

FREDERICK COUNTY PUBLIC SCHOOLS  
PURCHASING DEPARTMENT  
191 SOUTH EAST STREET  
FREDERICK, MD 21701  
TELEPHONE: 301-644-5219 FAX: 301-644-5213



SPECIFICATIONS AND PROPOSAL FORMS

FOR

UNIT PRICES FOR FUEL SYSTEM CLEANING, MAINTENANCE AND FUEL OIL TANK REPLACEMENT

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BID NUMBER:	14C6
PRE-BID MEETING TIME/DATE/LOCATION:	10:00 A.M., local time, November 14, 2013 FCPS/Conference Room 1B 191 South East Street Frederick, MD 21701
BID ATTENDANCE:	Not mandatory, however, attendance is encouraged.
BID DUE TIME/DATE/ LOCATION:	2:00 P.M., local time, December 5, 2013 FCPS Main Lobby 191 South East Street Frederick, MD 21701 (Parking is available at Deck #5 All Saints Street)
TENTATIVE AWARD SCHEDULED FOR BOARD MEETING:	6:00 P.M. local time, January 22, 2014

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QUESTIONS REGARDING THIS SOLICITATION SHOULD BE DIRECTED TO:

Stephen Starmer, Purchasing Manager  
Kim Miskell, Assistant Purchasing Manager  
Billie Laughland, Buyer Specialist  
X Bill Meekins CPPB, CPCP, Buyer Specialist  
Scott Bachtell, Buyer Specialist

A handwritten signature in black ink, appearing to read "Bill Meekins", is written over the name of the Buyer Specialist.

NOTE: Companies must have on file an approved General Application form in order to ensure notification of future bid solicitations. Contact Mrs. Robin Underwood, Vendor Maintenance Specialist, at 301-644-5211, if you are uncertain as to your company's registration status.

Issued: 11.01.13

**FREDERICK COUNTY PUBLIC SCHOOLS (FCPS)**

**BID 14C6**

**UNIT PRICES FOR FUEL SYSTEM CLEANING, MAINTENANCE AND FUEL OIL TANK REPLACEMENT**

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# Frederick County Public Schools' Calendar SY 2013-14

Approved January 23, 2013

## August 2013

5-7	Mon-Wed	New Teachers Report
9	Fri	New Teachers Report
13-16	Tue-Fri	Teachers Report to Work: Training and Preparation
19	Mon	First Day of School for Students

## September 2013

2	Mon	Schools Closed: Labor Day
5	Thu	Schools Closed: Rosh Hashanah
19	Thu	Mid-Term
20	Fri	Schools Closed: Fair Day
23	Mon	2-Hour Early Dismissal for Students: Teacher Work Session
30	Mon	High School Assessments

## October 2013

1-2	Tue-Wed	High School Assessments
16	Wed	PSAT Testing
18	Fri	Schools Closed for Students: Teacher Professional Development Day
24	Thu	End of First Term
25	Fri	Schools Closed for Students: Teacher Work Day
28	Mon	Second Terms Begins

## November 2013

22	Fri	2-Hour Early Dismissal for Students (Mid-Term): Teacher Work Session
25	Mon	Elementary & Middle School Parent-Teacher Conferences in evening: Schools open 4 hours late
26	Tue	Elementary & Middle School Parent-Teacher Conferences in afternoon: Schools dismiss 3.5 hours early
27	Wed	Schools Closed: Thanksgiving Break
28-29	Thu-Fri	Schools Closed: Thanksgiving and American Indian Heritage Day

## December 2013

20	Fri	2-Hour Early Dismissal for Students: Teacher Work Session
23	Mon	Schools Closed: Winter Break
24	Tue	Schools Closed: Christmas Eve
25	Wed	Schools Closed: Christmas Day
26-31	Thu-Tue	Schools Closed: Winter Break

## January 2014

1	Wed	Schools Closed: New Year's Day
6-9	Mon-Thu	High School Assessments
10	Fri	First Semester (Second Term) Ends
13	Mon	Schools Closed for Students: Teacher Work Day
14	Tue	Second Semester (Third Term) Begins
20	Mon	Schools Closed: Dr. Martin Luther King Jr. Day

## February 2014

13	Thu	Mid-Term
14	Fri	2-Hour Early Dismissal for Students: Teacher Work Session
17	Mon	Schools Closed: Presidents' Day
18	Tue	Schools Closed for Students: Teacher Curriculum Day

## March 2014

3-12	Mon-Wed	Maryland School Assessments (Reading and Mathematics)
20	Thu	End of Third Term
21	Fri	Schools Closed for Students: Teacher Work Day
24-31	Mon-Mon	Maryland School Assessments (Science)

## April 2014

1-11	Tue-Fri	Maryland School Assessments (Science)
14-17	Mon-Thur	Schools Closed: Spring Break
18	Fri	Schools Closed: Good Friday
21	Mon	Schools Closed: Easter Monday

## May 2014

2	Fri	2-Hour Early Dismissal for Students (Mid-Term)
19-22	Mon-Thu	High School Assessments
23	Fri	2-Hour Early Dismissal for Students: Teacher Work Session
26	Mon	Schools Closed: Memorial Day

## June 2014

11*	Wed	2-Hour Early Dismissal/Last Day of School for Students: Teacher Work Session
12*	Thu	Last Day of School for Teachers

\*Includes 5 days for snow or other emergency closings. If all days are not needed, the school year will be shortened by the number of unused days to provide 180 days for students.



# DIRECTORY OF SCHOOLS

## ELEMENTARY

1. **Ballenger Creek\*** 240-236-2500  
Stephanie Brown, Principal  
5250 Kingsbrook Drive  
Frederick, MD 21703  
Fax 240-236-2501
2. **Brunswick ♦♦** 240-236-2900  
Patricia Hosfelt, Principal  
400 Central Avenue  
Brunswick, MD 21716  
Fax 240-236-2901
3. **Carroll Manor ♦♦** 240-236-3800  
Kevin Cuppett, Principal  
5624 Adamstown Road  
Adamstown, MD 21710  
Fax 240-236-3801
4. **Centerville** 240-566-0100  
Tracy Hilliard, Principal  
3601 Carriage Hill Drive  
Frederick, MD 21704  
Fax 240-566-0101
5. **Deer Crossing ♦** 240-236-5900  
Heather Michael, Principal  
10601 Finn Drive  
New Market, MD 21774  
Fax 240-236-5901
6. **Emmitsburg \*** 240-236-1750  
Kathryn Golightly, Principal  
300 South Seton Avenue  
Emmitsburg, MD 21727  
Fax 240-236-1751
7. **Glade ♦♦** 240-236-2100  
Sunora Knill-Wilbar, Principal  
9525 Glade Road  
Walkersville, MD 21793  
Fax 240-236-2101
8. **Green Valley** 240-236-3400  
Leigh Warren, Principal  
11501 Fingerboard Road  
Monrovia, MD 21770  
Fax 240-236-3401
9. **Hillcrest \*** 240-236-3200  
Kimberly Seiss, Principal  
1285 Hillcrest Drive  
Frederick, MD 21703  
Fax 240-236-3201
10. **Kempton** 240-236-3500  
Kristen Canning, Principal  
3456 Kempton Church Road  
Monrovia, MD 21770  
Fax 240-236-3501
11. **Lewistown** 240-236-3750  
Shirley Olsen, Principal  
11119 Hessong Bridge Road  
Thurmont, MD 21788  
Fax 240-236-3751
12. **Liberty** 240-236-1800  
Angela Corrigan, Principal  
11820 Liberty Road  
Frederick, MD 21701  
Fax 240-236-1801
13. **Lincoln \*** 240-236-2650  
Ann Reeve, Principal  
200 Madison Street  
Frederick, MD 21701  
Fax 240-236-2651
14. **Middletown** 240-236-1100  
Grades 3-5  
Steve Parsons, Principal  
201 East Green Street  
Middletown, MD 21769  
Fax 240-236-1150
15. **Middletown Primary ♦♦** 240-566-0200  
Grades Pre-K-2  
Karen Hopson, Principal  
403 Franklin Street  
Middletown, MD 21769  
Fax 240-566-0201
16. **Monocacy \*** 240-236-1400  
Allie Watkins, Principal  
7421 Hayward Road  
Frederick, MD 21702  
Fax 240-236-1401
17. **Myersville** 240-236-1900  
Kathy Swire, Principal  
429 Main Street  
Myersville, MD 21773  
Fax 240-236-1901
18. **New Market \*** 240-236-1300  
Cindy Alvarado, Principal  
93 West Main Street  
New Market, MD 21774  
Fax 240-236-1301

19. **New Midway-Woodsboro**  
Giuseppe DiMonte, Principal  
**A) New Midway** 240-236-1500  
Grades 3-5  
12226 Woodsboro Pike  
Keymar, MD 21757  
Fax 240-236-1501  
**B) Woodsboro \*** 240-236-3700  
Grades Pre-K-2  
101 Liberty Road  
Woodsboro, MD 21798  
Fax 240-236-3701
20. **North Frederick \*** 240-236-2000  
DeVeda Coley, Principal  
1001 Matter Avenue  
Frederick, MD 21701  
Fax 240-236-2001
21. **Oakdale \*** 240-236-3300  
Randy Perrell, Principal  
9850 Old National Pike  
Ijamsville, MD 21754  
Fax 240-236-3301
22. **Orchard Grove \*** 240-236-2400  
Debra Myers, Principal  
5898 Hannover Drive  
Frederick, MD 21703  
Fax 240-236-2401
23. **Parkway ♦** 240-236-2600  
Elizabeth Little, Principal  
300 Carroll Parkway  
Frederick, MD 21701  
Fax 240-236-2601
24. **Sabillasville** 240-236-6000  
Kate Krietz, Principal  
16210-B Sabillasville Road  
Sabillasville, MD 21780  
Fax 240-236-6001
25. **Spring Ridge ♦♦** 240-236-1600  
Deborah Thackston, Principal  
9051 Ridgefield Drive  
Frederick, MD 21701  
Fax 240-236-1601
26. **Thurmont (Gr. 3-5)** 240-236-0900  
Cheryl Crawford, Principal  
805 East Main Street  
Thurmont, MD 21788  
Fax 240-236-0901
27. **Thurmont Primary ♦♦** 240-236-2800  
Grades Pre-K-2  
Karen Locke, Principal  
7989 Rocky Ridge Road  
Thurmont, MD 21788  
Fax 240-236-2801

28. **Tuscarora** 240-566-0000  
Stephen Raff, Principal  
6321 Lambert Drive  
Frederick, MD 21703  
Fax 240-566-0001
29. **Twin Ridge ♦♦** 240-236-2300  
Dr. Ayesha McArthur, Principal  
1106 Leafy Hollow Circle  
Mt. Airy, MD 21771  
Fax 240-236-2301
30. **Urbana ♦** 240-236-2200  
Jan Hollenbeck, Principal  
3554 Urbana Pike  
Frederick, MD 21704  
Fax 240-236-2201
31. **Valley \*** 240-236-3000  
Jason Bowser, Principal  
3519 Jefferson Pike  
Jefferson, MD 21755  
Fax 240-236-3001
32. **Walkersville** 240-236-1000  
Tess Blumenthal, Principal  
83 West Frederick Street  
Walkersville, MD 21793  
Fax 240-236-1050
33. **Waverley ♦♦** 240-236-3900  
Barbara Nash, Principal  
201 Waverley Drive  
Frederick, MD 21702  
Fax 240-236-3901
34. **Whittier ♦♦** 240-236-3100  
Amy Schwiegerath, Principal  
2400 Whittier Drive  
Frederick, MD 21702  
Fax 240-236-3101
35. **Wolfsville \*** 240-236-2250  
John Festerman, Principal  
12520 Wolfsville Road  
Myersville, MD 21773  
Fax 240-236-2251
36. **Yellow Springs** 240-236-1700  
Susan Kreiger, Principal  
8717 Yellow Springs Road  
Frederick, MD 21702  
Fax 240-236-1701

## MIDDLE

37. **Ballenger Creek** 240-236-5700  
Mita Badshah, Principal  
5525 Ballenger Creek Pike  
Frederick, MD 21703  
Fax 240-236-5701
38. **Brunswick** 240-236-5400  
Barbara Keiling, Principal  
301 Cummings Drive  
Brunswick, MD 21716  
Fax 240-236-5401

## HIGH

50. **Brunswick** 240-236-8600  
Nancy Doll, Principal  
101 Cummings Drive  
Brunswick, MD 21716  
Fax 240-236-8601
51. **Catoctin** 240-236-8100  
Bernard Quesada, Principal  
14745 Sabillasville Road  
Thurmont, MD 21788  
Fax 240-236-8101
52. **Frederick** 240-236-7000  
Kathy Campagnoli, Principal  
650 Carroll Parkway  
Frederick, MD 21701  
Fax 240-236-7015
53. **Governor Thomas Johnson** 240-236-8200  
Jethro Reid, Principal  
1501 North Market Street  
Frederick, MD 21701  
Fax 240-236-8201
54. **Linganore** 240-566-9700  
David Kehne, Principal  
12013 Old Annapolis Road  
Frederick, MD 21701  
Fax 240-566-9701
55. **Middletown** 240-236-7400  
Denise Fargo-Devine, Principal  
200 Schoolhouse Drive  
Middletown, MD 21769  
Fax 240-236-7450
56. **Oakdale** 240-566-9400  
Jeff Marker, Principal  
5850 Eaglehead Drive  
Ijamsville, MD 21754  
Fax 240-566-9401
57. **Tuscarora** 240-236-6400  
Kathleen Schlappal, Principal  
5312 Ballenger Creek Pike  
Frederick, MD 21703  
Fax 240-236-6401
58. **Urbana** 240-236-7600  
Jay Berno, Principal  
3471 Campus Drive  
Ijamsville, MD 21754  
Fax 240-236-7601
59. **Walkersville** 240-236-7200  
Tracey Franklin, Principal  
81 West Frederick Street  
Walkersville, MD 21793  
Fax 240-236-7250



## KEY

\* Pre-kindergarten program available

◆ Special education pre-kindergarten available

## Middle (continued)

39. **Crestwood** 240-566-9000  
Dr. Dan Lippy, Principal  
7100 Foxcroft Drive  
Frederick, MD 21703  
Fax 240-566-9001
40. **Governor Thomas Johnson** 240-236-4900  
Neal Case, Principal  
1799 Schifferstadt Boulevard  
Frederick, MD 21701  
Fax 240-236-4901
41. **Middletown** 240-236-4200  
Everett Warren, Principal  
100 Martha Mason Street  
Middletown, MD 21769  
Fax 240-236-4250
42. **Monocacy** 240-236-4700  
Brian Vasquez, Principal  
8009 Opossumtown Pike  
Frederick, MD 21702  
Fax 240-236-4701
43. **New Market** 240-236-4600  
Jennifer Bingman, Principal  
125 West Main Street  
New Market, MD 21774  
Fax 240-236-4650
44. **Oakdale** 240-236-5500  
Stephanie Ware, Principal  
9840 Old National Pike  
Ijamsville, MD 21754  
Fax 240-236-5501
45. **Thurmont** 240-236-5100  
Jennifer Powell, Principal  
408 East Main Street  
Thurmont, MD 21788  
Fax 240-236-5101
46. **Urbana** 240-566-9200  
Michelle Concepcion, Principal  
3511 Pontius Court  
Ijamsville, MD 21754  
Fax 240-566-9201
47. **Walkersville** 240-236-4400  
Stacey Hiltner, Principal  
55 West Frederick Street  
Walkersville, MD 21793  
Fax 240-236-4401
48. **West Frederick** 240-236-4000  
Frank Vetter, Principal  
515 West Patrick Street  
Frederick, MD 21701  
Fax 240-236-4050
49. **Windsor Knolls** 240-236-5000  
T.C. Suter, Principal  
11150 Windsor Road  
Ijamsville, MD 21754  
Fax 240-236-5001

## OTHER

60. **Career and Technology Center** 240-236-8500  
Michael Concepcion, Principal  
7922 Opossumtown Pike  
Frederick, MD 21702  
Fax 240-236-8501
61. **Carroll Creek Montessori Public Charter School \*** 301-663-7970  
Gerald DeGrange, Acting Principal  
7215 Corporate Court  
Frederick, MD 21703  
Fax 301-663-6107
62. **Frederick Classical Charter School** 240-236-1200  
Jacqueline Piro, Principal  
8445 Spires Way  
Frederick, MD 21701  
Fax 240-236-1201
63. **Frederick County Virtual School** 240-236-8421  
Dr. Stacey Adamiak, Principal  
c/o GTJMS  
1799 Schifferstadt Boulevard  
Room 116  
Frederick, MD 21701  
Fax 240-236-8451
64. **Heather Ridge** 240-236-8000  
Denise Flora, Principal  
1445 Taney Avenue  
Frederick, MD 21702  
Fax 240-236-8001
65. **Monocacy Valley Montessori Public Charter School \*** 301-668-5013  
Felacita King, Principal  
217 Dill Avenue  
Frederick, MD 21701  
Fax 301-668-5015
66. **Rock Creek ◆** 240-236-8700  
Mary Malone, Principal  
191 Waverley Drive  
Frederick, MD 21702  
Fax 240-236-8701

*For other useful numbers,  
see next page*

# **AIA**® Document A701™ – 1997

## **Instructions to Bidders**

for the following PROJECT:  
(Name and location or address)

### **THE OWNER:**

(Name and address):

The Board of Education of Frederick County  
191 South East Street  
Frederick, Maryland 21701-5918

### **THE ARCHITECT:**

(Name and address):

### **TABLE OF ARTICLES**

- 1 DEFINITIONS**
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- 7 PERFORMANCE BOND AND PAYMENT BOND**
- 8 FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR**

### **ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

## **ARTICLE 1 DEFINITIONS**

§ 1.1 Bidding Documents include the Bidding Requirements and the proposed Contract Documents. The Bidding Requirements consist of the Advertisement or Invitation to Bid, Instructions to Bidders, Supplementary Instructions to Bidders, the bid form, and other sample bidding and contract forms. The proposed Contract Documents consist of the form of Agreement between the Owner and Contractor, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications and all Addenda issued prior to execution of the Contract.

§ 1.2 Definitions set forth in the General Conditions of the Contract for Construction, AIA Document A201, or in other Contract Documents are applicable to the Bidding Documents.

§ 1.3 Addenda are written or graphic instruments issued by the Architect prior to the execution of the Contract which modify or interpret the Bidding Documents by additions, deletions, clarifications or corrections.

§ 1.4 A Bid is a complete and properly executed proposal to do the Work for the sums stipulated therein, submitted in accordance with the Bidding Documents.

§ 1.5 The Base Bid is the sum stated in the Bid for which the Bidder offers to perform the Work described in the Bidding Documents as the base, to which Work may be added or from which Work may be deleted for sums stated in Alternate Bids.

§ 1.6 An Alternate Bid (or Alternate) is an amount stated in the Bid to be added to or deducted from the amount of the Base Bid if the corresponding change in the Work, as described in the Bidding Documents, is accepted.

§ 1.7 A Unit Price is an amount stated in the Bid as a price per unit of measurement for materials, equipment or services or a portion of the Work as described in the Bidding Documents.

§ 1.8 A Bidder is a person or entity who submits a Bid and who meets the requirements set forth in the Bidding Documents.

§ 1.9 A Sub-bidder is a person or entity who submits a bid to a Bidder for materials, equipment or labor for a portion of the Work.

## **ARTICLE 2 BIDDER'S REPRESENTATIONS**

§ 2.1 The Bidder by making a Bid represents that:

§ 2.1.1 The Bidder has read and understands the Bidding Documents or Contract Documents, to the extent that such documentation relates to the Work for which the Bid is submitted, and for other portions of the Project, if any, being bid concurrently or presently under construction.

§ 2.1.2 The Bid is made in compliance with the Bidding Documents.

§ 2.1.3 The Bidder has visited the site, become familiar with local conditions under which the Work is to be performed and has correlated the Bidder's personal observations with the requirements of the proposed Contract Documents.

§ 2.1.4 The Bid is based upon the materials, equipment and systems required by the Bidding Documents without exception.

## **ARTICLE 3 BIDDING DOCUMENTS**

### **§ 3.1 COPIES**

§ 3.1.1 Bidders may obtain complete sets of the Bidding Documents from the issuing office designated in the Advertisement or Invitation to Bid.

§ 3.1.2 Bidding Documents will not be issued directly to Sub-bidders in complete bid sets only.

§ 3.1.3 Bidders shall use complete sets of Bidding Documents in preparing Bids; neither the Owner nor Architect assumes responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.



**§ 3.1.4** The Owner and Architect may make copies of the Bidding Documents available on the above terms for the purpose of obtaining Bids on the Work. No license or grant of use is conferred by issuance of copies of the Bidding Documents.

### **§ 3.2 INTERPRETATION OR CORRECTION OF BIDDING DOCUMENTS**

**§ 3.2.1** The Bidder shall carefully study and compare the Bidding Documents with each other, and with other work being bid concurrently or presently under construction to the extent that it relates to the Work for which the Bid is submitted, shall examine the site and local conditions, and shall at once report to the Architect errors, inconsistencies or ambiguities discovered.

**§ 3.2.2** Bidders and Sub-bidders requiring clarification or interpretation of the Bidding Documents shall make a written request which shall reach the Architect at least seven days prior to the date for receipt of Bids.

**§ 3.2.3** Interpretations, corrections and changes of the Bidding Documents will be made by Addendum. Interpretations, corrections and changes of the Bidding Documents made in any other manner will not be binding, and Bidders shall not rely upon them.

### **§ 3.3 SUBSTITUTIONS**

**§ 3.3.1** The materials, products and equipment described in the Bidding Documents establish a standard of required function, dimension, appearance and quality to be met by any proposed substitution.

**§ 3.3.2** No substitution will be considered prior to receipt of Bids unless written request for approval has been received by the Architect at least ten days prior to the date for receipt of Bids. Such requests shall include the name of the material or equipment for which it is to be substituted and a complete description of the proposed substitution including drawings, performance and test data, and other information necessary for an evaluation. A statement setting forth changes in other materials, equipment or other portions of the Work, including changes in the work of other contracts that incorporation of the proposed substitution would require, shall be included. The burden of proof of the merit of the proposed substitution is upon the proposer. The Architect's decision of approval or disapproval of a proposed substitution shall be final.

**§ 3.3.3** If the Architect approves a proposed substitution prior to receipt of Bids, such approval will be set forth in an Addendum. Bidders shall not rely upon approvals made in any other manner.

**§ 3.3.4** No substitutions will be considered after the Contract award unless specifically provided for in the Contract Documents.

### **§ 3.4 ADDENDA**

**§ 3.4.1** Addenda will be available to all who are known by the issuing office to have received a complete set of Bidding Documents at no charge, unless the addenda is informational and does not affect in any way the fit, form or function of any technical and design of this project. In that case, the potential contractor will be responsible for any printing costs.

**§ 3.4.2** Copies of Addenda will be made available for inspection wherever Bidding Documents are on file for that purpose.

**§ 3.4.3** Addenda will be issued no later than four days prior to the date for receipt of Bids except an Addendum withdrawing the request for Bids or one which includes postponement of the date for receipt of Bids.

**§ 3.4.4** Each Bidder shall ascertain prior to submitting a Bid that the Bidder has received all Addenda issued, and the Bidder shall acknowledge their receipt in the Bid.

## **ARTICLE 4 BIDDING PROCEDURES**

### **§ 4.1 PREPARATION OF BIDS**

**§ 4.1.1** Bids shall be submitted on the forms included with the Bidding Documents.

**§ 4.1.2** All blanks on the bid form shall be legibly executed in a non-erasable medium.

§ 4.1.3 Sums shall be expressed in both words and figures. In case of discrepancy, the amount written in words shall govern.

§ 4.1.4 Interlineations, alterations and erasures must be initialed by the signer of the Bid.

§ 4.1.5 All requested Alternates shall be bid. If no change in the Base Bid is required, enter "No Change."

§ 4.1.6 Where two or more Bids for designated portions of the Work have been requested, the Bidder may, without forfeiture of the bid security, state the Bidder's refusal to accept award of less than the combination of Bids stipulated by the Bidder. The Bidder shall make no additional stipulations on the bid form nor qualify the Bid in any other manner.

§ 4.1.7 Each copy of the Bid shall state the legal name of the Bidder and the nature of legal form of the Bidder. The Bidder shall provide evidence of legal authority to perform within the jurisdiction of the Work. Each copy shall be signed by the person or persons legally authorized to bind the Bidder to a contract. A Bid by a corporation shall further give the state of incorporation and have the corporate seal affixed. A Bid submitted by an agent shall have a current power of attorney attached certifying the agent's authority to bind the Bidder.

#### § 4.2 BID SECURITY

§ 4.2.1 Each Bid shall be accompanied by a bid security in the form and amount required if so stipulated in the Instructions to Bidders. The Bidder pledges to enter into a Contract with the Owner on the terms stated in the Bid and will, if required, furnish bonds covering the faithful performance of the Contract and payment of all obligations arising thereunder. Should the Bidder refuse to enter into such Contract or fail to furnish such bonds if required, the amount of the bid security shall be forfeited to the Owner as liquidated damages, not as a penalty. The amount of the bid security shall not be forfeited to the Owner in the event the Owner fails to comply with Section 6.2.

