



845-434-5750  
Fax: 845-434-4806

**SULLIVAN**  
COUNTY COMMUNITY COLLEGE  
S · U · N · Y

September 18, 2014

To Whom It May Concern:

You are invited to submit a proposal on the attached specifications for RFP:  
DEVELOPMENT OF SUNY SULLIVAN WEBSITE to be submitted by 3:30 p.m. on Monday,  
November 3, 2014.

No proposal will be considered unless the Proposal Form attached to our Proposal and  
Specifications Document is properly completed, signed, and returned to the College no later than  
3:30 p.m., Monday, November 3, 2014.

Please return the SEALED PROPOSAL in the return envelope provided, or if returning in  
your own envelope, please mark on the outside of the envelope: RFP: DEVELOPMENT OF  
SUNY SULLIVAN WEBSITE to be submitted by 3:30 p.m. on Monday, November 3, 2014.

If you should have any technical questions regarding this proposal please contact our  
Director of Information Technology, Cheryl Welsch at 845-434-5750, extension 4488.

If you should have any questions regarding this request for proposal they may be directed  
to Lorry-Lynn Irwin, at 845-434-5750, extension 4267.

Very truly yours,

*Lorry-Lynn Irwin*

Lorry-Lynn Irwin  
T.A.I/Purchasing Services

LI  
Encs.

LEGAL NOTICE

SULLIVAN COUNTY COMMUNITY COLLEGE

Sealed proposals for the following will be received in the Office of Purchasing Services at Sullivan County Community College, 112 College Road, Loch Sheldrake, New York 12759 (845) 434-5750, extension 4267 until 3:30 p.m. on Monday, November 3, 2014.

**RFP: DEVELOPMENT OF SUNY SULLIVAN WEBSITE**

Information and specifications may be obtained from the Purchasing Services Office at the above address or online at <http://www.sunysullivan.edu/purchasing/>. All proposals are subject to terms and conditions therein set forth.

Stephen M Mitchell, PhD  
Associate Vice President for Planning,  
Human Resources and Facilities

SULLIVAN COUNTY  
COMMUNITY COLLEGE  
112 COLLEGE ROAD  
LOCH SHELDRAKE  
NEW YORK, 12759

**RFP PROPOSAL:**

DEVELOPMENT OF SUNY SULLIVAN WEBSITE

**RFP SPECIFICATION:**

TO PROVIDE A PROPOSAL FOR THE DEVELOPMENT OF A NEW WEBSITE FOR SULLIVAN COUNTY COMMUNITY COLLEGE AS PER OUR ORIGINAL SPECIFICATIONS.

**PUBLISHED IN THE FOLLOWING NEWSPAPERS ON THE DATE INDICATED:**

SULLIVAN COUNTY DEMOCRAT, TUESDAY, SEPTEMBER 30, 2014, ONE TIME ONLY  
TIMES HERALD RECORD, WEDNESDAY, OCTOBER 1, 2014, ONE TIME ONLY

**PROPOSALS DUE: MONDAY AT 3:30 PM ON NOVEMBER 3, 2014**

**IN BUILDING H, IN THE H048 CONFERENCE ROOM FOR THE ASSOCIATE VICE PRESIDENT FOR PLANNING, HUMAN RESOURCES AND FACILITIES.**

## REQUEST FOR PROPOSAL (RFP) INFORMATION

Issue Date: September 18, 2014      RFP# 09182014

Title: **RFP: DEVELOPMENT OF SUNY SULLIVAN WEBSITE**

Issuing College, Address

And Location of Work:      Sullivan County Community College  
112 College Road  
Loch Sheldrake, NY 12759

Period of Contract: Single Project Services

All inquiries for information regarding this proposal should be directed to:  
Cindy Bennedum-Kashan the Vice President for Advancement, Partnerships, and Community Learning  
at 845-434-5750, extension 4213.

All inquiries regarding proposal forms or documents should be directed to:  
Lorry-Lynn Irwin, TAI/Purchasing Services at 845-434-5750, extension 4267

**IF PROPOSALS ARE MAILED, SEND DIRECTLY TO THE PURCHASING DEPARTMENT AT THE ADDRESS SHOWN ABOVE. IF PROPOSALS ARE HAND DELIVERED, DELIVER TO:**  
Sullivan County Community College, Attn: Lorry Lynn Irwin, 1<sup>st</sup> Floor, Room H047E, 112 College Road, Loch Sheldrake, NY 12759

Sealed proposals for furnishing the services described herein will be received until 3:30 p.m. local time on November 3, 2014. **Proposals must reach the above address by the deadline stated. Late proposals will not be accepted. The use of mail or delivery service is at the risk of the proposer.**

In compliance with this Request For Proposal, which includes all provisions and appendices attached and referenced therein, and subject to all the terms and conditions set forth herein, the undersigned offers and agrees to furnish the services described in the RFP cited above and submit this signed proposal which includes this completed and signed page, and other data as required by the RFP. It is understood that this proposal and the scope of services may be modified, by mutual agreement in subsequent negotiations.

Company Name: \_\_\_\_\_ Date: \_\_\_\_\_

Address: \_\_\_\_\_ Signature: \_\_\_\_\_

City: \_\_\_\_\_ Printed Name: \_\_\_\_\_

State: \_\_\_\_\_ Zip: \_\_\_\_\_ Title: \_\_\_\_\_

FEIN/SSN #: \_\_\_\_\_ Telephone No.: (\_\_\_\_) \_\_\_\_\_

Email: \_\_\_\_\_

## **SPECIFICATIONS**

### **I. SCOPE**

SUNY Sullivan will be accepting proposals for the redesign and development of a new college website. The winning proposal will present ideas on how a web design firm (provider) will assist the college in going from the “conceptual phase” through completion and implementation – including the handing off of day-to-day content management to college web professionals.

SUNY Sullivan is further compelled to accept multiple proposals on this project due to its crucial nature as a primary communication tool for the college across many platforms – faculty/student/alumni recruiter interfacement/admissions, academic, marketing, events/community/fund-raising and more. Moving forward, the college intends to increase its electronic and technology-based communications, making this a key project, and one that will demand close attention to design, particularly to a new USER INTERFACE, as well as the ability to incorporate new and emerging technologies beyond just “widget” placement.

This RFP outlines the evaluation criteria that SUNY Sullivan will follow for the assessing of all proposals/providers.

### **II. BACKGROUND**

The SUNY Sullivan website ([www.sunysullivan.edu](http://www.sunysullivan.edu)) as it stands today was designed in 2009 by our IT Department and OmniUpdate. It is updated in-house by our IT and marketing departments using the OmniUpdate (OUCampus V9) platform. The site is presently hosted internally, and proposals should include options for external hosting.

SUNY Sullivan’s current website does not reflect the college’s progressive attitude, nor does it communicate the college’s brand effectively. The site suffers from disorganization and convoluted pathways between areas of key data (admissions forms, registration info, financial aid info, etc...).

With 2013 being the first traditional incoming class of freshman who have never lived a day of their lives without the existence of the internet, it is paramount that any redesign of the college site integrates current technology, allows for usage across mobile platforms, and be engineered with user interfaced-in flexibility that will allow it to grow with today’s rapidly changing technology.

All proposers should familiarize themselves with the college by reviewing the current website. In particular, our About section and by perusing our Academic offerings. Other key areas to understand include our divisional pages, residential housing area, college mission, and athletics pages. Sections for current and future students provide crucial info that will need to be repackaged and presented in new, easy to use formats. Consideration of the current presentation method of the course catalog is encouraged, and a successful proposal will be one that develops a solution for best presenting that information and making it as user friendly as possible.

### **III. SCOPE OF SERVICES REQUESTED:**

Proposers should provide an all inclusive proposal. Additional fees not included in your proposal must be itemized and explained. This includes any proposed work that may call for the hiring of sub-contractors, purchase of additional hardware or software, licenses, etc...

The successful proposal will be required to re-design [www.sunysullivan.edu](http://www.sunysullivan.edu) and will consider design-forward branding, and incorporate responsive design. Design must be mobile responsive (based on html 5) and include a simpler mobile web browser version that is optimized for the iPhone, Android, and other smartphones in both tablet and phone layouts. Any new USER INTERFACE must be intuser interfacitive, easily navigable, and function in a manner our demographic is accustomed to.

The successful proposal will lay out a plan for in-house content management, as well as integration with our existing internal systems, which include (but are not limited to) Jenzabar EX ERP system with JICS portal, BlackBoard CMS and Spectrum Services for prospective students.

Additional consideration will go to proposals that include ideas for *non-tuser interfacetion-based* event registration and payments online.

#### **A. CONVERSION**

The successful proposal will include a detailed plan and timeline for launching an overhauled site that accounts for all pages under the [www.sunysullivan.edu](http://www.sunysullivan.edu) umbrella. This conversion would be best planned to take place all at once for a uniform re-launch. However, a gradual plan for conversion for pages of secondary and tertiary importance would also be considered. During the conversion, content for the new site (including text, photos and video) will be created primarily in conjunction with the college's marketing professionals as well as the Vice President for Advancement, Partnerships & Community Learning or hi/her designee(s).

#### **B. TIMELINE**

Proposal Due Date: Monday, November 3, 2014 at 3:30 p.m.

Evaluation of proposals will begin immediately following the due date.

The evaluation process may include the need for interviews with proposers (at the college or via teleconference). The firm with the selected proposal will be notified by once the bid committee makes a decision and the project has obtained all of the appropriate approvals.

Candidates not selected will be notified after the signing of a contract.

Project completion and delivery dates will be laid out after the contract is awarded.

#### **C. TARGET AUDIENCES**

The target audience for the site ranges from current and propsective students to faculty and staff, to community members, SUNY representatives, member of the media, potential donors, alumni and policymakers. An effective site should serve the campus community first, but be a source of info for all of the college's constituents.

#### **D. SERVERS/ HOSTING**

The winning proposal will present a solution for off-campus hosting, which include industry standard control panels and databases (MySQL or MSSQL). The successful proposal will include hosting standards that conform to the following, for either the bidding company or its subcontractor:

##### **1. Availability of Site**

The Contractor will use commercially reasonable efforts to ensure that the site will be available to users a minimum of 99.5% of the time during any 24 hour period, 99.9% of the time during any 7 day period, and 99.9% of the time during any 30 day period (excluding scheduled maintenance).

##### **2. Back Ups**

All hosted content and site structure must be backed up daily to an alternate location.

#### **E. CONTENT MANAGEMENT**

We currently use OmniUpdate Campus 9 as our CMS. Proposals suggesting a new content management system will be considered as long it is an open source, industry standard CMS that is user-friendly, and which will allow college staff to easily manage web content with minimal training and support. While day-to-day web changes will be made in-house, it may be the decision of the college to retain the winning firm's services for major updates and design changes. All content will be provided by, and will remain the property of, the college.

#### **F. SEARCH ENGINE OPTIMIZATION**

Ensure college website exposure by adhering to the latest search engine optimization (SEO) best practices and submitting page and sitemap information to all popular search engines (Google, Bing, Yahoo, et al) while allowing for intuser interfacetive integration with major social media platforms (Facebook, Twitter, YouTube, et al).

#### **G. ADA COMPLIANCE**

The website should be compliant with the requser interfacerelements of the Americans with Disabilities Act. The website should include sensible user interfaces and an intuser interfacetive Section 508-compliant navigation system which presents all pages on the site with a similar look and feel. It should also employ best practices to allow access to people with various abilities while meeting or exceeding Section 508 and ADA guser interfacedelines.

#### **H. TRAFFIC REPORTING**

- Any platform used to set up the site and manage content should allow us easy access to analytics.
- A proposal that includes a solution for trackable recruser interfacetment will be particularly favored.

## **REQUEST FOR PROPOSAL PROCESS AND ADMINISTRATION**

### **IV. PROPOSAL EVALUATION PROCESS**

The proposal evaluation committee will review and rank the proposals submitted using the factors listed below:

- A. Understanding of and approach to the proposed scope of work:
  - i. Submit a clear proposal with your organizational approach with steps stating how the proposer plans to achieve the proposed scope of work
- B. Project Plan
  - i. Submit a project plan including step by step plans with estimated deadlines.
- C. Cost-effectiveness of the proposal
  - i. Include any additional fees that may be required to complete the project.
  - ii. Include a breakdown of costs to show how the proposer achieved their final cost.
- D. Qualifications and relevant experience with respect to the tasks to be performed
  - i. Include recent (past 5 years) experience/history in designing projects within an established "Design-not-to-exceed" budget.
  - ii. Expertise, experience, and qualifications of the proposer's primary designer in each relative discipline for providing the services described in Section III, Scope of Services.
  - iii. Expertise and past experience in providing services on projects of similar size, scope and features as those required on this project.
  - iv. Qualifications and experience of the project manager to be assigned to this project.
  - v. Provide an organizational plan for your company.
  - vi. Give background and details of all those that might be working on the project as well.
  - vii. Expertise, experience and qualifications of any special consultants proposed for providing the services described in Section III, Scope of Services.
- E. Reputation among previous clients
- F. Demonstrated ability to complete all project tasks within the allotted time
  - i. Geographic location of the proposer's office where work will be performed in relation to the project location(s).
  - ii. Commitment of staff resources to the project
  - iii. Schedule of tasks consistent with the project schedule
  - iv. Current and projected work load
  - v. Size of the firm relative to the size of the project(s).

### **V. PROPOSAL REQUIREMENTS:**

- A. A description of the firm/company, including firm name, year established, principal business location and other pertinent information.
- B. The contractor shall procure and maintain at their expense until final payment by the College for services covered by this agreement, insurance in the kinds and amounts stated on Appendix A.



- C. A detailed resume for all who will perform work or supervise personnel performing work on this project.
- D. A description of the project approach to be used to complete the project.
- E. A minimum of five (5) professional references for the firm.
- F. An all inclusive fee.
- G. All documentation submitted with the proposal shall be included in one single bound volume. Elaborate brochures and other representations beyond those sufficient for presenting a complete and effective proposal are neither required nor desired.
- H. Any information thought to be relevant, but not specifically applicable to the enumerated Scope of Work, may be provided as an appendix to the proposal. If publications are supplied by the proposer to respond to a requirement, the response should include reference to the document number and page number. Publications provided without such reference will not be considered relevant to the RFP.
- I. Please list any known possible conflicts of interest in entering into a contract with Sullivan County and/or Sullivan County Community College.
- J. Please provide at least three copies of your proposal as more than one bid committee member may be reviewing the proposals.

SULLIVAN COUNTY COMMUNITY COLLEGE  
112 COLLEGE ROAD  
LOCH SHELDRAKE, NEW YORK 12759

PROPOSAL, SPECIFICATIONS AND PROPOSAL FORM  
FOR THE SALE TO THE SULLIVAN COUNTY COMMUNITY COLLEGE

OF

**DEVELOPMENT OF SUNY SULLIVAN WEBSITE**

1. Pursuant to the provisions of County Law, sealed proposals for the sale to the Sullivan County Community College:

**WILL BE RECEIVED BY THE** Associate Vice President For Planning, Human Resources and Facilities of the Sullivan County Community College, 112 College Road, Loch Sheldrake, New York 12759 until, **3:30 PM on Monday, November 3, 2014.**

2. All proposals must include the official proposal form and enclosed in an envelope which must be sealed and addressed as follows:  
Office of Purchasing Services  
Sullivan County Community College  
112 College Road  
Loch Sheldrake, New York 12759

**RFP: DEVELOPMENT OF SUNY SULLIVAN WEBSITE**

3. Proposals shall hold firm for a period of one year during which time the proposal may not be withdrawn. The successful party, upon award, will be required to enter into a written contract to comply with all of the specifications and conditions herein.
4. Separate proposals may be solicited for DEVELOPMENT OF SUNY SULLIVAN WEBSITE in accordance with the detailed specifications.
5. The RFP price or prices shall include any charges for delivery and installation, if installation is required as set forth in the details in later paragraphs. Delivery and/or installation is to be made as per the attached proposal specifications to Sullivan County Community College, 112 College Road, Loch Sheldrake, New York 12759.
6. The Sullivan County Community College, being tax exempt, will furnish the successful proposer with a Tax Exemption Certificate, wherever required.

