaller amount set by the procurement officer; or

(b) A change order or contract modification, expected to exceed \$100,000, or a smaller amount set by the procurement officer.

GC 51.1.2. The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date agreed upon between the parties, was inaccurate, incomplete or not current.

GC 52. Truth-In-Negotiation Certification.

GC 52.1. The Contractor by submitting cost or price information, including wage rates or other factual unit costs, certifies to the best of its knowledge, information, and belief, that:

(a) The wage rates and other factual unit costs supporting the firm's compensation, as set forth in the proposal, are accurate, complete and current as of the contract date;

(b) If any of the items of compensation were increased due to the furnishing of inaccurate, incomplete or noncurrent wage rates or other units of costs, the College is entitled to an adjustment in all appropriate items of compensation, including profit or fee, to exclude any significant sum by which the price was increased because of the defective data. The College's right to adjustment includes the right to a price adjustment for defects in costs or pricing data submitted by a prospective or actual subcontractor; and

(c) If additions are made to the original price of the contract, such additions may be adjusted to exclude any significant sums where it is determined the price has been increased due to inaccurate, incomplete or noncurrent wage rates and other factual costs.

GC 53. Incorporation by Reference.

All terms and conditions under the invitation to bid (or solicitation), and any amendments thereto, are made a part of this Contract.

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GC 54. Tax Exemption.

The Owner is generally exempt from federal excise taxes, Maryland sales and use taxes, District of Columbia sales taxes, and transportation taxes. Exemption certificates shall be completed upon request. Where a Contractor is required to furnish and install material in the construction or improvement of real property in performance of a contract, the Contractor shall pay the Maryland Sales Tax and the exemption does not apply.

GC 55. Conflict of Interest Laws.

It is unlawful for any State or College officer, employee, or agent to participate personally in his official capacity through decision, approval, disapproval, recommendation, advice, or investigation in any contract or other matter in which he, his spouse, parent, minor child, brother or sister has a financial interest or to which any firm, corporation, association or other organization in which he has a financial interest or in which he is serving as an officer, director, trustee, partner, or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, is a party, unless such officer, employee, or agent has previously complied with the provisions of Article 40A, Section 3-101 et seq. of the Annotated Code of Maryland.

GC 56. Performance and Payment Bonds.

Before the award by the College of a construction contract exceeding \$25,000, the Contractor shall provide payment security and performance security in the amount of the Contract price, except that if the Contract is not greater than \$50,000, each security shall be in the amount of one-half of the Contract price.

(1) Payment security or performance security shall be:

- (a) a bond executed by a surety company authorized to do business in Maryland;
- (b) cash in an amount equivalent to a bond; or
- (c) other security that is satisfactory to the College.

(2) The required performance bond shall be in the form attached as PGCC-C3.

(3) The required payment bond shall be in the form attached as PGCC-C4.

(4) The form of payment security or performance security shall be approved for the College by its attorney.

(5) The Contractor shall file the security or evidence of a trust account established as security, payable to the "Board of Trustees of Prince George's Community College", in the office of the College's Procurement Officer.

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(6) At the direction of the College, the Contractor may be required to increase the amount of the security if the Contract price is increased as the result of Contract modification or change order. The reasonable cost of such increase shall be an allowable cost in determining the increase in the Contract price.

GC 57. Anti-Bribery.

Contractors are required to be aware of Article 21, Section 3-405 of the Annotated Code of Maryland which requires that any person convicted of bribery, attempted bribery, or conspiracy to bribe based upon acts committed after July 1, 1971, in the obtaining of a contract from the State or any of its subdivisions, shall be subject to disqualification pursuant to Article 21, Section 3-405, Annotated Code of Maryland from entering into a contract with the State, or any county or other subdivision of the State, for the supply of materials, supplies, equipment, or services by the person. (For purposes of this clause, the College is deemed a subdivision of the State.)

GC 58. Registration.