§ 4.2.2 If a surety bond is required, it shall be written on AIA Document A310, Bid Bond, unless otherwise provided in the Bidding Documents, and the attorney-in-fact who executes the bond on behalf of the surety shall affix to the bond a certified and current copy of the power of attorney.

§ 4.2.3 The Owner will have the right to retain the bid security of Bidders to whom an award is being considered until either (a) the Contract has been executed and bonds, if required, have been furnished, or (b) the specified time has elapsed so that Bids may be withdrawn or (c) all Bids have been rejected.

#### § 4.3 SUBMISSION OF BIDS

§ 4.3.1 All copies of the Bid, the bid security, if any, and any other documents required to be submitted with the Bid shall be enclosed in a sealed opaque envelope. The envelope shall be addressed to the party receiving the Bids and shall be identified with the Project name, the Bidder's name and address and, if applicable, the designated portion of the Work for which the Bid is submitted. If the Bid is sent by mail, the sealed envelope shall be enclosed in a separate mailing envelope with the notation "SEALED BID ENCLOSED" on the face thereof.

§ 4.3.2 Bids shall be deposited at the designated location prior to the time and date for receipt of Bids. Bids received after the time and date for receipt of Bids will be returned unopened.

§ 4.3.3 The Bidder shall assume full responsibility for timely delivery at the location designated for receipt of Bids.

§ 4.3.4 Oral, telephonic, telegraphic, facsimile or other electronically transmitted bids will not be considered.

#### § 4.4 MODIFICATION OR WITHDRAWAL OF BID

§ 4.4.1 A Bid may not be modified, withdrawn or canceled by the Bidder during the stipulated time period following the time and date designated for the receipt of Bids, and each Bidder so agrees in submitting a Bid.

§ 4.4.2 Prior to the time and date designated for receipt of Bids, a Bid submitted may be modified or withdrawn by notice to the party receiving Bids at the place designated for receipt of Bids. Such notice shall be in writing over the signature of the Bidder. Written confirmation over the signature of the Bidder shall be received, and date- and

time-stamped by the receiving party on or before the date and time set for receipt of Bids. A change shall be so worded as not to reveal the amount of the original Bid.

**§ 4.4.3** Withdrawn Bids may be resubmitted up to the date and time designated for the receipt of Bids provided that they are then fully in conformance with these Instructions to Bidders.

**§ 4.4.4** Bid security, if required, shall be in an amount sufficient for the Bid as resubmitted.

## **ARTICLE 5 CONSIDERATION OF BIDS**

### **§ 5.1 OPENING OF BIDS**

At the discretion of the Owner, if stipulated in the Advertisement or Invitation to Bid, the properly identified Bids received on time will be publicly opened and will be read aloud. An abstract of the Bids may be made available to Bidders.

### **§ 5.2 REJECTION OF BIDS**

The Owner shall have the right to reject any or all Bids. A Bid not accompanied by a required bid security or by other data required by the Bidding Documents, or a Bid which is in any way incomplete or irregular is subject to rejection.

### **§ 5.3 ACCEPTANCE OF BID (AWARD)**

**§ 5.3.1** It is the intent of the Owner to award a Contract to the lowest qualified Bidder provided the Bid has been submitted in accordance with the requirements of the Bidding Documents and does not exceed the funds available. The Owner shall have the right to waive informalities and irregularities in a Bid received and to accept the Bid which, in the Owner's judgment, is in the Owner's own best interests.

**§ 5.3.2** The Owner shall have the right to accept Alternates in any order or combination, unless otherwise specifically provided in the Bidding Documents, and to determine the low Bidder on the basis of the sum of the Base Bid and Alternates accepted.

## **ARTICLE 6 POST-BID INFORMATION**

### **§ 6.1 CONTRACTOR'S QUALIFICATION STATEMENT**

Bidders to whom award of a Contract is under consideration shall submit to the Architect, upon request, a properly executed AIA Document A305, Contractor's Qualification Statement, unless such a Statement has been previously required and submitted as a prerequisite to the issuance of Bidding Documents.

### **§ 6.2 OWNER'S FINANCIAL CAPABILITY**

The Owner shall, at the request of the Bidder to whom award of a Contract is under consideration and no later than seven days prior to the expiration of the time for withdrawal of Bids, furnish to the Bidder reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. Unless such reasonable evidence is furnished, the Bidder will not be required to execute the Agreement between the Owner and Contractor.

### **§ 6.3 SUBMITTALS**

**§ 6.3.1** The Bidder shall, as soon as practicable or as stipulated in the Bidding Documents, after notification of selection for the award of a Contract, furnish to the Owner through the Architect in writing:

- .1 a designation of the Work to be performed with the Bidder's own forces;
- .2 names of the manufacturers, products, and the suppliers of principal items or systems of materials and equipment proposed for the Work; and
- .3 names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for the principal portions of the Work.

**§ 6.3.2** The Bidder will be required to establish to the satisfaction of the Architect and Owner the reliability and responsibility of the persons or entities proposed to furnish and perform the Work described in the Bidding Documents.

**§ 6.3.3** Prior to the execution of the Contract, the Architect will notify the Bidder in writing if either the Owner or Architect, after due investigation, has reasonable objection to a person or entity proposed by the Bidder. If the Owner or Architect has reasonable objection to a proposed person or entity, the Bidder may, at the Bidder's option, (1) withdraw the Bid or (2) submit an acceptable substitute person or entity with an adjustment in the Base Bid or

Alternate Bid to cover the difference in cost occasioned by such substitution. The Owner may accept the adjusted bid price or disqualify the Bidder. In the event of either withdrawal or disqualification, bid security will not be forfeited.

§ 6.3.4 Persons and entities proposed by the Bidder and to whom the Owner and Architect have made no reasonable objection must be used on the Work for which they were proposed and shall not be changed except with the written consent of the Owner and Architect.

## **ARTICLE 7 PERFORMANCE BOND AND PAYMENT BOND**

### **§ 7.1 BOND REQUIREMENTS**

§ 7.1.1 If stipulated in the Bidding Documents, the Bidder shall furnish bonds covering the faithful performance of the Contract and payment of all obligations arising thereunder. Bonds may be secured through the Bidder's usual sources.

§ 7.1.2 If the furnishing of such bonds is stipulated in the Bidding Documents, the cost shall be included in the Bid. If the furnishing of such bonds is required after receipt of bids and before execution of the Contract, the cost of such bonds shall be added to the Bid in determining the Contract Sum.

§ 7.1.3 If the Owner requires that bonds be secured from other than the Bidder's usual sources, changes in cost will be adjusted as provided in the Contract Documents.

### **§ 7.2 TIME OF DELIVERY AND FORM OF BONDS**

§ 7.2.1 The Bidder shall deliver the required bonds to the Owner not later than three days following the date of execution of the Contract. If the Work is to be commenced prior thereto in response to a letter of intent, the Bidder shall, prior to commencement of the Work, submit evidence satisfactory to the Owner that such bonds will be furnished and delivered in accordance with this Section 7.2.1.

§ 7.2.2 Unless otherwise provided, the bonds shall be written on COMAR Document 21.07.02.10, Performance Bond and Payment Bond. Both bonds shall be written in the amount of the Contract Sum.

§ 7.2.3 The bonds shall be dated on or after the date of the Contract.

§ 7.2.4 The Bidder shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney.

## **ARTICLE 8 FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR**

Unless otherwise required in the Bidding Documents, the Agreement for the Work will be written on AIA Document A101, Standard Form of Agreement Between Owner and Contractor Where the Basis of Payment Is a Stipulated Sum.



## Additions and Deletions Report for AIA® Document A701™ – 1997

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 08:29:19 on 03/21/2013.

### PAGE 1

~~(Name, legal status and address)~~ (Name and address):

The Board of Education of Frederick County  
191 South East Street  
Frederick, Maryland 21701-5918

...

~~(Name, legal status and address)~~ (Name and address):

### PAGE 2

§ 3.1.1 Bidders may obtain complete sets of the Bidding Documents from the issuing office designated in the Advertisement or Invitation to Bid ~~in the number and for the deposit sum, if any, stated therein.~~ The deposit will be refunded to Bidders who submit a bona fide Bid and return the Bidding Documents in good condition within ten days after receipt of Bids. The cost of replacement of missing or damaged documents will be deducted from the deposit. A Bidder receiving a Contract award may retain the Bidding Documents and the Bidder's deposit will be refunded. Bid.

§ 3.1.2 Bidding Documents will not be issued directly to Sub-bidders ~~unless specifically offered in the Advertisement or Invitation to Bid, or in supplementary instructions to bidders in complete bid sets only.~~

### PAGE 3

§ 3.4.1 Addenda will be ~~transmitted available~~ available to all who are known by the issuing office to have received a complete set of Bidding Documents. ~~Documents at no charge, unless the addenda is informational and does not affect in any way the fit, form or function of any technical and design of this project. In that case, the potential contractor will be responsible for any printing costs.~~

### PAGE 6

§ 7.2.2 Unless otherwise provided, the bonds shall be written on ~~AIA Document A312, COMAR Document 21.07.02.10.~~ Performance Bond and Payment Bond. Both bonds shall be written in the amount of the Contract Sum.

## **Certification of Document's Authenticity**

**AIA® Document D401™ – 2003**

I, Tony Ray Project Manager III, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 08:29:19 on 03/21/2013 under Order No. 7546025320\_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A701™ – 1997, Instructions to Bidders, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

*(Signed)*

*(Title)*

*(Dated)*

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User Notes:

(879721073)

**FREDERICK COUNTY PUBLIC SCHOOLS (FCPS)**  
**SUPPLEMENTAL INSTRUCTIONS TO BIDDERS (SUPPLEMENT TO AIA DOC. A701)**

**Lump Sum Offering Terms (Section A)**

1. The attention of all Contractors, Subcontractors and Material Supply Bidders is directed to the Invitation to Bid, Proposal Form, General Conditions and Supplementary Conditions of the Contract, and General Requirements for information pertinent to the bidding process. To be considered, bids must be made in accordance with these Instructions to Bidders, as well as with the Documents listed above.
2. Each bidder shall submit an original of the BID FORM OF PROPOSAL, and it shall be sealed in an opaque envelope and marked 14C6, Unit Price for Fuel System Cleaning, Maintenance and Fuel Oil Tank Replacement. All inner and outer envelopes and packaging, used by Fed Ex, Ups and etc., should be labeled with the Bid Name, Bid Number, and Due Date/Time. This will help assure timely receipt of proposals in the Purchasing Department. Bids not received in time due to improper labeling will be considered non-responsive. Bid shall be addressed to the Owner, the Board of Education (BOE) of Frederick County, and will be received in the Main Lobby of the FCPS, 191 South East Street, Frederick, Maryland 21701, no later than 2:00 P.M., local time, on December 5, 2013. All bids will be opened and read aloud in the Purchasing Department, Conference Room 2B. Bids received after this time will be returned unopened.
3. In the event of inclement weather on the date when the bids are scheduled to be opened and the FCPS administrative offices are closed, bids will be opened on the next business day at the same time as previously scheduled. Bids will be accepted until the scheduled time of opening on the next business day. (Often when schools are closed due to inclement weather, administrative offices remain open. When in doubt, call the Purchasing Department.)
4. The bidder shall acknowledge the receipt of each and every Addendum on the Bid Form as part of the bid.
5. Any bid may be withdrawn prior to the above scheduled time of the opening of bids. Bids received after the time and date specified shall not be considered by the Owner.
6. Each Bidder shall submit with his bid a certified check, cashier's check or bid bond acceptable to the Owner, for at least five percent (5%) of the amount of TOTAL BID. Each bidder agrees that he will, if awarded the contract, at the time of entering into agreement, furnish to the Owner proper payment and performance bonds naming the BOE of Frederick County for the full amount of the contract guaranteeing the faithful performance of all conditions thereof, and the payment in full to all parties furnishing labor and materials or other services on its account. If the successful bidder does not enter into contract within ten days after Owner's notification of his intent to enter into contract, he shall forfeit the Bid Bond unless the Owner is responsible for the delay.
7. The following requirements apply to bid bonds, performance bonds, labor and material payment bonds, and liability insurance are referenced in the bid documents:
  - a. they must be issued by a surety that is (i) authorized to do business in Maryland; and (ii) licensed to do business in Maryland.
  - b. the Contractor should include a copy of the certificate of license from the Maryland Insurance Administration, when each bond is submitted;
  - c. the Contractor should, upon request of the owner, provide a copy of the required

insurance policy; and

- d. bonds may be required for bid packages and the cost to provide them shall be included in the base bid and each alternate bid package.
8. Maryland Code 21-102 – A certificate of authority, or certified copy of a certificate of authority, issued by the Commissioner to a surety insurer shall be accepted as evidence of qualification to become sole surety on a bond, undertaking, recognizance, or other obligation required or allowed by law, or in the charter, ordinances, rules, or regulations of a municipal corporation, board, organization, court, judge, or public officer, without further proof or qualification regarding solvency, credit, or financial sufficiency to act as a surety or bidders may use bonding companies from Treasury approved sureties with an AM Best rating of A- or better rating.
9. The successful contractor's security as mentioned above will be retained until he has signed the Owner- Contractor Agreement and Addendum and furnished the required Payment Bond and Performance Bond, guaranteeing payment of damages in the event of failure to perform as agreed, including the prevailing wage rate clause. The Owner reserves the right to retain the security of all bidding Contractors until the selected bidder enters into contract, or until 90 calendar days after the bid opening, whichever is shorter. If any bidder refuses to enter into a contract, the Owner may retain his bid security as liquidated damages, but not as a penalty.
10. Should any bidder find discrepancies in, or omissions from, the drawing and other contract documents, or in his investigation of the site conditions, or should he be in doubt of their meaning, he should at once request via e-mail to Tony Ray, Project Manager, III, e-mail: [tony.ray@fcps.org](mailto:tony.ray@fcps.org) along with a copy to Bill Meekins, Buyer Specialist, e-mail: [willis.meekins@fcps.org](mailto:willis.meekins@fcps.org) . All necessary interpretations will be issued to all Bidders in the form of Addenda to the specifications, and such Addenda shall become part of the contract documents. No request received within seven calendar days prior to the bid opening date will be considered, and no Addenda will be issued later than four calendar days prior to the bid opening date except when notification of an extension of the bid opening date has been issued. Neither the Owner nor its employees, agents nor representatives shall be responsible for oral instructions.
11. Award of the contract is contingent upon the approval of full funding for this project.
12. The owner reserves the right to reject any or all of the bids without explanation, to waive any informality in the bids, and to award the Contract to the bidder who proves to be qualified as to financial responsibility, reputation and ability to carry out the obligations of the Contract to the best interest of the Owner. Bid forms, which are not completed in accordance with instructions, may be considered non-responsive.
13. Substitutions: Bidders are referred to paragraphs contained within the General Requirements and the technical specifications for information concerning product substitution.
14. Governing Laws and Regulations:
  - 14.1 Sales Tax: Materials which are incorporated into the work under this Contract are subject to the Maryland Sales or Use Tax. The Contractor will be required to pay the tax on all purchased items, and can recover this payment only as part of the Bid price.
  - 14.2 Objections to Award Recommendation: Any vendor objecting to the Purchasing Department's recommendation of award, must protest the Purchasing Department's action by formally notifying, in writing to the Executive Director



of Fiscal Services, five days prior to the award being made at the next scheduled Board meeting. It is the vendor's responsibility to ascertain the date and time of the pertinent Board Meeting.

- 14.3 Objections to Awards: Any objections to an award made by the Board of Education must be filed, in writing, to the Executive Director of Fiscal Services and received within ten days following the date of award by the Board of Education.

15. During the Bidding process, bidders may not use the telephones belonging to FCPS.
16. The form of Contract between the Owner and the Contractor shall be AIA Document A101, Standard Form of Agreement Between Owner and Contractor (2007 edition) including the AIA A201 General Conditions of the contract for Construction (2007 Edition), together with Frederick County Public Schools' Addenda and shall be properly prepared by the Owner, ready for execution of the various parties involved.
17. The amount of the Contract shall be derived from the BASE BID and ALTERNATE BIDS, as applicable.
18. Any change in bid opening time, date or place will be announced via addendum.
19. Each Bidder's attention is directed to the fact that all applicable Federal, State, County and local laws and ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the project shall apply to the Contract throughout, and they will be deemed to included in the Contract the same as though written out in full.

20. AMERICAN STEEL REQUIREMENT

The contractor shall comply with the provisions of Sections 17-301 through 17-306 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended entitled "Steel Procurement for Public Works." The contractor's affidavit of compliance with these provisions may be required before payment can be made.

21. Communications with the owner shall be directed to the contract administrator:

FCPS/ Facilities Department  
Tony Ray, Project Manager III,  
191 South East Street  
Frederick, Md. 21701  
Telephone: 301-644-4167 E-mail: [tony.ray@fcps.org](mailto:tony.ray@fcps.org)

22. It is anticipated that the Contract for this project will be awarded by the BOE on January 22, 2014. The successful contractor will be sent a Notice of Award within several days thereafter. A notice to proceed or purchase order will be issued upon receipt of proper bonds and proof of insurance.
23. It is anticipated that construction will commence on or around March 1, 2014. Substantial completion shall be achieved by May 2, 2014.
24. AIA Document A101, Article 3.4 clarification –

In the event that the Contractor does not achieve Substantial Completion as stipulated, including approved extensions, the Contractor and the Contractor's surety shall be liable for and shall pay liquidated damages to the Owner.

The liquidated damages sum of \$1.00 per student based on the expected enrollment of 616 students for total liquidated damages in the amount of \$616.00 per day.

25. HOLD HARMLESS

It is understood that firms providing quotes for this project shall defend and hold harmless the BOE of Frederick County and its representations from all suits, actions, or claims of any kind brought about as a result of any injuries or damages sustained by persons(s) or property during the performance of this contract.

26. USE OF PREMISES, PROVISION OF PORTABLE SANITATION AND REMOVAL OF DEBRIS

Contractors are responsible for removal of trash and debris and shall confine their apparatus, materials, supplies, and equipment in such orderly fashion at the work site. The Contractor shall not interfere with Board personnel or students while they are conducting their required business. All work areas must be returned to their former condition at the end of each work shift so as not to interfere with the daily duties of staff in the building. Contractor shall pay all disposal fees and can recuperate them only by including them in the price of the bid. At the completion of work and before final payment is made, contractors shall remove all rubbish from and about the building, and all tools, scaffolding and surplus materials, and shall leave the work site clean. In case of dispute, the Board may remove the rubbish and charge the cost to the contractor.

27. REMOVAL FROM BIDDER'S MAILING LIST

A company is solely responsible for obtaining, completing, and returning the General Application form; this is especially important where notification of the bid was obtained through advertisement, a bidder was informed by a sub-contractor, manufacturer, etc. Contact Robin Underwood, Vendor Maintenance Specialist, by telephone 301-644-5211 or facsimile 301-644-5213 to check the status of registration. Only companies approved and qualified by FCPS' Purchasing Department will be considered for contract award. The Large Construction Application is available on the FCPS website at: [www.fcps.org/purchasing](http://www.fcps.org/purchasing). The company is responsible for proper identification of bid categories on the form and is encouraged to contact a buyer in the Purchasing Department if he/she has questions. Applications are valid for a three year period. At the end of three years, the original application form and a new form will be mailed for update. Therefore, it is imperative that the company notifies FCPS' Purchasing Department of all address changes.

Only companies currently registered with FCPS' will automatically receive notifications of a bid solicitation. Staff will review the mailing list of the previous bid for similar products/services. All registered companies will be sent a one-page notification of bid advising interested companies to visit the FCPS website in order to obtain a complete bid solicitation package.

FCPS will not be held responsible for a company's failure to become and remain a registered bidder, to identify appropriate bid categories on the registration form, or for failure to notify the Purchasing Department of an address change, to accomplish these things in a timely manner. The Bidder's Mailing List is the only reliable means of notification of bids to individual companies.

Bidders with a repeated history of not bidding in a specific category may be removed from the Bidder's Mailing List for that category at the discretion of the Purchasing Manager.

28. AVAILABILITY OF BID TABULATIONS/BID AWARD

Final award and a copy of the bid tabulation will be posted on the FCPS website: [www.fcps.org/bidlist](http://www.fcps.org/bidlist) after BOE approval.

29. GOVERNING FORM

In the event of any conflict between the terms and provisions of these requirements and specifications, the specifications shall govern. In the event of any conflict of interpretation of any part of the overall document and plans, the purchasing manager's interpretation shall govern.

30. ERRORS IN BIDS

Bidders are allowed to request that their bid be withdrawn due arithmetical/clerical errors. The request must be received in the Purchasing Department within one business day after the time established for the bid opening. Written documentation substantiating the error must be submitted to the Purchasing Department within one business day after the time established for the bid opening. The written documentation must clearly document that the error occurred prior to the time established for the bid opening. If the Purchasing Department grants the request to withdraw a bid, the bid bond will be returned with no prejudice to the bidder. If the request to withdraw is denied or if a request is not made within one business day of the time established for the bid opening, it is understood that each bidder agrees that his/her bid will not be withdrawn for a period of (90) calendar days from the date of opening of bids.

31. CONTRACT DISPUTE

Any dispute resulting from a question or fact arising under this contract shall be decided by the FCPS' contract administrator and the purchasing manager who will reduce their decision to writing and furnish a copy thereof to the Contractor. This decision shall be final and conclusive unless within (30) days the Contractor furnishes to the contract administrator and purchasing manager a written appeal addressed to the BOE of Frederick County.

The BOE or duly authorized representative will review the appeal for the determination of such appeal and their finding shall be final and conclusive. Exceptions are decisions determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, or so grossly erroneous as to imply bad faith, or not supported by evidence. In connection with any appeal preceding under this clause the Contractor will be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of a dispute, the Contractor shall proceed diligently with the performance of the contract and in strict accordance with the FCPS staff's decision

This clause does not preclude consideration of laws questioned in connection with the decision provided for above.

32. NON-DISCRIMINATION CLAUSE

The FCPS does not discriminate in admissions, access, treatment or employment in its programs and activities on the basis of race, color, gender, age, national origin, religion, or disability.

Discrimination in any manner by the contractor against an employee or applicant for employment because of sex, race age, color, creed or national origin is prohibited.

The contractor is required to include a similar clause in every subcontract except a subcontract for standard commercial supplies or raw materials.

Each contractor and subcontractor subject to this clause are required to conspicuously post a notice that sets forth the provisions of the clause in a place that is available to employees and applicants for employment.

33. EMPLOYEE'S RESPONSIBILITIES

All contractors and subcontractors must abide by BOE policies and regulations while working on FCPS property.

The BOE of Frederick County desires to maintain a safe, healthy, and productive environment free of alcohol and drugs. The Board endorses the provisions of Public Law 100-690, Title V, Subtitle D (Drugs-Free Workplace Act of 1988) and Public Law 101-226 (The Drug-Free Schools and Communities Act of 1989) and regulations promulgated there under and establishes a drug-free and alcohol-free workplace and school system.

Maryland State Law (COMAR 13A.02.04) provides that each local school system is required to maintain a tobacco-free school environment.

Be advised that individuals who are registered sex offenders are not eligible to work on any FCPS' project. The contractor must initially check the Maryland Department of Public Safety & Correctional Services' MARYLAND SEX OFFENDER REGISTRY and search for the name of any employee to be assigned to work on this project. This applies to subcontractors and material/equipment suppliers as well. For projects lasting more than a few months, the contractor shall periodically re-check the names of workers against the registry to ensure ongoing compliance. In the event that a registered sex offender is discovered to be working on a FCPS project, whether through employment by the prime contractor, subcontractor or equipment or material supplier, FCPS will notify the site superintendent to immediately remove the individual from the premises and permanently terminate his work assignment. FCPS may terminate this contract as a result if the contractor is unable to demonstrate he has exercised care and diligence in the past by checking the Maryland registry.

34. NO SMOKING AND ALCOHOLIC BEVERAGES

The use of tobacco and alcoholic beverages in any form is prohibited in school buildings and on school grounds at all times, all year.

35. STATE FINANCE AND PROCUREMENT, ARTICLE 16-309

“If a person or business is debarred or suspended based on an offense listed in 16-202 (Bribery), the person or business may not be considered for the award of, be awarded, or perform directly or indirectly, a contract with a public body during the time period of debarment.”

36. EMARYLANDMARKETPLACE REGISTRATION

Contractors are required to register with [www.eMarylandMarketplace.org](http://www.eMarylandMarketplace.org) within five days following notice of award. Maryland law requires local and state agencies to post award notices on eMarylandMarketplace. This cannot be done without the contractor's self-registration in the system. Registration is free. Failure to comply with this requirement may be considered grounds for default. It is recommended that any interested bidder register with eMaryland Marketplace regardless of the award outcome for this procurement as it is a valuable resource for bid notification for municipalities through Maryland.