7. In determining the qualification of a proposal, the Associate Vice President for Planning, Human Resources and Facilities will consider the record in the performance of any contract in which he may have entered with other Public Bodies, and reserves the right to reject the proposal of such proposer if the record discloses that such proposer, in the opinion of the said Associate Vice President for Planning, Human Resources and Facilities, has not properly performed such contracts pursuant to specifications and/or contracts. The Associate Vice President for Planning, Human Resources and Facilities may make such investigation as he/she deems necessary to determine the ability of the contractor to perform the terms of the specifications and contract, and the contractor shall furnish the Associate Vice President for Planning, Human Resources and Facilities such information for this purpose as the Associate Vice President for Planning, Human Resources and Facilities may request.
8. Should the proposer find discrepancies or omissions in the specifications, he shall at once notify the Associate Vice President for Planning, Human Resources and Facilities, who will send out written instructions to all parties involved. NO oral interpretation of the specifications or other contract documents will be given to any contractor. Every request for such interpretation shall be addressed in writing to the Associate Vice President for Planning, Human Resources and Facilities and to be given consideration, it should be received at least five days prior to the date set for the opening of the proposals. All such interpretation and supplemental instructions will be in the form of written addenda to the specifications, and become a part of the contract documents. Failure to receive any such addenda shall not relieve any proposer from any obligation under his proposal as submitted.
9. Definition of apparatus, articles or materials by name or such specific description is intended only to convey to the contractor or proposer the understanding of the degree of performance, excellence or quality required. Any article or material which will conform substantially to the standards of excellence established in the specifications and is of equal merit, operation, strength, durability, appearance, and ability to perform the required functions, will be deemed eligible for offer. The Associate Vice President for Planning, Human Resources and Facilities, for and in behalf of the Sullivan County Community College, shall be the sole judge as to determine whether equivalents are equal to the items specifically identified.
10. The contractor agrees to comply with all provisions of the Labor Law applicable to this Contract, and, according to the provisions of the General Municipal Law, may not assign said contract or subcontract without written consent of the Associate Vice President for Planning, Human Resources and Facilities of the Sullivan County Community College.

11. In accordance with the provisions of Section 103-A of the General Municipal Law, the following clause is hereby inserted to provide:

“That upon the refusal of a person, when called before a Grand Jury to testify concerning any transaction or contract had with the State, any political subdivision thereof, a public authority or with any public department, agency or official of the State or of any political subdivision thereof or of a public authority, to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract,

(A) Such person, and any firm, partnership or corporation of which he is a member, partner, director, or officer shall be disqualified from thereafter selling to or submitting proposals to or receiving awards from or entering into any contracts with any municipal corporation or any corporation or any public department, agency or official thereof, for goods, work or services, for a period of five years after such refusal, and to provide that

(B) Any and all contracts made with any municipal corporation or any public department, agency or official thereof, since the effective date of this law, be such person, and by any firm, partnership or corporation of which he is a member, partner, director, or officer may be canceled or terminated by the municipal corporation without incurring any penalty or damages on account of such cancellation or termination, but any monies owing by the municipal corporation for goods delivered or work done prior to the cancellation or termination shall be paid.

(C) The proposer states that the proposal was arrived at independently and submitted without collusion with any other proposer or vendor; and further, that the contents of the proposal have not been communicated to any person, other than an employee of the proposer or its surety when a bond is furnished, and that no attempt has been made to induce another person or proposer to submit or not submit a proposal or proposals; and that the statements herein are accurate and true.”
12. If the proposer herein is a corporate proposer, there must be attached hereto a resolution indicating that the submission of this proposal was authorized by the corporation.
13. The Associate Vice President for Planning, Human Resources and Facilities, for and in behalf of the Sullivan County Community College, reserves the right to waive all formalities, to reject any or all proposals, or to accept any proposal or proposals which he/she deems for the best interest of the College.
14. Should a proposal be awarded, oral acceptance will not be honored. A written notice, such as a purchase order and/or written contract (Appendix B) signed by an authorized agent of the College will be necessary.
15. The previous and following pages show detailed specifications and/or requirements together with this proposal form are made a part and parcel of the “PROPOSAL, SPECIFICATIONS, AND PROPOSAL FORM.”

**PROPOSAL FORM**

TO: ASSOCIATE VICE PRESIDENT FOR PLANNING, HUMAN RESOURCES  
AND FACILITIES  
Sullivan County Community College  
112 College Road  
Loch Sheldrake, New York 12759

In accordance with the proposal and specifications, the undersigned submits the following proposal or proposals:

**RFP: DEVELOPMENT OF SUNY SULLIVAN WEBSITE**

**RFP DUE DATE: MONDAY, NOVEMBER 3, 2014 @ 3:30 PM**

**TOTAL AMOUNT OF SERVICES AS PER OUR RFP: \$ \_\_\_\_\_**

\_\_\_\_\_  
NAME OF PROPOSER (PRINT OR TYPE)

\_\_\_\_\_  
SIGNATURE & TITLE

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
CITY, STATE, ZIP

\_\_\_\_\_  
DATE

\_\_\_\_\_  
TELEPHONE NUMBER

**IF THE PROPOSER IS A CORPORATION,  
THE FOLLOWING CERTIFICATION MUST BE COMPLETED:**

I, \_\_\_\_\_, the Secretary of the aforementioned corporation, do hereby certify that the proposal and/or proposals submitted above are duly authorized by a Resolution of the Corporation.

\_\_\_\_\_  
SIGNATURE

PROPOSAL COMPLIANCE FORM

FOR FURTHER INFORMATION

OPENING DATE: NOVEMBER 3, 2014

CALL LORRY-LYNN IRWIN

OPENING TIME: 3:30 P.M.

AT (845) 434-5750 EXT. 4267

COMPLETION DATE: TO BE DETERMINED

BID BOND AMOUNT:

PERFORM BOND AMT.:

BID BOND PERCENT:

PERFORM BOND PERCENT:

IF APPLICABLE, BID AND PERFORMANCE BOND INFORMATION CAN BE FOUND IN THE SUPPLEMENTAL TERMS AND CONDITIONS.

DISCOUNT: PLEASE INDICATE YOUR FIRM'S DISCOUNT FOR PROMPT PAYMENT: (MINIMAL ACCEPTABLE PERIOD IS 20 CALENDAR DAYS)

20 CALENDAR DAYS: \_\_\_\_%

30 CALENDAR DAYS: \_\_\_\_%

OTHER: \_\_\_\_ CALENDAR DAYS: \_\_\_\_%

COMPLIANCE AGREEMENT

I, THE UNDERSIGNED, HAVE READ AND EXAMINED THE GENERAL TERMS, CONDITIONS, ANY SUPPLEMENTAL TERMS AND CONDITIONS, AND THE SPECIFICATIONS OF THIS REQUEST AND AGREE TO COMPLY WITH ALL OF THEM.

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

NAME: \_\_\_\_\_ TITLE: \_\_\_\_\_

COMPANY NAME: \_\_\_\_\_ EIN: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP: \_\_\_\_\_

PHONE: \_\_\_\_\_ FAX: \_\_\_\_\_



NON-COLLUSIVE PROPOSAL CERTIFICATION

By submission of this proposal, each proposer and each person signing on behalf of any proposer certifies, and in the case of a joint proposal, each party thereto certifies as to its own organization, under penalty or perjury, that to the best of knowledge and belief:

1. The prices in this proposal have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other proposer or with any competitor;
2. Unless otherwise required by law, the prices which have been quoted in this proposal have not been knowingly disclosed by the proposer and will not knowingly be disclosed by the proposer prior to opening, directly or indirectly, to any other proposer or to any competitor; and
3. No attempt has been made or will be made by the proposer to induce any other person, partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition.

The person signing this proposal, under the penalties of perjury, affirms the truth thereof.

\_\_\_\_\_  
DATED

(Corporate Seal)

\_\_\_\_\_  
SIGNATURE OF PROPOSER,  
IF INDIVIDUAL

\_\_\_\_\_  
NAME OF CORPORATION

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
CITY, STATE, ZIP

\_\_\_\_\_  
AUTHORIZED SIGNATURE



## APPENDIX A

### INSURANCE REQUIREMENTS:

THE CONTRACTOR SHALL PROCURE AND MAINTAIN AT ITS EXPENSE UNTIL FINAL PAYMENT BY THE COLLEGE FOR SERVICES COVERED BY THIS AGREEMENT, INSURANCE IN THE KINDS AND AMOUNTS HEREINAFTER PROVIDED WITH INSURANCE COMPANIES AUTHORIZED TO DO BUSINESS IN NEW YORK, COVERING ALL OPERATIONS UNDER THIS AGREEMENT, WHETHER PERFORMED BY IT OR ITS AGENTS. BEFORE COMMENCING THE SERVICES AND ON THE RENEWAL OF ALL COVERAGES, THE CONTRACTOR SHALL FURNISH TO THE COLLEGE A CERTIFICATE OR CERTIFICATES **NAMING: THE STATE OF NEW YORK, SULLIVAN COUNTY AND SULLIVAN COUNTY COMMUNITY COLLEGE**, IN FORM SATISFACTORY TO THE COLLEGE SHOWING THAT IT HAS COMPLIED WITH THIS SECTION. ALL CERTIFICATES OF INSURANCE SHALL PROVIDE THAT THIRTY (30) DAYS WRITTEN NOTICE BE GIVEN TO THE ASSOCIATE VICE PRESIDENT FOR PLANNING, HUMAN RESOURCES AND FACILITIES AT SULLIVAN COUNTY COMMUNITY COLLEGE, 112 COLLEGE ROAD, LOCH SHELDRAKE, NEW YORK 12759, BEFORE A POLICY IS CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED. VARIOUS TYPES OF REQUIRED INSURANCE MAY BE WRITTEN IN ONE OR MORE POLICIES. WITH RESPECT TO ALL COVERAGES REQUIRED OTHER THAN WORKERS' COMPENSATION, THE COLLEGE SHALL BE NAMED AN ADDITIONAL INSURED. ALL COVERAGES AFFORDED SHALL BE PRIMARY WITH RESPECT TO OPERATIONS PROVIDED. KINDS AND AMOUNTS OF INSURANCE REQUIRED ARE AS FOLLOWS:

- A. COMMERCIAL GENERAL LIABILITY INSURANCE - A COMMERCIAL GENERAL LIABILITY INSURANCE POLICY WITH COMBINED LIMITS OF LIABILITY FOR BODILY INJURY OR PROPERTY DAMAGE AS FOLLOWS:

\$1,000,000 PER OCCURRENCE  
\$1,000,000 POLICY AGGREGATE  
\$1,000,000 PRODUCTS LIABILITY/COMPLETED OPERATIONS  
\$1,000,000 PERSONAL AND ADVERTISING INJURY  
\$ 50,000 FIRE - LEGAL  
\$ 5,000 MEDICAL PAYMENTS

SAID POLICY OF INSURANCE MUST INCLUDE COVERAGE FOR ALL OPERATIONS PERFORMED FOR THE COLLEGE BY THE CONTRACTOR AND CONTRACTUAL LIABILITY COVERAGE SHALL SPECIFICALLY INSURE THE HOLD HARMLESS PROVISIONS OF THIS AGREEMENT.

- B. AUTOMOBILE LIABILITY INSURANCE - AN AUTOMOBILE LIABILITY POLICY WITH LIABILITY LIMITS IN AMOUNTS NOT LESS THAN \$1,000,000 COMBINED SINGLE LIMIT OF LIABILITY FOR BODILY INJURY, INCLUDING DEATH, AND PROPERTY DAMAGE IN ANY ONE OCCURRENCE. SAID POLICY OF INSURANCE MUST INCLUDE COVERAGE FOR THE USE OF ALL OWNED, NON-OWNED, HIRED AUTOMOBILES, VEHICLES AND OTHER EQUIPMENT BOTH ON AND OFF WORK.
- C. WORKERS' COMPENSATION INSURANCE - WORKERS' COMPENSATION INSURANCE FOR ITS EMPLOYEES IN ACCORDANCE WITH THE PROVISIONS OF THE WORKERS' COMPENSATION ACT OF THE STATE OF NEW YORK.
- D. INCREASED LIMITS - IF, DURING THE TERM OF THIS AGREEMENT, THE COLLEGE REQUIRES THE CONTRACTOR TO INCREASE MAXIMUM LIMITS OF ANY INSURANCE REQUIRED HEREIN, AN APPROPRIATE ADJUSTMENT IN THE CONTRACTOR'S COMPENSATION WILL BE MADE.

## APPENDIX B

### State UNIVERSITY of New York AGREEMENT

Contract No. \_\_\_\_\_

This Agreement made as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, for Contract Number \_\_\_\_\_ by and between Sullivan County Community College, a community college sponsored by The County of Sullivan, New York, with its principal office located at 112 College Rd, Loch Sheldrake NY 12759-4002 hereinafter referred to as "College" and \_\_\_\_\_ having its principal office located at \_\_\_\_\_, hereinafter referred to as "Contractor". The County of Sullivan is hereinafter referred to as "County."

Federal ID or  
Social Security No. \_\_\_\_\_

The College and the Contractor agree as follows:

1. The Contractor shall perform all work and duties required for the construction of Project Number \_\_\_\_\_, titled \_\_\_\_\_, ("Project") as contained in the Contract Documents. Subject to authorized adjustments the work and duties contained in the same shall be completed within \_\_\_\_\_ calendar days starting 10 calendar days after the approval date of the County by duly passed resolution. The Contractor agrees to pay the College liquidated damages in accordance with paragraph 1 of the Proposal for each calendar day of delay in completing the work.
2. The College shall pay and the Contractor shall accept for the performance of work of the above referenced Project, the total contract compensation of \$ \_\_\_\_\_, (in figures), \_\_\_\_\_ (in word)s.

#### ARTICLE I

##### General Provisions

##### Section 1.01 Definitions

Where the following words and expressions are used in the Contract Documents it is understood that they have the meaning set forth as follows:

<b>CONSULTANT</b>	The Architect, Engineer, Landscape Architect, or Surveyor named in the Notice to Bidders or such other person or firm designated by the College, including an employee of the College, to provide general administration of the Contract and inspection of the work, if any.
<b>BIDDING DOCUMENTS</b>	The Notice to Bidders, Information for Bidders and Proposals
<b>BONDS</b>	Performance Bond and Labor and Material Bond
<b>CONTRACT OR CONTRACT DOCUMENTS</b>	The Agreement, Project Manual, Proposal, Bonds, Specifications, Contract Drawings, Addenda issued prior to the opening of bids and Change Orders issued after the award of the Contract.
<b>COLLEGE</b>	Sullivan County Community College
<b>COUNTY</b>	The County of Sullivan, New York
<b>NOTICE OF AWARD</b>	Letter of Intent
<b>PROJECT</b>	The facility or facilities, or improvements thereto to be constructed including all usual, appropriate and necessary attendant work shown on, described in or mentioned in the Contract.
<b>SITE</b>	The area within the Contract limit lines, as shown on the Drawings, and all other areas upon which the Contractor is to perform work.
<b>WORK</b>	The using, performing, installing, furnishing and supplying of all materials, equipment, labor and incidentals necessary or proper for or incidental to the successful completion of the Project and the carrying out of all duties and obligations imposed upon the Contractor by the Contract.
<b>PROVIDE, PROVIDED</b>	Means that the Contractor shall furnish and install all materials and labor for the item so specified.

### **Section 1.02 Captions**

The titles or captions of Articles and Sections of the Contract are intended for convenience and reference purposes only and in no way define, limit or describe the scope or intent thereof or of the Contract or in any way affect the Contract.

### **Section 1.03 Nomenclature**

Materials, equipment or other work described in words which have a well-known, technical or trade meaning shall be interpreted as having such meaning in connection with the Contract.

### **Section 1.04 Contract Documents**

- (1) This agreement
- (2) Exhibit A

The Contract, together with all exhibits thereto, constitutes the entire agreement between the parties hereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and the Contract shall not be changed, modified, or altered in any manner except by an instrument in writing executed by the parties hereto.

### **Section 1.05 Successors and Assigns**

To the extent allowed by the terms of "Exhibit A", the Contract shall bind the successors, assigns and representatives of the parties hereto. The College reserves the right to have the County act on its behalf at any time or duration of this Agreement. Such designation of the County to act on the behalf of the College shall be in writing and addressed to the Contractor and signed by the College.

### **Section 1.06 Accuracy and Completeness of Contract Documents**

- (1) The Contract Documents are complementary and what is called for by any one shall be as binding as if called for by all. The intention of the Documents is to include all materials, plant, equipment, tools, skill and labor of every kind necessary for the proper execution of the work and also those things which may be reasonably inferable from the Contract Documents as being necessary to produce the intended results.
- (2) The Contract Documents contemplate a finished piece of work of such character and quality as is reasonably inferable from them. The Contractor acknowledges that the contract consideration includes sufficient money allowance to make its work complete and operational and in compliance with good practice and it agrees that inadvertent minor discrepancies or omissions or the failure to show details or to repeat on any part of the Contract Documents the figures or notes given on another shall not be the cause for additional charges or claims. In case of a conflict between any part or parts of the Contract Documents with any other part or parts thereof, as contrasted with an omission or failure to show details or to repeat on any part of the Contract Documents the figures or notes given on another part thereof, the following shall be given preference, in the order hereinafter set forth, to determine what work the Contractor is required to perform: (a) Addenda (later dates to take preference over earlier dates); (b) Amendments to Agreement; (c) Agreement; (d) Specifications; (e) Schedules; (f) Large scale detail Drawings (detail drawings having a scale of 3/4" and over); (g) Large scale plan and section Drawings (plan and section drawings having a scale equal to or larger than that used for the basic floor or site plan, as the case may be); (h) Small scale detail Drawings (detail drawings having a scale of less than 3/4"); and (i) Small scale plan and section Drawings (plan and section drawings having a scale less than that used for the basic floor or site plan, as the case may be). In the event of such a conflict between or among parts of the Contract Documents that are entitled to equal preference, the more expensive way of doing the work, the better quality or greater quantity of material shall govern unless the College otherwise directs.