Pursuant to Section 7-201 of the Corporations and Associations Article of the Annotated Code of Maryland, corporations not incorporated in the State shall be registered with the State Department of Assessments and Taxation, 301 West Preston Street, Baltimore, Maryland 21201, before doing any interstate or foreign business in this State. Before doing

any intrastate business in this State, a foreign corporation shall qualify with the Department of Assessments and Taxation.

GC 59. EPA Compliance.

Materials, supplies, equipment, or services shall comply in all respects with the Federal Noise Control Act of 1972, where applicable.

GC 60. Occupational Safety and Health Act.

All materials, supplies, equipment, or services supplied as a result of this Contract shall comply with the applicable U.S. and Maryland Occupational Safety and Health Act standards.

GC 61. Patent Infringement.

Contractor agrees to indemnify, protect, and save harmless the College, its officers, agents and employees with respect to any claim, action, cost or judgment for patent infringement, arising out of purchase or use of materials, supplies, equipment or services covered by this Contract.

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GC 62. Contractor's Invoices.

Contractor agrees to include on the face of all invoices billed to the College, its Federal Tax Identification or Social Security Number.

GC 63. Bid Security.

Unless otherwise specified, the Bidder is required to submit bid security in an amount at least equal to 5 percent of the amount of the bid.

(1) Bid security or evidence of the posting of bid security shall be submitted with the bid. If a Bidder fails to accompany its bid with the required bid security, the bid shall be deemed nonresponsive and rejected except as provided by sec. (2).

(2) If a bid does not comply with the security requirements of this clause, the bid shall be rejected as nonresponsive, unless the Contract Officer determines that the deficiency in the amount of security provided is insubstantial and acceptance is in the best interests of the College, and that:

(a) Only one bid or proposal was received, and there is insufficient time to rebid the contract;

(b) The bid security became inadequate as a result of the correction of a mistake in the bid, or as a result of a modification in the bid in accordance with applicable

regulations, and the bidder increased the amount of bid security to required limits within 48 hours after the correction or modification; or

(c) After consideration of the risks involved and the difference between the lowest bid and the next lowest bid, fiscal advantage could reasonably be expected to accrue to the College from acceptance of the lowest bid.

(3) If a Bidder is permitted to withdraw a bid before award because of a mistake in the bid or proposal, action may not be taken against the bid security. Otherwise, action may be taken against the bid security of a bidder that withdraws a bid.

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COMAR TITLE 21- STATE PROCUREMENT REGULATIONS

Subtitle 09 CONTRACT COST PRINCIPLES AND PROCEDURE

Chapter 01. GENERAL REGULATIONS

Authority: State Finance and Procurement Article, Section 12-101 and 13-213, Annotated Code of Maryland.

.01 DEFINITIONS.

A. In this chapter, the following words have the meanings indicated.

B. Terms Defined.

(1) “Actual costs” means all direct and indirect costs which have been incurred for labor performed, goods delivered, or construction built, as distinguished from allowable costs only.

(2) “Cost objective” means any unit of work such as a function, an organizational subdivision, or a contract for which provision is made to accumulate and measure separately the cost of processes, products, jobs, capitalized projects, and similar items. A final cost

objective is one that has allocated to it both direct and indirect costs and, in the contractor's accumulation system, is one of the final accumulation points.

.02 APPLICABILITY OF COST PRINCIPLES.

A. Limitation. These cost principles regulations are not applicable to:

(1) The establishment of prices under contracts awarded on the basis of competitive sealed bidding, or otherwise based on adequate price competition rather than the analysis of individual, specific cost elements, except that this subtitle does apply to the establishment of adjustments of price for equitable adjustments made under these contracts;

(2) Prices which are fixed by law or regulation; and

(3) Prices which are based on established catalog prices or established market prices.

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B. Application.

(1) The cost principles and procedures contained in this subtitle shall be used to determine the allowability of incurred costs for the purpose of reimbursing costs under contract provisions which provide for the reimbursement of costs, provided that any deviation from these cost principles may be made as provided in Regulation .23.