**FREDERICK COUNTY PUBLIC SCHOOLS (FCPS)**  
**SUPPLEMENTAL CONDITIONS OF CONTRACT TERMS**  
**SECTION B – UNIT PRICE(S)**

1. FCPS, herein called the “Owner”, invite bids from qualified bidders for a Unit Price for Fuel System Cleaning, Maintenance and Fuel Oil Tank Replacements. The unit price solicitation is an indefinite quantity contract with no guarantee of any purchase quantity or total dollar amount. Pricing is established on a unit price basis, as specified, for cleaning, maintenance and fuel oil tank replacements for any location in Frederick County, Maryland.
2. Contract Terms - The Unit Price contract shall be effective from the date of award through October 31, 2015, with two additional two-year renewal options available. The renewal terms shall only be for the unit price portion of the contract. Upon submission of bid, the contractor consents to the possibility of contract renewal as a condition of the award. If invoked, vendors will be notified around the anniversary dates.
3. Award for the unit price (Section B) will be based on a formula for a hypothetical project. This formula will be determined prior to opening the cost proposals. Award may be made to multiple vendors participating in this request for bid and may be made to two or more vendors.

All bidders are encouraged to bid the Unit Price portion of the contract along with Base Bid(s), Section A. Failure to bid every line item or to provide pricing for the exact description, as requested, may result in rejection of the bid.

This contract will be awarded on a line item basis, by group or in aggregate, whichever is in the best interest of FCPS.

4. Bid Bonds are not required for the unit price offering(s) at this time.

The Owner retains the right to require performance and payment bonds covering 100% of the purchase order amount on projects where the unit price(s) are utilized throughout the term(s) of the contract. If performance and payment bonds are required, they must be submitted to FCPS/Purchasing Department within ten days of any such request. The Owner will reimburse the actual cost of bonds not to exceed 2% of order total. Failure to provide bonds in the time frame indicated may result in FCPS not purchasing units under this contract.

5. Any bid may be withdrawn prior to the above scheduled time of the opening of bids. Bids received after the time and date specified shall not be considered by the Owner.
6. **PRICING**
  - a. All prices shall remain firm through the initial contract period.
  - b. FCPS expects all vendors to provide year over year cost reductions recommendations.
  - c. Price decreases are acceptable at any time, need not be verifiable, and are required should the contractor/producer/processor/manufacture experience a decrease in costs associated with the execution of the contract.
  - d. Price adjustments from the contractor/producer/processor/manufacture for any/all items may be considered at renewal. The request is subject to approval by the Contracting Officer. The request must be submitted in writing at least sixty (60) prior to the renewal term and shall be accompanied by supporting documentation.

- e. Should the awarded vendor, at any time during the life of the contract, sell materials of similar quality to another customer, or advertise special discounts or sales, at a price below those quoted within the contract, the lowest discounted prices shall be offered to FCPS.
7. Should any bidder find discrepancies in, or omissions from, the drawing and other contract documents, or in his investigation of the site conditions, or should he be in doubt of their meaning, he should at once request via e-mail to Tony Ray, Project Manager, III, e-mail: [tony.ray@fcps.org](mailto:tony.ray@fcps.org) along with a copy to Bill Meekins, Buyer Specialist, e-mail: [willis.meekins@fcps.org](mailto:willis.meekins@fcps.org) . All necessary interpretations will be issued to all Bidders in the form of Addenda to the specifications, and such Addenda shall become part of the contract documents. No request received within seven calendar days prior to the bid opening date will be considered, and no Addenda will be issued later than four calendar days prior to the bid opening date except when notification of an extension of the bid opening date has been issued. Neither the Owner nor its employees, agents nor representatives shall be responsible for oral instructions.
9. The successful contractor's security as mentioned above will be retained until he has signed the Owner- Contractor Agreement and Addendum and furnished the required Payment Bond and Performance Bond, guaranteeing payment of damages in the event of failure to perform as agreed, including the prevailing wage rate clause. The Owner reserves the right to retain the security of all bidding Contractors until the selected bidder enters into contract, or until 90 calendar days after the bid opening, whichever is shorter. If any bidder refuses to enter into a contract, the Owner may retain his bid security as liquidated damages, but not as a penalty.
10. Ordering Procedure
- a. Individual purchase order(s) will be issued for each project. There is no minimum order for services.
  - b. The contractor will be notified by telephone/facsimile that an "Order for Services" is requested. The contractor shall respond to the request within forty-eight (48) hours by calling the Maintenance, making a scheduled appointment to visit the work site with the Supervisor of Maintenance or his authorized representative. The purpose of this meeting will be to establish the scope of work, and a schedule for beginning and completing the project via the written Project Description Form. The beginning and ending work dates will be disclosed on the face of the purchase order and shall be contractually binding. The contract will not be paid for his time, travel or other expenses associated with visiting the work site to establish the scope of work.
  - c. For a given project, the appropriate units of labor and/or materials from this bid and the estimated quantity of each will be identified by the contractor in cooperation and consultation with the contract administrator. Pricing for units of labor, materials, or equipment, which are not specifically listed herein, will be subject to price review. The unit total of all lines, including items considered under the price review, will be added together to establish an estimated total project cost.
  - d. The contractor shall call the contract administrator and/or his authorized designee at least twenty-four (24) hours in advance of starting work.
  - e. Orders will be placed only as needs arise throughout the contract period(s). Individual purchase orders will be issued for each project.

## 11. Premium Surcharge

No additional fees will be paid for work done during the normal work week (any time Monday – Friday).

Normal hours (Monday through Friday, 800 a.m. to 5:00 p.m.)

Premium hours (Weekends, holidays, and weekdays before 8:00 a.m. or after 5:00 p.m.)

Contractor shall not exceed the mark-up of 50% the actual rate paid the employee for services, if requested by FCPS, in excess of eight hours per day actually worked on FCPS projects, Federal/State and Local holidays, and or weekend(s).

Contractor shall submit supplier invoices indicating cost for expediting deliveries.

Expediting deliveries shall only be valid in the event the contractor processed orders timely; availability is unacceptable for FCPS. Expediting deliveries due the contract processing orders late will not be considered for additional compensation by FCPS and the contractor shall be responsible for cost to expedite deliveries to the date deliveries could have been available if ordered timely.

**FREDERICK COUNTY PUBLIC SCHOOLS  
INSTRUCTIONS FOR SUBMITTING A RESPONSIVE BID**

**A. BID PROPOSAL**

1. Bidders are instructed to complete all applicable areas of the Bid Form of Proposal. Bidder should double-check all areas of the Form of Proposal to make sure that it is filled in carefully and completely.
2. The price for the base bid(s) and any alternate bid(s) must be submitted as a numeric value and readable.
3. Do not alter/modify the Form of Proposal unless specifically instructed by Addendum.
4. If sub-contractors are to be listed on the form, list only one sub-contractor per trade.
5. **Alternates:** You are encouraged to bid each Alternate on this bid form. If acceptance of the alternate does not affect your work scope enter “no change” or “N/C” on the line. If acceptance of the alternate impacts your work scope at no additional cost to the owner, enter “\$0” on the line. Blank lines, “N/A”, “Not Applicable”, and other similar notations, will be interpreted as “no change” if the work scope is unaffected or “\$0” if work scope is impacted. Where an appropriate notation/blank line impacts the work and is interpreted at “\$0,” the bidder will be required to perform the work at no cost.
6. Include a properly completed/signed **Bid Form of Proposal** carrying the corporate seal, if applicable.
7. **A Bid Bond or Cashier’s Check for 5% of the total bid amount.** Attach a **Power of Attorney**, if applicable and bonding company’s **Maryland Insurance Administration Certificate of License**.
8. A properly completed **Statutory Affidavit and Non-Collusion Certification form**.
9. Completed/signed **FCPS/Minority Business Enterprise Information Form**.

**BID 14C6**  
**UNIT PRICE CONTRACT FOR FUEL SYSTEM CLEANING, MAINTENANCE AND FUEL OIL**  
**TANK REPLACEMENT**

**FORM OF PROPOSAL**

In compliance with the invitation for bids, the undersigned proposes to provide all labor, materials, equipment, incidentals necessary and or required to perform work in strict accordance with the bid documents. Contractor shall provide Frederick County Public Schools (FCPS) with a certified shoring design stamped sealed by a registered engineer before excavation begins. Contractors must be licensed for Fuel Tank Installations.

**Lump sum for Thurmont Middle School (TMS) Replacement Tank Bid – Drawings ME1.01, ME1.02 and ME2.01. Base Bid 1 includes all labor, materials and incidentals to complete the work. Contractor shall provide FCPS a certified shoring design with a registered engineer seal before excavation begins. The contract shall include a \$25,000.00 allowance (Base Bid 1.A) for the disposal of contaminated materials or fuel transfer. This work shall be provided utilizing the unit cost(s) associated in section B of this bid. Contractor shall properly cover contaminated soils preventing additional water weight.**

A. **BASE BID 1 – Lump sum bid for Thurmont Middle School:** \$ \_\_\_\_\_

**BASE BID 1.A – Allowance for TMS contaminated materials:** \$ 25,000.00

**BASE BID 2 – Cost to provide Performance & Payment bonds  
for the Thurmont Middle School project:** \$ \_\_\_\_\_

B. **UNIT PRICES:** The following units shall be provided as specified on UPME1.0, 1UPME1.02 and UPME2.01 including all amenities physically connected or attached to the proposed replacement tank unless otherwise indicated.

I. **Unit price for below grade tank removal systems as indicated (No tank replacement):**

Include REMOVAL and DISPOSAL of existing fuel tank(s) and piping with regulatory inspections and approvals. **(Includes tank cleaning for disposal).** Below grade tank removal includes providing fill material to the site and installing as required to fill and compaction (97% modified proctor) the excavation returning the site to original contours.

a1. 20,000 Gallon 10' diameter tank removal: \$ \_\_\_\_\_

a2. 20,000 Gallon above grade tank removal: \$ \_\_\_\_\_

b1. 15,000 Gallon 8' diameter tank removal: \$ \_\_\_\_\_

b2. 15,000 Gallon above grade tank removal: \$ \_\_\_\_\_

c1. 10,000 Gallon 8' diameter tank removal: \$ \_\_\_\_\_

c2. 10,000 Gallon above grade tank removal: \$ \_\_\_\_\_

d1. 8,000 Gallon 8' diameter tank removal: \$ \_\_\_\_\_

d2. 8,000 Gallon above grade tank removal: \$ \_\_\_\_\_

e1. 6,000 Gallon 8' diameter tank removal: \$ \_\_\_\_\_

e2. 6,000 Gallon above grade tank removal: \$ \_\_\_\_\_

f1. 275 to 500 Gallon above grade tank removal: \$ \_\_\_\_\_

f2. Mark-up to actual cost for removal of tanks or materials not specified: % \_\_\_\_\_



**II. Unit price for Tank Replacement System as indicated (reinstall replacement tank):**

REMOVAL and DISPOSAL of existing fuel tank(s), provide and install replacement fuel oil tank include reconnections for operational fuel system, fuel level measuring stick with storage pipe and cover (in ground tanks requires a measuring stick and PVC weather tight storage pipe, above grade tanks require a weather tight storage pipe attached to above ground tanks). All tanks require regulatory inspections and approvals. (Concrete and or asphalt will be installed at a unit price for the actual units required). Fire Guard Tanks are above grade tanks.

- a1. 20,000 Gallon Steel Replacement 10' diameter: \$ \_\_\_\_\_
- a2. 20,000 Gallon Fiberglass Replacement 10' diameter: \$ \_\_\_\_\_
- a3. 20,000 Gallon Titan or approved equal 10' diameter: \$ \_\_\_\_\_
- a4. 20,000 Gallon Fire Guard or approved equal 10'6" diameter: \$ \_\_\_\_\_
- b1. 15,000 Gallon Steel Replacement 8' diameter: \$ \_\_\_\_\_
- b2. 15,000 Gallon Fiberglass Replacement 8' diameter: \$ \_\_\_\_\_
- b3. 15,000 Gallon Titan or approved equal 8' diameter: \$ \_\_\_\_\_
- b4. 15,000 Gallon Fire Guard or approved equal 8'6" diameter: \$ \_\_\_\_\_
- c1. 10,000 Gallon Steel Replacement 8' diameter: \$ \_\_\_\_\_
- c2. 10,000 Gallon Fiberglass Replacement 8' diameter: \$ \_\_\_\_\_
- c3. 10,000 Gallon Titan or approved equal 8' diameter: \$ \_\_\_\_\_
- c4. 10,000 Gallon Fire Guard or approved equal 8'6" diameter: \$ \_\_\_\_\_
- d1. 8,000 Gallon Steel Replacement 8' diameter: \$ \_\_\_\_\_
- d2. 8,000 Gallon Fiberglass Replacement 8' diameter: \$ \_\_\_\_\_
- d3. 8,000 Gallon Titan or approved equal 8' diameter: \$ \_\_\_\_\_
- d4. 8,000 Gallon Fire Guard or approved equal 8'6" diameter: \$ \_\_\_\_\_
- e1. 6,000 Gallon Steel Replacement 8' diameter: \$ \_\_\_\_\_
- e2. 6,000 Gallon Fiberglass Replacement 8' diameter: \$ \_\_\_\_\_
- e3. 6,000 Gallon Titan or approved equal 8' diameter: \$ \_\_\_\_\_
- e4. 6,000 Gallon Fire Guard or approved equal 8'6" diameter: \$ \_\_\_\_\_
- f1. 1,000 Gallon above grade tank: \$ \_\_\_\_\_
- f2. 500 Gallon above grade tank (install tank float gauge): \$ \_\_\_\_\_
- f3. 275 Gallon above grade tank (install tank float gauge): \$ \_\_\_\_\_
- f4. Actual cost mark-up for tanks/materials not specifically requested: % \_\_\_\_\_

**III. Unit price for installation of Steel, Fiberglass and Titan Tanks (below grade), Fire Guard Tanks (above grade). Anticipate minimal grading for above tanks. (Installation of NEW tank systems):**

Provide and install NEW fuel tank(s) including connections for operational fuel system, fuel level measuring stick with in ground storage pipe and cover, with regulatory inspections and approvals. (Concrete and/or asphalt will be installed at a unit price for the actual units required).

- a1. 20,000 Gallon Steel New Tank 10' diameter: \$ \_\_\_\_\_
- a2. 20,000 Gallon Fiberglass New Tank 10' diameter: \$ \_\_\_\_\_
- a3. 20,000 Gallon Titan or approved equal 10' diameter: \$ \_\_\_\_\_
- a4. 20,000 Gallon Fire Guard or approved equal 10'6" diameter: \$ \_\_\_\_\_
- b1. 15,000 Gallon Steel New Tank 8' diameter: \$ \_\_\_\_\_
- b2. 15,000 Gallon Fiberglass New Tank 8' diameter: \$ \_\_\_\_\_
- b3. 15,000 Gallon Titan or approved equal 8' diameter: \$ \_\_\_\_\_
- b4. 15,000 Gallon Fire Guard or approved equal 8'6" diameter: \$ \_\_\_\_\_
- c1. 10,000 Gallon Steel New Tank 8' diameter: \$ \_\_\_\_\_
- c2. 10,000 Gallon Fiberglass New Tank 8' diameter: \$ \_\_\_\_\_
- c3. 10,000 Gallon Titan or approved equal 8' diameter: \$ \_\_\_\_\_
- c4. 10,000 Gallon Fire Guard or approved equal 8'6" diameter: \$ \_\_\_\_\_
- d1. 8,000 Gallon Steel New Tank 8' diameter: \$ \_\_\_\_\_
- d2. 8,000 Gallon Fiberglass New Tank 8' diameter: \$ \_\_\_\_\_
- d3. 8,000 Gallon Titan or approved equal 8' diameter: \$ \_\_\_\_\_
- d4. 8,000 Gallon Fire Guard or approved equal 8'6" diameter: \$ \_\_\_\_\_
- e1. 6,000 Gallon Steel New Tank 8' diameter: \$ \_\_\_\_\_
- e2. 6,000 Gallon Fiberglass New Tank 8' diameter: \$ \_\_\_\_\_
- e3. 6,000 Gallon Titan or approved equal 8' diameter: \$ \_\_\_\_\_
- e4. 6,000 Gallon Fire Guard or approved equal 8'6" diameter: \$ \_\_\_\_\_
- f1. 1,000 Gallon above grade tank: \$ \_\_\_\_\_
- f2. 500 Gallon above grade tank (install tank float gauge): \$ \_\_\_\_\_
- f3. 275 Gallon above grade tank (install tank float gauge): \$ \_\_\_\_\_
- f4. Actual cost mark-up for tanks/materials not specifically requested: % \_\_\_\_\_

IV. **Unit cost for labor and materials to install two monitoring wells. Includes all conduits, junction boxes, pull string (for later installation and monitoring well casing with cover as required by P1.01 and P1.02:**

- | <b><u>Monitoring Well &amp; Conduit only:</u></b>                 | <b><u>With/Electronic Equipment installed:</u></b> |
|---|--|
| a. 20,000 Gallon: \$ _____  | a. w/e \$ _____                                    |
| b. 15,000 Gallon: \$ _____  | b. w/e \$ _____                                    |
| c. 10,000 Gallon: \$ _____  | c. w/e \$ _____                                    |
| d. 8,000 Gallon: \$ _____   | d. w/e \$ _____                                    |
| e. 6,000 Gallon: \$ _____   | e. w/e \$ _____                                    |
| f. Actual cost mark-up for tanks size not specifically indicated: | % _____  |

V. **Unit cost for labor and materials to install two monitoring pipe manhole wells. Include monitoring pipe manhole casing and cover required by P1.01 and P1.02 (no electrical conduit):**

- a. 20,000 Gallon: \$ \_\_\_\_\_
- b. 15,000 Gallon: \$ \_\_\_\_\_
- c. 10,000 Gallon: \$ \_\_\_\_\_
- d. 8,000 Gallon: \$ \_\_\_\_\_
- e. 6,000 Gallon: \$ \_\_\_\_\_
- f. Actual cost mark-up for tanks size not specifically indicated: % \_\_\_\_\_

VI. **Unit cost for labor and materials to install above grade new or replacement Steel Fuel Oil Tank with regulatory inspections and approvals:**

- a. 20,000 Gallon including dike: \$ \_\_\_\_\_
- b. 15,000 Gallon including dike: \$ \_\_\_\_\_
- c. 10,000 Gallon: \$ \_\_\_\_\_
- d. 8,000 Gallon: \$ \_\_\_\_\_
- e. 6,000 Gallon: \$ \_\_\_\_\_
- f. Actual cost mark-up for tanks size not specifically indicated: % \_\_\_\_\_

VII. **Unit cost per foot for labor, excavation and materials to install:**

- a. Underground electric conduit and wire up to 1½" w/fittings: \$ \_\_\_\_\_
- b. Underground fuel oil piping up to 2" piping and fittings: \$ \_\_\_\_\_
- c. Above grade electric conduit and wire up to 1½" w/fittings: \$ \_\_\_\_\_
- d. Above grade fuel oil piping up to 2" piping and fittings: \$ \_\_\_\_\_
- e. Underground vent piping up to 2 ½" piping and fittings: \$ \_\_\_\_\_
- f. Above grade vent piping up to 2 ½" piping and fittings: \$ \_\_\_\_\_
- g. Actual cost mark-up for conduit, wiring and piping not specified: % \_\_\_\_\_

VIII. **Unit cost for labor and materials for Precision Tank Tightness Testing up to the following tank sizes. Testing shall conform to Federal, State, and Local requirements to include COMAR and NFPA. The contractor must include cost for meeting the above requirements. The Equipment and Operator must have a current MDE approved certification. Contractor must provide a copy of the current certifications with each tank test report:**

	<u>Pressure</u>	<u>Vacuum</u>
a. 20,000 Gallon:	\$ _____	\$ _____
b. 15,000 Gallon:	\$ _____	\$ _____
c. 10,000 Gallon:	\$ _____	\$ _____
d. 8,000 Gallon:	\$ _____	\$ _____
e. 6,000 Gallon:	\$ _____	\$ _____
f. 4,000 Gallon:	\$ _____	\$ _____
g. 1,000 Gallon:	\$ _____	\$ _____

- h. Fill containment sump test: \$ \_\_\_\_\_
- i. Spill catchment basin test: \$ \_\_\_\_\_
- j. Actual cost mark-up for testing not specifically requested: % \_\_\_\_\_

**IX. Unit cost for labor and materials to TEST soil:**

- a. TPH DRO and TPH GRO per test: \$ \_\_\_\_\_
- b. VOC including MTBE: \$ \_\_\_\_\_
- c. Actual cost mark-up for testing not specifically requested: % \_\_\_\_\_

**X. Unit cost for labor and materials tank cleaning up to the following sizes. FCPS reserves the rights to evaluate and relocate usable material from tanks with alternate vendor:**

- a. 20,000 Gallon: \$ \_\_\_\_\_
- b. 15,000 Gallon: \$ \_\_\_\_\_
- c. 10,000 Gallon: \$ \_\_\_\_\_
- d. 8,000 Gallon: \$ \_\_\_\_\_
- e. 6,000 Gallon: \$ \_\_\_\_\_
- f. 4,000 Gallon: \$ \_\_\_\_\_
- g. 1,000 Gallon: \$ \_\_\_\_\_
- h. Actual cost mark-up for tank cleaning not specifically indicated: % \_\_\_\_\_

**XI. Unit cost for labor and materials pipe cleaning. Pipe cleaning shall be paid on a per foot basis:**

- a. Up to 1" pipe (per ft.): \$ \_\_\_\_\_
- b. Above 1" to 1 1/2" pipe (per ft.): \$ \_\_\_\_\_
- c. Above 1 1/2" to 2 1/2" pipe (per ft.): \$ \_\_\_\_\_
- d. Actual cost mark-up for cleaning not specifically indicated: % \_\_\_\_\_

**XII. Unit cost for providing and installing additional services FCPS may request:**

- a. Sq. ft. cost for concrete removal, transportation and dump: \$ \_\_\_\_\_
- b1. Sq. ft. cost for 4" reinforced concrete replacement: \$ \_\_\_\_\_
- b2. Sq. ft. cost for 6" reinforced concrete replacement: \$ \_\_\_\_\_
- c. Sq. ft. cost for asphalt removal, transportation and dump: \$ \_\_\_\_\_
- d1. Per ton cost for asphalt replacement (base asphalt 2"): \$ \_\_\_\_\_
- d2. Per ton cost for asphalt replacement (base asphalt 4"): \$ \_\_\_\_\_
- e1. Per ton cost for asphalt replacement (finish asphalt 2"): \$ \_\_\_\_\_
- e2. Per ton cost for asphalt replacement (finish asphalt 3"): \$ \_\_\_\_\_
- f1. Per ton cost for transport & disposal of contaminated soil: \$ \_\_\_\_\_
- g1. Per ton cost for transport & disposal of contaminated concrete: \$ \_\_\_\_\_

**XIII. Fuel Pumping Station Transfer Tanker deliveries:**

- h1. Fuel Pumping Station 2 ½": \$ \_\_\_\_\_
- h2. Fuel Pumping Station 3": \$ \_\_\_\_\_
- h3. Fuel Pumping Station 4": \$ \_\_\_\_\_
- i. Seeding per 100 sq. ft.: \$ \_\_\_\_\_
- j. Sodding per 100 sq. ft.: \$ \_\_\_\_\_
- k. Fuel Dispensing Pumps, Gasboy 9152A Dual  
or approved equal: \$ \_\_\_\_\_
- l. Fuel Dispensing Pumps, Gasboy 9153A Dual  
or approved equal: \$ \_\_\_\_\_

**XIV. Fuel oil transfer from FCPS tank to FCPS tank including trucking with a pump:**

- m1. less than 500 gal. fuel oil transfer or disposal, per gallon: \$ \_\_\_\_\_
- m2. over 499 gal. fuel oil transfer or disposal per gallon: \$ \_\_\_\_\_
- m3. flat hourly rate for truck, pump and operator to load,  
transport and off load fuel: \$ \_\_\_\_\_

**XV. Disposal of contaminates for FCPS tank removal sites:**

- n. Disposal of contaminated water
- n1. less than 500 gal. to evacuate, transport and disposal of,  
per ton: \$ \_\_\_\_\_
- n2. over 499 gal. to evacuate, transport and disposal of,  
per ton: \$ \_\_\_\_\_
- o. Disposal of all other tank contaminates
- o1. less than 500 gal. to evacuate, transport and disposal of,  
per ton: \$ \_\_\_\_\_
- o2. over 499 gal. to evacuate, transport and disposal of,  
per ton: \$ \_\_\_\_\_
- p. Actual cost mark-up for additional services not indicated: \$ \_\_\_\_\_
- q. Overtime for premium time: q1(a.-h.) shall apply to man hours only. Equipment will be paid at normal hourly rates. Only full time equipment operators may be billed at operator rates.
- q1. Contractor mark-up of the actual rate paid the employee for services, if requested by FCPS, in excess of eight hours per day actually worked on FCPS projects, Federal/State and Local holidays, and or weekend(s).