### **Section 1.07 Organization of Contract Documents**

The Specifications and Drawings are generally divided into trade sections for the purpose of ready references, but such division is arbitrary and such sections shall not be construed as the prescription by the Consultant or the College of the limits of the work of any subcontractor or as a determination of the class of labor or trade necessary for the fabrication, erection, installation or finishing of the work required. The Contractor will be permitted to allot the work of subcontractors at its own discretion regardless of the grouping of the Specifications and Drawings. It shall be the Contractor's responsibility to settle definitively with each subcontractor the portions of the work which the latter will be required to do. The College and the Consultant assume no responsibility whatever for any jurisdiction claimed by any of the trades involved in the work.



- (3) Except as otherwise provided in the Contract, the Consultant shall determine the amount, quality, acceptability, fitness and progress of the work covered by the Contract and shall decide all questions of fact which may arise in relation to the interpretation of the plans and Specifications, the performance of the work and the fulfillment by the Contractor of the provisions of the Contract. The Consultant shall in the first instance be the interpreter of the provisions of the Contract and the judge of its performance and it shall use its power under the Contract to enforce its faithful performance.

**Section 2.02 Finality of Decisions**

- (1) Any decision or determination of the Consultant under the provisions of the Contract shall be final, conclusive and binding on the Contractor unless the Contractor shall, within ten (10) working days after such decision, make and deliver to the College a verified written statement of its contention that the decision of the Consultant is contrary to a provision of the Contract. The College shall thereupon determine the validity of the Contractor's contention. Pending decision by the College, the Contractor shall proceed in accordance with the Consultant's decision.
- (2) Wherever it is provided in the Contract Documents that an application must be made to the College and/or determination made by the College, the College's decision on such application and/or its determination under the Contract Documents shall be final, conclusive and binding upon the Contractor unless the same shall be determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary or so grossly erroneous as necessarily to imply bad faith and unless the Contractor, within ten (10) working days after receiving notice of the College's decision or determination, files a written statement with the College and the Consultant that it reserves its rights in connection with the matters covered by said decision or determination.

**Section 2.03 Claims and Disputes**

- (1) If the Contractor claims (i) that any work it has been ordered to do is extra work or (ii) that it has performed or is going to perform extra work or (iii) that any action or omission of the College or the Consultant is contrary to the terms and provisions of the Contract, it shall:
  - a. Promptly comply with such order;
  - b. File with the College and the Consultant, within five (5) working days after being ordered to perform the work claimed by it to be extra work or within five (5) working days after commencing performance of the extra work, whichever date shall be the earlier, or within five (5) working days after the said action or omission on the part of the College or the Consultant occurred, a written notice of the basis of its claim and request a determination thereof;
  - c. File with the College and the Consultant, within thirty (30) calendar days after said alleged extra work was required to be performed or said alleged extra work was commenced, whichever date shall be the earlier, or said alleged action or omission by the College or the Consultant occurred, a verified detailed statement, with documentary evidence, of the items and basis of its claim;
  - d. Produce for the College's examination, upon notice from the College, all its books of account, bills, invoices, payrolls, sub contracts, time books, progress records, daily reports, bank deposit books, bank statements, checkbooks and canceled checks, showing all of its actions and transactions in connection with or relating to or arising by reason of its claim, and submit persons in its employment and in its subcontractors' employment for examination under oath by any person designated by the College to investigate any claims made against the College under the Contract, such examination to be made at the offices of the Contractor; and
  - e. Proceed diligently, pending and subsequent to the determination of the College with respect to any such disputed matter, with the performance of the Contract and in accordance with all instructions of the College and the Consultant.
- (2) The Contractor's failure to comply with any or all parts of subdivision b of paragraph (1) of this Section shall be deemed to be (i) a conclusive and binding determination on its part that said order, work, action or omission does not involve extra work and is not contrary to the terms and provisions of the Contract; and (ii) a waiver by the Contractor of all claims for additional compensation or damages as a result of said order, work, action or omission. The provisions of subdivision b of paragraph (1) of this Section are for the purpose of enabling the College to avoid waste of public funds by affording it promptly the opportunity to cancel or revise any order, change its plans, mitigate or remedy the effects of circumstances giving rise to a claim or take such other action as may seem desirable and to verify any claimed expenses or circumstances as they occur. Compliance with such provisions is essential whether or not the College is aware of the circumstances of any order or other circumstances which might constitute a basis for a claim and whether or not the College has indicated it will consider a claim in connection therewith.
- (3) No person has power to waive or modify any of the foregoing provisions and, in any action against the College to recover any sum in excess of the sum certified by the College to be due under or by reason of the Contract, the Contractor must allege in its complaint and prove at the trial compliance with the provisions of this Section.
- (4) Nothing in this Section shall in any way affect the College's right to obtain an examination before trial or a discovery and inspection in any action that might be instituted by or against the College or the Contractor.

#### **Section 2.04 Omitted Work**

The College reserves the right at any time during the progress of the work to delete, modify or change the work covered by the Contract, by a Change Order thereto providing for either a reduction or omission of any portion of the work, without constituting grounds for any claim by the Contractor for allowances or damages or for loss of anticipated profits and in such event a deduction shall be made from the Contract consideration, the amount of which is to be determined in accordance with the provisions of Section 4.02 of the Agreement.

#### **Section 2.05 Extra Work**

- (1) The College reserves the right at any time during the progress of the work to add, modify or change the work covered by the Contract by a Change Order thereto providing for extra work of either a qualitative or quantitative nature and in such event the Contract consideration shall be increased by an amount to be determined in accordance with the provisions of Section 4.02 of the Agreement and the completion date for all or any part of the work shall be extended for such period of time as may be determined by the College as necessary, because of the extra work, to complete the work or any part thereof.
- (2) Nothing in the Contract Documents shall excuse the Contractor from proceeding with the extra work as directed and, except as otherwise specifically provided for in a Change Order, the terms and conditions of the Contract Documents shall be fully applicable to all extra work.
- (3) The Contractor shall have no claim for extra work if the performance of such work, in the judgment of the Consultant, is made necessary or desirable because of any act or omission of the Contractor which is not in accordance with the Contract.
- (4) Notwithstanding the provisions of Section 2.02 of the Agreement and any other provisions of the Contract Documents to the contrary, the College, after conferring with the Consultant, shall have the right to overrule a determination or decision of the Consultant, that relates to whether certain work is included in the Contract Documents or is extra work, which he or she believes is incorrect; in the event an officer exercises such right, his or her determination or decision shall be final, conclusive and binding upon the Contractor and the College unless the same shall be determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary or so grossly erroneous as necessarily to imply bad faith.

#### **Section 2.06 Contractor to Give Personal Attention**

- (1) The Contractor shall give its constant personal attention to all the work while it is in progress and shall place the working charge of a competent and reliable full-time superintendent acceptable to the Consultant and the College who shall have authority to act for the Contractor and who shall be accountable to the Consultant to the extent provided in the Contract. Unless the superintendent proves to be unsatisfactory to the Contractor and/or ceases to be in Contractor's employ, such superintendent shall not be changed without the written permission of the Consultant and the College.
- (2) When the Contractor and its superintendent are temporarily absent from the site of the work, the Contractor or its superintendent shall designate a responsible supervisory employee to receive such orders as the Consultant or its representative may give. At no time shall any work be conducted on the site in the absence of an individual present who has been so designated by the Contractor or its superintendent as having authority to receive and execute instructions given by the Consultant or its representative.

#### **Section 2.07 Employment of Workers**

The Contractor shall at all times employ competent and suitable workers and equipment sufficient to prosecute all the work to full completion in the manner and time specified. All workers engaged in specially or skilled work shall have had sufficient experience in such work to properly and satisfactorily perform the same. Should the Consultant deem any employee of the Contractor or any subcontractor incompetent, careless, insubordinate or otherwise objectionable or whose continued employment on the work is deemed by the Consultant to be contrary to the public interest, it shall so advise the Contractor and the latter shall dismiss or shall cause the subcontractor, if such employee is employed by the latter, to dismiss such employee and such employee shall not again be employed on the work to be performed under the Contract without obtaining the prior written approval of the Consultant.

The **Contractor** shall adhere to the requirements of Article 8 of the Labor Law of the State of New York and shall require adherence to Article 8 in its agreements with subcontractors and shall enforce such provisions.

In the hiring of employees for the performance of work under this Agreement or any subcontract hereunder, no contractor, subcontractor, nor any person acting on behalf of such contractor or subcontractor, shall by reason of race, creed, color, disability, sex or national origin discriminate against any person or employee of the State of New York who is qualified and available to perform the work to which the employment relates.

#### **Section 2.08 Detailed Drawings and Instructions**

Upon timely notice by the Contractor that supplementary information is required, the Consultant shall furnish additional instructions, by means of Drawings or otherwise, necessary for the proper execution of the work. All such Drawings and instructions shall be consistent with the Contract Documents, true developments thereof and reasonably inferable therefrom. The work shall be executed in conformity therewith and the Contractor shall do no work without proper Drawings and/or instructions.

**Section 2.09 Contract Documents to Be Kept at Site**

The Contractor shall keep at the site of the work a copy of the Drawings and Specifications and shall at all times give the Consultant and the College access thereto.

**Section 2.10 Permits and Building Codes**

The Contractor shall obtain from the proper authorities all permits legally required to carry on its work, pay any and all taxes and fees legally required and shall be responsible for conducting its operations in accordance with the provisions of such permits.

**Section 2.11 Surveys**

- (1) From the data shown on the Drawings and identified at the site by the Consultant, a licensed surveyor, to be designated and paid for by the College, shall establish one (1) fixed bench mark and one (1) fixed base line at the site. The Contractor shall work from the bench marks and base lines shown on the Drawings, identified at the site by the Consultant and established at the site by the aforesaid surveyor and shall establish such supplementary bench marks and base lines that are required in order for it to lay out the work. The Contractor shall be responsible for all measurements that may be required for execution of the work to the exact position and elevation as prescribed in the Specifications, shown on the Drawings, or as the same may be modified at the direction of the Consultant to meet changed conditions or as a result of modifications to the work covered by the Contract.
- (2) The Contractor shall furnish at its own expense such stakes and other required equipment, tools and materials, and all labor as may be required in laying out any part of the work. If, for any reason, monuments are disturbed, it shall be the responsibility of the Contractor to reestablish them, without cost to the College, as directed by the Consultant. The Consultant may require that construction work be suspended at any time when location and limit marks established by the Contractor are not reasonably adequate to permit checking completed work or the work in progress.
- (3) In all multiple-story construction, the Contractor shall establish and maintain line marks at each floor level and grade marks four (4) feet above the finished floor at each floor level.

**Section 2.12 Site Conditions**

- (1) The Contractor acknowledges that it has assumed the risk and that the Contract consideration includes such provision as it deems proper for all physical conditions and subsurface conditions as it could reasonably anticipate encountering from the provisions of the Contract Documents, borings, rock cores, topographical maps and such other information as the College or the Consultant made available to it prior to the College's receipt of bids or from its own inspection and examination of the site prior to the College's receipt of bids.
- (2) In the event that the Contractor encounters subsurface physical conditions or other latent physical conditions at the site differing substantially from those shown on or described or indicated in the Contract Documents and which could not have been reasonably anticipated from the aforesaid information made available by the College or the Consultant or from the Contractor's aforesaid inspection and examination of the site, it shall give immediate notice to the Consultant of such conditions before they are disturbed. The Consultant will thereupon promptly investigate the conditions and, if it finds that they do substantially differ from that which should have been reasonably anticipated by the Contractor, it shall make such changes in the Drawings and Specifications as may be necessary and a Change Order shall be issued, the amount of which shall be determined in accordance with the provisions of Section 4.02, to reflect any increase or decrease in the cost of, or the time required for, performance of the Contract as a result of any of the aforesaid changes made by the Consultant and/or as a result of such unanticipated subsurface conditions.

**Section 2.13 Right to Change Location**

When additional information regarding the subsurface conditions becomes available to the College as a result of the excavation work, further testing or otherwise, it may be found desirable to change the location, alignment, dimensions or grades to conform to such conditions. The College reserves the right to make such reasonable changes in the work as, in its opinion, may be considered necessary or desirable, such changes and any adjustments in the Contract consideration as a result thereof are to be made in accordance with the provisions of Sections 2.04, 2.05 and 4.02 of the Agreement.

**Section 2.14 Unforeseen Difficulties**

Except as otherwise expressly provided in Section 2.12 of the Agreement and in other Sections of the Contract Documents, the Contractor acknowledges that it has assumed the risk and that the Contract consideration includes such provisions as it deems proper for any unforeseen obstacles or difficulties that it may encounter in the performance of the work.

### **Section 2.15 Moving Materials and Equipment**

Should it become necessary, in the judgment of the Consultant, at any time during the course of the work to move materials that are stored on the site and equipment that has been temporarily placed thereon, the Contractor upon request of the Consultant shall move them or cause them to be moved at Contractor's sole cost and expense; provided, however, if materials and equipment have been stored or placed by the Contractor at a location on the site expressly approved, in writing, by the Consultant and the same are moved or caused to be moved by the Contractor at the Consultant's request, such removal shall be deemed extra work and the Contractor shall be compensated therefore in accordance with the provisions of Section 4.02 of the Agreement.

### **Section 2.16 Other Contracts**

- (1) Prior to and during the progress of the work here under the College reserves the right to let other contracts relating to the Project or in connection with work on sites within the Contract limit lines or adjoining or adjacent to that on which the work covered by this Contract is to be performed. In the event such other contracts are let, or have previously been let, the Contractor and such other contractors shall coordinate their work with each other, arrange the sequence of their work to conform with the progressive operation of all the work covered by such contracts and afford each other reasonable opportunities for the introduction and storage of their materials, supplies and equipment and the execution of their work. If the Contractor or such other contractors contend that their work or the progress thereof is being interfered with by the acts or omissions of the other or others or that there is a failure to coordinate or properly arrange the sequence of the work on the part of the Contractor or such other contractors, they shall, within five (5) working days of the commencement of such interference or failure of coordination or failure to perform work in proper sequence, give written notification to the College and the Consultant of such contention. Upon receipt of such notification or on its own initiative, the Consultant shall investigate the situation and issue such instructions to the Contractor or such other contractors with respect thereto as it may deem proper. The Consultant shall determine the rights of the Contractor and of such other contractors and the sequence of work necessary to expedite the completion of all work covered by this Contract in relation to the work covered by said other contracts.
- (2) The Contractor agrees that it has and will make no claim for damages against the College by reason of any act or omission to act by any other contractor or party or in connection with the Consultant's or College's acts or omissions to act in connection with such other contractor, but the Contractor shall have a right to recover such damages from the other contractors under a provision similar to the following provision, which has been or will be inserted in the Contract with such other contractors.
- (3) Should any other contractor, having or who shall hereafter have a contract with the College relating to the Project or in connection with the work on sites adjoining or adjacent to that on which the work covered by this Contract is to be performed, sustain any damage, during the progress of the work hereunder, through any act or omission of the Contractor, the Contractor agrees to reimburse such other contractor for all such damages and it further agrees to indemnify and save harmless the College and the State of New York from all claims for such damages.
- (4) If the proper and accurate performance of the work covered by the Contract depends upon the proper performance and execution of work not included herein or depends upon the work of any other contractor, the Contractor shall inspect and promptly report to the Consultant any defects in such work that render it unsuitable for proper execution and results. Its failure to so inspect and report shall constitute an acceptance of the other contractor's work as fit and proper for the execution of the work covered by the Contract, except as to latent defects that may be discovered thereafter.