(2) The cost principles and procedures set forth in this subtitle shall be used as guidance in:

(a) The establishment of contract cost estimates and prices under contracts awarded on the basis of competitive sealed proposals where the award may not be based on adequate price competition, sole source emergency procurement or small procurement procedures;

(b) The establishment of price adjustments for equitable adjustments under contracts that have been let on the basis of competitive sealed bidding, competitive sealed proposals, or otherwise based on adequate price competition;

(c) The pricing of termination for convenience settlements; and

(d) Any other situation in which cost analysis is used.

.03 ALLOWABLE COSTS.

A. General.

Any contract cost proposed for estimating purposes or invoiced for cost-reimbursement purposes shall be allowable to the extent provided in the contract and, if inconsistent with these cost principles, approved as a deviation under Regulation .23. The contract shall provide that the total allowable cost of a contract is the sum of the allowable direct costs actually incurred in the performance of the contract in accordance with its terms, plus the properly allocable portion of the allowable indirect costs, subject to any specific contract limitations, less any applicable credits (such as discounts, rebates, refunds, and property disposal income), plus profit.

B. Accounting Consistency.

All costs shall be accounted for in accordance with generally accepted accounting principles. In pricing a proposal, a contractor shall estimate costs in a manner consistent with its cost accounting practices used in accumulating and reporting costs to other similar activities.

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C. When Allowable.

The contract shall provide that costs shall be allowed to the extent they are:

- (1) Reasonable;
 - (2) Allocable;
 - (3) Lawful under any applicable statute;
 - (4) Not unallowable under Regulations .06 through .19;
- and

(5) In the case of costs invoiced for reimbursement, actually incurred or accrued and accounted for in accordance with generally accepted accounting principles.

.04 REASONABLE COSTS.

A. Any cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by an ordinarily prudent person in the conduct of competitive business in that industry.

B. In determining the reasonableness of a given cost, consideration shall be given to:

(1) Requirements imposed by the contract terms and conditions;

(2) Whether the cost is of a type generally recognized as ordinary and necessary for the conduct of the contractor's business or the performance of the contract;

(3) The restraints inherent in, and the requirement imposed by, these factors as generally accepted sound business practices, arms length bargaining, and federal and State laws and regulations;

(4) The action that a prudent business manager would take under the circumstances, including general public policy and considering responsibilities to the owners of the business, employees, customers, and the State;

(5) Significant deviations from the contractor's established practices which may unjustifiably increase the contract costs; and

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(6) Any other relevant circumstances.

.05 ALLOCABLE COSTS.

A. General.

A cost is allocable if it is assignable or chargeable to one or more cost objectives in accordance with relative benefits received and if it:

(1) Is incurred specifically for the contract;

(2) Benefits both the contract and other work, and can be distributed to both in reasonable proportion to the benefits received; or

(3) Is necessary to the overall operation of the business, although a direct relationship to any particular cost objective may not be evident.

B. Allocation Consistency.

Costs are allocable as direct or indirect costs. Similar costs (those incurred for the same purpose, in like circumstances) shall be treated consistently either as direct costs or indirect costs except as provided by these regulations. When a cost is treated as a direct cost in respect to one cost objective, it and all similar costs shall be treated as a direct cost for all

cost objectives. Further, all costs similar to those included in any indirect cost pool shall be treated as indirect costs. All distributions to cost objectives from a cost pool shall be on the same basis.

C. Direct Costs.

A direct cost is any cost which can be identified specifically with a particular final cost objective. A direct cost shall be allocated only to its specific cost objective. To be allowable, a direct cost shall be incurred in accordance with the terms of the contract.

D. Indirect Costs.

(1) An indirect cost is one identified with not specific final cost objective or with more than one final cost objective. Indirect costs are those remaining to be allocated to the several final cost objectives after direct costs have been determined and charged directly to the contract or other work as appropriate. Any direct costs of minor dollar amount may be treated as indirect costs, if this treatment produces substantially the same results as treating the cost as a direct cost.