	<u>Regular Hr. Rate</u>	<u>Premium Hr. Rate</u>
q1a. Superintend/Forman:	\$ _____	\$ _____
q1b. Tank Installer:	\$ _____	\$ _____



q1c. Equipment Operator: \$ \_\_\_\_\_ \$ \_\_\_\_\_  
 q1d. Labor: \$ \_\_\_\_\_ \$ \_\_\_\_\_  
 q1e. Truck Driver: \$ \_\_\_\_\_ \$ \_\_\_\_\_  
 q1f. Concrete Finisher: \$ \_\_\_\_\_ \$ \_\_\_\_\_  
 q1g. Technician/Service man: \$ \_\_\_\_\_ \$ \_\_\_\_\_  
 q1h. Electrician: \$ \_\_\_\_\_ \$ \_\_\_\_\_  
 q1i. Mark-up of actual hourly rates for man hour requirements not indicated  
 above: % mark-up \_\_\_\_\_ % mark-up \_\_\_\_\_

r1. Contractor shall submit supplier invoices indicating cost for expediting deliveries. Expediting deliveries shall only be valid in the event the contractor processed orders timely; availability is unacceptable for FCPS. Expediting deliveries due to the contractor processing orders late will not be considered for additional compensation by FCPS and the contractor shall be responsible for cost to expedite deliveries to the date deliveries could have been available if ordered timely.

s1. Shoring excavations cost per sq. ft.: \$ \_\_\_\_\_

t1. Unit cost additional excavation requested by FCPS  
 per cubic yard: \$ \_\_\_\_\_  
 (Additional excavation is in addition to the excavation required removing or installing tanks. This unit cost will also be the credit for unnecessary excavation in the event shoring is required due to above or below grade obstructions encountered excavating for tank removal or installations).

u. Provide percentage cost for Performance and Payment Bond (total of unit prices required for scope times bond cost percentage). \$ \_\_\_\_\_

**XVI. PERFORMANCE GUARANTEE:**

WE/MY COMPANY CAN ACCOMPLISH THIS WORK IN \_\_\_\_\_ DAYS AFTER RECEIPT OF A NOTICE TO PROCEED AND/OR A PURCHASE ORDER.

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**XVII. REFERENCES: (Minimum of Three):**

Name	Address	Phone
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Name	Address	Phone
------	---------	-------

Name	Address	Phone
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The unit price portion of the contract shall be awarded with the intent for multiple year renewal(s) and may be utilized by other public agencies or governmental.

**FREDERICK COUNTY PUBLIC SCHOOLS (FCPS)**

**BID 14C6**

**UNIT PRICES FOR FUEL SYSTEM CLEANING, MAINTENANCE AND FUEL OIL TANK  
REPLACEMENT**

**SIGNATURE ACKNOWLEDGING COST PROPOSAL**

**Note: When submitting your bid/proposal, please use this page as a cover sheet for your bid/proposal.**

In compliance with your invitation for bidders, the undersigned proposes to furnish and deliver all labor and materials in accordance with the accompanying specifications and "Instructions and General Conditions" for the price as listed on the enclosed Proposal Sheet(s).

I/We certify that this bid/proposal is made without previous understanding, agreement, or connection with any person, firm, or corporation submitting a bid/proposal for the same goods/services and is, in all respects fair and without collusion or fraud; that none of this company's officers, directors, partners or its employees have been convicted of bribery, attempted bribery, or conspiracy to bribe under the laws of any state or federal government; and that no member of the Board of Education of Frederick County, Administrative or Supervisory Personnel or other employees of the Frederick County Public Schools, has any interest in the bidding company except as follows:

COMPANY: \_\_\_\_\_

dba: \_\_\_\_\_

REGISTERED MARYLAND CONTRACTOR NUMBER: \_\_\_\_\_

FEDERAL IDENTIFICATION: \_\_\_\_\_ DATE: \_\_\_\_\_

The undersigned has familiarized themselves with the conditions affecting the work, the specifications, and is legally authorized to make this proposal on behalf of the Contractor listed above.

NAME (please print): \_\_\_\_\_

SIGNATURE OF ABOVE: \_\_\_\_\_

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

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

TELEPHONE # \_\_\_\_\_ FAX # \_\_\_\_\_

E-MAIL ADDRESS (for correspondence): \_\_\_\_\_

E-MAIL ADDRESS (for receiving Purchase Orders): \_\_\_\_\_

**(DO NOT COMPLETE THIS AREA IF YOUR COMPANY IS UNABLE TO RECEIVE PURCHASE  
ORDERS ELECTRONICALLY)**

**ACKNOWLEDGMENT OF ADDENDA (if applicable)**

The above-signed company/firm acknowledges the receipt of the following addenda for the above-referenced solicitation.

Date Received by Proposer/Bidder:

Addendum #1	_____	Addendum #3	_____
Addendum #2	_____	Addendum #4	_____



# AIA® Document A310™ – 2010

## Bid Bond

**CONTRACTOR:**

(Name, legal status and address)

**SURETY:**

(Name, legal status and principal place of business)

**OWNER:**

(Name, legal status and address)

The Board of Education of Frederick County  
191 South East Street  
Frederick, Maryland 21701-5918

**BOND AMOUNT: \$****PROJECT:**

(Name, location or address, and Project number, if any)

The Contractor and Surety are bound to the Owner in the amount set forth above, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein. The conditions of this Bond are such that if the Owner accepts the bid of the Contractor within the time specified in the bid documents, or within such time period as may be agreed to by the Owner and Contractor, and the Contractor either (1) enters into a contract with the Owner in accordance with the terms of such bid, and gives such bond or bonds as may be specified in the bidding or Contract Documents, with a surety admitted in the jurisdiction of the Project and otherwise acceptable to the Owner, for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; or (2) pays to the Owner the difference, not to exceed the amount of this Bond, between the amount specified in said bid and such larger amount for which the Owner may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect. The Surety hereby waives any notice of an agreement between the Owner and Contractor to extend the time in which the Owner may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding sixty (60) days in the aggregate beyond the time for acceptance of bids specified in the bid documents, and the Owner and Contractor shall obtain the Surety's consent for an extension beyond sixty (60) days.

If this Bond is issued in connection with a subcontractor's bid to a Contractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Project, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

**ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

Init.

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User Notes:

(795961460)

Signed and sealed this    day of    ,

(Witness)

(Witness)

(Contractor as Principal)

(Seal)

(Title)

(Surety)

(Seal)

(Title)

Init.

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## **Additions and Deletions Report for AIA<sup>®</sup> Document A310<sup>™</sup> – 2010**

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 10:44:16 on 03/21/2013.

### **PAGE 1**

The Board of Education of Frederick County  
191 South East Street  
Frederick, Maryland 21701-5918



## **Certification of Document's Authenticity**

**AIA® Document D401™ – 2003**

I, Tony Ray Project Manager III, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 10:44:16 on 03/21/2013 under Order No. 7546025320\_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A310™ – 2010, Bid Bond, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

*(Signed)*

*(Title)*

*(Dated)*

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FREDERICK COUNTY PUBLIC SCHOOLS (FCPS)

BID 14C6

UNIT PRICES FOR FUEL SYSTEM CLEANING, MAINTENANCE AND FUEL OIL TANK REPLACEMENT

STATUTORY AFFIDAVIT AND NON-COLLUSION CERTIFICATION

Special Instructions: An authorized representative of the bidder needs to complete the following affidavit and insert an answer to paragraphs 1 and 3.

BIDDERS: The submission of the following Affidavit at the time of the bid opening is:

☒ requested to be completed but not required to be notarized.

☐ required to be completed and notarized.

I, \_\_\_\_\_, being duly sworn, depose and state:

1. I am the \_\_\_\_\_ (officer) and duly authorized representative of the firm of  
the organization named \_\_\_\_\_ whose address is  
(Name of Corporation) \_\_\_\_\_ and that I  
possess the authority to make this affidavit and certification on behalf of myself and the firm for which I am  
acting.
2. Except as described in paragraph 3 below, neither I, nor to the best of my knowledge, the above firm, nor any  
of its officers, directors, or partners, or any of its employees who are directly involved in obtaining or  
performing contracts with any public bodies has:
  - a. been convicted of bribery, attempted bribery, or conspiracy to bribe, under the laws of any state or of  
the federal government;
  - b. been convicted under the laws of the state, another state, or the United States of: a criminal offense  
incident to obtaining, attempting to obtain, or performing a public or private contract; or fraud,  
embezzlement, theft, forgery, falsification or destruction of records, or receiving stolen property;
  - c. been convicted of criminal violation of an antitrust statute of the State of Maryland, another state, or  
the United States;
  - d. been convicted of a violation of the Racketeer influenced and Corrupt Organization Act, or the Mail  
Fraud Act, for acts in connection with the submission of bids or proposals for a public or private  
contract;
  - e. been convicted of any felony offenses connected with obtaining, holding, or maintaining a minority  
business enterprise certification, as prohibited by Section 14-308 of the State Finance & Procurement  
Article;
  - f. been convicted of conspiracy to commit any act or omission that would constitute grounds for  
conviction under any of the laws or statutes described in Paragraph (a) through (e) above; or
  - g. been found civilly liable under an antitrust statute of this State, another state, or the United States for  
acts or omissions in connection with the submission of bids or proposals for a public or private  
contract.
3. The only conviction, plea, or admission by any officer, director, partner, or employee of this firm to

involvement in any of the conduct described in Paragraph 2 above is as follows:

If none, write "None" below. If involvement, list the date, count, or charge, official or administrative body, the individuals involved, their position with the firm, and the sentence or disposition of the charge.

\_\_\_\_\_  
\_\_\_\_\_

(you may attach an explanation necessary)

4. I affirm that this firm will not knowingly enter into a contract with a public body under which a person or business debarred or suspended under Maryland State Finance and Procurement Title 16, subtitle 3, Annotated Code of Maryland, as amended, will provide, directly or indirectly, supplies, services, architectural services, construction-related services, leases of real property, or construction.
5. I affirm that this proposal or bid to the Board of Education of Frederick County is genuine and not collusive or a sham; that said bidder has not colluded, conspired, connived and agreed, directly or indirectly, with any bidder or person to put in a sham bid or to refrain from bidding and is not in any manner, directly or indirectly, sought by agreement of collusion or communication or conference, with any person to fix the bid prices of the affidavit or any other bidder, or to fix any overhead, profit or cost element of said bid price, or that if any bidder, or to secure an advantage against the Board of Education of Frederick County or any other person interested in the proposed contract; and that all statements in the proposal or bid are true. I acknowledge that, if the representations set forth in this affidavit are not true and correct, the Board of Education of Frederick County may terminate any contract awarded and take any other appropriate action.

I DO SOLEMNLY DECLARE AND AFFIRM under the penalties of perjury that the contents of this affidavit are true and correct, that I am executing this Affidavit in compliance with Section 16-311 of the State Finance and Procurement Article, Annotated Code of Maryland, and in compliance with requirements of the Frederick County Board of Education, and that I am executing and submitting this Proposal on behalf of and as authorized by the bidder named below.

\_\_\_\_\_  
(Witness) (Title)

SUBSCRIBED AND SWORN to before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
(Legal Name of Company)

\_\_\_\_\_  
(dba)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City) (State) (Zip)

\_\_\_\_\_  
(Telephone) (Fax)

\_\_\_\_\_  
(Print Name) (Title) (Date)

\_\_\_\_\_  
(Signature) (Title) (Date)

We are/I am licensed to do business in the State of Maryland as a:

( ) Corporation ( ) Partnership ( ) Individual ( ) Other

FREDERICK COUNTY PUBLIC SCHOOLS (FCPS)

BID 14C6

UNIT PRICES FOR FUEL SYSTEM CLEANING, MAINTENANCE AND FUEL OIL TANK REPLACEMENT

MINORITY BUSINESS ENTERPRISE INFORMATION

THIS FORM MUST BE COMPLETED AND RETURNED WITH YOUR PROPOSAL.

1. Is the company a certified Minority Business Enterprise (MBE) with documented certification from the Maryland State Department of Transportation (MDOT)? \_\_\_\_\_  
If yes, provide certification number: \_\_\_\_\_
2. Is the company a registered/certified MBE by any other state or local governmental agency? If yes, provide type of certification, certifying agency, and certification number below. (Copies of certificates may be attached.)

<u>Type</u>	<u>Issuing Agency</u>	<u>Certification No.</u>

3. If applicable, circle the group(s) which qualifies the company as a minority business enterprise.

African-American      Hispanic      American-Indian      Asian      Women  
Disabled      Other: \_\_\_\_\_

[Note: MBE means any legal entity except a joint venture, that is (a) organized to engage in commercial transactions, (b) at least 51% owned and controlled by one or more individuals who are members of a group that is disadvantaged socially or economically, as noted above.]

4. Would the company be considered a Minority Business Enterprise due to the majority (51% or greater) of the board of directors/company officers being a member(s) of any of the following groups? \_\_\_\_ If yes, indicate by circling the group(s) to which the member(s) of the board/officers belong.

African-American      Hispanic      American-Indian      Asian      Women  
Disabled      Other: \_\_\_\_\_

5. If the company is not a Maryland certified MBE, please describe the plan for utilization of minority suppliers or subcontractors to accomplish any portion of the work.

\_\_\_\_\_  
Name (Please Print)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature of Above

\_\_\_\_\_  
Date

\_\_\_\_\_  
Company



PLEASE RETURN TO:

FREDERICK COUNTY PUBLIC SCHOOLS  
PURCHASING DEPARTMENT  
191 SOUTH EAST STREET  
FREDERICK, MARYLAND 21701  
TELEPHONE 301-644-5219 FAX 301-644-5213

BID 14C6

UNIT PRICES FOR FUEL SYSTEM CLEANING, MAINTENANCE AND FUEL OIL TANK REPLACEMENT

NOTICE OF "NO BID" RESPONSE

\*\*\*\*\*

Due to increased costs in maintaining an accurate and active "Bidder's List", it is necessary for the Purchasing Department to be informed of the reason(s) for a firm not bidding. If you will not be bidding on this project, please indicate below the reason(s).

Unless a responsive bid or this form is returned to us, your firm will be removed from the "Bidder's List" for this category.

☐

Current workload prevents bidding at this time.

☐

We do not sell the type of products/services requested.

☐

Bid has been forwarded to our distributor; we do not sell direct.

☐

We wish to be removed from this category.

Other: \_\_\_\_\_

Date: \_\_\_\_\_

Firm Name: \_\_\_\_\_

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

\_\_\_\_\_

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

Title: \_\_\_\_\_

QUESTIONS REGARDING THIS SOLICITATION SHOULD BE SUBMITTED IN WRITING TO:  
BILL MEEKINS CPPB, CPCP, BUYER SPECIALIST, e-mail: [willis.meekins@fcps.org](mailto:willis.meekins@fcps.org).



# AIA<sup>®</sup> Document A101<sup>™</sup> – 2007

## **Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum**

AGREEMENT made as of the    day of    in the year  
(In words, indicate day, month and year.)

BETWEEN the Owner:  
(Name, legal status, address and other information)

The Board of Education of Frederick County  
191 South East Street  
Frederick, Maryland 21701-5918

and the Contractor:  
(Name, legal status, address and other information)

for the following Project:  
(Name, location and detailed description)

The Architect:  
(Name, legal status, address and other information)

The Owner and Contractor agree as follows.

### **ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201<sup>™</sup>–2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.

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## TABLE OF ARTICLES

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9	ENUMERATION OF CONTRACT DOCUMENTS
10	INSURANCE AND BONDS

### ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

### ARTICLE 2 THE WORK OF THIS CONTRACT

*(Paragraph deleted)*

**§ 2.1** The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others. In addition to performing the Work as described in the Contract Documents, the Contractor shall perform the Work in accordance with all applicable ordinances, building codes, statutes, regulations and guidelines of all federal, state and local government authorities having jurisdiction over the Project.

**§ 2.2** The Architect will schedule and the Contractor shall attend the Pre-Construction Meeting and Progress Meetings. The Contractor shall require the attendance of Subcontractors at the meetings as needed or as required by the Architect or Owner. The Contractor shall provide to the Architect and Owner either prior to or during each progress meeting such reports and documentation requested by the Architect and Owner regarding the progress and performance of the Work and the percentage of completion of Contract and all Subcontracts.

**§ 2.3** In addition to progress and review meetings, the Contractor shall attend additional meetings with the Owner as needed and at the Owner's sole discretion. The Owner may designate the location and time of such meetings.

**§ 2.4** Within (14) days after the Owner issues the notice to proceed the Contractor shall submit a Preliminary Contractor Schedule, the Preliminary Contractor Schedule shall indicate task(s) (the work), duration(s) (start and completion) and be compliant with the dates indicated for Substantial Completion as required by the contract. Preliminary Contractor Schedule shall be in a Critical Path Method (CPM) and bar chart format, indicating sufficient detail, task(s) (the work) and durations(s) (start and completion) of each major item of the Work, the current status of each major item of Work indicating staffing and equipment to comply with the Schedule. The Contract Schedule must be submitted for the Owners review as a condition precedent to the Contractor submission of the first application for Payment. Contractor shall provide additional detail when requested by the Architect or Owner and update the Contractor Schedule to be compliant with the Substantial Completion date(s) including only owner approves time

extensions. Within 7 days of a request by the Architect or Owner, the Contractor shall furnish to the Architect and Owner a Progress Schedule showing the current progress and completion stage of the Work as compared to the Contract Schedule. Progress Schedule shall clearly identify any item of Work, which is behind the Contract Schedule along with the Contractor's increase in manpower and equipment necessary to comply with the updated Contract Schedule.

### ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be fixed in a notice to proceed issued by the Owner.  
*(Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)*

If, prior to the commencement of the Work, the Owner requires time to file mortgages and other security interests, the Owner's time requirement shall be as follows:

§ 3.2 The Contract Time shall be measured from the date of commencement.

§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than :

§ 3.4 The Contractor acknowledges and agrees that time is of the essence in achieving Substantial Completion and that a delay in achieving Substantial Completion will result in increased costs to the Owner. In the event that the Contractor does not achieve Substantial Completion as stipulated in Article 3.3, including approved extensions, the Contractor and the Contractor's surety shall be liable for and shall pay liquidated damages to the Owner. For each calendar day required to achieve Substantial Completion beyond the Substantial Completion Date authorized by the Contract, the Contractor shall pay to the Owner all direct costs charged to the Owner plus liquidated damages on account of Owner's staff expense and on account of student inconvenience, disruption, and dislocation the sum of \$1.00 per student based upon an expected enrollment of \_\_\_\_\_ students for total liquidated damages in the amount of \$ \_\_\_\_\_ per day.

Portion of Work

Substantial Completion Date

, subject to adjustments of this Contract Time as provided in the Contract Documents.

*(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)*

§ 3.5 The Contractor shall not be entitled to any form of damages for not being able to achieve Substantial Completion earlier than the date set forth in Paragraph 3.3. Additionally, a Contractor shall not be entitled to any form of damages or other compensation from Owner by reason of delay or interruptions of its work caused by other contractors or utilities working on the project. Contractor shall indemnify Owner against any and all loss, cost, and damages that the Owner may be caused to sustain by reason of claims from any other contractor working on the Project caused in whole or in part by the acts of the Contractor or those for whom it is responsible.

### ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be (\$ \_\_\_\_\_), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

*(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)*

Int.

**§ 4.3 Unit prices, if any:**

*(Identify and state the unit price; state quantity limitations, if any, to which the unit price will be applicable.)*

**Item**

**Units and Limitations**

**Price Per Unit (\$0.00)**

**§ 4.4 Allowances included in the Contract Sum, if any:**

*(Identify allowance and state exclusions, if any, from the allowance price.)*

**Item**

**Price**

**ARTICLE 5 PAYMENTS**

**§ 5.1 PROGRESS PAYMENTS**

**§ 5.1.1** Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

**§ 5.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

The billing period shall be as required herein and as indicated by the specifications. Contractor is required to submit estimated billing by the 28th of each month for the current month. The Contractor must provide a pencil copy for the Architect and Owners review. Contractors' failure to provide estimate billing may delay processing the Application for Payment. Frederick County Public Schools requires overall estimates in compliance with Frederick County Government's funding requirements and in order to obtain funds for Contractor Applications for Payment.

**§ 5.1.3** Provided that an Application for Payment is received by the Architect not later than the first day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the twenty-fifth day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than thirty ( 30 ) days after the Architect receives the Application for Payment.

*(Federal, state or local laws may require payment within a certain period of time.)*

**§ 5.1.4** Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

**§ 5.1.5** Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

**§ 5.1.6** Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1** Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of five percent ( 5 %). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201™-2007, General Conditions of the Contract for Construction;
- .2** Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of five percent ( 5 %);

- 3 Subtract the aggregate of previous payments made by the Owner; and
- 4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007 and,
- 5 The requirements of 5.1.8 Reduction or limitation of retainage.

§ 5.1.7 The progress payment amount determined in accordance with Section 5.1.6 shall be further modified under the following circumstances:

- 1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and  
(Section 9.8.5 of AIA Document A201-2007 requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)
- 2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201-2007.

§ 5.1.8 Reduction or limitation of retainage, if any, shall be as follows:

*(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections 5.1.6.1 and 5.1.6.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)*

Five percent (5%) retainage shall be held from progress payments. After issuance of a Certificate of Substantial Completion for the Contract Work, retainage may be reduced at the Owner's sole and discretion. When the Owner and Architect agree that the work, including all Punch List items, has been satisfactorily completed, the retainage may be reduced at the Owner's sole option to one percent (1%). Any retainage reduction must be approved by the Architect, Owner and Surety prior to submitting an Application for Payment reflecting such reductions and shall include an executed AIA G707A Consent of Surety to reduction in or Partial Release of Retainage or AIA G707 Consent of Surety to Final Payment.

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

## § 5.2 FINAL PAYMENT

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- 1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment; and
- 2 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner's final payment to the Contractor shall be processed after the following Contractual requirements have been completed by the Contractor:

The Contractor shall deliver to the Owner:

- a. Final Releases of Liens and Waiver of Claims from the Contractor; and
- b. "As-built or Record Drawings" Plans and Specifications showing all changes, locations and installation shall be submitted to the architect for approval and forwarded to the Owner for his approval and acceptance, "As-built or Record Drawings" shall be provided on a drawing set sealed with the Architect's stamp; and
- c. Three (3) complete sets of warranties and guarantees in three-ring binders, indexed with a table of contents approved by the Architect; and
- d. A statement from the Contractor that there exist no pending or threatened claims against the Owner relating to the Work or for which the Owner may be liable which are unresolved or a statement of any unresolved issues; and
- e. All punch list items shall be satisfactorily completed, each punch list item signed and dated indicating when the correction was completed and inspected by the Owner, Architect and Engineer; and
- f. The Contractor shall deliver to the Owner attesting that various items of Work have been satisfactory completed in accordance with the requirements of the Contract Documents and in accordance with industry standards of workmanship.

Init.

## ARTICLE 6 DISPUTE RESOLUTION

### § 6.1 INITIAL DECISION MAKER

The Architect will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007, unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker.

*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*

### § 6.2 BINDING DISPUTE RESOLUTION

For any Claim subject to, but not resolved by, mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box. If the Owner and Contractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)*

☐ Arbitration pursuant to Section 15.4 of AIA Document A201–2007

☒ Litigation in a court of competent jurisdiction

☐ Other *(Specify)*

## ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2007.

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007.

## ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.  
*(Insert rate of interest agreed upon, if any.)*

☐ 0.0 % zero percentage

§ 8.3 The Owner's representative:  
*(Name, address and other information)*

191 South East Street  
Frederick, Maryland 21701-5918

§ 8.4 The Contractor's representative:  
*(Name, address and other information)*

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User Notes:

(1799447608)



**§ 8.5** Neither the Owner's nor the Contractor's representative shall be changed without ten days written notice to the other party.

**§ 8.6** Other provisions:

**§ 8.6.1** The cost of reproducing copies of any additional Construction Documents required for construction shall be at the sole cost of the Contractor.

**§ 8.6.2** The Contractor, Subcontractors and all employees shall conform to all Board of Education policies when on Board of Education property, including but not limited to no smoking and the possession of deadly weapons.

**§ 8.6.3** The Contractor shall appoint a safety officer who shall be available to the Owner. On a regular basis such safety officer shall inspect the job site for compliance to OSHA and MOSHA requirements. In the event of any job site violations of OSHA or MOSHA, the Contractor shall immediately rectify the situation and bring the job site into compliance.

**§ 8.6.4** The Owner may issue a Notice to Contractor for failure to comply with the Contract requirements and/or the Contract Documents; Contractor must respond to such notice as practical, and Owner must receive a written response within two (2) business days of the Contractor's receipt of such notice. Inspections by Owner or the Owner's failure to issue such Notices shall not relieve the Contractor from full compliance with the Contract Documents.

**§ 8.6.5** When Work is to be completed during operation of and use of the building Contractor shall ensure all building systems and egress/ingress remain operable and effective during the hours that the school is in use as determined by the Principal. Dividing walls or partitions shall be erected to separate construction and demolition activities from building activities and egress/ingress shall be maintained as stipulated by the relevant Government authorities, including the Fire Marshal.

**§ 8.6.6** The Contractor and its Subcontractors shall staff the project with competent and experienced superintendents, foreman, and journeyman. The Electrical contractor must provide a Master Electrician and the Plumbing contractor must provide a Master Plumber to work on the Project. The number of apprentices working on the Project shall not exceed the ratio of two apprentices for every journeyman. If requested, the Contractor shall, within twenty-four (24) hours, provide documentation outlining specific experience for a journeyman, foreman or superintendent.

