

Purchasing Office
191 South East St
Frederick, Maryland 21701
301-644-5209 phone
301-644-5213 fax



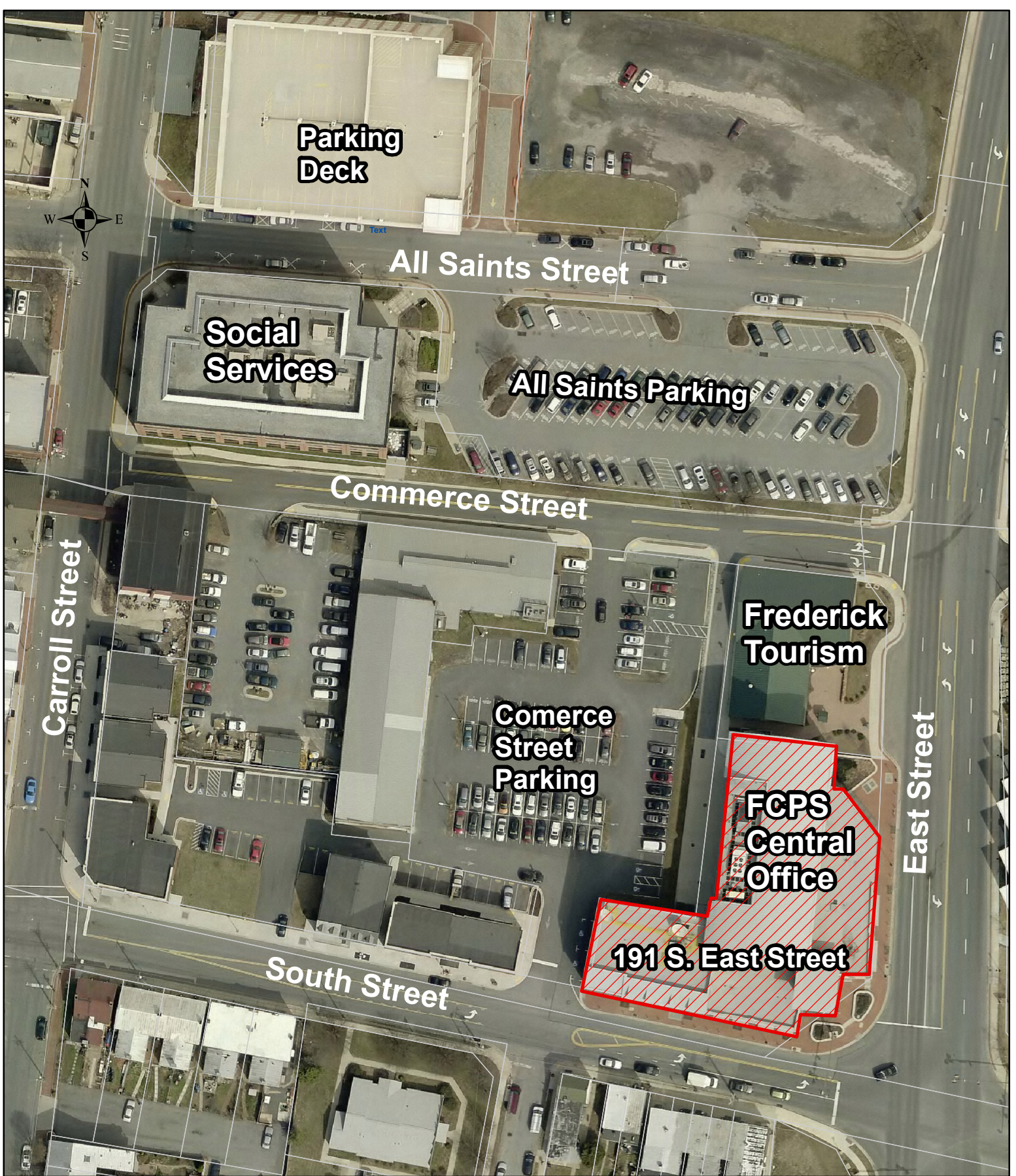
Stephen P. Starmer, C.P.M., CSBA,
Purchasing Manager
Kim Miskell, Asst. Purchasing Manager
Billie Laughland, Purchasing Agent
Bill Meekins CPPB, CPCP, Purchasing Agent
Shane Ryberg, Purchasing Agent

RFP NUMBER/BID NAME:	RFP 17C16, Construction Management Services
RFP ISSUE DATE:	March 22, 2017
RFP CONTRACT MANAGER:	Kim Miskell, Assistant Purchasing Manager, kim.miskell@fcps.org
RFP CONTRACT ADMINISTRATOR:	Tony Ray, Construction Management, Project Manager III, tony.ray@fcps.org
QUESTIONS:	Questions due no later than 4:00 P.M., local time, on April 3, 2017. Submit questions in writing to the Contract Manager listed above with a copy to the Contract Administrator.
OBTAINING DOCUMENTS:	To view and/or download this solicitation package please visit our webpage at: www.fcps.org/bidlist . If you have problems downloading this bid or applicable addenda, contact: amy.beall@fcps.org
BONDS REQUIRED:	NO
MBE REQUIREMENTS:	NO
RFP DUE:	2:00 P.M., local time, on April 13, 2017. Faxed or emailed bids are not acceptable.
SEALED RFP DELIVERED TO:	Frederick County Public Schools Attn: Purchasing Department 191 South East Street Frederick, MD 21701 (Parking is available at Deck #5 on All Saints Street) Bid proposal must be properly marked with vendor's business name, address, Bid Name and Number on the envelope or package.
TENTATIVE AWARD DATE:	BOE Work Session, scheduled on: May 10, 2017.
ELIGIBILITY TO BID:	All Frederick County Public School vendors and or contractors interested in bidding on FCPS projects must register at www.emarylandmarketplace.com . FCPS will no longer accept bidder's applications.

FREDERICK COUNTY PUBLIC SCHOOLS
RFP 17C16, CONSTRUCTION MANAGEMENT SERVICES

TABLE OF CONTENTS

	<u>PAGE #</u>
Cover Page	1
Table of Contents	2
Invitation – Request for Proposal	3
FCPS Map; 2016 - 2017 FCPS Calendar and 2016 - 2017 FCPS Directory	4 - 6
Section I – General Terms and Conditions	7 - 23
Section II – Specific Terms and Conditions	24 - 27
Letter of Interest – Attachment A	28
Technical Proposal – Attachment B	29 - 31
Attachment C	32
Signature Acknowledging Proposal	33
Statutory Affidavit and Non-Collusion Certification	34 - 35
Certification of Compliance	36
AIA Document C132 – 2009, Standard Form of Agreement Between Owner and Construction Manager as Adviser	37 - 85
AIA Document A132 – 2009, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition	86 - 110
AIA Document A232 – 2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition	111 - 183
AIA Document B132 – 2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition	184 - 237



Frederick County Public Schools, MD, School Year 2016-17 Calendar

August 2016

08 Mon New Teachers Report—New-Hire Symposium
16 Tue Teachers Report to Work: Training and Preparation
22 Mon First Day of School for Students

September 2016

05 Mon Schools Closed. Labor Day
22 Thu 2-Hour Early Dismissal for Students: Teacher Mid-Term Work Session
23 Fri Schools Closed. Fair Day

October 2016

03 Mon Schools Closed. Rosh Hashanah
12 Wed Schools Closed. Yom Kippur
21 Fri Schools Closed for Students: Teacher Professional Development Day
28 Fri End of Term 1
31 Mon Schools Closed for Students: Teacher Work Day

November 2016

01 Tue Term 2 Begins
08 Tue Schools Closed: Election Day
09 Wed Elementary Evening Parent-Teacher Conferences: Elem Schools Open 4 Hours Late; Middle and High Schools Are Full Day
10 Thu Elem & Middle School Evening Parent-Teacher Conferences: Those Schools Open 4 Hours Late; High School Is Full Day
11 Fri Elem & Middle School Afternoon Parent-Teacher Conferences: Those Schools Dismiss 3.5 Hours Early; High School Is Full Day
23 Wed Schools Closed: Thanksgiving Break
24-25 Thu-Fri Schools Closed: Thanksgiving and American Indian Heritage Day

December 2016

09 Fri 2-Hour Early Dismissal for Students: Teacher Mid-Term Work Session
23-30 Fri-Fri Schools Closed: Winter Break

January 2017

02 Mon Schools Closed: Winter Break
03 Schools Re-Open
16 Mon Schools Closed: Dr. Martin Luther King Jr. Day
20 Fri End of First Semester and Term 2
23 Mon Schools Closed for Students: Teacher Work Day
24 Tue Second Semester and Term 3 Begin

February 2017

20* Mon Schools Closed: Presidents' Day
21 Tue Schools Closed for Students: Teacher Professional Development Day
27 Mon 2-Hour Early Dismissal for Students: Teacher Mid-Term Work Session

March 2017

13 Mon 2-Hour Late Start for Students: Teacher Work Session
30 Thu End of Term 3
31 Fri Schools Closed for Students: Teacher Work day

April 2017

03 Mon Term 4 Begins
14 Fri Schools Closed: Good Friday
17 Mon Schools Closed: Easter Monday
18-21* Tue-Fri Schools Closed: Spring Break

May 2017

12 Fri 2-Hour Early Dismissal for Students: Teacher Mid-Term Work Session
26 Fri 2-Hour Early Dismissal for Students: Teacher Work Session
29 Mon Schools Closed: Memorial Day

June 2017

16* Fri 2-Hour Early Dismissal/Last Day of School for Students: Teacher Work Session
19* Mon Last Day of School for Teachers

*Includes 6 days for snow or other emergency closings. If no snow days are used, the last day for students is June 8. If some but not all days are needed, the school year will be shortened by the number of unused days to provide 180 days for students. If more days are needed, we will make them up in this order: February 20, April 18, 19, 20, 21 and/or at the end of the school year; dates are subject to BOE revision.

DIRECTORY OF SCHOOLS

ELEMENTARY

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

19. **New Midway-Woodsboro**
Mr. Giuseppe Di Monte, 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**
Ms. DeVeda Coley, Principal
1010 Fairview Avenue
Frederick, MD 21701
Fax 240-236-2001
21. **Oakdale ♦♦** **240-236-3300**
Ms. Kimberly Clifford, Principal
5830 Oakdale School Road
Ijamsville, MD 21754
Fax 240-236-3301
22. **Orchard Grove ♦♦** **240-236-2400**
Ms. Debra Myers, Principal
5898 Hannover Drive
Frederick, MD 21703
Fax 240-236-2401
23. **Parkway** **240-236-2600**
Ms. Stephanie Brown, Principal
300 Carroll Parkway
Frederick, MD 21701
Fax 240-236-2601
24. **Sabillasville** **240-236-6000**
Ms. Kate Krietz, Principal
16210-B Sabillasville Road
Sabillasville, MD 21780
Fax 240-236-6001
25. **Spring Ridge ♦♦** **240-236-1600**
Ms. Patricia Hosfelt, Principal
9051 Ridgefield Drive
Frederick, MD 21701
Fax 240-236-1601
26. **Thurmont (Gr. 3-5)** **240-236-0900**
Ms. Christina McKeever, Principal
805 East Main Street
Thurmont, MD 21788
Fax 240-236-0901
27. **Thurmont Primary ♦♦** **240-236-2800**
Grades Pre-K-2
Ms. Karen Locke, Principal
7989 Rocky Ridge Road
Thurmont, MD 21788
Fax 240-236-2801

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

MIDDLE

37. **Ballenger Creek** **240-236-5700**
Ms. Jeneen Stewart, Principal
5525 Ballenger Creek Pike
Frederick, MD 21703
Fax 240-236-5701
38. **Brunswick** **240-236-5400**
Mr. Jay Schill, Principal
301 Cummings Drive
Brunswick, MD 21716
Fax 240-236-5401
50. **Brunswick** **240-236-8600**
Mr. Michael Dillman, Principal
101 Cummings Drive
Brunswick, MD 21716
Fax 240-236-8601
51. **Catoctin** **240-236-8100**
Mr. Bernard Quesada, Principal
14745 Sabillasville Road
Thurmont, MD 21788
Fax 240-236-8101
52. **Frederick** **240-236-7000**
Mr. David Franceschina, Acting Principal
Ms. Kathy Campagnoli, Special Assignment**
650 Carroll Parkway
Frederick, MD 21701
Fax 240-236-7015
53. **Governor Thomas Johnson** **240-236-8200**
Dr. Dan Lippy, Principal
1501 North Market Street
Frederick, MD 21701
Fax 240-236-8201
54. **Linganore** **240-566-9700**
Ms. Nancy Doll, Principal
12013 Old Annapolis Road
Frederick, MD 21701
Fax 240-566-9701
55. **Middletown** **240-236-7400**
Ms. Lee Jeffrey, Principal
200 Schoolhouse Drive
Middletown, MD 21769
Fax 240-236-7450
56. **Oakdale** **240-566-9400**
Ms. Donna Clabaugh, Principal
5850 Eaglehead Drive
Ijamsville, MD 21754
Fax 240-566-9401
57. **Tuscarora** **240-236-6400**
Mr. Andrew Kibler, Principal
5312 Ballenger Creek Pike
Frederick, MD 21703
Fax 240-236-6401
58. **Urbana** **240-236-7600**
Mr. David Kehne, Principal
3471 Campus Drive
Ijamsville, MD 21754
Fax 240-236-7601
59. **Walkersville** **240-236-7200**
Ms. Tracey Franklin, Principal
81 West Frederick Street
Walkersville, MD 21793
Fax 240-236-7250



KEY

* Pre-kindergarten program available

◆ Special education pre-kindergarten available

FINDOUTFIRST EMAIL AND TEXTING – SIGN UP AT WWW.FCPS.ORG

Middle (continued)

39. **Crestwood** **240-566-9000**
Ms. Jennifer Bingman, Principal
7100 Foxcroft Drive
Frederick, MD 21703
Fax 240-566-9001
40. **Governor Thomas Johnson** **240-236-4900**
Mr. Neal Case, Principal
1799 Schifferstadt Boulevard
Frederick, MD 21701
Fax 240-236-4901
41. **Middletown** **240-236-4200**
Mr. Everett Warren, Principal
100 Martha Mason Street
Middletown, MD 21769
Fax 240-236-4250
42. **Monocacy** **240-236-4700**
Dr. Stephanie Ware, Principal
8009 Opossumtown Pike
Frederick, MD 21702
Fax 240-236-4701
43. **New Market** **240-236-4600**
Ms. T.C. Suter, Principal
125 West Main Street
New Market, MD 21774
Fax 240-236-4650
44. **Oakdale** **240-236-5500**
Ms. Mita Badshah, Principal
5810 Oakdale School Road
Ijamsville, MD 21754
Fax 240-236-5501
45. **Thurmont** **240-236-5100**
Ms. Jennifer Powell, Principal
408 East Main Street
Thurmont, MD 21788
Fax 240-236-5101
46. **Urbana** **240-566-9200**
Mr. Peter Daddone, Principal
3511 Pontius Court
Ijamsville, MD 21754
Fax 240-566-9201
47. **Walkersville** **240-236-4400**
Ms. Stacey Hiltner, Principal
55 West Frederick Street
Walkersville, MD 21793
Fax 240-236-4401
48. **West Frederick** **240-236-4000**
Mr. Frank Vetter, Principal
515 West Patrick Street
Frederick, MD 21701
Fax 240-236-4050
49. **Windsor Knolls** **240-236-5000**
Mr. Brian Vasquezna, Principal
11150 Windsor Road
Ijamsville, MD 21754
Fax 240-236-5001

OTHER

60. **Career and Technology Center** **240-236-8500**
Mr. Michael Concepcion, Principal
7922 Opossumtown Pike
Frederick, MD 21702
Fax 240-236-8501
61. **Carroll Creek Montessori Public Charter School *** **301-663-7970**
Ms. Marilyn Horan, Principal
7215 Corporate Court
Frederick, MD 21703
Fax 301-663-6107
62. **Frederick Classical Charter School** **240-236-1200**
Ms. Erica Cummins, Principal
8445 Spires Way, Suite CC
Frederick, MD 21701
Fax 240-236-1201
63. **Frederick County Virtual School** **240-236-8450**
(includes Flexible Evening High School)
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**
Ms. Denise Flora, Principal
1445 Taney Avenue
Frederick, MD 21702
Fax 240-236-8001
65. **Monocacy Valley Montessori Public Charter School *** **301-668-5013**
Ms. Nancy Radkiewicz, Principal
217 Dill Avenue
Frederick, MD 21701
Fax 301-668-5015
66. **Rock Creek** **240-236-8700**
Ms. Mary Malone, Principal
191 Waverley Drive
Frederick, MD 21702
Fax 240-236-8701

** Frederick High's new construction, fall 2017 move to the new building and the LYNX School program; see www.fcps.org/lynx

**For other useful numbers,
see next page**

FREDERICK COUNTY PUBLIC SCHOOLS (FCPS)
GENERAL TERMS AND CONDITIONS
SECTION I

1. BIDDER REGISTRATION

- a. All Frederick County Public School (FCPS) vendors and or contractors interested in bidding on FCPS projects must register at www.emarylandmarketplace.com. FCPS will no longer accept bidder's applications.

2. PRE-BID MEETING

- a. A Pre-Bid Meeting will be held at the date and time indicated on the cover page of this solicitation package.
- b. Attendance at the Pre-Bid Meeting is not mandatory; however, all vendors are strongly encouraged to attend.
- c. The agenda for this Pre-Bid Meeting will include the following: introduction of staff; description of scope of work; timeline/scheduling; budget priorities/concerns; and procurement responsibilities.
- d. Questions shall be submitted, via email, to the person(s) indicated on the cover page of this solicitation package. Due to possible changes and/or additions to the specifications, bids should not be submitted prior to the Pre-Bid meeting.
- e. If FCPS offices are closed, or operating on a modified schedule, due to inclement weather on the day a Pre-Bid is scheduled, the Pre-Bid is cancelled and will not be rescheduled unless an addendum is issued. Bidders are advised that they are to email questions to the identified Contract Manager by the date and time required within this solicitation. For the fastest, most reliable information, regarding closures and/or delays check the following:
 - www.fcps.org
 - Social Media: FCPS on Twitter and FCPS on Facebook
 - Email/Text Messages: Sign up for FindOutFirst email and emergency-only text messages
 - FCPS TV: Comcast Channel 18 (Frederick area)
 - Local radio and TV stations

3. RECEIPT OF BIDS

- a. Bids received prior to the time of opening will be time stamped and securely kept unopened. No bid received thereafter will be considered. FCPS will not be responsible for the premature opening of bids received that are not properly addressed or identified. Any bid may be withdrawn before the scheduled time for opening bids.
- b. All inner and outer envelopes and packaging, used by Fed Ex, UPS and etc., are to be labeled with the following:
 - Bidder Name
 - Bid Number and Name

- Due Date and Time
- c. Bids received after the designated date and/or time will not be accepted, regardless of when they were mailed or given to a delivery carrier.
 - d. Bids not received by the date, time, and location designated on the solicitation cover sheet, due to improper labeling, may be considered non-responsive.
 - e. In the event of inclement weather on the date when bids are scheduled to be opened and the FCPS offices are closed, or operating under a modified schedule, 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. OPENING OF BIDS

- a. Sealed bids will be opened at the location, date, and time indicated on the solicitation cover sheet.
- b. All bids received must include original signatures; no photo copies will be accepted. Unless specifically authorized, facsimile or emailed bids will not be considered. Modifications by facsimile, or email, of bids already submitted will be considered if received prior to the time set for opening. No bids will be accepted via telephone.

5. ADDENDA

- a. All changes to the bid solicitation will be made through appropriate addenda issued from the Purchasing Department.
- b. Addenda will be available on the FCPS Purchasing Department webpage. All vendors who are known by the Purchasing Department to have downloaded the bid documents will receive an email notification.
- c. Addenda will be issued a minimum of five days prior to the bid opening date, unless the addenda issued extends the due date.
- d. Each bidder shall ascertain, prior to submitting a bid that they have received all Addenda issued and the bidder shall acknowledge receipt on the Signature Acknowledgement Form. Failure of any bidder to acknowledge the receipt of addenda will not relieve that bidder from any obligations under this solicitation as amended by addenda. All addenda so issued will become a part of the award and contract documents.

6. PREPARATION OF BID

- a. Should any bidder be in doubt as to the meaning of the specifications, or should they find any discrepancy or omission, they shall notify the Contract Manager listed on the solicitation cover sheet. If required, bidders will be notified of clarifications and/or additional information by means of addenda.
- b. Bidder must submit one original proposal, with original signatures, unless otherwise specified. Bids must be prepared on the proposal form(s) provided.
- c. Each bid will be sealed, show the full business address and contact information of the bidder and be

signed by the person(s) legally authorized to sign contracts. All correspondence concerning the bid and contract, including notice of award, copy of contract, and purchase order, will be emailed, or mailed, to the address shown on the bid in the absence of written instructions from the bidder to the contrary.

- d. The following items must be included in submission:
 - i. Proposal pages completely and accurately filled out.
 - ii. Signature Acknowledgement Form completed and signed.
 - iii. Statutory Affidavit and Non-Collusion Certification form completed and signed.
 - iv. Certificate of Compliance form completed and signed.
- e. Bidders shall be required under Article 56, Section 270(4), Annotated Code of Maryland, to provide proof of Certificate of Registry and must be licensed to do business in the State of Maryland and must provide a tax certification number. Visit the following website to ensure compliance: <https://certificate.dat.maryland.gov/Pages/default.aspx> .
- f. Bids by partnerships must be signed with the partnership name, followed by the signature and designation of the person having authority to sign. When requested, satisfactory evidence of authority of the person signing will be furnished. Anyone signing the bid as an agent shall file satisfactory evidence of their authority to do so, if requested.
- g. Bids by corporations must be signed with the name of the corporation, followed by the signature and designation of the person having authority to sign. When requested, satisfactory evidence of authority of the person signing will be furnished. Anyone signing the bid as an agent shall file satisfactory evidence of their authority to do so, if requested.
- h. Failure to sign the bid document will result in rejection of the bid as non-responsive.
- i. FCPS will not be responsible for any costs incurred by a bidder in preparing and submitting a proposal in response to this solicitation.

7. STANDARD OF QUALITY, "OR EQUAL CLAUSES," AND SUBSTITUTIONS

- a. Any make/model specified in the solicitation is used only to establish a quality level, unless specifically noted in Section II. Any material or article that will perform adequately the duties imposed by the general design will be considered equal and satisfactory. FCPS retains the right to determine if items are equivalent and will be accepted.
- b. It will be the responsibility of the bidder to submit a clear and concise proposal wherein each substitution and deviation is identified and described, in writing, at the time of solicitation submission.
- c. In the absence of any statement to the contrary by the bidder, the submission will be interpreted as being the exact brand and/or qualities, etc., enumerated in the detailed specifications, whenever the specifications indicate a product of a particular manufacturer, model or brand.
- d. Bidders must submit detailed literature if bidding an item other than the specified item. Detailed literature is defined as product features or specifications relating to construction and/or performance.

- e. The detailed literature is to be arranged and labeled according to item number.
- f. It is the bidders' responsibility to submit required literature, or links to webpages, with the bid submission. Failure to submit such data as required and/or at the time designated by the Purchasing Department shall be cause for rejection of that item.
- g. No substitutions or deviations will be permitted following the award of the contract unless "cause and effect" is presented in writing and approved by the Contract Manager. A statement of any credit or extra cost involved will be included with the request.
- h. FCPS shall not be responsible to provide personnel, testing facilities, or other resources necessary to search out substitutions and deviations in bid proposals which are unclear through the nebulous terms such as "comparable", or blanket statements of deviation such as "our standard design, construction, hardware, finishes, etc."
- i. The bidder will, upon request and with no cost to the FCPS, furnish documents, independent laboratory tests reports, and/or similar materials of proof to substantiate that the substitutions and deviations of the items they propose to furnish do not prevent these items from being truly and factually equal to, or exceeding, that which is specified.
- j. The cost of testing a representative sample of an order or shipment for acceptance and compliance with specifications shall be borne by FCPS. If the order or shipment is rejected for failure to meet the requirements of the specifications or purchase description, the cost of testing will be charged to the awarded vendor.

8. SAMPLES

- a. Samples may be requested for testing and evaluation purposes. Failure to submit samples as required at the time designated may be cause for rejection of that item.
- b. All samples must be delivered with all charges prepaid to the designated point of delivery. Samples must be marked as "SAMPLE" and include the name of the bidder, bid name and number, and return instructions, if applicable.
- c. The right is reserved to retain any sample submitted with bids for the purposes of examination and testing. FCPS reserves the right to use all samples in any manner which may best serve the final determination of the successful bidder, even if said examination and testing results in damage to or destruction of the sample.
- d. FCPS retains the right to determine the method of testing to be utilized.
- e. Samples that are not retained by FCPS must be removed within two weeks upon notification. Return shipping must be prepaid by the vendor. Samples not removed within this two-week period shall be retained, or disposed of, at the discretion FCPS, and without compensation to the bidder.

9. BID PRICING

- a. Prices quoted shall not exceed the prices established under any governmental price control regulations.
- b. All prices shall be firm for a period of 90 days from the date of bid opening unless otherwise stated in Section II. FCPS retains the right, with mutual consent of the bidder(s), to utilize the bid pricing

and approved price changes for future purchases for as long as the bidder(s) mutually agrees to extend the prices.

- c. FCPS will not accept any proposal with escalator clauses, minimum order requirements or irregular features unless specifically authorized in Section II.
- d. If the contract includes equipment, all prices must be FOB-Destination (inside delivery), unless specifically authorized in Section II.
- e. Charges for express delivery will only be allowed if authorized by FCPS in writing.
- f. The bidder(s) are encouraged to bid only one product per line item that most nearly meets the specifications. If the bidder believes that there is more than one product available, a limit of two offers will be considered for each line item.
- g. If two or more particular brands, models, or makes are listed in the specifications (under Base and Alternate Bids) and the bidder has not indicated in the bid which of the two or more brands, models, etc., is being bid, it shall be understood that FCPS may require the bidder to furnish whichever is preferred by FCPS.
- h. All unit prices on items bid shall be completed on the provided proposal sheet(s). A "NO BID" or "N/A" notation should be completed for each item not being bid. Blank spaces in the proposal sheet will be considered as not being bid.
- i. In case of an error in the extension of prices in the bid, the unit price shall govern.
- j. Unit Prices must be rounded off to no more than two decimal places unless so specified in Section II.
- k. FCPS reserves the right to consider discounts in evaluating a bid with line item pricing requirements. The bidder should calculate all discounts, other than prompt payment, as part of their unit pricing.

10. TAXES

- a. No charge will be allowed for federal excise, state, and/or municipal sales and use taxes, from which the Board of Education of Frederick County is exempt.
- b. A contractor is not eligible, per the Maryland Comptroller's Office, to utilize the tax exemption certificate for governmental agencies.

11. GUARANTEES AND WARRANTIES

- a. The awarded vendor(s) will guarantee the material and workmanship on all services, equipment, materials, supplies, and labor, furnished by them, for a minimum period of one year from the date of acceptance, unless a longer period of time is specified in Section II.
- b. If, within the guarantee period, any defects or signs of deterioration are noted, the awarded vendor(s), at their expense, shall correct the condition or they shall replace the part or entire unit of work/equipment to the complete satisfaction of FCPS. These repairs, replacements, or adjustments shall be made only at such times as will be designated by FCPS to minimize the disruption to building/school operations.

- c. Should the awarded vendor(s) fail to comply with the terms of this guarantee, FCPS may have such work performed as it deems necessary to fulfill the guarantee, charging the cost to the awarded vendor(s).

12. BID OPENING

- a. Bids shall be opened in public at the time and place designated in the bid solicitation.
- b. Complete evaluation of the proposals will not take place at the bid opening and no indication of award will be made. A final recommendation(s) shall be prepared for review and approval by the Board of Education of Frederick County.
- c. The recommended award will be posted to the FCPS BoardDocs website a minimum of three days prior to the Board of Education meeting in which it will be presented.
- d. Final award recommendation, and the bid tabulation, will be posted on the FCPS webpage, www.fcps.org/bidlist, after the Board of Education of Frederick County approval.

13. ERRORS IN BID SUBMISSIONS

- a. Bidders, or their authorized representatives, are expected to fully inform themselves as to the conditions and requirements of the specifications before submitting bids. Failure to do so will be at the bidder's own risk.
- b. If the bidder has made an error, the bidder may request, in writing, to have their bid withdrawn. Approval of a bidder's request is not automatic and may be given only by the Purchasing Manager. Requests for withdrawal are usually denied, unless the bidder proves to the satisfaction of the Purchasing Manager that the mistake was either a scrivener's error or another type of clearly unintentional error so departing from customary and reasonable business practices as to be obvious and to legitimately and substantially impair the vendor's business.
- c. Neither law nor regulations make allowance for errors either of omission or commission on the part of the bidders. In case of error in multiplication of unit price when arriving at total price per line item, the unit price shall govern. If there is a discrepancy between the price written in numbers and the price written in words, the words will govern.

14. AWARDS OR REJECTION OF BIDS

- a. The basis of award shall be the lowest responsible bidder submitting a responsive bid that conforms to the specifications established in the solicitation with consideration given to the quantities involved, time required for delivery, purpose for which required, competency and responsibility of bidder, the ability of the bidder to perform satisfactory service, and the plan for utilization of minority contractors, if applicable.
- b. FCPS reserves the right to determine completeness and/or timeliness of bids, to reject any or all bids in whole or in part, to make partial awards, to waive any informality in any quotation, to increase or decrease quantities if quantities are listed in the bid, to reject any bid that shows any omissions, alterations of form, additions not called for, conditions, or alternate proposals, and to make any such award as is deemed to be in its best interest.
- c. Bidders may be required, before the awarding of a contract, to show to the complete satisfaction of

FCPS, that they have the necessary facilities, ability and financial resources to execute the contract in a satisfactory manner, and within the time specified. Bidders may be required to demonstrate they have the necessary experience, history and references to assure FCPS of their qualifications.

- d. The Board of Education of Frederick County reserves the right to award the bid within 90 days from the date of the bid opening unless a different time period is stated in the bid document.
- e. Unless stated otherwise in Section II, the contract may be awarded by line item, group, or in the aggregate, whichever is in the best interest of FCPS.
- f. In the event of a tie, where all other factors, such as past performance, are considered comparable, the award shall be made to the Frederick County based bidder; the closest Maryland out-of-county based bidder; and the closest out-of-state based bidder, in that order of preference.
- g. FCPS does not have local, state or federal preference requirements except when mandated by a targeted funding source.
- h. If, after competitive sealed bids have been opened, the Purchasing Manager determines that only one responsible bidder has submitted a responsive bid, the procurement contract may be negotiated with that one bidder as sole source procurement.
- i. A recommendation for the award of a contract will be presented to the Board of Education of Frederick County for approval. Upon approval of the award of contract, the bidder(s) shall be notified of their award(s). If applicable, an FCPS contract document shall also be issued.
- j. The Board of Education of Frederick County reserves the right to reject the bid of a bidder who has, in the opinion of FCPS, failed to properly perform under previous contracts, or, who investigation shows, is not in a position to perform the contract.
- k. The Board of Education of Frederick County retains the right to reject any and all bids, if it is deemed in the best interest of FCPS to do so.
- l. If, during the life of the contract, a product or service does not meet the solicitation terms and conditions, FCPS retains the right to cancel the awarded item(s) and award to a new bidder, as long as that bidder mutually agrees to the award.

15. CONTRACT FORMATION

- a. Notification of the contract award will be made by letter after approval by the Board of Education of Frederick County.
- b. The primary form of contract is the purchase order(s), and any agreed upon schedules, addenda, shop drawings, and documents associated with the bid solicitation/submission/award.
- c. A secondary form of contract, if required, may be noted in Section II of this bid solicitation.
- d. No amendment, modification or change to the contract shall be effective unless such change is in writing and mutually agreed upon by authorized representatives of FCPS and the awarded vendor(s). Changes may not significantly alter the original scope of the agreement.

16. PROTESTS

- a. The Purchasing Manager or designee (when the Purchasing Manager administers the bid being protested) shall attempt to resolve, informally, all protests of bid award recommendations. Bidders are encouraged to present their concerns promptly to the Contract Manager for consideration.
 - i. The bidder must submit their concern, in writing, addressed to the Purchasing Manager. It should include the following:
 - Name, address, contact information of the protestor;
 - Statement of reasons for the protest;
 - Supporting documentation to substantiate the claim;
 - The remedy sought.
 - ii. The protest must be received by the Purchasing Manager at least two calendar days prior to the date of the Board of Education meeting at which the recommendation will be presented. It is the vendor's responsibility to ascertain the date and time of award.
 - iii. A bidder who does not file a timely protest before the contract is awarded by the Board of Education of Frederick County is deemed to have waived any objection.
- b. The Purchasing Manager shall inform the Chief Financial Officer and/or general counsel upon receipt of the protest, and shall confer with them prior to the issuance of a decision regarding disputes of contracts or awards valued at \$25,000 or above.
- c. The Purchasing Manager shall issue a decision in writing.
- d. Should the protestor disapprove of the Purchasing Manager's decision, they have the right to address the Board of Education of Frederick County during the public comment section of the same Board meeting where the award recommendation is scheduled for award.
- e. The Board of Education of Frederick County's decision is deemed the final action at the local level.
- f. A bidder may appeal a decision of the Board directly to the Maryland State Board of Education in accordance with Board Policy 105.11 and Maryland law.

17. CONTRACT ASSIGNMENT

- a. The awarded vendor(s) will not assign or transfer any portion of their interest or obligation under this Agreement to any third party, without the prior written consent of the Contract Manager. Nothing herein shall be construed to create any personal or individual liability upon any employee, officer, elected official of the Board of Education of Frederick County, nor shall this Agreement be construed to create any rights hereunder in any person or entity other than the parties to this Agreement.
- b. The awarded vendor(s) will, when required, submit to the Contract Manager, in writing, the name of each subcontractor they intend to employ, the portion of the material to be furnished, their place of business, and any such information as may be required in order to know whether such subcontractor is reputable and reliable and able to furnish satisfactorily the material as called for in the specifications.
- c. FCPS reserves the right to approve or disapprove all subcontractors to be employed on a project. FCPS further reserves the right to approve or disapprove a change of subcontractor once an initial

subcontractor has been approved. Any increased cost associated with the change of a subcontractor shall be the full obligation and responsibility of the awarded vendor(s).

- d. The awarded vendor(s) will not legally, or equitably, assign any of the funds payable under the contract, or its claim thereto, unless by, and with, the consent of the Contract Manager.
- e. The awarded vendor(s) will have the same provisions inserted in all subcontracts relative to the terms of the general conditions and other contract documents. Nothing contained in this contract shall create any contractual relations between any subcontractor and FCPS.

18. MULTI-YEAR CONTRACT

- a. Contracts that require funding appropriation for more than one fiscal year automatically terminate if money sufficient for the continued performance is not appropriated for any fiscal year. The date of termination is the last day of the fiscal year for which money was last appropriated, or the date provided in the termination clause of the procurement contract, whichever is earlier.
- b. If the multi-year contract is terminated due to lack of funding, FCPS shall reimburse the vendor for the reasonable value of any nonrecurring costs that were incurred as a result of the multi-year contract, but not amortized in the price of the supplies or services delivered under the multi-year contract. The reasonable value will be negotiated, and mutually agreed upon, by FCPS and the vendor.
- c. The cost of termination may be paid from any appropriation available for that purpose.

19. HOLD HARMLESS

It is understood that the awarded vendor(s) shall defend and hold harmless the Board of Education of Frederick County, and its representatives, from all suits, actions, or claims of any kind brought about as a result of any injuries or damages sustained by person(s) or property during the performance of this contract.

20. CONTRACT DISPUTES

- a. Any dispute arising under this contract shall be decided by the Contract Administrator, the Contract Manager and the Purchasing Manager, who will communicate their decision to writing and furnish a copy to the vendor. This decision shall be final and conclusive unless, within 30 days, the vendor furnishes a written appeal addressed to the Board of Education of Frederick County. The local Board of Education has the right to hear appeals as provided by Maryland law.
- b. The Board of Education of Frederick County, or its duly authorized representative, will review the appeal for the determination of such appeal and their finding shall be final and conclusive. In connection with any appeal preceding under this clause, the vendor will be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of a dispute, the vendor shall proceed diligently with the performance of the contract and in strict accordance with the FCPS staff's decision. 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.
- c. This clause does not preclude consideration of laws questioned in connection with the decision provided for above.

21. TERMINATION FOR DEFAULT

- a. When an awarded vendor has not performed or has unsatisfactorily performed the contract, payment shall be withheld at the discretion of FCPS. FCPS may, by written notice of default to the vendor, terminate the whole or any part of the contract in any of the following circumstances:
 - i. If the vendor fails to perform the services or provide the products within the time and manner specific herein or any extension thereof, or:
 - ii. If the vendor fails to perform any of the provisions of this contract, or fails to make progress as to endanger performance of this contract, in accordance with its terms and in either of these two circumstances does not cure such failure within a period of ten calendar days (or longer as authorized by the Purchasing Manager) after receipt of written notice from the Purchasing Manager of such failure, or:
 - iii. If the vendor willfully attempts to perform the services other than specified as to coverage, limits, protections, and quality or otherwise, without specified authorization in the form of contract amendment, or:
 - iv. If a determination is made by FCPS that the obtaining of the contract was influenced by an employee FCPS having received a gratuity, or a promise therefore, in any way or form.
- b. In the event FCPS terminates the contract in whole or in part, FCPS may procure such products and services, in a manner the Purchasing Manager deems appropriate, and the vendor shall be liable to FCPS for any additional cost(s) incurred.
- c. If, after notice of termination of this contract under provisions of this clause, it is determined for any reason that the vendor was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to a termination for convenience.

22. TERMINATION FOR CONVENIENCE

The contract may be terminated by FCPS in accordance with this clause in whole, or in part, whenever FCPS determines that such a termination is in the best interest of FCPS. Written notice shall be given a minimum of 30 days in advance. FCPS will pay for all services, in accordance with contract pricing, up to the date of the termination. However, the awarded vendor(s) shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Under this contract, the awarded vendor does not have a right to unilateral termination for convenience.

23. GOVERNING LAW AND VENUE

The solicitation shall be construed in accordance with, and interpreted under, the laws of the State of Maryland. Any lawsuits shall be filed in the appropriate State Court located in Frederick County, Maryland.

24. MULTI-AGENCY PARTICIPATION

- a. FCPS reserves the right to extend the terms and conditions of this solicitation to any and all other agencies within the state of Maryland, as well as, any other federal, state, municipal, county, or local governmental agency under the jurisdiction of the United States and its territories. This is conditioned upon mutual agreement of all parties pursuant to special requirements, which may be

appended thereto. The awarded vendor(s) agrees to notify the issuing body of those entities that wish to use any contract resulting from this bid and will also provide usage information, which may be requested.

- b. By agreeing to extend the contract to other agencies, the vendor(s) reaffirms and warrants his original commitment to FCPS so that afterwards all items and services shall continue to conform to the requirements and conditions of the original agreement for its duration. Agencies who utilize the contract agree to notify FCPS Purchasing Department of any significant experiences, problems or issues which may, or may have the potential to, affect our administration of this contract.
- c. FCPS assumes no obligation on behalf of any other agency and shall be held harmless if either party is damaged due to the agency or vendor's failure to become informed of, or comply with, any provision or pricing under this agreement. All purchase orders and billing will be transacted between the vendor and the public agency.
- d. Each participating jurisdiction or agency shall enter into its own contract with the awarded vendor(s) and this contract shall be binding only upon the principals signing such an agreement. Invoices shall be submitted in duplicate "directly" to the ordering jurisdiction for each unit purchased. Disputes over the execution of any contract shall be the responsibility of the participating jurisdiction or agency that entered into that contract. Disputes must be resolved solely between the participating agency and the awarded vendor(s). The Lead Agency does not assume any responsibility other than to obtain pricing for the specifications provided.

25. PACKAGING AND DELIVERY REQUIREMENTS

- a. All materials must be securely packed in accordance with accepted trade practices.
- b. A packing list will be included in each shipment. This list shall contain the following information: Purchase Order Number, Vendor Name, Item Description, Item Number, Quantity and Delivery Location. Failure to comply with this condition may be considered sufficient reason to refuse to accept the goods.
- c. All materials, supplies and equipment for FCPS shall be delivered F.O.B Destination. Unless otherwise noted in Section II, all items shall be delivered inside the office, school, or warehouse.
- d. Special delivery and handling instructions will be defined in Section II of each bid.
- e. All school deliveries shall be made during the hours of 9:00 A.M. and 2:00 P.M. local time and only on regular school days, see School Calendar Closings enclosed, except where modified in Section II.
- f. All warehouse deliveries shall be made during the hours of 9:00 A.M. to 2:30 P.M. on all regular scheduled school days, see School Calendar Closings enclosed, except where modified in Section II.
- g. Bulk materials, delivered to the Warehouse, are to be delivered on skids, or pallets, to the Warehouse receiving platform.
- h. No help for unloading will be provided. Suppliers shall notify their delivery personnel accordingly.
- i. The awarded vendor(s) shall be held responsible for and shall be required to make good at their expense, any and all damage done or caused by their employees in the execution of the contract as

determined by FCPS.

- j. The vendor will be required to furnish proof of signed delivery in every instance. Delivery receipts indicating only the number and weight of cartons received will not constitute "proof" of delivery in the event of a dispute. FCPS will not accept responsibility for deliveries that have not been signed for by an FCPS employee.

26. BILLING AND PAYMENT

- a. Invoices shall be submitted to: accounts.payable@FCPS.org or in duplicate to:

FREDERICK COUNTY PUBLIC SCHOOLS
Accounts Payable Department
191 South East Street
Frederick, MD 21701

- b. Invoices and packing slips must contain the following information:
 - i. Bid Number
 - ii. Purchase Order Number
 - iii. Item Number (if applicable)
 - iv. Quantity (if applicable)
 - v. Brief Description of Item or Work Performed
 - vi. Unit Price Bid/Partial Payment Amount
 - vii. Extended Total for Each Item
 - viii. Grand Total
 - ix. Public School Construction Number (PSC) (if applicable)
- c. Payments will be made by FCPS check, single use credit account or credit card. Credit card statements with level three data are preferred. Bidders are prohibited from charging additional costs or fees from their bid price to process such orders.

27. COMPLIANCE WITH SPECIFICATIONS

- a. The awarded vendor(s) will abide by, and comply with, the true intent of the specifications and not take advantage of any unintentional error or omission, but will fully complete every part as to the true intent and meaning of the specifications and drawings.
- b. Whenever mention is made of any article, material, or workmanship to be in accordance with laws, ordinances, building codes, underwriter's code, A.S.M.E. regulations, or similar expressions, the requirements of these laws, ordinances, etc., shall be construed as to the minimum requirements of these specifications.
- c. Where the requirements of the specifications call for a higher grade and are not in conflict with the laws, ordinances, etc., the specifications shall govern.
- d. In the case of any apparent conflict between the specifications and such laws, ordinances, etc., the awarded vendor(s) will contact the Contract Administrator and the Contract Manager for a decision before proceeding with any work.