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(2) Indirect costs shall be accumulated into logical cost groups (or pools), with consideration of the reasons for incurring the costs. Each group should be distributed to cost objectives benefiting from the costs in the group. Each indirect cost group shall be distributed to the cost objectives substantially in proportion to the benefits received by the cost objectives. The number and composition of the groups and the method of distribution should not unduly complicate indirect cost allocation where substantially the same results could be achieved through less precise methods.

(3) The contractor's method of distribution may require examination when any one of the following apply:

(a) Any substantial difference exists between the cost patterns of the work performed under the contract and the contractor's other work.

(b) Any significant change occurs in the nature of the business, the extent of subcontracting, fixed asset improvement programs, inventories, the volume of sales and production, manufacturing processes, the contractor's products, or other relevant circumstances.

(c) Indirect cost groups developed for a contractor's primary location are applied to off-site locations. Separate cost groups for costs allocable to off-site locations may be necessary to distribute the contractor's costs on the basis of the benefits accruing to the appropriate cost objectives.

(d) The base period for indirect cost allocation is the one in which the costs are incurred and accumulated for distribution to work performed in that period. Normally, the base period is the contractor's fiscal year. A different base period may be appropriate under unusual circumstances. In these cases, an appropriate period should be agreed to in advance.

.06 ADVERTISING.

A. Advertising costs are those incurred in using any advertising media when the advertiser has control over the form and content of what will appear, the media in which it will appear, or when it will appear. Advertising media includes newspapers, magazines, radio, television, direct mail, trade papers, billboards, window displays, conventions, exhibits, free samples, and the like. All advertising costs except those set forth below are unallowable.

B. The only allowable advertising costs are those for:

(1) The recruitment of personnel;

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(2) The procurement of scarce items;

(3) The disposal of scrap or surplus materials;

(4) The listing of a business's name and location in a classified directory;

(5) Notices or advertisements required by law or regulations; and

(6) The delivery of public service.

.07 BAD DEBTS.

Bad debts include losses arising from uncollectible accounts and other claims, such as dishonored checks, uncollected employee advances, and related collection and legal costs. All bad debt costs are unallowable.

.08 CONTINGENCIES.

A. Contingency costs are contributions to a reserve account for unforeseen costs. Contingency costs are unallowable except as provided below.

B. For the purpose of establishing a contract cost estimate or price in advance of performance of the contract, recognition of uncertainties within a reasonably anticipated

range of costs may be required and is not prohibited by this regulation. However, if contract clauses are present which serve to remove risks from the contract, a contingency factor for these risks may not be included in the contract. Further, contributions to a reserve for self-insurance in lieu of, and not in excess of, commercially available liability insurance premiums are allowable as an indirect charge.

.09 DEPRECIATION AND USE ALLOWANCES.

A. Depreciation and use allowances, that is, the allowance made for fully depreciated assets, are allowable to compensate contractors for the use of buildings, capital improvements, and equipment or for the provision of these facilities on a standby basis for subsequent use when these facilities are temporarily idle because of suspensions or delays not caused by the contractor, not reasonably foreseeable, and not otherwise avoidable when the contract was awarded. Depreciation is a method of allocating the acquisition cost of an asset to periods of its useful life. Useful life refers to the asset's period of economic usefulness in the particular contractor's operation as distinguished from its physical life. Use allowances provide compensation in lieu of depreciation or other equivalent costs. Consequently, these two methods may not be combined to compensate contractors for the use of any one type of property.

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B. The computation of depreciation or use allowance shall be based on acquisition costs. When the acquisition costs are unknown, reasonable estimates may be used.

C. Depreciation shall be computed using any generally accepted method, if the method is consistently applied and results in equitable charges considering the use of the property. The straight-line method of depreciation is preferred unless the circumstances warrant some other method. However, a State agency shall accept any method which is accepted by the Internal Revenue Service.

D. In order to compensate the contractor for use of depreciated, contractor-owned property which has been fully depreciated on the contractor's books and records and is being used in the performance of a contract, use allowances may be allowed as a cost of that contract. Use allowances are allowable, if they are computed in accordance with an established industry or government schedule or other method mutually agreed upon by the parties. If a schedule is not used, factors to consider in establishing the allowance are the original cost, remaining estimated useful life, the reasonable fair market value, and the effect of any increased maintenance or decreased efficiency.