**§ 8.6.7** It is Contractor's sole responsibility to provide utilities, including but not limited to electricity, water, telephone, sewer and gas at the job site during the construction period, notwithstanding the indication of any utilities noted as existing in the Contract Documents.

**§ 8.6.8** The Contractor shall promptly make available to the Owner complete copies of all executed Subcontracts and any changes, modifications or exclusions thereto, upon the Owner's request.

**§ 8.6.9** The Architect or Engineer's approved shop drawings and or samples must be on site before work can begin on the applicable item of Work detailed on the shop drawings or stipulated in the specifications. The Contractor shall make the approved shop drawing available to the Owner's representative as needed to review the installation(s).

**§ 8.6.10** All existing areas, interior and exterior, damaged during construction or renovation, are to be refurbished to their original condition.

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§ 8.6.11 Any soil or excess excavation, including but not limited to rock, which is not required for the finished Work, shall be removed from the site as part of the Contract Sum.

§ 8.6.12 Notwithstanding any other contract provisions to the contrary, the mechanical system and plumbing system must be completely balanced and such balance must be accepted by the Engineer, before the warranty/guarantee period will begin.

§ 8.6.13 The Contractor shall provide not less than a 2 year warranty for the project, the 2 year warranty shall not diminish any extended warranty provided by equipment manufacturer's not limited to and including all HVAC equipment and Compressors.

#### ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 9.1.1 The Agreement is this executed AIA Document A101-2007, Standard Form of Agreement Between Owner and Contractor.

§ 9.1.2 The General Conditions are AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 9.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
----------	-------	------	-------

§ 9.1.4 The Specifications:  
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Section	Title	Date	Pages
---------	-------	------	-------

§ 9.1.5 The Drawings:  
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Number	Title	Date
--------	-------	------

§ 9.1.6 The Addenda, if any:

Number	Date	Pages
--------	------	-------

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 9.

§ 9.1.7 Additional documents, if any, forming part of the Contract Documents:

1. AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:

2. Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201-2007 provides that bidding requirements such as advertisement or invitation to bid,

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*Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)*

Frederick County Public Schools Bid Documents for this projects Bid.

## ARTICLE 10 INSURANCE AND BONDS

**10.1** The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201-2007.

*(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)*

**10.2** Maryland Code 21-102 - A certificate of authority, or certified copy of a certificate of authority, issued by the Commissioner to a surety insurer shall be accepted as evidence of qualification to become sole surety on a bond, undertaking, recognizance, or other obligation required or allowed by law, or in the charter, ordinances, rules, or regulations of a municipal corporation, board, organization, court, judge, or public officer, without further proof or qualification regarding solvency, credit, or financial sufficiency to act as a surety or bidders may use bonding companies from Treasury approved sureties with an AM Best rating of A- or better rating.

**10.3** The Contractor shall provide a Performance Bond with a Penal Sum equal to the Contract Sum. The Contractor shall provide a Payment Bond with a Penal Sum equal to the Contract Sum. All bonds shall be written on MD COMAR 21 07 02 10 Bond and will be from a surety company acceptable to the Owner.

**10.4** The Contractor shall comply with the additional insurance requirements set forth below:

(a) The Board of Education of Frederick County, The Board of Commissioners of Frederick County, the State of Maryland and the other entities stipulated by the Owner shall be named as an additional insured on the Contractor policies other than Worker's Compensation.

(b) All policies shall stipulate the Owner is to receive written notice thirty (30) days before cancellation.

(c) The Owner is to receive insurance certificates evidencing the compliance of insurance requirements at least (10) ten days before Work commences.

(d) Insurance policies shall contain a Waiver of Subrogation in favor of the Owner.

(e) General Liability and Umbrella Insurance policies are to be in "Occurrence Form".

(f) Insurance policies shall provide primary coverage to The Board of Education of Frederick County and The Board of Commissioners of Frederick County and the State of Maryland as additional insureds for loss, injury and damage arising out of or associated with the Work under this agreement as opposed to pro-rate with, concurrent with excess to any other insurance coverages by the Owner other than insurance Worker's Compensation Insurance.

(g) The Contractor shall purchase and maintain all insurance from an insurer acceptable to the Owner and lawfully authorized to do business in Maryland.

**10.5** The Contractor shall provide and maintain Builder's Risk Protection throughout the project. The Contractor and the Contractors Security shall pay the cost of any deductible(s) required by the Builders risk Protection as provided by the Contractor. This provision shall not release the contractor of the obligation to complete the work according to plans and specifications required by the contract, and the contractor his/her Surety shall be obligated to full performance of the contract's undertaking.

**10.6** The Contractor shall provide insurance pursuant to the requirements set forth below:

### Type of Insurance or bond

Part 1 Worker's Compensation Insurance

### Limit of liability or bond amount (\$0.00)

as required by statute

### Part 2 Employers Liability:

Bodily Injury by Accident

\$ 500,000.00 each accident

Bodily Injury by Disease

\$ 500,000.00 policy limits

Bodily Injury by Disease

\$ 500,000.00 each employee

Commercial General Liability Insurance, to include, premises, products, completed

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operations, personal injury and contractual: Aggregate to apply Per Project./Per Location, Occurrence	\$1,000,000.00
Each Occurrence	\$2,000,000.00
General aggregate Limit (Per Site)	\$2,000,000.00 aggregate limit
Products and complete operation	\$1,000,000.00 each occurrence Limit
Personal & advertising injury	\$1,000,000.00
Fire damage	\$ 50,000.00
Medical Expense (Any One Person)	\$ 10,000.00 each occurrence
General Liability insurance shall provide coverage for:	
Completed Operations to meet the Statute of Repose & Statute of Limitations;	
Independent Contractors	
Contractual Liability	
Broad Form Property Damage	
Liability arising from Explosion, Collapse and Underground Damage (X, C, U)	
Additional Insured Endorsement (GL2010 11/85)	
Terrorism-Certified & Non Certified	
Option (b1)	
Automobile Liability Insurance, including owned, non-owned and hired vehicles	
Bodily injury liability	\$1,000,000.00 each person
Property damage liability	\$1,000,000.00 each occurrence
Option (b2)	
Combined single limit Bodily injury or property damage liability	
	\$1,000,000.00 each person
	\$1,000,000.00 each accident
Umbrella Excess Liability (true following form)	
	\$5,000,000.00 per Occurrence
	\$5,000,000.00 General Aggregate
	\$5,000,000.00 Products & Completed Operations
Any construction contractor providing Mass Grading, Masonry, Structural Steel, Superstructure or foundation concrete, Mechanical or Electrical contractors shall be required to carry the following Umbrella Excess Liability (true following form) minimum limits:	
	\$8,000,000.00 Each Occurrence
	\$8,000,000.00 General Aggregate
	\$8,000,000.00 Products & Completed Operations
Contractors Pollution Liability for contractors engaged in testing for, monitoring, clean-up, removal, containing, detoxifying, neutralizing, transporting, handling, storage treatment, or disposing of or processing any waste pollutants.	
	\$1,000,000.00 per Occurrence
	\$1,000,000.00 Aggregate

This Agreement entered into as of the day and year first written above.

OWNER (Signature)

Theresa R. Alban, Ph.D.,  
(Printed name and title)

CONTRACTOR (Signature)

(Printed name and title)

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## Additions and Deletions Report for AIA® Document A101™ – 2007

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 15:39:36 on 03/20/2013.

### PAGE 1

The Board of Education of Frederick County  
191 South East Street  
Frederick, Maryland 21701-5918

### PAGE 2

~~The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.~~

§ 2.1 The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others. In addition to performing the Work as described in the Contract Documents, the Contractor shall perform the Work in accordance with all applicable ordinances, building codes, statutes, regulations and guidelines of all federal, state and local government authorities having jurisdiction over the Project.

§ 2.2 The Architect will schedule and the Contractor shall attend the Pre-Construction Meeting and Progress Meetings. The Contractor shall require the attendance of Subcontractors at the meetings as needed or as required by the Architect or Owner. The Contractor shall provide to the Architect and Owner either prior to or during each progress meeting such reports and documentation requested by the Architect and Owner regarding the progress and performance of the Work and the percentage of completion of Contract and all Subcontracts.

§ 2.3 In addition to progress and review meetings, the Contractor shall attend additional meetings with the Owner as needed and at the Owner's sole discretion. The Owner may designate the location and time of such meetings.

§ 2.4 Within (14) days after the Owner issues the notice to proceed the Contractor shall submit a Preliminary Contractor Schedule, the Preliminary Contractor Schedule shall indicate task(s) (the work), duration(s) (start and completion) and be compliant with the dates indicated for Substantial Completion as required by the contract. Preliminary Contractor Schedule shall be in a Critical Path Method (CPM) and bar chart format, indicating sufficient detail, task(s) (the work) and durations(s) (start and completion) of each major item of the Work, the current status of each major item of Work indicating staffing and equipment to comply with the Schedule. The Contract Schedule must be submitted for the Owners review as a condition precedent to the Contractor submission of the first application for Payment. Contractor shall provide additional detail when requested by the Architect or Owner and update the Contractor Schedule to be compliant with the Substantial Completion date(s) including only owner approves time extensions. Within 7 days of a request by the Architect or Owner, the Contractor shall furnish to the Architect and Owner a Progress Schedule showing the current progress and completion stage of the Work as compared to the Contract Schedule. Progress Schedule shall clearly identify any item of Work, which is behind the Contract Schedule along with the Contractor's increase in manpower and equipment necessary to comply with the updated Contract Schedule.

~~§ 3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.~~

PAGE 3

§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than (—) days from the date of commencement, or as follows:

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

§ 3.4 The Contractor acknowledges and agrees that time is of the essence in achieving Substantial Completion and that a delay in achieving Substantial Completion will result in increased costs to the Owner. In the event that the Contractor does not achieve Substantial Completion as stipulated in Article 3.3, including approved extensions, the Contractor and the Contractor's surety shall be liable for and shall pay liquidated damages to the Owner. For each calendar day required to achieve Substantial Completion beyond the Substantial Completion Date authorized by the Contract, the Contractor shall pay to the Owner all direct costs charged to the Owner plus liquidated damages on account of Owner's staff expense and on account of student inconvenience, disruption, and dislocation the sum of \$1.00 per student based upon an expected enrollment of \_\_\_\_\_ students for total liquidated damages in the amount of \$ \_\_\_\_\_ per day.

§ 3.5 The Contractor shall not be entitled to any form of damages for not being able to achieve Substantial Completion earlier than the date set forth in Paragraph 3.3. Additionally, a Contractor shall not be entitled to any form of damages or other compensation from Owner by reason of delay or interruptions of its work caused by other contractors or utilities working on the project. Contractor shall indemnify Owner against any and all loss, cost, and damages that the Owner may be caused to sustain by reason of claims from any other contractor working on the Project caused in whole or in part by the acts of the Contractor or those for whom it is responsible.

PAGE 4

The billing period shall be as required herein and as indicated by the specifications. Contactor is required to submit estimated billing by the 28th of each month for the current month. The Contractor must provide a pencil copy for the Architect and Owners review. Contractors' failure to provide estimate billing may delay processing the Application for Payment. Frederick County Public Schools requires overall estimates in compliance with Frederick County Government's funding requirements and in order to obtain funds for Contractor Applications for Payment.

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the first day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the twenty-fifth day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than thirty ( 30 ) days after the Architect receives the Application for Payment.

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of five percent ( 5 %). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201™-2007, General Conditions of the Contract for Construction;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of five percent ( 5 %);

PAGE 5

- .4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007, A201-2007 and,



.5 The requirements of 5.1.8 Reduction or limitation of retainage.

Five percent (5%) retainage shall be held from progress payments. After issuance of a Certificate of Substantial Completion for the Contract Work, retainage may be reduced at the Owner's sole and discretion. When the Owner and Architect agree that the work, including all Punch List items, has been satisfactorily completed, the retainage may be reduced at the Owner's sole option to one percent (1%). Any retainage reduction must be approved by the Architect, Owner and Surety prior to submitting an Application for Payment reflecting such reductions and shall include an executed AIA G707A Consent of Surety to reduction in or Partial Release of Retainage or AIA G707 Consent of Surety to Final Payment.

**§ 5.2.2** The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows: processed after the following Contractual requirements have been completed by the Contractor:

The Contractor shall deliver to the Owner:

- a. Final Releases of Liens and Waiver of Claims from the Contractor; and
- b. "As-built or Record Drawings" Plans and Specifications showing all changes, locations and installation shall be submitted to the architect for approval and forwarded to the Owner for his approval and acceptance. "As-built or Record Drawings" shall be provided on a drawing set sealed with the Architect's stamp; and
- c. Three (3) complete sets of warranties and guarantees in three-ring binders, indexed with a table of contents approved by the Architect; and
- d. A statement from the Contractor that there exist no pending or threatened claims against the Owner relating to the Work or for which the Owner may be liable which are unresolved or a statement of any unresolved issues; and
- e. All punch list items shall be satisfactorily completed, each punch list item signed and dated indicating when the correction was completed and inspected by the Owner, Architect and Engineer; and
- f. The Contractor shall deliver to the Owner attesting that various items of Work have been satisfactory completed in accordance with the requirements of the Contract Documents and in accordance with industry standards of workmanship.

PAGE 6

[ **XXX** ] Litigation in a court of competent jurisdiction

0.0 % zero percentage

191 South East Street  
Frederick, Maryland 21701-5918

PAGE 7

**§ 8.6.1** The cost of reproducing copies of any additional Construction Documents required for construction shall be at the sole cost of the Contractor.

**§ 8.6.2** The Contractor, Subcontractors and all employees shall conform to all Board of Education policies when on Board of Education property, including but not limited to no smoking and the possession of deadly weapons.

§ 8.6.3 The Contractor shall appoint a safety officer who shall be available to the Owner. On a regular basis such safety officer shall inspect the job site for compliance to OSHA and MOSHA requirements. In the event of any job site violations of OSHA or MOSHA, the Contractor shall immediately rectify the situation and bring the job site into compliance.

§ 8.6.4 The Owner may issue a Notice to Contractor for failure to comply with the Contract requirements and/or the Contract Documents. Contractor must respond to such notice as practical, and Owner must receive a written response within two (2) business days of the Contractor's receipt of such notice. Inspections by Owner or the Owner's failure to issue such Notices shall not relieve the Contractor from full compliance with the Contract Documents.

§ 8.6.5 When Work is to be completed during operation of and use of the building Contractor shall ensure all building systems and egress/ingress remain operable and effective during the hours that the school is in use as determined by the Principal. Dividing walls or partitions shall be erected to separate construction and demolition activities from building activities and egress/ingress shall be maintained as stipulated by the relevant Government authorities, including the Fire Marshal.

§ 8.6.6 The Contractor and its Subcontractors shall staff the project with competent and experienced superintendents, foreman, and journeyman. The Electrical contractor must provide a Master Electrician and the Plumbing contractor must provide a Master Plumber to work on the Project. The number of apprentices working on the Project shall not exceed the ratio of two apprentices for every journeyman. If requested, the Contractor shall, within twenty-four (24) hours, provide documentation outlining specific experience for a journeyman, foreman or superintendent.

§ 8.6.7 It is Contractor's sole responsibility to provide utilities, including but not limited to electricity, water, telephone, sewer and gas at the job site during the construction period, notwithstanding the indication of any utilities noted as existing in the Contract Documents.

§ 8.6.8 The Contractor shall promptly make available to the Owner complete copies of all executed Subcontracts and any changes, modifications or exclusions thereto, upon the Owner's request.

§ 8.6.9 The Architect or Engineer's approved shop drawings and or samples must be on site before work can begin on the applicable item of Work detailed on the shop drawings or stipulated in the specifications. The Contractor shall make the approved shop drawing available to the Owner's representative as needed to review the installation(s).

§ 8.6.10 All existing areas, interior and exterior, damaged during construction or renovation, are to be refurbished to their original condition.

§ 8.6.11 Any soil or excess excavation, including but not limited to rock, which is not required for the finished Work, shall be removed from the site as part of the Contract Sum.

§ 8.6.12 Notwithstanding any other contract provisions to the contrary, the mechanical system and plumbing system must be completely balanced and such balance must be accepted by the Engineer, before the warranty/guarantee period will begin.

§ 8.6.13 The Contractor shall provide not less than a 2 year warranty for the project, the 2 year warranty shall not diminish any extended warranty provided by equipment manufacturer's not limited to and including all HVAC equipment and Compressors.

**PAGE 9**

Frederick County Public Schools Bid Documents for this projects Bid.

**10.1** The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201-2007.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)

**10.2** Maryland Code 21-102 - A certificate of authority, or certified copy of a certificate of authority, issued by the Commissioner to a surety insurer shall be accepted as evidence of qualification to become sole surety on a bond, undertaking, recognizance, or other obligation required or allowed by law, or in the charter, ordinances, rules, or regulations of a municipal corporation, board, organization, court, judge, or public officer, without further proof or qualification regarding solvency, credit, or financial sufficiency to act as a surety or bidders may use bonding companies from Treasury approved sureties with an AM Best rating of A- or better rating.

**10.3** The Contractor shall provide a Performance Bond with a Penal Sum equal to the Contract Sum. The Contractor shall provide a Payment Bond with a Penal Sum equal to the Contract Sum. All bonds shall be written on MD COMAR 21.07.02 10 Bond and will be from a surety company acceptable to the Owner.

**10.4** The Contractor shall comply with the additional insurance requirements set forth below:

(a) The Board of Education of Frederick County, The Board of Commissioners of Frederick County, the State of Maryland and the other entities stipulated by the Owner shall be named as an additional insured on the Contractor policies other than Worker's Compensation.

(b) All policies shall stipulate the Owner is to receive written notice thirty (30) days before cancellation.

(c) The Owner is to receive insurance certificates evidencing the compliance of insurance requirements at least (10) ten days before Work commences.

(d) Insurance policies shall contain a Waiver of Subrogation in favor of the Owner.

(e) General Liability and Umbrella Insurance policies are to be in "Occurrence Form".

(f) Insurance policies shall provide primary coverage to The Board of Education of Frederick County and The Board of Commissioners of Frederick County and the State of Maryland as additional insureds for loss, injury and damage arising out of or associated with the Work under this agreement as opposed to pro-rate with, concurrent with excess to any other insurance coverages by the Owner other than insurance Worker's Compensation Insurance.

(g) The Contractor shall purchase and maintain all insurance from an insurer acceptable to the Owner and lawfully authorized to do business in Maryland.

**10.5** The Contractor shall provide and maintain Builder's Risk Protection throughout the project. The Contractor and the Contractors Security shall pay the cost of any deductible(s) required by the Builders risk Protection as provided by the Contractor. This provision shall not release the contractor of the obligation to complete the work according to plans and specifications required by the contract, and the contractor his/her Surety shall be obligated to full performance of the contract's undertaking.

**10.6** The Contractor shall provide insurance pursuant to the requirements set forth below:

Part 1 Worker's Compensation Insurance

as required by statute

Part 2 Employers Liability:

Bodily Injury by Accident

\$ 500,000.00 each accident

Bodily Injury by Disease

\$ 500,000.00 policy limits

Bodily Injury by Disease

\$ 500,000.00 each employee

Commercial General Liability Insurance, to include, premises, products, completed operations, personal injury and contractual: Aggregate to apply Per Project/Per Location, Occurrence

\$1,000,000.00

Each Occurrence

\$2,000,000.00

General aggregate Limit (Per Site)

\$2,000,000.00 aggregate limit

Products and complete operation

\$1,000,000.00 each occurrence Limit

Personal & advertising injury

\$1,000,000.00

Fire damage

\$ 50,000.00

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<u>Medical Expense (Any One Person)</u>	<u>\$ 10,000.00 each occurrence</u>
<u>General Liability insurance shall provide coverage for:</u>	
<u>Completed Operations to meet the Statute of Repose &amp; Statute of Limitations:</u>	
<u>Independent Contractors</u>	
<u>Contractual Liability</u>	
<u>Broad Form Property Damage</u>	
<u>Liability arising from Explosion, Collapse and Underground Damage (X, C, U)</u>	
<u>Additional insured Endorsement (GL2010 11/85)</u>	
<u>Terrorism-Certified &amp; Non Certified</u>	
<u>Option (b1)</u>	
<u>Automobile Liability Insurance, including owned, non-owned and hired vehicles</u>	
<u>Bodily injury liability</u>	<u>\$1,000,000.00 each person</u>
<u>Property damage liability</u>	<u>\$1,000,000.00 each occurrence</u>
<u>Option (b2)</u>	
<u>Combined single limit Bodily injury or property damage liability</u>	<u>\$1,000,000.00 each person</u>
	<u>\$1,000,000.00 each accident</u>
<u>Umbrella Excess Liability (true following form)</u>	<u>\$5,000,000.00 per Occurrence</u>
	<u>\$5,000,000.00 General Aggregate</u>
	<u>\$5,000,000.00 Products &amp; Completed Operations</u>
<u>Any construction contractor providing Mass Grading, Masonry, Structural Steel, Superstructure or foundation concrete, Mechanical or Electrical contractors shall be required to carry the following Umbrella Excess Liability (true following form) minimum limits:</u>	<u>\$8,000,000.00 Each Occurrence</u>
	<u>\$8,000,000.00 General Aggregate</u>
	<u>\$8,000,000.00 Products &amp; Completed Operations</u>
<u>Contractors Pollution Liability for contractors engaged in testing for, monitoring, clean-up, removal, containing, detoxifying, neutralizing, transporting, handling, storage treatment, or disposing of or processing any waste pollutants.</u>	<u>\$1,000,000.00 per Occurrence</u>
	<u>\$1,000,000.00 Aggregate</u>

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Theresa R. Alban, Ph.D.,

**Certification of Document's Authenticity**  
**AIA® Document D401™ – 2003**

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\_\_\_\_\_  
(Signed)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Dated)

# **AIA** Document A201™ – 2007

## **General Conditions of the Contract for Construction**

for the following PROJECT:  
(Name and location or address)

### **THE OWNER:**

(Name, legal status and address)

The Board of Education of Frederick County  
191 South East Street  
Frederick, Maryland 21701-5918

### **THE ARCHITECT:**

(Name, legal status and address)

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## **ARTICLE 1 GENERAL PROVISIONS**

### **§ 1.1 BASIC DEFINITIONS**

#### **§ 1.1.1 THE CONTRACT DOCUMENTS**

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. As specifically enumerated in the Agreement, the Contract Documents shall include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

#### **§ 1.1.2 THE CONTRACT**

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

#### **§ 1.1.3 THE WORK**

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

#### **§ 1.1.4 THE PROJECT**

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

#### **§ 1.1.5 THE DRAWINGS**

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

#### **§ 1.1.6 THE SPECIFICATIONS**

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

#### **§ 1.1.7 INSTRUMENTS OF SERVICE**

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under the Architect respective professional services agreements with the Owner. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials. As the design progresses and payments to the Architect are made by the Owner the instruments of services become the property of The Board of Education of Frederick County, see 1.5.1 Ownership and Use of Drawings, Specifications and Other Instruments of Service.

#### **§ 1.1.8 INITIAL DECISION MAKER**

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

### **§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS**

**§ 1.2.1** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as

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binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities:

1. The Agreement
2. Addenda with those or late date having precedence over those of earlier date
3. The Supplementary Conditions
4. The General Conditions of the Contract for Construction
5. The Contract Specifications
6. The Contract Drawings

**§ 1.2.2** Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

**§ 1.2.3** Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

### **§ 1.3 CAPITALIZATION**

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

### **§ 1.4 INTERPRETATION**

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

### **§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE**

**§ 1.5.1** The Architect and the Architect's consultants shall be deemed the authors of the respective Instruments of Service, including the Drawings and Specifications, and The Board of Education of Frederick County will own and retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

**§ 1.5.2** The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner.

### **§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM**

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

## **ARTICLE 2 OWNER**

### **§ 2.1 GENERAL**

**§ 2.1.1** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. The Architect does not have authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization.

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**§ 2.1.2** The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

## **§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

**§ 2.2.1** Is deleted.

**§ 2.2.2** Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. Fees for trade and specialty permits, including but not limited to, electrical, plumbing, elevator, fire review(s) and inspection, boiler, pressure vessel and fuel burning permits and all reinspections shall be paid by and at the Contractor's expense.

**§ 2.2.3** The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project which are known to the Owner, and a legal description of the site if requested by the Contractor. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner and shall exercise proper precautions relating to the safe performance of the Work.

**§ 2.2.4** The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

**§ 2.2.5** Unless otherwise provided in the Contract or Bidding Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

## **§ 2.3 OWNER'S RIGHT TO STOP THE WORK**

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

## **§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK**

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a three-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to or waiver of other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

## **ARTICLE 3 CONTRACTOR**

### **§ 3.1 GENERAL**

**§ 3.1.1** The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed as required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

**§ 3.1.2** The Contractor shall perform the Work in accordance with the Contract Documents.

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**§ 3.1.3** The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Owner or the Architect in the administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

### **§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR**

**§ 3.2.1** Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents. The Contractor represents that it has received all information it needs concerning the conditions of the Project site. The Contractor represents that it has inspected the location of the Work and has satisfied itself as to the condition thereof or unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents. Based upon the foregoing inspections, understandings, agreements and acknowledgements, the Contractor agrees and acknowledges that the Contract Sum is just and reasonable compensation for all the Work and that the Work shall not result in any lateral or vertical movement of any structure due to the Contractor's construction activities. The Contractor shall exercise special care in executing subsurface Work in proximity of subsurface utilities, improvements and easements.