28. LIQUIDATED DAMAGES

- a. A date for delivery and/or installation/assembly shall be stated in the specifications. Requests for

extension of completion time due to strikes, lack of materials, or any other causes over which the awarded vendor(s) has no control must be submitted, in writing, with supporting documentation, to the Contract Manager. Requests must occur immediately upon occurrence of conditions for a time extension to be granted. Extensions are not guaranteed.

- b. If the awarded vendor(s) fails to provide the services, equipment, or other items required within the prescribed time limits, the Contract Manager may elect to obtain services, equipment, or other items necessary from an alternate source.
- c. The awarded vendor(s) will pay any additional cost(s) incurred by FCPS for obtaining replacement services, equipment, and other necessary items.
- d. FCPS shall have the unilateral right of alternate source selection to perform the work when the awarded vendor(s) does not perform the required work.
- e. In addition to, or in lieu of, paying for any incurred replacement costs(s), the awarded vendor(s) may pay liquidated damages, in the amount of \$150 per day, for any delay or failure in performance, as well as any related damages sustained by FCPS.
- f. The assessment of liquidated damages by FCPS against the awarded vendor(s) does not supersede or affect the right of FCPS to impose other remedies that may be available.

29. SAFETY REQUIREMENTS

- a. When applicable, all machinery/equipment must meet OSHA-MOSHA requirements as to the safety of the operation of the equipment. All required safety devices shall be included in the price(s) bid.
- b. When applicable, kitchen equipment and supplies must meet Maryland State Health Department, National Sanitation Foundation (NSF) and Frederick County Health Department requirements.
- c. All construction activities must be conducted in strict compliance with OSHA/MOSHA requirements.
- d. Equipment offered which fails to comply with any applicable section of the National Electrical Code, or is not U.L. Listed (where U.L. Listings have been established for that type of device) shall be rejected.
- e. The awarded vendor(s) shall submit Safety Data Sheets (SDS) for all items awarded to that vendor provided under the terms of this proposal, if applicable.
- f. The awarded vendor(s) and subcontractor(s) are required to comply with all provisions of the Access to Information about Hazardous and Toxic Substances Act, a part of the Maryland Occupational Safety and Health Law.
- g. The awarded vendor(s) is responsible to report to FCPS any asbestos material or suspected material found or uncovered that is not part of the scope of the project. In addition, they may not introduce new asbestos or asbestos bearing materials into the site.
- h. It is the responsibility of the awarded vendor(s) to comply with all Municipal, State, and Federal EPA regulations and laws when handling or disposing of asbestos materials.
- i. If the awarded vendor(s) intentionally endangers or jeopardizes the health of any building/school

occupant(s) through mishandling of hazardous material, the vendor(s) will be held liable for such action.

30. LAWS AND REGULATIONS

- a. The vendor will comply with all Federal, State, and local laws, ordinances and regulations pertaining to work under their charge. If the vendor performs any work which it knows or should know to be contrary to such laws, ordinance, and regulations and without such notices to FCPS they shall bear all costs arising therefrom.
- b. All vendors and subcontractors must abide by the Board of Education of Frederick County policies and FCPS regulations while working on school property.
- c. The vendor certifies that their firm adheres to or follows non-discriminatory practices with respect to the employment and promotion of personnel without regard to color, creed, race, sex, or national origin.

31. PATENTS

The vendor will defend all suits or claims for infringement of any patent rights and will save the Board of Education of Frederick County harmless from loss.

32. TECHNOLOGY-BASED INSTRUCTIONAL PRODUCTS

All FCPS technology based instructional products (instructional software, online resources, and computer based equipment) must be consistent with the federal Rehabilitation Act, Maryland Subpart B Technical Standards, Section 508, for accessibility by students with disabilities unless doing so would fundamentally alter the nature of the instructional activity or result in undue financial and administrative burdens. Requests for bids, proposals, procurement contracts, and grants will follow established procedures for evaluating compliance to accessibility standards in all purchase decisions.

33. EMPLOYMENT OF CHILD SEX OFFENDERS AND PERSONS WITH UNCONTROLLED ACCESS TO STUDENTS

- a. Be advised that individuals who are registered sex offenders are not eligible to work on any FCPS' project. The awarded vendor(s) 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 vendor will 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 vendor, 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 at no additional costs, as a result if the vendor is unable to demonstrate they have exercised care and diligence in the past in checking the Maryland registry.
- b. Contracted service providers who have regular, direct and unsupervised access to children cannot begin service without undergoing the same process as new employees per FCPS Regulation 300-33. If required, an awarded vendor(s) is responsible for payment of the full cost of the criminal background check. Additional information regarding this requirement will be found in Section II.

- c. The awarded vendor(s), or subcontractor(s), may not knowingly assign an employee to work on FCPS school premises with direct, unsupervised, and uncontrolled access to children, if the employee has been convicted of a crime identified as a crime of violence.
- d. The awarded vendor(s) will not assign employees who has been convicted of an offense under § 3-307 or § 3-308 of the Criminal Law Article or an offense under the laws of another state that would constitute a violation of § 3-307 or § 3-308 of the Criminal Law Article if committed in the state.
- e. An awarded vendor will not assign employee who has been convicted of a crime of violence as defined in § 14-101 of the Criminal Law Article, or an offense under the laws of another state that would be a violation of § 14-101 of the Criminal Law Article if committed in this state.

34. DRUG, ALCOHOL, AND TOBACCO-FREE WORKPLACE

- a. All awarded vendors and subcontractors must abide by Board Policy 112 while working on any FCPS property at all times.
- b. The Board of Education of Frederick County endorses the provisions of Public Law 100-690, Title V, Subtitle D (Drug-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.
- c. Maryland State Law (COMAR 13A.02.04) provides that each local school system is required to maintain a tobacco-free school environment.

35. WEAPON POSSESSION ON SCHOOL PROPERTY

- a. The criminal code of Maryland makes it illegal to possess a weapon on school property.
- b. No person shall carry or possess any rifle, gun, knife, or deadly weapon of any kind on FCPS property.
- c. Any awarded vendor(s) whose employees violate this clause may be subject to the termination of the contract for cause.

36. FOREIGN LANGUAGE TRANSLATOR REQUIREMENT

- a. An awarded vendor(s) that assigns employees to an FCPS project that do not speak English must have an on-site, full time interpreter.
- b. Failure of an awarded vendor(s) to have an on-site, full time interpreter that is fluent in speaking and understanding an employee's native language for those employees that do not speak English is reason for immediate termination of the contract for cause.

37. ILLEGAL IMMIGRANT LABOR

The use of illegal immigrant labor to fulfill contracts solicited by FCPS is in violation of the law and is strictly prohibited. Awarded vendor(s) and subcontractors must verify employment eligibility of workers in order to assure that they are not violating federal/state/local laws regarding illegal immigration. A compliance audit may be conducted.

38. STUDENT/STAFF CONFIDENTIALITY

Under no circumstances may any vendor/contractor/provider/consultant release, disclose, sell or otherwise use names, addresses, or any other information related to students, or staff, of FCPS and may only use this information for purposes required under any contract/agreement or memorandum of understanding.

39. PUBLIC INFORMATION ACT NOTICE

- a. Bidders should identify those portions of their solicitation, which they deem to be confidential, or to contain proprietary commercial information or trade secrets. Bidders should provide justification why such material, upon request, should not be disclosed by FCPS under the Public Information Act, Title 4, General Provisions Article, Annotated Code of Maryland.
- b. Unless portions of a solicitation are identified as confidential, all records are considered public. A person or governmental unit that wishes to inspect a public record, or receive copies of a public record, shall submit a written or electronic request and direct it to the Office of Legal Services per FCPS Regulation 200-42.

40. FORCE MAJEURE

Force Majeure is defined as an occurrence beyond the control of the affected party and not avoidable by reason of diligence. It includes the acts of nature, war, riots, strikes, fire, floods, epidemics, terrorism, or other similar occurrences. If either party is delayed by Force Majeure, said party shall provide written notification to the other within 48 hours. Delays shall cease as soon as practicable and written notification of same provided. The time of contract completion may be extended by contract modification, for a period of time equal to that delay caused under this condition. FCPS may also consider requests for price increase for raw materials that are directly attributable to the cause of delay. FCPS reserves the right to cancel the contract and/or purchase materials, equipment or services from the best available source during the time of Force Majeure, and the vendor shall have no recourse against FCPS. Further, except for payment of sums due, neither party shall be liable to the other or deemed in default under this contract, if and to the extent that such party's performance of this contract is prevented by reason of Force Majeure as defined herein.

41. ETHICS POLICY

- a. The Board of Education of Frederick County has an Ethics Policy, which covers conflict of interest, financial disclosure and lobbying. All bidders are expected to comply with any and all Ethics Policies that may apply to them individually or as a business entity.
- b. All bidders should carefully review Board Policy 109, Ethics, which prohibits FCPS employees from benefiting from business with the school system.

42. NON-COLLUSION

- a. Bidder represents and certifies that prices for these services have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition or any matter related to such prices with any competitor or other bidder. Prices quoted in this bid have not been knowingly disclosed directly or indirectly to any competitor or other vendor prior to the opening of this bid.

- b. Bidder represents and certifies that it has not employed or retained any other company or person (other than a full-time bona fide employee working exclusively for the bidder) with the primary intent to solicit or secure the contract.

43. CONFLICT OF INTEREST

The bidder will advise FCPS in writing as soon as possible, but not later than the date of award of the contract, of any known relationships with a third party, or FCPS employee or representative, which would present a significant advantage to one bidder over another bidder or present a conflict of interest with the rendering of products and services under this agreement.

44. EMARYLANDMARKETPLACE REGISTRATION

Contractors are required to register with www.eMarylandMarketplace.org within five days following notice of award. Maryland law requires local and state agencies to post award notices on eMaryland Marketplace. 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.

**RFP 17C16, CONSTRUCTION MANAGEMENT
FREDERICK COUNTY PUBLIC SCHOOLS (FCPS)
SPECIFIC TERMS AND CONDITIONS
SECTION II**

1. SCOPE

The intent of this solicitation is to qualify and select Construction Management “Agency” firms for future school construction projects. Construction Management “At Risk” firms must specifically indicate the number of projects completed under the CMa (Agency) format, if any. Should the Construction Manager list “At Risk” projects they must be specifically labeled “At Risk.”

Qualified Construction Management firms shall provide construction management services associated with the planning, design, cost estimating, bidding, construction management and consulting, warranty and close-out of a project.

2. CONTRACT PERIOD

The initial term of the contract will be effective for a three (3) year period, from the date of award through April 30, 2020. FCPS retains the right and option to extend this contract for three additional one-year terms at the discretion of the Board of Education. Upon submission of proposal, the contractor consents to the possibility of contract renewal as a condition of award and acknowledges that all terms and condition remain unchanged.

3. CONTRACT TERMS

- a. The following General Terms and Conditions from Section I are not applicable for the qualification process but may be applicable for the post-award process.
 - i. #2, Pre-Bid Meeting
 - ii. #7, Standard of Quality, “Or Equal Clauses,” and Substitutions
 - iii. #8, Samples
 - iv. #9, Bid Pricing
 - v. #11, Guarantees and Warranties
 - vi. #25, Packaging and Delivery Requirements
 - vii. #32, Technology-Based Instructional Products
- b. Work under this contract will be performed on a lump sum basis as needs arise throughout the contract period. No guarantee of any work is expressed or implied.
- c. If an awarded contractor fails to respond to a request for quote on more than two occasions, they may be subject to contract termination or non-renewal.
- d. FCPS reserves the right to replace a terminated/non-renewed vendor with another vendor from the original proposal ranking and cost evaluation, by mutual agreement.
- e. This contract will be governed by the following documents; however, should there be contradictory language, the AIA Document will govern:
 1. General Terms and Conditions of this bid
 2. AIA Document C132-2009, Standard Form of Agreement Between Owner and Construction Manager as Adviser, as modified by FCPS.
- f. Additionally, the following AIA Documents are being provided for information purposes as to the requirements imposed on the prime contractors and architect:

1. AIA Document A132- 2009, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition, as modified by FCPS.
 2. AIA Document A232- 2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, as modified by FCPS.
 3. AIA Document B132 – 2009, Standard Form of Agreement Between Owner and Architect as modified by FCPS
- g. FCPS may modify the AIA documents included in this solicitation and will provide the construction manager with changes as appropriate.
- h. At the discretion of FCPS, additional Construction Managers may become qualified under this solicitation during the month of February.

4. QUALIFICATION CRITERIA:

Firms must meet the following minimum qualifications in order for their Letter of Interest to be considered by the evaluation committee:

- Licensed to perform business in the State of Maryland
- Meet FCPS minimum insurance requirements
- Minimum aggregate bonding capacity of \$1,000,000.
- Must be in the construction management business for a minimum of five (5) years
- Must fully complete FCPS Questionnaire form.

5. PREPARATION OF PROPOSAL

- a. Due to possible changes and/or additions to the solicitation package, FCPS requests that bidders delay submission of their proposal package until after the date that questions are due to allow time for the possible issuance of an addendum. All changes will be processed through appropriate addenda.
- b. Submit one bound original and (4) additional copies of the Construction Manager Letter of Interest Questionnaire (Attachment A), along with an electronic copy on CD or USB Flash Drive, in a sealed envelope, properly labeled on the outside with the bidder's name and solicitation number.
- c. The qualification material shall include the following:
 - Construction Manager Letter of Interest Questionnaire
 - Certificate of Insurance
 - Maryland State Contractor's License
 - Signature Page
 - Statutory Affidavit and Non-Collusion Certification
 - Certification of Compliance

6. EVALUATION AND AWARD

- a. Letters of Interest/Proposals submitted will be evaluated by a committee comprising a minimum of three FCPS staff members.
- b. Each member of the selection committee will independently review and evaluate each letter of interest/technical proposal using a point formula during the review process to score proposals. The full committee will then convene to review and discuss these evaluations and to combine the

individual scores to arrive at a composite score for each firm.

- c. Based on the composite score of each firm, the qualified firms will be requested to submit Technical Proposals.
- d. The technical proposal will consist of a combination of formats, including but not limited to a questionnaire, interview and/or site visit, and includes appraisals of various aspects of the bidder's business including capacity, financials, quality assurance, organization structure and processes and performance.
- e. Points will be deducted for incomplete or missing responses, or responses that do not follow the required format.
- f. A total of 100 points will be assigned for the technical proposal and will be assigned as follows:
 - Completeness of Qualification Materials 5
 - CM Agency Construction Experience 35
 - Project Team Expertise and Experience 30
 - LEED Project Experience 10
 - Overall Project Administration 20
- g. Final ranking will be made based on technical scores.
- h. An interview may be required to obtain more information prior to recommendation for award, and additional points may be assigned.
- i. It is FCPS's intention to recommend award to the top most qualified firms

7. POST AWARD PROCEDURE FOR SOLICITING SERVICES:

- a. Only firms that have been awarded under this solicitation will be eligible to receive a request for proposal when services are required.
- b. The RFP will include, but is not limited to, a proposal due date, project summary and/or written scope of work, questionnaire, a preliminary project schedule, fee proposal form (including a fee schedule of values and reimbursable schedule of values) for the required project.
- c. Firms will be required to make a site visit and attend a pre-proposal meeting if scheduled.
- d. Firms requiring clarification or interpretation of RFP shall make a written request. Any clarification or interpretations to the RFP will be made by addenda
- e. Firms shall submit their proposal by the date and time stated in the RFP.
- f. After receipt of proposals, discussions may be conducted with an offeror to ensure full understanding of the requirements set forth in the request and to obtain the best price for FCPS.

8. VENDOR PERFORMANCE EVALUATION

- a. The Contract Manager and Administrator shall confer periodically to discuss the status of the contract. Issues of noncompliance may arise throughout the contract term and shall be brought to the attention of the Contract Manager as they occur.
- b. The Contract Manager or Administrator may request multiple metrics, from the vendor, to evaluate contract performance. Metrics may include, but are not limited to:

- i. Delivery
 - ii. Response time
 - iii. Backorders
 - iv. Quality of deliverables
 - v. Invoicing
 - vi. Sales data (Contract data, non-contract data)
 - vii. Financial
- c. Where technical, construction or performance specifications have been identified in the RFP document, the contract administrator shall utilize these specifications as the basis of determining contract compliance.
- d. If noncompliance occurs, it shall be documented in a timely manner, including actions taken and final resolution. Copies of the correspondence will be maintained in the Purchasing Department bid documents.
- e. Issues of noncompliance will be handled on a case by case basis. This may include, but is not limited to, written correspondence, face-to-face meetings, and/or an agreed upon performance management plan. FCPS retains the right to terminate the contract, in whole or in part, if the noncompliance issue is not resolved to the satisfaction of FCPS.

9. CONTRACTOR'S AND SUBCONTRACTOR'S INSURANCE

FCPS requires an insurance certificate evidencing the compliance of insurance requirements in the types and limits as defined in AIA Document C132-2009, Section 14 Other Conditions or Services, #14.1 Insurance.

Such certificates also shall contain substantially the following statement: "The insurance covered by this certificate will not be cancelled or materially altered, except after thirty days written notice has been received by FCPS."

Insurance providers must have an AM Best Company rating of at least A-/VIII.

**RFP 17C16 - Construction Management Agency Services
Letter of interest**

Name of Firm: _____

Address of Firm: _____

Principal's Name: _____ Title: _____

Telephone #: _____ Fax #: _____ E-mail Address: _____

MD Business License #: _____

How long your firm has been in business as a Construction Manager: _____

Total number of buildings managed by your firm via the Construction Management Agency delivery _____

Total Construction Cost for the CMA buildings delivered above \$ _____

Total Change Orders added to the bid construction cost above \$ _____

Total Construction Management Agency Fee \$ _____

Total Reimbursable expenses billed for the construction management services above \$ _____

Total additional fees requested by the construction manager for the above projects \$ _____

The following requires you to provide information about school projects constructed in Maryland that your firm was responsible for the Construction Management Agency delivery method: (provide a separate listing with contact info.)

Total number of Maryland School projects managed by your firm via CMA delivery: _____

Total number of Maryland Elementary & Primary School projects managed by your firm via CMA delivery: _____

Total number of Maryland Middle School projects managed by your firm via CMA delivery: _____

Total number of Maryland High School projects managed by your firm via CMA delivery: _____

Total number of Maryland LEED School projects managed by your firm via CMA delivery: _____

After FCPS completes a review the letters of interest, FCPS will contact the qualified firms to submit Technical Proposals.

**RFP 17C16 - Construction Management Services
Technical Proposal**

Please provide a written Technical Proposal response to the following information and questions in numerical order not to exceed twenty (20) pages total for all responses.

1. Why should FCPS award a contract for CM Services to your firm over other candidates? **(One page)**

Items 2 & 3 (Up to three pages) (Must be in the attached format. A fillable form is included – Attachment C)

2. How many staff members will be on your Project Team, assigned to the project? Provide staff member names with titles, defined responsibilities and experience levels. Designate which staff will be assigned to the site full time and who will be located elsewhere in your firm?
3. Provide your firms typical CM Services staffing for Maryland Public School Projects similar to this proposal request? See sample form attached (modify titles as appropriate to your firms management standard practices providing the scope as identified. Provide in tabular format broken down into phases of the project sample attached (Number of pages as necessary).

Items 4 & 5 (Up to two pages)

4. Define your role in providing CM services during the Project Design process.
5. Define your role in providing CM services specifically related to the LEED requirements. Include your responsibilities during all phases of the project. Attachments as required to clarify how your firm manages the LEED aspect of the project, identify design, review, construction and final approval with receipt of the LEED certificate.

Items 6 & 7 (One page)

6. Describe how your firm assists the Design Team and Owner in guiding the Project through the permit approval process to assure that all permits will be provided in a timely manner. Include cost saving measures and timely issuance of the permit.
7. Define your role in providing CM services during the Project Bidding process.

Items 8, 9 & 10 (Up to four pages).

8. Define your role in providing CM services during the Project Construction Administration process.
9. Define the CM role reviewing, rejecting/recommendation of submittals throughout the construction process.
10. Define your role in providing CM services during the Project construction process specifically related to the LEED requirements.

Items 11, 12, 13 & 14 (Up to two pages) (Third Party Commissioning agent provided by FCPS)

11. Define your role in providing CM services during the Project Punch list process?
12. Define your role in providing CM services during the Project Close Out list process.

13. Define your role in providing CM services during the Project Warranty process.
14. Define your role as the CM reviewing, rejecting and recommending progress payments throughout the construction process. Including your role reviewing minority business pay applications and contractor insurance certificates when processing applications for payment to the Architect and Owner. How will you assure FCPS that the Project will remain on schedule and within budget

Item 15 & 16 (One page)

15. Has your firm used an automated Project Management System using web based technology with capabilities equal to My Smart Plans or Submittal Exchange? If so, please provide a listing of Projects and the type of Automated Project Management System used. Please identify any problems that were encountered with the electronic submittal/RFI or other construction administration data.
16. Describe how your will firm assist the Owner in the event scope(s) is (are) completed via the bonding company should a contractor fail to complete his/her contractual requirements
17. Has an owner ever filed a legal suite against your firm in a court of law? If yes, please provide explanation. **(One page)**
18. Has your firm ever been refused consideration or suspended from working for any municipality or jurisdiction? If yes, provide explanation. **(Up to two pages)**

(Item 19 & 20, One page as necessary for appropriate description).

19. Cost saving measures during the design phase of the project.
20. Meet proposed Project Schedule.

Provide a written narrative describing how your firm proposes to accommodate the following objectives:

21. Divide the project into bid packages. (Number of contracts & proposed scopes for Primary/Elementary less than 100,000 sq. ft., Middle up to 200,000 sq. ft. and High Schools over 200,000 sq. ft.)
22. Estimate project construction cost.
23. Evaluate, estimate, monitor, track and process Field Work Directives (FWD), Proposed Change Orders (PCOs), Construction Change Directives (CCD's) and Change Orders (CO) during construction.
24. Maintain, monitor and update the project schedule.
25. Deal with contractors falling behind schedule.
26. How you will monitor timely submission and verify accuracy when processing: submittals, applications for payment, prevailing wage rate certified payroll, Minority Business Enterprises (MBE), including change orders, billing against allowance, etc.
27. Maintain quality control.

28. Manage project closeout: Compile all closeout documents, as-built, O&M manuals, written U&O permit approvals issued by the LGJ, warranties, project correspondence. The Construction Manager shall review and confirm the accuracy and completeness of the Operations and Maintenance manuals as follows: grouped together, incorporating an index in the binders, with each grouped section indexed separately and include the Architects'/Engineers' review and final approval of the submittals: electrical, mechanical, food service and general trades referencing the specific specification sections. The balance of the contractor packages shall be grouped together and indexed referencing the specifications sections. The O&M binders shall be referenced as: Electrical indexed volume 1 through volumes as necessary for the Electrical section of the specifications. Mechanical indexed volume 1 through volumes as necessary for the Mechanical section of the specifications. Food Service indexed volume 1 through volumes as necessary for the Food Service section of the specifications.

General Trades indexed volume 1 through volumes as necessary for the General Trades section of the specifications. All other packages shall be indexed volume 1 through volumes as necessary for the balance of the prime contractor packages. Similarly, as-built or record drawings shall be reviewed confirming accuracy and completeness of red line changes documenting the actual as built conditions. Minor no cost changes and change order work additions and deletions have been included within the record of drawings. These confirmations must be completed before submitting the record drawings to the Owner and Architect.

29. Manage RFI's, conflicting contractual requirements, architectural errors and omissions.
30. Manage non-compliant installation(s) and the correction process.
31. Process for comparing approved submittals with the construction activities and the process if unapproved materials are installed by the contractor.
32. Process for updating the owner on a monthly basis concerning project schedule, status, cost, delays, change orders (pending & approved) and outstanding issues or problems.
33. Manage final cleaning.

RFP 17C16, Construction Management Services

Firm: _____

Date: _____

Up to 100,000 square feet

Staff Member	Title	During SD Phase	During DD Phase	During CD Phase	During Bidding	During CA	During Close Out	During Warranty
Enter Name	President							
Enter Name	VP							
Enter Name	Superintendent							
Enter Name	Estimator							
Enter Name	Project Manager							
Enter Name	LEED							
Enter Name	Site/Field							
Enter Name	Manager							
Enter Name	Manager							
Enter Name	QA							
Enter Name	Clerical							
Enter Name	Driver							

Up to 100,000 square feet less than 200,000 square feet

Staff Member	Title	During SD Phase	During DD Phase	During CD Phase	During Bidding	During CA	During Close Out	During Warranty
Enter Name	President							
Enter Name	VP							
Enter Name	Superintendent							
Enter Name	Estimator							
Enter Name	Project Manager							
Enter Name	LEED							
Enter Name	Site/Field							
Enter Name	Manager							
Enter Name	Manager							
Enter Name	QA							
Enter Name	Clerical							
Enter Name	Driver							

Up to Over 200,000 square feet

Staff Member	Title	During SD Phase	During DD Phase	During CD Phase	During Bidding	During CA	During Close Out	During Warranty
Enter Name	President							
Enter Name	VP							
Enter Name	Superintendent							
Enter Name	Estimator							
Enter Name	Project Manager							
Enter Name	LEED							
Enter Name	Site/Field							
Enter Name	Manager							
Enter Name	Manager							
Enter Name	QA							
Enter Name	Clerical							
Enter Name	Driver							

RFP 17C16, CONSTRUCTION MANAGEMENT SERVICES
SIGNATURE ACKNOWLEDGING PROPOSAL

Note: When submitting your bid/proposal, please use this page as a cover sheet for your 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 #2	_____
Addendum #3	_____	Addendum #4	_____
Addendum #5	_____	Addendum #6	_____
Addendum #7	_____	Addendum #8	_____

RFP 17C16, CONSTRUCTION MANAGEMENT SERVICES
FREDERICK COUNTY PUBLIC SCHOOLS
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 if 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 Board of Education of Frederick County, and that I am executing and submitting this Proposal on behalf of and as authorized by the bidder named below.

(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

If required to be notarized:

(Witness)

(Title)

SUBSCRIBED AND SWORN to before me on this _____ day of _____, 20____.

NOTARY PUBLIC

My Commission Expires: _____

RFP 17C16, CONSTRUCTION MANAGEMENT SERVICES
CERTIFICATION OF COMPLIANCE

1. All Contractors, subcontractors or vendors must abide by FCPS Board policies and regulations while working on FCPS property.
2. Maryland Law requires that any person who enters into a contract with a county board of education may not knowingly employ an individual to work at a schools (or FCPS facility) if the individual is a registered sex offender. Please reference §11-113 of the Criminal Procedure Article of Maryland Code for penalty.
3. 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.
4. 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 vendor, the site superintendent will 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 in checking the Maryland registry.
5. Effective July 1, 2015, amendments to §6-113 of the Education Article of the Maryland Code further require that a contractor or subcontractor or vendor for a local school system may not knowingly assign an employee to work on school premises with direct, unsupervised, and uncontrolled access to children, if the employee has been convicted of, or pled guilty or nolo contendere to, a crime involving:
 - a. A sexual offense in the third or fourth degree under §3-307 or §3-308 of the Criminal Law Article of the Maryland Code.
 - b. Child sexual abuse under §3-602 of the Criminal Law Article of the Maryland Code or any other State; or
 - c. A crime of violence as defined in §14-101 of the Criminal Law Article of the Maryland Code or any other State
6. Under recent amendments to §5-561 of the Family Law Article of the Maryland Code, each contractor, subcontractor or vendor shall certify by signing this affidavit that any individuals in its work-force including sub-contractors, have undergone a criminal background check, including fingerprinting, if the individuals will work in a FCPS school facility in circumstances where they have direct, unsupervised, and uncontrolled access to children.

By my signature below, I affirm under penalties of perjury that the contents of this Certification of Compliance are true to the best of my knowledge, information and belief.

Signature_____Date_____

Print name and title of signatory_____

Print name of company_____



Document C132™ – 2009

Standard Form of Agreement Between Owner and Construction Manager as Adviser

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)

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

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

Construction Management Services

RFP 17C16

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

The Owner and Construction Manager 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.

This document is intended to be used in conjunction with AIA Documents A132™–2009, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; A232™–2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; and B132™–2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition.

AIA Document A232™–2009 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.

AIA Document C132™ – 2009 (formerly B801™CMA – 1992). Copyright © 1973, 1980, 1992 and 2009 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 08:48:57 on 03/20/2017 under Order No.8161989522_1 which expires on 10/03/2017, and is not for resale.

User Notes:

(960969012)
Page 37

TABLE OF ARTICLES

1	INITIAL INFORMATION
2	CONSTRUCTION MANAGER'S RESPONSIBILITIES
3	SCOPE OF CONSTRUCTION MANAGER'S BASIC SERVICES
4	ADDITIONAL SERVICES
5	OWNER'S RESPONSIBILITIES
6	COST OF THE WORK
7	COPYRIGHTS AND LICENSES
8	CLAIMS AND DISPUTES
9	TERMINATION OR SUSPENSION
10	MISCELLANEOUS PROVISIONS
11	COMPENSATION
12	SPECIAL TERMS AND CONDITIONS
13	SCOPE OF THE AGREEMENT

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable," "unknown at time of execution" or "to be determined later by mutual agreement.")

§ 1.1.1 The Owner's program for the Project: The Final Educational Specifications dated June 2013.
(Identify documentation or state the manner in which the program will be developed.)

§ 1.1.2 The Project's physical characteristics: Refer to Exhibit "A" Project Description.
(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:
(Provide total and, if known, a line item breakdown.) Funding may be available over multiple fiscal years.

The budget is million thousand hundred dollars and no cents, (\$,,.00) which includes:

§ 1.1.4 The Owner's anticipated design and construction schedule:

.1 Design phase milestone dates, if any:

See Exhibit B – Preliminary Project Milestone Schedule

.2 Commencement of construction:

See Exhibit B – Preliminary Project Milestone Schedule, Construction to begin FY –
contingent upon construction funding approval

.3 Substantial Completion date or milestone dates:

See Exhibit B – Preliminary Project Milestone Schedule, Substantial Completion for construction of the new building is based on a month construction duration and the substantial completion of the entire Construction Project is based on a month period from the receipt of construction funding.

.4 Other:

The project requires a 24 month warranty period following commissioning of the building systems.

§ 1.1.5 The Owner intends the following procurement method for the Project:
(Identify method such as competitive bid, negotiated Contract or multiple Prime Contracts.)

Competitive bidding for multiple prime contracts which may include multiple advertisements and bid openings.

§ 1.1.6 The Owner's requirements for accelerated or fast-track scheduling, multiple bid packages, or phased construction are set forth below: Owner anticipates awarding multiple prime contracts, and multiple procurements as required to meet funding and schedule constraints.
(List number and type of bid/procurement packages.)

§ 1.1.7 Other Project information: The project, at a minimum will follow the requirements of the latest edition and updates to the "State of Maryland, Public School Construction Program, Administrative Procedures Guide."
(Identify special characteristics or needs of the Project not provided elsewhere, such as environmentally responsible design or historic preservation requirements.)

§ 1.1.8 The Owner identifies the following representative in accordance with Section 5.5:
(List name, address and other information.)

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:
(List name, address and other information.)

The FCPS Maintenance and Operations Department

The FCPS Facilities Services/Planning Department

The FCPS Food Service Department

The FCPS Transportation Department

The FCPS Technical Services Department

The Elementary or Secondary School Improvement, Instruction and Administration Departments

The School Administration

(NOTE: The official names of the above referenced departments may change however the reviews shall cover the intended functional areas regardless of title.)

Init.

§ 1.1.10 Unless provided by the Construction Manager, the Owner will retain the following consultants and contractors:

(List name, legal status, address and other information.)

.1 Construction Testing Agency:

TBD

.2 Commissioning Agent:

.3 Third Party Constructability Reviewer:

TBD

.4 Other:

(List any other consultants retained by the Owner, such as a Project or Program Manager, or construction contractor.) Insert Theater Consultant, Athletic Facility Consultant, or other consultants as appropriate.

TBD

§ 1.1.11 The Construction Manager identifies the following representative in accordance with Section 2.4:

(List name, address and other information.)

§ 1.1.12 The Construction Manager's staffing plan as required under Section 3.3.2 shall include:

(List any specific requirements and personnel to be included in the staffing plan, if known.)

Exhibit C – Staffing Plan

§ 1.1.13 The Construction Manager's consultants retained under Basic Services, if any:

.1 Cost Estimator:

(List name, legal status, address and other information.)

.2 Other consultants:

Project Scheduling – Project Control Services

§ 1.1.14 The Construction Manager's consultants retained under Additional Services:

N/A

§ 1.1.15 Other Initial Information on which the Agreement is based: "The CM solicitation correspondence and submission."

FCPS Bid # RFQ 14-C-10 Construction Management Services.

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the schedules, the Construction Manager's services and the Construction Manager's compensation.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

§ 2.1 The Construction Manager shall provide the services as set forth in this Agreement.

§ 2.2 The Construction Manager shall perform its services consistent with the skill and care ordinarily provided by construction managers practicing in the same or similar locality under the same or similar circumstances. The Construction Manager shall perform its services as expeditiously as is consistent with such skill and care and the orderly progress of the Project.

§ 2.3 The Construction Manager shall provide its services in conjunction with the services of an Architect as described in AIA Document B132™–2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition as modified by Frederick County Public Schools. The Construction Manager shall not be responsible for actions taken by the Architect.

§ 2.4 The Construction Manager shall identify representatives authorized to act on behalf of the Construction Manager with respect to the Project.

§ 2.5 Except with the Owner's knowledge and consent, the Construction Manager shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Construction Manager's judgment with respect to this Project.

§ 2.6 The Construction Manager shall maintain the following insurance for the duration of this Agreement.

§ 2.6.1 Comprehensive General Liability with policy limits of not less than (\$) for each occurrence and in the aggregate for bodily injury and property damage. For insurance policy requirements see Article 14 coverage amounts.

§ 2.6.2 Automobile Liability covering owned and rented vehicles operated by the Construction Manager with policy limits of not less than (\$) combined single limit and aggregate for bodily injury and property damage. For insurance policy requirements see Article 14 for coverage amounts.

§ 2.6.3 The Construction Manager may use umbrella or excess liability insurance to achieve the required coverage for Comprehensive General Liability and Automobile Liability, provided that such umbrella or excess insurance results in the same type of coverage as required for the individual policies.

§ 2.6.4 Workers' Compensation at statutory limits and Employers Liability with a policy limit of not less than (\$). For insurance policy requirements see Article 14 for coverage amounts.

Init.

§ 2.6.5 Professional Liability covering the Construction Manager's negligent acts, errors and omissions in its performance of services with policy limits of not less than (\$) per claim and in the aggregate. For insurance policy requirements see Article 14 for coverage amounts.

§ 2.6.6 The Construction Manager shall provide within seven (7) days of issuance of a Notice of Award, to the Owner certificates of insurance evidencing compliance with the requirements in this Section 2.6. The certificates will show the Owner as an additional insured on the Comprehensive General Liability, Automobile Liability, umbrella or excess policies.

ARTICLE 3 SCOPE OF CONSTRUCTION MANAGER'S BASIC SERVICES

§ 3.1 Definition

The Construction Manager's Basic Services consist of those described in Sections 3.2 and 3.3 and include usual and customary construction coordination and scheduling, constructability review, cost estimating, and allocation of construction activities among the Multiple Prime Contractors.

§ 3.2 Preconstruction Phase

§ 3.2.1 The Construction Manager shall review the program furnished by the Owner and any evaluation of the Owner's program provided by the Architect, to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the Owner and Architect.

§ 3.2.2 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 3.2.3 The Construction Manager shall prepare, and deliver to the Owner, a written Construction Management Plan that includes, at a minimum, the following: (1) preliminary evaluations required in Section 3.2.2, (2) a Project schedule, (3) cost estimates, (4) recommendations for Project delivery method, and (5) Contractors' scopes of Work, if multiple Contractors construction will be used. The Construction Manager shall periodically update the Construction Management Plan over the course of the Project.

§ 3.2.4 Based on preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems and may also provide its own suggestions.

§ 3.2.5 The Construction Manager shall expeditiously review design documents during their development and advise the Owner and Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect on constructability, availability of materials and labor, sequencing for phased construction, time requirements for procurement, installation and construction, and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 3.2.6 The Construction Manager shall prepare and periodically update the Project schedule included in the Construction Management Plan for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and highlight items that could affect the Project's timely completion. Construction Manager shall develop recommendations for phases of construction to accommodate the Owner's program, schedule, funding and to meet the requirements of the authorities having jurisdiction.

§ 3.2.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement. The Construction Manager shall include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in the estimates of the Cost of the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall advise the Owner and

Architect immediately if it appears that the Cost of the Work may exceed the Owner's budget and make recommendations for corrective action.

§ 3.2.8 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations whenever the Construction Manager determines that design details adversely affect constructability, cost or schedules.

§ 3.2.9 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding the assignment of responsibilities for temporary Project facilities and equipment, materials and services for common use of the Contractors. The Construction Manager shall verify that such requirements and assignment of responsibilities are included in the proposed Contract Documents.

§ 3.2.10 The Construction Manager shall provide recommendations and information to the Owner regarding the allocation of responsibilities for safety programs among the Contractors, and include requirements for safety programs in the contractor's scope of work.

§ 3.2.11 The Construction Manager shall provide recommendations to the Owner on the division of the Project into individual Contracts for the construction of various categories of Work, including the method to be used for selecting Contractors and awarding Contracts. If multiple Contracts are to be awarded, the Construction Manager shall review the Drawings and Specifications and make recommendations as required to provide that (1) the Work of the Contractors is coordinated, (2) all requirements for the Project are assigned to the appropriate Contract, (3) the likelihood of jurisdictional disputes is minimized, and (4) proper coordination is provided for phased construction.

§ 3.2.12 The Construction Manager shall update the Project schedule to include the components of the Work, including phasing of construction, times of commencement and completion required of each Contractor, ordering and delivery of products, including those that must be ordered well in advance of construction, and the occupancy requirements of the Owner.

§ 3.2.13 The Construction Manager shall expedite and coordinate the ordering and delivery of materials, including those that must be ordered well in advance of construction.

§ 3.2.14 The Construction Manager shall assist the Owner in selecting, retaining and coordinating the professional services of surveyors, special consultants and testing laboratories required for the Project.

§ 3.2.15 The Construction Manager shall provide an analysis of the types and quantities of labor required for the Project and review the availability of appropriate categories of labor required for critical phases. The Construction Manager shall make recommendations for actions designed to minimize adverse effects of labor shortages.

§ 3.2.16 The Construction Manager shall assist the Owner in obtaining information regarding applicable requirements for equal employment opportunity programs, and other programs as may be required by governmental and for quasi-governmental authorities for inclusion in the Contract Documents including Davis Bacon and Prevailing Wage requirements of the State of Maryland.

§ 3.2.17 Following the Owner's approval of the Drawings and Specifications, the Construction Manager shall update and submit the latest estimate of the Cost of the Work and the Project schedule for the Architect's review and the Owner's approval.

§ 3.2.18 The Construction Manager shall submit the list of prospective bidders for the Architect's review and the Owner's approval and coordinate that list with the Frederick County Public Schools Purchasing Department.

§ 3.2.19 The Construction Manager shall develop bidders' interest in the Project and establish bidding schedules. The Construction Manager, with the assistance of the Architect, shall issue bidding documents to bidders and coordinate bidding activities with Owner's Purchasing Department and plan houses and conduct pre-bid conferences with prospective bidders. The Construction Manager shall issue the current Project schedule with each set of bidding documents. The Construction Manager shall assist the Architect with regard to questions from bidders and with the issuance of bidding Requests for Information (RFI's) and addenda.

§ 3.2.20 The Construction Manager shall assist the Frederick County Public Schools Purchasing Department receiving bids, prepare bid analyses and make recommendations to the Owner for the Owner's award of Contracts or rejection of bids.

§ 3.2.21 The Construction Manager shall assist the Architect and Owner in preparing Construction Contracts and advise the Owner on the acceptability of Subcontractors and material suppliers proposed by Multiple Prime Contractors.

§ 3.2.22 The Construction Manager shall assist the Architect and Owner in obtaining building permits and special permits for temporary and permanent improvements, except for permits required to be obtained directly by the various Multiple Prime Contractors. The Construction Manager shall verify that the Owner has paid applicable fees and assessments. The Construction Manager shall assist the Owner and Architect in connection with the Owner's responsibility for filing documents required for the approvals of governmental authorities having jurisdiction over the Project.

§ 3.3 Construction Phase Administration of the Construction Contract

§ 3.3.1 Subject to Section 4.3, the Construction Manager's responsibility to provide Construction Phase Services commences with the award of the initial Contract for Construction and terminates approximately twenty four (24) months after substantial completion and building occupancy. This 24 month period provides time to complete all Project Closeout requirements monitor the standard twenty-four (24) month warranty period and provide a final inspection at the end of the warranty.

§ 3.3.2 The Construction Manager shall provide a staffing plan to include one or more representatives who shall be in attendance at the Project site whenever the Work is being performed.

§ 3.3.3 The Construction Manager shall provide on-site administration of the Contracts for Construction in cooperation with the Architect as set forth below and in the Owner's modified AIA Document A232™-2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition. Construction Manager's services shall be inclusive of the requirements of the Owner's modified AIA Document A232-2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition.

§ 3.3.4 The Construction Manager shall provide administrative, management and related services to coordinate scheduled activities and responsibilities of the Multiple Prime Contractors with each other and with those of the Construction Manager, the Owner and the Architect. The Construction Manager shall coordinate the activities of the Multiple Prime Contractors in accordance with the latest approved Project schedule and the Contract Documents.

§ 3.3.5 Utilizing the construction schedules provided by the Multiple Prime Contractors, the Construction Manager shall update the Project schedule, incorporating the activities of the Owner, Architect, and Multiple Prime Contractors on the Project, including activity sequences and durations, allocation of labor and materials, processing of Shop Drawings, Product Data and Samples, and delivery and procurement of products, including those that must be ordered well in advance of construction. The Project schedule shall include the Owner's phasing and occupancy requirements showing portions of the Project having occupancy priority. The Construction Manager shall update and reissue the Project schedule as required to show current conditions. If an update indicates that the previously approved Project schedule may not be met, the Construction Manager shall recommend corrective action, if any, to the Owner and Architect, to minimize schedule, occupancy and cost impacts.

§ 3.3.6 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner, Architect and Multiple Prime Contractors.

§ 3.3.7 Utilizing information from the Multiple Prime Contractors, the Construction Manager shall schedule and coordinate the sequence of construction and assignment of space in areas where the Multiple Prime Contractors are performing Work, in accordance with the Contract Documents and the latest approved Project schedule.

§ 3.3.8 The Construction Manager shall schedule all tests and inspections required by the Contract Documents, with the Owner's third party inspection and testing firm, or governmental authorities, and arrange for the delivery of test and inspection reports to the Owner and Architect.

§ 3.3.9 The Construction Manager shall endeavor to obtain satisfactory performance from each of the Multiple Prime Contractors. The Construction Manager shall recommend courses of action to the Owner when requirements of a Contract are not being fulfilled.