### **Section 2.17 Inspection and Testing**

- (1) All materials and workmanship shall be subject to inspection, examination and testing by the Consultant and the College at all times during the performance of the work and at all places where the work is carried on. Except as otherwise herein specified, the College shall pay for the cost of inspection, examination and testing by the Consultant or the College. If, however, the tests and any attendant re-inspection or re-examination prove that the materials and/or work tested do not meet the requirements of the Contract, then the entire cost of such tests is to be borne by the Contractor. The Consultant will have the right to reject defective material and workmanship furnished by the Contractor or require its' correction. The Contractor, without charge therefore, shall satisfactorily and promptly correct all rejected work and replace all rejected material with proper material.
- (2) The Contractor shall promptly segregate and remove from the site of the work all rejected material and work. If the Contractor shall fail to proceed at once with the replacing of rejected material and/or correction of defective workmanship, the College may, by contract or otherwise, replace such material and/or correct such workmanship, and charge the costs thereof to the Contractor and/or it may cancel the Contract and terminate the Contractor's engagement as provided in this Agreement.
- (3) The Contractor, without additional charge therefore, shall promptly furnish all reasonable facilities, labor and materials necessary for the safe and convenient inspection and testing that may be required by the Consultant or the College.
- (4) If the Contract Documents or the Consultant's instructions or the applicable laws, ordinances or regulations of any governmental authority require any part of the work covered by the Contract to be specially tested or inspected, the Contractor shall give the Consultant timely notice of its readiness for such testing or inspection or, if the same is to be performed by a governmental authority, of the date fixed therefore. If any such work, without the written permission of the Consultant, should be covered up prior to such testing or inspection, the Contractor, at its sole cost and expense, must, if directed by the Consultant, uncover the same for testing or inspection and reconstruct the same after the tests or inspection are conducted. All certificates of inspection or testing, involving the Contractor's work, required to be obtained from governmental authorities are to be secured by the Contractor at its sole cost and expense.



- (5) Should it be considered necessary or advisable by the Consultant at any time before final acceptance of the entire work to make an examination of work already completed by removing or tearing out same, the Contractor, upon request, shall furnish all necessary facilities, labor and material to perform such examination. If the work subject to such examination is found to be defective or nonconforming in any manner due to the fault of the Contractor or any of its subcontractors, such uncovering or destruction and necessary reconstruction, even though such includes work not covered in the Contract, shall be at the expense of the Contractor. If, however, such work after testing and examination is found to be satisfactory, the College will pay the Contractor the cost of such uncovering or destruction and reconstruction, such cost to be determined as in the case of extra work as provided in Section 4.02.
- (6) Inspection of material and furnished articles to be incorporated in the work may be made at the place of production, manufacture or shipment unless otherwise stated herein. The inspection of material and workmanship for final acceptance as a whole or in part will be made at the site of the work.

## **Section 2.18 Subcontractors**

- (1) Except for subcontractors designated by the College, or required to be named at any earlier date, pursuant to the provisions of the Information for Bidders, within thirty (30) calendar days after Notice of Award, the Contractor must submit a written statement to the Consultant giving the name and address of all proposed subcontractors. Said statement must contain a description of the portion of the work and materials which the proposed subcontractors are to perform and furnish and any other information tending to prove that the proposed subcontractors have the necessary facilities, skill, integrity, past experience and financial resources to perform the work in accordance with the terms and provisions of the Contract Documents.
- (2) If the Consultant finds that the proposed subcontractors are qualified, it will so notify the Contractor within ten (10) working days after receipt of the aforesaid information. If the determination is to the contrary, however, the Consultant within such period will notify the Contractor of such determination and the latter, unless it decides to do such work itself and is qualified, in the Consultant's opinion, to do such work, must, within ten (10) working days thereafter, submit similar information with respect to other proposed subcontractors.
- (3) The Consultant's approval of a subcontractor and/or the College's designation of a subcontractor pursuant to the provisions of the Contract Documents shall not relieve the Contractor of any of its responsibilities, duties and liabilities hereunder. The Contractor shall be solely responsible to the College for the acts or defaults of such subcontractors and of such subcontractors' officers, agents and employees, each of whom shall, for this purpose, be deemed to be the agent or employee of the Contractor to the extent of its subcontract.
- (4) The Contractor shall be fully responsible for the administration, integration, coordination, direction and supervision of all of its subcontractors and of all work and it shall check all space requirements of the work and coordinate and adjust the same so that conflicts in space do not occur in the work being performed by it with its own employees and with the work being performed by its subcontractors and so that all equipment, piping, wiring, etc., can be installed, where possible, in the spaces allowed for the same.
- (5) No subcontractor shall be permitted to work at the site until (a) it has furnished satisfactory evidence to the Consultant of the insurance required by law; (b) in the case of a Project involving a federal grant, it has furnished satisfactory evidence to the Consultant of the same type and amount of liability insurance as that required of the Contractor by Section 5.06 of the Agreement; and (c) except for subcontractors designated by the College pursuant to the provisions of the Information for bidders, it has been approved by the Consultant.
- (6) Within seven (7) working days after the Contractor receives payment from the College on account of a progress payment application for the percentage of the work done, it shall pay each of its subcontractors the sum contained in said payment for the percentage of said subcontractor's work, less the same amount retained there from by the College under the terms of the Contract Documents or in consequence of any legal proceedings or statutory liens, and less any amounts due the Contractor under the subcontract for work not performed or not properly or timely performed by the subcontractor. In the event any subcontractor is not paid by the Contractor, the former should immediately notify the College of such fact. Notwithstanding the foregoing, no retention or withholding of payment by the College shall affect the Contractor's obligation to pay all subcontractors, agents, employees or other parties for goods or services provided in connection with the work.
- (7) The Contractor shall execute with each of its subcontractors and shall require all subcontractors to execute with their sub-subcontractors a written agreement which shall bind the latter to the terms and provisions of this Contract insofar as such terms and provisions are applicable to the work to be performed by such subcontractors. The Contractor shall require all subcontractors and sub-subcontractors to promptly, upon request, file with the Consultant and the College a copy of such agreements, from which the price and terms of payment may be deleted.
- (8) If for sufficient reason, at any time during the progress of the work to be performed hereunder, the Consultant determines that any subcontractor or sub-subcontractor is unsatisfactory, the Consultant will notify the Contractor accordingly and immediate steps will be taken by the Contractor for cancellation of such subcontract or sub-subcontract. Such termination, however, shall not give rise to any claim by the Contractor or by such subcontractor or sub-subcontractor for loss of prospective profits on work unperformed and/or work unfurnished and a provision to that effect shall be contained in all subcontracts and sub-subcontracts.
- (9) No provisions of this Contract shall create or be construed as creating any contractual relation between the College and any subcontractor or sub-subcontractor or with any person, firm or corporation employed by, contracted with or whose services are utilized by the Contractor.

## **Section 2.19 Shop Drawings and Samples**

- (1) The Contractor, in accordance with the approved Shop Drawing and Sample schedule and with such promptness and in such sequence as to cause no delay in the work, shall submit for the Consultant's approval all Shop Drawings and Samples called for under the Contract or requested by the Consultant.
- (2) Shop Drawings shall establish the actual detail of the work, indicate proper relation to adjoining work, amplify design details of mechanical and electrical equipment in proper relation to physical spaces in the structure, and incorporate minor changes of design or construction to suit actual conditions.
- (3) All Shop Drawings and Samples shall be thoroughly checked by the Contractor for compliance with the Contract Documents before submitting them to the Consultant for approval and all Shop Drawings shall bear the Contractor's recommendation for approval certifying that they have been so checked. Any Shop Drawings submitted without this stamp of approval and certification, and Shop Drawings which, in the Consultant's opinion, are incomplete, contain numerous errors or have not been checked or only checked superficially, will be returned unchecked by the Consultant for resubmission by the Contractor. In checking Shop Drawings, the Contractor shall verify all dimensions and field conditions and shall check and coordinate the Shop Drawings of any section or trade with the requirements of all other sections or trades whose work is related thereto, as required for proper and complete installation of the work.
- (4) Samples must be of sufficient size or number to show the quality, type, range of color, finish and texture of the material. Each Sample shall be properly labeled to show the nature of the material, trade name of manufacturer, name and location of the work where the material represented by the Sample is to be used and the name of the Contractor submitting the Sample. Transportation charges to the Consultant must be prepaid on Samples forwarded to it.
- (5) Shop Drawings and Samples, submitted by the Contractor in accordance with the approved Shop Drawing and Sample schedule, will be reviewed by the Consultant within fifteen (15) working days and if satisfactory will be approved. A Shop Drawing, when approved, will be returned to the Contractor. If not satisfactory, the Drawings and Samples will be appropriately marked and returned to the Contractor for correction thereof, in which event the Contractor shall resubmit to the Consultant a corrected copy of the Shop Drawing or a new Sample, as the case may be. The Contractor shall make any correction required by the Consultant and shall appropriately note any changes or revisions on the Shop Drawing, dated to correspond with the date of the Consultant's request for the change. Upon approval of the Shop Drawing by the Consultant, the Contractor shall promptly furnish to the Consultant as many copies thereof as the Consultant may reasonably request.
- (6) At the time of submission of a Shop Drawing or Sample, the Contractor shall inform the Consultant and the College in writing of any deviation in the Shop Drawing or Sample from the requirements of the Contract Documents. Unless such deviation is specifically noted by the Contractor with a notation that such deviation will result in extra work for which the Contractor requests payment or requires additional time, the Contractor shall be deemed to have waived any claim for extra work, additional compensation or payment or an extension of time with respect to all work shown on, described in or related to the Shop Drawing or Sample.
- (7) The Consultant's approval of Shop Drawings or Samples is for design only and is not a complete check on the method of assembly, erection or construction. Approval shall in no way be construed as: (a) permitting any departure whatsoever from the Contract Documents, except where the Contractor, in accordance with the provisions of paragraph 6 of this Section, has previously notified the College and the Consultant of such departure; (b) relieving the Contractor of full responsibility for any error in quality of materials, details, dimensions, omissions or otherwise that may exist; (c) relieving the Contractor of full responsibility for adequate field connections, erection techniques, bracing or deficiencies in strength; (d) relieving the Contractor of full responsibility for satisfactory performance of all work and coordination with the work of all subcontractors and other contractors; or (e) permitting departure from additional details or instructions previously furnished by the Consultant.
- (8) No work requiring a Shop Drawing or Sample shall be commenced until a Shop Drawing or Sample is approved in writing by the Consultant and all such work shall be: (a) in accordance with the approved Shop Drawing, provided the latter conforms in all respects to the Contract Documents or to such deviations therefrom as have been previously noted by the Contractor in accordance with the provisions of paragraph 6 of this Section; and (b) in conformance in all respects to the sample furnished to and approved by the Consultant and, unless otherwise specified, as new and of good quality.

## **Section 2.20 Equivalents - Approved Equal**

### **A. EQUIVALENTS OR APPROVALS - GENERAL**

- (1) The words "similar and equal to", "or equal", "equivalent", and such other words of similar content and meaning shall, for the purposes of this Contract, be deemed to mean similar and equivalent to one of the named products. For the purposes of subdivisions A and B of this Section and for purposes of the Bidding Documents, the word "products" shall be deemed to include the words "articles", "materials", "items", "equipment" and "methods". Whenever in the Contract Documents one or more products are specified, the words "similar and equal to" shall be deemed inserted.

- (2) Whenever any product is specified in the Contract Documents by a reference to the name, trade name, make or catalog number of any manufacturer or supplier, the intent is not to limit competition, but to establish a standard of quality which the Consultant has determined is necessary for the Project. A Contractor may at its option use any product other than that specified in the Contract Documents provided the same is approved by the Consultant in accordance with the procedures set forth in subdivision B of this Section. In all cases the Consultant shall be the sole judge as to whether a proposed product is to be approved and the Contractor shall have the burden of proving, at its own cost and expense, to the satisfaction of the Consultant, that the proposed product is similar and equal to the named product. In making such determination the Consultant may establish such objective and appearance criteria as it may deem proper that the proposed product must meet in order for it to be approved.
- (3) Nothing in the Contract Document shall be construed as representing, expressly or implicitly, that the named product is available or that there is or there is not a product similar and equal to any of the named products and the Contractor shall have and make no claim by reason of the availability or lack of availability of the named product or of a product similar and equal to any named product.
- (4) The Contractor shall have and make no claim for an extension of time or for damages by reason of the time taken by the Consultant in considering a product proposed by the Contractor or by reason of the failure of the Consultant to approve a product proposed by the Contractor.
- (5) Requests for approval of proposed equivalents will be received by the Consultant only from the Contractor.

#### **B. EQUIVALENTS OR APPROVALS AFTER BIDDING**

- (1) Requests for approval of proposed equivalents will be considered by the Consultant after bidding only in the following cases: (a) the named product cannot be obtained by the Contractor because of strikes, lockouts, bankruptcies or discontinuance of manufacture and the Contractor makes a written request to the Consultant for consideration of the proposed equivalent within ten (10) calendar days of the date it ascertains it cannot obtain the named product; or (b) the proposed equivalent is superior, in the opinion of the Consultant, to the named product; or (c) the proposed equivalent, in the opinion of the Consultant, is equal to the named product and its use is to the advantage of the College, e.g., the College receives an equitable credit, acceptable to it, as a result of the estimated cost savings to the Contractor from the use of the proposed equivalent or the College determines that the Contractor has not failed to act diligently in placing the necessary purchase orders and a savings in the time required for the completion of the construction of the Project should result from the use of the proposed equivalent; or (d) the proposed equivalent, in the opinion of the Consultant, is equal to the named product and less than ninety (90) calendar days have elapsed since the Notice of Award of the Contract.
- (2) Where the Consultant pursuant to the provisions of the subdivision approves a product proposed by a Contractor and such proposed product requires a revision or redesign of any part of the work covered by this Contract, all such revision and redesign and all new Drawings and details required therefore shall be subject to the approval of the Consultant and shall be provided by the Contractor at its own cost and expense.
- (3) Where the Consultant pursuant to the provisions of this Section approves a product proposed by a Contractor and such proposed product requires a different quantity and/or arrangement of duct work, piping, wiring, conduit or any other part of the work from that specified, detailed or indicated in the Contract Documents, the Contractor shall provide the same at its own cost and expense.

#### **Section 2.21 Patents, Trademarks and Copyrights**

The Contractor acknowledges that the Contract consideration includes all royalties, license fees and costs arising from patents or trademarks in any way involved in the work, provided, however, that the Contract consideration shall not be deemed to have included therein any royalty, license fee or cost arising from a patent or trademark for a design prepared by the Consultant and neither the Contractor nor the College shall have any liability in connection therewith. Where the Contractor is required or desires to use any product, device, material or process covered by patent or trademark, the Contractor shall indemnify and save harmless the College and the County all claims, actions, causes of action or demands, for infringement by reason of the use of such patented product, device, material or process, and shall indemnify the College and the State of New York from any cost, liability, damage and expense, including reasonable attorneys' fees and court costs, which it may be obligated to incur or pay by reason of any claim or infringement at anytime both before or after the College's final acceptance of all the work to be performed under the Contract.

#### **Section 2.22 Possession Prior to Completion**

If before the final completion of all the work it shall be deemed advisable or necessary by the College to take over, use, occupy or operate any part of the completed or partly completed work or to place or install therein equipment and furnishings, the College, upon reasonable written notice to the Contractor, shall have the right to do so and the Contractor will not in any way interfere therewith or object to the same. Such action by the College shall in no way affect the obligations of the Contractor under the terms and provisions of the Contract Documents and the Contractor acknowledges that such action by the College does not in any way evidence the completion of the work or any part thereof or in any way signify the College's acceptance of the work or any part thereof, provided, however, that the period for the Contractor's warranties and guarantees under the Contract for the work so occupied or operated shall be deemed to commence on the date said work is occupied or operated. The Contractor agrees to continue the performance of all work covered by the Contract in a manner that will not unreasonably interfere with such takeover, use, occupancy, operation, placement or installation.

## **Section 2.23 Completion and Acceptance**

### **A. PARTIAL COMPLETION AND ACCEPTANCE**

If before the final completion of all the work any portion of the permanent construction has been satisfactorily completed and the same will be immediately useful to the College, the latter may, by written notice, advise the Contractor that it accepts such portion of the work. Such actions by the College shall in no way affect the obligations of the Contractor under the terms and provisions of the Contract with respect to any work not so completed and accepted.

### **B. SUBSTANTIAL COMPLETION**

When all the work covered by the Contract is substantially completed, i.e., has reached such point of completion that the Project can be fully occupied and used for the purposes for which it was intended, the Contractor shall give written notice thereof to the College and the Consultant. Consultant will then promptly make an inspection of the work and, if it shall determine that all the work is substantially completed, it shall so advise the Contractor. Such action shall in no way affect the obligations of the Contractor under the terms and provisions of the Contract with respect to any uncompleted (including untested or deferred work), unaccepted or corrective work or in any way affect, limit or preclude the issuance by the Consultant, from time to time thereafter, of "Punch Lists", i.e., lists of uncompleted or corrective work that the Contractor is to promptly complete and/or correct.

### **C. FULL COMPLETION AND ACCEPTANCE**

After the completion of all the work the Contractor shall give written notice to the College and the Consultant that all the work is ready for inspection and final acceptance. The College and the Consultant shall promptly make such inspection and, if they shall determine that all the work has been satisfactorily completed, the College shall thereupon by written notice advise the Contractor that it accepts such work.