**§ 3.2.2** Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report in writing to the Architect and Owner any errors, inconsistencies or omissions discovered by or in the exercise of due diligence should have been discovered or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. If the Contractor performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without providing written notice to the Owner and Architect, the Contractor shall assume appropriate responsibility for such performance and shall bear the costs for correction.

**§ 3.2.3** The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect in writing any nonconformity discovered by or in the exercise of due diligence should have been discovered or made known to the Contractor as a request for information in such form as the Architect may require.

**§ 3.2.4** If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

### **§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES**

**§ 3.3.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then

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instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

**§ 3.3.2** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

**§ 3.3.3** The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

#### **§ 3.4 LABOR AND MATERIALS**

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

**§ 3.4.2** Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

**§ 3.4.3** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

**§ 3.4.4** The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Owner or the Architect or of other Contractors during the performance of the Work or by Tests, inspections or approvals required or performed by persons other than the Contractor, including inspections or approvals performed by the Owner's personnel or by any public authority.

#### **§ 3.5 WARRANTY**

**§ 3.5.1** The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

**§ 3.5.2** The Minimum Warranty Period will be two (2) years from the date of substantial completion of the project. The Warranty shall include extended warranty period(s) available from equipment manufacturers and or extended warranties as required by project specification are required as if individually enumerated herein.

**§ 3.5.3** Notwithstanding any other contract provisions to the contrary, the mechanical system and plumbing system must be completely balanced and such balance reports must be reviewed and accepted by the Engineer before the warranty/guarantee period will begin.

#### **§ 3.6 TAXES**

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

#### **§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS**

**§ 3.7.1** Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, inspections and reinspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally

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required at the time bids are received. Fees for trade and a specialty permit including, but not limited to, electrical, plumbing, elevator, fire review(s), inspections and reinspections, boiler, pressure vessel and fuel burning permits, shall be paid by and at Contractor's expense.

**§ 3.7.2** The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. Compliance with local governing jurisdiction requirements shall be completed at no additional cost to the Owner.

**§ 3.7.3** If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction. The provisions of this Agreement regarding compensation and damages, including delay damages, shall apply.

**§ 3.7.4 Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

**§ 3.7.5** If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

### **§ 3.8 ALLOWANCES**

**§ 3.8.1** The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

**§ 3.8.2** Unless otherwise provided in the Contract Documents,

1. Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
2. Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
3. Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

**§ 3.8.3** Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

### **§ 3.9 SUPERINTENDENT AND PROJECT MANAGER**

**§ 3.9.1** The Contractor shall employ a competent superintendent, project manager and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Communications shall be confirmed in writing. The Superintendent and necessary staff members shall be in attendance at the Project site during the performance of the Work including completion of all Punch List items.

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**§ 3.9.2** Prior to being assigned to the Project both the Project Manager and Superintendent shall be subject to the approval of the Owner. Once approved, the Superintendent and Project Manager will not be removed from the Project without the Owner's written consent. The Owner reserves and retains the right, at its sole and absolute discretion, to order the Contractor to replace any of the Contractor's employees. In the event the Owner requests Contractor employees' removal, the Contractor shall promptly replace such employees with competent replacements satisfactory to the Owner. The Contractor shall not change the Superintendent or Project Manager without the Owner's consent.

**§ 3.9.3** The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

### **§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES**

**§ 3.10.1** The Contractor, promptly after being awarded the Contract and as a condition precedent to the first Application for Payment, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at no cost to the Owner at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. The Owner reserves the right to have the Contractor update the schedule with each Application for Payment,

**§ 3.10.2** The Contractor shall prepare preliminary construction and a submittal schedule, within 14 days after being awarded the Contract and complete schedules before 60 contract days have elapsed. The contractor shall update the schedules thereafter as necessary to maintain current construction and submittal schedules, and shall submit the schedule(s) for the Architect's and Owner's review. The Architect's and Owner's review shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. Contractor's Construction Schedule shall be in a Critical Path Method (CPM) and bar chart format, indicating sufficient detail, task(s) (the work) and durations(s) (start and completion) of each major item of the Work, the current status of each major item of Work indicating staffing and equipment to comply with the Contract Substantial Completion Date and any Owner approved extensions. Contractor(s) shall provide additional detail when requested by the Architect or Owner and update their Proposed Contractor Schedule to be compliant with the Contract Substantial Completion Date(s). Within 7 days of a request by the Architect or Owner, the Contractor shall furnish to the Owner and Architect a Progress Schedules showing the current progress and completion stage of the Work as compared to the Original Contract Schedule. Progress Schedules shall clearly identify any item of Work, which is behind Schedule along with the Contractor's increased manpower and equipment necessary to comply with the Contract Schedule including any time extensions approved by the Owner. Progress Schedule(s) shall be provided in a Critical Path Method (CPM), bar chart format and electronic as requested by the Owner. During the Owners review the Owner may choose to advise the contractor of work that will be performed by the owner's forces or the Owners separate Contractors. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals. The Contractor shall provide the Owner and Architect updated schedules as a condition precedent to progress payments. The up dated schedules shall be provided by the Contractor as the project progresses and as requested by the Owner or Architect.

**§ 3.10.3** The Contractor shall perform the Work in accordance with the most recent schedules reviewed by the Owner and Architect without objection.

### **§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE**

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed. The Owner may request, and Contractor shall provide, at any time during the course of the Project, As-Built Drawings that reflect the then current stage of construction as actually built and be submitted to the Owner for its review. If such drawings are not provided the Owner may withhold progress payment, or in its discretion a portion thereof, until the requested drawings are up to date and provided for the Owners review.

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### **§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

**§ 3.12.1** Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

**§ 3.12.2** Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

**§ 3.12.3** Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

**§ 3.12.4** Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. The Contractor shall submit shop drawings to the Architect for all structural elements of the Work and all other portions of the Work required by the Contract Documents. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

**§ 3.12.5** The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

**§ 3.12.6** By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

**§ 3.12.7** The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

**§ 3.12.8** The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

**§ 3.12.9** The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

**§ 3.12.10** The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop

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Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

### **§ 3.13 USE OF SITE**

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

### **§ 3.14 CUTTING AND PATCHING**

**§ 3.14.1** The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

**§ 3.14.2** The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

### **§ 3.15 CLEANING UP**

**§ 3.15.1** The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

**§ 3.15.2** If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

### **§ 3.16 ACCESS TO WORK**

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

### **§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS**

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

### **§ 3.18 INDEMNIFICATION**

**§ 3.18.1** To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a

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party indemnified hereunder including but not limited to the contributing negligence of such party to be indemnified. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

**§ 3.18.2** In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

## **ARTICLE 4 ARCHITECT**

### **§ 4.1 GENERAL**

**§ 4.1.1** The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

**§ 4.1.2** Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

**§ 4.1.3** If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

### **§ 4.2 ADMINISTRATION OF THE CONTRACT**

**§ 4.2.1** The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

**§ 4.2.2** The duties of the Architect shall be governed by the Agreement between the Owner and Architect, and will review the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1. Notwithstanding other provisions in this Agreement to the contrary, for the purpose of effectuating the Architect's duties in this section, the Architect shall be responsible for exercising reasonable care and diligence in observing on-going Work. No inspection or approval or failure to inspect or approve by the Architect shall relieve the Contractor from complying in all respects with the requirements of the Contract Documents.

**§ 4.2.3** On the basis of the site reviews, the Architect will report to the Owner and copy the Contractor about the progress and quality of the portion of the Work completed reporting (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

**§ 4.2.3.1** Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect, for additional services which may be charged by the Architect for additional site visits made necessary by the fault or neglect of the Contractor.

### **§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION**

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be

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through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

**§ 4.2.5** Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

**§ 4.2.6** The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

**§ 4.2.7** The Architect will review and or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of reviewing the adequacy of the structural elements of the building and checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule reviewed by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's review of a specific item shall not indicate approval of an assembly of which the item is a component. Should any local Government authorities require certification or correctness of any structural shop drawings by the Architect of record, the Architect will sign and certify the shop drawings only after the shop drawings have been signed and certified by the both the structural engineer and other professional engineer registered in the State of Maryland on behalf of the manufacturer, fabricator, Subcontractor, or Contractor. The cost for such additional engineering certification shall be borne by the Contractor.

**§ 4.2.8** The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

**§ 4.2.9** The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive, review and forward to the Owner with comments, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10. Architect's inspection and issuance of a certificate for final payment and Owner's payment shall not relieve Contractor of responsibility for defects in the Work.

**§ 4.2.10** If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

**§ 4.2.11** The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

**§ 4.2.12** Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

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§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

## **ARTICLE 5 SUBCONTRACTORS**

### **§ 5.1 DEFINITIONS**

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

### **§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK**

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract or propose to contract with a proposed person, entity or subcontractor unless the Contractor is satisfied that such person, entity or Subcontractor is technically and financially qualified to perform the Work as a Subcontractor in accordance with the Contract Documents. The Contractor shall not Contract with any entity or persons to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.2.5 The Contractor shall not enter into any Subcontract, Contract agreement, purchase order or other arrangement for the furnishing of any portion of the materials, services, equipment or Work with any party or entity as such party or entity is an affiliated entity with which the Contractor has a direct or indirect ownership, control or interest unless such Agreement has been approved by the Owner after full disclosure in writing by the Contractor to the Owner of such affiliation or relationship and all details relating to the proposed arrangements.

### **§ 5.3 SUBCONTRACTUAL RELATIONS**

§ 5.3.1 By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect

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under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

**§ 5.3.2** Contractor shall not withhold sums earned by any Subcontractor on this Project by reason of obligations which may be owing to Contractor from Subcontractor on any other projects ("cross withholding"). Any such cross withholding shall be grounds for termination of Contractor or, in Owner's sole discretion, shall authorize the Owner to engage another Subcontractor to perform the Work at Contractor's expense including all damages and losses caused to Owner by such Subcontractor substitution.

#### **§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS**

**§ 5.4.1** Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

**§ 5.4.2** Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

**§ 5.4.3** Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

#### **ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

##### **§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS**

**§ 6.1.1** The Owner reserves the right to and may perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

**§ 6.1.2** When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

**§ 6.1.3** The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

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§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

## § 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect and Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

## § 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents. The Contractor agrees that it will incorporate the provisions of Article 7 in its entirety into all agreements with lower tier Contractors. It is further understood and agreed that these Change Order pricing provisions, apply to all types of Contracts, Subcontracts and purchases. The Owner and Owner's accountant shall be afforded access to Contractor's records, books and correspondence, instructions, drawings, receipts, Subcontracts, purchase orders, vouchers and any other data relating to the Project as necessary to verify the cost of any change, including wages and benefits paid, for which compensation is sought under this Agreement.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone. Verbal notification approving the Contractor to proceed with a change in the work shall be confirmed in a written format via, CCD, Change Order, Progress minutes, e-mail or other written correspondence and should be made as soon as practical.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work. A Change Order or Construction Change Directive involving unit cost shall be equitably adjusted in accordance with 7.3.4.

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## § 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time; and
- .4 Comply with all requirements of 7.2.2 below and 7.3.4.

No Change Order shall exceed any of the limitations and requirements of the Contract Documents.

§ 7.2.2 The Contractor shall comply with the following regarding Changes:

(A) A Notice of Request for Change must comply with all of the following:

- .1 specifically and in detail describe the nature and cause of the Claim; and
- .2 specifically reference the detail(s) on the plans and the specification section(s) that are affected; and
- .3 contain an estimate of the increase or decrease in the cost to the Owner; and
- .4 include supporting documentation that satisfactorily justifies to the Owner overhead, profit, insurance, sales or payroll taxes and incorporate a detailed quantity survey of all Work added and deleted; and
- .5 be submitted in a format acceptable to the Owner.

(B) Additive Changes must comply with the following Mark-Up schedule for Overhead, profit and bond:

If the Cost of the proposed change is \$0.00 to \$4,999.99, the total combined overhead, profit and bond must not exceed 20%.

If the Cost of the proposed change is \$5,000.00 to \$14,999.99, the combined overhead, profit and bond must not exceed 15%.

If the Cost of the proposed change is \$15,000.00 to \$24,999.99, the combined overhead, profit and bond must not exceed 10%.

If the Cost of the proposed change is \$25,000.00 to \$49,999.99, the combined overhead, profit and bond must not exceed 7%.

If the Cost of the proposed change is over \$50,000.00, the combined overhead, profit and bond will be negotiated but will not exceed 5%, the cost of the bond shall be clearly indicated in the detailed proposal regardless of the proposed cost.

(C) The Contractors' markup of Subcontractor Work and supplier's material(s) shall not exceed 7% for changes up to \$24,999.99 and the markup shall be negotiated for changes over \$25,000.00 but shall not exceed 5% of the Subcontractor(s) cost of the Work.

(D) Overhead cost shall include all the general conditions, expenses, including but not limited to, all coordination, calculations, engineering, field and office supervision, field and office rent utilities, telephone and communications expenses, office supplies, clean-up, debris expenses, administration and preparation. When both additions and deletions are involved in any one change, the allowance for overhead, profit and bond shall be computed on the net increase, if any, with respect to the change.

(E) For decreases in the Work or credits, the Contract Amount shall be decreased 100% of the Scheduled Value of the deleted Work plus overhead, profit and bond. Contractor and Subcontractor(s) credits shall include credit for overhead, profit and Bond, in the same percentages allowed for additive changes in the above mark-up schedule:

(F) The Contractor's total charge to the Owner for the use of equipment owned in whole or in part by the Contractor, its Owners, directors, officers, shareholders, or affiliated or related persons or entities shall consider the rate agreed upon between the Contractor, Owner and Architect at the beginning of the project less operator and fuel. Reference materials such as "the AED Green Book" should be used to establish market rental rates for equipment. The following shall apply:

- .1 The appropriate duration of hourly rate shall be calculated based on the entire duration the piece of equipment is on the FCPS site (e.g. if the equipment item has been on the project for 30 days or more the hourly rate shall be the monthly rental divided by 176 hours; if on the project for one week the hourly rental shall be the weekly rental divided by 40; if on the project for a day the hourly rental shall be the daily rental divided by 8; if brought to the project for the specific operation the minimal rental period shall apply.) Minimal rental durations will be considered for equipment rented for specific project purposes,
- .2 The Contractor shall not invoice for delivery or removal of the equipment to or from the job site,
- .3 In no event shall the total payment paid by the Owner on any such piece of equipment exceed fifty percent (50%) of its purchase price.

(G) Subcontractor(s) shall comply with the requirements specified above for the Contractor regarding Changes.

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### § 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall not exceed any requirements listed in Article 7 including all sub-sections and shall be based on one of the following methods:

- 1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- 2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- 3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- 4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted. Unit prices are all inclusive including cost of overhead profit, bond and insurance.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- 1 Wages for construction Workers, including supervisors, directly employed to perform the construction of the Work at the site. Unless otherwise agreed by Addendum to this Contract, labor burden shall be limited to: social security, old age and unemployment, Workmen's compensation, health and life insurance benefits, sick leave, holidays, military leave, vacation and pension and savings plan benefits;
- 2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- 3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- 4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- 5 Additional costs of supervision and field office personnel directly attributable to the change, provided, however, the Contractor shall provide an itemized breakdown showing quantities, unit costs, hours and rates of labor, and other costs and such detail as may be required to allow the reasonableness of cost to be established. Similar cost information covering Subcontractors' Work shall be included as a part of

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the Contractor's Proposal. Minimum charges for "handling" will not be acceptable. The allowable overhead and profit Mark-Ups to be included in the Total Cost to Owner shall be based on paragraph 7.2 and:

- .1 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of the cost including labor, materials and Subcontractors. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are Subcontracts, they shall be itemized also. In no case will a charge involving over \$500.00 be approved without such itemization.
- .2 A Change Order must include each of the items listed in this Article 7. In the event there is no change in the Contract time or Contract amount, it must be noted that no such change is intended. A Change Order is all-inclusive, that is, a Change Order must indicate the change in Contract amount, including any overhead and profit. The Contractor cannot later request additional sums for a prior Change Order because it did not include overhead, profit, or similar items. If additional Contract time is indicated on the Change Order and the Contractor intends to claim any cost for time on any basis, the Change Order must include all additional costs, if any, associated with the additional time.
- .3 Where both additions and credits are involved in any one Change Order the allowance of overhead and profit shall be figured on the basis of the net increase, if any.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect and the credit shall be as required by Article 7 mark-up schedule. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change per the mark-up schedule.

§ 7.3.9 Pending final determination of the actual cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such costs that remains in dispute, a Claim may be made in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order otherwise, if Contractor is directed to proceed by Owner, the matter shall be considered a Claim under Article 15. Change Orders may be issued for all or any part of a Construction Change Directive.

#### § 7.4 MINOR CHANGES IN THE WORK

The Architect with the consent of the Owner has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

### ARTICLE 8 TIME

#### § 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement shall be fixed in a Notice to Proceed.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

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## **§ 8.2 PROGRESS AND COMPLETION**

**§ 8.2.1** Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

**§ 8.2.2** The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

**§ 8.2.3** The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

## **§ 8.3 DELAYS AND EXTENSIONS OF TIME**

**§ 8.3.1** If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and with consent of the Owner; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine. Contractor waives any all rights to any increased payments for delay damages, whether by Change Order or otherwise, to include overhead, extended overhead, extended general conditions, or for any other delay-based amounts of any kind or nature, for any delay by reason of the events referred to in this subparagraph or any other event of any kind or nature. Contractor's remedy is limited to an extension of time as set forth herein.

**§ 8.3.2** Claims relating to time shall be made in accordance with applicable provisions of Article 15.

**§ 8.3.3** Is deleted.

## **ARTICLE 9 PAYMENTS AND COMPLETION**

### **§ 9.1 CONTRACT SUM**

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

### **§ 9.2 SCHEDULE OF VALUES**

**§ 9.2.1** Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect and Owner, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect or Owner may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. The Schedule of Values shall be revised from time to time as may be necessary and due to the issuance of Change Orders or Construction Change Directives, the Contractor shall revise the Schedule of Values as requested by the Architect or Owner. The owner reserves the right to request the contractor to provide additional detail substantiating the schedule of values.

**§ 9.2.2** The Contractor shall include a line item in the schedule of values for production of project record documents. The minimum value established for the record documents must not be less than ½ of 1% of the total Contract Value including accepted alternates.

### **§ 9.3 APPLICATIONS FOR PAYMENT**

**§ 9.3.1** At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect and Owner an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage as provided for in the Contract Documents. Applications for Payment shall be based upon the Schedule of Values and shall be in a form and content satisfactory to the Owner. Each Application for Payment shall be accompanied by the following:

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- (a) Contractor's application and Cost Certification Statement, AIA Forms 702, 703 and IAC/PSCP Form No. 306.4, with attachment "G Certified Minority Business Enterprise Participation Standard Monthly Contractor's Requisition for Payment (June 2008 or current form)", and;
- (b) A statement from the Contractor that all items of construction for which payment is sought have been incorporated into the Project were properly stored in accordance with the Contract Documents, and;
- (c) the Contractors and applicable Subcontractors release of liens and waivers of claim and such other documents that the Owner may require after discussion with the Contractor, and;
- (d) such other documentation that the Owner, Construction Manager, Architect may reasonably require after discussion with Contractor.

**§ 9.3.1.1** As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

**§ 9.3.1.2** Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

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

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

#### **§ 9.4 CERTIFICATES FOR PAYMENT**

**§ 9.4.1** The Architect will, after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

**§ 9.4.2** The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

#### **§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION**

**§ 9.5.1** The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the

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Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld after the contractor revises and resubmits a current application for payment including such amounts that were previously withheld.

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§ 9.5.4 If the Contractor disputes any determination by the Architect or Owner with regard to any Applications for Payment, the Contractor shall nevertheless expeditiously continue to perform the Work and shall make claim as provided in Article 15.

§ 9.5.5 The Owner shall not be deemed to be in breach of this Contract by reason of the withholding of any payment pursuant to any provision of the Contract Documents provided the Architect has approved the Owner's action, or the Work for which payment is being withheld has been rejected by any Governmental authority.

#### § 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

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**§ 9.6.6** A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

**§ 9.6.7** Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

#### **§ 9.7 FAILURE OF PAYMENT**

Subject to other provisions of the Contract Documents, if the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within thirty days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's substantiated direct costs of shut-down. Article 9.7 shall not apply to Change Orders that have not received formal approval by the Board of Education of Frederick County, all such Change Orders shall not be included in Applications for Payment until the Contractor receives formal notification from the Owner that the Change Order has received formal approval by the Board of Education of Frederick County and the contractor has completed the Change Order work.

#### **§ 9.8 SUBSTANTIAL COMPLETION**

**§ 9.8.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

**§ 9.8.2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

**§ 9.8.3** The comprehensive list of items to be completed or corrected ("Contractor's Punch List") prepared by the Contractor shall be submitted to the Owner and the Architect and the Owner shall be notified of inspections and be entitled to have an Owner's representative present at such inspections. All items that are disclosed during inspections not complying with the Contract Documents shall be added to the Contractor's Punch List and a copy of the Amended Punch List shall be submitted to the Owner and the Contractor. Any Certificate of Substantial Completion shall then be submitted making reference to the Punch List item, as either being completed to the Architect's satisfaction or shall fix a time within which the Contractor shall complete any remaining items. In the event the Contractor's Punch List is not completed by the date set forth in the Certificate of Substantial Completion, Owner has the option of deducting from balances due the Contractor an amount sufficient to compensate Owner for the cost of completing the Punch List.

The amount to be deducted shall be determined in the sole discretion of Owner. Alternatively, Owner at its sole discretion may proceed to engage another Contractor to complete the Punch List Work with the cost thereof to include Owner's administrative costs, which costs shall be calculated in the sole discretion of the Owner, to be deducted from the amount retained and if the amount retained is insufficient, the Contractor is responsible to reimburse Owner the full amount of the uncovered cost. To the extent that multiple inspections may be required to determine whether the Work, or a designated portion thereof has attained substantial completion, the Owner shall be entitled to deduct from the Contract Sum any amounts which it must pay to the Architect for additional services for such additional inspections.

**§ 9.8.4** When the Work or designated portion thereof including Record Documents & Maintenance Manuals are substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work provided the contractor has completed all other contractual requirements



stipulated to begin the warranty period or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

**§ 9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

#### **§ 9.9 PARTIAL OCCUPANCY OR USE**

**§ 9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

**§ 9.9.2** Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

**§ 9.9.3** Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

#### **§ 9.10 FINAL COMPLETION AND FINAL PAYMENT**

**§ 9.10.1** Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

**§ 9.10.2** Neither retainage payments nor final payment shall become due until all documents required by the Contract Documents and Article 5 of AIA 101 including (a) Maintenance Manuals, (b) Record Documents, (c) Instructions and Demonstrations have been provided and the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5) other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

**§ 9.10.3** If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the

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Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 defects in the Work or failure of the Work to comply with the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

§ 9.10.6 Under no circumstances shall final payment by the Owner constitute a waiver of defects in construction or failure of the Work to otherwise comply with the Contract Documents.

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

### § 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall give the Owner reasonable advance notice and exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.4.1 If the Contract Documents require the Contractor to handle materials or substances that under certain circumstances may be designated as hazardous, the Contractor shall handle such materials in an appropriate manner and shall defend, indemnify, and hold Owner and Architect harmless from and against all claims, liabilities, suits, losses and damages arising out of or relating to such materials.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone

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directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

**§ 10.2.6** The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

**§ 10.2.7** The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

**§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY**

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

**§ 10.3 HAZARDOUS MATERIALS**

**§ 10.3.1** The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

**§ 10.3.2** Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

**§ 10.3.3** To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

**§ 10.3.4** The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

**§ 10.3.5** The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

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**§ 10.3.6** If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

#### **§ 10.4 EMERGENCIES**

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

### **ARTICLE 11 INSURANCE AND BONDS**

#### **§ 11.1 CONTRACTOR'S LIABILITY INSURANCE**

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

- 1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- 2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- 3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- 4 Claims for damages insured by usual personal injury liability coverage;
- 5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- 6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- 7 Claims for bodily injury or property damage arising out of completed operations; and
- 8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

**§ 11.1.2** The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

**§ 11.1.3** Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

**§ 11.1.4** The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

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## **§ 11.2 OWNER'S LIABILITY INSURANCE**

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

## **§ 11.3 PROPERTY INSURANCE**

**§ 11.3.1** The Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

**§ 11.3.1.1** Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

**§ 11.3.1.2** Is Deleted.

**§ 11.3.1.3** If the property insurance requires deductibles, the Contractor shall pay costs not covered because of such deductibles.

**§ 11.3.1.4** This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

**§ 11.3.1.5** Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

## **§ 11.3.2 BOILER AND MACHINERY INSURANCE**

The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

## **§ 11.3.3 LOSS OF USE INSURANCE**

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused.