§ 3.3.10 The Construction Manager shall monitor and evaluate actual costs for activities in progress and estimates for uncompleted tasks and advise the Owner and Architect as to variances between actual and budgeted or estimated costs. If the Contractor is required to submit a Control Estimate, the Construction Manager shall meet with the Owner and Contractor to review the Control Estimate. The Construction Manager shall promptly notify the Contractor if there are any inconsistencies or inaccuracies in the information presented. The Construction Manager shall also report the Contractor's cost control information to the Owner.

§ 3.3.11 The Construction Manager shall develop cash flow reports quarterly and forecasts for the Project.

§ 3.3.12 The Construction Manager shall maintain accounting records on authorized Work performed under unit costs, additional Work performed on the basis of actual costs of labor and materials, and other Work requiring accounting records. Construction Manager shall issue a written Notice to Proceed to Contractors authorizing work to be performed under unit costs or on the basis of actual costs of labor and materials as soon as practical after verbal authorization for such work.

§ 3.3.12.1 The Construction Manager shall develop and implement procedures for the review and processing of Applications for Payment by Multiple Prime Contractors for progress and final payments.

§ 3.3.12.2 Not more frequently than monthly, the Construction Manager shall review and certify the amounts due the respective Contractors as follows:

- .1 Where there is only one Contractor responsible for performing the Work, the Construction Manager shall, within seven days after the Construction Manager receives the Contractor's Application for Payment, review the Application, certify the amount the Construction Manager determines is due the Contractor, and forward the Contractor's Application and Certificate for Payment to the Architect.
- .2 Where there are Multiple Prime Contractors responsible for performing different portions of the Project, the Construction Manager shall, within seven days after the Construction Manager receives each Contractor's Application for Payment: (1) review the Applications and certify the amount the Construction Manager determines is due each Contractor, (2) prepare a Summary of Contractors' Applications for Payment by summarizing information from each Contractor's Application for Payment, (3) prepare a Project Application and Certificate for Payment, (4) certify the total amount the Construction Manager determines is due all Multiple Prime Contractors collectively, and (5) forward the Summary of Contractors' Applications for Payment and Project Application and Certificate for Payment to the Architect.

§ 3.3.12.3 The Construction Manager's certification for payment shall constitute a representation to the Owner, based on the Construction Manager's evaluations of the Work and on the data comprising the Contractors' Applications for Payment, that, to the best of the Construction Manager's knowledge, information and belief, the Work has progressed to the point indicated and 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 Construction Manager. The issuance of a Certificate for Payment shall further constitute a recommendation to the Architect and Owner that the Contractor be paid the amount certified.

§ 3.3.12.4 The certification of an Application for Payment or a Project Application for Payment by the Construction Manager shall not be a representation that the Construction Manager 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 for the Contractor's own Work, 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) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.3.13 The Construction Manager shall review the safety programs developed by each of the Multiple Prime Contractors solely and exclusively for purposes of coordinating the safety programs with those of the other Contractors and for making recommendations to the Owner for any safety programs not included in the Work of the Multiple Prime Contractors. The Construction Manager's responsibilities for coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractor, Multiple Prime Contractors, Subcontractors, agents or employees of the Contractors or Multiple Prime Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager.

§ 3.3.14 The Construction Manager shall determine in general that the Work of each Contractor is being performed in accordance with the requirements of the Contract Documents and notify the Owner, Contractor and Architect of defects and deficiencies in the Work. The Construction Manager shall have the authority to reject Work that does not conform to the Contract Documents and shall notify the Architect about the rejection. The failure of the Construction Manager to reject Work shall not constitute the acceptance of the Work. The Construction Manager shall record any rejection of Work in its daily log and include information regarding the rejected Work in its progress reports to the Architect and Owner pursuant to Section 3.3.20.1. Upon written authorization from the Owner, the Construction Manager may require and make arrangements for additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed, and the Construction Manager shall give timely notice to the Architect of when and where the tests and inspections are to be made so that the Architect may be present for such procedures.

§ 3.3.15 The Construction Manager shall advise and consult with the Owner and Architect during the performance of its Construction Phase Services. The Construction Manager shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Construction Manager shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work of each of the Contractors, since these are solely the Contractor's rights and responsibilities under the Contract Documents. The Construction Manager shall not be responsible for a Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall be responsible for the Construction Manager's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or Multiple Prime Contractors, Subcontractors, or their agents or employees, or any other persons or any other persons or entities performing portions of the Work.

§ 3.3.16 The Construction Manager shall transmit to the Architect requests for interpretations and requests for information of the meaning and intent of the Drawings and Specifications with its written recommendation, and assist in the resolution of questions that may arise. The Construction Manager shall maintain a schedule of Requests for Information (RFI) submitted by the prime contractors noting the contractor submitting such, the date of submittal, the date of transmittal to the architect and date of receipt of resolution.

§ 3.3.17 The Construction Manager shall review requests for changes, assist in negotiating Contractors' proposals, assure that change proposals meet the Owner's requirements as delineated in Article 7 of the Owner modified AIA Document A232-2009, General Conditions, submit recommendations to the Architect and Owner, and, if they are accepted, prepare Change Orders and Construction Change Directives that incorporate the Architect's modifications to the Contract Documents. The Construction Manager may verbally authorize time and material (T&M) and bid unit cost work to be accomplished as a change to the contract, however, shall issue a written Notice to Proceed for such work as soon as practical after the verbal authorization is issued. Copies of the Notice to Proceed shall be furnished to the Owner and Architect.

§ 3.3.18 The Construction Manager shall assist the Initial Decision Maker in the review, evaluation and documentation of Claims, subject to Section 4.3.1.7.

§ 3.3.19 Utilizing the submittal schedules provided by each Contractor, the Construction Manager shall prepare, and revise as necessary, a Project submittal schedule incorporating information from the Owner, Owner's consultants, Owner's separate contractors and vendors, governmental agencies, and all other participants in the Project under the management of the Construction Manager. The Project submittal schedule and any revisions shall be submitted to

the Architect for approval. The Construction Manager shall promptly review all Shop Drawings, Product Data, Samples and other submittals from the Multiple Prime Contractors for compliance with the submittal requirements of the Contract, coordinate submittals with information contained in related documents, and transmit to the Architect those that the Construction Manager recommends for approval. The Construction Manager's actions shall be taken in accordance with the Project submittal schedule approved by the Architect, or in the absence of an approved Project submittal schedule, with such reasonable promptness as to cause no delay in the Work or in the activities of the Contractor, other Multiple Prime Contractors, the Owner, or the Architect.

§ 3.3.20 The Construction Manager shall keep a daily log containing a record of weather, each Contractor's Work on the site, number of workers, identification of equipment, Work accomplished, problems encountered, and other similar relevant data as the Owner may require.

§ 3.3.20.1 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information identified below:

- .1 Work completed for the period;
- .2 Project schedule status;
- .3 Submittal schedule and status report, including a summary of remaining and outstanding submittals;
- .4 Request for information, Change Order, and Construction Change Directive status reports;
- .5 Tests and inspection reports;
- .6 Status report of nonconforming and rejected Work;
- .7 Daily logs;
- .8 Summary of all Multiple Prime Contractors' Applications for Payment;
- .9 Cumulative total of the Cost of the Work to date including the Construction Manager's compensation and reimbursable expenses at the job site, if any;
- .10 Cash-flow and forecast reports; and
- .11 Any other items the Owner may require;
- .12 Weather related delay claims.

(Paragraphs deleted)

§ 3.3.21 Utilizing the documents provided by the Contractor, the Construction Manager shall maintain at the site one copy of all Contracts, Drawings, Specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record all changes and selections made during construction, and in addition, approved Shop Drawings, Product Data, Samples and similar required submittals, third party testing and inspection reports, and inspection reports from the authorities having jurisdiction. The Construction Manager shall maintain records, in duplicate, of principal building layout lines, elevations of the bottom of footings, floor levels and key site elevations certified by a qualified surveyor or professional engineer. The Construction Manager shall make all such records available to the Architect and the Contractor, and upon completion of the Project, shall deliver them to the Owner.

§ 3.3.22 The Construction Manager shall arrange for the delivery, storage, protection and security of Owner-purchased materials, systems and equipment that are a part of the Project until such items are incorporated into the Work.

§ 3.3.23 With the Architect and the Owner's maintenance personnel, the Owner's HVAC Commissioning authority, the equipment manufacturer's representatives as appropriate, the Construction Manager shall observe the Contractor's or Multiple Prime Contractors' final testing and start-up of utilities, operational systems and equipment and observe any commissioning as the Contract Documents may require.

§ 3.3.24 When the Construction Manager considers each Contractor's Work or a designated portion thereof is substantially complete, the Construction Manager shall, jointly with the Contractor, prepare for the Architect a list of incomplete or unsatisfactory items and a schedule for their completion. The Construction Manager shall assist the Architect in conducting inspections to determine whether the Work or designated portion thereof is substantially complete.

§ 3.3.25 When the Work or designated portion thereof is substantially complete, the Construction Manager shall prepare, and the Construction Manager and Architect shall execute, a Certificate of Substantial Completion. The Construction Manager shall submit the executed Certificate to the Owner and Contractor. The Construction Manager

shall coordinate the correction and completion of the Work. Following issuance of a Certificate of Substantial Completion of the Work or a designated portion thereof, the Construction Manager shall evaluate the completion of the Work of the Contractor or Multiple Prime Contractors and make recommendations to the Architect when Work is ready for final inspection. The Construction Manager shall assist the Architect in conducting final inspections.

§ 3.3.26 The Construction Manager shall forward to the Owner, with a copy to the Architect, the following information received from the Contractor or Multiple Prime Contractors: (1) certificates of insurance received from the Contractor or Multiple Prime Contractors; (2) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (3) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (4) any other documentation required of the Contractor under the Contract Documents, including warranties and similar submittals.

§ 3.3.27 The Construction Manager shall deliver all keys, manuals, record drawings and maintenance stocks to the Owner. The Construction Manager shall forward to the Architect a final Project Application for Payment and Project Certificate for Payment or final Application for Payment and final Certificate for Payment upon the Contractor's compliance with the requirements of the Contract Documents.

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

§ 3.3.29 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Construction Manager shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

§ 3.3.30 Construction Manager shall coordinate the activities of the Owner's third party consultants as identified in section 1.1.10.4.

§ 3.3.31 The Construction Manager's required services are more specifically enumerated in Article 12.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Services listed below are included in Basic Services and may be required for the Project. The Construction Manager shall provide the listed Services only if specifically designated in the table below as the Construction Manager's responsibility,

(Designate the Additional Services the Construction Manager shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)

Services	Responsibility (Construction Manager, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Measured drawings	Architect	4.2.1
§ 4.1.2 Architectural interior design (B252™–2007)	Architect	4.2.2
§ 4.1.3 Tenant-related services		4.2.3
§ 4.1.4 Commissioning (B211™–2007)	Owner	4.2.4
§ 4.1.5 LEED® certification (B214™–2007)	Architect	4.2.5
§ 4.1.6 Furniture, furnishings, and equipment design (B253™–2007)	Architect	4.2.6

(Row deleted)

§ 4.2 Description of Additional Services designated in Section 4.1, if not further described in an exhibit attached to this document.

4.2.1 Measured drawings refer here to sketches and additional drawing required to be drawn to scale printing of such documents shall be funded by either the Owner or Construction Manager.

- 4.2.2 Interior design shall be limited to color and material selection for the interior finishes and space design to assure that the required instructional equipment will efficiently fit within the space provided.
- 4.2.3 Tenant related services are not a part of this contract unless specific as such elsewhere.
- 4.2.4 Commissioning shall be performed by a third party contractor working directly for the owner. The Architect and his consultants, the Construction Manager and require prime contractors shall work with the commissioning agent to complete the commissioning of the building.
- 4.2.5 LEED certification shall be a requirement of all State funded school construction projects unless specified such herein. The Architect, Construction Manager and Owner shall work together to achieve the required certifications where the fees for such certification shall be paid by the owner or as a reimbursable expense to the Architect.
- 4.2.6 Equipment specification and purchase will be accomplished by the Owner, Coordination with both the Architect during the design and the Construction Manager during construction shall be provided to assure efficient use and placement of the equipment to be used.

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating this Agreement. Except for services required due to the fault of the Construction Manager, any Additional Services provided in accordance with this Section 4.3 shall entitle the Construction Manager to compensation pursuant to Section 11.3.

§ 4.3.1 Upon recognizing the need to perform Additional Services as determined by the Owner, the Construction Manager shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Construction Manager shall not proceed to provide the services until the Construction Manager receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method, or bid packages in addition to those listed in Section 1.1.6;
- .2 Services necessitated by the enactment or revision of codes, laws or regulations or official interpretations after the date of this Agreement;
- .3 Preparation of documentation for alternate bid or proposal requests proposed by the Owner;
- .4 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .5 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Construction Manager is party thereto;
- .6 Providing consultation concerning replacement of Work resulting from fire or other cause during construction and furnishing services required in connection with the replacement of such Work;
- .7 Assistance to the Initial Decision Maker, if other than the Architect; or
- .8 Service as the Initial Decision Maker.

§ 4.3.2 To avoid delay in the Construction Phase, the Construction Manager shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Construction Manager, and the Owner shall have no further obligation to compensate the Construction Manager for those services:

- .1 Services in evaluating an extensive number of Claims submitted by a Contractor or others in connection with the Work when the Architect is serving as the Initial Decision Maker.
- .2 To the extent the Construction Manager's Basic Services are affected, providing Construction Phase Services as defined in 3.3.1.
- .3 Services required in an emergency to coordinate the activities of a Contractor or Multiple Prime Contractors in the event of risk of personal injury or serious property damage, consistent with Section 3.3.13.

§ 4.3.3 If the services covered by this Agreement have not been completed within approximately twenty-four (24) months after Substantial Completion, building occupancy, as well as completing the Project Closeout requirements monitoring and final inspections for the standard 24 month warranty period, through no fault of the Construction

Manager, an extension of the Construction Manager's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including the Owner's program, other objectives, schedule, constraints and criteria, special equipment, systems, and site requirements. Within 15 days after receipt of a written request from the Construction Manager, the Owner shall furnish the requested information as necessary and relevant for the Construction Manager to evaluate, give notice of, or enforce any lien rights, if any.

§ 5.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the budget for the Cost of the Work or in the Project's scope and quality.

§ 5.3 The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it the risk of additional costs. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.

§ 5.4 The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B132-2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition, as modified by the Owner. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and Architect, and any further modifications to the agreement.

§ 5.5 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions pertaining to documents the Construction Manager submits in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Construction Manager's services.

§ 5.6 Unless provided by the Construction Manager, the Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.7 Unless provided by the Construction Manager, the Architect shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.8 The Owner shall coordinate the services of its own consultants with those services provided by the Construction Manager. Upon the Construction Manager's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Construction Manager to furnish them as an Additional Service, when the Construction Manager requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance and other liability insurance as appropriate to the services provided.

§ 5.9 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.10 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

Init.

§ 5.11 The Owner shall provide prompt written notice to the Construction Manager and Architect if the Owner becomes aware of any fault or defect in Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service or any fault or defect in the Construction Manager's services.

§ 5.12 The Owner reserves the right to perform construction and operations related to the Project with the Owner's own forces, and to award contracts in connection with the Project which are not part of the Construction Manager's responsibilities under this Agreement. The Construction Manager shall notify the Owner if any such independent action will interfere with the Construction Manager's ability to perform the Construction Manager's responsibilities under this Agreement. When performing construction or operations related to the Project, the Owner agrees to be subject to the same obligations and to have the same rights as the Contractors.

§ 5.13 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Construction Manager's consultants through the Construction Manager about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Construction Manager of any direct communications that may affect the Construction Manager's services.

§ 5.14 Before executing the Contract for Construction, the Owner shall coordinate the Construction Manager's duties and responsibilities set forth in the Contract for Construction with the Construction Manager's services set forth in this Agreement. The Owner shall provide the Construction Manager a copy of the executed agreements between the Owner and Contractors, including the General Conditions of the Contracts for Construction.

§ 5.15 The Owner shall provide the Construction Manager access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Construction Manager access to the Work wherever it is in preparation or progress.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include the contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, and contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2 and 6.4. Evaluations of the Owner's budget, preliminary estimates for the Cost of the Work and detailed estimates of the Cost of the Work prepared by the Construction Manager represent the Construction Manager's judgment as a person or entity familiar with the construction industry. It is recognized, however, that neither the Construction Manager nor the Owner has control over the cost of labor, materials or equipment, over Contractors' methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Construction Manager cannot and does not warrant or represent that bids or negotiated prices will not vary from the budget proposed, established or approved by the Owner, or from any cost estimate or evaluation prepared by the Construction Manager.

§ 6.3 If the Architect is providing detailed cost estimating services as an Additional Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Architect and the Construction Manager shall work cooperatively to conform the cost estimates to one another.

§ 6.4 If, prior to the conclusion of the Design Development Phase, the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Construction Manager, in consultation with the Architect, shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget, and the Owner shall cooperate with the Construction Manager and Architect in making such adjustments.

§ 6.5 If the estimate of the Cost of the Work at the conclusion of the Design Development Phase exceeds the Owner's budget for the Cost of the Work, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;

- .2 in consultation with the Construction Manager and Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .3 implement any other mutually acceptable alternative.

ARTICLE 7 COPYRIGHTS AND LICENSES

The Construction Manager and the Construction Manager's consultants, if any, shall not own or claim a copyright in the Instruments of Service. The Construction Manager, the Construction Manager's consultants, if any, and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Construction Manager 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.

ARTICLE 8 Litigation

§ 8.1 All Claims, disputes or other matters in question between the Owner and Construction Manager arising out of, or related to, the Contract Documents, or the breach thereof, shall be decided by the Circuit Court or District Court for Frederick County. In the event that the Circuit Court or District Court of Frederick County do not have jurisdiction over all necessary parties, Construction Manager consents to the jurisdiction of any Court selected by Owner which otherwise has jurisdiction over all parties deemed necessary by Owner for complete resolution of the dispute or claim or other matter in questions.

(Paragraphs deleted)

§ 8.2 The filing of suit shall be made within a reasonable time after the claim, dispute, or other matter in question has arisen, and in no event shall it be made after the date when the institution of legal or equitable proceedings based on such claim would be barred by the applicable statute of limitations.

(Paragraphs deleted)

§ 8.3 Unless otherwise agreed in writing, the Construction Manager shall carry on with the Work and maintain its progress during any litigation proceedings, and the Owner shall continue to make payments to the Construction Manager in accordance with the Contract Documents.

(Paragraphs deleted)

§ 8.4 The award rendered and judgment in accordance with applicable law in the court having jurisdiction thereof shall be final.

ARTICLE 9 TERMINATION, SUSPENSION OR ABANDONMENT

§ 9.1 In the event Construction Manager is terminated for failing the substantially perform, Owner may take possession of the site and all material, equipment, tools, construction equipment and machinery thereon owned by Construction Manager and may finish the Project by whatever method the Owner may deem expedient.

§ 9.2 If the Project is suspended by the Owner for more than 30 consecutive days, the Construction Manager shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Construction Manager's compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the Construction Manager's services, as agreed to by both parties.

§ 9.3 The Owner may terminate this Agreement whenever the Owner, in its sole discretion, shall determine that such termination is in the best interest of the Owner (termination for convenience). Any such termination shall be effected by delivery to the Construction Manager of a Notice of Termination specifying the basis for the termination, the extent to which performance of work is terminated and the effective date of such termination. In the event of termination under this provision, Construction Manager shall be entitled to receive compensation for the portion of its fee earned to the date of termination and all substantiated reimbursable expenses under this Agreement if any, as of the date of termination. No other or additional sums, whether for lost profits, overhead, consequential damages, direct or indirect damages, or any other damages or claims, whether in contract or in tort shall be payable by the Owner. If after termination of this Agreement or any part thereof, for failure to substantially perform under 9.1 above (termination for default), it is adjudged that the Construction Manager was not at fault pursuant to 9.1, or that the Construction Manager's failure to perform satisfactorily is due to causes beyond the control of and without fault or negligence on the part of the Construction Manager, any termination under 9.1 shall be deemed to be a

termination for convenience under this subparagraph 9.3 and the rights and obligations of the parties, including compensation payable by Owner to Construction Manager, shall be governed by and resolved accordingly. Upon receipt of a Notice of Termination and except as otherwise directed by the Owner, the Construction Manager shall stop work under this Agreement on the date and to the extent specified in the Notice of Termination; and shall take all necessary or appropriate steps to limit disbursements and to minimize costs; and will furnish a report as of the date of receipt of notice of suspension or termination, of the status of all activities conducted under the terms of this Agreement including the work effort, and such other matters as the Owner may require. In the event of termination under this Article, Construction Manager consents to the Owner's selection of another Construction Manager of the Owner's choice to assist the Owner in any way in completing the Project. Construction Manager further agrees to cooperate and provide any information requested by the Owner in connection with the completion of this Project, including assignment of any contract rights as the Owner may require. Any services provided by Construction Manager which are requested by Frederick County after termination shall be fairly compensated by Frederick County as an Additional Service. Provided, however, Construction Manager shall not be relieved of any liability to the Owner by reason of any breach of this contract by Construction Manager and the Owner may withhold payment to the Construction Manager for the purpose of set-off until such time as the exact amount due to the Owner and Construction Manager is determined.

§ 9.4 Failure of the Owner to make payments to the Construction Manager in accordance with this Agreement shall be considered substantial nonperformance and cause for termination.

§ 9.5 If the Owner fails to make payment when due the Construction Manager for services and expenses, the Construction Manager may, upon seven days' written notice to the Owner, suspend performance of services under this Agreement. Unless payment in full is received by the Construction Manager within seven days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services, the Construction Manager shall have no liability to the Owner for delay or damage caused to the Owner because of such suspension of services.

§ 9.6 In the event of termination not the fault of the Construction Manager, the Construction Manager shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due.

§ 9.7 Suspension of Agreement due to funding or permit delays. The Owner may suspend this Agreement whenever the Owner, in its sole discretion, shall determine that such suspension is in the best interest of the Owner (suspension due to funding or permit delays), due to delays in the provision of funding for the project or due to delays beyond 120 days in length in the receipt of appropriate permits allowing the start and/or continuation of construction of the Work. Any such suspension shall be affected by delivery to the Construction Manager of a Notice of Suspension specifying the basis for the suspension, the extent to which performance of Work is suspended, and the effective date of such suspension, and the expected date of resumption of the Work. In the event of suspension under this provision, Construction Manager shall be entitled to receive compensation for the portion of its fee earned to the date of suspension and all substantiated expenses reimbursable under this Agreement, if any, as of the date of suspension. No other or additional sums, whether for lost or indirect damages, or any other damages or claims, whether in contract or in tort, shall be payable by the Owner.

(Paragraphs deleted)

ARTICLE 10 MISCELLANEOUS PROVISIONS

(Paragraph deleted)

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A232-2009, General Conditions of the Contract for Construction, except for purposes of this Agreement, the term "Work" shall include the work of all Contractors under the administration of the Construction Manager.

§ 10.3 The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

§ 10.4 If the Owner requests the Construction Manager to execute certificates, the proposed language of such certificates shall be submitted to the Construction Manager for review at least 14 days prior to the requested dates of

Init.

execution. If the Owner requests the Construction Manager to execute consents reasonably required to facilitate assignment to a lender, the Construction Manager shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Construction Manager for review at least 14 days prior to execution. The Construction Manager shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Construction Manager.

§ 10.6 Unless otherwise required in this Agreement, the Construction Manager shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Construction Manager shall have the right to include photographic or artistic representations of the design of the Project among the Construction Manager's promotional and professional materials. The Construction Manager shall be given reasonable access to the completed Project to make such representations. However, the Construction Manager's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Construction Manager in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Construction Manager in the Owner's promotional materials for the Project.

§ 10.8 If the Construction Manager or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

ARTICLE 11 COMPENSATION

§ 11.1 For the Construction Manager's Basic Services described under Article 3, the Owner shall compensate the Construction Manager as required by the solicitation package: See Exhibit D – Form of Proposal.

(Paragraphs deleted)

§ 11.1.2 For Construction Phase Services in Section 3.3: "Not less than five (5) per cent of the total Construction Manager's fee shall be held by the Owner at the completion of the project until all close out documents are provided to the Owner from all prime contractors."

(Insert amount of, or basis for, compensation, including stipulated sums, multiples or percentages.)

CM Pre-Construction Fee \$00,000.00 Initial Purchase Order.

CM Construction Fee \$0,000,000.00 Subsequent PO subject to availability of funds.

Total CM Pre-Construction and Construction fee \$0,000,000.00

CM Reimbursables

Pre-Construction reimbursables \$00,000.00 Initial Purchase Order

Construction Reimbursables \$000,000

Total CM reimbursables \$000,000.00

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Construction Manager as follows:

(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Construction Manager as follows:

(Insert amount of, or basis for, compensation.)

Is the project schedule is extended then The Construction Management per month fee is Thousand
hundred dollars and no cents - \$00,000.00

§ 11.4 Compensation for Additional Services of the Construction Manager's consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Construction Manager plus ten percent (10 %), or as otherwise stated below:

§ 11.5 The hourly billing rates for services of the Construction Manager and the Construction Manager's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Construction Manager's and Construction Manager's consultants' normal review practices.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Employee or Category	Rate (\$0.00)
----------------------	---------------

§ 11.6 Compensation for Reimbursable Expenses

§ 11.6.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Construction Manager and the Construction Manager's consultants directly related to the Project, as follows:

- .1 FCPS pre-approved transportation and authorized out-of-town travel and subsistence;
- .2 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .3 Printing, reproductions, plots, standard form documents;
- .4 Postage, handling and delivery;
- .5 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .6 Professional photography, and presentation materials requested by the Owner;
- .7 Construction Manager's consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Construction Manager's consultants;
- .8 All taxes levied on professional services and on reimbursable expenses;
- .9 Temporary electricity;
- .10 Temporary toilets;
- .11 Temporary fencing;
- .12 Temporary access roads;
- .13 Drinking water;
- .14 Winter protection;
- .15 Equipment rental;
- .16 Clean-up;
- .17 Dumpsters;
- .18 Professional cleaning;
- .19 Liability insurance;
- .20 Automated project management system by "Submittal Exchange".
- .21 Groundbreaking ceremony
- .22 Constructability review
- .23 Seismic monitoring
- .24 Internet service
- .25 Temporary signs
- .26 Office supplies
- .27 Office Trailer
- .28 Telephone
- .29 Surveying
- .30 Temporary heat
- .31 Utility locators
- .32 Other unidentified services, equipment and materials - \$100,000.00

Init.

§ 11.6.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Construction Manager and the Construction Manager's consultants plus Ten percent (10 %) of the expenses incurred.

§ 11.7 Payments to the Construction Manager

(Paragraph deleted)

§ 11.7.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid 60 (sixty) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.

(Insert rate of monthly or annual interest agreed upon.)

Zero % 0

§ 11.7.3 The Owner shall not withhold amounts from the Construction Manager's compensation to impose a penalty or liquidated damages on the Construction Manager, or to offset sums requested by or paid to Contractors for the cost of changes in the Work unless the Construction Manager agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.7.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows: See Article 14; Other Conditions or Services

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 13.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document C132™-2009, Standard Form Agreement Between Owner and Construction Manager as Adviser, as modified by the Owner.
- .4 Other documents: Article 14; Other Conditions or Services: and all documents and submissions of the initial and supplemental Construction Manager solicitation.
(List other documents, if any, including additional scopes of service forming part of the Agreement.)

ARTICLE 14 OTHER CONDITIONS OR SERVICES

(Insert descriptions of other services, identify Additional Services included within Basic Compensation and modifications to the payment and compensation terms included in this Agreement.)

Services required due to Article 3.2.3 and Article 3.3.2. are Basic Services and shall not be compensated in addition to the Construction Managers current Contract.

Per FCPS RFQ 14-C-10

14.1 INSURANCE

The insurance coverage provided shall be written for not less than the following minimum limits, or greater if required by law for all of the following:

(Insert the specific dollar amounts for the appropriate insurance limits of liability.)

1. Worker's Compensation: As required by Statute with statutory benefits as required by any state or Federal law, including standard "other states" coverages; and employers liability insurance or its equivalent.
2. Commercial Comprehensive General Liability Insurance, to include premises, elevator, products, completed operations, personal injury, bodily injury and property damage including loss of use, with minimum limits of:

4. Insurance provided to the Owner and Owner's elected and appointed officials, officers, consultants, agents, and employees under any Construction Manager's liability insurance required herein, including, but not limited to, umbrella and excess liability or excess liability policies, shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of insurance or self-insurance. Any cross suits or cross liability exclusion shall be deleted from Construction Manager's liability insurance policies required herein.
- f. Insurance provided to the Owner and Owner's elected and appointed officials, officers, consultants, agents and employees under any Construction Manager's liability insurance required herein, including, but not limited to, umbrella and excess liability or excess liability policies, shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of insurance or self-insurance. Any cross suits or cross liability exclusion shall be deleted from Construction Manager's liability insurance policies required herein.

If any liability insurance purchased by the Construction Manager has been issued on a "claims made" basis, the Construction Manager must comply with the following additional conditions.

The Construction Manager shall agree to provide certificates of insurance evidencing the above coverage for a period of two years final payment for the Contract. Such certificates shall evidence a retroactive date no later than the beginning of the Work under this Contract; or

- g. The Construction Manager shall purchase an extended (minimum two years) reporting period endorsement for each such "claims made" policy in force as of the date of final acceptance and evidence the purchase of this extended reporting period endorsement by means of certificate of insurance or a copy of the endorsement itself. Such certificates or copy of the endorsement shall evidence retroactive date no later than the beginning of the Work of this Contract.

The Construction Manager's selection of insurers shall be acceptable to the Owner and the insurer shall be lawfully authorized to do business in the State of Maryland.

The Construction Manager shall not commence Work under this Agreement until satisfactory evidence of all required coverage is submitted to the Owner. Further, the Construction Manager shall not reduce or cancel or change any of the required coverages without the consent of the Owner. Failure to maintain required insurances shall be viewed as a material breach of this Agreement. Upon notification by Owner that required insurance has lapsed of the Construction Manager, the Owner, at its option and sole discretion, may terminate this Contract or may purchase such insurance and the Construction Manager shall be responsible for the payment of any applicable premiums.

§ 14.2 Additional Article 14 Requirements

1. General Information
 - a. The Project will consist of the requirements identified by: The Educational Specifications, The Frederick County Public Schools Design Guide, The State of Maryland Public Schools Construction Program, IAC and DGS programs.
 - b. The Project time line starts with the Architect's and Construction Manager's selection; this may be contingent on final funding approval. The basic services of the Construction Manager will terminate approximately twenty-four (24) months after Substantial Completion and Building occupancy. The 24 month period allows for completion of Project Closeout requirements and monitoring final inspection of the twenty-four (24) month warranty period.
 - c. The Construction Management Firm shall base their proposal on providing reviews coinciding with the timing requirements of the Maryland Public Schools Program and the construction schedule complying with the proposed opening of the Facility.
 - d. The Fee shall include all overhead, general conditions, required staff, CM transportation, office facilities, supplies, equipment and all associated costs including maintenance of office and CM provided equipment.
 - e. Reimbursables shall be limited to the items listed at the end of the form of proposal.
 - f. Frederick County Public Schools cannot allow Construction Management firms requirements in Prime Contract Packages as funds for services that are included in the Construction Managers proposal

Init.

(Dumpster Requirements may be included in trade packages, CM shall include general dumpster requirements, temporary lighting and electrical receptacles in trade packages).

- g. This Request for Proposal and the AIA C132-2009 Owner – Construction Manager Form of Agreement as modified by FCPS, list Insurance coverages required by this proposal. If the insurance coverages required by this proposal are in excess of the amount carried by the Construction Management Firm, then the cost of the excess coverage may be included as a reimbursable expense provided an insurance bill, is provided specifically for this project and only the cost in excess of the normal amount of coverage carried by the Construction Manager differences are clearly identified. The Construction Managers total cost for this project insurance is not a reimbursable.
 - h. CM shall utilize FCPS billing format for CM services.
 - i. Additional Services: The Project Scope of Work must add acreage to the site, extend the established Project Schedule and/or changes to the Educational Specification that are over and above the original educational specifications to be considered as an increase in the Project Scope of Work that will result in additional compensation to the Construction Manager. Offsite utility, access road work, additional staff-hours, or overtime required to provide a complete functional facility is not considered an increase in scope or eligible for additional compensation by the terms of this contract.
 - j. Construction Manager or subsidiary firms shall not bid any work associated with this project as a prime or sub-contractor.
2. Pre-Construction Phase
- a. CM will provide preliminary evaluation of Owner's program, project plan, educational specifications, schedule, FCPS Design Guide requirements and construction estimates and budget. (As the design progresses the Educational Specifications may be modified).
 - b. Additions, renovations, alterations, and up-grades; The CM shall review existing building conditions which could impact the schedule including but not limited to hazardous materials, occupied areas, requirements to maintain occupancy and space constraints associated with proposed installation, etc. The CM shall schedule and coordinate without disruption to the building occupants throughout the project.
 - c. CM will provide a detailed cost estimate(s) at the SD, DD, and CD design phases of the project and provide reports showing the comparisons with the budget. CM will divide the budget into bid packages so that when the bids are received they can be analyzed against the budgeted value.
 - d. CM shall provide Value Engineering Services for the project to identify items that may be changed to save funds to improve operation of the facility and best fit the FCPS design guide. In the event the Architect rejects substantial cost savings concepts, the CM shall prepare a detailed cost savings estimate and alternative construction method(s) with detailed cost estimates for FCPS to review. The value engineering process must also include a constructability analysis during the design process.
 - e. CM will review and provide comments on construction document plans and specifications for general constructability, completeness, accuracy, scheduling, phasing, sequencing of operations, dimensional accuracy, and coordination to minimize change orders during construction.
 - f. CM will review documents advising and providing recommendations to FCPS for proposed;
 - 1) site use improvements,
 - 2) special conditions required by the building site,
 - 3) selection and specification of bid alternates,
 - 4) selection of materials, building systems and equipment,
 - 5) method of project delivery and alternate construction methods,
 - 6) availability of materials, labor and time requirements for procurement,
 - 7) factors related to construction cost including alternative designs and materials,
 - 8) budget and possible bidding economies or volume discounts,
 - g. CM will divide the work plans and specifications into bid packages providing FCPS general assurance that all items for the construction of the facility are identified and assigned to individual bid packages. (Architect will prepare actual plans and specifications as a project, the work will not be subdivided the plans or specifications into bid packages by the Architect).
 - h. After the CM has completed its document review and subdivided the complete project into scope packages, the CM shall provide FCPS with a letter indicating the CM has reviewed the documents and finds the bid documents (plans, specifications, unit price items, etc.) complete. The CM shall confirm that the completed bid documents are sufficiently detailed providing quantity and quality of the project for Prime Contractors to bid and construct the project without: excessive request for information, change

orders or schedule delays. Should the CM find the bid documents lacking detail or completeness to issue the aforementioned letter the CM shall submit a letter to FCPS providing a list of potential change orders and projected change order cost associated with omitted details or incompleteness of the documents. The letters are to be provided so FCPS can make an informed decision regarding the release of the bid documents to Contractors.

- i. CM will prepare bid packages to submit to State IAC for approval. (Architect will prepare plans and specifications but CM will assemble, provide appropriate accompanying information, and deliver to FCPS for submission to the State IAC).
 - j. Preparation of bid documents: the Architect will prepare the plans and specifications. CM shall arrange plans and specifications in Bid-Packages and prepare division 0900 specification. The Architect and Construction Manager shall prepare preliminary sets of BID Documents and meet with FCPS Purchasing to coordinate and finalize the Bid Sets. The CM and Architect shall prepare additional documentation including bidding information and forms as required by FCPS Purchasing or Construction Management Departments. The CM shall arrange for printing of Construction Documents with FCPS Plan House and Purchasing Department. FCPS may elect to distribute the Bid Documents using electronic media as a CD or DVD. Construction Document Printing or the purchase of electronic media (CD or DVD) by the CM shall be a reimbursable item.
 - k. The CM shall deliver the IAC submittal(s) on behalf of Frederick County Public Schools after completing the package(s) and receiving appropriate documentation from FCPS. The CM shall obtain a signed contract transmittal from the IAC listing all information delivered.
 - l. CM shall coordinate with FCPS Purchasing Department and Plan House to obtain a CD or DVD of the documents and paper plans as requested by the Senior Project Manager for the Owners use.
 - m. Architect will complete the process of obtaining all necessary building permits, other permits required for construction and work with the county agencies to develop Public Works Agreement, Modified Public Works Agreements, and such other agreements and easements as may be required by the State, County and/or City. CM shall assist in these efforts assuring that any and all document modifications required to obtain the permit are being incorporated by the Architect. The CM is not attending the meeting as a designer. FCPS will assist as required.
 - n. The CM will develop, monitor, and maintain a project schedule that includes, but is not limited to, the following elements; planning, design, permitting, approvals.
3. Pre Bid/Bidding Phase
- a. The FCPS Purchasing Department maintains pre-qualified bidder list for projects over \$250,000.00. This list is available to the CM for review.
 - b. Specific trade requirements & qualifications must be indicated by the Specification Section 0900 and individual division specification for such requirements as Years of Experience, Certifications, Manufacturer Representation, etc.
 - c. FCPS will advertise for Prime Contractor Bids; however the CM should poll prospective bidders to assure maximum competition. The CM should be prepared to assist in the advertising process when authorized by FCPS Purchasing Department.
 - d. CM, having divided the project into trade packages shall solicit bidder participation for each package. CM shall provide FCPS Purchasing Department will a current list of potential Bidders for each Trade Package.
 - e. Distribution of Bid Documents (plans and specifications) and all Addenda will be from the FCPS Purchasing Departments or their representative, however, the Construction Manager is required to work in coordination with other members of the design team and FCPS Purchasing Department and Plan House when developing, copying and delivering addenda to FCPS Purchasing Department in a timely manner. The CM must review Addenda for content and division placement into trade packages.
 - f. CM will conduct pre-bid meetings, in conjunction with the Architect and FCPS Purchasing Department. The CM will record meetings minutes, questions, and answers arising from Pre-Bid Meeting(s) providing documentation and a report to FCPS Purchasing for distribution of pre-bid addenda to all parties.
 - g. Purchasing Department will receive bids; the CM will be present assisting FCPS in opening and recording bids. CM shall prepare bid tabulation for FCPS. The bid tabulation shall be in a form that allows for assessment and selection of alternates and assessment of the Trade package budget and project budget. FCPS Purchasing Department may provide a sample for reference.
 - h. CM will review bids with FCPS and A/E.
 - i. CM will review bid proposals for responsiveness advising FCPS of their findings.

- j. CM will review proposed substitutions and work with the design team providing recommendations for any construction impact and consideration for acceptance.
 - k. CM shall conduct pre-award conference(s) with the apparent low bidder reviewing the scope of services to be provided in connection with the submitted bid. The CM shall document the review and direct the apparent low bidder to execute the pre-award conference meeting documentation that acknowledges acceptance of the pre-award conference that will become part of the executed Contract.
 - l. CM will assist Purchasing Department in determining the qualifications of the successful prime contractors. A determination will be made by checking references provided by Prime Contractors, the specified requirements and other means approved by the Purchasing Department.
 - m. CM will compile recommendations for formal approval of base bid and selected alternates in conjunction with FCPS Construction Management and Purchasing Departments.
 - n. FCPS Purchasing Department, with assistance from CM and A/E, will prepare award recommendation report(s) for the Board of Education review and action. This report will include the bid tabulations and bid recommendations prepared by the Construction Manager.
 - o. CM will prepare bid packages and appropriate forms for State IAC approval of contract award in a timely manner. The CM shall obtain a formal transmittal to the state from the Project Manager and delivery packages to the state.
 - p. The Owner reserves the right to employ the services of a professional contracting rating service to assist in the evaluation of the bids and contractors.
4. Construction Phase – Administration
- a. CM will prepare final contracts for FCPS review, approval, and submit and track approved contracts to the Contractor(s) for signature. (CM must utilize the same contract available in the project specifications at the time of bid).
 - b. CM will review Prime Contractor' MBE compliance, and certify as to same with each payment requisition.
 - c. CM will ensure that Prime Contractors comply with bond, insurance, and subcontract requirements and shall obtain all appropriate files.
 - d. CM will schedule, track, and review submittals and shop drawings to assure adherence to the contract specifications and project schedule. The CM shall provide recommendation comments to A/E as to compliance with the specifications, general constructability and schedule. FCPS will provide a sample numbering system for tracking purposes; no installation shall proceed without the A/E's approval of submittals and shop drawings.
 - e. CM will coordinate all jobsite progress meetings, record minutes, and distribute with-in 48 hrs.
 - f. The CM shall confirm billing with the contractors construction schedule and the contractors schedule of values and the actual work completed.
 - g. CM will review and approve all requisitions for actual progress of the work completed, accuracy of the requisition, and assurance that all contractors submit and maintain accurate records for MDB and prevailing wage requirements. Requisitions that are not approved shall be returned to the Contractor with written detail of all errors that prohibited approval.
 - h. CM will provide reviews and recommendations for all change orders providing recommendations for FCPS consideration to be within budget and to maintain schedule. Consideration should be given to cost, schedule, FCPS approval requirements, constructability, construction contract requirements, general building operation, and alternative construction methods or vendors.
 - i. CM will review Contractor(s) proposals for cost, time, required materials, alternate construction methods, and schedule providing recommendations for all change orders.
 - j. FCPS will issue progress payments payable to Prime Contractors. Progress payments will not be made without appropriate documentation and certification from CM. the payment recommendations shall including recommendations from CM identifying Prime Contractors are on schedule and those that are not on schedule.
 - k. CM will provide project closeout and coordination for M/E demonstration(s) and commissioning.
 - l. CM will provide field trailer, telecommunications, furniture, copier, FAX machine, and other office furnishings as required. This requirement shall include an office (120 sq. ft.) for the FCPS inspector with 1 Data (high speed data when available) and appropriate furnishings. A meeting room sized & furnished for minimum of 20 people, this space maybe common space for both Owner and CM's use. This Cost shall be in the base fee of the project (Not Reimbursable).