E. In accordance with Section A, costs of idle facilities may be allowable for a reasonable period of time, ordinarily not to exceed one year, depending on the initiative taken to use, lease, or dispose of these facilities.

.10 ENTERTAINMENT.

A. Entertainment costs include costs of social activities, and related incidental costs such as meals, beverages, lodging, transportation, and gratuities. Entertainment costs are unallowable.

B. Nothing in these regulations shall make unallowable a legitimate expense for employee morale, health, welfare, food service, or lodging costs; except that, where a net profit is generated by these services, it shall be treated as a credit as provided in Regulation .20. This regulation does not make unallowable costs incurred for meetings or conferences, including, but not limited to, costs of food, rental facilities, and transportation where the primary purpose of incurring the cost is the dissemination of technical information or the stimulation of production.

.11 FINES AND PENALTIES.

Fines and penalties include all costs incurred as the result of violations of, or failure to comply with, federal, State, and local laws and regulations. Fines and penalties are unallowable costs unless incurred as a direct result of compliance with specific provisions of the contract.

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.12 GIFTS, CONTRIBUTIONS, AND DONATIONS.

A gift, contribution, and donation is property transferred to another person without the other person providing return consideration of equivalent value. Gifts, contributions, and donations are unallowable.

.13. LOSSES INCURRED UNDER OTHER CONTRACTS.

A loss is the excess of costs over income earned under a particular contract. Losses may include both direct and indirect costs. A loss incurred under one contract may not be charged to any other contract.

.14 MATERIAL COSTS.

A. Material costs are the costs of all supplies, including raw materials, parts, and components (whether acquired by purchase from an outside source or acquired by transfer from any division, subsidiary, or affiliate under the common control of the contractor), which are acquired in order to perform the contract. Material costs are allowable, subject to Sections B and C. In determining material costs, consideration shall be given to reasonable spoilage, reasonable inventory losses, and reasonable overages.

B. Material costs shall include adjustments for all available discounts, refunds, rebates, and allowances which the contractor reasonably should take under the

circumstances, and for credits for proceeds the contractor received or reasonably should receive from salvage and material returned to suppliers.

C. Allowance for all materials transferred from any division (including the division performing the contract), subsidiary, or affiliate under the common control of the contractor shall be made on the basis of costs incurred by the transferor (determined in accordance with this subtitle), except the transfer may be made at the established price if the price of materials is not determined to be unreasonable by the procurement officer, the price is not higher than the transferor's current sales price to its most favored customer for a similar quantity under similar payment and delivery conditions, and the price is established either by the:

(1) Established catalog price; or

(2) Lowest price offer obtained as a result of a competitive procurement conducted with other businesses that normally produce the item in similar quantities.

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.15 TAXES.

A. Except as limited below, all allocable taxes which the contractor is required to pay and which are paid and accrued in accordance with generally accepted accounting principles are allowable.

B. The following costs are unallowable:

(1) Federal, State, and local income taxes and federal excess profit taxes;

(2) All taxes from which the contractor could have obtained an exemption, but failed to do so, except where the administrative cost of obtaining the exemption would have exceeded the tax savings realized from the exemption;

(3) Any interest, fines, or penalties paid on delinquent taxes unless incurred at the written direction of the procurement officer; and

(4) Income tax accruals designed to account for the tax effects of differences between taxable income and pretax income as reflected by the contractor's books of account and financial statements.

C. Any refund of taxes which were allowed as a direct cost under the contract shall be credited to the contract. Any refund of taxes which were allowed as an indirect cost under

a contract shall be credited to the contract. Any refund of taxes which were allowed as an indirect cost under a contract shall be credited to the indirect cost group applicable to any contracts being priced or costs being reimbursed during the period in which the refund is made.

D. Direct government charges for services, such as water, or capital improvement, such as sidewalks, are not considered taxes and are allowable costs.

.16 COMPENSATION FOR PERSONAL SERVICES.