**§ 11.3.4** If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

**§ 11.3.5** If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

**§ 11.3.6** Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable

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conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

#### **§ 11.3.7 WAIVERS OF SUBROGATION**

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

**§ 11.3.8** A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

**§ 11.3.9** If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

**§ 11.3.10** The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner as required this by Agreement. No decision of the Architect shall be required.

#### **§ 11.4 PERFORMANCE BOND AND PAYMENT BOND**

**§ 11.4.1** The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

**§ 11.4.2** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

### **ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

#### **§ 12.1 UNCOVERING OF WORK**

**§ 12.1.1** If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

**§ 12.1.2** If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If Work is not in accordance with the Contract Documents, such costs and

the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs. The cost to repair nonconforming work shall be considered a latent defect and the contractor responsible for the work or as appropriate the damage to the work shall be responsible for the cost to make repairs to said work and return the uncovered work to the condition before the work was uncovered.

## **§ 12.2 CORRECTION OF WORK**

### **§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION**

The Contractor and its surety shall have the right to remedy any defects in the Work on materials which shall appear within a period of two (2) year from the date of Substantial Completion. Upon written notice from the Owner, the Contractor and surety shall promptly provide said remedy after notice from the Owner. If said remedy is not promptly provided, the Owner shall have the right to correct said defects and charge the Contractor and its surety for the same.

### **§ 12.2.2 AFTER SUBSTANTIAL COMPLETION**

**§ 12.2.2.1** In addition to the Contractor's obligations under Section 3.5, if, within two-years after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the two-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within five working days after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4. If the Contractor does not proceed with correction of such nonconforming Work within five working days fixed by written notice from the Architect the Owner may remove it and store the salvable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within three days after written notice, the Owner may upon ten additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Owner's and Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

**§ 12.2.2.2** The two-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

**§ 12.2.2.3** The two-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

**§ 12.2.3** The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

**§ 12.2.4** The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

**§ 12.2.5** Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the two-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

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### **§ 12.3 ACCEPTANCE OF NONCONFORMING WORK**

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## **ARTICLE 13 MISCELLANEOUS PROVISIONS**

### **§ 13.1 GOVERNING LAW**

The Contract shall be governed by the law of The State of Maryland.

### **§ 13.2 SUCCESSORS AND ASSIGNS**

**§ 13.2.1** The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

**§ 13.2.2** Is Deleted.

### **§ 13.3 WRITTEN NOTICE**

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

### **§ 13.4 RIGHTS AND REMEDIES**

**§ 13.4.1** Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

**§ 13.4.2** No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

### **§ 13.5 TESTS AND INSPECTIONS**

**§ 13.5.1** Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

**§ 13.5.2** If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

**§ 13.5.3** If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

**§ 13.5.4** Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

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§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5.7 No tests or inspections or results thereof shall constitute an acceptance of any Work not conforming to the requirements of Contract Documents.

#### § 13.6 INTEREST

Interest payments will not be required for late payments under the terms of this Contract.

#### § 13.7 TIME LIMITS ON CLAIMS

Commencement of Statutory Limitations Period and Statute of Repose shall be in accordance with the laws of the State of Maryland.

#### § 13.8 EQUAL OPPORTUNITY

§13.8.1 The Contractor shall maintain minimum policies of employment as follows:

§13.8.1.1 The Contractor and the Contractor's Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of nondiscrimination.

§13.8.1.2 The Contractor and the Contractor's Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex or national origin.

### ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

#### § 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 120 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- 1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- 2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- 3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- 4 Is Deleted.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment as set forth in the provisions of this Agreement regarding termination by the Owner for convenience.

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§ 14.1.4 Is Deleted.

**§ 14.2 TERMINATION BY THE OWNER FOR CAUSE**

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 -refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 -disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.2.5 In the event that is adjusted that the Owner's termination for cause is not justified, then the Termination shall be deemed to be a termination by the Owner for convenience and the Contractor shall be entitled to compensation as only set forth in the provisions of this Agreement regarding termination by Owner for Convenience.

**§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE**

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

**§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE**

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. At its option the Owner may terminate this Contract in whole or from time to time in part at any time by written notice thereof to the Contractor. Upon any such termination, Contractor agrees to waive any claims for damages, including loss of anticipated profits, on account thereof, and as the sole right and remedy of the Contractor, Owner shall pay Contractor in accordance with 14.4.2 below. The provisions of the Contract, which by their nature survive final acceptance of the Work, shall remain in full force and effect after such termination to include but not limited to warranties and obligations for the correction of Work not confirming to the Contract Documents. Upon receipt of the Termination Notice, Contractor shall, unless the Notice direct otherwise, immediately discontinue the Work and, to the extent specified in the Notice, place no further orders or subcontracts for materials, equipment, services, or

facilities and shall promptly make every reasonable effort to procure cancellation of such orders or subcontracts upon terms satisfactory to the Owner and shall thereafter do only such Work and perform such services as may be directed by the Owner as necessary to preserve and protect Work already in progress and to protect materials, plans and equipment on the Site or in transit thereto. Upon such termination, the obligations of the Contractor shall continue as to portions of the Work already performed and as to bona fide obligations assumed by the Contractor prior to the date of termination.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 Upon Termination for Convenience, the provisions of the Contract, which by their nature, survive any final acceptance of the Work, shall remain in full force and effect after such termination to include but not limited to warranties and obligations for the correction of Work not conforming to the Contract Documents. Upon receipt of the Termination Notice, Contractor shall, unless the Notice directs otherwise, immediately discontinue the Work and, to the extent specified in the Notice, place no future orders or Subcontracts for materials, equipment, services or facilities and shall promptly make every reasonable effort to procure cancellation of such orders or Subcontracts upon terms satisfactory to the Owner and shall thereafter do only such Work and perform such services as may be directed by the Owner as necessary to preserve and protect Work already in progress and to protect materials, plant and equipment on the site or in transit thereto. Upon termination, Contractor shall be entitled to be paid the full cost of all Work properly done by Contractor on account of the portion of Work Performed. If at the date of such termination, Contractor has properly prepared or fabricated off the site any goods for subsequent incorporation in the Work, and if Contractor delivers such goods to the Site or to such other place as the Owner shall reasonably direct, then Contractor shall be paid for such goods or materials. No other payment shall be made by reason of damages or otherwise, including but not limited to loss of anticipated profits, overhead, or any other claim or amount whatsoever.

## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 CLAIMS

#### § 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

#### § 15.1.2 NOTICE OF CLAIMS

Claims by the Contractor must be made by written notice to the Owner and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by Contractor must be made within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the Contractor first recognizes the condition giving rise to the Claim, whichever is later. Contractor claim(s) shall not be valid unless made in strict accordance with this subparagraph.

#### § 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

#### § 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4. A Claim must be processed as defined herein, Article 15 and comply with all requirements of Article 7

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#### **§ 15.1.5 CLAIMS FOR ADDITIONAL TIME**

**§ 15.1.5.1** If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. No claim for delay damages of any kind or nature shall be valid and no such damages shall be paid by the Owner except upon Owner's written consent which consent is in the sole and absolute discretion of the Owner. No written consent by Owner to damages for one period of delay, entitle Contractor to damages for any other period of delay. A Claim for additional time must be for adverse weather conditions and the actual conditions must exceed the cumulative monthly adverse weather day totals indicated in 15.1.5.2.

**§ 15.1.5.2** If adverse weather conditions are the basis for a Claim for additional time, the time must exceed the time as defined in the schedule below, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, exceeded the schedule below and could not have been reasonably anticipated and had an adverse effect on the scheduled construction. The State of Maryland, Department of General Services, Special Provisions Section of Hagerstown, Maryland will be used in the calculation of the monthly anticipated adverse weather delays. The monthly-anticipated adverse weather delays are as follows, in workdays. The Contractor's schedule must reflect these anticipated adverse weather delay days in weather dependent activities:

Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec
8	7	7	8	8	7	5	6	4	6	5	5

In any event, Contractor's Claim(s) for delay in the performance of the Work due to adverse weather conditions is strictly limited to a Claim for additional for additional time only. In no event shall the Contractor be entitled to monetary damages or any other compensation as a result of a delay in the performance of the Work due to adverse weather conditions.

#### **§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES**

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

1. damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
2. damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

#### **§ 15.2 INITIAL DECISION**

**§ 15.2.1** Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

**§ 15.2.2** The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

**§ 15.2.3** In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision

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Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be subject to mediation and, if the parties fail to resolve their dispute through mediation, the claim shall be resolved by litigation.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue litigation with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

### § 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of litigation proceedings but, in such event, mediation shall proceed in advance of litigation proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. -

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

### § 15.4 ARBITRATION is deleted and replaced with Litigation as follows,

All disputes and other matters in question between the parties to this Agreement which cannot be resolved by the parties in accordance with the terms of this Agreement shall be referred to legal counsel and resolved in the Circuit Court for Frederick County, Maryland and all parties hereto agree to submit themselves to the jurisdiction of that Court. During any legal proceedings or other dispute resolution proceedings which may be agreed to between the parties, Owner and Contractor shall comply with sub-paragraph 4.74.

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The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. ~~Unless As~~ specifically enumerated in the Agreement, the Contract Documents ~~do not shall~~ include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under ~~their the Architect~~ respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials. As the design progresses and payments to the Architect are made by the Owner the instruments of services become the property of The Board of Education of Frederick County, see 1.5.1 Ownership and Use of Drawings, Specifications and Other Instruments of Service.

**§ 1.2.1** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities:

1. The Agreement
2. Addenda with those or late date having precedence over those of earlier date
3. The Supplementary Conditions
4. The General Conditions of the Contract for Construction
5. The Contract Specifications
6. The Contract Drawings

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**§ 1.5.1** The Architect and the Architect's consultants shall be deemed the authors and owners of their of the respective Instruments of Service, including the Drawings and Specifications, and will The Board of Education of Frederick County will own and retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

**§ 1.5.2** The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants. Owner.

**§ 2.1.1** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative. The Architect does not have authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization.

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**§ 2.2.1** Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor. Is deleted.

**§ 2.2.2** Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. Fees for trade and specialty permits, including but not limited to, electrical, plumbing, elevator, fire review(s) and inspection, boiler, pressure vessel and fuel burning permits and all reinspections shall be paid by and at the Contractor's expense.

**§ 2.2.3** The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, Project which are known to the Owner, and a legal description of the site site if requested by the Contractor. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but and shall exercise proper precautions relating to the safe performance of the Work.

**§ 2.2.5** Unless otherwise provided in the Contract or Bidding Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has

been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ~~ten-day~~ three-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to or waiver of other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the ~~reasonable~~ cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

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§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully ~~licensed~~, if licensed as required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

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§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Owner or the Architect in the ~~Architect's~~ administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

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§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents. The Contractor represents that it has received all information it needs concerning the conditions of the Project site. The Contractor represents that it has inspected the location of the Work and has satisfied itself as to the condition thereof or unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents. Based upon the foregoing inspections, understandings, agreements and acknowledgements, the Contractor agrees and acknowledges that the Contract Sum is just and reasonable compensation for all the Work and that the Work shall not result in any lateral or vertical movement of any structure due to the Contractor's construction activities. The Contractor shall exercise special care in executing subsurface Work in proximity of subsurface utilities, improvements and easements.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report in writing to the Architect and Owner any errors, inconsistencies or omissions discovered by or in the exercise of due diligence should have been discovered or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. If the Contractor performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without providing written notice to the Owner and Architect, the Contractor shall assume appropriate responsibility for such performance and shall bear the costs for correction.

**§ 3.2.3** The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect in writing any nonconformity discovered by or in the exercise of due diligence should have been discovered or made known to the Contractor as a request for information in such form as the Architect may require.

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**§ 3.4.4** The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Owner or the Architect or of other Contractors during the performance of the Work or by Tests, inspections or approvals required or performed by persons other than the Contractor, including inspections or approvals performed by the Owner's personnel or by any public authority.

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. **§ 3.5.1** The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

**§ 3.5.2** The Minimum Warranty Period will be two (2) years from the date of substantial completion of the project. The Warranty shall include extended warranty period(s) available from equipment manufactures and or extended warranties as required by project specification are required as if individually enumerated herein.

**§ 3.5.3** Notwithstanding any other contract provisions to the contrary, the mechanical system and plumbing system must be completely balanced and such balance reports must be reviewed and accepted by the Engineer before the warranty/guarantee period will begin.

...

**§ 3.7.1** Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and ~~inspections~~ inspections and reinspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. received. Fees for trade and a specialty permit including, but not limited to, electrical, plumbing, elevator, fire review(s), inspections and reinspections, boiler, pressure vessel and fuel burning permits, shall be paid by and at Contractor's expense.

**§ 3.7.2** The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. Compliance with local governing jurisdiction requirements shall be completed at no additional cost to the Owner.

**§ 3.7.3** If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction. The provisions of this Agreement regarding compensation and damages, including delay damages, shall apply.



**§ 3.9 SUPERINTENDENT AND PROJECT MANAGER**

**§ 3.9.1** The Contractor shall employ a competent ~~superintendent~~ superintendent, project manager and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Communications shall be confirmed in writing. The Superintendent and necessary staff members shall be in attendance at the Project site during the performance of the Work including completion of all Punch List items.

**§ 3.9.2** The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection. Prior to being assigned to the Project both the Project Manager and Superintendent shall be subject to the approval of the Owner. Once approved, the Superintendent and Project Manager will not be removed from the Project without the Owner's written consent. The Owner reserves and retains the right, at its sole and absolute discretion, to order the Contractor to replace any of the Contractor's employees. In the event the Owner requests Contractor employees' removal, the Contractor shall promptly replace such employees with competent replacements satisfactory to the Owner. The Contractor shall not change the Superintendent or Project Manager without the Owner's consent.

**§ 3.10.1** The Contractor, promptly after being awarded the Contract, Contract and as a condition precedent to the first Application for Payment, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at no cost to the Owner at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. The Owner reserves the right to have the Contractor update the schedule with each Application for Payment.

**§ 3.10.2** The Contractor shall prepare preliminary construction and a submittal schedule, promptly within 14 days after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, complete schedules before 60 contract days have elapsed. The contractor shall update the schedules thereafter as necessary to maintain current construction and submittal schedules, and shall submit the schedule(s) for the Architect's approval. The Architect's approval and Owner's review. The Architect's and Owner's review shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. Contractor's Construction Schedule shall be in a Critical Path Method (CPM) and bar chart format, indicating sufficient detail, task(s) (the work) and durations(s) (start and completion) of each major item of the Work, the current status of each major item of Work indicating staffing and equipment to comply with the Contract Substantial Completion Date and any Owner approves extensions. Contractor(s) shall provide additional detail when requested by the Architect or Owner and update their Proposed Contractor Schedule to be compliant with the Contract Substantial Completion Date(s). Within 7 days of a request by the Architect or Owner, the Contractor shall furnish to the Owner and Architect a Progress Schedules showing the current progress and completion stage of the Work as compared to the Original Contract Schedule. Progress Schedules shall clearly identify any item of Work, which is behind Schedule along with the Contractor's increased manpower and equipment necessary to comply with the Contract Schedule including any time extensions approved by the Owner. Progress Schedule(s) shall be provided in a Critical Path Method (CPM), bar chart format and electronic as requested by the Owner. During the Owners review the Owner may choose to advise the contractor of work that will be performed by the owner's forces or the Owners separate Contractors. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals. The Contractor shall provide the Owner and Architect updated schedules as a condition precedent to progress payments. The up dated schedules shall be provided by the Contractor as the project progresses and as requested by the Owner or Architect.

**§ 3.10.3** The Contractor shall perform the Work in general accordance with the most recent schedules submitted to reviewed by the Owner and Architect. Architect without objection.

...

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed. The Owner may request, and Contractor shall provide, at any time during the course of the Project, As-Built Drawings that reflect the then current stage of construction as actually built and be submitted to the Owner for its review. If such drawings are not provided the Owner may withhold progress payment, or in its discretion a portion thereof, until the requested drawings are up to date and provided for the Owners review.

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§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. The Contractor shall submit shop drawings to the Architect for all structural elements of the Work and all other portions of the Work required by the Contract Documents. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

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§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder, ~~hereunder including but not limited to the contributing negligence of such party to be indemnified.~~ Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

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§ 4.2.2 ~~The Architect will visit~~ the duties of the Architect shall be governed by the Agreement between the Owner and Architect, and will review the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, construction to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1. Notwithstanding other provisions in this Agreement to the contrary, for the purpose of effectuating the Architect's duties in this section, the Architect shall be responsible for exercising reasonable care and diligence in observing on-going Work. No inspection or approval or failure to inspect or approve by the Architect shall relieve the Contractor from complying in all respects with the requirements of the Contract Documents.

§ 4.2.3 ~~On the basis of the site visits, the Architect will keep the Owner reasonably informed reviews, the Architect will report to the Owner and copy the Contractor about the progress and quality of the portion of the Work completed, and report to the Owner completed reporting~~ (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The

Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.3.1 Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect, for additional services which may be charged by the Architect for additional site visits made necessary by the fault or neglect of the Contractor.

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§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of reviewing the adequacy of the structural elements of the building and checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved reviewed by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval reviewed of a specific item shall not indicate approval of an assembly of which the item is a component. Should any local Government authorities require certification or correctness of any structural shop drawings by the Architect of record, the Architect will sign and certify the shop drawings only after the shop drawings have been signed and certified by the both the structural engineer and other professional engineer registered in the State of Maryland on behalf of the manufacturer, fabricator, Subcontractor, or Contractor. The cost for such additional engineering certification shall be borne by the Contractor.

...

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive-receive, review and forward to the Owner, Owner with comments, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10. Architect's inspection and issuance of a certificate for final payment and Owner's payment shall not relieve Contractor of responsibility for defects in the Work.

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§ 5.2.2 The Contractor shall not contract with a proposed person or entity or propose to contract with a proposed person, entity or subcontractor unless the Contractor is satisfied that such person, entity or Subcontractor is technically and financially qualified to perform the Work as a Subcontractor in accordance with the Contract Documents. The Contractor shall not Contract with any entity or persons to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

...

§ 5.2.5 The Contractor shall not enter into any Subcontract, Contract agreement, purchase order or other arrangement for the furnishing of any portion of the materials, services, equipment or Work with any party or entity as such party or entity is an affiliated entity with which the Contractor has a direct or indirect ownership, control or interest unless such Agreement has been approved by the Owner after full disclosure in writing by the Contractor to the Owner of such affiliation or relationship and all details relating to the proposed arrangements.

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.3.1 By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.3.2 Contractor shall not withhold sums earned by any Subcontractor on this Project by reason of obligations which may be owing to Contractor from Subcontractor on any other projects ("cross withholding"). Any such cross withholding shall be grounds for termination of Contractor or, in Owner's sole discretion, shall authorize the Owner to engage another Subcontractor to perform the Work at Contractor's expense including all damages and losses caused to Owner by such Subcontractor substitution.

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§ 6.1.1 The Owner reserves the right to and may perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

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§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect and Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor to so report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

...

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents. The Contractor agrees that it will incorporate the provisions of Article 7 in its entirety into all agreements with lower tier Contractors. It is further understood and agreed that these Change Order pricing provisions, apply to all types of Contracts, Subcontracts and purchases. The Owner and Owner's accountant shall be afforded access to Contractor's records, books and correspondence, instructions, drawings, receipts, Subcontracts, purchase orders, vouchers and any other data relating to the Project as necessary to verify the cost of any change, including wages and benefits paid, for which compensation is sought under this Agreement.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone. Verbal notification approving the Contractor to proceed with a change in the work shall be confirmed in a written format via, CCD, Change Order, Progress minutes, e-mail or other written correspondence and should be made as soon as practical.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work. A Change Order or Construction Change Directive involving unit cost shall be equitably adjusted in accordance with 7.3.4.

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3 The extent of the adjustment, if any, in the Contract Time; ~~Time;~~ and

4 Comply with all requirements of 7.2.2 below and 7.3.4.

No Change Order shall exceed any of the limitations and requirements of the Contract Documents.

§ 7.2.2 The Contractor shall comply with the following regarding Changes:

(A) A Notice or Request for Change must comply with all of the following:

- 1 specifically and in detail describe the nature and cause of the Claim; and
- 2 specifically reference the detail(s) on the plans and the specification section(s) that are affected; and
- 3 contain an estimate of the increase or decrease in the cost to the Owner; and
- 4 include supporting documentation that satisfactorily justifies to the Owner overhead, profit, insurance, sales or payroll taxes and incorporate a detailed quantity survey of all Work added and deleted; and
- 5 be submitted in a format acceptable to the Owner.

(B) Additive Changes must comply with the following Mark-Up schedule for Overhead, profit and bond:

If the Cost of the proposed change is \$0.00 to \$4,999.99, the total combined overhead, profit and bond must not exceed 20%.

If the Cost of the proposed change is \$5,000.00 to \$14,999.99, the combined overhead, profit and bond must not exceed 15%.

If the Cost of the proposed change is \$15,000.00 to \$24,999.99, the combined overhead, profit and bond must not exceed 10%.

If the Cost of the proposed change is \$25,000.00 to \$49,999.99, the combined overhead, profit and bond must not exceed 7%.

If the Cost of the proposed change is over \$50,000.00, the combined overhead, profit and bond will be negotiated but will not exceed 5%, the cost of the bond shall be clearly indicated in the detailed proposal regardless of the proposed cost.

(C) The Contractors' markup of Subcontractor Work and supplier's material(s) shall not exceed 7% for changes up to \$24,999.99 and the markup shall be negotiated for changes over \$25,000.00 but shall not exceed 5% of the Subcontractor(s) cost of the Work.

(D) Overhead cost shall include all the general conditions, expenses, including but not limited to, all coordination, calculations, engineering, field and office supervision, field and office rent utilities, telephone and communications



expenses, office supplies, clean-up, debris expenses, administration and preparation. When both additions and deletions are involved in any one change, the allowance for overhead, profit and bond shall be computed on the net increase, if any, with respect to the change.

(E) For decreases in the Work or credits, the Contract Amount shall be decreased 100% of the Scheduled Value of the deleted Work plus overhead, profit and bond. Contractor and Subcontractor(s) credits shall include credit for overhead, profit and Bond, in the same percentages allowed for additive changes in the above mark-up schedule;

(F) The Contractor's total charge to the Owner for the use of equipment owned in whole or in part by the Contractor, its Owners, directors, officers, shareholders, or affiliated or related persons or entities shall consider the rate agreed upon between the Contractor, Owner and Architect at the beginning of the project less operator and fuel. Reference materials such as "the AED Green Book" should be used to establish market rental rates for equipment. The following shall apply:

- .1 The appropriate duration of hourly rate shall be calculated based on the entire duration the piece of equipment is on the FCPS site (e.g. if the equipment item has been on the project for 30 days or more the hourly rate shall be the monthly rental divided by 176 hours; if on the project for one week the hourly rental shall be the weekly rental divided by 40; if on the project for a day the hourly rental shall be the daily rental divided by 8; if brought to the project for the specific operation the minimal rental period shall apply.) Minimal rental durations will be considered for equipment rented for specific project purposes.
- .2 The Contractor shall not invoice for delivery or removal of the equipment to or from the job site.
- .3 In no event shall the total payment paid by the Owner on any such piece of equipment exceed fifty percent (50%) of its purchase price.

(G) Subcontractor(s) shall comply with the requirements specified above for the Contractor regarding Changes.

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§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall not exceed any requirements listed in Article 7 including all sub-sections and shall be based on one of the following methods:

...

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted. Unit prices are all inclusive including cost of overhead profit, bond and insurance.

...

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance; Wages for construction Workers, including supervisors, directly employed to perform the construction of the Work at the site. Unless otherwise agreed by Addendum to this Contract, labor burden shall be limited to: social security, old age and unemployment, Workmen's compensation, health and life insurance benefits, sick leave, holidays, military leave, vacation and pension and savings plan benefits;

...

- .5 Additional costs of supervision and field office personnel directly attributable to the change, provided, however, the Contractor shall provide an itemized breakdown showing quantities, unit costs, hours and rates of labor, and other costs and such detail as may be required to allow the reasonableness of cost to be established. Similar cost information covering Subcontractors' Work shall be included as a part of the Contractor's Proposal. Minimum charges for "handling" will not be acceptable. The allowable overhead and profit Mark-Ups to be included in the Total Cost to Owner shall be based on paragraph 7.2 and:
  - .1 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete



itemization of the cost including labor, materials and Subcontractors. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are Subcontracts, they shall be itemized also. In no case will a charge involving over \$500.00 be approved without such itemization.

2 A Change Order must include each of the items listed in this Article 7. In the event there is no change in the Contract time or Contract amount, it must be noted that no such change is intended. A Change Order is all-inclusive, that is, a Change Order must indicate the change in Contract amount, including any overhead and profit. The Contractor cannot later request additional sums for a prior Change Order because it did not include overhead, profit, or similar items. If additional Contract time is indicated on the Change Order and the Contractor intends to claim any cost for time on any basis, the Change Order must include all additional costs, if any, associated with the additional time.