- m. CM will provide a Competent Superintendent and other staff as necessary to properly manage, document and oversee the construction project.
 - n. CM shall review and update the schedule as work progresses. Printed copies of the schedule shall be included in the Construction Managers monthly reports. The schedule shall be printed in both critical path method and bar chart (bar chart shall include a bar indicating the bid scheduled time frame, current revised schedule, actual progress and all change order work. The schedule shall be cost loaded with the CM estimates at the start of the bidding process and the cost shall be updated with the actual bids and change orders when approved. (ESTIMATED COST SHALL NOT BE PROVIDED TO THE BIDDERS).
 - o. During the course of the project, the CM will provide problem-solving services by coordinating activities with the A/E in the identification of problems and the reasons and/or causes. The CM shall provide optional solutions to these problems by developing alternative means, materials, scheduling, and cost. The data shall then be presented to FCPS, and the CM shall work with FCPS and A/E in implementing the chosen method for corrective action(s).
 - p. The duration of the Owner-CM Agreement shall start at the signing of this Contract through Board of Education project closeout. Closeout may be approximately twenty-four (24) months after building completion, final payments to Contractors, issuance of Use of Occupancy by the County Government and final occupancy.
 - q. CM will review all change orders involving contractor owned equipment rentals and verify compliance with the requirements of the AIA A232 General Conditions Article 7 paragraph 7.2.
 - r. CM will provide a total cost of change orders to the Owner for changes that affect multiple prime contractors prior to recommending approval of change orders for related work. If the final costs are not known for each prime contractor and timely approval is required to insure that the project can proceed without undue delay, the CM will prepare a cost estimate to the Owner for those costs which are not finalized. CM to alert the Owner immediately upon discovery of any changes that affect multiple prime contractors that have the potential to meet or exceed \$25,000 in total cost.
 - s. CM shall provide initial cash flow projects for the duration of the project within fourteen (14) days after award of construction contracts and quarterly (every 3 months) thereafter.
5. Construction Phase – On Site
- a. CM will schedule and hold pre-installation meeting with each trade contractor for each specification section before work is scheduled to start. Pre-installation conference reviews will include but not be limited to review of the CM's division 900, each specification section, submittals required by contract documents, approved submittals, schedule, and staffing. The conferences are held with trade Contract Owners or Project Managers and Supervisors to prevent unapproved installations, offset Quality Control problems and scheduling problems throughout the construction period.
 - b. CM shall schedule and chair progress meeting, and other meetings as warranted by the project, Owner, Architect, or Construction Manager: CM shall record all data, preparing and distributing meeting minutes to the project team and attendees.
 - c. CM will provide coordination for LEED tracking requirements documenting all aspects of the LEED requirements and managing the prime contractors insuring they are complying with the services required to achieve the desired LEED rating. Additionally the CM will provide on-site management of construction project by means of Project Superintendent and other staff as may be required to maintain project quality control and schedule.
 - d. CM will coordinate work, activities, and progress of all Prime Contractors throughout the course of construction project. CM shall develop the project schedule after meeting with the contractors to review modifications to the bid schedule. The bid schedule modifications are generated in compliance with the Prime Contractors schedule review & comment to the extent possible while maintaining the overall substantial completion date The CM Shall update the schedule as the project progresses assessing the working relationship to the approved schedule and use all Construction Contract Provisions to assure compliance with the schedule. When necessary to maintain the overall project schedule the CM will schedule tasks directly with trade contractors. In the event a prime contractor or a prime contractor's subcontractor fails to comply with the schedule, the CM shall issue a letter to the contractor advising that the CM intends to issue a 7 day notice. If the contractor has not complied with the requirements requested by the CM, the CM shall issue formal notices as required by the terms of the bond providing copies of the notice to the Owner, Prime Contractor, Architect and Bonding Company.
 - e. Safety: CM will monitor and enforce Prime Contractor compliance with a safety program(s).

- f. Quality Control: CM will be responsible for project control, and will provide necessary personnel to achieve such, CM will schedule and coordinate activities of third party inspection, commissioning agents and testing firms however, FCPS shall directly pay for the testing cost.
- g. FCPS shall perform quality control inspections on an as needed basis, but these inspections shall not be a substitute for quality control responsibilities of CM or code compliance inspections required by the authority having jurisdiction. In the event the CM is not providing sufficient Quality Control FCPS may charge the CM for the cost of a full time FCPS inspector.
- h. CM will formulate and provide daily progress reports for actives starting, in progress and actives being completed.
- i. CM shall maintain for its use and use of FCPS a record file of all correspondence relating to the project and provide regular reports as required by the owner to assess budget, schedule, or other project issues. This report shall indicate any team related delays hindering project progress.
- j. As the projects near completion, CM will coordinate construction activities with FCPS in furniture placement, final cleaning, equipment staging and occupancy.
- k. CM will collect review and approve all closeout information (including completion of punch list and record/as-built drawings) from trade contractors. The CM shall confirm that all closeout documents are correctly completed and executed before approving or submitting contractors' final application for payment to the Architect or FCPS. The Construction Manager shall review, confirm accuracy and completeness of the Operations and Maintenance manuals as follows, grouped together, incorporating an index in the binders, with each grouped section indexed separately and include the Architects'/engineers review and final approval of the completed O&M Manuals:
 Electrical, Mechanical, Food service and general trades referencing the specific specification sections.
 The balance of the contractor packages shall be grouped together and indexed referencing the specifications sections.
 The O & M binders shall be referenced as:
 Electrical indexed volume 1 through volumes as necessary for the Electrical section of the specifications.
 Mechanical indexed volume 1 through volumes as necessary for the Mechanical section of the specifications.
 Food Service indexed volume 1 through volumes as necessary for the Food Service section of the specifications.
 General Trades indexed volume 1 through volumes as necessary for the General Trades packages.
 All other packages shall be indexed volume 1 through volumes as necessary for the balance of the prime contractor packages.
 Similarly as-built or record drawings shall be reviewed confirming accuracy and completeness of red line changes documenting the actual as built conditions. Minor no cost changes and change order work additions and deletions have been included within the record drawings. These confirmations must be completed before submitting the record drawings to the Owner and Architect. The CM shall compile Prime Contract O & M package subdivided into Specification Sections not trade packages.
- l. See Exhibit E – Reference Documents to the Contract.

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

 OWNER (Signature)

 CONSTRUCTION MANAGER (Signature)

 (Printed name and title)

 (Printed name and title)

Init.

Additions and Deletions Report for

AIA® Document C132™ – 2009

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 08:48:57 on 03/20/2017.

PAGE 1

Construction Management Services

RFP 17C16

PAGE 2

§ 1.1.1 The Owner's program for the Project: The Final Educational Specifications dated June 2013.

...

§ 1.1.2 The Project's physical characteristics: Refer to Exhibit "A" Project Description.

...

(Provide total and, if known, a line item ~~breakdown~~ breakdown.) Funding may be available over multiple fiscal years.

The budget is million thousand hundred dollars and no cents, (\$,,.00) which includes:

...

See Exhibit B – Preliminary Project Milestone Schedule

PAGE 3

See Exhibit B – Preliminary Project Milestone Schedule. Construction to begin FY _____ –
contingent upon construction funding approval

...

See Exhibit B – Preliminary Project Milestone Schedule. Substantial Completion for construction of
the new building is based on a _____ month construction duration and the substantial completion of
the entire Construction Project is based on a _____ month period from the receipt of construction
funding.

...

The project requires a 24 month warranty period following commissioning of the building systems.

...

Competitive bidding for multiple prime contracts which may include multiple advertisements and bid openings.

§ 1.1.6 The Owner's requirements for accelerated or fast-track scheduling, multiple bid packages, or phased construction are set forth below: Owner anticipates awarding multiple prime contracts, and multiple procurements as required to meet funding and schedule constraints.

...

§ 1.1.7 Other Project information: The project, at a minimum will follow the requirements of the latest edition and updates to the "State of Maryland, Public School Construction Program, Administrative Procedures Guide."

...

The FCPS Maintenance and Operations Department

The FCPS Facilities Services/Planning Department

The FCPS Food Service Department

The FCPS Transportation Department

The FCPS Technical Services Department

The Elementary or Secondary School Improvement, Instruction and Administration Departments

The School Administration

(NOTE: The official names of the above referenced departments may change however the reviews shall cover the intended functional areas regardless of title.)

PAGE 4

.1 ~~Land Surveyor:~~Construction Testing Agency:

TBD

.2 ~~Geotechnical Engineer:~~Commissioning Agent:

...

.3 ~~Civil Engineer:~~Third Party Constructability Reviewer:

TBD

...

(List any other consultants retained by the Owner, such as a Project or Program Manager, or construction contractor.) Insert Theater Consultant, Athletic Facility Consultant, or other consultants as appropriate.

TBD

...

Exhibit C – Staffing Plan

PAGE 5

Project Scheduling – Project Control Services

...

N/A

§ 1.1.15 Other Initial Information on which the Agreement is based: "The CM solicitation correspondence and submission."

FCPS Bid # RFQ 14-C-10 Construction Management Services.

...

§ 2.3 The Construction Manager shall provide its services in conjunction with the services of an Architect as described in AIA Document B132™–2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser ~~Edition~~, Edition as modified by Frederick County Public Schools. The Construction Manager shall not be responsible for actions taken by the Architect.

§ 2.4 The Construction Manager shall identify ~~a representative~~ representatives authorized to act on behalf of the Construction Manager with respect to the Project.

...

§ 2.6 The Construction Manager shall maintain the following insurance for the duration of this Agreement. ~~If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.~~

§ 2.6.1 Comprehensive General Liability with policy limits of not less than (\$) for each occurrence and in the aggregate for bodily injury and property damage. For insurance policy requirements see Article 14 coverage amounts.

§ 2.6.2 Automobile Liability covering owned and rented vehicles operated by the Construction Manager with policy limits of not less than (\$) combined single limit and aggregate for bodily injury and property damage. For insurance policy requirements see Article 14 for coverage amounts.

...

§ 2.6.4 Workers' Compensation at statutory limits and Employers Liability with a policy limit of not less than (\$). For insurance policy requirements see Article 14 for coverage amounts.

§ 2.6.5 Professional Liability covering the Construction Manager's negligent acts, errors and omissions in its performance of services with policy limits of not less than (\$) per claim and in the aggregate. For insurance policy requirements see Article 14 for coverage amounts.

§ 2.6.6 The Construction Manager shall provide within seven (7) days of issuance of a Notice of Award, to the Owner certificates of insurance evidencing compliance with the requirements in this Section 2.6. The certificates will show the Owner as an additional insured on the Comprehensive General Liability, Automobile Liability, umbrella or excess policies.

PAGE 6

§ 3.2.3 The Construction Manager shall prepare, and deliver to the Owner, a written Construction Management Plan that includes, at a minimum, the following: (1) preliminary evaluations required in Section 3.2.2, (2) a Project schedule, (3) cost estimates, (4) recommendations for Project delivery method, and (5) Contractors' scopes of Work, if multiple Contractors ~~or fast-track~~ construction will be used. The Construction Manager shall periodically update the Construction Management Plan over the course of the Project.

...

§ 3.2.6 The Construction Manager shall prepare and periodically update the Project schedule included in the Construction Management Plan for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the

Architect's services, other Owner consultants' services, and the Owner's responsibilities and highlight items that could affect the Project's timely completion. Construction Manager shall develop recommendations for phases of construction to accommodate the Owner's program, schedule, funding and to meet the requirements of the authorities having jurisdiction.

§ 3.2.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement. The Construction Manager shall include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in the estimates of the Cost of the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall advise the Owner and Architect immediately if it appears that the Cost of the Work may exceed the Owner's budget and make recommendations for corrective action.

PAGE 7

§ 3.2.10 The Construction Manager shall provide recommendations and information to the Owner regarding the allocation of responsibilities for safety programs among the ~~Contractors~~. Contractors, and include requirements for safety programs in the contractor's scope of work.

...

§ 3.2.16 The Construction Manager shall assist the Owner in obtaining information regarding applicable requirements for equal employment opportunity programs, and other programs as may be required by governmental and for ~~quasi-governmental~~ quasi-governmental authorities for inclusion in the Contract ~~Documents~~. Documents including Davis Bacon and Prevailing Wage requirements of the State of Maryland.

...

§ 3.2.18 The Construction Manager shall submit the list of prospective bidders for the Architect's review and the Owner's ~~approval~~. approval and coordinate that list with the Frederick County Public Schools Purchasing Department.

§ 3.2.19 The Construction Manager shall develop bidders' interest in the Project and establish bidding schedules. The Construction Manager, with the assistance of the Architect, shall issue bidding documents to bidders and coordinate bidding activities with Owner's Purchasing Department and plan houses and conduct pre-bid conferences with prospective bidders. The Construction Manager shall issue the current Project schedule with each set of bidding documents. The Construction Manager shall assist the Architect with regard to questions from bidders and with the issuance of bidding Requests for Information (RFI's) and addenda.

§ 3.2.20 The Construction Manager shall ~~receive~~ assist the Frederick County Public Schools Purchasing Department receiving bids, prepare bid analyses and make recommendations to the Owner for the Owner's award of Contracts or rejection of bids.

§ 3.2.21 The Construction Manager shall assist the Architect and Owner in preparing Construction Contracts and advise the Owner on the acceptability of Subcontractors and material suppliers proposed by Multiple Prime Contractors.

§ 3.2.22 The Construction Manager shall assist the Architect and Owner in obtaining building permits and special permits for temporary and permanent improvements, except for permits required to be obtained directly by the various Multiple Prime Contractors. The Construction Manager shall verify that the Owner has paid applicable fees and assessments. The Construction Manager shall assist the Owner and Architect in connection with the Owner's responsibility for filing documents required for the approvals of governmental authorities having jurisdiction over the Project.

PAGE 8

§ 3.3.1 Subject to Section 4.3, the Construction Manager's responsibility to provide Construction Phase Services commences with the award of the initial Contract for Construction and terminates ~~on the date the Architect issues the final Certificate for Payment, approximately twenty four (24) months after substantial completion and building occupancy. This 24 month period provides time to complete all Project Closeout requirements monitor the standard twenty-four (24) month warranty period and provide a final inspection at the end of the warranty.~~

...

§ 3.3.3 The Construction Manager shall provide on-site administration of the Contracts for Construction in cooperation with the Architect as set forth below and in the Owner's modified AIA Document A232™-2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition. If the Owner and Contractor modify AIA Document A232-2009, those modifications shall not affect the Construction Manager's services under this Agreement unless the Owner and the Construction Manager amend this Agreement. Construction Manager's services shall be inclusive of the requirements of the Owner's modified AIA Document A232-2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition.

...

§ 3.3.5 Utilizing the construction schedules provided by the Multiple Prime Contractors, the Construction Manager shall update the Project schedule, incorporating the activities of the Owner, Architect, and Multiple Prime Contractors on the Project, including activity sequences and durations, allocation of labor and materials, processing of Shop Drawings, Product Data and Samples, and delivery and procurement of products, including those that must be ordered well in advance of construction. The Project schedule shall include the Owner's phasing and occupancy requirements showing portions of the Project having occupancy priority. The Construction Manager shall update and reissue the Project schedule as required to show current conditions. If an update indicates that the previously approved Project schedule may not be met, the Construction Manager shall recommend corrective action, if any, to the Owner and Architect.

PAGE 9

§ 3.3.8 The Construction Manager shall schedule all tests and inspections required by the Contract Documents Documents, with the Owner's third party inspection and testing firm, or governmental authorities, and arrange for the delivery of test and inspection reports to the Owner and Architect.

...

§ 3.3.11 The Construction Manager shall develop cash flow reports quarterly and forecasts for the Project.

§ 3.3.12 The Construction Manager shall maintain accounting records on authorized Work performed under unit costs, additional Work performed on the basis of actual costs of labor and materials, and other Work requiring accounting records. Construction Manager shall issue a written Notice to Proceed to Contractors authorizing work to be performed under unit costs or on the basis of actual costs of labor and materials as soon as practical after verbal authorization for such work.

PAGE 10

§ 3.3.15 The Construction Manager shall advise and consult with the Owner and Architect during the performance of its Construction Phase Services. The Construction Manager shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Construction Manager shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work of each of the Contractors, since these are solely the Contractor's rights and responsibilities under the Contract Documents. The Construction Manager shall not be responsible for a Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall be responsible for the Construction Manager's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or Multiple Prime Contractors, Subcontractors, or their agents or employees, or any other persons or any other persons or entities performing portions of the Work.

§ 3.3.16 The Construction Manager shall transmit to the Architect requests for interpretations and requests for information of the meaning and intent of the Drawings and Specifications with its written recommendation, and assist in the resolution of questions that may arise. The Construction Manager shall maintain a schedule of Requests for Information (RFI) submitted by the prime contractors noting the contractor submitting such, the date of submittal, the date of transmittal to the architect and date of receipt of resolution.

§ 3.3.17 The Construction Manager shall review requests for changes, assist in negotiating Contractors' proposals, assure that change proposals meet the Owner's requirements as delineated in Article 7 of the Owner modified AIA Document A232-2009, General Conditions, submit recommendations to the Architect and Owner, and, if they are accepted, prepare Change Orders and Construction Change Directives that incorporate the Architect's modifications to the Contract Documents. The Construction Manager may verbally authorize time and material (T&M) and bid unit cost work to be accomplished as a change to the contract, however, shall issue a written Notice to Proceed for such work as soon as practical after the verbal authorization is issued. Copies of the Notice to Proceed shall be furnished to the Owner and Architect.

PAGE 11

.12 Weather related delay claims.

~~§ 3.3.20.2~~ In addition, for Projects constructed on the basis of the Cost of the Work, the Construction Manager shall include the following additional information in its progress reports:

- ~~.1 Contractor's work force report;~~
- ~~.2 Equipment utilization report;~~
- ~~.3 Cost summary, comparing actual costs to updated cost estimates; and~~
- ~~.4 Any other items as the Owner may require;~~

§ 3.3.21 Utilizing the documents provided by the Contractor, the Construction Manager shall maintain at the site one copy of all Contracts, Drawings, Specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record all changes and selections made during construction, and in addition, approved Shop Drawings, Product Data, Samples and similar required submittals, submittals, third party testing and inspection reports, and inspection reports from the authorities having jurisdiction. The Construction Manager shall maintain records, in duplicate, of principal building layout lines, elevations of the bottom of footings, floor levels and key site elevations certified by a qualified surveyor or professional engineer. The Construction Manager shall make all such records available to the Architect and the Contractor, and upon completion of the Project, shall deliver them to the Owner.

...

§ 3.3.23 With the Architect and the Owner's maintenance personnel, the Owner's HVAC Commissioning authority, the equipment manufacturer's representatives as appropriate, the Construction Manager shall observe the Contractor's or Multiple Prime Contractors' final testing and start-up of utilities, operational systems and equipment and observe any commissioning as the Contract Documents may require.

PAGE 12

§ 3.3.30 Construction Manager shall coordinate the activities of the Owner's third party consultants as identified in section 1.1.10.4.

§ 3.3.31 The Construction Manager's required services are more specifically enumerated in Article 12.

~~§ 4.1 Additional Services listed below are not included in Basic Services but and may be required for the Project. The Construction Manager shall provide the listed Additional Services only if specifically designated in the table below as the Construction Manager's responsibility, and the Owner shall compensate the Construction Manager as provided in Section 11.2.~~

...

§ 4.1.1 Measured drawings	<u>Architect</u>	<u>4.2.1</u>
§ 4.1.2 Architectural interior design (B252™-2007)	<u>Architect</u>	<u>4.2.2</u>
§ 4.1.3 Tenant-related services		<u>4.2.3</u>
§ 4.1.4 Commissioning (B211™-2007)	<u>Owner</u>	<u>4.2.4</u>
§ 4.1.5 LEED® certification (B214™-2012)(B214™-2007)	<u>Architect</u>	<u>4.2.5</u>
§ 4.1.6 Furniture, furnishings, and equipment design (B253™-2007)	<u>Architect</u>	<u>4.2.6</u>

§ 4.2 ~~Insert a description of each Additional Service.~~ Description of Additional Services designated in Section 4.1, if not further described in an exhibit attached to this document.

- 4.2.1 Measured drawings refer here to sketches and additional drawing required to be drawn to scale printing of such documents shall be funded by either the Owner or Construction Manager.
- 4.2.2 Interior design shall be limited to color and material selection for the interior finishes and space design to assure that the required instructional equipment will efficiently fit within the space provided.
- 4.2.3 Tenant related services are not a part of this contract unless specific as such elsewhere.
- 4.2.4 Commissioning shall be performed by a third party contractor working directly for the owner. The Architect and his consultants, the Construction Manager and require prime contractors shall work with the commissioning agent to complete the commissioning of the building.
- 4.2.5 LEED certification shall be a requirement of all State funded school construction projects unless specified such herein. The Architect, Construction Manager and Owner shall work together to achieve the required certifications where the fees for such certification shall be paid by the owner or as a reimbursable expense to the Architect.
- 4.2.6 Equipment specification and purchase will be accomplished by the Owner, Coordination with both the Architect during the design and the Construction Manager during construction shall be provided to assure efficient use and placement of the equipment to be used.

PAGE 13

§ 4.3.1 ~~Upon recognizing the need to perform the following Additional Services,~~ Additional Services as determined by the Owner, the Construction Manager shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Construction Manager shall not proceed to provide the ~~following~~ services until the Construction Manager receives the Owner's written authorization:

...

- .2 To the extent the Construction Manager's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion, identified in Initial Information, whichever is earlier as defined in 3.3.1.

...

§ 4.3.3 ~~If the services covered by this Agreement have not been completed within (—) months of the date of this Agreement, approximately twenty-four (24) months after Substantial Completion, building occupancy, as well as completing the Project Closeout requirements monitoring and final inspections for the standard 24 month warranty period, through no fault of the Construction Manager, an extension of the Construction Manager's services beyond that time shall be compensated as Additional Services.~~

PAGE 14

§ 5.4 The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B132-2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser ~~Edition-~~Edition, as modified by the Owner. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and Architect, and any further modifications to the agreement.

...

§ 5.7 Unless provided by the Construction Manager, the ~~Owner-Architect~~ shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

PAGE 15

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include the contractors' general conditions costs, overhead and profit. The Cost of the Work ~~includes the compensation of the Construction Manager and Construction Manager's Consultants during the Construction Phase only, including compensation for reimbursable expenses at the job site, if any.~~ The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, and contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2 and 6.4. Evaluations of the Owner's budget, preliminary estimates for the Cost of the Work and detailed estimates of the Cost of the Work prepared by the Construction Manager represent the Construction Manager's judgment as a person or entity familiar with the construction ~~industry-~~industry. It is recognized, however, that neither the Construction Manager nor the Owner has control over the cost of labor, materials or equipment, over Contractors' methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Construction Manager cannot and does not warrant or represent that bids or negotiated prices will not vary from the budget proposed, established or approved by the Owner, or from any cost estimate or evaluation prepared by the Construction Manager.

PAGE 16

ARTICLE 8 — CLAIMS AND DISPUTES

ARTICLE 8 Litigation

§ 8.1 ~~General~~All Claims, disputes or other matters in question between the Owner and Construction Manager arising out of, or related to, the Contract Documents, or the breach thereof, shall be decided by the Circuit Court or District Court for Frederick County. In the event that the Circuit Court or District Court of Frederick County do not have jurisdiction over all necessary parties, Construction Manager consents to the jurisdiction of any Court selected by Owner which otherwise has jurisdiction over all parties deemed necessary by Owner for complete resolution of the dispute or claim or other matter in questions.

~~§ 8.1.1 The Owner and Construction Manager shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the 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 Construction Manager waive all claims and causes of action not commenced in accordance with this Section 8.1.1.~~

~~§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Construction Manager waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A232-2009, General Conditions of the Contract for Construction. The Owner or the Construction Manager, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.~~

~~§ 8.1.3 The Construction Manager shall indemnify and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Construction Manager, its employees and its consultants in the performance of professional services under this Agreement. The Construction Manager's duty to indemnify the Owner under this provision shall be limited to the available proceeds of insurance coverage.~~

~~§ 8.1.4 The Construction Manager and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.~~

~~§ 8.2 Mediation~~The filing of suit shall be made within a reasonable time after the claim, dispute, or other matter in question has arisen, and in no event shall it be made after the date when the institution of legal or equitable proceedings based on such claim would be barred by the applicable statute of limitations.

~~§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Construction Manager's services, the Construction Manager may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.~~

~~§ 8.2.2 The Owner and Construction Manager shall endeavor to resolve claims, disputes and other matters in question between them 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 Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution 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 proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~

~~§ 8.2.3 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.~~

~~§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:~~

~~(Check the appropriate box. If the Owner and Construction Manager 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, the dispute will be resolved in a court of competent jurisdiction.)~~

~~☐ Arbitration pursuant to Section 8.3 of this Agreement~~

~~☐ Litigation in a court of competent jurisdiction~~

~~☐ Other: (Specify)~~

~~§ 8.3 Arbitration~~3 Unless otherwise agreed in writing, the Construction Manager shall carry on with the Work and maintain its progress during any litigation proceedings, and the Owner shall continue to make payments to the Construction Manager in accordance with the Contract Documents.

~~§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement any claim, dispute or other matter in question arising out of or related to this Agreement 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 this Agreement, and filed with the person or entity administering the arbitration.

~~§ 8.3.1.1~~ 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, dispute or other matter in question 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, dispute or other matter in question.

~~§ 8.3.2~~ The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

~~§ 8.3.3~~ The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

~~§ 8.3.4 Consolidation or Joinder~~

~~§ 8.3.4.1~~ 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).

~~§ 8.3.4.2~~ 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.

~~§ 8.3.4.3~~ The Owner and Construction Manager grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Construction Manager under this Agreement.

ARTICLE 9 — TERMINATION OR SUSPENSION

§ 8.4 The award rendered and judgment in accordance with applicable law in the court having jurisdiction thereof shall be final.

ARTICLE 9 TERMINATION, SUSPENSION OR ABANDONMENT

§ 9.1 If the Owner fails to make payments to the Construction Manager in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Construction Manager's option, cause for suspension of performance of services under this Agreement. If the Construction Manager elects to suspend services, the Construction Manager shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Construction Manager shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Construction Manager shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Construction Manager's services. The Construction Manager's fees for the remaining services and the time schedules shall be equitably adjusted. In the event Construction Manager is terminated for failing the substantially perform, Owner may take possession of the site and all material, equipment, tools, construction equipment and machinery thereon owned by Construction Manager and may finish the Project by whatever method the Owner may deem expedient.

§ 9.2 If the Owner suspends the Project, the Project is suspended by the Owner for more than 30 consecutive days, the Construction Manager shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Construction Manager shall be compensated Manager's compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the Construction Manager's services. The Construction Manager's fees for the remaining services and the time schedules shall be equitably adjusted services, as agreed to by both parties.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Construction Manager, the Construction Manager may terminate this Agreement by giving not less than seven days' written notice. The Owner may terminate this Agreement whenever the Owner, in its sole discretion, shall determine that such termination is in the best interest of the Owner (termination for convenience). Any such termination shall be effected by delivery to the Construction Manager of a Notice of Termination specifying the basis for the termination, the extent to which performance of work is terminated and the effective date of such termination. In the event of termination under this provision, Construction Manager shall be entitled to receive compensation for the portion of its fee earned to the date of termination and all substantiated reimbursable expenses under this Agreement if any, as of the date of termination. No other or additional sums, whether for lost profits, overhead, consequential damages, direct or indirect damages, or any other damages or claims, whether in contract or in tort shall be payable by the Owner. If after termination of this Agreement or any part thereof, for failure to substantially perform under 9.1 above (termination for default), it is adjudged that the Construction Manager was not at fault pursuant to 9.1, or that the Construction Manager's failure to perform satisfactorily is due to causes beyond the control of and without fault or negligence on the part of the Construction Manager, any termination under 9.1 shall be deemed to be a termination for convenience under this subparagraph 9.3 and the rights and obligations of the parties, including compensation payable by Owner to Construction Manager, shall be governed by and resolved accordingly. Upon receipt of a Notice of Termination and except as otherwise directed by the Owner, the Construction Manager shall stop work under this Agreement on the date and to the extent specified in the Notice of Termination; and shall take all necessary or appropriate steps to limit disbursements and to minimize costs; and will furnish a report as of the date of receipt of notice of suspension or termination, of the status of all activities conducted under the terms of this Agreement including the work effort, and such other matters as the Owner may require. In the event of termination under this Article, Construction Manager consents to the Owner's selection of another Construction Manager of the Owner's choice to assist the Owner in any way in completing the Project. Construction Manager further agrees to cooperate and provide any information requested by the Owner in connection with the completion of this Project, including assignment of any contract rights as the Owner may require. Any services provided by Construction Manager which are requested by Frederick County after termination shall be fairly compensated by Frederick County as an Additional Service. Provided, however, Construction Manager shall not be relieved of any liability to the Owner by reason of any breach of this contract by Construction Manager and the Owner may withhold payment to the Construction Manager for the purpose of set-off until such time as the exact amount due to the Owner and Construction Manager is determined.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the Failure of the Owner to make payments to the Construction Manager in accordance with this Agreement shall be considered substantial nonperformance and cause for termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause. If the Owner fails to make payment when due the Construction Manager for services and expenses, the Construction Manager may, upon seven days' written notice to the Owner, suspend performance of services under this Agreement. Unless payment in full is received by the Construction Manager within seven days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services, the Construction Manager shall have no liability to the Owner for delay or damage caused to the Owner because of such suspension of services.

§ 9.6 In the event of termination not the fault of the Construction Manager, the Construction Manager shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7. due.

§ 9.7 Termination Expenses are in addition to compensation for the Construction Manager's services and include expenses directly attributable to termination for which the Construction Manager is not otherwise compensated, plus an amount for the Construction Manager's anticipated profit on the value of the services not performed by the Construction Manager, as set forth below. Suspension of Agreement due to funding or permit delays. The Owner may suspend this Agreement whenever the Owner, in its sole discretion, shall determine that such suspension is in the best interest of the Owner (suspension due to funding or permit delays), due to delays in the provision of funding for the project or due to delays beyond 120 days in length in the receipt of appropriate permits allowing the start and/or continuation of construction of the Work. Any such suspension shall be affected by delivery to the

Construction Manager of a Notice of Suspension specifying the basis for the suspension, the extent to which performance of Work is suspended, and the effective date of such suspension, and the expected date of resumption of the Work. In the event of suspension under this provision, Construction Manager shall be entitled to receive compensation for the portion of its fee earned to the date of suspension and all substantiated expenses reimbursable under this Agreement, if any, as of the date of suspension. No other or additional sums, whether for lost or indirect damages, or any other damages or claims, whether in contract or in tort, shall be payable by the Owner.

~~§ 9.7.1 In the event of termination for the Owner's convenience prior to commencement of construction, the Construction Manager shall be entitled to receive payment for services performed, costs incurred by reason of such termination and reasonable overhead and profit on Preconstruction services not completed during the Preconstruction Phase.~~

~~§ 9.7.2 In the event of termination for the Owner's convenience after commencement of construction, the Construction Manager shall be entitled to receive payment for services performed and costs incurred by reason of such termination, along with reasonable overhead and profit on services not completed during the Construction Phase.~~

~~§ 10.1 This Agreement 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 8.3.~~

PAGE 18

§ 11.1 For the Construction Manager's Basic Services described under Article 3, the Owner shall compensate the Construction Manager as follows: required by the solicitation package: See Exhibit D – Form of Proposal.

~~§ 11.1.1 For Preconstruction Phase Services in Section 3.2:
(Insert amount of, or basis for, compensation, including stipulated sums, multiples or percentages.)~~

§ 11.1.2 For Construction Phase Services in Section 3-3.3.3: "Not less than five (5) per cent of the total Construction Manager's fee shall be held by the Owner at the completion of the project until all close out documents are provided to the Owner from all prime contractors."

...

CM Pre-Construction Fee \$00,000.00 Initial Purchase Order.
CM Construction Fee \$0,000,000.00 Subsequent PO subject to availability of funds.
Total CM Pre-Construction and Construction fee \$0,000,000.00

CM Reimbursables
Pre-Construction reimbursables \$00,000.00 Initial Purchase Order
Construction Reimbursables \$000,000
Total CM reimbursables \$000,000.00

PAGE 19

Is the project schedule is extended then The Construction Management per month fee is _____ Thousand
hundred _____ dollars and no cents - \$00,000.00

§ 11.4 Compensation for Additional Services of the Construction Manager's consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Construction Manager plus ten percent (10 %), or as otherwise stated below:

...

- ~~.1 Transportation~~ FCPS pre-approved transportation and authorized out-of-town travel and subsistence;
- ~~.2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;~~
- ~~.3~~ Fees paid for securing approval of authorities having jurisdiction over the Project;
- ~~.4~~ .3 Printing, reproductions, plots, standard form documents;
- ~~.5~~ .4 Postage, handling and delivery;
- ~~.6~~ .5 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- ~~.7~~ .6 Professional photography, and presentation materials requested by the Owner;
- ~~.8~~ .7 Construction Manager's consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Construction Manager's consultants;
- ~~.9~~ .8 All taxes levied on professional services and on reimbursable expenses;
- ~~.10~~ Site office expenses; and .9 Temporary electricity;
- .10 Temporary toilets;
- .11 Other similar Project-related expenditures: Temporary fencing;
- .12 Temporary access roads;
- .13 Drinking water;
- .14 Winter protection;
- .15 Equipment rental;
- .16 Clean-up;
- .17 Dumpsters;
- .18 Professional cleaning;
- .19 Liability insurance;
- .20 Automated project management system by "Submittal Exchange".
- .21 Groundbreaking ceremony
- .22 Constructability review
- .23 Seismic monitoring
- .24 Internet service
- .25 Temporary signs
- .26 Office supplies
- .27 Office Trailer
- .28 Telephone
- .29 Surveying
- .30 Temporary heat
- .31 Utility locators
- .32 Other unidentified services, equipment and materials - \$100,000.00

§ 11.6.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Construction Manager and the Construction Manager's consultants plus Ten percent (10 %) of the expenses incurred.

PAGE 20

~~§ 11.7.1 An initial payment of (\$) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.~~

§ 11.7.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid 60 (sixty) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.

...

Zero % 0

...

Special terms and conditions that modify this Agreement are as follows: See Article 14: Other Conditions or Services

...

- .1 AIA Document C132™–2009, Standard Form Agreement Between Owner and Construction Manager as ~~Adviser~~ Adviser, as modified by the Owner.
- .4 Other documents: Article 14: Other Conditions or Services: and all documents and submissions of the initial and supplemental Construction Manager solicitation.
~~.2 AIA Document E201™ 2007, Digital Data Protocol Exhibit, if completed, or (List other documents, if any, including additional scopes of service forming part of the Agreement.)~~

ARTICLE 14 OTHER CONDITIONS OR SERVICES

(Insert descriptions of other services, identify Additional Services included within Basic Compensation and modifications to the payment and compensation terms included in this Agreement.)

Services required due to Article 3.2.3 and Article 3.3.2 are Basic Services and shall not be compensated in addition to the Construction Managers current Contract.

Per FCPS RFQ 14-C-10

14.1 INSURANCE

The insurance coverage provided shall be written for not less than the following minimum limits, or greater if required by law for all of the following:

(Insert the specific dollar amounts for the appropriate insurance limits of liability.)

1. Worker's Compensation: As required by Statute with statutory benefits as required by any state or Federal law, including standard "other states" coverages; and employers liability insurance or its equivalent.
2. Commercial Comprehensive General Liability Insurance, to include premises, elevator, products, completed operations, personal injury, bodily injury and property damage including loss of use, with minimum limits of:

<u>Bodily injury liability</u>	<u>\$1,000,000.00 each person</u>
	<u>\$2,000,000.00 each occurrence</u>
<u>General aggregate</u>	<u>\$2,000,000.00</u>
<u>Products and completed operations</u>	<u>\$2,000,000.00 aggregate</u>
<u>Personal & advertising injury</u>	<u>\$1,000,000.00 each occurrence</u>
a. <u>General aggregate liability applying on a per project basis;</u>	
b. <u>Liability arising from premises and operations;</u>	
c. <u>Liability arising from the actions of independent contractors;</u>	
d. <u>Liability arising from products and completed operations with such coverage to be maintained for two years after completion of the work.</u>	
e. <u>Contractual liability including protection for the contractor from bodily injury and property damage claims arising out of liability assumed under this contract; and</u>	
f. <u>Liability arising from the explosion, collapse, or underground (XCU) hazards and Broad Form CGL, Property Damage and Completed Operations Insurance.</u>	
3. Automobile Liability Insurance, including owned, non-owned and hired vehicles:

<u>Bodily Injury Liability</u>	<u>\$1,000,000.00 each person</u>
	<u>\$2,000,000.00 each occurrence</u>
<u>Property damage liability</u>	<u>\$1,000,000.00 each person</u>
	<u>\$2,000,000.00 each occurrence</u>
4. Umbrella excess liability or excess liability insurance or its equivalent with minimum limits of:

<u>\$5,000,000 per occurrence</u>
<u>\$5,000,000 aggregate for other than and auto liability; and</u>
<u>\$5,000,000 products/completed operations aggregate products/completed operations and including all of the following coverage on the applicable schedule of underlying insurance:</u>
a. <u>Commercial general liability;</u>
b. <u>Business auto liability; and</u>

c. Employers liability.

In addition the Construction Manager shall provide the following insurance coverages:

5. Construction Manager's Errors and Omissions Liability with minimum limits of at least \$1,000,000 per claim and annual aggregate of \$1,000,000 with terms and conditions satisfactory to Owner.
6. When any aircraft is to be used to perform the work (e.g. installation of HVAC unit on roof), aircraft liability insurance or its equivalent with a minimum limit of \$5,000,000 per occurrence and including coverage of any owner, hired or non-owned aircraft.

The Construction Manager shall comply with the additional insurance requirements as set forth below:

- a. The Owner, Frederick County Council, and the State of Maryland and other entities stipulated by the Owner shall be named as additional insureds on all Construction Manager policies.
- b. All policies shall stipulate the Owner is to receive written notice thirty (30) days before cancellation.
- c. All insurance policies shall contain a Waiver of Subrogation in favor of the Owner.
- d. All insurance policies are to be in "Occurrence "Form" and for "Replacement Cost Basis" unless otherwise agreed in writing by Owner.

3. AIA Document E202™ 2008, Building Information Modeling Protocol Exhibit, if completed, or the following:
 - e. Insurance provided to the Owner and Owner's elected and appointed officials, officers, consultants, agents and employees under Construction Manager's liability insurance shall afford coverage for liability arising out of:

1. The Construction Manager's work (including products and completed operations as well as ongoing operations); and
2. Acts or omissions of the Owner and Owner's elected and appointed officials, officers, directors, trustees, consultants, agents or employees in connection with general supervision of the Construction Manager's operations on the premises of the Project as well as inspection of the Project at any state of construction.
3. The current editions ISO Forms CC 2009 and CC 2010 entitled "Additional Insured – Owners, Lessees or Construction Managers (Form A and B) or their equivalent shall not be used to add the Owner as an additional insured on the Construction Manager's commercial general liability insurance policy because both forms exclude coverage for the additional insured. A manuscript endorsement shall be obtained to properly afford coverage to the additional insured for liability arising out of the Construction Manager's ongoing operations, the Construction Manager's products and completed operations on the Owner's general supervision of the Construction Manager's operations on the premises of the Project.
4. Insurance provided to the Owner and Owner's elected and appointed officials, officers, consultants, agents, and employees under any Construction Manager's liability insurance required herein, including, but not limited to, umbrella and excess liability or excess liability policies, shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of insurance or self-insurance. Any cross suits or cross liability exclusion shall be deleted from Construction Manager's liability insurance policies required herein.

- f. Insurance provided to the Owner and Owner's elected and appointed officials, officers, consultants, agents and employees under any Construction Manager's liability insurance required herein, including, but not limited to, umbrella and excess liability or excess liability policies, shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of insurance or self-insurance. Any cross suits or cross liability exclusion shall be deleted from Construction Manager's liability insurance policies required herein.

If any liability insurance purchased by the Construction Manager has been issued on a "claims made" basis, the Construction Manager must comply with the following additional conditions.

The Construction Manager shall agree to provide certificates of insurance evidencing the above coverage for a period of two years final payment for the Contract. Such certificates shall evidence a retroactive date no later than the beginning of the Work under this Contract; or

- g. The Construction Manager shall purchase an extended (minimum two years) reporting period endorsement for each such "claims made" policy in force as of the date of final acceptance and evidence the purchase of this extended reporting period endorsement by means of certificate of insurance or a copy of the endorsement itself. Such certificates or copy of the endorsement shall evidence retroactive date no later than the beginning of the Work of this Contract.

The Construction Manager's selection of insurers shall be acceptable to the Owner and the insurer shall be lawfully authorized to do business in the State of Maryland.

The Construction Manager shall not commence Work under this Agreement until satisfactory evidence of all required coverage is submitted to the Owner. Further, the Construction Manager shall not reduce or cancel or change any of the required coverages without the consent of the Owner. Failure to maintain required insurances shall be viewed as a material breach of this Agreement. Upon notification by Owner that required insurance has lapsed of the Construction Manager, the Owner, at its option and sole discretion, may terminate this Contract or may purchase such insurance and the Construction Manager shall be responsible for the payment of any applicable premiums.

§ 14.2 Additional Article 14 Requirements

1. General Information

- a. The Project will consist of the requirements identified by: The Educational Specifications, The Frederick County Public Schools Design Guide, The State of Maryland Public Schools Construction Program, IAC and DGS programs.
- b. The Project time line starts with the Architect's and Construction Manager's selection; this may be contingent on final funding approval. The basic services of the Construction Manager will terminate approximately twenty-four (24) months after Substantial Completion and Building occupancy. The 24 month period allows for completion of Project Closeout requirements and monitoring final inspection of the twenty-four (24) month warranty period.
- c. The Construction Management Firm shall base their proposal on providing reviews coinciding with the timing requirements of the Maryland Public Schools Program and the construction schedule complying with the proposed opening of the Facility.
- d. The Fee shall include all overhead, general conditions, required staff, CM transportation, office facilities, supplies, equipment and all associated costs including maintenance of office and CM provided equipment.
- e. Reimbursables shall be limited to the items listed at the end of the form of proposal.
- f. Frederick County Public Schools cannot allow Construction Management firms requirements in Prime Contract Packages as funds for services that are included in the Construction Managers proposal (Dumpster Requirements may be included in trade packages, CM shall include general dumpster requirements, temporary lighting and electrical receptacles in trade packages).
- g. This Request for Proposal and the AIA C132-2009 Owner – Construction Manager Form of Agreement as modified by FCPS, list Insurance coverages required by this proposal. If the insurance coverages required by this proposal are in excess of the amount carried by the Construction Management Firm, then the cost of the excess coverage may be included as a reimbursable expense provided an insurance bill, is provided specifically for this project and only the cost in excess of the normal amount of coverage carried by the Construction Manager differences are clearly identified. The Construction Managers total cost for this project insurance is not a reimbursable.
- h. CM shall utilize FCPS billing format for CM services.
- i. Additional Services: The Project Scope of Work must add acreage to the site, extend the established Project Schedule and/or changes to the Educational Specification that are over and above the original educational specifications to be considered as an increase in the Project Scope of Work that will result in additional compensation to the Construction Manager. Offsite utility, access road work, additional staff-hours, or overtime required to provide a complete functional facility is not considered an increase in scope or eligible for additional compensation by the terms of this contract.
- j. Construction Manager or subsidiary firms shall not bid any work associated with this project as a prime or sub-contractor.