## **Section 2.24 Record Drawings**

- (1) Prior to acceptance by the College of all work covered by the Contract, the Contractor shall furnish to the Consultant one (1) set of current Contract Drawings on which the Contractor has recorded, using colored pencil, in a neat and workmanlike manner, all instances where actual field construction differs from work as indicated on the Contract Drawings. These "Record" Drawings shall show the following information: (a) all significant changes in plans, sections, elevations and details, such as shifts in location of walls, doors, windows, stairs and the like made during construction; (b) all significant changes in foundations, columns, beams, openings, concrete reinforcing, lintels, concealed anchorage and "knock-out" panels made during construction; (c) final location of electric panels, final arrangement of electric circuits and any significant changes made in electrical design as a result of Change Orders or job conditions; (d) final location and arrangement of all mechanical equipment and major concealed plumbing, including, but not limited to, supply and circulating mains, vent stacks, sanitary and storm water drainage; and (e) final location and arrangement of all underground utilities, connections to building and/or rerouting of existing utilities, including, but not limited to, sanitary, storm, heating, electric, signal gas, water and telephone.
- (2) Shop Drawings shall not be acceptable as "Record" Drawings.
- (3) The Contractor agrees to provide Record Drawings on "electronic media" or "hard copy" at the discretion of the College at no extra cost.

## **Section 2.25 Guarantees**

- (1) The Contractor, at the convenience of the College, shall remove, replace and/or repair at its own cost and expense any defects in workmanship, materials, ratings, capacities or characteristics occurring in or to the work covered by the Contract within one (1) year or within such longer period as may otherwise be provided in the Contract, the period of such guarantee to commence with the College's final acceptance of all work covered under the Contract or at such other date or dates as the College may specify prior to that time, and the Contractor, upon demand, shall pay for all damage to all other work resulting from such defects and all expenses necessary to remove, replace and/or repair such other work which may be damaged in removing, replacing or repairing the said defects. The obligations of the Contractor under the provisions of this paragraph or any other guarantee provisions of the Contract Documents are not limited to the monies retained by the College under the Contract.
- (2) Unless such removal, replacement and/or repair shall be performed by the Contractor within ten (10) working days after it receives written notice from the College specifying such defect, or if such defect is of such a nature that it cannot be completely removed, repaired and/or replaced within said ten (10) day period and the Contractor shall not have diligently commenced removing, repairing and/or replacing such defect within said ten (10) day period and shall not thereafter with reasonable diligence and in good faith proceed to do such work, the College may employ such other person, firm or corporation as it may choose to perform such removal, replacement and/or repair and the Contractor agrees, upon demand, to pay to the College all amounts which it expends for such work.

**Section 2.26 Default of Contractor**

- (1) In addition to those instances specifically referred to in other Sections hereof, the College shall have the right to declare the Contractor in default of the whole or any part of the work if:
  - a. The Contractor makes an assignment for the benefit of creditors pursuant to the statutes of the State of New York; or if
  - b. A voluntary or involuntary petition in bankruptcy is filed by or against the Contractor; or if
  - c. A receiver or receivers are appointed to take charge of the Contractor's property or affairs; or if
  - d. The Contractor shall sublet, assign, transfer, convey, or otherwise dispose of the Contract other than as herein specified; or if
- (2) Before the College shall exercise its right to declare the Contractor in default by reason of the conditions set forth in this subsection, it shall give the Contractor three (3) working days' notice of its intention to declare the Contractor in default and unless, within such three (3) day period, the Contractor shall make arrangements, satisfactory to the College, to correct and/or eliminate the conditions set forth in the College's aforesaid notice, the Contractor may be declared in default at the expiration of such three (3) day period or at the expiration of such longer period of time as the College may determine. In addition to those instances specifically referred to above, the College shall have the right to declare the Contractor in default of the whole or any part of the work if, in the sole opinion of the College:
  - a. The Contractor becomes insolvent; or if
  - b. The Contractor fails to commence work when notified to do so by the Consultant; or if
  - c. The Contractor shall abandon the work; or if
  - d. The Contractor shall refuse to proceed with the work when and as directed by the Consultant; or if
  - e. The Contractor shall without just cause reduce its working force to a number which, if maintained, would be insufficient, in the opinion of the College, to complete the work in accordance with the approved time progress schedule, and shall fail or refuse to sufficiently increase such working force when ordered to do so by the Consultant; or if
  - f. The Contractor is or has been unnecessarily or unreasonably or willfully delaying the performance and completion of the work, or the award of necessary subcontracts, or the placing of necessary material and equipment orders; or if
  - g. The work cannot be completed within the time herein provided therefore or within the time to which such completion may have been extended; provided, however, that the impossibility of timely completion is, in the College's opinion, attributable to conditions within the Contractor's control; or if
  - h. The work is not completed within the time herein provided therefore or within the time to which the Contractor may be entitled to have such completed extended; or if
  - i. The Contractor is or has been willfully or in bad faith violating any of the provisions of this Contract; or if
  - j. The Contractor is not or has not been executing the Contract in good faith and in accordance with its terms.
- (3) The right to declare in default for any of the grounds specified or referred to shall be exercised by the College sending the Contractor a written notice setting forth the ground or grounds upon which such default is declared. Upon receipt of notice that it has been declared in default, the Contractor shall immediately discontinue all further operations under the Contract and shall immediately quit the site, leaving untouched all plant, materials, equipment, tools and supplies then on site.
- (4) The College, after declaring the Contractor in default, may then have the work completed by such means and in such manner, by contract, with or without public letting, or otherwise, as it may deem advisable, utilizing for such purpose such of the Contractor's plant, materials, equipment, tools and supplies remaining on the site, and also such subcontractors as it may deem advisable, or it may call upon the Contractor's surety at its own expense to do so.
- (5) In the event that the College declared the Contractor in default of the work or any part of the work, the Contractor, in addition to any other liability to the College hereunder or otherwise provided for or allowed by law, shall be liable to the College for any costs it incurs for additional architectural and engineering services necessary, in its opinion, because of the default and the total amount of liquidated damages from the date when the work should have been completed by the Contractor in accordance with the terms hereof to the date of actual completion of the work, both of which items shall be considered as expenses incurred by the College in completing the work and the amount of which may be charged against and deducted out of such monies as would have been payable to the Contractor or its surety if the work had been completed without a default.
- (6) If the College completes the work, the Consultant shall issue a certificate stating the expenses incurred in such completion, including the cost of re-letting. Such certificates shall be final, binding and conclusive upon the Contractor, its surety, and any person claiming under or through the Contractor, as to the amount thereof.

- (7) The expense of such completion, as so certified by the Consultant, shall be charged against and deducted out of such monies as would have been payable to the Contractor if it had completed the work; the balance of such monies, if any, subject to the other provisions of the Contract, to be paid to the Contractor without interest after such completion. Should the expense of such completion, so certified by the Consultant, exceed the total sum which would have been payable under the Contract if the same had been completed by the Contractor, any such excess shall be paid by the Contractor to the College upon demand.
- (8) In the event the College shall determine to complete the work without calling upon the Contractor's surety to do so, the Contractor shall not be entitled, from and after the effective date of the declaration of the default, to receive any further payment under the Contract until the said work shall be wholly completed and accepted by the College.
- (9) In case the College shall declare the Contractor in default as to a part of the work only, the Contractor shall discontinue such part, shall continue performing the remainder of the work in strict conformity with the terms of the Contract, and shall in no way hinder or interfere with any other contractors or persons whom the College may engage to complete the work as to which the Contractor was declared in default.
- (10) The provisions relating to declaring the Contractor in default as to the entire work shall be equally applicable to a declaration of partial default, except that the College shall be entitled to utilize for completion of the part of the work as to which the Contractor was declared in default only such plant, materials, equipment, tools and supplies as had been previously used by the Contractor on such part.
- (11) In completing the whole or any part of the work, the Consultant and the College shall have the power to depart from, change or vary the terms and provisions of the Contract; provided, however, that such departure, change or variation is made for the purpose of reducing the time or expense of such completion. Such departure, change or variations, even to the extent of accepting a lesser or different performance, shall not affect the conclusiveness of the Consultant's certificate of the cost of completion, nor shall it constitute a defense to any action to recover the amount by which such certificate exceeds the amount which would have been payable to the Contractor hereunder but for its default.
- (12) The provisions of this Section shall be in addition to any and all other legal or equitable remedies provided by this Agreement and otherwise available by law.

#### **Section 2.27 Termination**

- (1) The performance of work under this Contract may be terminated by the College, in whole or in part, whenever the College shall determine that such termination is in the best interest of the College; or in the event any filings or certifications filed by Contractor related to this Agreement are found to be intentionally false or intentionally incomplete. Any such termination shall be effected by a notice in writing to the Contractor specifying the date upon which such termination shall become effective and the extent to which performance of the Contract shall be terminated. Such termination shall be effective on the date and to the extent specified in said notice.
- (2) Upon receipt of a notice of termination, and except as otherwise directed in writing by the College, the Contractor shall:
  - a. Discontinue all work and the placing of all orders for materials and facilities otherwise required for the performance thereof;
  - b. Cancel all existing orders and subcontracts to the extent such orders and subcontracts relate to the performance of work terminated by the notice of termination;
  - c. Take such actions as may be necessary to secure to the College the benefits of any rights of the Contractor under orders or subcontracts which relate to the performance of work terminated by the notice of termination, including, but not limited to, the assignment to the College, in the manner and to the extent directed by the College, all the right, title and interest of the Contractor under the orders or subcontracts so terminated and canceled. In the event of such assignment, the College shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination and cancellation of such orders and subcontracts;
  - d. Transfer title and deliver to the College, in accordance with the direction of the College, all materials, supplies, work in process, facilities, equipment, machines or tools produced as a part of or acquired by the Contractor in connection with the work terminated by said notice, and all plans, Drawings, Working Drawings, sketches, Specifications and information for use in connection therewith; provided, however, that the Contractor may retain any of the foregoing if it so elects and forgoes reimbursement therefore;
  - e. Take such action as may be necessary or as the Consultant or the College may prescribe for the protection and preservation of all property in the possession or control of the Contractor in which the College, under the provisions of the Contract, has or may acquire an interest.
- (3) Notwithstanding the foregoing, should the notice of termination relate to only a portion of the work covered by the Contract, the Contractor will proceed with the completion of such portions of the work as are not terminated.
- (4) The College will pay and the Contractor shall accept, in full consideration for the performance and completion of the portions of the work as are not terminated, a sum calculated by determining the percentage the portions of the work not terminated bear to the total amount of the work covered by the Contract, and by multiplying the Contract consideration by such percentage the product thereof being the amount to be paid to the Contractor. The College shall determine the amount of such consideration in accordance with the foregoing.

- (5) Upon compliance by the Contractor with the foregoing provisions of this Section and subject to deductions for payments previously made, the College, for the portions of the work terminated, shall compensate the Contractor as follows:
  - a. By reimbursing the Contractor for actual expenditures made with respect to such work, including expenditures made in connection with any portion thereof which may have been completed prior to termination, as well as expenditures made after termination in completing those portions of the work covered by the Contract which the Contractor may have been required by the notice of termination to complete. The College shall determine the allocability and amount of such expenditures.
  - b. By reimbursing the Contractor for all actual expenditures made, with the prior written approval of the College or pursuant to a court judgment, in settling or discharging any outstanding contractual obligations or commitments incurred or entered into by the Contractor in good faith with respect to the Contract and resulting from the termination thereof.
  - c. By reimbursing the Contractor for all actual expenditures made after the effective date of the notice of termination resulting from or caused by the Contractor taking necessary action or action prescribed by the Consultant or the College for the protection and preservation of all property in the possession or control of the Contractor in which the College, under the provisions of the Contract, has or may acquire an interest.
  - d. By paying the Contractor a markup, which is to be calculated in the same manner as that provided for in subdivision c of paragraph (1) of Section 4.02 for extra work, on the foregoing expenditures, which markup is to cover the Contractor's overhead and profit; provided, however, that if it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, said markup shall be reduced by one-third.
- (6) The sum of all amounts payable under this Section, plus the sum of all amounts previously paid by the College under the provisions of the Contract, shall not exceed the amount of the Contract consideration. In no event shall the Contractor be entitled to any payment for loss of anticipated profits on uncompleted work and the College shall not be liable for the same.
- (7) Termination by the College under the provisions of this Section shall be without prejudice to any claims or rights which the College may have against the Contractor. The College may retain from the amount due to the Contractor under the provisions of this Section such monies as may be necessary to satisfy any claim that the College may have against the Contractor in connection with the Contract; provided, however, that the College's failure to retain such monies shall not be deemed a waiver of any of its rights or claims against the Contractor.
- (8) Notwithstanding the foregoing, where the Contractor and the Consultant may agree upon another method of determining the amount of the consideration to be paid to the Contractor under the provisions of the Section, such method, subject to the approval of the College, may, at the option of the College, be substituted for the method set forth above.

### **ARTICLE III**

#### **Time of Performance**

##### **Section 3.01 Commencement, Prosecution and Completion of Work**

- (1) The Contractor agrees that it will begin the work referenced in this Agreement within ten (10) calendar days after the County approves the Contract by written resolution and that it will prosecute the same with such diligence that all work covered by the Contract shall be entirely completed and performed on or before the time specified on page A-1 of the Agreement.
- (2) The Contractor further agrees that time is of the essence in this Contract and that the work shall be prosecuted in such manner and with sufficient plant and forces to complete all the work by the specified completion date.

##### **Section 3.02 Time Progress Schedule**

- (1) Within thirty (30) calendar days after receipt of the Notice of Award, the Contractor, unless otherwise directed by the College, shall submit to the College and the Consultant for their approval its proposed working plan and schedule for its first ninety (90) calendar days of operation. The working plan and schedule shall be in the form of suitable charts, diagrams or bar graphs and shall be based on the Contractor's logic and time estimates. Such plan and schedule shall be sufficiently detailed to show clearly, in sequence, all salient features of the work of each trade including: the anticipated time of commencement and completion of such work and the interrelationship between such work, submission of Shop Drawings and Samples for approval, approval of Shop Drawings and Samples, placing of orders of materials, fabrication and delivery of materials, installation and testing of materials, contiguous or related work under other contracts, and other items pertinent to the work.
- (2) Within ninety (90) calendar days after receipt of the Notice of Award, the Contractor, unless otherwise directed by the College, shall submit to the College and the Consultant for their approval its proposed working plan and schedule for all the work covered by the Contract. Said proposed working plan and schedule shall be prepared in accordance with the form and requirements set forth in the preceding paragraph.
- (3) The aforesaid proposed working plan and schedule shall be revised by the Contractor until they are satisfactory to the College and the Consultant, and the same shall be periodically revised thereafter and submitted by the Contractor to the College and the Consultant for approval at such time or times as the College or the Consultant may request.

- (4) The proposed working plan and schedule, including any revision or revisions thereof, when approved by both the College and the Consultant shall be known as the time progress schedule. The time progress schedule, as the same may be revised from time to time by the Contractor and approved by the College and the Consultant, shall be strictly adhered to by the Contractor.
- (5) If through the fault of the Contractor or any subcontractor the Contractor shall fail to adhere to the time progress schedule, it must promptly adopt such other and additional means and methods of construction as will make up for the time lost and will assure completion in accordance with such schedule.
- (6) The College's or the Consultant's approval of the Contractor's time progress schedule or of its time, means and/or methods of construction, including any revisions thereof, and/or their failure to reject the same shall not relieve the Contractor of its obligation to accomplish the result required by the Contract, nor shall the exercise of such right to reject, create or give rise to any claim, action or cause of action, legal, equitable or otherwise, against the Consultant or the College.

### **Section 3.03 Time Schedule for Shop Drawings and Samples**

- (1) Within sixty (60) calendar days after the date specified for the commencement of the work, the Contractor, unless otherwise directed by the Consultant, shall submit to the latter for approval a proposed time schedule covering the preparation and submission of all Shop Drawings and Samples. The proposed schedule will be revised by the Contractor until it is satisfactory to the Consultant and it shall be periodically revised thereafter and submitted by the Contractor to the Consultant for approval at such time or times as the Consultant may request.
- (2) The aforesaid schedule, as the same may be revised from time to time by the Contractor, after approval by the Consultant, shall be strictly adhered to by the Contractor.

### **Section 3.04 Notice of Conditions Causing Delay**

- (1) Within ten (10) working days after the commencement of any condition which is causing or may cause delay in completion, the Contractor must notify the Consultant and the College in writing of the effect, if any, of such condition upon the time progress schedule, and must state why and in what respects, if any, the condition is causing or may cause such delay.
- (2) Failure to strictly comply with this requirement may, in the discretion of the College, be deemed sufficient cause to deny any extension of time on account of delay in completion arising out of or resulting from any change, extra work, suspension, or other condition.