A. Compensation for personal services includes, but is not limited to salaries, wages, directors' and executive committee members' fees, bonuses (including stock bonuses), incentive awards, employee stock options, employee insurance, fringe benefits, contributions to pension, annuity and management employee incentive compensation plans, allowances for off-site pay, incentive pay, location allowances, hardship pay, and cost of living differential, paid or accrued, in any form.

B. These costs are allowable to the extent that total compensation of

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individual employees is reasonable for services rendered. Compensation is reasonable to the extent that the total amount paid or accrued is commensurate with compensation paid under the contractor's established policy and conforms generally to compensation paid by other firms of the same size, in the same industry, or in the same geographic area, for similar services.

C. Determination should be made that compensation to owners of closely held corporations, partners, sole proprietors, or members of the immediate families thereof, is reasonable for the actual personal services rendered, rather than a distribution of profits.

D. Bonuses and incentive compensation are allowable to the extent that the overall compensation is determined to be reasonable and the costs are paid or accrued pursuant to an agreement entered into in good faith between the contractor and the employees before the services were rendered, or pursuant to an established plan followed by the contractor so consistently as to imply, in effect, an agreement to make payment.

E. Deferred Compensation.

(1) Deferred compensation includes all remuneration, in whatever form, for which the employee is not paid until after the lapse of a stated period of years or the occurrence of other events as provided in the plans, except that it does not include normal end of accounting period accruals. It includes contributions to pension, annuity, stock bonus,

and profit sharing plans, contributions to disability, withdrawal, insurance, survivorship, and similar benefit plans, and other deferred compensation, whether paid in cash or in stock.

(2) Deferred compensation is allowable to the extent that it is:

(a) Reasonable;

(b) Paid pursuant to an agreement between the contractor and employees before the services are rendered or pursuant to a plan established and consistently applied; and

(c) Deductible for the same fiscal year for federal income tax purposes.

F. Costs of fringe benefits, such as pay for vacations, holidays, sick leave, military leave, employee insurance, and supplement unemployment benefit plans, are allowable to the extent required by law, employer-employee agreement, or an established policy of the contractor.

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.17 RENTAL AND LEASING COSTS FOR ORGANIZATIONS UNDER COMMON CONTROL.

A. Charges in the nature of rent between any division, subsidiary, or organization under common control are allowable to the extent the charges do not exceed the allowable costs of ownership of the lessor. In determining the cost of ownership, items such as depreciation, taxes, insurance, and maintenance, shall be considered.

B. Rental costs of personal property leased from any division, subsidiary, or organization under common control which has an established practice of leasing the same or similar property to unaffiliated leases, are allowable provided that they are reasonable. Factors to be considered with respect to reasonableness may include rental costs of comparable property, market conditions in the area, the type, life expectancy, condition, and value of the property leased, and other alternatives available.

.18 REIMBURSEMENT FOR DIRECT EXPENSES.

Direct expenses include meal subsistence, vehicle mileage, other transportation costs, lodging and certain other direct expenses. Direct reimbursement of necessary expenses, if provided for by the procurement officer, are allowable only to the level of the actual costs of the necessary expense, but may not be more liberal than the current State Standard Travel Regulations unless approved in writing by the Secretary of Budget and Fiscal Planning before expenditure.

.19 COSTS REQUIRING PRIOR APPROVAL TO BE ALLOWABLE AS DIRECT COSTS.

A. General. The costs described in this regulation are allowable as direct costs to cost-reimbursement type contracts to the extent that they have been approved in advance by the procurement officer. In other situations, the allowability of these costs shall be determined in accordance with general standards set out in these cost principles.

B. Pre-Contract Costs. Pre-contract costs are those incurred in anticipation of, and prior to, the effective date of the contract. These costs are allowable to the extent that they would have been allowable if incurred after the date of the contract. In the case of a cost-reimbursement type contract, a special provision shall be inserted in the contract setting forth the period of time and maximum amount of cost which will be covered as allowable pre-contract costs.