2. Pre-Construction Phase

- a. CM will provide preliminary evaluation of Owner's program, project plan, educational specifications, schedule, FCPS Design Guide requirements and construction estimates and budget. (As the design progresses the Educational Specifications may be modified).
- b. Additions, renovations, alterations, and up-grades; The CM shall review existing building conditions which could impact the schedule including but not limited to hazardous materials, occupied areas,

- requirements to maintain occupancy and space constraints associated with proposed installation, etc. The CM shall schedule and coordinate without disruption to the building occupants throughout the project.
- c. CM will provide a detailed cost estimate(s) at the SD, DD, and CD design phases of the project and provide reports showing the comparisons with the budget. CM will divide the budget into bid packages so that when the bids are received they can be analyzed against the budgeted value.
 - d. CM shall provide Value Engineering Services for the project to identify items that may be changed to save funds to improve operation of the facility and best fit the FCPS design guide. In the event the Architect rejects substantial cost savings concepts, the CM shall prepare a detailed cost savings estimate and alternative construction method(s) with detailed cost estimates for FCPS to review. The value engineering process must also include a constructability analysis during the design process.
 - e. CM will review and provide comments on construction document plans and specifications for general constructability, completeness, accuracy, scheduling, phasing, sequencing of operations, dimensional accuracy, and coordination to minimize change orders during construction.
 - f. CM will review documents advising and providing recommendations to FCPS for proposed:
 - 1) site use improvements,
 - 2) special conditions required by the building site,
 - 3) selection and specification of bid alternates,
 - 4) selection of materials, building systems and equipment,
 - 5) method of project delivery and alternate construction methods,
 - 6) availability of materials, labor and time requirements for procurement,
 - 7) factors related to construction cost including alternative designs and materials,
 - 8) budget and possible bidding economies or volume discounts,
 - g. CM will divide the work plans and specifications into bid packages providing FCPS general assurance that all items for the construction of the facility are identified and assigned to individual bid packages. (Architect will prepare actual plans and specifications as a project, the work will not be subdivided the plans or specifications into bid packages by the Architect).
 - h. After the CM has completed its document review and subdivided the complete project into scope packages, the CM shall provide FCPS with a letter indicating the CM has reviewed the documents and finds the bid documents (plans, specifications, unit price items, etc.) complete. The CM shall confirm that the completed bid documents are sufficiently detailed providing quantity and quality of the project for Prime Contractors to bid and construct the project without: excessive request for information, change orders or schedule delays. Should the CM find the bid documents lacking detail or completeness to issue the aforementioned letter the CM shall submit a letter to FCPS providing a list of potential change orders and projected change order cost associated with omitted details or incompleteness of the documents. The letters are to be provided so FCPS can make an informed decision regarding the release of the bid documents to Contractors.
 - i. CM will prepare bid packages to submit to State IAC for approval. (Architect will prepare plans and specifications but CM will assemble, provide appropriate accompanying information, and deliver to FCPS for submission to the State IAC).
 - j. Preparation of bid documents: the Architect will prepare the plans and specifications. CM shall arrange plans and specifications in Bid-Packages and prepare division 0900 specification. The Architect and Construction Manager shall prepare preliminary sets of BID Documents and meet with FCPS Purchasing to coordinate and finalize the Bid Sets. The CM and Architect shall prepare additional documentation including bidding information and forms as required by FCPS Purchasing or Construction Management Departments. The CM shall arrange for printing of Construction Documents with FCPS Plan House and Purchasing Department. FCPS may elect to distribute the Bid Documents using electronic media as a CD or DVD. Construction Document Printing or the purchase of electronic media (CD or DVD) by the CM shall be a reimbursable item.
 - k. The CM shall deliver the IAC submittal(s) on behalf of Frederick County Public Schools after completing the package(s) and receiving appropriate documentation from FCPS. The CM shall obtain a signed contract transmittal from the IAC listing all information delivered.
 - l. CM shall coordinate with FCPS Purchasing Department and Plan House to obtain a CD or DVD of the documents and paper plans as requested by the Senior Project Manager for the Owners use.
 - m. Architect will complete the process of obtaining all necessary building permits, other permits required for construction and work with the county agencies to develop Public Works Agreement, Modified Public Works Agreements, and such other agreements and easements as may be required by the State, County

and/or City. CM shall assist in these efforts assuring that any and all document modifications required to obtain the permit are being incorporated by the Architect. The CM is not attending the meeting as a designer. FCPS will assist as required.

- n. The CM will develop, monitor, and maintain a project schedule that includes, but is not limited to, the following elements; planning, design, permitting, approvals.

3. Pre Bid/Bidding Phase

- a. The FCPS Purchasing Department maintains pre-qualified bidder list for projects over \$250,000.00. This list is available to the CM for review.
- b. Specific trade requirements & qualifications must be indicated by the Specification Section 0900 and individual division specification for such requirements as Years of Experience, Certifications, Manufacturer Representation, etc.
- c. FCPS will advertise for Prime Contractor Bids; however the CM should poll prospective bidders to assure maximum competition. The CM should be prepared to assist in the advertising process when authorized by FCPS Purchasing Department.
- d. CM, having divided the project into trade packages shall solicit bidder participation for each package. CM shall provide FCPS Purchasing Department with a current list of potential Bidders for each Trade Package.
- e. Distribution of Bid Documents (plans and specifications) and all Addenda will be from the FCPS Purchasing Departments or their representative, however, the Construction Manager is required to work in coordination with other members of the design team and FCPS Purchasing Department and Plan House when developing, copying and delivering addenda to FCPS Purchasing Department in a timely manner. The CM must review Addenda for content and division placement into trade packages.
- f. CM will conduct pre-bid meetings, in conjunction with the Architect and FCPS Purchasing Department. The CM will record meetings minutes, questions, and answers arising from Pre-Bid Meeting(s) providing documentation and a report to FCPS Purchasing for distribution of pre-bid addenda to all parties.
- g. Purchasing Department will receive bids; the CM will be present assisting FCPS in opening and recording bids. CM shall prepare bid tabulation for FCPS. The bid tabulation shall be in a form that allows for assessment and selection of alternates and assessment of the Trade package budget and project budget. FCPS Purchasing Department may provide a sample for reference.
- h. CM will review bids with FCPS and A/E.
- i. CM will review bid proposals for responsiveness advising FCPS of their findings.
- j. CM will review proposed substitutions and work with the design team providing recommendations for any construction impact and consideration for acceptance.
- k. CM shall conduct pre-award conference(s) with the apparent low bidder reviewing the scope of services to be provided in connection with the submitted bid. The CM shall document the review and direct the apparent low bidder to execute the pre-award conference meeting documentation that acknowledges acceptance of the pre-award conference that will become part of the executed Contract.
- l. CM will assist Purchasing Department in determining the qualifications of the successful prime contractors. A determination will be made by checking references provided by Prime Contractors, the specified requirements and other means approved by the Purchasing Department.
- m. CM will compile recommendations for formal approval of base bid and selected alternates in conjunction with FCPS Construction Management and Purchasing Departments.
- n. FCPS Purchasing Department, with assistance from CM and A/E, will prepare award recommendation report(s) for the Board of Education review and action. This report will include the bid tabulations and bid recommendations prepared by the Construction Manager.
- o. CM will prepare bid packages and appropriate forms for State IAC approval of contract award in a timely manner. The CM shall obtain a formal transmittal to the state from the Project Manager and delivery packages to the state.
- p. The Owner reserves the right to employ the services of a professional contracting rating service to assist in the evaluation of the bids and contractors.

4. Construction Phase – Administration

- a. CM will prepare final contracts for FCPS review, approval, and submit and track approved contracts to the Contractor(s) for signature. (CM must utilize the same contract available in the project specifications at the time of bid).

- b. CM will review Prime Contractor' MBE compliance, and certify as to same with each payment requisition.
- c. CM will ensure that Prime Contractors comply with bond, insurance, and subcontract requirements and shall obtain all appropriate files.
- d. CM will schedule, track, and review submittals and shop drawings to assure adherence to the contract specifications and project schedule. The CM shall provide recommendation comments to A/E as to compliance with the specifications, general constructability and schedule. FCPS will provide a sample numbering system for tracking purposes; no installation shall proceed without the A/E's approval of submittals and shop drawings.
- e. CM will coordinate all jobsite progress meetings, record minutes, and distribute with-in 48 hrs.
- f. The CM shall confirm billing with the contractors construction schedule and the contractors schedule of values and the actual work completed.
- g. CM will review and approve all requisitions for actual progress of the work completed, accuracy of the requisition, and assurance that all contractors submit and maintain accurate records for MDB and prevailing wage requirements. Requisitions that are not approved shall be returned to the Contractor with written detail of all errors that prohibited approval.
- h. CM will provide reviews and recommendations for all change orders providing recommendations for FCPS consideration to be within budget and to maintain schedule. Consideration should be given to cost, schedule, FCPS approval requirements, constructability, construction contract requirements, general building operation, and alternative construction methods or vendors.
- i. CM will review Contractor(s) proposals for cost, time, required materials, alternate construction methods, and schedule providing recommendations for all change orders.
- j. FCPS will issue progress payments payable to Prime Contractors. Progress payments will not be made without appropriate documentation and certification from CM. the payment recommendations shall including recommendations from CM identifying Prime Contractors are on schedule and those that are not on schedule.
- k. CM will provide project closeout and coordination for M/E demonstration(s) and commissioning.
- l. CM will provide field trailer, telecommunications, furniture, copier, FAX machine, and other office furnishings as required. This requirement shall include an office (120 sq. ft.) for the FCPS inspector with 1 Data (high speed data when available) and appropriate furnishings. A meeting room sized & furnished for minimum of 20 people, this space maybe common space for both Owner and CM's use. This Cost shall be in the base fee of the project (Not Reimbursable).
- m. CM will provide a Competent Superintendent and other staff as necessary to properly manage, document and oversee the construction project.
- n. CM shall review and update the schedule as work progresses. Printed copies of the schedule shall be included in the Construction Managers monthly reports. The schedule shall be printed in both critical path method and bar chart (bar chart shall include a bar indicating the bid scheduled time frame, current revised schedule, actual progress and all change order work. The schedule shall be cost loaded with the CM estimates at the start of the bidding process and the cost shall be updated with the actual bids and change orders when approved. (ESTIMATED COST SHALL NOT BE PROVIDED TO THE BIDDERS).
- o. During the course of the project, the CM will provide problem-solving services by coordinating activities with the A/E in the identification of problems and the reasons and/or causes. The CM shall provide optional solutions to these problems by developing alternative means, materials, scheduling, and cost. The data shall then be presented to FCPS, and the CM shall work with FCPS and A/E in implementing the chosen method for corrective action(s).
- p. The duration of the Owner-CM Agreement shall start at the signing of this Contract through Board of Education project closeout. Closeout may be approximately twenty-four (24) months after building completion, final payments to Contractors, issuance of Use of Occupancy by the County Government and final occupancy.
- q. CM will review all change orders involving contractor owned equipment rentals and verify compliance with the requirements of the AIA A232 General Conditions Article 7 paragraph 7.2.
- r. CM will provide a total cost of change orders to the Owner for changes that affect multiple prime contractors prior to recommending approval of change orders for related work. If the final costs are not known for each prime contractor and timely approval is required to insure that the project can proceed without undue delay, the CM will prepare a cost estimate to the Owner for those costs which are not

finalized. CM to alert the Owner immediately upon discovery of any changes that affect multiple prime contractors that have the potential to meet or exceed \$25,000 in total cost.

- s. CM shall provide initial cash flow projects for the duration of the project within fourteen (14) days after award of construction contracts and quarterly (every 3 months) thereafter.

5. Construction Phase – On Site

- a. CM will schedule and hold pre-installation meeting with each trade contractor for each specification section before work is scheduled to start. Pre-installation conference reviews will include but not be limited to review of the CM's division 900, each specification section, submittals required by contract documents, approved submittals, schedule, and staffing. The conferences are held with trade Contract Owners or Project Managers and Supervisors to prevent unapproved installations, offset Quality Control problems and scheduling problems throughout the construction period.
- b. CM shall schedule and chair progress meeting, and other meetings as warranted by the project, Owner, Architect, or Construction Manager; CM shall record all data, preparing and distributing meeting minutes to the project team and attendees.
- c. CM will provide coordination for LEED tracking requirements documenting all aspects of the LEED requirements and managing the prime contractors insuring they are complying with the services required to achieve the desired LEED rating. Additionally the CM will provide on-site management of construction project by means of Project Superintendent and other staff as may be required to maintain project quality control and schedule.
- d. CM will coordinate work, activities, and progress of all Prime Contractors throughout the course of construction project. CM shall develop the project schedule after meeting with the contractors to review modifications to the bid schedule. The bid schedule modifications are generated in compliance with the Prime Contractors schedule review & comment to the extent possible while maintaining the overall substantial completion date. The CM Shall update the schedule as the project progresses assessing the working relationship to the approved schedule and use all Construction Contract Provisions to assure compliance with the schedule. When necessary to maintain the overall project schedule the CM will schedule tasks directly with trade contractors. In the event a prime contractor or a prime contractor's subcontractor fails to comply with the schedule, the CM shall issue a letter to the contractor advising that the CM intends to issue a 7 day notice. If the contractor has not complied with the requirements requested by the CM, the CM shall issue formal notices as required by the terms of the bond providing copies of the notice to the Owner, Prime Contractor, Architect and Bonding Company.
- e. Safety: CM will monitor and enforce Prime Contractor compliance with a safety program(s).
- f. Quality Control: CM will be responsible for project control, and will provide necessary personnel to achieve such. CM will schedule and coordinate activities of third party inspection, commissioning agents and testing firms however, FCPS shall directly pay for the testing cost.
- g. FCPS shall perform quality control inspections on an as needed basis, but these inspections shall not be a substitute for quality control responsibilities of CM or code compliance inspections required by the authority having jurisdiction. In the event the CM is not providing sufficient Quality Control FCPS may charge the CM for the cost of a full time FCPS inspector.
- ~~h. Other documents: CM will formulate and provide daily progress reports for actives starting, in progress and actives being completed.~~

~~(List other documents, if any, including additional scopes of service forming part of the Agreement.)~~

CM shall maintain for its use and use of FCPS a record file of all correspondence relating to the project and provide regular reports as required by the owner to assess budget, schedule, or other project issues. This report shall indicate any team related delays hindering project progress.

- j. As the projects near completion, CM will coordinate construction activities with FCPS in furniture placement, final cleaning, equipment staging and occupancy.
- k. CM will collect review and approve all closeout information (including completion of punch list and record/as-built drawings) from trade contractors. The CM shall confirm that all closeout documents are correctly completed and executed before approving or submitting contractors' final application for payment to the Architect or FCPS. The Construction Manager shall review, confirm accuracy and completeness of the Operations and Maintenance manuals as follows, grouped together, incorporating an index in the binders, with each grouped section indexed separately and include the Architects'/engineers review and final approval of the completed O&M Manuals:

Electrical, Mechanical, Food service and general trades referencing the specific specification sections.

The balance of the contractor packages shall be grouped together and indexed referencing the

specifications sections.

The O & M binders shall be referenced as:

Electrical indexed volume 1 through volumes as necessary for the Electrical section of the specifications.

Mechanical indexed volume 1 through volumes as necessary for the Mechanical section of the specifications.

Food Service indexed volume 1 through volumes as necessary for the Food Service section of the specifications.

General Trades indexed volume 1 through volumes as necessary for the General Trades packages.

All other packages shall be indexed volume 1 through volumes as necessary for the balance of the prime contractor packages.

Similarly as-built or record drawings shall be reviewed confirming accuracy and completeness of red line changes documenting the actual as built conditions. Minor no cost changes and change order work additions and deletions have been included within the record drawings. These confirmations must be completed before submitting the record drawings to the Owner and Architect. The CM shall compile Prime Contract O & M package subdivided into Specification Sections not trade packages.

- I. See Exhibit E – Reference Documents to the Contract.

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 08:48:57 on 03/20/2017 under Order No. 8161989522_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 C132™ – 2009, Standard Form of Agreement Between Owner and Construction Manager as Adviser, 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)



Document A132™ – 2009

Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition

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)

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

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

Construction Management Services

RFP 17C16

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

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.

This document is intended to be used in conjunction with AIA Documents A232™–2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; B132™–2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132™–2009, Standard Form of Agreement Between Owner and Construction Manager as Adviser.

AIA Document A232™–2009 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.

AIA Document A132™ – 2009 (formerly A101™CMA – 1992). Copyright © 1975, 1980, 1992 and 2009 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 09:46:04 on 03/16/2017 under Order No.8161989522_1 which expires on 10/03/2017, and is not for resale.

User Notes:

(1649103685)
Page 86

TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS
- 2 THE WORK OF THIS CONTRACT
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 4 CONTRACT SUM
- 5 PAYMENTS
- 6 DISPUTE RESOLUTION
- 7 TERMINATION OR SUSPENSION
- 8 MISCELLANEOUS PROVISIONS
- 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 Modifications, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

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 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 Construction Manager will schedule and the Contractor shall attend the Pre-Construction Meeting and Progress Meetings. The Contractor shall require the attendance of Subcontractors at such meetings as needed or as required by the Construction Manager, Architect or Owner.

§ 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 Prime Contractor(s) shall submit a Proposed Prime Contractor Schedule, the Proposed Prime Contractor Schedule shall indicate task(s) (the work), duration(s) (start and completion) and be compliant with the dates indicated by the Preliminary Schedule. Proposed Prime 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 Preliminary Schedule. Prime Contractor(s) shall provide additional detail when requested by the Construction Manager or Owner and update their Proposed Prime Contractor Schedule to be compliant with the Contract Schedule requirements as provided by the Construction Manager. A Contract Schedule will be formulated by the Construction Manager from requested Prime Contractor Schedules as indicated by Schedule Designations below. Within 7 days of a request by the Construction Manager or Owner, the Prime Contractor shall furnish to the Owner and Construction Manager a Progress Schedule showing the current progress and completion stage of the Work as compared to the Contract Schedule. The Progress

Schedule shall clearly identify any item of Work, which is behind the Contract Schedule along with the Prime Contractor's increase manpower and equipment necessary to comply with the Contract Schedule as updated by the Construction Manager. Progress Schedule(s) shall be in a Critical Path Method (CPM) and bar chart format as requested by the Owner.

Schedule designations:

Preliminary Schedule – This schedule is the basis for the contractor to formulate the bid, providing materials and method to complete work with-in time frames allotted allowing construction time for other activities.

Contract Schedule – this schedule formulated by the Construction Manager with input from Prime Contractors awarded Contracts, every effort will be made to provide time requested by Prime Contractors: however, the project Substantial Completion shall not be jeopardized as time is of the essence.

Progress Schedule – This schedule shall reflect actual progress as related to the Contract Schedule and any extensions approved in accordance with the requirements of the Contract.

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, mechanics' liens 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 :

Portion of the 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.)

§ 3.4 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 projected enrollment of students for total liquidated damages in the amount of \$.00 per day.

§ 3.5 The Contractor shall not be entitled to any form of damages or other compensation for not being able to achieve Substantial Completion earlier than the date as set forth in Article 3.3. Additionally, the Contractor shall not be entitled to any form of damages or other compensation from the Owner by reason of delay or interruption 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 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 as follows:
(Check the appropriate box.)

[XXX] Stipulated Sum, in accordance with Section 4.2
(Paragraphs deleted)
below

(Based on the above complete Section 4.2 below. Based on the selection above, also complete Section 5.1.4.

§ 4.2 Stipulated Sum

§ 4.2.1 The Stipulated Sum shall be (\$), subject to additions and deletions as provided in the Contract Documents.

§ 4.2.2 The Stipulated Sum is based on 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.)

§ 4.2.3 Unit prices, if any:
(Identify and state the unit price, and state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
------	-----------------------	-------------------------

§ 4.2.4 Allowances included in the Stipulated Sum, if any:
(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Allowance
------	-----------

(Paragraphs deleted)
(Table deleted)
(Paragraphs deleted)
(Table deleted)
(Paragraphs deleted)
(Table deleted)
(Paragraphs deleted)

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Construction Manager by the Contractor, and upon certification of the Project Application and Project Certificate for Payment or Application for Payment and Certificate for Payment by the Construction Manager and Architect and issuance 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.

Init.

§ 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. Construction Managers are required to submit overall estimated billing by the 28th of each month for the current month. The Contractor must provide estimates to the Construction Manager as specified by the Construction Manager. Contractors' failure to provide estimate to the Construction Manager as requested may delay processing their 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 Contractors Applications for Payments.

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

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

§ 5.1.4 Progress Payments Where the Contract Sum is Based on a Stipulated Sum

§ 5.1.4.1 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 and be prepared in such form and supported by such data to substantiate its accuracy as the Construction Manager and Architect may require. This schedule, unless objected to by the Construction Manager or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.4.2 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.

§ 5.1.4.3 Subject to the 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 total Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of five percent (5 %);
- .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 provided the Contractor provides an insurance certificate listing The Board of Education of Frederick County as a named insured), 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 Construction Manager or Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of the General Conditions.

§ 5.1.4.4 The progress payment amount determined in accordance with Section 5.1.4.3 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 five percent (5 %) of the Contract Sum, less such amounts as the Construction Manager recommends and the Architect determines for incomplete Work and unsettled claims; and
- .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 the General Conditions.

§ 5.1.4.5 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 5.1.4.3.1 and 5.1.4.3.2 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 discretion. When the Construction Manager, 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 Construction Manager, 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.

(Paragraphs deleted)

§ 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 of AIA Document A232-2009, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 is deleted
- .3 a final Certificate for Payment or Project Certificate for Payment has been issued by the Architect; such final payment shall be made by the Owner not more than 30 days after the issuance of the final Certificate for Payment or Project Certificate for Payment, or as follows:

Final Payment for the Work shall be made when the following conditions have been satisfied 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" two sets of 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. One (1) complete set of O&M manuals divided by specification section, warranties and guarantees in three-ring binders, indexed with a table of contents approved by the Architect; and one complete set in an electronic format (CD/flash drive).
- 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.

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 A232-2009, 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 A232-2009, 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.)

Init.

[] Arbitration pursuant to Section 15.4 of AIA Document A232–2009.

[XXX] Litigation in a court of competent jurisdiction.

[] Other: *(Specify)*

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 Where the Contract Sum is a Stipulated Sum

§ 7.1.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A232–2009.

§ 7.1.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A232–2009.

(Paragraphs deleted)

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A232–2009 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 percent

§ 8.3 The Owner's representative:

(Name, address and other information)

§ 8.4 The Contractor's representative:

(Name, address and other information)

§ 8.5 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 one apprentice for every one journeyman, as per the DLLR requirements. If requested, the Contractor shall, within twenty-four (24) hours, provide documentation outlining specific experience for a journeyman, foreman or superintendent.

§ 8.6.7 Where required by the construction or bidding documents 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 of record and/or the Commissioning Agent, before the warranty/guarantee period will begin.

§8.6.13 The Contractor shall provide not less than a 2 year material and labor 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.

§ 8.6.14 The Contractor and Subcontractors shall conform to all requirements of the following Maryland General Assembly Policies:

- .1 Maryland General Assembly House Bill 642 – Children – Child Care Facilities, Public Schools and Nonpublic Schools – Contractors and Subcontractors.
- .2 Maryland General Assembly Senate Bill 508 – Children Care Facilities, Public Schools and Nonpublic Schools – Contractors and Subcontractors.

.3 The Contractor and Subcontractors shall not knowingly hire or retain any individual who has been convicted of a crime involving:

1. An offense under 3-307 of the Criminal Law Article;
2. Child sexual abuse under 3-602 of the Criminal Law Article, or an offense under the laws of another state that would constitute child sexual abuse under 3-602 of the Criminal Law Article if committed in the State; or
3. A crime of violence as defined in 14-101 of the Criminal Law Article, or an offense under the laws of another state that would be a violation of 14-101 of the Criminal Law Article if committed in this State.

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 or included in the FCPS bid package and addenda.

§ 9.1.1 The Agreement is this executed AIA Document A132–2009, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition as modified.

§ 9.1.2 The General Conditions are, AIA Document A232–2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition as modified.

§ 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
--------	------	-------

(Paragraph deleted)

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

- .1 AIA Document A132™–2009, Exhibit A, Determination of the Cost of the Work, if applicable.
- .2 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:
- .3 AIA Document E202™–2008, Building Information Modeling Protocol Exhibit, if completed, or the following:

- .4 Other documents, if any, listed below:
(List here any additional documents which are intended to form part of the Contract Documents. AIA Document A232-2009 provides that bidding requirements such as advertisement or invitation to bid, 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(s).

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 A232-2009.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A232-2009.)

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 as set forth below:

- (a) The Board of Education of Frederick County, Frederick County Council, 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 Frederick County Council 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-rata 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 Owner provides and maintains Builder's Risk Protection. The Contractor shall provide coverage for the first \$1,000.00 for damages per occurrence. 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

Part 2 Employers Liability:

Limit of Liability or Bond Amount

as required by statute

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
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 From 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.	\$2,000,000.00 per Occurrence \$2,000,000.00 Aggregate

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

OWNER *(Signature)*

CONTRACTOR *(Signature)*

| Theresa R. Alban, Ph.D., Superintendent

(Printed name and title)

(Printed name and title)

Init.

Additions and Deletions Report for

AIA® Document A132™ – 2009

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 09:46:04 on 03/16/2017.

PAGE 1

Construction Management Services

...

RFP 17C16

PAGE 2

10 INSURANCE AND BONDS

EXHIBIT A — DETERMINATION OF THE COST OF THE WORK

...

§ 2.1 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 Construction Manager will schedule and the Contractor shall attend the Pre-Construction Meeting and Progress Meetings. The Contractor shall require the attendance of Subcontractors at such meetings as needed or as required by the Construction Manager, Architect or Owner.

§ 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 Prime Contractor(s) shall submit a Proposed Prime Contractor Schedule, the Proposed Prime Contractor Schedule shall indicate task(s) (the work), duration(s) (start and completion) and be compliant with the dates indicated by the Preliminary Schedule. Proposed Prime 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 Preliminary Schedule. Prime Contractor(s) shall provide additional detail when requested by the Construction Manager or Owner and update their Proposed Prime Contractor Schedule to be compliant with the Contract Schedule requirements as provided by the Construction Manager. A Contract Schedule will be formulated by the Construction Manager from requested Prime Contractor Schedules as indicated by Schedule Designations below. Within 7 days of a request by the Construction Manager or Owner, the Prime Contractor shall furnish to the Owner and Construction Manager a Progress Schedule showing the current progress and completion stage of the Work as compared to the Contract Schedule. The Progress Schedule shall clearly identify any item of Work, which is behind the Contract Schedule along with the Prime Contractor's increase manpower and equipment necessary to comply with the Contract Schedule as updated by the Construction Manager. Progress Schedule(s) shall be in a Critical Path Method (CPM) and bar chart format as requested by the Owner.

Schedule designations:

Preliminary Schedule – This schedule is the basis for the contractor to formulate the bid, providing materials and method to complete work with-in time frames allotted allowing construction time for other activities.

Contract Schedule – this schedule formulated by the Construction Manager with input from Prime Contractors awarded Contracts, every effort will be made to provide time requested by Prime Contractors; however, the project Substantial Completion shall not be jeopardized as time is of the essence.
Progress Schedule – This schedule shall reflect actual progress as related to the Contract Schedule and any extensions approved in accordance with the requirements of the Contract.

§ 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 projected enrollment of _____ students for total liquidated damages in the amount of \$ _____ .00 per day.

§ 3.5 The Contractor shall not be entitled to any form of damages or other compensation for not being able to achieve Substantial Completion earlier than the date as set forth in Article 3.3. Additionally, the Contractor shall not be entitled to any form of damages or other compensation from the Owner by reason of delay or interruption 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 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

§ 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 ~~one of the following:~~ as follows:

...

[XXX] Stipulated Sum, in accordance with Section 4.2 below

[] ~~Cost of the Work plus the Contractor's Fee without a Guaranteed Maximum Price, in accordance with Section 4.3 below~~

[] ~~Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with Section 4.4 below~~

~~(Based on the selection above, complete Section 4.2, 4.3 or 4.4 above complete Section 4.2 below. Based on the selection above, also complete either Section 5.1.4, 5.1.5 or 5.1.6 below.)~~Section 5.1.4.

...

~~§ 4.3 Cost of the Work Plus Contractor's Fee without a Guaranteed Maximum Price~~

~~§ 4.3.1 The Contract Sum is the Cost of the Work as defined in Exhibit A, Determination of the Cost of the Work, plus the Contractor's Fee.~~

~~§ 4.3.2 The Contractor's Fee:~~

~~(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee.)~~

~~§ 4.3.3 The method of adjustment of the Contractor's Fee for changes in the Work:~~

~~§ 4.3.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:~~

~~§ 4.3.5 Rental rates for Contractor-owned equipment shall not exceed _____ percent (____%) of the standard rate paid at the place of the Project.~~

~~§ 4.3.6 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)
------	-----------------------	-------------------------

~~§ 4.3.7 The Contractor shall prepare and submit to the Construction Manager for the Owner, in writing, a Control Estimate within 14 days of executing this Agreement. The Control Estimate shall include the items in Section A.1 of Exhibit A, Determination of the Cost of the Work.~~

~~§ 4.4 Cost of the Work Plus Contractor's Fee with a Guaranteed Maximum Price~~

~~§ 4.4.1 The Contract Sum is the Cost of the Work as defined in Exhibit A, Determination of the Cost of the Work, plus the Contractor's Fee.~~

~~§ 4.4.2 The Contractor's Fee:~~

~~(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee.)~~

~~§ 4.4.3 The method of adjustment of the Contractor's Fee for changes in the Work:~~

~~§ 4.4.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:~~

~~§ 4.4.5 Rental rates for Contractor-owned equipment shall not exceed _____ percent (____%) of the standard rate paid at the place of the Project.~~

~~§ 4.4.6 Unit Prices, if any:~~

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

Item	Units and Limitations	Price per Unit (\$0.00)
------	-----------------------	-------------------------

~~§ 4.4.7 Guaranteed Maximum Price~~

~~§ 4.4.7.1 The sum of the Cost of the Work and the Contractor's Fee is guaranteed by the Contractor not to exceed (\$ —), subject to additions and deductions by changes in the Work as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.~~

~~(Insert specific provisions if the Contractor is to participate in any savings.)~~

~~§ 4.4.7.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:~~

~~§ 4.4.7.3 Allowances included in the Guaranteed Maximum Price, if any:~~

~~(Identify and state the amounts of any allowances, and state whether they include labor, materials, or both.)~~

Item	Allowance
------	-----------

~~§ 4.4.7.4 Assumptions, if any, on which the Guaranteed Maximum Price is based:~~

PAGE 5

The billing period shall be as required herein and as indicated by the specifications. Construction Managers are required to submit overall estimated billing by the 28th of each month for the current month. The Contractor must provide estimates to the Construction Manager as specified by the Construction Manager. Contractors' failure to provide estimate to the Construction Manager as requested may delay processing their 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 Contractors Applications for Payments.

§ 5.1.3 Provided that an Application for Payment is received by the Construction Manager not later than the first day of a month, the Owner shall make payment of the certified amount in the Application for Payment to the Contractor not later than the twenty-fifth day of the same month. If an Application for Payment is received by the Construction Manager after the application date fixed above, payment shall be made by the Owner not later than thirty (30) days after the ~~Construction Manager-Owner~~ 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 total Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of percent (%). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included as provided in Section 7.3.9 of the General Conditions; five percent (5 %);
- .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 —percent (—writing provided the Contractor provides an insurance certificate listing The Board of Education of Frederick County as a named insured), less retainage of five percent (5 %);

...

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to five percent (5 %) of the Contract Sum, less such amounts as the Construction Manager recommends and the Architect determines for incomplete Work and unsettled claims; and

PAGE 6

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 discretion. When the Construction Manager, 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 Construction Manager, 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.

~~§ 5.1.5 Progress Payments Where the Contract Sum is Based on the Cost of the Work without a Guaranteed Maximum Price~~

~~§ 5.1.5.1 With each Application for Payment, the Contractor shall submit the cost control information required in Exhibit A, Determination of the Cost of the Work, along with payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached and any other evidence required by the Owner, Construction Manager or Architect to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor; less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment.~~

~~§ 5.1.5.2 Applications for Payment shall show the Cost of the Work actually incurred by the Contractor through the end of the period covered by the Application for Payment and for which the Contractor has made or intends to make actual payment prior to the next Application for Payment.~~

~~§ 5.1.5.3 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:~~

- ~~.1 Take the Cost of the Work as described in Exhibit A, Determination of the Cost of the Work;~~
- ~~.2 Add the Contractor's Fee, less retainage of — percent (— %). The Contractor's Fee shall be computed upon the Cost of the Work described in that Section at the rate stated in that Section; or if the Contractor's Fee is stated as a fixed sum, an amount which bears the same ratio to that fixed sum Fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;~~
- ~~.3 Subtract retainage of — percent (— %) from that portion of the Work that the Contractor self-performs;~~
- ~~.4 Subtract the aggregate of previous payments made by the Owner;~~
- ~~.5 Subtract the shortfall, if any, indicated by the Contractor in the documentation required by Article 5 or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and~~
- ~~.6 Subtract amounts, if any, for which the Construction Manager or Architect has withheld or withdrawn a Certificate for Payment as provided in Section 9.5 of AIA Document A232™ 2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition.~~

~~§ 5.1.5.4 The Owner, Construction Manager and Contractor shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.~~

~~§ 5.1.5.5 In taking action on the Contractor's Applications for Payment, the Construction Manager and Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Construction Manager and Architect have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Article 5 or other supporting data; that the Construction Manager and Architect have made exhaustive or continuous on-site inspections; or that the Construction Manager and Architect have made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.~~

~~§ 5.1.5.6 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.~~

~~§ 5.1.6 Progress Payments Where the Contract Sum is Based on the Cost of the Work with a Guaranteed Maximum Price~~

~~§ 5.1.6.1 With each Application for Payment, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoicees with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor; less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment.~~

~~§ 5.1.6.2 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 and be prepared in such form and supported by such data to substantiate its accuracy as the Construction Manager and Architect may require. This schedule, unless objected to by the Construction Manager or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.~~

~~§ 5.1.6.3 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. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work for which the Contractor has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.~~

~~§ 5.1.6.4 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 Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.10 of AIA Document A232-2009;~~
- ~~2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;~~
- ~~3 Add the Contractor's Fee, less retainage of — percent (— %). The Contractor's Fee shall be computed upon the Cost of the Work at the rate stated in Section 4.4.2 or, if the Contractor's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;~~
- ~~4 Subtract retainage of — percent (— %) from that portion of the Work that the Contractor self-performs;~~
- ~~5 Subtract the aggregate of previous payments made by the Owner;~~
- ~~6 Subtract the shortfall, if any, indicated by the Contractor in the documentation required by Section 5.1.6.1 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and~~
- ~~7 Subtract amounts, if any, for which the Construction Manager or Architect have withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A232-2009.~~

~~§ 5.1.6.5 The Owner and the Contractor shall agree upon a (1) mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.~~

~~§ 5.1.6.6 In taking action on the Contractor's Applications for Payment, the Construction Manager and Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Construction Manager or Architect have made a detailed examination, audit or~~

arithmetic verification of the documentation submitted in accordance with Section 5.1.6.1 or other supporting data; that the Construction Manager or Architect have made exhaustive or continuous on-site inspections; or that the Construction Manager or Architect have made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

~~§ 5.1.6.7 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.~~

...

- ~~.2 the Contractor has submitted a final accounting for the Cost of the Work, pursuant to Exhibit A, Determination of the Cost of the Work when payment is on the basis of the Cost of the Work, with or without a Guaranteed Maximum payment; and is deleted~~
- .3 a final Certificate for Payment or Project Certificate for Payment has been issued by the Architect; such final payment shall be made by the Owner not more than 30 days after the issuance of the final Certificate for Payment or Project Certificate for Payment, or as follows:

Final Payment for the Work shall be made when the following conditions have been satisfied 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" two sets of 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. One (1) complete set of O&M manuals divided by specification section, warranties and guarantees in three-ring binders, indexed with a table of contents approved by the Architect; and one complete set in an electronic format (CD/flash drive).
- 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 7

[XXX] Litigation in a court of competent jurisdiction.

...

~~§ 7.2~~

~~Where the Contract Sum is Based on the Cost of the Work with or without a Guaranteed Maximum Price~~

~~§ 7.2.1 Subject to the provisions of Section 7.2.2 below, the Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A232 - 2009.~~

§ 7.2.2 The Contract may be terminated by the Owner for cause as provided in Article 14 of AIA Document A232 - 2009; however, the Owner shall then only pay the Contractor an amount calculated as follows:

- ~~.1 Take the Cost of the Work incurred by the Contractor to the date of termination;~~
- ~~.2 Add the Contractor's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Sections 4.3.2 or 4.4.2, as applicable, or, if the Contractor's Fee is stated as a fixed sum, an amount that bears the same ratio to that fixed sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and~~

.3 — Subtract the aggregate of previous payments made by the Owner.

§ 7.2.3 If the Owner terminates the Contract for cause when the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, and as provided in Article 14 of AIA Document A232-2009, the amount, if any, to be paid to the Contractor under Section 14.2.4 of AIA Document A232-2009 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed the amount calculated in Section 7.2.2.

§ 7.2.4 The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 7.2.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 7, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.

§ 7.2.5 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A232-2009; in such case, the Contract Sum and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A232-2009, except that the term 'profit' shall be understood to mean the Contractor's Fee as described in Sections 4.3.2 and 4.4.2 of this Agreement.

...

0.0 % zero percent

...

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

...

§ 8.6.1 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 one apprentice for every one journeyman, as per the DLLR requirements. If requested, the Contractor shall, within twenty-four (24) hours, provide documentation outlining specific experience for a journeyman, foreman or superintendent.

§ 8.6.7 Where required by the construction or bidding documents 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 of record and/or the Commissioning Agent, before the warranty/guarantee period will begin.

§8.6.13 The Contractor shall provide not less than a 2 year material and labor 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.

§ 8.6.14 The Contractor and Subcontractors shall conform to all requirements of the following Maryland General Assembly Policies:

.1 Maryland General Assembly House Bill 642 – Children – Child Care Facilities, Public Schools and Nonpublic Schools – Contractors and Subcontractors.

.2 Maryland General Assembly Senate Bill 508 – Children Care Facilities, Public Schools and Nonpublic Schools – Contractors and Subcontractors.

.3 The Contractor and Subcontractors shall not knowingly hire or retain any individual who has been convicted of a crime involving:

1. An offense under 3-307 of the Criminal Law Article;
2. Child sexual abuse under 3-602 of the Criminal Law Article, or an offense under the laws of another state that would constitute child sexual abuse under 3-602 of the Criminal Law Article if committed in the State; or
3. A crime of violence as defined in 14-101 of the Criminal Law Article, or an offense under the laws of another state that would be a violation of 14-101 of the Criminal Law Article if committed in this State.

PAGE 9

§ 9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below-below or included in the FCPS bid package and addenda.

§ 9.1.1 The Agreement is this executed AIA Document A132–2009, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition-~~Edition as modified.~~

§ 9.1.2 The General Conditions are ~~are~~ AIA Document A232-2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition ~~Edition~~ as modified.

...

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.

PAGE 10

Frederick County Public Schools Bid Documents for this projects Bid(s).

...

10.1 The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A232-2009.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A232-2009.)

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 as set forth below:

(a) The Board of Education of Frederick County, Frederick County Council, 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 Frederick County Council 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 Owner provides and maintains Builder's Risk Protection. The Contractor shall provide coverage for the first \$1,000.00 for damages per occurrence. 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	Limit of Liability or Bond Amount (\$0.00)
<u>Part 1 Worker's Compensation Insurance</u>	<u>as required by statute</u>
<u>Part 2 Employers Liability:</u>	
<u>Bodily Injury by Accident</u>	<u>\$ 500,000.00 each accident</u>
<u>Bodily Injury by Disease</u>	<u>\$ 500,000.00 policy limits</u>
<u>Bodily Injury by Disease</u>	<u>\$ 500,000.00 each employee</u>
<u>Commercial General Liability Insurance, to include, premises, products, completed operations, personal injury and contractual: Aggregate to apply Per Project./Per Location, Occurrence</u>	<u>\$1,000,000.00</u>
<u>Each Occurrence</u>	<u>\$2,000,000.00</u>
<u>General aggregate Limit (Per Site)</u>	<u>\$2,000,000.00 aggregate limit</u>
<u>Products and complete operation</u>	<u>\$1,000,000.00 each occurrence Limit</u>
<u>Personal & advertising injury</u>	<u>\$1,000,000.00</u>
<u>Fire damage</u>	<u>\$ 50,000.00</u>
<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 & Statute of Limitations:</u>	
<u>Independent Contractors</u>	
<u>Contractual Liability</u>	
<u>Broad From 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 & 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 & 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 & 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>\$2,000,000.00 per Occurrence</u> <u>\$2,000,000.00 Aggregate</u>

PAGE 12

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 09:46:04 on 03/16/2017 under Order No. 8161989522_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 A132™ – 2009, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition, 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)



Document A232™ – 2009

General Conditions of the Contract for Construction, Construction Manager as Adviser Edition

for the following PROJECT:

(Name, and location or address)

Construction Management Services

RFP 17C16

THE CONSTRUCTION MANAGER:

(Name, legal status and address)

THE OWNER:

(Name, legal status and address)

THE ARCHITECT:

(Name, legal status and address)

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.

This document is intended to be used in conjunction with AIA Documents A132™–2009, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; B132™–2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132™–2009, Standard Form of Agreement Between Owner and Construction Manager as Adviser.

TABLE OF ARTICLES

1	GENERAL PROVISIONS
2	OWNER
3	CONTRACTOR
4	ARCHITECT AND CONSTRUCTION MANAGER
5	SUBCONTRACTORS
6	CONSTRUCTION BY OWNER OR BY OTHER CONTRACTORS
7	CHANGES IN THE WORK
8	TIME
9	PAYMENTS AND COMPLETION
10	PROTECTION OF PERSONS AND PROPERTY
11	INSURANCE AND BONDS
12	UNCOVERING AND CORRECTION OF WORK
13	MISCELLANEOUS PROVISIONS
14	TERMINATION OR SUSPENSION OF THE CONTRACT
15	CLAIMS AND DISPUTES

INDEX

(Topics and numbers in bold are section headings.)