3 Where both additions and credits are involved in any one Change Order the allowance of overhead and profit shall be figured on the basis of the net increase, if any.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. Architect and the credit shall be as required by Article 7 mark-up schedule. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total actual cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such costs that remains in dispute, a Claim may be made in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Order otherwise, if Contractor is directed to proceed by Owner, the matter shall be considered a Claim under Article 15. Change Orders may be issued for all or any part of a Construction Change Directive.

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The Architect with the consent of the Owner has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement. Agreement shall be fixed in a Notice to Proceed.

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§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; with consent of the Owner; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine. Contractor waives any all rights

to any increased payments for delay damages, whether by Change Order or otherwise, to include overhead, extended overhead, extended general conditions, or for any other delay-based amounts of any kind or nature, for any delay by reason of the events referred to in this subparagraph or any other event of any kind or nature. Contractor's remedy is limited to an extension of time as set forth herein.

...

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents. Is deleted.

...

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. § 9.2.1 Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect and Owner, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect or Owner may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. The Schedule of Values shall be revised from time to time as may be necessary and due to the issuance of Change Orders or Construction Change Directives, the Contractor shall revise the Schedule of Values as requested by the Architect or Owner. The owner reserves the right to request the contractor to provide additional detail substantiating the schedule of values.

§ 9.2.2 The Contractor shall include a line item in the schedule of values for production of project record documents. The minimum value established for the record documents must not be less than 1/2 of 1% of the total Contract Value including accepted alternates.

...

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect and Owner an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be ~~notarized, if required,~~ notarized and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if as provided for in the Contract Documents. Applications for Payment shall be based upon the Schedule of Values and shall be in a form and content satisfactory to the Owner. Each Application for Payment shall be accompanied by the following:

- (a) Contractor's application and Cost Certification Statement, AIA Forms 702, 703 and IAC/PSCP Form No. 306.4, with attachment "G Certified Minority Business Enterprise Participation Standard Monthly Contractor's Requisition for Payment (June 2008 or current form)", and;
- (b) A statement from the Contractor that all items of construction for which payment is sought have been incorporated into the Project were properly stored in accordance with the Contract Documents, and;
- (c) the Contractors and applicable Subcontractors release of liens and waivers of claim and such other documents that the Owner may require after discussion with the Contractor, and;
- (d) such other documentation that the Owner, Construction Manager, Architect may reasonably require after discussion with Contractor.

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§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

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§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld after the contractor revises and resubmits a current application for payment including such amounts that were previously withheld.

...

§ 9.5.4 If the Contractor disputes any determination by the Architect or Owner with regard to any Applications for Payment, the Contractor shall nevertheless expeditiously continue to perform the Work and shall make claim as provided in Article 15.

§ 9.5.5 The Owner shall not be deemed to be in breach of this Contract by reason of the withholding of any payment pursuant to any provision of the Contract Documents provided the Architect has approved the Owner's action, or the Work for which payment is being withheld has been rejected by any Governmental authority.

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If Subject to other provisions of the Contract Documents, if the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within ~~seven~~ thirty days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, Architect, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents, substantiated direct costs of shut-down. Article 9.7 shall not apply to Change Orders that have not received formal approval by the Board of Education of Frederick County, all such Change Orders shall not be included in Applications for Payment until the Contractor receives formal notification from the Owner that the Change Order has received formal approval by the Board of Education of Frederick County and the contractor has completed the Change Order work.

...

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion. The comprehensive list of items to be completed or corrected ("Contractor's Punch List") prepared by the Contractor shall be submitted to the Owner and the Architect and the Owner shall be notified of inspections and be entitled to have an Owner's representative present at such inspections. All items that are disclosed during inspections not complying with the Contract Documents shall be added to the Contractor's Punch List and a copy of the Amended Punch List shall be submitted to the Owner and the Contractor. Any Certificate of Substantial Completion shall then be submitted making reference to the Punch List item, as either being completed to the Architect's satisfaction or shall fix a time within which the Contractor shall complete any remaining items. In the event the Contractor's Punch List is not completed by the date set forth in the Certificate of Substantial Completion, Owner has the option of deducting from balances due the Contractor an amount sufficient to compensate Owner for the cost of completing the Punch List. The amount to be deducted shall be determined in the sole discretion of Owner. Alternatively, Owner at its sole discretion may proceed to engage another Contractor to complete the Punch List Work with the cost thereof to include Owner's administrative costs, which costs shall be calculated in the sole discretion of the Owner, to be deducted from the amount retained and if the amount retained is insufficient, the Contractor is responsible to reimburse Owner the full amount of the uncovered cost. To the extent that multiple inspections may be required to determine whether the Work, or a designated portion thereof has attained substantial completion, the Owner shall be entitled to deduct from the Contract Sum any amounts which it must pay to the Architect for additional services for such additional inspections.

**§ 9.8.4** When the Work or designated portion thereof is including Record Documents & Maintenance Manuals are substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work provided the contractor has completed all other contractual requirements stipulated to begin the warranty period or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

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**§ 9.10.2** ~~Neither final payment nor any remaining retained percentage shall become due until the retainage payments nor final payment shall become due until all documents required by the Contract Documents and Article 5 of AIA 101 including (a) Maintenance Manuals, (b) Record Documents, (c) Instructions and Demonstrations have been provided and the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other (5) other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.~~

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- 2** defects in the Work or failure of the Work to comply with the requirements of the Contract Documents;  
or

**§ 9.10.6** Under no circumstances shall final payment by the Owner constitute a waiver of defects in construction or failure of the Work to otherwise comply with the Contract Documents.

**§ 10.2.4** When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall give the Owner reasonable advance notice and exercise utmost care and carry on such activities under supervision of properly qualified personnel.

**§ 10.2.4.1** If the Contract Documents require the Contractor to handle materials or substances that under certain circumstances may be designated as hazardous, the Contractor shall handle such materials in an appropriate manner and shall defend, indemnify, and hold Owner and Architect harmless from and against all claims, liabilities, suits, losses and damages arising out of or relating to such materials.

**PAGE 35**

**§ 11.3.1** ~~Unless otherwise provided, the Owner~~ The Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the

entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto. ~~Is Deleted.~~

§ 11.3.1.3 If the property insurance requires deductibles, the ~~Owner~~ Contractor shall pay costs not covered because of such deductibles.

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. ~~The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.~~

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§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. ~~If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators, as required this by Agreement. No decision of the Architect shall be required.~~

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs. The cost to repair nonconforming work shall be considered a latent defect and the contractor responsible for the work or as appropriate the damage to the work shall be responsible for the cost to make repairs to said work and return the uncovered work to the condition before the work was uncovered.

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The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense, and its surety shall have the right to remedy any defects in the Work on materials



which shall appear within a period of two (2) year from the date of Substantial Completion. Upon written notice from the Owner, the Contractor and surety shall promptly provide said remedy after notice from the Owner. If said remedy is not promptly provided, the Owner shall have the right to correct said defects and charge the Contractor and its surety for the same.

...

**§ 12.2.2.1** In addition to the Contractor's obligations under Section 3.5, if, within ~~one year~~ two-years after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the ~~one year~~ two-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period ~~five working days~~ after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4. If the Contractor does not proceed with correction of such nonconforming Work within five working days fixed by written notice from the Architect the Owner may remove it and store the salvable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within three days after written notice, the Owner may upon ten additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Owner's and Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

**§ 12.2.2.2** The ~~one year~~ two-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

**§ 12.2.2.3** The ~~one year~~ two-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

...

**§ 12.2.5** Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the ~~one year~~ two-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

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The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4. The State of Maryland.

...

**§ 13.2.1** The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.



**§ 13.2.2** The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment. Is Deleted.

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**§ 13.5.7** No tests or inspections or results thereof shall constitute an acceptance of any Work not conforming to the requirements of Contract Documents.

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. Interest payments will not be required for late payments under the terms of this Contract.

...

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7. Commencement of Statutory Limitations Period and Statute of Repose shall be in accordance with the laws of the State of Maryland.

#### **§ 13.8 EQUAL OPPORTUNITY**

**§13.8.1** The Contractor shall maintain minimum policies of employment as follows:

**§13.8.1.1** The Contractor and the Contractor's Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of nondiscrimination.

**§13.8.1.2** The Contractor and the Contractor's Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex or national origin.

...

**§ 14.1.1** The Contractor may terminate the Contract if the Work is stopped for a period of 30-120 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

...

- 4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1. Is Deleted.

...

**§ 14.1.3** If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages, as set forth in the provisions of this Agreement regarding termination by the Owner for convenience.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3-Is Deleted.

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- .1 repeatedly refuses-refuses or fails to supply enough properly skilled workers or proper materials;
- ...
- 3 repeatedly disregards-disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- ...

§ 14.2.5 In the event that is adjusted that the Owner's termination for cause is not justified, then the Termination shall be deemed to be a termination by the Owner for convenience and the Contractor shall be entitled to compensation as only set forth in the provisions of this Agreement regarding termination by Owner for Convenience.

...

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. At its option the Owner may terminate this Contract in whole or from time to time in part at any time by written notice thereof to the Contractor. Upon any such termination, Contractor agrees to waive any claims for damages, including loss of anticipated profits, on account thereof, and as the sole right and remedy of the Contractor, Owner shall pay Contractor in accordance with 14.4.2 below. The provisions of the Contract, which by their nature survive final acceptance of the Work, shall remain in full force and effect after such termination to include but not limited to warranties and obligations for the correction of Work not conforming to the Contract Documents. Upon receipt of the Termination Notice, Contractor shall, unless the Notice direct otherwise, immediately discontinue the Work and, to the extent specified in the Notice, place no further orders or subcontracts for materials, equipment, services, or facilities and shall promptly make every reasonable effort to procure cancellation of such orders or subcontracts upon terms satisfactory to the Owner and shall thereafter do only such Work and perform such services as may be directed by the Owner as necessary to preserve and protect Work already in progress and to protect materials, plans and equipment on the Site or in transit thereto. Upon such termination, the obligations of the Contractor shall continue as to portions of the Work already performed and as to bona fide obligations assumed by the Contractor prior to the date of termination.

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§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed. Upon Termination for Convenience, the provisions of the Contract, which by their nature, survive any final acceptance of the Work, shall remain in full force and effect after such termination to include but not limited to warranties and obligations for the correction of Work not conforming to the Contract Documents. Upon receipt of the Termination Notice, Contractor shall, unless the Notice directs otherwise, immediately discontinue the Work and, to the extent specified in the Notice, place no future orders or Subcontracts for materials, equipment, services or facilities and shall promptly make every reasonable effort to procure cancellation of such orders or Subcontracts upon terms satisfactory to the Owner and shall thereafter do only such Work and perform such services as may be directed by the Owner as necessary to preserve and protect Work already in progress and to protect materials, plant and equipment on the site or in transit thereto. Upon termination, Contractor shall be entitled to be paid the full cost of all Work properly done by Contractor on account of the portion of Work Performed. If at the date of such termination, Contractor has properly prepared or fabricated off the site any goods for subsequent incorporation in the Work, and if

Contractor delivers such goods to the Site or to such other place as the Owner shall reasonably direct, then Contractor shall be paid for such goods or materials. No other payment shall be made by reason of damages or otherwise, including but not limited to loss of anticipated profits, overhead, or any other claim or amount whatsoever.

Claims by either the Owner or Contractor must be initiated made by written notice to the other party Owner and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party Contractor must be initiated made within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant Contractor first recognizes the condition giving rise to the Claim, whichever is later. Contractor claim(s) shall not be valid unless made in strict accordance with this subparagraph.

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4. A Claim must be processed as defined herein, Article 15 and comply with all requirements of Article 7

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§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary. No claim for delay damages of any kind or nature shall be valid and no such damages shall be paid by the Owner except upon Owner's written consent which consent is in the sole and absolute discretion of the Owner. No written consent by Owner to damages for one period of delay, entitle Contractor to damages for any other period of delay. A Claim for additional time must be for adverse weather conditions and the actual conditions must exceed the cumulative monthly adverse weather day totals indicated in 15.1.5.2.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, the time must exceed the time as defined in the schedule below, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, exceeded the schedule below and could not have been reasonably anticipated and had an adverse effect on the scheduled construction. The State of Maryland, Department of General Services, Special Provisions Section of Hagerstown, Maryland will be used in the calculation of the monthly anticipated adverse weather delays. The monthly-anticipated adverse weather delays are as follows, in workdays. The Contractor's schedule must reflect these anticipated adverse weather delay days in weather dependent activities:

Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec
8	7	7	8	8	7	5	6	4	6	5	5

In any event, Contractor's Claim(s) for delay in the performance of the Work due to adverse weather conditions is strictly limited to a Claim for additional for additional time only. In no event shall the Contractor be entitled to monetary damages or any other compensation as a result of a delay in the performance of the Work due to adverse weather conditions.

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§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution; the claim shall be resolved by litigation.

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand

fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings litigation with respect to the initial decision.

...

**§ 15.3.2** The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution litigation proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution litigation proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

...

**§ 15.4 ARBITRATION is deleted and replaced with Litigation as follows,**

All disputes and other matters in question between the parties to this Agreement which cannot be resolved by the parties in accordance with the terms of this Agreement shall be referred to legal counsel and resolved in the Circuit Court for Frederick County, Maryland and all parties hereto agree to submit themselves to the jurisdiction of that Court. During any legal proceedings or other dispute resolution proceedings which may be agreed to between the parties, Owner and Contractor shall comply with sub-paragraph 4.74.

**§ 15.4.1** If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

**§ 15.4.1.1** A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

**§ 15.4.2** The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

**§ 15.4.3** The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

**§ 15.4.4 CONSOLIDATION OR JOINDER**

**§ 15.4.4.1** Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

**§ 15.4.4.2** Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

**§ 15.4.4.3** The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.

## **Certification of Document's Authenticity**

**AIA® Document D401™ – 2003**

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 17:23:56 on 03/20/2013 under Order No. 7546025320\_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2007, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

*(Signed)* \_\_\_\_\_

*(Title)* \_\_\_\_\_

*(Dated)* \_\_\_\_\_

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User Notes:

(1346927157)



## MD COMAR 21.07.02.10 Performance and Payment Bond

Mandatory provision for all construction contracts exceeding \$100,000.

A. Performance Bond. The required performance bond shall be in the form specified as follows:

### PERFORMANCE BOND

Principal \_\_\_\_\_

Business Address of Principal \_\_\_\_\_

Surety a corporation of the State of \_\_\_\_\_ and authorized to do business in the State of Maryland.

Bond Number \_\_\_\_\_ Penal Sum of Bond \_\_\_\_\_  
(expressed in figures)

\_\_\_\_\_ Date Bond Executed \_\_\_\_\_, 20\_\_\_\_  
(expressed in words)

The Board of Education of Frederick County  
Obligee

191 South East Street, Frederick MD. 21701-5918  
Business Address of Obligee

Contract Description: Bid Number 14C6 Contract Date \_\_\_\_\_, 20\_\_\_\_ Project Name: Unit Prices for  
Fuel System Cleaning, Maintenance and Fuel Oil Tank Replacement

KNOW ALL MEN BY THESE PRESENTS, That we, the Principal named above and Surety named above, are held and firmly bound unto the Obligee named above in the Penal Sum of this Performance Bond stated above, for the payment of which Penal Sum we bind ourselves, our heirs, executors, administrators, personal representatives, successors, and assigns, jointly and severally, firmly by these presents. However, where Surety is composed of corporations acting as co-sureties, we the co-sureties, bind ourselves, our successors and assigns, in such Penal Sum jointly and severally as well as severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each co-surety binds itself, jointly and severally with the Principal, for the payment of such sum as appears above its name below, but if no limit of liability is indicated, the limit of such liability shall be the full amount of the Penal Sum.

WHEREAS, Principal has entered into or will enter into a contract with The Board of Education of Frederick County, which contract is described and dated as shown above, and incorporated herein by reference. The contract and all items incorporated into the contract, together with any and all changes, extensions of time, alterations, modifications, or additions to the contract or to the work to be performed thereunder or to the Plans, Specifications, and Special Provisions, or any of them, or to any other items incorporated into the contract shall hereinafter be referred as "the Contract."

WHEREAS, it is one of the conditions precedent to the final award of the Contract that these presents be executed.

NOW, THEREFORE, during the original term of said Contract, during any extensions thereto that may be granted by The Board of Education of Frederick County, and during the guarantee and warranty period, if any, required under the Contract, unless otherwise stated therein, this Performance Bond shall remain in full force and effect unless and until the following terms and conditions are met:

- 1 Principal shall well and truly perform the Contract; and
- 2 Principal and Surety shall comply with the terms and conditions in this Performance Bond.

Whenever Principal shall be declared by The Board of Education of Frederick County to be in default under the Contract, the Surety may, within 15 days after notice of default from The Board of Education of Frederick County, notify The Board of Education of Frederick County of its election to either promptly proceed to remedy the default or promptly proceed to complete the contract in accordance with and subject to its terms and conditions. In the event the Surety does not elect to exercise either of the above stated options, then The Board of Education of Frederick County thereupon shall have the remaining contract work completed, Surety to remain liable hereunder for all expenses of completion up to but not exceeding the penal sum stated above.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or

## MD COMAR 21.07.02.10 Performance and Payment Bond

### PERFORMANCE BOND CONTINUED

to the work to be performed thereunder or the Specifications accompanying the same shall in any way affect its obligation on this Performance Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work or to the Specifications.

This Performance Bond shall be governed by and construed in accordance with the laws of the State of Maryland and any reference herein to Principal or Surety in the singular shall include all entities in the plural who or which are signatories under the Principal or Surety heading below.

IN WITNESS WHEREOF, Principal and Surety have set their hands and seals to this Performance Bond. If any individual is a signatory under the Principal heading below, then each such individual has signed below on his or her own behalf, has set forth below the name of the firm, if any, in whose name he or she is doing business, and has set forth below his or her title as a sole proprietor. If any partnership or joint venture is a signatory under the Principal heading below, then all members of each such partnership or joint venture, and each member has set forth below his or her title as a general partner, limited partner, or member of joint venture, whichever is applicable. If any corporation is a signatory under the Principal or Surety heading below, then each such corporation has caused the following: the corporation's name to be set forth below, a duly authorized representative of the corporation to affix below the corporation's seal and to attach hereto a notarized corporate resolution of power of attorney authorizing such action, and each such duly authorized representative to sign below and set forth below his or her title as a representative of the corporation. If any individual acts as a witness to any signature below, then each such individual has signed below and has set forth below his or her title as a witness. All of the above has been done as of the Date of Bond shown above.

In Presence of:  
Witness

Individual Principal

\_\_\_\_\_ as to \_\_\_\_\_ (SEAL)

In Presence of:  
Witness

Co-Partnership Principal

\_\_\_\_\_ (SEAL)  
(Name of Co-Partnership)

\_\_\_\_\_ as to By: \_\_\_\_\_ (SEAL)

\_\_\_\_\_ as to \_\_\_\_\_ (SEAL)

\_\_\_\_\_ as to \_\_\_\_\_ (SEAL)

\_\_\_\_\_  
(Name of Corporation)

Attest:

Corporate Principal

\_\_\_\_\_ as to  
(Corporate Secretary)

By: \_\_\_\_\_  
(President)

AFFIX  
CORPORATE  
SEAL

# MD COMAR 21.07.02.10 Performance and Payment Bond

## PERFORMANCE BOND CONTINUED

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\_\_\_\_\_  
(Individual or Corporate Surety)

Attest: \_\_\_\_\_ (SEAL) By: \_\_\_\_\_ (SEAL)  
\_\_\_\_\_  
(Signature) Title \_\_\_\_\_

\_\_\_\_\_  
(Bonding Agent's Name) \_\_\_\_\_  
(Name of Surety)

\_\_\_\_\_  
(Agent's Address) \_\_\_\_\_  
(Business Address of Surety)

Approved as to legal form and sufficiency this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
(Asst. Attorney General)

B. Payments Bond. The required Payments bond shall be in the form specified as follows:

### PAYMENT BOND

---

\_\_\_\_\_  
(Principal) \_\_\_\_\_  
(Business Address of Principal)

Surety \_\_\_\_\_ a corporation of the State of \_\_\_\_\_ and authorized to  
do business in the State of Maryland  
**OR**  
an individual surety qualified in accordance with State Finance and Procurement Article, § 13-207 or 17-104, Annotated Code  
of Maryland.

Bond Number \_\_\_\_\_ Penal Sum of Bond \_\_\_\_\_  
(expressed in figures)

\_\_\_\_\_  
(expressed in words) Date Bond Executed \_\_\_\_\_, 20\_\_\_\_

The Board of Education of Frederick County 191 South East Street, Frederick MD 21701  
(Obligee) (Business Address of Obligee)

Contract Description: Bid Number # 14C6 Contract Date \_\_\_\_\_, 20\_\_\_\_ Project Name: Unit Prices for Fuel  
System Cleaning, Maintenance and Fuel Oil Tank Replacement

BY THESE PRESENTS, That we, the Principal named above and Surety named above, being authorized to do business in Maryland, and having business address as shown above, are held and firmly bound unto the Obligee named above, for the use and benefit of claimants as hereinafter defined, in the Penal Sum of this Payment Bond stated above, for the payment of which Penal Sum we bind ourselves, our heirs, executors, administrators, personal representatives, successors, and assigns, jointly and severally, firmly by these co-sureties, bind ourselves, our successors and assigns, in such Penal Sum jointly and severally as well as severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each co-surety binds itself, jointly and severally with the Principal, for the payment of such sum as appears above its name below, but if no limit of liability is indicated, the limit of such liability shall be the full amount of the Penal Sum.

## **MD COMAR 21.07.02.10 Performance and Payment Bond**

### **PAYMENT BOND CONTINUED**

WHEREAS, Principal has entered into or will enter into a contract with The Board of Education of Frederick County, which contract is described and dated as shown above, and incorporated herein by reference. The contract and all items incorporated into the contract, together with any and all changes, extensions of time, alterations, modifications, or additions to the contract or to the work to be performed thereunder or to the Plans, Specifications, and Special Provisions, or any of them, or to any other items incorporated into the contract shall hereinafter be referred to as the "Contract".

WHEREAS, it is one of the conditions precedent to the final award of the Contract that these presents be executed.

NOW THEREFORE, the condition of this obligation is such that if the Principal shall promptly make payment to all claimants as hereinafter defined, for all labor and materials furnished, supplied and reasonably required for use in the performance of the Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect, subject to the following conditions:

1. A claimant is defined to be any and all of those persons supplying labor and materials (including lessors of the equipment to the extent of the fair market value thereof) to the Principal or its subcontractors and subcontractors in the prosecution of the work provided for in the Contract, entitled to the protection provided by Section 17-101et. seq., State Finance and Procurement Article of the Annotated Code of Maryland, as from time to time amended.

2. The above named Principal and Surety hereby jointly and severally agree with the Obligees that every claimant as herein defined, who has not been in full pay, pursuant to and when in compliance with the provisions of the aforesaid Section 9-113, sue on this Bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant and have execution thereon. The Obligees shall not be liable for the payment of any costs or expenses of any such suit.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the Specifications accompanying the same shall in any way affect its obligation on this Payment Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work or to the Specifications.

This Payment Bond shall be governed by and construed in accordance with the laws of the State of Maryland and any reference herein to Principal or Surety in the singular shall include all entities in the plural who or which are signatories under the Principal or Surety heading below.

IN WITNESS WHEREOF, Principal and Surety have set their hands and seals to this Payment Bond. If any individual is a signatory under the Principal heading below, then each such individual has signed below on his or her own behalf, has set forth below the name of the firm, if any, in whose name he or she is doing business, and has set forth below his or her title as a sole proprietor. If any partnership or joint venture is a signatory under the Principal heading below, then all members of each such partnership or joint venture have signed below, each member has set forth below the name of the partnership or joint venture, and each member has set forth below his or her title as a general partner, limited partner, or member of joint venture, whichever is applicable. If any corporation is a signatory under the Principal or Surety heading below, then each such corporation has caused the following: the corporation's name to be set forth below, a duly authorized representative of the corporation to affix below the corporation's seal and to attach hereto a notarized corporate resolution of power of attorney authorizing such action, and each such duly authorized representative to sign below and set forth below his or her title as a representative of the corporation. If any individual acts as a witness to any signature below, then each such individual has signed below and has set forth below his or her title as a witness. All of the above has been done as of the date shown above and in the presence of:

# MD COMAR 21.07.02.10 Performance and Payment Bond

## PAYMENT BOND CONTINUED

Witness

(Individual Principal)

as to

(SEAL)

Witness

(Name of Co-Partnership)

(SEAL)

(Co-Partnership Principal)

as to

By: (SEAL)

as to

(SEAL)

as to

(SEAL)

(Corporate Principal)

Attest:

(Name of Corporation)

as to

By: (SEAL)

(Corporate Secretary)

(President)

SEAL

AFFIX  
CORPORATE

(Individual or Corporate Surety)

Attest:

(SEAL)

By: (SEAL)

Signature

Title

Bonding Agent's Name

(Business Address of Surety)

Agent's Address

(Business Address of Surety)

Approved as to legal form and sufficiency this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
(Asst. Attorney General)