### **Section 3.05 Extension of Time**

- (1) An extension or extensions of time for the completion of the work may be granted by the College subject to the provisions of this Section, but only upon written application therefore by the Contractor to the College and the Consultant.
- (2) An application for an extension of time must set forth in detail the source and the nature of each alleged cause of delay in the completion of the work, the date upon which each such cause of delay began and ended and the number of days of delay attributable to each of such causes. It must be submitted prior to completion of the work.
- (3) If such an application is made, the Contractor shall be entitled to an extension of time for delay in completion of the work caused solely: (a) by the acts or omissions of the College, its trustees, officers, agents or employees; or (b) by the acts or omissions of other contractors, not including subcontractors of the Contractor, on this Project; or (c) by unforeseeable supervening conditions entirely beyond the control of either party hereto (such as, but not limited to, acts of God or the public enemy, war or other national emergency making performance temporarily impossible or illegal, or strikes or labor disputes).
- (4) The Contractor shall, however, be entitled to an extension of time for such causes only for the number of calendar days of delay which the College may determine to be due solely to such causes, and then only if the Contractor shall have strictly complied with all of the requirements of this Section and Section 3.04. The College shall make such determination within ninety (90) calendar days after receipt of the Contractor's application for an extension of time; provided, however, said application complies with the requirements of this Section.
- (5) The Contractor shall not be entitled to receive a separate extension of time for each one of several causes of delay operating concurrently, but, if at all, only for the actual period of delay in completion of the work as determined by the College, irrespective of the number of causes contributing to produce such delay. If one of several causes of delay operating concurrently results from any act, fault or omission of the Contractor or of its subcontractors or material men, and would of itself (irrespective of the concurrent causes) have delayed the work, no extension of time will be allowed for the period of delay resulting from such act, fault or omission.
- (6) The granting of an application for an extension of time for causes of delay other than those herein referred to shall be entirely within the discretion of the College.
- (7) If the Contractor shall claim to have sustained any damages by reason of delays, extraordinary or otherwise, or hindrances which it claims to be due to any action, omission, direction or order by the College or the Consultant, the Contractor shall be entitled only to an extension of time as hereinabove provided and shall not have or assert any claim or prosecute any suit, action, cause of action or proceeding against the College based upon such delays or hindrances, unless such delays or hindrances were caused by the College's bad faith or its willful, malicious, or grossly negligent conduct, or un-contemplated delays, or delays so unreasonable that they constitute an intentional abandonment of the contract by the College, or delays resulting from the College's breach of a fundamental obligation of the contract.



### **Section 3.06 Contractor's Progress Reports**

After commencement of the work the Contractor shall furnish the Consultant with written monthly reports setting forth the condition and general progress of the work, the percentage of each part of the work that has been finished, those parts of the work that have been completed within the scheduled time and those parts of the work which have not been finished within the scheduled time, and the general progress of the work that is being performed away from the site and the approximate date when such work will be finished and delivered to the site.

## **ARTICLE IV**

### **Payment**

#### **Section 4.01 Compensation to Be Paid Contractor**

The College shall pay to the Contractor and the latter shall accept as full and complete payment for the performance of this Contract, subject to additions or deductions as provided herein, the sum indicated on page 1 of this Agreement which sum is the amount of the total contract compensation. The Contractor shall provide complete and accurate billing invoices to the College in order to receive payment for its services. Billing invoices submitted to the College must contain all information and supporting documentation required by the College and the County. **Payment for invoices submitted by the Contractor shall only be rendered electronically** unless payment by paper check is expressly authorized by the College due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary College procedures and practices. The Contractor shall comply with the College procedures to authorize electronic payments. The Contractor acknowledges that it will not receive payment on any invoices submitted under this Agreement if it does not comply with the College's electronic payment procedures, except where the College has expressly authorized payment by paper check as set forth above.

#### **Section 4.02 Value of Omitted and Extra Work**

- (1) The amount by which the Contract consideration is to be increased or decreased by any Change Order shall be determined by the College by one or more of the following methods:
  - a. By accepting an amount agreed upon by both parties, which amount is to be calculated in a manner similar to that provided in subdivision c hereof.
  - b. By applying the applicable price or prices set forth in the attached Schedule "I" of this Agreement or by applying a unit price agreed to by both parties. Subject to the provisions of Sections 4.04, this method must be used if the Contract Documents contain applicable unit prices.
  - c. By estimating the fair and reasonable cost of: (i) labor, including all wages, required wage supplements and insurance required by law (workers' compensation, social security, disability, unemployment, etc.) paid to or on behalf of foremen, workers and other employees below the rank of superintendent directly employed at the site of the Project; (ii) materials; and (iii) equipment, excluding hand tools, which, in the judgment of the College, would have been or will be employed exclusively and directly on the omitted work or extra work, as the case may be; and, in the case of extra work, where the same is performed directly by the Contractor, by adding to the total of such estimated costs a sum equal to 15 percent thereof, but, where the extra work is performed by a subcontractor, by adding a sum equal to 15 percent of said costs for the benefit of such subcontractor, and by adding, for the benefit of the Contractor (no further allowance will be made where extra work is performed by the sub-subcontractor), an additional sum equal to 10 percent of the first \$10,000 of the above-estimated costs, including the subcontractor's percentage override, plus 5 percent of the next \$90,000 of the total of said items, plus 3 percent of any sum in excess of \$100,000 of the total of said items. For the purposes of the aforesaid percentage overrides, the words "extra work" shall be defined as a complete item of added, modified or changed work as described in the Consultant's written instructions to the Contractor. Such "extra work" may include the work of one or more trades and/or subcontractors or sub-subcontractors and shall include all labor, materials, plant, equipment, tools and all incidentals directly and/or indirectly necessary, related, involved in or convenient to the successful completion of the extra work item. Where the Consultant's aforesaid written instructions to the Contractor involve both an increase and a reduction in similar or related work, the above percentage overrides will be applied only on the amount, if any, the cost of the increased work exceeds the cost of the reduced work.

All profit, overhead and expense of whatsoever kind and nature, other than those set forth above in items (i) through (iii), of the Contractor, its subcontractors and sub-subcontractors, are covered by the aforesaid percentage overrides and no additional payment therefore will be made by the College. The College may make such cost estimate either before or after the extra work is completed by the Contractor.
  - d. By determining the actual cost of the extra work in the same manner as in the above subdivision c except that actual costs of the Contractor shall be utilized in lieu of estimated costs. The College shall have the option of utilizing this method provided it notifies the Contractor of its intent to do so prior to the time the Contractor commences performance of such extra work.
- (2) Irrespective of the method used or to be used by the College in determining the value of a Change Order, the Contractor, within fifteen (15) working days after a request for the same, must submit to the College and the Consultant a detailed breakdown of the Contractor's estimate of the value of the omitted and/or extra work.

- (3) For the purposes of paragraph (1) hereof, the cost of equipment shall be determined, irrespective of the actual price for any rental or actual cost associated with such equipment and irrespective of whether the equipment is or is not owned by the Contractor, as follows: (a) for the first 40 hours of use by taking the monthly rate listed in the "Green Book" (the publication of the Associated Equipment Distributors of Oakbrook, Illinois) and dividing the same by 176 hours to establish an hourly rate and then multiplying such hourly rate by the actual number of hours that the equipment was used; and (b) for any period of time in excess of the first 40 hours of use by taking 50 percent of the hourly rate established in accordance with the above for equipment used for periods of less than 40 hours, and then multiplying such rate by the actual number of hours in excess of 40 hours that the equipment was used. In the event that the "Green Book" does not list the item of equipment used, the applicable rate shall be determined in the same manner as that set forth above except that the monthly rate shall be that set forth in the "Blue Book" (published by Equipment Guidebook Co. of Palo Alto, California). If no listing or rates for an item of equipment is contained in either the "Green Book" or the "Blue Book", the College shall determine the reasonable rate of rental of the particular item of equipment by such other means as it finds appropriate. The editions of the "Green Book" and the "Blue Book" to be used shall be those in effect on the date of the receipt of bids for this Contract. None of the provisions of the "Green Book" or the "Blue Book" shall be deemed referred to or included in this Contract excepting only the aforesaid monthly rates. To the cost of equipment as determined above, there is to be added the actual cost of gasoline, oil, grease and maintenance required for operation of such equipment and, in the case of equipment utilized only for extra work when, in the opinion of the Consultant, suitable equipment therefore was not available on the site, the reasonable cost of transporting said equipment to and from the site. Notwithstanding the foregoing, if the Consultant should determine that the nature or size of the equipment used by the Contractor in connection with the extra work is larger or more elaborate, as the case may be, than the size or nature of the minimum equipment determined by the Consultant to be suitable for the extra work, the cost of equipment will not be based upon the equipment used by the Contractor but instead will be based on the smallest or least elaborate equipment determined by the Consultant to have been suitable for the performance of the extra work.
- (4) Unless otherwise specifically provided for in a Change Order, the compensation specified therein for extra work includes full payment for both the extra work covered thereby and for any damage or expense caused the Contractor by any delays to other work to be done under the Contract resulting from or on account of said extra work, and the Contractor waives all rights to any other compensation for said extra work, damage or expense.

#### **Section 4.03 Adjustment for Bond and Insurance Premiums**

Upon final acceptance of the work to be performed under this Contract, the College shall adjust the Contract consideration to reflect any changes in the cost of all required Bonds and liability and builder's risk insurance premiums which the Contractor had to pay for on all extra work and would have had to furnish and pay for on all omitted work. Unless such cost is agreed upon by the College and the Contractor, the College shall calculate and determine the amount of the adjustment in the Contract consideration by estimating such cost.

#### **Section 4.04 Unit Prices**

- (1) Except as otherwise provided in the second paragraph of this Section, the unit prices, set forth in the attached Schedule I will be binding upon both the College and the Contractor in determining the value of omitted and/or extra work, and, in the case of extra work, such unit prices shall be deemed to include all profit, overhead and expenses of whatever kind and nature of the Contractor, its subcontractors and sub-subcontractors, and the Contractor agrees that it shall make no claim for any profit, overhead, expense or percentage override in connection therewith.
- (2) Where Schedule I sets forth a unit price for added and/or deducted work, the College shall have the option, whenever it is found that the quantity of changed work varies by more than 15 percent from the quantity that is stated or that can be determined by the Contract Documents at the time of execution thereof, to accept or reject such unit price for the quantity that the changed work varies by more than 15 percent from the stated or determinable quantity. Where a quantity is not specifically stated in the Contract Documents, the College's determination of the amount of said quantity included in the Contract Documents shall determine the applicability of this paragraph. Where the College, pursuant to the foregoing provisions, exercises its aforesaid option, the amount of the increase or decrease in the Contract consideration for the quantity of work which varies by more than 15 percent from the stated or determinable quantity shall be determined in accordance with the provisions of Section 4.02 of the Agreement as if there was no unit price therefore set forth in said Proposal.

#### **Section 4.05 Allowances**

- (1) The Contractor acknowledges that the Contract consideration includes the allowances set forth in the attached Schedule I and, except for quantitative allowances, it agrees to cause the work covered thereby to be done by such contractors for such sums as the College may direct. Where cash allowances are provided, the allowances shall be deemed to include the purchase of the materials and/or equipment and the delivery of the same to the job site. Unless otherwise specified in the Contract Documents, cash allowances do not include the proper installation of the materials and/or equipment or the connection for final utilities thereto; the cost of said installation and/or connection having been included in the amount of the Contract consideration.
- (2) The Contractor acknowledges that the Contract consideration includes such sums for expenses and profit on account of cash allowances as it deems proper and that it shall make no claim for expenses or profit or any percentage override in addition thereto; said items having been included in the amount of the Contract consideration.
- (3) In the event any cash allowance listed below is either higher or lower than the cost of having the work done in accordance herewith, the Contract consideration shall be adjusted to reflect such variance, the amount of said adjustment to be the difference between the amount of the allowance and the actual cost of performing the work covered thereby.

- (4) When quantitative allowances are provided, progress payments thereof to the Contractor will be based upon the applicable unit prices set forth in the attached Schedule I, subject, however to the provisions of paragraph (2) of Section 4.04. In the event any of said quantitative allowances are more than or less than the actual quantity of work performed, the Contract consideration shall be adjusted to reflect such variance, the amount of said adjustment to be determined in accordance with the provisions of Section 4.02 and Section 4.04 of the Agreement.

#### **Section 4.06 Deductions for Unperformed and/or Uncorrected Work**

- (1) Without prejudice to any other rights, remedies or claims of the College, in the event that the Contractor at any time fails or neglects to supply working forces and materials of the proper quantity and quality necessary, in the opinion of the Consultant or the College, to comply with the approved time progress schedule, or fails in any respect to prosecute the work with promptness and diligence or causes by any action or omission the stoppage or delay of or interference with the work of any other contractor having a contract with the College, or fails in the performance of any obligations and responsibilities under this Contract, then, and in that event, the College, acting itself or through the Consultant, may, upon three (3) working days' notice to the Contractor, either itself provide or have any other contractor provide any and all labor or materials or both necessary, in its opinion, to correct any aforesaid deficiency of the Contractor, and the College will thereafter back charge the Contractor by issuing a Change Order reducing the amount of the Contract consideration for all costs and expenses it incurs in connection with the correction of such deficiency.
- (2) Notwithstanding any provisions in the Contract Documents to the contrary, if the College deems it inexpedient to correct work not done in accordance with the Contract or any work damaged as a result thereof, it shall notify the Contractor of such fact and the latter shall not remedy or correct the same. In such event, however, the amount of the Contract consideration shall be decreased by an amount, determined by the College, which is equal to the difference in value of the work as performed by the Contractor and the value of the work had it been satisfactorily performed in accordance with the Contract or which is equal to the cost of performing the corrective work, whichever shall be the higher amount.

#### **Section 4.07 Liquidated Damages**

In the event that the Contractor shall fail to substantially complete all the work within the time fixed for such completion on page A-1 of the Agreement, or within the time to which such completion may have been extended, or in the event that the Contractor abandons the work and the same is not substantially completed within the aforesaid time for such completion, the Contractor must pay to the College as damages for each calendar day of delay in completing the work the amount set forth on page A-1. In view of the difficulty of accurately ascertaining the loss which the College will suffer by reason of delay in completion of the work hereunder, said sum is hereby fixed and agreed as liquidated damages which the College will suffer by reason of such delay and not as a penalty. The College may deduct and retain out of the monies which may become due hereunder to the Contractor the amount of any such liquidated damages and, in case the amount which may become due to the Contractor under the provisions of the Contract may be less than the liquidated damages suffered by the College, the Contractor shall pay the difference, upon demand, to the College.

#### **Section 4.08 Contract Breakdown**

Prior to the submission of its first application for a progress payment, the Contractor shall present to the College and the Consultant for their approval a detailed schedule showing the breakdown of the Contract consideration. Such schedule must contain the amount estimated for each part of the work and quantity survey for each part of the work. It shall also list the estimated value of the Contractor's guarantee obligations under the provisions of the Contract Documents, which is hereby fixed at \$5,000 or one-half of one percent (1/2%) of the Contract award amount, whichever is the lesser sum. Such schedule shall be revised by the Contractor until the same shall be satisfactory to the College and the Consultant and shall not be changed after the College and the Consultant have approved the same. The amounts set forth in the schedule will not be considered as fixing the basis for additions to or deductions from the Contract consideration.

#### **Section 4.09 Prompt Payment Requirements**

- (1) The campus for which the work is being performed is the College's designated payment office. Applications for payment must contain the approval of the Consultant before being submitted to the College.
- (2) Whenever the Consultant's approval of an application for payment is required under the Contract, the Consultant shall have fifteen (15) calendar days after receipt of such application to inspect the work before acting on the application.
- (3) This Contract is subject to the approval of the County of Sullivan, New York and the State University of New York, in accordance with applicable law.

#### **Section 4.10 Progress Payments**

- (1) Unless otherwise provided in the Contract, progress payments will be made as the work progresses upon applications submitted by the Contractor and approved by the Consultant and the College. Payment of such approved applications shall be made by the College within thirty (30) days after such approval has been given.

- (2) The College shall make progress payments to the Contractor on the basis of such approved applications, less an amount equal to 5 percent thereof, plus an amount necessary, in the College's judgment, to satisfy any claims, liens or judgments against the Contractor which have not been suitably discharged, which it shall reserve from each such payment until all of the work covered by the Contract has been completed.
- (3) When the College and the Consultant have determined that all the work is substantially completed, or that a substantial portion of the permanent construction has been completed and accepted, the College shall make a progress payment to the Contractor, on the basis of an application submitted by the Contractor and approved by the Consultant and the College, which shall reduce the unpaid amount due to the Contractor under the terms of the Contract, including all monies retained by the College from previous progress payments to the Contractor, to an amount equal to two (2) times the cost, estimated by the Consultant, of performing, in accordance with the Contract, all uncompleted, unaccepted and corrective work, plus an amount necessary, in the College's judgment, to satisfy any claims, liens or judgments against the Contractor which have not been suitably discharged. As the remaining items of work are satisfactorily completed or corrected, the College shall make progress payments to the Contractor, on the basis of applications submitted by the Contractor and approved by the College and the Consultant, covering said items of work less an amount necessary, in the College's judgment, to satisfy any claims, liens or judgments against the Contractor which have not been suitably discharged.