Acceptance of Nonconforming Work

9.6.6, 9.9.3, **12.3**

Acceptance of Work

9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, **12.3**

Access to Work

3.16, 6.2.1, **12.1**

Accident Prevention

10

Acts and Omissions

3.2.1, 3.2.2, 3.3.2, 3.12.8, 3.18, 8.3.1, 9.5.1, 10.1, 10.2.5, 13.4.2, **13.7**

Addenda

1.1.1, 3.11, 4.2.14

Additional Costs, Claims for

3.2.4, 3.7.4, 3.7.5, 6.1.1, 7.3, 9.10.3, 9.10.4, 10.3, 10.4, 15.1.4

Additional Inspections and Testing

4.2.8, 12.2.1, **13.5**

Additional Insured

11.1.4

Additional Time, Claims for

3.7.4, 3.7.5, 6.1.1, 7.3, 8.3, **10.3**

Administration of the Contract

3.10, **4.2**

Advertisement or Invitation to Bid

1.1.1

Aesthetic Effect

4.2.19

Allowances

3.8, 7.3.8

All-risk Insurance

11.3.1, 11.3.1.1

Applications for Payment

4.2.7, 4.2.15, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, 9.7, 9.8.3, 9.10.1, 9.10.3, 9.10.5, 11.1.3, 14.2.4

Approvals

2.1.1, 2.2.2, 2.4, 3.1.4, 3.10.1, 3.10.2, 3.12.4 through

3.12.10, 3.13.2, 3.15.2, 4.2.9, 9.3.2, 13.4.2, **13.5**

(Paragraphs deleted)

ARCHITECT

4

Architect, Certificates for Payment

9.4

Architect, Definition of

4.1.1

Architect, Extent of Authority

5.2, 7.1.2, 7.3.7, 7.4, 9.3.1, 9.4, 9.5, 9.8.3, 9.8.4, 9.10.1, 9.10.3, 12.1, 12.2.1, 13.5.1, 13.5.2, 15.1.3, 15.2.1

Architect, Limitations of Authority and

Responsibility

2.1.1, 3.12.8, 4.2.1, 4.2.2, 4.2.8, 4.2.13, 5.2.1, 9.6.4, **15.2**

Architect's Additional Services and Expenses

2.4, 11.3.1.1, 12.2.1, 12.2.4, **13.5.2**

Architect's Administration of the Contract

4.2, 9.4, 9.5, **15.2**

Architect's Approvals

3.12.8

Architect's Authority to Reject Work

4.2.8, 12.1.2, 12.2.1

Architect's Copyright

1.5

Architect's Decisions

4.2.8, 7.3.9, 7.4, 8.1.3, 8.3.1, 9.2, 9.4, 9.5, 9.8.3, 9.9.2, 13.5.2, 14.2.2, 14.2.4, **15.2**

Architect's Inspections

3.7.4, 4.2, 9.8.3, 9.9.2, 9.10.1, **13.5**

Architect's Instructions

3.2.4, 7.4, 9.4

Architect's Interpretations

4.2.8, 4.2.17, 4.2.18

Architect's On-Site Observations

4.2.2, 9.4, 9.5.1, 9.10.1, 12.1.1, 12.1.2, **13.5**

Architect's Project Representative

4.2.16

Architect's Relationship with Contractor

1.1.2, 1.5, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5, 3.7.4, 3.9.2, 3.9.3, 3.10, 3.11, 3.12.8, 3.16, 3.18, 4.2, 5.2, 6.2.2, 8.2, 11.3.7, 12.1, **13.5**

Architect's Relationship with Construction Manager

1.1.2, 9.3 through 9.10, 10.3, 13.5.1, 10.3, 11.3.7, 13.4.2, **13.5.4**

Architect's Relationship with Subcontractors

1.1.2, 4.2.8, 5.3, 9.6.3, 9.6.4

Architect's Representations

9.4, 9.5, 9.10.1

Architect's Site Visits

4.2.2, 9.4, 9.5.1, 9.8.3, 9.9.2, 9.10.1, **13.5**

Asbestos

10.3.1

Attorneys' Fees

3.18.1, 9.10.2, 10.3.3

Award of Other Contracts

6.1.1, 6.1.2

Award of Subcontracts and Other Contracts for Portions of the Work

5.2

Basic Definitions

1.1

Bidding Requirements

1.1.1, 5.2.1, 11.4.1

Binding Dispute Resolution

9.7, 11.3.9, 11.3.10, 13.1, 15.2.5, 15.2.6.1, 15.3.1, 15.3.2, **15.4.1**

Init.

Boiler and Machinery Insurance

11.3.2

BONDS, INSURANCE AND 11

Bonds, Lien

7.3.7.4, 9.10.3

Bonds, Performance and Payment

7.3.7.4, 9.6.7, 9.10.3, 11.3.9, 11.4

Building Permit

2.2.2, 3.7.1

Capitalization

1.3

Certificate of Substantial Completion

9.8.3, 9.8.4, 9.8.5

Certificates for Payment

4.2.2, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3,
15.1.3

Certificates of Inspection, Testing or Approval

13.5.4

Certificates of Insurance

9.3.2, 9.10.2, 11.1.3

Change Orders

1.1.1, 2.4, 3.4.2, 3.7.4, 3.8.2, 3.11, 3.12.8, 4.2.12,
4.2.13, 4.2.14, 5.2.3, 7.1.1, 7.1.2, 7.2, 7.3.2, 7.3.4,
7.3.6, 7.3.9, 7.3.10, 8.3.1, 9.3.1.1, 9.10.3, 10.3.2,
11.3.1.2, 11.3.4, 11.3.9, 12.1.2, 15.1.3

Change Orders, Definition of

7.2

Changes

7.1

CHANGES IN THE WORK

2.2.1, 3.4.2, 3.11, 3.12.8, 4.2.13, 4.2.14, 7, 8.3.1,
9.3.1.1

Claims, Definition of

15.1.1

CLAIMS AND DISPUTES

1.1.8, 3.2.4, 3.7.5, 6.1.1, 7.3.9, 8.3.2, 9.3.3, 9.10.3,
9.10.4, 10.3.3, 15, 15.4

Claims for Additional Cost

3.2.4, 3.7.5, 6.1.1, 7.3.9, 9.10.3, 9.10.4, 10.3.2, 10.4,
15.1.4

Claims for Additional Time

3.2.4, 3.7.5, 7, 8.3.2, 10.4, 15.1.5

Concealed or Unknown Conditions, Claims for

3.7

Claims for Damages

3.2.4, 3.18, 6.1.1, 6.2.5, 8.3.2, 9.3.3, 9.5.1.2, 9.10.2,
9.10.5, 10.3.3, 11.1.1, 11.3.5, 11.3.7, 15.1.6

Cleaning Up

3.15, 6.3

Commencement of Statutory Limitation Period

13.7

Commencement of the Work, Definition of

8.1.2

Communications, Owner to Architect

2.2.6

Communications, Owner to Construction Manager

2.2.6

Communications, Owner to Contractor

2.2.6

Communications Facilitating Contract Administration

3.9.1, 4.2.6

COMPLETION, PAYMENTS AND 9

Completion, Substantial

4.2.15, 8.1.1, 8.1.3, 8.2.3, 9.4.3.3, 9.8, 9.9.1, 9.10.3,
12.2.1, 12.2.2, 13.7

Concealed or Unknown Conditions

3.7.4, 4.2.8, 8.3.1, 10.3

Conditions of the Contract

1.1.1

Consolidation or Joinder

15.4.4

CONSTRUCTION BY OWNER OR BY OTHER CONTRACTORS

1.1.4, 6

Construction Change Directive, Definition of

7.3.1

Construction Change Directives

1.1.1, 3.4.2, 3.12.8, 4.2.12, 4.2.13, 7.1.1, 7.1.2, 7.1.3,
7.3, 9.3.1.1

Construction Manager, Building Permits

2.2.2

Construction Manager, Communications through

4.2.6

Construction Manager, Construction Schedule

3.10.1, 3.10.3

CONSTRUCTION MANAGER

4

Construction Manager, Definition of

4.1.2

Construction Manager, Documents and Samples at the Site

3.11

Construction Manager, Extent of Authority

3.12.7, 3.12.8, 4.1.3, 4.2.1, 4.2.4, 4.2.5, 4.2.9, 7.1.2,
7.2, 7.3.1, 8.3, 9.3.1, 9.4.1, 9.4.2, 9.4.3, 9.8.2, 9.8.3,
9.8.4, 9.9.1, 12.1, 12.2.1, 14.2.2, 14.2.4

Construction Manager, Limitations of Authority and Responsibility

4.2.5, 4.2.8, 13.4.2

Construction Manager, Submittals

4.2.9

Construction Manager's Additional Services and Expenses

12.2.1

Construction Manager's Administration of the Contract

4.2, 9.4, 9.5

Construction Manager's Approval

2.4, 3.10.1, 3.10.2

Construction Manager's Authority to Reject Work
4.2.8, 12.2.1
Construction Manager's Decisions
7.3.7, 7.3.9, 9.4.1, 9.5.1
Construction Manager's Inspections
4.2.8, 9.8.3, 9.9.2
Construction Manager's On-Site Observations
9.5.1
Construction Manager's Relationship with Architect
1.1.2, 4.2.1, 4.2.7, 4.2.8, 4.2.9, 4.2.13, 4.2.15, 4.2.16,
4.2.20, 9.2.1, 9.4.2, 9.5, 9.6.1, 9.6.3, 9.8.2, 9.8.3,
9.8.4, 9.9.1, 9.10.1, 9.10.2, 9.10.3, 11.1.3, 12.2.4,
13.5.1, 13.5.2, 13.5.4, 14.2.2, 14.2.4
Construction Manager's Relationship with Contractor
3.2.2, 3.2.3, 3.3.1, 3.5, 3.10.1, 3.10.2, 3.10.3, 3.11,
3.12.5, 3.12.6, 3.12.7, 3.12.8, 3.12.9, 3.12.10, 3.13.2,
3.14.2, 3.15.2, 3.16, 3.17, 3.18.1, 4.2.4, 4.2.5, 4.2.6,
4.2.9, 4.2.14, 4.2.17, 4.2.20, 5.2, 6.2.1, 6.2.2, 7.1.2,
7.2, 7.3.5, 7.3.7, 7.3.10, 8.3.1, 9.2, 9.3.1, 9.4.1, 9.4.2,
9.7, 9.8.2, 9.8.3, 9.8.4, 9.9.1, 9.10.1, 9.10.2, 9.10.3,
10.1, 10.3, 11.3.7, 12.1, 13.5.1, 13.5.2, 13.5.3, 13.5.4
Construction Manager's Relationship with Owner
2.2.2, 4.2.1, 10.3.2
Construction Manager's Relationship with Other
Contractors and Owner's Own Forces
4.2.4
Construction Manager's Relationship with
Subcontractors
4.2.8, 5.3, 9.6.3, 9.6.4
Construction Manager's Site Visits
9.5.1
Construction Schedules, Contractor's
3.10, 3.12.1, 3.12.2, 6.1.2, 15.1.5.2
Contingent Assignment of Subcontracts
5.4, 14.2.2.2
Continuing Contract Performance
15.1.3
Contract, Definition of
1.1.2
CONTRACT, TERMINATION OR
SUSPENSION OF THE
5.4.1.1, 11.3.9, 14
Contract Administration
3.1.3, 4.2, 9.4, 9.5
Contract Award and Execution, Conditions Relating
to
3.7.1, 3.10, 5.2, 6.1, 11.1.3, 11.3.6, 11.4.1
Contract Documents, Copies Furnished and Use of
1.5.2, 2.2.5, 5.3
Contract Documents, Definition of
1.1.1
Contract Performance During Claim, Mediation or
Litigation
15.1.3

Contract Sum
3.7.4, 3.7.5, 3.8, 3.10.2, 5.2.3, 7.2, 7.3, 7.4, 9.1, 9.2,
9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.3.1.1, 12.3, 14.2.4,
14.3.2, 15.1.4, 15.2.5
Contract Time
3.7.4, 3.7.5, 4, 3.10.2, 5.2.3, 7.2.3, 7.3.1, 7.3.5,
7.3.10, 7.4, 8.1.1, 8.2.1, 8.2.3, 8.3.1, 9.5.1, 9.7,
10.3.2, 12.1.1, 14.3.2, 15.1.5.1, 15.2.5
Contract Time, Definition of
8.1.1
CONTRACTOR
3
Contractor, Definition of
3.1.1
Contractor's Construction Schedules
3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2
Contractor's Employees
3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3,
11.1.1, 11.3.7, 14.1, 14.2.1.1
Contractor's Liability Insurance
11.1
Contractor's Relationship with Other Contractors and
Owner's Own Forces
3.12.5, 3.14.2, 4.2.6, 6, 11.3, 12.1.2, 12.2.4
Contractor's Relationship with Subcontractors
1.2.2, 3.3.2, 3.18, 5, 9.6.2, 9.6.7, 9.10.2, 11.3.1.2,
11.3.7, 11.3.8, 14.2.1.2
Contractor's Relationship with the Architect
1.1.2, 1.5, 3.2.2, 3.2.3, 3.2.4, 3.4.2, 3.5, 3.7.4, 3.10.1,
3.11, 3.12, 3.16, 3.18, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3,
9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3.7, 12, 13.5,
15.1.2, 15.2.1
Contractor's Relationship with the Construction
Manager
1.1.2, 3.2.2, 3.2.3, 3.3.1, 3.5, 3.10.1, 3.10.2, 3.10.3,
3.11, 3.12.5, 3.12.7, 3.12.9, 3.12.10, 3.13.2, 3.14.2,
3.15.1, 3.16, 3.17, 3.18.1, 4.2.4, 4.2.5, 5.2, 6.2.1,
6.2.2, 7.1.2, 7.3.5, 7.3.7, 7.3.10, 8.3.1, 9.2, 9.3.1,
9.4.1, 9.4.2, 9.8.2, 9.9.1, 9.10.1, 9.10.2, 9.10.3, 10.1,
10.2.6, 10.3, 11.3.7, 12.1, 13.5.1, 13.5.2, 13.5.3,
13.5.4
Contractor's Representations
3.2.1, 3.2.2, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2
Contractor's Responsibility for Those Performing the
Work
3.3.2, 3.18, 5.3, 6.1.3, 6.2, 9.5.1, 10.2.8
Contractor's Review of Contract Documents
3.2
Contractor's Right to Stop the Work
9.7
Contractor's Right to Terminate the Contract
14.1
Contractor's Submittals
3.10.2, 3.11, 3.12, 4.2.9, 9.2, 9.3, 9.8.2, 9.9.1, 9.10.2,
9.10.3, 11.1.3, 11.4.2
Contractor's Superintendent
3.9, 10.2.6

Contractor's Supervision and Construction Procedures
 1.2.2, 3.3, 3.4, 4.2.5, 4.2.7, 6.1, 6.2.4, 7.1.3, 7.3.5, 7.3.7, 8.2, 10, 12, 14, 15.1.3
 Contractual Liability Insurance
 11.1.1.8, 11.2, 11.3.1.5
 Coordination and Correlation
 1.2, 3.2, 3.3.1, 3.10, 3.12.6, 6.1.2, 6.2.1
 Copies Furnished of Drawings and Specifications
 1.5, 2.2.5, 3.11
 Copyrights
 1.5, 3.17
Correction of Work
 2.3, 2.4, 9.4.1, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, **12.2**
Correlation and Intent of the Contract Documents
1.2
 Costs
 2.4, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3, 7.3.3.3, 7.3.6, 7.3.7, 7.3.8, 7.3.9, 11.3.1.2, 11.3.1.3, 11.3.4, 11.3.9, 12.1, 12.2.1, 13.5, 14
Cutting and Patching
3.14, 6.2.5
 Damage to Construction of Owner or Other Contractors
 3.14.2, 6.2.4, 9.5.1.5, 10.2.1.2, 10.2.5, 10.4, 11.1.1, 11.3, 12.2.4
 Damage to the Work
 3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4, 11.3.1, 12.2.4
 Damages, Claims for
 3.2.4, 3.18, 6.1.1, 8.3.2, 10.3.3, 11.1.1, 11.3.5, 11.3.7, 14.2.4, 15.1.6
 Damages for Delay
 6.1.1, 8.3.3, 9.5.1.6, 9.7, 10.3.2, 15.1.5
 Date of Commencement of the Work, Definition of
 8.1.2
 Date of Substantial Completion, Definition of
 8.1.3
 Day, Definition of
 8.1.4
 Decisions of the Architect
 3.7.4, 4.2.7, 4.2.8, 4.2.10, 4.2.11, 4.2.13, 4.2.15, 4.2.16, 4.2.17, 4.2.18, 4.2.19, 4.2.20, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4, 9.5, 9.8.3, 9.8.4, 9.9.1, 10.1.2, 13.5.2, 14.2.2, 14.2.4, 15.1, 15.2
 Decisions of the Construction Manager
 7.3.7, 7.3.8, 7.3.9, 15.1, 15.2
Decisions to Withhold Certification
 9.4.1, **9.5**, 9.7, 14.1.1.3
 Defective or Nonconforming Work, Acceptance, Rejection and Correction of
 2.3, 2.4, 3.5, 4.2.8, 6.2.5, 9.5.1, 9.6.6, 9.8.2, 9.9.3, 9.10.4, 12.2.1, 12.2.2
 Definitions
 1.1, 2.1.1, 3.1.1, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 4.1.2, 7.2, 7.3.1, 8.1, 9.1, 9.8.1, 15.1.1

Delays and Extensions of Time
 3.2, 3.7.4, 5.2.3, 7.2, 7.3.1, 7.4, **8.3**, 9.5.1, 9.7, 10.3.2, 10.4, 14.3.2, 15.1.5, 15.2.5
 Disputes
 7.3.8, 7.3.9, 9.3, 15.1, 15.2
DISPUTES, CLAIMS AND
 3.2.4, 6.1.1, 6.3, 7.3.9, 9.3.3, **15**, 15.4
Documents and Samples at the Site
3.11
Drawings, Definition of
1.1.5
Drawings and Specifications, Ownership and Use
 1.1.1, **1.5**, 2.2.5, 3.11, 5.3
 Duty to Review Contract Documents and Field Conditions
 3.2
 Effective Date of Insurance
 8.2.2, 11.1.2
Emergencies
10.4, 14.1.1.2, 15.1.4
 Employees, Contractor's
 3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.1, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3.3, 11.1.1, 11.3.7, 14.1, 14.2.1.1
 Equipment, Labor, Materials and or
 1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12.2, 3.12.3, 3.13.1, 3.15.1, 4.2.8, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.2
 Execution and Progress of the Work
 1.1.3, 1.2.1, 1.2.2, 2.2.3, 2.2.5, 3.1, 3.3.1, 3.4.1, 3.5, 3.7.1, 3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.5, 8.2, 9.5.1, 9.9.1, 10.2, 10.3, 12.2, 14.2, 14.3.1, 15.1.3
 Extensions of Time
 3.2.4, 3.7.4, 5.2.3, 7.2.3, 7.4, 8.3, 9.5.1, 9.7, 10.3.2, 10.4, 14.3, 15.1.5, 15.2.5
Failure of Payment
 9.5.1.3, **9.7**, 13.6, 14.1.1.3, 14.1.3, 14.2.1.2, 15.1.4
 Faulty Work (See Defective or Nonconforming Work)
Final Completion and Final Payment
 4.2.1, 4.2.15, 9.8.2, **9.10**, 11.1.2, 11.1.3, 11.3.1, 11.3.5, 12.3, 15.2.1
 Financial Arrangements, Owner's
 2.2.1
GENERAL PROVISIONS
1
Governing Law
13.1
 Guarantees (See Warranty and Warranties)
Hazardous Materials
10.2.4, 10.3
 Identification of Contract Documents
 1.2.1
 Identification of Subcontractors and Suppliers
 5.2.1
Indemnification
3.18, 9.10.2, 10.3.3, 10.3.5, 10.3.6, 11.3.1.2, 11.3.7

Information and Services Required of the Owner
2.1.2, 2.2, 4.2.6, 6.1.2, 6.2.5, 9.6.1, 9.6.4, 9.8, 9.9.1,
9.10.3, 10.3.2, 10.3.3, 11.2, 11.3.4, 13.5.1, 13.5.2,
14.1.1.4, 14.1.3, 15.1.2

Initial Decision
15.2

Initial Decision Maker, Definition of
1.1.8

Initial Decision Maker, Extent of Authority
14.2.2, 14.2.4, 15.1.3, 15.2.2, 15.2.3, 15.2.4, 15.2.5

Injury or Damage to Person or Property
3.18.1, 10.2.1, 10.2.2, 10.2.8, 10.3, 10.3.3, 10.4,
11.1.1

Inspections
3.1.3, 3.7.1, 4.2.2, 9.8.2, 9.9.2, 9.10.1, 13.5

Instructions to Bidders
1.1.1

Instructions to the Contractor
3.1.4, 3.3.3, 3.7.1, 4.2.4, 5.2.1, 7, 8.2.2, 12.1, 13.5.2

Instruments of Service, Definition of
1.1.7, 1.5, 1.6

Insurance
6.1.1, 7.3.7, 8.2.2, 9.3.2, 9.8.4, 9.9.1, 9.10.2, 10.2.5,
11

Insurance, Boiler and Machinery
11.3.2

Insurance, Contractor's Liability
11.1

Insurance, Effective Date of
8.2.2, 11.1.2

Insurance, Loss of Use
11.3.3

Insurance, Owner's Liability
11.2

Insurance, Property
10.2.5, 11.3

Insurance, Stored Materials
9.3.2, 11.3.1

INSURANCE AND BONDS
11

Insurance Companies, Consent to Partial Occupancy
9.9.1, 11.3.1.5

Insurance Companies, Settlement with
11.3.10

Intent of the Contract Documents
1.2, 4.2.18, 4.2.19, 7.4

Interest
9.7, 13.6

Interpretation
1.4, 4.2.8, 4.2.17, 4.2.18

Interpretations, Written
4.2.17, 4.2.18, 4.2.20

Joinder and Consolidation of Claims Required
15.4.4

Judgment on Final Award
15.4.2

Labor and Materials, Equipment
1.1.3, 1.1.6, 3.4, 3.8.2, 3.8.3, 3.12.2, 3.12.3, 3.12.6,
3.12.10, 3.13.1, 3.15.1, 5.2.1, 6.2.1, 7.3.7, 9.3.2,
9.3.3, 9.5.1.3, 9.6, 9.10.2, 10.2.1.2, 11.3.1, 14.2.1,
14.2.2

Labor Disputes
8.3.1

Laws and Regulations
3.2.3, 3.2.4, 3.7, 3.13.1, 10.2.2, 10.2.3, 13.5.1, 14.2.1

Liens
2.1.2, 9.3.3, 9.10.2, 9.10.4, 15.2.8

Limitation on Consolidation or Joinder
15.4.4

Limitations, Statutes of
15.4.1

Limitations of Authority
3.12.4, 4.1.3, 4.2.16

Limitations of Liability
9.6.7, 11.1.1, 12.2

Limitations of Time
3.10.1, 4.2.17, 4.2.20, 8.2.1, 9.3.3, 9.6.1, 9.8.4,
9.10.2, 10.2, 11.1.3, 12.1.1, 12.2.2.2, 12.2.5, 13.7,
14.1.1, 15.2.6.1

Loss of Use Insurance
11.3.3

Material Suppliers
1.5.1, 1.5.2, 3.12, 4.2.6, 4.2.8, 9.3.1, 9.3.1.2, 9.3.3,
9.5.3, 9.6.4, 9.6.5, 9.6.7, 9.10.5, 11.3.1

Materials, Hazardous
10.2.4, 10.3

Materials, Labor, Equipment and
1.1.3, 1.1.6, 1.5.1, 1.5.2, 3.4, 3.5, 3.8.2, 3.8.3, 3.12.2,
3.12.3, 3.12.6, 3.12.10, 3.13.1, 5.2.1, 6.2.1, 9.3.1,
9.3.2, 9.3.3, 9.5.1, 9.5.3, 9.6.4, 9.6.5, 9.6.7, 9.10.2,
9.10.5, 10.2.1, 10.2.4, 10.3

**Means, Methods, Techniques, Sequences and
Procedures of Construction**
3.3.1, 3.12.10, 4.2.5, 4.2.11

Mechanic's Lien
2.1.2, 15.2.8

Mediation
8.3.1, 10.3.5, 15.2.1, 15.2.5, 15.2.6, 15.3, 15.4.1

Minor Changes in the Work
1.1.1, 3.12.8, 4.2.13, 7.1, 7.4

MISCELLANEOUS PROVISIONS
13

Modifications, Definition of
1.1.1

Modifications to the Contract
1.1.1, 1.1.2, 3.11, 4.1.3, 4.2.14, 5.2.3, 7, 11.3.1

Mutual Responsibility
6.2

Nonconforming Work, Acceptance of
9.4.3, 9.8.3, 12.3

Nonconforming Work, Rejection and Correction of
2.3, 2.4, 3.2.3, 3.7.3, 9.4.3.3, 9.8.2, 9.8.3, 9.9.1,
11.1.1, 12.2.2.1, 12.2.3, 12.2.4, 12.2.5

Notice

1.5, 2.1.2, 2.2.1, 2.4, 3.2.4, 3.3.1, 3.7.1, 3.7.2, 3.7.5, 3.9.2, 3.12.9, 5.2.1, 6.3, 9.4.1, 9.7, 9.10.1, 9.10.2, 10.2.2, 10.2.6, 10.2.8, 10.3.2, 11.3.6, 12.2.2.1, 13.3, 13.5.1, 13.5.2, 14.1.2, 14.2.2, 14.4.2, 15.1.2, 15.1.4, 15.1.5.1, 15.2, 15.4.1

Notice of Claims

3.7.2, 10.2.8, 15.1.2, 15.4.1

Notice of Testing and Inspections

13.5.1, 13.5.2

Notices, Permits, Fees and

3.7, 7.3.7, 10.2.2

Observations, On-Site

3.2.1, 9.5.1, 12.1.1

Occupancy

2.2.2, 9.6.6, 9.9, 11.3.1.5

On-Site Inspections

4.2.2, 9.10.1, 9.4.4, 9.5.1

Orders, Written

4.2.7, 4.2.18, 4.2.20

Other Contracts and Contractors

1.1.4, 3.14.2, 4.2.9, 6, 11.3.7, 12.1.2

OWNER

2

Owner, Definition of

2.1.1

Owner, Information and Services Required of the

2.1.2, 2.2, 4.2, 6.1.2, 6.1.3, 6.2.5, 9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.2, 10.3.3, 11.2, 11.3, 13.5.1, 13.5.2, 14.1.1, 14.1.3, 15.1.3

Owner's Authority

1.5, 2.1.1, 2.3, 2.4, 3.4.2, 3.12.10, 3.14.2, 4.1.2, 4.1.3, 4.2.8, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3, 7.2, 7.3.1, 8.2.2, 9.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1, 9.10.2, 10.3.2, 11.3.3, 11.3.10, 12.2.2.1, 12.3, 13.5.2, 14.2, 14.3.1, 14.4, 15.2.7

Owner's Financial Capability

2.2.1, 13.2.2, 14.1.1

Owner's Liability Insurance

11.2

Owner's Relationship with Subcontractors

1.1.2, 5.2.1, 5.3, 5.4.1, 9.6.4, 9.10.2, 14.2.2

Owner's Right to Carry Out the Work

2.4, 12.2.4, 14.2.2

Owner's Right to Clean Up

6.3

Owner's Right to Perform Construction with Own Forces and to Award Other Contracts

6.1

Owner's Right to Stop the Work

2.3

Owner's Right to Suspend the Work

14.3

Owner's Right to Terminate the Contract

14.2

Ownership and Use of Drawings, Specifications and Other Instruments of Service

1.1.1, 1.1.5, 1.5, 1.6, 3.11, 3.12.10, 3.17, 4.2.14, 4.2.18, 4.2.20

Partial Occupancy or Use

9.9, 11.3.1.5

Patching, Cutting and

3.14, 6.2.5

Patents and Copyrights, Royalties

3.17

Payment, Applications for

4.2.1, 4.2.7, 4.2.15, 7.3.9, 9.2, 9.3, 9.4, 9.5, 9.7, 9.10.1, 9.10.3, 9.10.5, 11.1.3

Payment, Certificates for

4.2.15, 7.3.9, 9.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 15.1.3

Payment, Failure of

9.4.1, 9.5, 9.7, 14.1.1.3

Payment, Final

4.2.1, 9.8.2, 9.10, 11.1.2, 11.3.1, 11.3.5, 12.3, 15.2.1

Payment Bond, Performance Bond and

5.4.1, 7.3.7, 9.6.7, 9.10.2, 9.10.3, 11, 11.4

Payments, Progress

9.3.1, 9.4.2, 9.6

PAYMENTS AND COMPLETION

9, 14

Payments to Subcontractors

5.4.2, 9.3, 9.5.1.3, 9.5.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 9.10.5, 14.2.1.2

PCB

10.3.1

Performance Bond and Payment Bond

5.4.1, 7.3.7, 9.6.7, 9.10.2, 9.10.3, 11, 11.4

Permits, Fees, Notices and Compliance with Laws

2.2.2, 3.7, 7.3.7.4, 10.2.2

PERSONS AND PROPERTY, PROTECTION OF

10

Polychlorinated Biphenyl

10.3.1

Product Data, Definition of

3.12.2

Product Data and Samples, Shop Drawings

3.11, 3.12, 4.2.9, 4.2.10, 4.2.14

Progress and Completion

8.2, 9.3.1, 9.4.2, 9.6, 9.8, 9.10, 14.2.4, 15.1.6

Progress Payments

9.3.1, 9.4.2, 9.6

Project, Definition of

1.1.4

Project Representatives

4.2.16

Property Insurance

10.2.5, 11.3

Project Schedule

3.10.1, 3.10.3, 3.10.4, 4.2.2, 4.2.3, 4.2.4

PROTECTION OF PERSONS AND PROPERTY

10

Regulations and Laws

1.5, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 9.9.1, 10.2.2, 11.1, 11.4, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14.1.1, 14.2.1, 15.2.8, 15.4

Rejection of Work

3.5, 4.2.8, 12.2.1

Releases of and Waivers and of Liens

9.10.2

Representations

1.3, 2.2.1, 3.5, 3.12, 6.2.2, 8.2.1, 9.3.3, 9.4.3, 9.5.1, 9.8.2, 9.10.1

Representatives

2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.1, 4.2.2, 4.2.10, 5.1.1, 5.1.2, 13.2.1

Requests for Information

4.2.20

Resolution of Claims and Disputes

15

Responsibility for Those Performing the Work

3.3.2, 3.7.3, 3.12.8, 3.18, 4.2.2, 4.2.5, 4.2.8, 5.3, 6.1.2, 6.2, 6.3, 9.5.1, 9.8.2, 10

Retainage

9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3

Review of Contract Documents and Field

Conditions by Contractor

1.2.2, 3.2, 3.7.3, 3.12.7

Review of Contractor's Submittals by Owner, Construction Manager and Architect

3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 5.2, 9.2, 9.8.2

Review of Shop Drawings, Product Data and Samples by Contractor

3.12.5

Rights and Remedies

1.1.2, 2.3, 2.4, 3.7.4, 3.15.2, 4.2.8, 5.3, 5.4, 6.1, 6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.2, 12.2.4, 13.4, 14, 15.4

Royalties, Patents and Copyrights

3.17

Rules and Notices for Litigation

15.4

Safety of Persons and Property

10.2, 10.3, 10.4

Safety Precautions and Programs

3.3.1, 3.12, 4.2.5, 5.3, 10.1, 10.2, 10.3, 10.4

Samples, Definition of

3.12.3

Samples, Shop Drawings, Product Data and

3.11, 3.12, 4.2.9, 4.2.10

Samples at the Site, Documents and

3.11

Schedule of Values

9.2, 9.3.1

Schedules, Construction

3.10, 3.12.1, 3.12.2, 6.1.2, 15.1.5.2

Separate Contracts and Contractors

1.1.4, 3.12.5, 3.14.2, 4.2.6, 4.2.11, 6, 8.3.1, 12.1.2

Shop Drawings, Definition of

3.12.1

Shop Drawings, Product Data and Samples

3.11, 3.12, 4.2.9, 4.2.10, 4.2.14

Site, Use of

3.13, 6.1.1, 6.2.1

Site Inspections

3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2.2, 4.2.3, 4.2.15, 9.4.3.3, 9.8.3, 9.9.2, 9.10.1, 13.5

Site Visits, Architect's

3.7.4, 4.2.2, 4.2.15, 9.8.3, 9.9.2, 9.10.1, 13.5

Special Inspections and Testing

4.2.8, 12.2.1, 13.5

Specifications, Definition of

1.1.6

Specifications

1.1.1, 1.1.6, 1.2.2, 1.5, 3.11, 3.12.10, 3.17, 4.2.14

Staffing Plan

4.2.3

Statute of Limitations

12.2.5, 13.7, 15.4.1.1

Stopping the Work

2.3, 9.7, 10.3, 14.1

Stored Materials

6.2.1, 9.3.2, 10.2.1.2, 10.2.4

Subcontractor, Definition of

5.1.1

SUBCONTRACTORS

5

Subcontractors, Work by

1.2.2, 3.3.2, 3.12.1, 4.2.5, 5.2.3, 5.3, 5.4, 9.3.1.2, 9.6.7

Subcontractual Relations

5.3, 5.4, 9.3.1.2, 9.6.2, 9.6.3, 9.10, 10.2.1, 14.1, 14.2

Submittals

3.2.3, 3.10, 3.11, 3.12, 4.2.9, 4.2.10, 4.2.11, 5.2.1, 5.2.3, 7.3.7, 9.2, 9.3, 9.8, 9.9.1, 9.10.2, 9.10.3, 11.1.3

Submittal Schedule

3.10.2, 3.12.5, 4.2.9, 4.2.10

Subrogation, Waivers of

6.1.1, 11.3.7

Substantial Completion

8.1.1, 8.1.3, 8.2.3, 9.4.3.3, 9.8, 9.9.1, 9.10.3, 12.2.1, 12.2.2, 13.7

Substantial Completion, Definition of

9.8.1

Substitution of Subcontractors

5.2.3, 5.2.4

Substitution of Architect

4.1.4

Substitution of Construction Manager

4.1.4

Substitutions of Materials

3.4.2, 3.5, 7.3.8

Init.

Sub-subcontractor, Definition of
5.1.2
Subsurface Conditions
3.7.4
Successors and Assigns
13.2
Superintendent
3.9, 10.2.6
Supervision and Construction Procedures
1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.3, 4.2.5, 4.2.8,
4.2.9, 4.2.10, 4.2.11, 6.1.3, 6.2.4, 7.1.3, 7.3.7, 8.2,
8.3.1, 9.4.3.3, 10, 12, 14, 15.1.3
Surety
5.4.1.2, 9.8.5, 9.10.2, 9.10.3, 14.2.2, 15.2.7
Surety, Consent of
9.10.2, 9.10.3
Surveys
1.1.7, 2.2.3
Suspension by the Owner for Convenience
14.3
Suspension of the Work
5.4.2, 14.3
Suspension or Termination of the Contract
5.4.1.1, 14
Taxes
3.6, 3.8.2.1, 7.3.7.4
Termination by the Contractor
14.1, 15.1.6
Termination by the Owner for Cause
5.4.1.1, **14.2**, 15.1.6
Termination by the Owner for Convenience
14.4
Termination of the Contractor
14.2.2
TERMINATION OR SUSPENSION OF THE CONTRACT
14
Tests and Inspections
3.1.4, 3.3.3, 4.2.2, 4.2.6, 4.2.8, 9.4.3.3, 9.8.3, 9.9.2,
9.10.1, 10.3.2, 12.2.1, **13.5**
TIME
8
Time, Delays and Extensions of
3.2.4, 3.7.4, 5.2.3, 7.2, 7.3.1, 7.4, **8.3**, 9.5.1, 10.3.2,
14.3.2, 15.1.5, 15.2.5
Time Limits
2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.1,
5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3,
9.4.1, 9.4.2, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 11.1.3, 11.4,
12.2, 13.5, 13.7, 14, 15
Time Limits on Claims
3.7.4, 10.2.8, **13.7**, 15.1.2

Title to Work
9.3.2, 9.3.3
Transmission of Data in Digital Form
1.6
UNCOVERING AND CORRECTION OF WORK
12
Uncovering of Work
12.1
Unforeseen Conditions, Concealed or Unknown
3.7.4, 8.3.1, 10.3
Unit Prices
7.3.3.2, 7.3.4
Use of Documents
1.1.1, 1.5, 2.2.5, 3.12.6, 5.3
Use of Site
3.13, 6.1.1, 6.2.1
Values, Schedule of
9.2, 9.3.1
Waiver of Claims by the Architect
13.4.2
Waiver of Claims by the Construction Manager
13.4.2
Waiver of Claims by the Contractor
9.10.5, 13.4.2, 15.1.6
Waiver of Claims by the Owner
9.9.3, 9.10.3, 9.10.4, 12.2.2.1, 13.4.2, 14.2.4, 15.1.6
Waiver of Consequential Damages
14.2.4, 15.1.6
Waiver of Liens
9.10.2, 9.10.4
Waivers of Subrogation
6.1.1, **11.3.7**
Warranty
3.5, 4.2.15, 9.3.3, 9.8.4, 9.9.1, 9.10.4, 12.2.2
Weather Delays
15.1.5.2
Work, Definition of
1.1.3
Written Consent
1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.3, 9.3.2, 9.8.5,
9.9.1, 9.10.2, 9.10.3, 10.3.2, 11.4.1, 13.2, 13.4.2,
15.4.4.2
Written Interpretations
4.2.17, 4.2.18
Written Notice
2.3, 2.4, 3.3.1, 3.9, 3.12.9, 3.12.10, 5.2.1, 5.3, 5.4.1.1,
7.1.2, 8.2.2, 9.4, 9.5.1, 9.7, 9.10, 10.2.2, 10.3, 11.1.3,
12.2.2, 12.2.4, **13.3**, 13.5.2, 14, 15.4.1
Written Orders
1.1.1, 2.3, 3.9, 7, 8.2.2, 12.1, 12.2, 13.5.2, 14.3.1,
15.1.2

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 the Construction Manager or the Construction Manager's consultants, (3) between the Owner and the Architect or the Architect's consultants, (4) between the Contractor and the Construction Manager or the Construction Manager's consultants, (5) between the Owner and a Subcontractor or Sub-subcontractor (6) between the Construction Manager and the Architect, or (7) between any persons or entities other than the Owner and Contractor. The Construction Manager and Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of their 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 other Multiple Prime Contractors and by the Owner's own forces, including persons or entities under separate contracts not administered by the Construction Manager.

§ 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 agreement 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 Frederick County Public Schools, 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 binding as if required by all; performance by the Contractor shall be required only to the extent

Init.

consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. In case of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities:

1. The Agreement
2. Addenda with those of 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. The Construction Manager will indicate the work that is required by specific contractors, as appropriate the construction manager may indicate divisions of the work by specifications section, drawing references and or by text descriptions.

§ 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 their 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 Board of Education of Frederick County, the Architect, 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 Construction Manager and the Architect do not have such authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. The term "Owner" means the Owner or the Owner's authorized representative.

§ 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. Unless otherwise provided under the Contract Documents, the Owner, through the Construction Manager, shall secure and pay for the building permit. 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 but 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.

§ 2.2.6 The Owner shall endeavor to forward all communications to the Contractor through the Construction Manager and shall contemporaneously provide the same communications to the Architect about matters arising out of or relating to the Contract Documents.

§ 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 or fails to maintain progress per the schedule 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 or waiver to other rights or 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 and expediting the Work to comply with the scheduled progress, including Owner's expenses and compensation for the Construction Manager's and Architect's and their respective consultants' 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, after consultation with the Construction Manager. 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, 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 plural term "Multiple Prime Contractors" refers to persons or entities who perform construction under contracts with the Owner that are administered by the Construction Manager. The term does not include the Owner's own forces, including persons or entities under separate contracts not administered by the Construction Manager.

§ 3.1.3 The Contractor shall perform the Work in accordance with the Contract Documents. 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 Construction Manager, 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.

(Paragraph deleted)

§ 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 Construction Manager and Owner and Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information submitted to the Construction Manager in such form as the Construction Manager and 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, Construction Manager 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 Construction Manager and Architect 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 submitted to Construction Manager in such form as the Construction Manager and 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 instruction 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, the Construction Manager, and the Architect and shall not proceed with that portion of the Work without further written instructions from the Architect, through the Construction Manager. If the Contractor is then 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 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 the Project 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, in consultation with the Construction Manager, 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, Construction Manager, 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 and faults 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 Construction Manager or 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 must be accepted by the Engineer of record and/or the Commissioning Agent before the warranty/guarantee period will begin.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work or portions thereof provided by the Contractor that are legally enacted when bids are received, 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 Owner, through the Architect, shall secure and pay for the building permit and grading permit. The Contractor shall secure and pay for other permits, fees, licenses and inspections 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. 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 or should have known 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, Construction Manager, and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect and Construction Manager will promptly investigate such conditions and, if the Architect, in consultation with the Construction Manager, 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, in consultation with the Construction Manager, 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, Construction Manager, and Contractor in writing, stating the reasons. If the Owner or Contractor disputes the Architect's determination or recommendation, either 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, Construction Manager, 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. Prior to being assigned to the Project all management staff shall be subject to the approval of the Owner. 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.

§ 3.9.2 Prior to being assigned to the Project both the Project Manager and Superintendent shall be subject to the approval of the Construction Manager and Owner. Once approved, the Superintendent and Project Manager will not be removed from the Project without the Construction Manager and 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, Construction Manager 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. Once approved all management staff shall not be removed from the Project so long as they are in the employ of the Contractor without Owner's consent.

§ 3.9.4 The Owner has the right, at any time, in its sole and absolute discretion to order the Project Manager or Superintendent or assistances be removed from the Project. In such event, the Project Manager, Superintendent and/or assistances shall be immediately removed from the site and shall promptly be replaced by a competent replacement satisfactory to the Owner. Superintendent and necessary assistants shall be in attendance at the Project site during performance of the Work to include the completion of all punch list items.

§ 3.10 Contractor's Construction Schedules

§ 3.10.1 Within (14) days after the Owner issues the notice to proceed each Prime Contractor(s) shall submit a Proposed Prime Contractor Schedule, the Proposed Prime Contractor Schedule shall indicate task(s) (the work), duration(s) (start and completion) and be compliant with the dates indicated by the Construction Managers Preliminary Schedule. Proposed Prime 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 Preliminary Schedule. Prime Contractor(s) shall provide additional detail when requested by the Construction Manager or Owner and update their Proposed Prime Contractor Schedule to be compliant with the Contract Schedule requirements as provided by the Construction Manager. A Contract Schedule will be formulated by the Construction Manager from requested Prime Contractor Schedules as indicated by Schedule Designations below. Within 7 days of a request by the Construction Manager or Owner, the Prime Contractor shall furnish to the Owner

Init.

and Construction Manager 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 Prime Contractor's increase manpower and equipment necessary to comply with the Contract Schedule as updated by the Construction Manager. Progress Schedule(s) shall be in a Critical Path Method (CPM) and bar chart format as requested by the Owner. Schedule designations: Preliminary Schedule – This schedule is the basis for the contractor to formulate the bid, providing materials and method to complete work with-in time frames allotted allowing construction time for other activities. Contract Schedule – this schedule formulated by the Construction Manager with input from Prime Contractors awarded Contracts, every effort will be made to provide time requested by Prime Contractors: however, the project Substantial Completion shall not be jeopardized as time is of the essence. Progress Schedule – This schedule shall reflect actual progress as related to the Contract Schedule and any extensions approved in accordance with the requirements of the Contract. The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information and the Construction Manager's approval a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project schedule to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. The Contractor shall cooperate with the Construction Manager in scheduling and performing the Contractor's Work to avoid conflict with, and as to cause no delay in, the work or activities of other Multiple Prime Contractors or the construction or operations of the Owner's own forces.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter update it as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Construction Manager's and Architect's approval. The Architect and Construction Manager's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Construction Manager and Architect reasonable time to review submittals. 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.