C. Bid and Proposal Costs. Bid and proposal costs are the costs incurred in

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preparing, submitting, and supporting bids and proposals. Reasonable ordinary bid and proposal costs are allowable as indirect costs in accordance with these cost principles regulations. Bid and proposal costs are allowable as direct costs only to the extent that they are specifically permitted by a provision of the contract or solicitation document. When bid and proposal costs are allowable as direct costs, to avoid double accounting, the same bid and proposal costs may not be charged as indirect costs.

D. Insurance.

(1) Ordinary and necessary insurance costs are normally allowable as indirect costs. Direct insurance costs are the costs of obtaining insurance in connection with performance of the contract or contributions to a reserve account for the purpose of self-insurance. Self-insurance contributions are allowable only to the extent of the cost to the contractor to obtain similar insurance.

(2) Insurance costs may be approved as a direct cost only if the insurance is specifically required for the performance of the contract.

(3) Actual losses which should reasonably have been covered by permissible insurance or were expressly covered by self-insurance are unallowable unless the parties expressly agree otherwise in the terms of the contract.

E. Litigation Costs. Litigation costs include all filing fees, legal fees, expert witness fees, and all other costs involved in litigating claims in court or before the Appeals Board or

the Board. Litigation costs incident to the contract are allowable as indirect costs in accordance with these cost principles regulations except that costs incurred in litigation by or against the State are unallowable.

.20 APPLICABLE CREDITS.

A. Definitions and Examples. Applicable credits are receipts or price reductions which offset or reduce expenditures allocable to contracts as direct or indirect costs. Examples include purchase discounts, rebates, allowances, recoveries or indemnification for losses, sale of scrap and surplus equipment and materials, adjustments for overpayments or erroneous charges, and income from employee recreational or incidental services and food sales.

B. Reducing Costs. Credits shall be applied to reduce related direct or indirect costs.

C. Refund. The State shall be entitled to a cash refund if the related expenditures have been paid to the contractor under a cost-reimbursement type contract.

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.21 ADVANCE AGREEMENTS.

A. Purpose. Both the State and the contractor should seek to avoid disputes and litigation arising from potential problems by providing in the terms of the solicitation and the contract the treatment to be accorded special or unusual costs which are expected to be incurred.

B. Form Required. Advance agreements may be negotiated either before or after contract award, depending upon when the parties realize the cost may be incurred, but shall be negotiated before a significant portion of the cost covered by the agreement has been incurred. Advance agreements shall be in writing executed by both contracting parties, and incorporated in the contract.

C. Limitation on Costs Covered. An advance agreement may not provide for any treatment of costs inconsistent with these cost principles regulations unless a determination has been made pursuant to Regulation .23.

.22 USE OF FEDERAL COSTS PRINCIPLES.

A. Cost Negotiations. In dealing with contractors operating according to federal cost principles, such as Defense Acquisition Regulations, Section 15, or Federal Procurement Regulations, Part 1-15, the procurement officer, after notifying the contractor, may use the federal cost principles as guidance in contract negotiations, subject to Section B.

B. Incorporation of Federal Cost Principles; Conflicts Between Federal Principles and this Subtitle. All requirements set forth in federal assistance instruments applicable to contracts let by the State under a federal assistance program shall be satisfied. Therefore, to the extent that the cost principles which are specified in the assistance instrument conflict with the cost principles issued pursuant to this subtitle, the former shall control.

.23 AUTHORITY TO DEVIATE FROM COST PRINCIPLES.

When the best interest of the State would be served by a deviation, the procurement officer may deviate from the cost principles set forth in these regulations, if a written determination is made by the procurement officer specifying the reasons for the deviation. A copy of the determination shall be filed promptly with the agency head and the determination shall be effective only upon approval by the agency head and upon incorporation into the contract. However, all costs shall be reasonable, lawful, allocable, and accounted for in accordance with generally accepted accounting principles to be reimbursed, and a deviation may not contravene this principle. After approval of the determination by the agency head, and the appropriate control authority, a copy of the determination shall be forwarded to the Board for informational purposes.