#### **Section 4.11 Applications for Progress Payments**

The Contractor shall prepare all applications for progress payments for work performed, together with supporting data and computations as are deemed necessary by the Consultant to determine the accuracy of the application. The application for payment shall be submitted on the form prescribed by the College. Failure of the Contractor to submit applications for progress payments, or lack of complete and accurate supporting data, shall be sufficient reason for withholding payment until such omissions or errors are rectified. Unless otherwise directed, such applications, signed and certified as correct by the Contractor, shall be delivered by the Contractor to the Consultant once each month showing the total value of work completed and in place on the last day of the payment period covered by the application.

#### **Section 4.12 Progress Payments for Materials Delivered to Site**

- (1) Progress payments made in accordance with Section 4.10 shall include a payment for materials and equipment to be furnished and installed under the Contract, after such materials and equipment have been delivered and accepted at the site of the work.
- (2) Materials and equipment for which such progress payment has been made shall not be removed from the site, shall be stored until incorporated into the work in a location approved by the Consultant and shall be adequately protected from fire, theft and vandalism, the effects of the elements and any other damage whatsoever, and shall at all times be available for inspection by the Consultant and the College.

#### **Section 4.13 Transfer of Title to Materials Delivered to Site**

Title to all supplies and materials to be furnished or provided by the Contractor to the College pursuant to the provisions of the Contract Documents shall immediately vest in and become the sole property of the College upon delivery of such supplies and materials to the site. Notwithstanding such transfer of title, the Contractor shall have the full continuing responsibility to install such materials and supplies, protect them, maintain them in proper condition and forthwith repair, replace and make good any damage thereto without cost to the College until such time as the work covered by the Contract is fully accepted by the College. Such transfer of title shall in no way affect any of the Contractor's obligations under the Contract. In the event that, after title has passed to the College, any of such supplies and materials are rejected as being defective or otherwise unsatisfactory, title to all such supplies and materials shall be deemed to have been transferred back to the Contractor.

#### **Section 4.14 Progress Payments for Materials Stored Off Site**

- (1) Progress payments made in accordance with Section 4.10 shall include a payment for materials and equipment that are in short and/or critical supply or have been specially fabricated for the Project. Materials and equipment, for which a progress payment is made pursuant to the preceding sentence, shall be stored by the Contractor, after fabrication, until such time as their delivery to the site is required, at a facility and location approved by the Consultant; shall be adequately protected from fire, theft and vandalism, the effects of the elements and any other damage whatsoever; and shall at all times be available for inspection by the Consultant and the College. No progress payment shall, however, be made for said materials and equipment until:
  - a. The Contractor furnishes to the College a bill of sale listing quantity and costs of said materials and equipment f.o.b. point of origin;
  - b. The Consultant shall have inspected said materials and equipment and recommended payment therefore; and
  - c. The Contractor furnishes to the College a builder's risk insurance policy, with the broad form extended coverage endorsement, for said materials and equipment, in an amount equal to 100 percent of the value thereof, which policy shall be maintained, at the sole cost and expense of the Contractor, until said materials and equipment have been incorporated into the Project. The said insurance policy shall contain a provision that the loss, if any, is to be made adjustable with and payable to the College as trustee for the insured, i.e., the College and the Contractor, and a provision that it shall not be changed or canceled and that it will be automatically renewed upon expiration and continued in force unless the College is given fifteen (15) days' written notice to the contrary.

- (2) Materials and equipment for which a progress payment has been made by the College pursuant to this Section shall be, become and remain the sole property of the College; provided, however, that the Contractor shall have the full continuing responsibility to install such materials and equipment, to deliver it to the site, to protect it, to maintain it in proper condition and to forthwith repair, replace and make good any damage thereto without cost to the College until such time as the work covered by the Contract is fully accepted by the College. Such transfer of title shall in no way affect any of the Contractor's obligations under the Contract.

#### **Section 4.15 Withholding of Progress Payments**

Notwithstanding anything contained in the Contract to the contrary, the College may withhold payment of all or any part of a progress, final or guarantee payment, in such an amount as it may deem proper to enforce the provisions of the Contract and to satisfy the claims of third parties, when:

- a. The College shall learn of any claim, of whatever nature or kind, against the College or the Contractor, which in any way arises or is alleged to arise out of or as a result of or in connection with the performance by the Contractor of the work covered by the Contract or out of or in connection with the Contractor's operations or performance at or in the vicinity of the construction site, that, in the opinion of the College, may not be adequately covered by insurance.

If an action on such claim is timely commenced and the liability of the College and/or the Contractor shall have been established therein by a final judgment of a court of competent jurisdiction, or if such claim shall have been admitted by the Contractor to be valid, the College shall pay such judgment or admitted claim out of the monies retained by it under the provisions of the Contract and return the balance, if any, without interest, to the Contractor.

The College may withhold from the Contractor any payments retained by it until such time as all such claims are either satisfied or barred by law from being presented. At such time the College, upon written demand by the Contractor, shall return to the Contractor the amount so withheld, without interest.

- b. The Contractor has not complied with any lawful or proper direction of the Consultant or the College or their representatives concerning the work covered by the Contract or the performance of the Contract or the production of records as required under the provisions of the Contract.
- c. There exists any of the conditions, listed in Section 2.26, which would allow the College to declare the Contractor in default of the whole or any part of the work.
- d. The Contractor is a foreign contractor and has not furnished satisfactory proof that all taxes due by such Contractor under the provisions of the Tax Law have been paid. The Certificate of the New York State Tax Commission to the effect that all such taxes have been paid shall be conclusive proof of the payment of such taxes. The term "foreign contractor" as used herein means, in the case of an individual, a person who is not a resident of the State of New York; in the case of a partnership, one having one or more partners not a resident of the State; and in the case of a corporation, one not organized under the laws of the State of New York.
- e. The Contractor, upon request of the College at any time after the initial progress payment by the College to the Contractor, fails to furnish the College with such documentary evidence that the College may deem necessary to prove to it that material and labor paid for by the College under previous applications for payment submitted have been paid for by the Contractor and that there are no outstanding claims or liens in connection therewith or fails to satisfy the College that the Contractor, with good cause, has sufficiently provided for the payment and/or satisfaction of claims for said material and labor.

#### **Section 4.16 Lien Law**

The attention of the Contractor is specifically called to the provisions of the Lien Law of the State of New York, wherein funds received by a Contractor for a public improvement are declared to constitute trust funds in the hands of such Contractor to be applied first to the payment of certain claims.

#### **Section 4.17 Final Payment**

Upon acceptance of all the work, except for the Contractor's guarantee obligations under Section 2.25 of the Agreement and the Contractor's guarantee obligations under any provision of the Specifications, the Contractor shall prepare and submit to the College and the Consultant, for their approval, a final application for payment, which the College, within thirty (30) days after its approval of the same and subject to approval by the County of Sullivan, shall pay. Such application and payment shall be in an amount equal to 100 percent of the Contract consideration, excluding the Contractor's guarantee obligations (reference Section 4.08), less:

- a. All previous payments by the College to the Contractor;
- b. All deductions authorized to be made by the College under the Contract; and
- c. An amount necessary, in the College's judgment, to satisfy any claims, liens or judgments against the Contractor which have not been suitably discharged.

#### **Section 4.18 Acceptance of Final Payment**

- (1) The acceptance by the Contractor, or by anyone claiming by or through it, of the final payment shall, except with respect to the amount retained by the College pursuant to the provisions of subdivisions b and c of Section 4.17 of the Agreement, constitute and operate as a release to the College from any and all claims of any liability for anything theretofore done or furnished for or relating to or arising out of the work covered by the Contract and for any prior act, neglect or default on the part of the College or any of its trustees, officers, agents or employees in connection therewith.
- (2) Should the Contractor refuse to accept the final payment as tendered by the College or should the Contractor refuse to execute the final application for payment without protest and without reserving any rights or claims against the College, it shall constitute a waiver of any right to interest on the amount of the payment so tendered and/or on the amount set forth in said final application for payment.

#### **Section 4.19 Guarantee Payment**

- (1) Subject to the provisions of the second paragraph of this Section, at the expiration of one (1) year after the College has accepted all the work covered by the Contract, the Contractor shall prepare and submit to the College and the Consultant, for their approval, a guarantee application for payment, which the College, within thirty (30) days after its approval of the same, shall pay. Such application and payment shall be in an amount equal to the monies retained by the College for the Contractor's guarantee obligations under the Agreement, less any monies deducted by the College under this Section. The Contractor shall not be entitled to any interest on the monies retained by the College pursuant to subdivision c of Section 4.18 of the Agreement.
- (2) In the event the Contractor does not, in accordance with the terms and provisions of the Contract, complete all corrective work or comply with and fulfill its contractual obligations, the College may use and apply all or any part of the monies retained by it to have such work or obligations performed or fulfilled by a person, firm or corporation other than the Contractor. The obligations of the Contractor, under the terms and provisions of the Contract, shall not, however, be limited to the monies retained by the College pursuant to the provisions of the Contract.
- (3) No payments may be made under this agreement for work completed more than 365 days after the Contract Closing Date as listed on page A-1, is extended in writing by the College, and approved by the County of Sullivan.

#### **Section 4.20 Acceptance of Guarantee Payment**

The acceptance by the Contractor, or by anyone claiming by or through it, of the guarantee payment shall constitute and operate as a release to the College from any and all claims in connection with monies retained by the College. Should the Contractor refuse to accept the guarantee payment as tendered by the College or should the Contractor refuse to execute the guarantee application for payment without protest and without reserving any rights or claims against the College, it shall constitute a waiver of any right to interest on the amount of the payment so tendered and/or on the amount set forth in said guarantee application for payment.

#### **Section 4.21 Contractor Limited to Money Damages**

Inasmuch as the Contractor can be compensated adequately by money damages for any breach of the Contract which may be committed by the College, the Contractor agrees that no default, act or omission of the College shall constitute a material breach of the Contract entitling it to cancel or rescind the same or to suspend or abandon performance thereof; and it hereby waives any and all rights and remedies to which it might otherwise be or become entitled to because of any wrongful act or omission of the College or its representatives, saving only its right to money damages.

#### **Section 4.22 No Estoppel or Waiver**

- (1) The College shall not be precluded or estopped by any inspection, acceptance, application for payment or payment, final or otherwise, issued or made under the Contract or otherwise issued or made by it, the Consultant, or any trustee, officer, agent or employee of the College, from showing at any time the true amount and character of the work performed, or from showing that any such inspection, acceptance, application for payment or payment is incorrect or was improperly issued or made; and the College shall not be precluded or estopped, notwithstanding any such inspection, acceptance, application for payment or payment, from recovering from the Contractor any damages which it may sustain by reason of any failure on its part to comply strictly with the Contract and any monies which may be paid to it or for its account in excess of those to which it is lawfully entitled.
- (2) Neither the acceptance of all or any part of the work covered by the Contract; nor any payment therefore; nor any order or application for payment issued under the Contract or otherwise issued by the College, the Consultant, or any trustee, officer, agent or employee of the College; nor any permission or direction to continue with the performance of the Contract before or after its specified completion date; nor any performance by the College of any of the Contractor's duties or obligations; nor any aid lent to the Contractor by the College in its performance of such duties or obligations; nor any delay or omission by the College to exercise any right or remedy accruing to it under the terms of the Contract or existing at law or in equity or by statute or otherwise; nor any other thing done or omitted to be done by the College, its trustees, officers, agents or employees; shall be deemed to be a release to the Contractor or its sureties from any obligations, liabilities or undertakings in connection with the Contract or the Performance Bond or a waiver of any provision of the Contract or of any rights or remedies to which the College may be entitled because of any breach thereof, excepting only a written instrument expressly providing for such release or waiver. No cancellation, rescission or annulment hereof, in whole or as to any part of the Contract, because of any breach hereof, shall be deemed a waiver of any money damages to which the College may be entitled because of such breach. No waiver by the College of any breach of the Contract shall be deemed to be a waiver of any other or any subsequent breach.

#### **Section 4.23 Limitation of Actions**

- (1) No action or proceeding shall be maintained by the Contractor, or anyone claiming under or through the Contractor, against the College, or its trustees, officers, agents or employees, upon any claim arising out of or based upon the Contract or any breach thereof or by reason of any act or omission or requirement of the College, or its trustees, officers agents or employees, unless:
  - a. Such action or proceeding is instituted in the Court of Claims for the State of New York;
  - b. The Contractor or the person claiming under or through it shall have strictly complied with all requirements relating to the giving of notices and information with respect to such claims; and
  - c. Such action or proceeding shall be commenced within one (1) year after the submission to the College of the final application for payment or, if the claim is based upon monies required to be retained for any period after the date of the final application for payment, such action is commenced within six (6) months after such monies become due and payable under the terms of the Contract; or
  - d. If the Contract is terminated or the Contractor declared in default by the College, such action is commenced within six (6) months after the date of such termination or declaration of default by the College.
- (2) Notwithstanding anything in the laws of the State of New York to the contrary, the Contractor, or anyone claiming under or through the Contractor, shall not be entitled to any additional time to begin anew any other action if an action commenced within the times herein specified is dismissed or discontinued for any reason whatsoever.

#### **Section 4.24 Audit**

Any of the College, the COUNTY, the State of New York, and the United States ("Responsible Parties") shall have the right at any time during the term of this Agreement and for the period limited by the applicable statute of limitations to audit the payment of monies hereunder. The Contractor shall comply with any demands made by any of the Responsible Parties to provide information with respect to the payment of monies hereunder during the period covered by this paragraph. The Contractor shall maintain its books and records in accordance with generally accepted accounting principles or such other method of account which is approved in writing by the College in consultation with the other Responsible Parties prior to the date of this Agreement. The revenues and expenditures of the Contractor in connection with this Agreement shall be separately identifiable. Each expenditure or claim for payment shall be fully documented. Expenditures or claims for payment which are not fully documented may be disallowed. The Contractor agrees to provide to or permit the requesting Responsible Parties to examine or obtain copies of any documents relating to the payment of money to the Contractor or expenditures made by the Contractor for which reimbursement is made to the Contractor by the College. The Contractor shall maintain all records required by this paragraph for seven years after the date this Agreement is terminated or ends.

If the Contractor has expended, in any fiscal year, \$300,000.00 or more in funds provided by a Federal financial assistance program from a Federal agency pursuant to this Agreement and all other contracts with the College the Contractor shall provide the College with an audit prepared by an independent auditor in accordance with the Single Audit Act of 1984, 31 U.S.C. §§ 7501, et seq., as amended, and the regulations adopted pursuant to such Act.

In addition to the foregoing, if this Agreement is financed by Medicare reimbursements, then until the expiration of four years after the furnishing of the services provided under this Agreement, the Contractor will make available to the Secretary, U.S. Department of Health and Human Services, and the U.S. Comptroller General, and their representatives, this agreement and all books, documents, and records necessary to certify the nature and extent of the costs of those services. If the Contractor carries out the duties of the agreement through a subcontract worth \$10,000 or more over a 12-month period with a related organization, the subcontract will also contain an access clause to permit access by the Secretary, Comptroller General, and their representatives to the related organization's books and records.

### **ARTICLE V**

#### **Protection of Rights and Property**

##### **Section 5.01 Accidents and Accident Prevention**

The Contractor shall at all times take reasonable precautions for the safety of persons engaged in the performance of the work. The Contractor shall comply fully with all applicable provisions of the laws of the State of New York, OSHA, and with all valid rules and regulations adopted or promulgated by the agencies of the State of New York pursuant thereto. The Contractor's attention is specifically called to the applicable rules and regulations, codes and bulletins of the New York State Department of Labor.

##### **Section 5.02 Adjoining Property**

The Contractor shall be required to protect all the adjoining property and to repair or replace any such properties damaged or destroyed by it, its employees or subcontractors through, by reason of or as a result of activities under, for or related to the Contract.

### **Section 5.03 Emergencies**

- (1) In case of an emergency that threatens loss or injury to persons or property, the Contractor will be allowed to act, without previous instructions from the Consultant or the College, in a diligent manner, to the extent required to avoid or limit such loss or injury, and it shall notify the Consultant and the College immediately thereafter of the action taken by it and of such emergency. Where the Contractor has not taken action but has notified the Consultant or the College of an emergency which threatens loss or injury to persons or property, it shall act in accordance with the instructions and/or authorization by the Consultant or the College.
- (2) In the event that the Contractor performs extra work in accordance with the preceding paragraph, it will be compensated therefore in accordance with the provisions of Section 4.02.