§ 3.10.3 The Contractor shall participate with other Contractors, the Construction Manager and Owner in reviewing and coordinating all schedules for incorporation into the Project schedule that is prepared by the Construction Manager. The Contractor shall make revisions to the construction schedule and submittal schedule as deemed necessary by the Construction Manager to conform to the Project schedule.

§ 3.10.4 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner, Construction Manager and Architect and incorporated into the approved Project schedule.

§ 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 documents shall be available to the Architect and delivered to the Construction Manager 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, that As-Built Drawings shall reflect the then existing stage of construction as actually built be submitted to the Owner for its review. If such drawings are not provided Owner may withhold the Next scheduled payment, or in its discretion a portion thereof, until the requested drawings are provided.

§ 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 and Construction Manager is subject to the limitations of Sections 4.2.9 through 4.2.11. The Contractor shall submit shop drawings to the Architect for all structural elements of the Work and such other portions of the Work required by the Contract Documents. Informational submittals upon which the Construction Manager and Architect are 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 Construction Manager or Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Construction Manager Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the Project submittal schedule approved by the Construction Manager and Architect, or in the absence of an approved Project submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of other Multiple Prime Contractors or the Owner's own forces. The Contractor shall cooperate with the Construction Manager in the coordination of the Contractor's Shop Drawings, Product Data, Samples and similar submittals with related documents submitted by other Multiple Prime Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner, Construction Manager, 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 reviewed and 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 Construction Manager and 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 Construction Manager and 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 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

§ 3.13.1 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.

§ 3.13.2 The Contractor shall coordinate the Contractor's operations with, and secure the approval of, the Construction Manager before using any portion of the site.

§ 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's own forces or of other Multiple Prime 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's own forces or by other Multiple Prime Contractors except with written consent of the Construction Manager, Owner and such other Multiple Prime Contractors; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the other Multiple Prime Contractors or the Owner 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, or Construction Manager with the Owner's approval, may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Owner, Construction Manager 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, Construction Manager 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, Architect, or Construction Manager. 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 through the Construction Manager.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Construction Manager, Architect, Construction Manager's and 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 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 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 AND CONSTRUCTION MANAGER

§ 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 The Owner shall retain a construction manager lawfully licensed to practice construction management or an entity lawfully practicing construction management in the jurisdiction where the Project is located. That person or entity is identified as the Construction Manager in the Agreement and is referred to throughout the Contract Documents as if singular in number.

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

§ 4.1.4 If the employment of the Construction Manager or Architect is terminated, the Owner shall employ a successor construction manager or architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Construction Manager or Architect, respectively.

§ 4.2 Administration of the Contract

§ 4.2.1 The Construction Manager and Architect will provide administration of the Contract as described in the Contract Documents and will be the Owner's representatives during construction until the date the Architect issues the final Certificate for Payment. The Construction Manager and 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 visit 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. Full time on-site inspection services are not part of the Owner Architect Agreement. It shall nevertheless be the obligation of the Architect, its Engineers and its Consultants to visit the site enough and at appropriate intervals and stages, of the construction, and inspect the on-going Work closely enough, so that construction methods, materials and procedures which are not in accordance with the Construction Documents or applicable laws, statutes, ordinance or codes, or within accepted industry standards and practices maybe observed with reasonable diligence, and to determine whether the design intent is being carried out. Such observations shall be reported in writing within 48 hours to the Owner, Construction Manager, Contractor and Owner's representative immediately. On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner and Construction Manager (1) known deviations from the Contract Documents and from the most recent Project schedule prepared by the Construction Manager, and (2) defects and deficiencies observed in the Work. 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 inspections or approvals 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 The Construction Manager shall provide a staffing plan to include one or more representatives who shall be in attendance at the Project site whenever the Work is being performed. The Construction Manager will determine if the Work observed is being performed in accordance with the Contract Documents, will keep the Owner reasonably informed of the progress of the Work, and will report to the Owner and Architect (1) deviations from the Contract Documents and the most recent Project schedule, and (2) defects and deficiencies observed in 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 Construction Manager or Architect for additional site visits made necessary by the fault or neglect of the Contractor.

§ 4.2.4 The Construction Manager will schedule and coordinate the activities of the Contractor and other Multiple Prime Contractors in accordance with the latest approved Project schedule.

§ 4.2.5 The Construction Manager, except to the extent required by Section 4.2.4, and Architect will not have control over, or charge of, 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, and neither will be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. Neither the Construction Manager nor the Architect will have control over or charge of or be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

§ 4.2.6 **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 Construction Manager, and shall contemporaneously provide the same communications to the Architect about matters arising out of or relating to the Contract Documents. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with other Multiple Prime Contractors shall be through the Construction Manager and shall be contemporaneously provided to the Architect if those communications are about matters arising out of or related to the Contract Documents. Communications by and with the Owner's own forces shall be through the Owner.

§ 4.2.7 The Construction Manager and Architect will review and certify all Applications for Payment by the Contractor, in accordance with the provisions of Article 9.

§ 4.2.8 The Architect and Construction Manager have authority to reject Work that does not conform to the Contract Documents and will notify each other about the rejection. The Construction Manager shall determine in general whether the Work of the Contractor is being performed in accordance with the requirements of the Contract Documents and notify the Owner, Contractor and Architect of defects and deficiencies in the Work. Whenever the Construction Manager considers it necessary or advisable, the Construction Manager will have authority to require additional inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, upon written authorization of the Owner, whether or not such Work is fabricated, installed or completed. The foregoing authority of the Construction Manager will be subject to the provisions of Sections 4.2.18 through 4.2.20 inclusive, with respect to interpretations and decisions of the Architect. However, neither the Architect's nor the Construction Manager's authority to act under this Section 4.2.8 nor a decision made by either of them in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Construction Manager to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing any of the Work.

§ 4.2.9 The Construction Manager will receive and promptly review for conformance with the submittal requirements of the Contract Documents, all valid submittals from the Contractor such as Shop Drawings, Product Data and Samples. Where there are Multiple Prime Contractors, the Construction Manager will also check and coordinate the information contained within each submittal received from Contractor and other Multiple Prime

Init.

Contractors, and transmit to the Architect those recommended for approval. By submitting Shop Drawings, Product Data, Samples and similar submittals, the Construction Manager represents to the Owner and Architect that the Construction Manager has reviewed and recommended them for approval. The Construction Manager's actions will be taken in accordance with the Project submittal schedule approved by the Architect or, in the absence of an approved Project submittal schedule, with reasonable promptness while allowing sufficient time to permit adequate review by the Architect.

§ 4.2.10 The Architect will review and comment 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 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 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. Upon the Architect's completed review, the Architect shall transmit its submittal review to the Construction Manager.

§ 4.2.11 Review of the Contractor's submittals by the Construction Manager and Architect 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 Construction Manager and 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 Construction Manager and Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Construction Manager and Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. If 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.

§ 4.2.12 The Construction Manager will prepare all PCO's and Change Orders and if necessary the Architect will prepare and provide any Construction Change Directives.

§ 4.2.13 The Construction Manager and the Architect will take appropriate action on Change Orders or Construction Change Directives in accordance with Article 7 and the Architect will have authority to order minor changes in the Work as provided in Section 7.4. The Architect, in consultation with the Construction Manager, will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.14 Utilizing the documents provided by the Contractor, the Construction Manager will maintain at the site for the Owner one copy of all Contract Documents, approved Shop Drawings, Product Data, Samples and similar required submittals, in good order and marked currently to record all changes and selections made during construction. These will be available to the Architect and the Contractor, and will be delivered to the Owner upon completion of the Project.

§ 4.2.15 The Construction Manager will assist the Architect in conducting inspections to determine the dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion in conjunction with the Architect pursuant to Section 9.8; and receive and forward to the Owner written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10. The Construction Manager will forward to the Architect a final Application and Certificate for Payment or final Project Application and Project Certificate for Payment upon the Contractor's compliance with the requirements of the Contract Documents.

§ 4.2.16 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.

Init.

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

§ 4.2.18 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 so rendered in good faith.

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

§ 4.2.20 The Construction Manager will receive and review requests for information from the Contractor, and forward each request for information to the Architect, with the Construction Manager's recommendation. The Architect will review and respond in writing to the Construction Manager to requests for information about the Contract Documents. The Construction Manager's recommendation and the Architect's response to each request will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information as reviewed.

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 other Multiple Prime Contractors or subcontractors of other Multiple Prime Contractors.

§ 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, shall within 5 working days after award of the Contract, shall furnish in writing to the Construction Manager for review by the Owner, Construction Manager and 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 Construction Manager may reply within 14 days to the Contractor in writing stating (1) whether the Owner, the Construction Manager or the Architect has reasonable objection to any such proposed person or entity or, (2) that the Construction Manager, Architect or Owner requires additional time for review. Failure of the Construction Manager, 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 person or entity or subcontractor unless the Contractor is satisfied that such person, entity, or Subcontractor is technically and financially qualified to perform to perform the Work as a Subcontractor in accordance with the Contract Documents to whom the Owner, Construction Manager 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, Construction Manager or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner, Construction Manager 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 change or substitute a Subcontractor, person or entity previously selected if the Owner, Construction Manager or Architect makes reasonable objection to such change or 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 responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner, Construction Manager and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner, Construction Manager 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.

§ 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 OTHER CONTRACTORS

§ 6.1 Owner's Right to Perform Construction with Own Forces and to Award Other Contracts

§ 6.1.1 The Owner reserves the right and may perform construction or operations related to the Project with the Owner's own forces, which include persons or entities under separate contracts not administered by the Construction Manager, and to award other contracts in connection with other portions of the Project or other construction or

Init.

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 the Owner performs construction or operations with the Owner's own forces including persons or entities under separate contracts not administered by the Construction Manager, the Owner shall provide for coordination of such forces with the Work of the Contractor, who shall cooperate with them.

§ 6.1.3 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's own forces, Construction Manager and other Multiple Prime 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's own forces or other Multiple Prime Contractors, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Owner, Construction Manager and Architect 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 own forces or other Multiple Prime Contractors' 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, including costs that are payable to a separate contractor or to other Multiple Prime Contractors 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 delays, improperly timed activities, damage to the Work or defective construction by the Owner's own forces or other Multiple Prime Contractors.

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

§ 6.2.5 The Owner and other Multiple Prime Contractors 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, other Multiple Prime 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 Construction Manager, 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 of the Contract Documents. Contract Language contained in Article 7 as modified herein will take precedence over all other change order pricing provisions in the contract documents. The Contractor agrees that it will incorporate the provisions of this Article 7 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. Owner and Owner's Accountant shall be afforded access to Contractor's records, books, and correspondence, instructions, drawings, receipts, subcontractors, purchase orders, vouchers, and any other data relating to the project as are necessary to verify the cost of any change, including wages and benefits paid, for which compensation is sought under this Article.

Init.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Construction Manager, Architect and Contractor; a Construction Change Directive requires agreement by the Owner, Construction Manager 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.

§ 7.1.4 The Contractor and Sub Contractors must comply with all requirements specified by Article 7 Changes In The Work and each of the sub paragraph of Article 7 including, 7.2 Change Orders which shall be applied to Article 7.3 Construction Change Directivities to include 7.3.1, through 7.3.10 in the entirety to finalize the change in the contract scope.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Construction Manager and signed by the Owner, Construction Manager, Architect and Contractor, 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 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 proposed change is \$0.00 to \$ 4,999.99 the combining overhead, profit and bond must not exceed 20%,
If the Cost of proposed change is \$5,000.00 to \$ 14,999.99 the combining overhead, profit and bond must not exceed 15%,

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

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

If the Cost of proposed change is over \$50,000.00 the combining 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 shall be decreased 100% of the scheduled value of the deleted Work plus 3% for overhead, profit, and bond as applicable for the Contractor and Subcontractor(s) work or credits.

(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; and
- .2 The Contractor shall not invoice for delivery or removal of the equipment to or from the job site; and
- .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 shall comply with the requirements specified above for the Contractor regarding Changes.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Construction Manager and signed by the Owner, Construction Manager 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 inclusive of all cost including 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 Construction Manager and 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 Construction Manager 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 Construction Manager may prescribe, an itemized accounting together with

Init.

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 supervision, directly employed to perform the construction of the work at the site. Unless otherwise agreed to by Addendum to this Contract, Labor Burden shall be limited to: social security, old age and unemployment insurance, health and life insurance benefits, sick leave, holidays, military leave, vacation, and pension, as well as fringe benefits required by collective bargaining agreement, and workers compensation insurance or as otherwise required by law;
- .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 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; and
 - .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 Construction Manager and Architect, 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 accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Construction Manager and 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 Construction Manager shall prepare a Change Order otherwise, if contractor is directed to proceed by Owner or Construction Manager, 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 issued through the Construction Manager 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.

§ 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, Owner's own forces, Construction Manager, Architect, any of the other Multiple Prime Contractors or an employee of any of them, 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 or by other causes that the Architect, based on the recommendation of the Construction Manager, 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 this 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 Construction Manager, 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 Owner, Construction Manager and Architect may require. This schedule, unless objected to by the Owner, Construction Manager or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. In the event there is one Contractor, the Construction Manager shall forward to the Architect the Contractor's schedule of values. If there are Multiple Prime Contractors responsible for performing different portions of the Project, the Construction Manager shall forward the Multiple Prime Contractors' schedules

Init.

of values only if requested by the Architect. 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 will be indicated within each individual Prime Contract Package scope of work.

§ 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 Construction Manager 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, and supported by such data substantiating the Contractor's right to payment as the Owner, Construction Manager or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents. Applications for payments 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 include and be accompanied by the following:

- (a) A Contractor's Application for Payment and Cost Certification Statement AIA forms 732, 703, and IAC/PSCP 306.4 with attachment "G Certified Minority Business Enterprise Participation Standard Monthly Contractor's Requisition for Payment (June 2008 or current form)" including a statement from the Contractor that all items of construction for which payment is sought have been incorporated into the Project or properly stored in accordance with the Contract Document, and;
- (b) The Construction Manager shall provide the Architect with G736 and G737, Project Application and Project Certification for Payment including each contractor(s) G732 and G703 Application and Certification for Payment properly executed within the past 7 days by Contractor(s) and Construction Manager, the Architect shall execute approved documents rejecting inappropriate amounts submitted by the Contractor(s) within three days and;
- (c) The Contractor's and applicable Subcontractor's Release of Liens and Waivers of Claims as requested by the owner, Construction Manager, Architect; 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 Construction Manager and Architect, and 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 in accordance with the Contract Documents.

§ 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 Where there is only one Contractor, the Construction Manager will, within seven days after the Construction Manager's receipt of the Contractor's Application for Payment, review the Application, certify the amount the Construction Manager determines is due the Contractor, and forward the Contractor's Application and Certificate

Init.

for Payment to the Architect. Within seven days after the Architect receives the Contractor's Application for Payment from the Construction Manager, the Architect will either issue to the Owner a Certificate for Payment, with a copy to the Construction Manager, for such amount as the Architect determines is properly due, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1. The Construction Manager will promptly forward to the Contractor the Architect's notice of withholding certification.

§ 9.4.2 Where there are Multiple Prime Contractors performing portions of the Project, the Construction Manager will, within seven days after the Construction Manager receives the Multiple Prime Contractors' Applications for Payment: (1) review the Applications and certify the amount the Construction Manager determines is due each of the Multiple Prime Contractors; (2) prepare a Summary of Contractors' Applications for Payment by combining information from each Multiple Prime Contractors' application with information from similar applications for progress payments from other Multiple Prime Contractors; (3) prepare a Project Application and Certificate for Payment; (4) certify the amount the Construction Manager determines is due all Multiple Prime Contractors; and (5) forward the Summary of Contractors' Applications for Payment and Project Application and Certificate for Payment to the Architect.

§ 9.4.3 Within seven days after the Architect receives the Project Application and Project Certificate for Payment and the Summary of Contractors' Applications for Payment from the Construction Manager, the Architect will either issue to the Owner a Project Certificate for Payment, with a copy to the Construction Manager, for such amount as the Architect determines is properly due, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1. The Construction Manager will promptly forward the Architect's notice of withholding certification to the Contractors.

§ 9.4.4 The Construction Manager's certification of an Application for Payment or, in the case of Multiple Prime Contractors, a Project Application and Certificate for Payment shall be based upon the Construction Manager's evaluation of the Work and the information provided as part of the Application for Payment. The Construction Manager's certification will constitute a representation that, to the best of the Construction Manager's knowledge, information and belief, the Work has progressed to the point indicated and the quality of the Work is in accordance with the Contract Documents. The certification will also constitute a recommendation to the Architect and Owner that the Contractor be paid the amount certified.

§ 9.4.5 The Architect's issuance of a Certificate for Payment or in the case of Multiple Prime Contractors, Project Application and Certificate for Payment, shall be based upon the Architect's evaluation of the Work, the recommendation of the Construction Manager, and information provided as part of the Application for Payment or Project Application for Payment. The Architect's certification will constitute a representation that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, that the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified.

§ 9.4.6 The representations made pursuant to Sections 9.4.4 and 9.4.5 are subject to their individual evaluation of the Work for conformance with the Contract Documents upon Substantial Completion which may include, results of subsequent tests and inspections, correction of minor deviations from the Contract Documents prior to completion and specific qualifications expressed by the Construction Manager or Architect.

§ 9.4.7 The issuance of a separate Certificate for Payment or a Project Certificate for Payment will not be a representation that the Construction Manager or Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed the Contractor's 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 Construction Manager or Architect may withhold a Certificate for Payment or Project Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Construction Manager's or Architect's opinion the representations to the Owner required by Section 9.4.4 and 9.4.5 cannot be made. If the Construction Manager or Architect is unable to certify payment in the amount of the Application, the

Init.

Construction Manager will notify the Contractor and Owner as provided in Section 9.4.1 and 9.4.3. If the Contractor, Construction Manager and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment or a Project Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Construction Manager or Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a Certificate for Payment or Project Certificate for Payment previously issued, to such extent as may be necessary in the Construction Manager's or Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from the 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 may be made for previously withheld amounts after the contractor revises and resubmits a current application for payment including such amounts that were previously withheld.

§ 9.5.3 If the Architect or Construction Manager withholds certification for payment under Section 9.5.1, 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 Construction Manager and both 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 execute 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 or Project 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 Construction Manager and 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 Construction Manager 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 Owner, Construction Manager and Architect 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, Construction

Manager 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.

§ 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 Construction Manager and Architect do not issue a Certificate for Payment or a Project Certificate for Payment, through no fault of the Contractor, within thirty days after the Construction Manager's approval 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 Construction Manager and Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner, Construction Manager 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 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 notify the Construction Manager, and the Contractor and Construction Manager shall jointly 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 Upon receipt of the Contractor's comprehensive punch list, the Architect, assisted by the Construction Manager, 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 list, which is not sufficiently complete in accordance with the requirements of 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, assisted by the Construction Manager, to determine Substantial Completion. 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 Architect. 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 Architect, assisted by the Construction Manager, determines that the Work or designated portion thereof including Record Documents & Maintenance Manuals are substantially complete, the Construction Manager will prepare, and the Construction Manager and Architect shall execute 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 pursuant to Article 5 Standard Form of Agreement Between Owner and Contractor as executed for the project. 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 and Construction Manager shall jointly 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 after consultation with the Construction Manager.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Construction Manager, 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 completion of the Work, the Contractor shall forward to the Construction Manager a written notice that the Work is ready for final inspection and acceptance and shall also forward to the Construction Manager a final Contractor's Application for Payment. Upon receipt, the Construction Manager will evaluate the completion of Work of the Contractor and then forward the notice and Application, with the Construction Manager's recommendations, to the Architect who will promptly make such inspection. When the Architect, finds the Work acceptable under the Contract Documents and the Contract fully performed, the Construction Manager and Architect will promptly issue a final Certificate for Payment or Project Certificate for Payment stating that to the best of their knowledge, information and belief, and on the basis of their 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 Construction Manager's and Architect's final Certificate for Payment or Project 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 final payment nor any remaining retained percentage shall become due until the requirements of Article 5 Standard Form of Agreement Between Owner and Contractor as executed for the project have been completed and until the Contractor submits to the Architect through the Construction Manager (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 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 Construction Manager and Architect so confirm, the Owner shall, upon application by the Contractor and certification by the Construction Manager and Architect, and without terminating the 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 through the Construction Manager 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 requirements of 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. The Contractor shall submit the Contractor's safety program to the Construction Manager for review and coordination with the safety programs of other Contractors.

The Construction Manager's responsibilities for review and coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractors, Subcontractors, agents or employees of the Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager.

§ 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;
- .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; and
- .4 construction or operations by the Owner or other Contractors.

§ 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, 10.2.1.3 and 10.2.1.4 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, 10.2.1.3 and 10.2.1.4, except damage or loss attributable to acts or omissions of the Owner, Construction Manager or Architect or anyone directly or indirectly employed by any of them, or by anyone for whose acts any 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, Construction Manager 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, Construction Manager 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 a 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, Construction Manager 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, the Construction Manager and the Architect will promptly reply to the Owner in writing stating whether or not any of them has reasonable objection to the persons or entities proposed by the Owner. If the Contractor, Construction Manager or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor, the Construction Manager and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resumed 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, Construction Manager, Architect, their 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 not 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.

§ 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 which 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; and
- .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 submitted to the Construction Manager for transmittal to the Owner with a copy to the Architect 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 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 Construction Manager, the Construction Manager's consultants, 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.

§ 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 Unless otherwise provided, the Owner 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 the Architect's, Contractor's, and Construction Manager's services and expenses required as a result of such insured loss.

§ 11.3.1.2 is deleted.

Init.

§ 11.3.1.3 If the property insurance requires deductibles, the Owner 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, Construction Manager, 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. 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.

§ 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, adjoining 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 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 Construction Manager, 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 the Owner and Contractor may have to the proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Construction Manager, Construction Manager's consultants, Architect, Architect's consultants, Owner's 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 not resolved between the Owner and said party, the dispute shall be resolved in accordance with Article 4. 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 Construction Manager's or Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by either, be uncovered for their observation 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 which the Construction Manager or Architect has not specifically requested to observe prior to its being covered, the Construction Manager or 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 one of the other Contractors 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 shall promptly correct Work rejected by the Construction Manager or 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 Construction Manager's and Architect's services and expenses made necessary thereby, shall be at the Contractor's expense. If the Contractor fails to correct nonconforming Work within five working days, 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 issued through the Construction Manager, 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 Construction Manager'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 and or its surety shall pay the difference to the Owner.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within two year 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, 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 Construction Manager'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 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 or other Multiple Prime 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.

§ 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, Construction Manager, 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 thereunder, 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 Construction Manager and Architect timely notice of when and where tests and inspections are to be made so that the Construction Manager and 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 Construction Manager, 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 Construction Manager and 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 Construction Manager and Architect of when and where tests and inspections are to be made so that the Construction Manager and 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 Construction Manager's and 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 Construction Manager for transmittal to the Architect.

§ 13.5.5 If the Construction Manager or Architect is to observe tests, inspections or approvals required by the Contract Documents, the Construction Manager or 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 test or inspection or results thereof, shall constitute an acceptance of any Work not conforming to the requirements of the 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 exceeding 120 consecutive days beyond the Construction Managers current updated schedule 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 Construction Manager has not certified or 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, 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 Provided the following stipulations are outside or beyond the Construction Managers current project schedule, 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, Construction Manager and Architect, terminate the Contract and recover from the Owner payment for Work executed as set forth in the provisions of this Agreement regarding termination by the Owner for convenience.

§ 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;
- .5 in the event that it is adjudged 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 only as set forth in the provisions of this Agreement regarding termination by the Owner for convenience.

§ 14.2.2 When any of the above reasons exist, the Owner, after consultation with the Construction Manager, and 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 Construction Manager's and 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, upon application, be certified by the Initial Decision Maker after consultation with the Construction Manager, and this obligation for payment shall survive termination of the Contract.

§ 14.2.5 In the event that is adjudged 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 the 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 this 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. A Claim must be made by written notice. 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 Construction Manager and Architect, if the Construction Manager and or Architect is not serving as the Initial Decision Maker. Claims by the Contractor must be made within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. No Contractor claim shall be valid unless made in strict accordance with this paragraph.

§ 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

Init.

Construction Manager will prepare Change Orders and the Architect will issue a Certificate for Payment or Project Certificate 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 10.3. A Claim must be processed as defined herein, Article 15 and comply with all requirements of Article 7.

§ 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. 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 shall be valid and no such damages shall be paid by the Owner without Owner's written consent, which consent is in the sole and absolute discretion of the Owner. No written consent by the Owner to damages for one period of delay shall 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 the anticipated conditions were abnormal for the period of time, 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 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 and Construction Manager, if the Architect or Construction Manager 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.

§ 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 but, in such event, mediation shall proceed in advance of litigation, 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.

(Paragraphs deleted)

Additions and Deletions Report for AIA® Document A232™ – 2009

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 09:48:27 on 03/16/2017.

PAGE 1

Construction Management Services

RFP 17C16

PAGE 3

2.1.1, 2.2.2, 2.4, 3.1.4, 3.10.1, 3.10.2, 3.12.4 through 3.12.10, 3.13.2, 3.15.2, 4.2.9, 9.3.2, 13.4.2, 13.5

Arbitration

~~8.3.1, 11.3.10, 13.1, 15.3.2, 15.4~~

PAGE 5

Contract Performance During ~~Arbitration~~ Claim, Mediation or Litigation

PAGE 9

Rules and Notices for ~~Arbitration~~ Litigation

PAGE 10

2.3, 2.4, 3.3.1, 3.9, 3.12.9, 3.12.10, 5.2.1, 5.3, 5.4.1.1, 7.1.2, 8.2.2, 9.4, 9.5.1, 9.7, 9.10, 10.2.2, 10.3, 11.1.3, 12.2.2, 12.2.4, **13.3**, 13.5.2, 14, 15.4.1

PAGE 11

§ 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. 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).

...

§ 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 ~~their the Architect~~ respective professional services ~~agreements agreement 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 Frederick County Public Schools, 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 case of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities:

1. The Agreement
2. Addenda with those of 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. The Construction Manager will indicate the work that is required by specific contractors, as appropriate the construction manager may indicate divisions of the work by specifications section, drawing references and or by text descriptions.

PAGE 12

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors ~~and owners~~ of their 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 Board of Education of Frederick County, the Architect, 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 Article 4, the~~ The Construction Manager and the Architect do not have such authority. authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. The term "Owner" means the Owner or the Owner's authorized representative.

PAGE 13

§ 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. Unless otherwise provided under the Contract Documents, the Owner, through the Construction Manager, shall secure and pay for the building permit. 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-site if requested by the Contractor. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but 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 or fails to maintain progress per the schedule 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 or waver to other rights or 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, cost of correcting such deficiencies and expediting the Work to comply with the scheduled progress,~~ including Owner's expenses and compensation for the Construction Manager's and Architect's and their respective consultants' 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, after consultation with the Construction Manager. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

PAGE 14

§ 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 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.

...

§ 3.1.3 The Contractor shall perform the Work in accordance with the Contract Documents. 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 Construction Manager, 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.

~~§ 3.1.4 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 Construction Manager or Architect in their administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.~~

§ 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 Construction Manager and Owner and Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information submitted to the Construction Manager in such form as the Construction Manager and 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, Construction Manager 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 Construction Manager and Architect 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 submitted to Construction Manager in such form as the Construction Manager and Architect may require.

PAGE 15

§ 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, Construction Manager, 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 with 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 Construction Manager or 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, Construction Manager, 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 and faults 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 Construction Manager or 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 must be accepted by the Engineer of record and/or the Commissioning Agent before the warranty/guarantee period will begin.

PAGE 16

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

...

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Owner, through the ~~Construction Manager, Architect,~~ shall secure and pay for the building permit and grading permit. The Contractor shall secure and pay for other permits, fees, licenses and inspections 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. 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 or should have known 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.

PAGE 17

§ 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. Prior to being assigned to the Project all management staff shall be subject to the approval of the Owner. 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.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner and Architect through the Construction Manager, the name and qualifications of a proposed superintendent. The Construction Manager may reply within 14 days to the Contractor in writing stating (1) whether the Owner, the Construction Manager, or the Architect has reasonable objection to the proposed superintendent or (2) that any of them require additional time to review. Failure of the Construction Manager 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 Construction Manager and Owner. Once approved, the Superintendent and Project Manager will not be removed from the Project without the Construction Manager and 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, Construction Manager 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. Once approved all management staff shall not be removed from the Project so long as they are in the employ of the Contractor without Owner's consent.

§ 3.9.4 The Owner has the right, at any time, in its sole and absolute discretion to order the Project Manager or Superintendent or assistances be removed from the Project. In such event, the Project Manager, Superintendent and/or assistances shall be immediately removed from the site and shall promptly be replaced by a competent replacement satisfactory to the Owner. Superintendent and necessary assistants shall be in attendance at the Project site during performance of the Work to include the completion of all punch list items.

...

§ 3.10.1 Within (14) days after the Owner issues the notice to proceed each Prime Contractor(s) shall submit a Proposed Prime Contractor Schedule, the Proposed Prime Contractor Schedule shall indicate task(s) (the work), duration(s) (start and completion) and be compliant with the dates indicated by the Construction Managers Preliminary Schedule. Proposed Prime 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 Preliminary Schedule. Prime Contractor(s) shall provide additional detail when requested by the Construction Manager or Owner and update their Proposed Prime Contractor Schedule to be compliant with the Contract Schedule requirements as provided by the Construction Manager. A Contract Schedule will be formulated by the Construction Manager from requested Prime Contractor Schedules as indicated by Schedule Designations below. Within 7 days of a request by the Construction Manager or Owner, the Prime Contractor shall furnish to the Owner and Construction Manager 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 Prime Contractor's increase manpower and equipment necessary to comply with the Contract Schedule as updated by the Construction Manager. Progress Schedule(s) shall be in a Critical Path Method (CPM) and bar chart format as requested by the Owner. Schedule designations: Preliminary Schedule – This schedule is the basis for the contractor to formulate the bid, providing materials and method to complete work with-in time frames allotted allowing construction time for other activities. Contract Schedule – this schedule formulated by the Construction Manager with input from Prime Contractors awarded Contracts, every effort will be made to provide time requested by Prime Contractors; however, the project Substantial Completion shall not be jeopardized as time is of the essence. Progress Schedule – This schedule shall reflect actual progress as related to the Contract Schedule and any extensions approved in accordance with the requirements of the Contract. The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information and the Construction Manager's approval a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project schedule to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. The Contractor shall cooperate with the Construction Manager in scheduling and performing the Contractor's Work to avoid conflict with, and as to cause no delay in, the work or activities of other Multiple Prime Contractors or the construction or operations of the Owner's own forces.

PAGE 18

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 documents shall be available to the Architect and delivered to the Construction Manager 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, that As-Built Drawings shall reflect the then existing stage of construction as actually built be submitted to the Owner for its review. If such drawings are not provided Owner may withhold the Next scheduled payment, or in its discretion a portion thereof, until the requested drawings are provided.

PAGE 19

§ 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 and Construction Manager is subject to the limitations of Sections 4.2.9 through 4.2.11. The Contractor shall submit shop drawings to the Architect for all structural elements of the Work and such other portions of the Work required by the Contract Documents. Informational submittals upon which the Construction Manager and Architect are 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 Construction Manager or Architect without action.

PAGE 20

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Construction Manager, Architect, Construction Manager's and 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.

PAGE 21

§ 4.2.2 The duties of the Architect shall be governed by the Agreement between the Owner and Architect, and will visit the site at intervals appropriate to the stage of construction, ~~or as otherwise agreed with the Owner,~~ 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. Full time on-site inspection services are not part of the Owner Architect Agreement. It shall nevertheless be the obligation of the Architect, its Engineers and its Consultants to visit the site enough and at appropriate intervals and stages, of the construction, and inspect the on-going Work closely enough, so that construction methods, materials and procedures which are not in accordance with the Construction Documents or applicable laws, statutes, ordinance or codes, or within accepted industry standards and practices maybe observed with reasonable diligence, and to determine whether the design intent is being carried out. Such observations shall be reported in writing within 48 hours to the Owner, Construction Manager, Contractor and Owner's representative immediately. On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner and Construction Manager (1) known deviations from the Contract Documents and from the most recent Project schedule prepared by the Construction Manager, and (2) defects and deficiencies observed in the Work. 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 inspections or approvals 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 The Construction Manager shall provide a staffing plan to include one or more representatives who shall be in attendance at the Project site whenever the Work is being performed. The Construction Manager will determine in

general if the Work observed is being performed in accordance with the Contract Documents, will keep the Owner reasonably informed of the progress of the Work, and will report to the Owner and Architect (1) ~~known~~ deviations from the Contract Documents and the most recent Project schedule, and (2) defects and deficiencies observed in 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 Construction Manager or Architect for additional site visits made necessary by the fault or neglect of the Contractor.

PAGE 22

§ 4.2.9 The Construction Manager will receive and promptly review for conformance with the submittal requirements of the Contract Documents, all valid submittals from the Contractor such as Shop Drawings, Product Data and Samples. Where there are Multiple Prime Contractors, the Construction Manager will also check and coordinate the information contained within each submittal received from Contractor and other Multiple Prime Contractors, and transmit to the Architect those recommended for approval. By submitting Shop Drawings, Product Data, Samples and similar submittals, the Construction Manager represents to the Owner and Architect that the Construction Manager has reviewed and recommended them for approval. The Construction Manager's actions will be taken in accordance with the Project submittal schedule approved by the Architect or, in the absence of an approved Project submittal schedule, with reasonable promptness while allowing sufficient time to permit adequate review by the Architect.

§ 4.2.10 The Architect will review and approve-comment 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 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 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. Upon the Architect's completed review, the Architect shall transmit its submittal review to the Construction Manager.

§ 4.2.11 Review of the Contractor's submittals by the Construction Manager and Architect 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 Construction Manager and 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 Construction Manager and Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Construction Manager and Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. If 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.

§ 4.2.12 The Construction Manager will prepare all PCO's and Change Orders and if necessary the Architect will prepare and provide any Construction Change Directives.

PAGE 24

§ 4.2.20 The Construction Manager will receive and review requests for information from the Contractor, and forward each request for information to the Architect, with the Construction Manager's recommendation. The Architect will review and respond in writing to the Construction Manager to requests for information about the Contract Documents. The Construction Manager's recommendation and the Architect's response to each request 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-information as reviewed.

...

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, ~~as seen as practicable shall within 5 working days~~ after award of the Contract, shall furnish in writing to the Construction Manager for review by the Owner, Construction Manager and 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 Construction Manager may reply within 14 days to the Contractor in writing stating (1) whether the Owner, the Construction Manager or the Architect has reasonable objection to any such proposed person or entity or, (2) that the Construction Manager, Architect or Owner requires additional time for review. Failure of the Construction Manager, 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 with a proposed person or entity or propose to contract with a person or entity or subcontractor unless the Contractor is satisfied that such person, entity, or Subcontractor is technically and financially qualified to perform to perform the Work as a Subcontractor in accordance with the Contract Documents to whom the Owner, Construction Manager 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.

PAGE 25

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

...

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 responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner, Construction Manager and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner, Construction Manager 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 responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner, Construction Manager and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner, Construction Manager 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.

...

§ 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, which include persons or entities under separate contracts not administered by the Construction Manager, and to award other 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.

PAGE 26

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner's own forces or other Multiple Prime Contractors, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Owner, Construction Manager and Architect 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 own forces or other Multiple Prime Contractors' 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, separate contractors, or other Multiple Prime Contractors as provided in Section 10.2.5.

...

If a dispute arises among the Contractor, other Multiple Prime 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 Construction Manager, ~~with notice to the Architect,~~ will allocate the cost among those responsible.

...

§ 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 of the Contract Documents.~~ Contract Language contained in Article 7 as modified herein will take precedence over all other change order pricing provisions in the contract documents. The Contractor agrees that it will incorporate the provisions of this Article 7 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. Owner and Owner's Accountant shall be afforded access to Contractor's records, books, and correspondence, instructions, drawings, receipts, subcontractors, purchase orders, vouchers, and any other data relating to the project as are necessary to verify the cost of any change, including wages and benefits paid, for which compensation is sought under this Article.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Construction Manager, Architect and Contractor; a Construction Change Directive requires agreement by the Owner, Construction Manager 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.

§ 7.1.4 The Contractor and Sub Contractors must comply with all requirements specified by Article 7 Changes In The Work and each of the sub paragraph of Article 7 including, 7.2 Change Orders which shall be applied to Article 7.3 Construction Change Directivities to include 7.3.1, through 7.3.10 in the entirety to finalize the change in the contract scope.

PAGE 27

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

...

.3 The extent of the adjustment, if any, in the ~~Contract Time~~ 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 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 proposed change is \$0.00 to \$ 4,999.99 the combining overhead, profit and bond must not exceed 20%.

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

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

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

If the Cost of proposed change is over \$50,000.00 the combining 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 shall be decreased 100% of the scheduled value of the deleted Work plus 3% for overhead, profit, and bond as applicable for the Contractor and Subcontractor(s) work or credits.
(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; and
- .2 The Contractor shall not invoice for delivery or removal of the equipment to or from the job site; and
- .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 shall comply with the requirements specified above for the Contractor regarding Changes.

PAGE 28

§ 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 inclusive of all cost including overhead profit, bond and insurance.

PAGE 29

- .1 ~~Costs of labor, including Wages for Construction Workers, including supervision, directly employed to perform the construction of the work at the site. Unless otherwise agreed to by Addendum to this Contract, Labor Burden shall be limited to: social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers compensation insurance; health and life insurance benefits, sick leave, holidays, military leave, vacation, and pension, as well as fringe benefits required by collective bargaining agreement, and workers compensation insurance or as otherwise required by law;~~

...

- .5 Additional costs of supervision and field office personnel directly attributable to the change 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; and

- .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 Construction Manager and Architect. Architect, 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~~ change per the mark-up schedule.

§ 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 Construction Manager and Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Construction Manager and Architect determine to be reasonably justified. The 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 accordance with Article 15.~~

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Construction Manager and 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 Construction Manager shall prepare a Change Order.~~ Order otherwise, if contractor is directed to proceed by Owner or Construction Manager, 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.

...

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 issued through the Construction Manager and shall be binding on the Owner and Contractor.

PAGE 30

§ 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.

...

§ 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, Owner's own forces, Construction Manager, Architect, any of the other Multiple Prime Contractors or an employee of any of them, 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~~, or by other causes that the Architect, based on the recommendation of the Construction Manager, 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 this 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.~~

...

~~Where the Contract is based on a Stipulated Sum or Guaranteed Maximum Price, the Contractor shall submit to the Construction Manager, 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 Construction Manager and Architect may require. This schedule, unless objected to by the Construction Manager or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. In the event there is one Contractor, the Construction Manager shall forward to the Architect the Contractor's schedule of values. If there are Multiple Prime Contractors responsible for performing different portions of the Project, the Construction Manager shall forward the Multiple Prime Contractors' schedules of values only if requested by the Architect.~~

§ 9.2.1 Where the Contract is based on a Stipulated Sum or Guaranteed Maximum Price, the Contractor shall submit to the Construction Manager, 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 Owner, Construction Manager and Architect may require. This schedule, unless objected to by the Owner, Construction Manager or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. In the event there is one Contractor, the Construction Manager shall forward to the Architect the Contractor's schedule of values. If there are Multiple Prime Contractors responsible for performing different portions of the Project, the Construction Manager shall forward the Multiple Prime Contractors' schedules of values only if requested by the Architect. 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 will be indicated within each individual Prime Contract Package scope of work.

PAGE 31

§ 9.3.1 At least fifteen-ten days before the date established for each progress payment, the Contractor shall submit to the Construction Manager 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, and supported by such data substantiating the Contractor's right to payment as the Owner, Construction Manager or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents. Applications for payments 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 include and be accompanied by the following:

- (a) A Contractor's Application for Payment and Cost Certification Statement AIA forms 732, 703, and IAC/PSCP 306.4 with attachment "G Certified Minority Business Enterprise Participation Standard Monthly Contractor's Requisition for Payment (June 2008 or current form)" including a statement from the Contractor that all items of construction for which payment is sought have been incorporated into the Project or properly stored in accordance with the Contract Document, and;
- (b) The Construction Manager shall provide the Architect with G736 and G737, Project Application and Project Certification for Payment including each contractor(s) G732 and G703 Application and Certification for Payment properly executed within the past 7 days by Contractor(s) and Construction Manager, the Architect shall execute approved documents rejecting inappropriate amounts submitted by the Contractor(s) within three days and;
- (c) The Contractor's and applicable Subcontractor's Release of Liens and Waivers of Claims as requested by the owner, Construction Manager, Architect; 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 Construction Manager and Architect, but not yet and 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-pay in accordance with the Contract Documents.

PAGE 32

§ 9.4.6 The representations made pursuant to Sections 9.4.4 and 9.4.5 are subject to ~~an~~ their individual evaluation of the Work for conformance with the Contract Documents upon Substantial ~~Completion, to Completion which may include,~~ 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 Construction Manager or Architect.

PAGE 33

§ 9.5.2 When the above reasons for withholding certification are removed, certification ~~will be made for amounts may be made for previously withheld amounts 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 execute 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.

PAGE 34

~~If Subject to other provisions of the Contract Documents, if the Construction Manager and Architect do not issue a Certificate for Payment or a Project Certificate for Payment, through no fault of the Contractor, within fourteen thirty days after the Construction Manager's receipt approval 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 Construction Manager and Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner, Construction Manager 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 Contractors comprehensive punch list, the Architect, assisted by the Construction Manager, 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 list, which is not sufficiently complete in accordance with the requirements of 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, assisted by the Construction Manager, to determine Substantial Completion. 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 Architect. 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 Architect, assisted by the Construction Manager, determines that the Work or designated portion thereof ~~is including~~ Record Documents & Maintenance Manuals are substantially complete, the Construction Manager will prepare, and the Construction Manager and Architect shall execute 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~~ pursuant to Article 5 Standard Form of Agreement Between Owner and Contractor as executed for the project. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

PAGE 36

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the requirements of Article 5 Standard Form of Agreement Between Owner and Contractor as executed for the project have been completed and until the Contractor submits to the Architect through the Construction Manager (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 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.

...

- .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.

PAGE 37

§ 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 38

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify a 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, Construction Manager 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, the Construction Manager and the Architect will promptly reply to the Owner in writing stating whether or not any of them has reasonable objection to the persons or entities proposed by the Owner. If the Contractor, Construction Manager or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor, the Construction Manager and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall ~~resume~~ resumed 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, Construction Manager, Architect, their 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 not due to the fault or negligence of the party seeking indemnity.

PAGE 39

~~§ 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.~~

PAGE 41

§ 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 distribution of insurance proceeds in accordance with the direction of the arbitrators not resolved between the Owner and said party, the dispute shall be resolved in accordance with Article 4. No decision of the Architect shall be required.~~

...

§ 12.1.2 If a portion of the Work has been covered which the Construction Manager or Architect has not specifically requested to observe prior to its being covered, the Construction Manager or 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 one of the other Contractors 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.

...

The Contractor shall promptly correct Work rejected by the Construction Manager or 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 Construction Manager's and Architect's services and expenses made necessary thereby, shall be at the Contractor's expense. If the Contractor fails to correct nonconforming Work within five working days, 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 issued through the Construction Manager, 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 Construction Manager'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 and or its surety shall pay the difference to the Owner.