### **Section 5.04 Fire Safety**

- (1) In the event that a municipal fire alarm box is not located within 300 feet from the site of the Project, the Contractor will be required to provide at the site of the Project, at a location approved by the Consultant, a private unlisted telephone reserved for fire calls only. The phone must be in addition to regular business phones and a rule prohibiting its use for purposes other than alarm for fire or other emergencies must be strictly enforced. The phone itself should be colored red and be located at a point quickly available to all employees, including watchmen. Clear instructions for the sending of a fire alarm should be conspicuously posted by the phone and all personnel customarily at work near the phone shall be acquainted with the procedure. If such a phone is required, the Contractor, at its sole cost and expense, must provide the same from the time the College first approves the Contract breakdown to be submitted by the Contractor pursuant to the provisions of Section 4.08 up until the time the College accepts all the work covered by the Contract.
- (2) All solid fuel salamanders and U. L. approved heaters used by the Contractor or any of its subcontractors shall be arranged in a standard manner. All other salamanders used by the Contractor or any of its subcontractors shall require constant attendance of competent persons on each floor where in use.
- (3) All temporary fabric used by the Contractor or any of its subcontractors for curtains or awnings shall be either non-combustible or flame retarded so that it will not burn or propagate flame.

### **Section 5.05 Risks Assumed by Contractor**

- (1) The Contractor solely assumes the following distinct several risks whether they arise from acts or omissions (whether negligent or not and whether supervisory or otherwise) of the Contractor, of the College, of third persons or from any other cause, including unforeseen obstacles and difficulties which may be encountered in the prosecution of the work covered by the Contract, whether such risks are within or beyond the control of the Contractor and whether such risks involve a legal duty, primary or otherwise, imposed upon the State College Construction Fund, the Dormitory Authority of the State of New York, the State of New York or the State College of New York, excepting only risks that arise from defects in maps, plans, designs or Specifications prepared, acquired or used by the Consultant or the College, from the negligence of the College, its agents or employees or from affirmative acts of the State College Construction Fund, the Dormitory Authority of the State of New York, the State of New York or the State College of New York or their trustees, officers, agents or employees committed with intent to cause the loss, damage and injuries herein below set forth:
  - a. The risk of loss or damage, direct or indirect, to the work covered by the Contract or to any plant, equipment, tools, materials or property furnished, used, installed or received by the College or by the Contractor or any subcontractor, materialman or worker performing services or furnishing materials for the work covered hereunder.

The Contractor shall bear such risk of loss or damage until the work covered by the Contract has been fully accepted by the College or until completion of removal of such plant, equipment, tools, materials or property from the construction site and the vicinity thereof, whichever event occurs last. In the event of such loss or damage, the Contractor shall forthwith repair, replace and/or make good any such loss or damage without cost to the College.
  - b. The risk of claims, just or unjust, by third persons against the Contractor, the State College Construction Fund, the Dormitory Authority of the State of New York, the State of New York, or the State College of New York on account of wrongful death, bodily injuries and property damage, direct or consequential, loss or damage of any kind whatsoever arising or alleged to arise out of or as a result of or in connection with the performance by the Contractor of the work covered by the Contract (whether actually caused by or resulting from the performance of the Contract) or out of or in connection with the Contractor's operations or presence at or in the vicinity of the construction site. The Contractor shall bear such risk for all such deaths, injuries, damages or losses sustained or alleged to have been sustained prior to the final acceptance by the College of all work covered by the Contract. The Contractor shall also bear the risk of claims for wrongful death occurring subsequent to said final acceptance provided such death is caused, contributed to or is a consequence of bodily injuries sustained or alleged to have been sustained prior to said final acceptance.
- (2) The Contractor shall indemnify and save harmless the College, the County of Sullivan, the Dormitory Authority of the State of New York, the State of New York and the State College of New York, their trustees, officers, agents or employees against all claims described above and for all costs and expenses incurred by them in the defense, settlement or satisfaction thereof, including attorneys' fees and court costs. If so directed, the Contractor shall at its own expense defend against such claims, in which event it shall not, without obtaining express advance permission from Counsel of the College, raise any defense involving in any way jurisdiction of the tribunal over the College, governmental nature of the College or the provisions of any statutes respecting suits against the College.



- (3) Neither the College's final acceptance of the work to be performed hereunder nor the making of any payment shall release the Contractor from its obligations under this Section. The enumeration elsewhere in the Contract of particular risks assumed by the Contractor or of particular claims for which it is responsible shall not be deemed to limit the effect of the provision of this Section or to imply that it assumes or is responsible for only risks or claims of the type enumerated.

**Section 5.06 Compensation and Liability Insurance**

- (1) The Contractor shall procure and maintain, at its own cost and expense, until final acceptance by the College of all the work covered by this Contract, the following kinds of insurance:

- a. Workers' Compensation Insurance.

A policy complying with the requirements of the laws of the State of New York.

- b. General Liability and Property Damage Insurance.

A standard general comprehensive liability insurance policy or a commercial general liability insurance policy issued to and covering the liability of the Contractor for all work and operations under this Contract, including, but not limited to, contractual and completed operations coverage. Such policy shall be written by a company licensed or approved as an excess line liability company by the New York State Department of Insurance. The coverage under such policy shall not be less than the following limits:

Bodily Injury and Property Damage Liability  
\$ 1,000,000 Each Occurrence  
\$ 2,000,000 Aggregate

The aforesaid insurance requirements will be deemed met by the Contractor's procurement and maintenance of either of the aforesaid policies and, in addition thereto, an umbrella policy providing similar coverage; provided, however, that the total amount of insurance coverage is at least equal to the requirements above set forth.

- c. Automobile Liability and Property Damage Insurance.

A policy covering the use in connection with the work covered by the Contract Documents of all owned, non-owned and hired vehicles bearing, or, under the circumstances under which they are being used, required by the Motor Vehicle Laws of the State of New York to bear license plates. The coverage under such policy shall not be less than the following limit:

Bodily Injury and Property Damage Liability  
\$ 1,000,000 Each Occurrence

- d. Owner's Protective Liability Insurance.

A policy issued to and covering the liability for damages imposed by law upon College, the County of Sullivan, the Dormitory Authority of the State of New York, the State of New York and the State College of New York, their trustees, officers, agents or employees, with respect to all operations under the Contract by the Contractor and its subcontractors, and/or their interest in the Project and the property upon which work under the Contract is to be performed, including omissions and supervisory acts of the former. Said insurance shall be in the same amounts as that required under subdivision b above and shall be written by a company licensed or approved as an excess line liability company by the New York State Department of Insurance.

- e. Asbestos Abatement Insurance.

A liability insurance policy issued to and covering the liability, of the Contractor and/or subcontractor engaged in the removal, handling or wrapping of asbestos, if any of such work is to be performed under the Contract, for bodily injury, illness, sickness or property damage caused by exposure to asbestos in an amount not less than \$1,000,000 per occurrence and \$2,000,000 aggregate. The Contractor and/or its aforesaid subcontractor shall either obtain an endorsement to the aforesaid required insurance policy adding the College, the County of Sullivan, the Dormitory Authority of the State of New York, the State of New York and the State College of New York, their trustees, officers, agents or employees, as additional parties insured thereunder or shall obtain a separate owner's protective liability insurance policy for such parties with coverage similar to that required by the first sentence of this subdivision. In addition, any Contractor or subcontractor engaged in the removal, handling, or wrapping of asbestos shall hold harmless and indemnify the College, the County of Sullivan, the Dormitory Authority of the State of New York, the State of New York and the State College of New York, for any claims or liabilities in connection with illness or sickness arising from work performed, not performed, or which should have been performed. The Contractor shall have said hold-harmless and indemnification conditions stipulated in all Contracts with subcontractors.

- (2) The aggregate insurance limit set forth above shall apply separately to each project for which a certificate of insurance and/or policy is issued.

- (3) Before commencing the performance of any work covered by the Contract, the Contractor shall furnish to the College a certificate or certificates in duplicate of the insurance required under the foregoing provisions. Such certificates shall be on a form prescribed by the College, shall list the various coverages and shall contain, in addition to any provisions hereinbefore required, a provision that the policy shall not be changed or canceled and that it will be automatically renewed upon expiration and continued in force until final acceptance by the College of all the work covered by the Contract, unless the College is given fifteen (15) days' written notice to the contrary. Upon request, the Contractor shall furnish the College with a certified copy of each policy. The College reserves the right to receive a copy of the insurance policy which was based on the Certificate of Insurance issued.
- (4) All insurance required to be procured and maintained as aforesaid must be procured from insurance companies approved by the College and authorized to do business in the State of New York. The College is to be cited as a named insured on all policies and certificates of insurance and shall be notified if a policy is canceled, terminated or modified.
- (5) If at any time any of the above-required insurance policies should be canceled, terminated or modified so that insurance is not in effect as above required, then, if the College shall so direct, the Contractor shall suspend performance of the work covered in the Contract. If the said work is so suspended, no extension of time shall be due on account thereof. If said work is not suspended, then the College may, at its option, obtain insurance affording coverage equal to that above required, the cost of such insurance to be payable by the Contractor to the College.

#### **Section 5.07 Builder's Risk Insurance**

- (1) The Contractor shall procure and maintain, at its own cost and expense, until final acceptance of all work covered by this Contract or until the Project has been turned over for use by the State College of New York, whichever event occurs earlier, a builder's risk insurance policy with fire, extended coverage, vandalism and malicious mischief coverage.
- (2) The policy shall be in an amount equal to the Project's insurable value, i.e., the Contract consideration less the cost of the Contractor's Performance and Labor and Material Bonds; the cost of trees, shrubbery, lawn grass, plants and the maintenance of the same; the cost of demolition; the cost of excavation; the cost of foundations, piers or other supports which are below the undersurface of the lowest basement floor, or where there is no basement, which are below the surface of the ground, concrete and masonry work; the cost of underground flues, pipes or wiring; the cost of earthmoving, grading and the cost of paving, roads, walks, parking lots or athletic fields; and the cost of bridges, tunnels, dams, piers, wharves, docks, retaining walls and radio and/or television towers and antennas.
- (3) The policy may contain a provision for a \$500 deductible for each loss to a Project having an insurable value of less than \$1,500,000 and a \$1,000 deductible for each loss to a Project having an insurable value of \$1,500,000 or more.
- (4) The College, the Contractor and its subcontractors, as their interests may appear, will be named as the parties insured under said policy.
- (5) The Contractor shall have the sole responsibility to promptly report any loss to the insurer and/or its representatives and to furnish the latter with all necessary details relating to the occurrence of the loss and the amount thereof. The College, the Contractor and all subcontractors of the Contractor waive all rights, each against the others, for damages caused by fire or other perils covered by insurance provided under the terms of this Section, except such rights as they may have to the proceeds of insurance received; provided, however, this waiver shall not apply to any manufacturer, supplier or similar agent under any guarantee or warranty.
- (6) The Contractor shall not violate or permit to be violated any condition of such policy and shall at all times satisfy the fire safety requirements of the College and the insurance company issuing the same.
- (7) The procurement and maintenance of said policy shall in no way be construed or be deemed to relieve the Contractor from any of the obligations and risks imposed upon it by this Contract or to be a limitation on the nature or extent of such obligations and risks.
- (8) Such policy shall contain a provision that it shall not be changed or canceled and that it will be automatically renewed upon expiration and continue in force until final acceptance by the College of all the work covered by the Contract, unless the College is given fifteen (15) days' written notice to the contrary. Before the Contractor shall be entitled to have any progress payment rendered on account of the work which is to be insured pursuant to this Section, it shall furnish to the College a certificate in duplicate of the insurance herein required. Such insurance must be procured from an insurance company approved by the College and authorized to do business in the State of New York.

#### **Section 5.08 Effect of Procurement of Insurance**

Neither the procurement nor the maintenance of any type of insurance by the College or the Contractor shall in any way be construed or be deemed to limit, discharge, waive or release the Contractor from any of the obligations and risks imposed upon it by the Contract or to be a limitation on the nature or extent of such obligations and risks.

#### **Section 5.09 No Third Party Rights**

Nothing in the Contract shall create or give to third parties, except the County of Sullivan, the Dormitory Authority of the State of New York, the State of New York and the State College of New York, any claim or right of action against the Contractor, the Consultant, the College County of Sullivan, the Dormitory Authority of the State of New York, the State of New York or the State College of New York beyond such as may legally exist irrespective of the Contract.

**ARTICLE VI**  
**Affirmative Action**

The College's requirements for affirmative action are set forth in "Exhibit A-1" which is attached hereto and made a part hereof, and shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein and, in the event any such provision is not inserted or is not correctly inserted, then, upon the application of either party, this Contract shall forthwith be physically amended to make such insertion or correction.

**ARTICLE VII**  
**Provisions Required by Law**

**Section 7.01 Provisions Deemed Inserted**

Each and every provision required by law to be inserted in the Contract, including, but not limited to, the provisions set forth in Exhibit "A" which is attached hereto and made a part hereof, shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein and, in the event any such provision is not inserted or is not correctly inserted, then, upon the application of either party, this Contract shall forthwith be physically amended to make such insertion or correction.

**Section 7.02 Entire Agreement**

This Agreement, all schedules and exhibits and all other documents incorporated herein by reference constitutes to the entire Agreement. This Agreement supersedes all previous understandings and agreements with respect to the Project or any of the provisions thereof. No statement, promise, condition, understanding, inducement, or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and this Agreement shall not be changed, modified or altered in any manner except by an instrument in writing executed by the parties hereto.

**Section 7.03 Hierarchy of Precedent**

In the event of any controversy regarding the provisions of this Agreement, the terms of Exhibits A and A-1 shall take precedence followed by this Agreement, then the Contractor's proposal.

**Section 7.04 Wage Rates**

The Contractor shall post the appropriate prevailing wage schedules in a conspicuous place at the construction site. The Contractor shall also distribute wallet cards to all workers engaged at the construction site containing information relating to wage rates and telephone numbers to call if a worker believes his or her rights are being violated. The Contractor shall provide each worker with a written notice, informing them of the applicable prevailing wage requirements, and the Contractor must obtain a signed statement or declaration from such worker attesting to the fact that he or she has been given this information. Further, the Contractor is required to keep certified copies of its payrolls at the construction site.

**Section 7.05 Contractor Responsibility**

The College will undertake an affirmative review of the proposed Contractor's responsibility in accordance with the standards outlined in Comptroller's Bulletin G 221, and based upon such review, will determine if it is reasonably assured that the proposed Contractor is responsible.

**Agency Certification:** "In addition to the acceptance of this Contract, it is certified that an originally executed copy of this signature page will be attached to an exact copy of the Contract Documents, and forwarded to the Contractor".

SULLIVAN COUNTY COMMUNITY COLLEGE

By: \_\_\_\_\_ Date \_\_\_\_/\_\_\_\_/\_\_\_\_  
(campus official)

**Contractor**

*(If Corporation, Affix Seal)*

By: \_\_\_\_\_ Date \_\_\_\_/\_\_\_\_/\_\_\_\_

*(If Corporation, Affix Seal)*

Approved as to Form:  
COUNTY OF SULLIVAN, NEW YORK

By: \_\_\_\_\_ Date \_\_\_\_/\_\_\_\_/\_\_\_\_

**ACKNOWLEDGMENTS**  
(ACKNOWLEDGMENT BY AN INDIVIDUAL)

STATE OF NEW YORK        )  
                                  ) ss.:  
COUNTY OF                )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came \_\_\_\_\_

\_\_\_\_\_, to me known and known to me to be the person(s) described in and who executed the foregoing instrument and he/she acknowledged to me that he/she executed the same.

\_\_\_\_\_  
Notary Public

(ACKNOWLEDGMENT BY A PARTNERSHIP)

STATE OF NEW YORK        )  
                                  ) ss.:  
COUNTY OF                )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came \_\_\_\_\_

\_\_\_\_\_, to me known and known to me to be the person who executed the above instrument, who, being duly sworn by me, did for themselves depose and say that they are a member of the firm of \_\_\_\_\_, consisting of themselves and \_\_\_\_\_, that he/she executed the foregoing instrument in the firm name \_\_\_\_\_

\_\_\_\_\_, and that he/she had authority to sign the same, and that he/she did duly acknowledge to me that he/she executed the same as the act and deed of the aforementioned firm for the purposes mentioned therein.

\_\_\_\_\_  
Notary Public

(ACKNOWLEDGMENT BY A CORPORATION)

STATE OF                    )  
                                  ) ss.:  
COUNTY OF                )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came \_\_\_\_\_

\_\_\_\_\_, to me known, who, being duly sworn, did depose and say that he/she reside in \_\_\_\_\_; that he/she is the \_\_\_\_\_

of the \_\_\_\_\_, the corporation described in and which executed the foregoing instrument; that he/she knows the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that if it was affixed by the order of the Board of Directors of said corporation, and that he/she signed their name thereto by like order.

\_\_\_\_\_  
Notary Public

**SCHEDULE I**

The following Unit Prices shall apply for additional work authorized by Change Order:

**UNIT PRICES**

Description of Unit Price

Amount of Unit Price

**NONE**

The total bid includes the following Allowances:

**ALLOWANCES**

**NONE**