PAGE 42

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within ~~one~~ two year 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 ~~2.4.2.4~~, 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 Construction Manager'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 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.

...

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.

PAGE 43

§ 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.

PAGE 44

§ 13.5.7 No test or inspection or results thereof, shall constitute an acceptance of any Work not conforming to the requirements of the 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 the 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 the 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 consecutive days exceeding 120 consecutive days beyond the Construction Managers current updated schedule 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.

§ 14.1.2 The Provided the following stipulations are outside or beyond the Construction Managers current project schedule, 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, Construction Manager 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, Construction Manager and Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3-is deleted.

PAGE 45

- .1 repeatedly-refuses or fails to supply enough properly skilled workers or proper materials;

...

- .3 repeatedly-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-Documents;
- .5 in the event that it is adjudged 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 only as set forth in the provisions of this Agreement regarding termination by the Owner for convenience.

...

§ 14.2.5 In the event that is adjudged 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.

PAGE 46

§ 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.

...

§ 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. A Claim must be made by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.2 Notice of Claims. 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 Construction Manager and Architect, if the Construction Manager and or Architect is not serving as the Initial Decision Maker. Claims by ~~either party-the 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 first recognizes the condition giving rise to the Claim, whichever is later. No Contractor claim shall be valid unless made in strict accordance with this paragraph.

PAGE 47

§ 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 10.3. A Claim must be processed as defined herein, Article 15 and comply with all requirements of Article 7.

...

§ 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 shall be valid and no such damages shall be paid by the Owner without Owner's written consent, which consent is in the sole and absolute discretion of the Owner. No written consent by the Owner to damages for one period of delay shall 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 the anticipated conditions were abnormal for the period of time, 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.

PAGE 48

§ 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 proceedings-litigation~~ but, in such event, mediation shall proceed in advance of ~~binding dispute resolution proceedings-litigation~~, 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 09:48:27 on 03/16/2017 under Order No. 8161989522_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 A232™ – 2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, 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)



Document B132™ – 2009

Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition

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

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address and other information)

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

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

Construction Management Services

RFP 17C16

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

The Owner and Architect 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.

This document is intended to be used in conjunction with AIA Documents A132™–2009, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; A232™–2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; and C132™–2009, Standard Form of Agreement Between Owner and Construction Manager as Adviser.

AIA Document A232™–2009 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.

TABLE OF ARTICLES

1	INITIAL INFORMATION
2	ARCHITECT'S RESPONSIBILITIES
3	SCOPE OF ARCHITECT'S BASIC SERVICES
4	ADDITIONAL SERVICES
5	OWNER'S RESPONSIBILITIES
6	COST OF THE WORK
7	COPYRIGHTS AND LICENSES
8	CLAIMS AND DISPUTES
9	TERMINATION OR SUSPENSION
10	MISCELLANEOUS PROVISIONS
11	COMPENSATION
12	SPECIAL TERMS AND CONDITIONS
13	SCOPE OF THE AGREEMENT

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(Paragraph deleted)

§ 1.1.1 The Owner's program for the Project shall be as identified in the draft or final education specification provided or as specified herein.

(Identify documentation or state the manner in which the program will be developed.)

§ 1.1.1.1 The project is described in the attached **Exhibit A**.

§ 1.1.1.2 The design of the school or facility shall include all amenities to allow efficient functionality including, but not limited to playing fields, roadways, parking areas, landscaping, storm water management systems, utilities, vehicular and pedestrian access and circulation and other items specified herein. The design team shall make every effort to meet the desires of the "FCPS Design Guide" which states preferences for the completed facility. If preferences are found to be unadvisable or not code compliant the design team should bring this to the attention of the FCPS design team.

§ 1.1.1.3 Civil engineering services for the entire site that meet the "Authority having Jurisdiction's" requirements are to be included in the basic fee. Surveying included for meets and bounds descriptions, easements, rights of way, etc. not currently provided by the owner shall be included as a basic service.

§ 1.1.1.4 The school or facility shall be air-conditioned except for areas identified by the owner in writing. The school or facility shall be equipped with a state of the art building automation system; the specific requirements for such will be coordinated with the FCPS Maintenance and Operations Department.

§ 1.1.1.5 The Architect shall provide typical furniture layouts and note such items in equipment schedules where necessary. See Section 4.1.26.

§ 1.1.1.6 The Architect shall conform and/or provide services as stipulated in the Board of Education policy manual, a copy of which shall be available to the Architect upon request.

§ 1.1.1.7 Duties, responsibilities and limitations of authority of the Architect shall not be restricted, modified or extended without written agreement of the Owner and Architect.

§ 1.1.2 The Project's physical characteristics:

(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

See Exhibit "A"

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:
(Provide total and, if known, a line item breakdown.)

The Construction Budget for the cost of the work – The fixed limit construction budget in current fiscal year dollars including building, site, off-site utilities, off-site road improvements, and other items normally included in the building construction costs to provide a functional efficient facility is; _____ (Not including construction contingency and moveable equipment.) At the Owner's discretion, the Construction Budget can be adjusted to account for any such conditions requiring changes.

§ 1.1.4 The Owner's anticipated design and construction schedule the Owner may require accelerated or fast track scheduling, multiple bid packages or phased construction to accommodate fiscal and occupancy requirements of the project. Justifiable additional design costs will be considered if these requirements are not a part of this agreement.

.1 Design phase milestone dates, if any:

The State of Maryland has fixed approval dates and review periods for Schematic Design, Design Development and Construction Documents Submissions, Architectural responses as well as Engineering responses that are required to be strictly adhered to by the terms of this contract. The design schedule shall be developed by the architect to meet those dates, review periods and formulate required responses. A design, bid and award schedule shall be developed and submitted to the Owner for review comment 30 days after the formal notice to proceed is issued by FCPS. The schedules shall be modified incorporating the Owners review comments.

.2

(Paragraphs deleted)

Other :

§ 1.1.5 The Owner intends to retain a Construction Manager adviser and:
(Note that, if Multiple Prime Contractors are used, the term "Contractor" as referred to throughout this Agreement will be as if plural in number.)

☐ One Contractor

☒ Multiple Prime Contractors

☐ Unknown at time of execution

§ 1.1.6 The Owner's requirements for accelerated or fast-track scheduling, multiple bid packages, or phased construction are set forth below:
(List number and type of bid/procurement packages.)

1.1.6 Shall be as defined by the Educational Specification and indicated elsewhere throughout the FCPS documents as modified.

§ 1.1.7 Other Project information:

(Identify special characteristics or needs of the Project not provided elsewhere, such as environmentally responsible design or historic preservation requirements.)

New or totally renovated schools funded by or which funding may be requested for are required to achieve a LEED Silver Certification. The Architect shall provide complete designs and specification required to comply with LEED Silver Certification as a minimum requirement. The Architect shall prepare the project charrette for the project scheduling meetings at the beginning of an integrative design process that sets the stage for cooperation and

Init.

collaboration among all participants, including the design team, engineers, clients, and others involved in the project. Early involvement of the entire project team is fundamental to the successful use of a system approach to green building. The Architect shall address the Contractors green building requirements in the bid documents such that contractors scope requirements are known to include in their bid. The design (Construction Documents and the specifications) shall require services and construction materials supporting the LEED points identified and approved by the Owner as the charrette is being developed and modified during the design process.

§ 1.1.8 The Owner identifies the following representative in accordance with Section 5.4:
(List name, address and other information.)

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:
(List name, address and other information.)

The FCPS Maintenance and Operations Departments,
The FCPS Facilities Services / Construction Managements / Planning Department,
The FCPS Food Service Department,
The FCPS Transportation Department,
The FCPS Technology Services Department,
The Elementary or Secondary School Improvement, Instruction and Administration Departments, and
The School Administration

(Note: The official names of the above referenced departments may change however the reviews shall cover the intended functional areas regardless of title or FCPS staff member providing review comments.)

§ 1.1.10 The Owner will retain the following consultants:
(List name, legal status, address and other information.)

.1 Construction Manager: The Construction Manager is identified on the cover page. If a Construction Manager has not been retained as of the date of this Agreement, state the anticipated date of retention:

.2 Commissioning Agent:

(Paragraphs deleted)

.3 Inspection and Testing

(Paragraphs deleted)

.4 Geo-Tech

(Paragraphs deleted)

.5 Environmental

(Paragraphs deleted)

.6 Thermal Conductivity

§ 1.1.11 The Architect identifies the following representative in accordance with Section 2.3:
(List name, address and other information.)

§ 1.1.12 The Architect will retain the consultants identified in Sections 1.1.12.1 and 1.1.12.2:
(List name, legal status, address and other information.)

§ 1.1.12.1 Consultants retained under Basic Services:

.1 Structural Engineer:

.2 Mechanical Engineer:

.3 Electrical Engineer:

.4 Civil Engineer:

.5 Kitchen Consultant (if required):

Init.

.6 Other Consultants required by the Architect to provide basic services as required by this Contract:

§ 1.1.12.2 Consultants retained under Additional Services or funded as a reimbursable expense:

§ 1.1.12.2.1 Geotechnical Engineer for design requirements and reports.

§ 1.1.12.2.2 Traffic Engineer

§ 1.1.12.2.3 Other consultants required by the architect and approved as an additional service by the owner.

§ 1.1.13 Other Initial Information on which the Agreement is based:

§ 1.1.13.1 Several "add" alternates amounting to approximately 10% of the estimated construction price will be identified and specified by the Architect in the Construction Documents after consultation with the Owner. The Architect shall prepare the necessary Construction Documents as requested by the Owner.

§ 1.1.13.2 In the event that the Construction Manager's estimate or the lowest bona fide bid or negotiated proposal received by the Owner exceeds the Owner's budget for reasons other than those described in Article 4, the modification of Contract Documents shall be the limit of the Architect's responsibility.

§ 1.1.13.3 In the event that the Construction Manager's estimate or the lowest bona fide bid or negotiated proposal received by the Owner exceeds the Owner's budget without additional charge, the Architect shall revise and modify the Contract Documents as necessary to comply with the Construction Budget. Such modifications may be required at any phase or multiple phases of the design.

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services in accordance with the schedule agreed to between the Architect and Owner.

§ 2.2.1 The Architect shall design the project in conformance with all applicable ordinances, building codes, Frederick County Public Schools (FCPS) Education Specifications, FCPS Design Guide, "Standards for the design of new and renovated facilities" statutes and regulations of all federal, state, and local government authorities as interpreted by the relevant government authorities having jurisdiction over the project. If the Architect determines that adherence to the FCPS Design Preferences would be inconsistent or inappropriate with the design of the project, the Architect shall promptly notify the Owner in writing of its determination and proposed resolution. The Owner shall approve or disapprove the Architect's proposed resolution.

§ 2.2.2 Notwithstanding any other provisions in this agreement to the contrary, the Architect shall promptly, without additional compensation, correct or revise any errors, omissions or deficiencies discovered in the design, drawings, specifications and other services be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the Architect under this Agreement. The Architect shall promptly, without additional compensation, correct or revise any errors or deficiencies discovered in his design, drawings, specifications and other services. Neither the Owner's review, approval, acceptance of, or payment for, the services required under this Agreement shall be construed to be a waiver of any rights under this

Init.

Agreement or of any cause of action arising out of the performance of this Agreement, and the Architect shall be and remain liable to the Owner for all damages, including costs, to the Owner caused by the Architect's negligent performance of any of the services furnished under this Agreement. The rights and remedies of the Owner provided for by this Agreement are not exclusive and are in addition to any other rights and remedies provided by law.

§ 2.2.3 The Architect shall provide a certification based upon personal knowledge and belief stating that the Project was designed without building materials containing asbestos.

§ 2.3 The Architect shall provide its services in conjunction with the services of a Construction Manager as described in AIA Document C132™–2009, Standard Form of Agreement Between Owner and Construction Manager as modified by Frederick County Public Schools. The Architect shall not be responsible for actions taken by the Construction Manager.

§ 2.4 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.5 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.6 The Architect shall maintain the following insurance for the duration of this Agreement. The Board of Education of Frederick County, Frederick County Council and The State of Maryland shall be named additional insured on policies excluding insurance required by statute. All forms of insurance and carriers shall have an A. M. Best's rating of "A" or better and are subject to the Owner's approval, all Certificates of Insurance shall be provided to the Owner within ten (10) days of award of the Contract. The insurance shall be written on a General Liability policy form, Certificate of insurance shall be ACCORD form 25-s (7/97).

§ 2.6.1 Comprehensive General Liability with policy limits of not less than One Million Dollars and no cents (\$ 1,000,000.00) for each occurrence and in the aggregate for bodily injury and property damage.

§ 2.6.2 Automobile Liability covering owned and rented vehicles operated by the Architect with policy limits of not less than One Million Dollars and no cents (\$ 1,000,000.00) combined single limit and aggregate for bodily injury and property damage.

§ 2.6.3 The Architect may use umbrella or excess liability insurance to achieve the required coverage for Comprehensive General Liability and Automobile Liability, provided that such umbrella or excess insurance results in the same type of coverage as required for the individual policies. The Umbrella or Excess Liability limits will be excess over the underlying General Liability and Automobile Liability limits and there will be no gaps.

§ 2.6.4 Workers' Compensation at statutory limits and Employers Liability with a policy limit of not less than Five Hundred thousand dollars and no cents (\$ 500,000.00).

§ 2.6.5 Professional Liability covering the Architect's negligent acts, errors and omissions in its performance of professional services with policy limits of not less than Two million dollars and no cents (\$ 2,000,000.00) per claim and in the aggregate with deductible not exceeding \$50,000.00.

§ 2.6.6 The Architect shall provide to the Owner certificates of insurance evidencing compliance with the requirements in this Section 2.6 in its entirety. The certificates will show the Owner as The Board of Education of Frederick County, The Frederick County Board of Commissioners and The State of Maryland as an additional insured on the Comprehensive General Liability, Automobile Liability, umbrella or excess policies.

§ 2.6.6.1 The Architect shall comply with each of the additional insurance requirements as set forth below:

§ 2.6.6.1.1 The Owner shall receive insurance certificates from the Architect evidencing the compliance of insurance requirements at least 10 days before Work commences.

§ 2.6.6.1.2 Policies shall stipulate the Owner is to receive written notice thirty (30) days before cancellation.

§ 2.6.6.1.3 Insurance policies shall contain a Waiver of Subrogation in favor of the Owner.

§ 2.6.6.1.4 Insurance policies shall provide primary insurance coverage to the Owner and Frederick County Board of

Init.

Commissioners as additional insureds for loss, injury, and damage arising out of or associated with the Services under this Agreement as opposed to pro-rata with, concurrent with or excess to any other insurance coverage by Owner.

§ 2.6.6.1.5 The Architect's selection of insurer shall be acceptable to the Owner, and the insurer shall be lawfully authorized to do business in the State of Maryland.

§ 2.6.6.1.6 If project insurance purchased by the Architect has been issued on a "claims made" basis, the Architect shall comply with the following additional conditions: Architect will supply certificates of project insurance evidencing the above coverage for a period of two (2) years after final completion of the Project with such certificates evidencing a retroactive date no later than the beginning of the Work under this Agreement, or Architect shall purchase an extended (minimum two years) reporting period endorsement for each such "claims made" policy in force as of the date of final completion and evidence the purchase of this extended reporting period endorsement by means of a certificate of insurance or a copy of the endorsement itself. Such certificate or copy of the endorsement shall evidence a retroactive date no later than the beginning of the Work under this agreement.

§ 2.6.6.1.7 Architect agrees to indemnify and hold the Owner harmless from all losses, claims, liabilities, injuries, damages, and expenses that Owner may incur by reason of any injury or damage sustained to any person or property arising out, or occurring in connection with, Architect's negligent acts, errors, or omissions. Owner agrees to indemnify and hold the Architect harmless from all losses, claims, liabilities, injuries, damages, and expenses that Architect may incur by reason of any injury or damage sustained to any person or property arising out, or occurring in connection with, Owner's negligent acts, errors, or omissions.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary structural, mechanical, civil, and electrical engineering services and design of the project. The basic services definition includes clarifications listed Article 4, Architect's Basic Services Continued. The Construction Documents shall be prepared according to the Architect's best professional knowledge, information, and belief, and shall sufficiently describe and delineate the entire project and be in such detail as is necessary to permit proper construction of the Project and shall comply with all applicable laws, statutes, ordinances, codes, rules, and regulations applicable to the construction and design of the project.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner and the Construction Manager, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner. Projects funded, or may potentially be funded; by the State of Maryland require specific reviews at each design stage. The Architect shall assure the appropriate reviews are made and subsequent comments addressed within the time allotted.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner, the Construction Manager and the Owner's other consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner, the Construction Manager, and the Owner's other consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.2.1 Any revisions to the plans issued at the time of bid shall be made on the full size plans and re-issued. Any change(s) shall be clouded and referenced with the appropriate Addenda or Directive reference number that generated the change in scope. Minor changes in scope not modifying time or cost as permitted by the contract shall be so noted within the cloud identifying such change(s).

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit to the Owner and the Construction Manager a schedule of the Architect's services for inclusion in the Project schedule prepared by the Construction Manager. The schedule of the Architect's services shall include design milestone dates, anticipated dates when cost estimates or design reviews may occur, and allowances for periods of time required (1) for the Owner's review, (2) for the Construction Manager's review, (3) for the performance of the Owner's consultants, and (4) for approval of submissions by authorities having jurisdiction over the Project.

§ 3.1.4 The Architect shall submit information to the Construction Manager and participate in developing and revising the Project schedule as it relates to the Architect's services.

§ 3.1.5 Once the Owner and the Architect agree to the time limits established by the Project schedule, the Owner and the Architect shall not exceed them, except for reasonable cause.

§ 3.1.6 Is Deleted.

§ 3.1.7 The Architect shall, at appropriate times, in coordination with the Construction Manager, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.8 The Architect shall assisted as necessary by the Construction Manager shall on the behalf of the Owner, procure the required approvals and permits for the project excluding the permits required to be procured by the Contractor's Contracts, including the Occupancy Permit. Examples of these approvals and permits are the Building Permit, Grading Permit, Air Quality Permit, Historical Trusts, Storm Water Management, Water Resources Administration, Corps of Engineers, Frederick County Public Schools Curriculum Department, IAC (Interagency Committee), Maryland State Public School Construction Program Utility Companies and State Boiler Permits. If possible, the Grading Permit and Building Permit shall be procured before the Board of Education approves Prime Contractor(s). The Owner will reimburse the Architect for fees charged by the agencies issuing such Permits. As the time for drawing such permits draws near, the Owner, Architect, and Construction Manager may agree on a division of labor with respect to obtaining permits. The Architect shall file for permits modifying plans as necessary to insure permits are approved and obtained within 30 days of the bid award.

§ 3.2 Schematic Design Phase Services

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner and Construction Manager, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and Construction Manager and shall discuss with the Owner and Construction Manager alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present to the Owner and Construction Manager, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval and the Construction Manager's review. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing. The schematic submission shall meet the requirements of the State of Maryland Public School Construction Program, Administrative Procedures Guide from the latest edition.

§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

§ 3.2.5.2 The Architect shall consider with the Owner and the Construction Manager the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics in

developing a design for the Project that is consistent with the Owner's program, schedule and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit the Schematic Design Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Schematic Design Documents.

§ 3.2.7 Upon receipt of the Construction Manager's review comments and cost estimate at the conclusion of the Schematic Design Phase, the Architect shall take action as required under Section 6.4, identify agreed upon adjustments to the Project's size, quality or budget, and request the Owner's approval of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate the required revisions in the Design Development Phase.

§ 3.2.8 In the further development of the Drawings and Specifications during this and subsequent phases of design, the Architect shall be entitled to rely on the accuracy of the estimates of the Cost of the Work, which are to be provided by the Construction Manager under the Construction Manager's agreement with the Owner.

§ 3.3 Design Development Phase Services

§ 3.3.1 During the Design Development Phase, the Architect shall make all arrangements for and conduct progress and review meetings with the Owner, the Architect, and its Consultants, and the Construction Manager, at the Owner's discretion. The Owner may designate the time and location of such meetings. The Architect shall take minutes of the meetings and distribute copies to attendees within 48 hours.

§ 3.3.1.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work pursuant to Section 1.1.3, the Architect shall prepare Design Development Documents for the Owner's approval and the Construction Manager's review. The Design Development Documents shall be based upon information provided, and estimates prepared by, the Construction Manager and shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels. The Design Development Submission shall meet the requirements of the State of Maryland, Public School Construction Program, Administrative Procedures Guide, latest edition.

§ 3.3.2 Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Design Development Documents.

§ 3.3.3 Upon receipt of the Construction Manager and Owner's information and estimate at the conclusion of the Design Development Phase, the Architect shall take action as required under Sections 6.5 and 6.6 and request the Owner's approval of the Design Development Documents.

§ 3.4 Construction Documents Phase Services

§ 3.4.1 During the Construction Document Phase, the Architect shall make all arrangements for and conduct progress and review meetings with the Owner, the Architect and its Consultants, and the Construction Manager. The Owner may designate the time and location of such meetings as needed, at the Owner's discretion. The Architect shall take minutes of the meetings and distribute copies to attendees within 48 hours.

§ 3.4.1.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval and the Construction Manager's review. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to

construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ 3.4.3 During the development of the Construction Documents, if requested by the Owner, the Architect shall assist the Owner and the Construction Manager in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions); and (4) compile a project manual that includes the Conditions of the Contract for Construction and may include bidding requirements and sample forms and (5) provide the document in the media acceptable to the owner and required by the plan room.

§ 3.4.3.1 The Architect shall assist the Owner and Construction Manager in the preparation of the necessary bidding information, bidding forms, the Conditions of the Contracts, and the forms of Agreement between the Owner and the Contractors. The Architect shall assist the Owner and the Construction Manager in issuing bidding documents to bidders and conducting pre-bid conferences with prospective bidders. The Architect, with the assistance of the Owner and the Construction Manager, shall respond to questions from bidders, and shall assist the Owner and the Construction Manager issuing addenda.

§ 3.4.4 Prior to the conclusion of the Construction Documents Phase, the Architect shall submit the Construction Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Construction Documents.

§ 3.4.5 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Construction Documents Phase, the Architect shall take action as required by the State of Maryland, Public School Construction Program, Administrative Procedure Guide will be submitted for review and comment.

§ 3.5 Bidding or Negotiation Phase Services

§ 3.5.1 General

The Architect shall assist the Owner and Construction Manager in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner and Construction Manager in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and (4) awarding and preparing contracts for construction. Bids for Prime contracts may be "phased" such that various bid packages are bid in different groups at different times due to schedule or financial considerations.

§ 3.5.2 Competitive Bidding

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner and Construction Manager in bidding the Project by

- .1 facilitating the reproduction of Bidding Documents for distribution to prospective bidders,
- .2 participating in a pre-bid conference for prospective bidders, and
- .3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents in the form of addenda.

§ 3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall consult with the Construction Manager and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5.2.4 Should the Contract Documents include any provisions for substitutions or approved equivalent equipment, materials or systems, such provisions shall be written in such a manner to preclude bidders from using as a bid basis any equipment, materials, or systems that are not specifically pre-approved by the Architect, or Engineer, Construction Manager and Owner. Any substitutions not considered "approved equivalent" by the Owner may be accepted at the Owner's sole discretion, on recommendation of the Architect, Engineer, and Construction Manager, provided an appropriate credit is offered with the substituted equipment, materials or systems.

§ 3.5.3 Is deleted

§ 3.5.3.1 Is deleted

§ 3.5.3.2

(Paragraphs deleted)

Is deleted

§ 3.5.3.3 Is deleted

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 All references in this document to AIA Document A232, General Conditions of the Contract for Construction, CM Adviser Edition, shall constitute reference to the AIA Document 232 as modified by Frederick County Public Schools. The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A232™–2009 as modified by Frederick County Public Schools, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition. If the Owner and Contractor modify AIA Document A232–2009, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement. Subject only to Subparagraph 11.5.1, the Architect shall be responsible to provide Basic Services for the Construction Phase under this Agreement commencing with the award of the Contract for construction, though termination of the project by the Owner which requires approval of the final Project Certificate for Payment to construction Manager and the Architect. For purposes of providing a definitive end to the Architect's responsibility to provide Basic Services for the Construction Phase, this responsibility shall terminate at project closeout or eighteen (18) months after building occupancy, whichever comes first.

§ 3.6.1.2 The Architect shall advise and consult with the Owner and Construction Manager during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Construction Manager, or the Contractor or of any other persons or entities performing portions of the Work. The Architect shall attend regularly scheduled construction progress meetings normally scheduled two times per month.

§ 3.6.1.3 Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.1.4 The Architect shall provide a "Conforming Set of Drawings" as soon as practical after the bid opening. These drawings shall incorporate all addenda and changes since the publication of the bid drawings. The drawings shall be furnished in electronic format in both PDF and AutoCAD format determined by Owner, or as requested by the owner and construction manager and as stipulated by 3.1.2.1 above.

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, 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 shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner and the Construction Manager (1) known deviations from the Contract Documents and from the most recent construction schedule, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.2 While full time on-site inspection services are not part of this agreement, it shall nevertheless be the obligation of the Architect, its Engineers, and its Consultants, to visit the site often enough and at appropriate intervals and stages of the construction, and observe the ongoing work closely enough, to endeavor to determine that the construction and the construction materials appear to be in accordance with the Construction Documents, and with applicable laws, statutes, ordinances or codes, and within accepted industry standards and practices. Observations of construction and construction materials not in accordance with applicable requirements or design intent shall be reported in writing within 48 hours of observation, to the Owner, Prime Contractor, and Construction Manager. Such observations shall also be orally communicated to the Owner, Prime Contractor, and Construction Manager immediately. 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 endeavoring to exercise reasonable care and diligence in observing on-going construction work.

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

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A232–2009, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.3 Certificates for Payment to Contractor

§ 3.6.3.1 The Architect shall review and certify an application for payment not more frequently than monthly. Within seven days after the Architect receives an application for payment forwarded from the Construction Manager, the Architect shall review and certify the application as follows:

- .1 Where there is only one Contractor responsible for performing the Work, the Architect shall review the Contractor's Application and Certificate for Payment that the Construction Manager has previously reviewed and certified. The Architect shall certify the amount due the Contractor and shall issue a Certificate for Payment in such amount.
- .2 Where there are Multiple Prime Contractors responsible for performing different portions of the Project, the Architect shall review a Project Application and Project Certificate for Payment, with a Summary of Contractors' Applications for Payment, that the Construction Manager has previously prepared, reviewed and certified. The Architect shall certify the amounts due the Contractors and shall issue a Project Certificate for Payment in the total of such amounts.

§ 3.6.3.2 The Architect's certification for payment shall constitute a representation to the Owner, based on (1) the Architect's evaluation of the Work as provided in Section 3.6.2, (2) the data comprising the Contractor's Application for Payment or the data comprising the Project Application for Payment, and (3) the recommendation of the Construction Manager, 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 (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 3.6.3.3 Subject to subparagraph 3.6.2.2, The issuance of a Certificate for Payment or a Project Certificate for Payment shall 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) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.4 The Architect shall maintain a record of the applications and certificates for payment.

§ 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Construction Manager's Project submittal and construction schedules shall not unreasonably delay or withhold review. The Architect's action in reviewing submittals transmitted by the Construction Manager shall be taken in accordance with the approved submittal schedule 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, normally within 14 calendar days.

§ 3.6.4.2 In accordance with the Architect reviewed Project submittal schedule, and after the Construction Manager reviews, approves and transmits the submittals, the Architect shall 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 checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. 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 of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review shop drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. 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.

§ 3.6.4.4 After receipt of the Construction Manager's recommendations, and subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information about the Contract Documents. The Architect, in consultation with the Construction Manager, shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 The Architect shall review and approve or take other appropriate action upon Contractors' submittals for the purpose of (1) endeavoring to determine whether or not the work when completed will be in compliance with the requirements of the Contract Documents, and (2) endeavoring to determine whether the submittals appear to be in compliance with applicable laws, statutes, ordinances, codes, orders, rules, and regulations applicable to the project, but this action on the part of the Architect shall not relieve the Contractor (s) of responsibility in property preparing, reviewing and submitting said submittals. The Architect's action shall be taken with such reasonable promptness, normally 14 calendar days, as to cause no delay in the Contractors' Work or in construction by the Owner's own forces, 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 designed by the Contractors, all of which remain the responsibility of the Contractors to the extent required by the Contract Documents. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. When professional certification of performance characteristics of materials, systems or equipment is required by the Contract Documents, the Architect shall be entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the Contract Documents.

§ 3.6.4.5.1 The Architect shall maintain a record of submittals and copies of submittals transmitted by the Construction Manager in accordance with the requirements of the Contract Documents.

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect shall review and sign, or take other appropriate action, on Change Orders and Construction Change Directives prepared by the Construction Manager for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.1.1 The Architect shall submit to the Owner with each proposal its recommendation, including a technical and cost analysis review. The Architect, or its Engineer or Consultant as appropriate, shall be prepared to personally present all construction Change Orders with a dollar value equal to or exceeding \$25,000.00 to a Board of Education meeting and/or subcommittee meeting as directed by the Owner.

§ 3.6.5.2 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Such changes shall be effected by written order issued by the Architect through the Construction Manager.

§ 3.6.5.3 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect, assisted by the Construction Manager, shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion prepared by the Construction Manager; receive from the Construction Manager and review written warranties and related documents required by the Contract Documents and assembled by the Contractor; and, after receipt of a final Contractor's Application and Certificate for Payment or a final Project Application and Project Certificate for Payment from the Construction Manager, issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 3.6.6.1.1 The Architect shall inspect the project for the owner and prepare punch lists of items of work to be completed or reworked in order to comply with the Construction Documents. Any additional inspection beyond those required by the General Conditions of the Contract for Construction shall be performed as an additional service and the Owner shall have the right to back charge the Prime Contractor for the same. The architect, assisted by the construction manager, shall collect "field as-built" records/drawings from the prime contractors and incorporate the changes into an As Built record of the project. The As Built drawings shall be provided to the owner in PDF and AutoCAD format. As-built drawings are to be furnished with architect's seal.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner and Construction Manager to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Construction Manager and Contractor of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete by the Construction Manager and Architect, and after certification by the Construction Manager and the Architect, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 ARCHITECT'S BASIC SERVICES CONTINUED

§ 4.1 Notwithstanding anything to the contrary in this Agreement, Owner shall not be responsible to pay and the Architect shall not be entitled to receive compensation for any additional services, if such services were required due to the fault of the Architect, or his consultants, or the Architect's failure to perform in accordance with this agreement. Under no circumstances will the Owner be obligated to provide compensation for additional services not

specifically requested and approved in writing by the Owner. The clarification of services 4.1.1 through 4.2.26 below provides the Owner's expectation for such services, whether basic or additional.

Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
Services	Responsibility	Additional information
<i>(Rows deleted)</i>		
§ 4.1.1 Programming - The owner shall provide the Educational Specifications, project budget and General Schedule.	Owner	
§ 4.1.2 Multiple preliminary designs -The Architect shall lead the design team through the design process and will receive comments from the owner's staff as well as the construction manager, where applicable as a basic service requirement. Multiple preliminary designs are not required however modifications to the initial proposed design can and should be expected. A major change to an approved "benchmark design stage", SD, DD, CD, will be the basis for additional services. The determination of "major" shall be made by the owner.	Architect	
§ 4.1.3 Measured drawings - The architect will provide measured drawings as required for review agencies, the owner and construction manager, where applicable. The architect shall also provide colored renderings for presentation at each Benchmark Design Stage, SD, DD, CD. The drawings and renderings listed above are a basic service requirement. Cost associated with printing of the above shall be billed as a reimbursable expense.	Architect	
§ 4.1.4 Existing facilities surveys - The owner shall provide the design team with the condition of any associated existing structure or building. The cost of any test or other verification means of such condition will be borne by the owner. The architect and his consultants will be responsible for surveys required to coordinate and properly connect the design for which this document applies to existing buildings, utilities, roadways or other appurtenances as a basic service.	Owner and Architect	
§ 4.1.5 Site evaluation and planning – The architect is responsible for site evaluation and planning as a basic service. Geotechnical exploration and reports should be coordinated with the owner and CM, where applicable, and may be billed as a reimbursable expense.	Architect	
<i>(Row deleted)</i>		
§ 4.1.6 Building information modeling	Not required as a basic service	
<i>(Row deleted)</i>		
§ 4.1.7 Civil engineering – required to obtain a permit to construct and provide an efficient, workable design shall be provided as a basic service.	Architect	
§ 4.1.8 Landscape design – required to obtain a permit to construct will be provided as a basic service.	Architect	
§ 4.1.9 Architectural interior design - The interior design required to provide color, finish, and materials for walls, floors and ceilings and adapt built-in aspects of the design	Architect	

Init.

to an efficient operating facility shall be included in the basic services.		
<i>(Row deleted)</i>		
§ 4.1.10 Value analysis	Architect	Life Cycle cost analysis as required by The State of Maryland and specified by this document.
<i>(Row deleted)</i>		
§ 4.1.11 Detailed cost estimating - Detailed Cost Estimating shall be provided by the construction manager where applicable.	Construction Manager	
§ 4.1.12 On-site project representation - Daily on-site representation will be provided by the owner and construction manager.	Owner and Construction Manager	Architect shall provide on-site services as required through-out this contract.
<i>(Row deleted)</i>		
§ 4.1.13 Conformed construction documents - Conformed documents incorporating all addenda items shall be a basic service. They shall be provided as soon as practical after the bid award. Reproduction costs are not included.	Architect	
§ 4.1.14 As-designed record drawings - As designed record drawings are considered the same as the Bid Set of drawings and shall be considered part of the basic service.	Architect	
§ 4.1.15 As-constructed record drawings - As-constructed record drawings are considered "As Built" drawings and are to be provided in electronic format PDF and AutoCAD (including supporting files) and one hard copy. These will be provided as a part of the basic services.	Architect	
§ 4.1.16 Post occupancy evaluation - The FCPS Construction Department performs a post occupancy evaluation referred to as a De-briefing. Architect will attend and participate in such as a part of the basic service.	Owner and Architect	
§ 4.1.17 Facility support services		
§ 4.1.18 Tenant-related services	Not required by Architect as a basic service	
§ 4.1.19 Coordination of Owner's consultants	Not required by Architect as a basic service	
§ 4.1.20 Telecommunications/data design - FCPS has design criteria and standards for the telecommunications and data systems. The architect will provide the design adaptation and construction detail to the new or renovated facility as a basic service.	Owner and Architect	
§ 4.1.21 Security evaluation and planning – FCPS has design criteria, standardized equipment and standards for the physical and electronic security for its facilities. The architect will provide design adaptation and construction detail required for a complete installation as a Basic Service.	Owner and Architect	
<i>(Row deleted)</i>		
§ 4.1.22 Commissioning –The Architect and their consultants will be coordinating with a commissioning agent hired directly by FCPS as a Basic Service.	Owner and Architect	
<i>(Row deleted)</i>		
§ 4.1.23 Extensive environmentally responsible design - FCPS will be required to comply with a LEED silver	Architect	

Init.

classification, or equal, for any project that has State of Maryland funding or has the potential for future State funding. The Architect shall provide the consulting and design required to achieve this rating as a Basic Service. Fees for actual certification will be billed as reimbursable or paid directly by FCPS.		
§ 4.1.24 LEED® certification – see 4.1.23 above	Architect	
§ 4.1.25 Historic preservation – Not required by Architect as a basic Service unless noted elsewhere in the project description.	Owner and Architect	
<i>(Row deleted)</i>		
§ 4.1.26 Furniture, furnishings, and equipment design – Furnishings and equipment planning and purchasing is performed by FCPS. The Architect shall provide general equipment coordination and layouts to assure the spaces are functional and adequate storage is furnished for the equipment purchased as a Basic Service.	Owner and Architect	

(Rows deleted)

§ 4.2 A description of each Service designated in Section 4.1 is described as the Architect's, Owner's, Construction Managers responsibility as a basic service or identified as Not required as a basic service, and may be further described in an exhibit attached to or indicated within this document.

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information or previous instructions given by the Owner;
- .2 Services necessitated by

(Paragraphs deleted)

decisions of the Owner or Construction Manager not rendered in a timely manner or any other failure of performance on the part of the Owner, Construction Manager or the Owner's other consultants or contractors;

- .3 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto; and

(Paragraph deleted)

- .4 Consultation concerning replacement of Work resulting from fire or other cause during construction.

§ 4.3.2

(Paragraphs deleted)

The original information identified by this section is enumerated in other sections of this agreement.

§ 4.3.3 The Architect shall provide Construction Phase Services

(Paragraphs deleted)

as a basic service of this Contract.

§ 4.3.4 If the services covered by this Agreement have not been completed within sixty (60) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

§ 4.3.5 The Architect shall lead the design team through the design process and will receive comments from the owner's staff as well as the construction manager, where applicable as a basic service requirement. Modifications comments and suggested changes to the initial proposed design can and should be expected. A major change to an approved "benchmark design stage" (SD, DD, CD) or program or funding change affecting the design in a major way may be the basis for additional services. The determination of "major" shall be made by the owner.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including Educational Specifications, tentative schedule or special requirements. The Owner shall furnish information required by the Architect in a reasonable time a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.2 The Owner shall retain a Construction Manager to provide services, duties and responsibilities as described in AIA Document C132-2009, Standard Form of Agreement Between Owner and Construction Manager as modified by FCPS. The Owner shall provide the Architect a copy of the executed agreement between the Owner and the Construction Manager if requested by the Architect and Construction Manager a copy of the agreement between the Owner and Architect if requested by the Construction Manager.

§ 5.3 The Owner shall furnish the services of a Construction Manager that shall be responsible for creating the bidding and construction phase schedule.

§ 5.4 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. The Owner shall furnish the services of a Construction Manager that shall be responsible for preparing all estimates of the Cost of the Work. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect and the Construction Manager. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the budget for the Cost of the Work or in the Project's scope and quality.

§ 5.4.1 Is deleted.

§ 5.5 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.6 The Owner shall furnish to the architect existing surveys and other information about the site that it has available at the time of architect contract award, and will provide legal services required throughout the project. Other information required for the design and permitting of the project shall be provided by the Architect and its consultants as a basic service.

§ 5.6.1 The physical characteristics and utility locations described in Article 5.6 & 5.6.1 shall be limited to those known to the owner. It shall be the responsibility of the Architect to furnish such geotechnical and consulting services to determine any other physical characteristics, subsurface conditions or utility locations as the Architect deems necessary for the proper design and construction of the project. The Architect shall coordinate the geotechnical investigation and report with the design team members, the cost of such investigation and report can be billed as a reimbursable expense.

§ 5.7 Is deleted.

§ 5.8 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon request the Architect or the Owner shall furnish copies of the scope of services in the contracts between them and their consultants. The Owner and Architect shall require their consultants to maintain professional liability insurance and other liability insurance as appropriate to the services provided.

§ 5.9 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.10 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.11 The Owner shall provide prompt written notice to the Architect and Construction Manager if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Instruments of Service.

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

§ 5.13 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.14 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Construction Manager and Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include the contractors' general conditions costs, overhead and profit. The Cost of the Work includes the compensation of the Construction Manager and Construction Manager's consultants during the Construction Phase only, including compensation for reimbursable expenses at the job site, if any. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, and contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.4 and 6.5.

§ 6.3 The Owner shall require the Construction Manager to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work. The Architect shall be entitled to rely on the accuracy and completeness of estimates of the Cost of the Work the Construction Manager prepares as the Architect progresses with its Basic Services. The Architect shall prepare, as an Additional Service, revisions to the Drawings, Specifications or other documents required due to the Construction Manager's inaccuracies or incompleteness in preparing cost estimates. The Architect may review the Construction Manager's estimates solely for the Architect's guidance in completion of its services, however, the Architect shall report to the Owner any material inaccuracies and inconsistencies noted during any such review.

§ 6.3.1 If the Architect is providing detailed cost estimating services as an Additional Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Architect and the Construction Manager shall work cooperatively to conform the cost estimates to one another.

§ 6.4 If, prior to the conclusion of the Schematic Design Phase, Design Development Phase, or Construction Document phase, the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect, in consultation with the Construction Manager, shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget, and the Owner shall cooperate with the Architect in making such adjustments or direct the Architect as indicated in one of the options identified by 6.5.

§ 6.5 If the estimate of the Cost of the Work at the conclusion of the Schematic Design Phase or Design Development Phase or Construction Document Phase, exceeds the Owner's budget for the Cost of the Work, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 in consultation with the Architect and Construction Manager, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .3 implement any other mutually acceptable alternative; or
- .4 redesign the project to comply with the current budget.

§ 6.6 If the Owner chooses to proceed under Section 6.5, the Architect, without additional compensation, shall incorporate the required modifications in the Schematic Design Phase, Design Development Phase or Construction Documents Phase as necessary to comply with the Owner's budget for the Cost of the Work, or the budget as adjusted under Section 6.5.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility as a Basic Service under this Article 6.

§ 6.7 After incorporation of modifications under Section 6.6, the Architect shall, as part of the Architects Basic Service, make any required revisions to the Drawings, Specifications or other documents necessitated by subsequent cost estimates that exceed the Owner's budget for the Cost of the Work, except when the excess is due to changes initiated by the Architect in scope, basic systems, or the kinds and quality of materials, finishes or equipment.

ARTICLE 7 USE OF DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

§ 7.1 The Drawings, Specifications and other documents prepared by the Architect for this Project are instruments of the Architect's service for this Project and, unless otherwise provided, the Architect shall be deemed the author of these documents however Frederick County Public Schools shall retain all common law, statutory and other reserved rights, including the copyright. The Owner shall be permitted to retain copies, including reproducible copies, of the Architects Drawings, Specifications and other documents for information and reference in connection with the Owner's use and occupancy of the Project.

§ 7.2 Submission or distribution of documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the Owner's reserved rights.

§ 7.3 Conditioned upon the Architect's being paid in full for all amounts due under this Agreement, or if this Work under this Agreement is still in progress, conditioned upon the Architect being paid an amount consistent with his progress in providing services under this Agreement, the Architect specifically grants to the Board of Education of Frederick County, Maryland the right to use the space layouts, detailing, means of identifying through specifications, and other concepts and features in the documents prepared by the Architect for this Project as the basis of other designs for Frederick County Public Schools. The Architect shall not be liable to the Owner or to any third party as a result of the Owner's reuse of the drawings, specifications, other concepts and features in the documents on the on the other projects. The Owner shall hold the Architect harmless and indemnify the Architect against all losses, claims and liabilities including legal and court costs, should any arise as a direct result of the reuse of the drawings and specifications in this manner.

§ 7.3.1 Is deleted

§ 7.4 Is deleted

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 Claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be resolved in the Circuit or District Courts for Frederick County and the parties hereby consent to and agree to the jurisdiction of those Courts. Provided, however, in the event that the presence of third parties is required for the complete resolution of any dispute over whom the Circuit or District Courts do not have jurisdiction, then the Architect consents to the jurisdiction of any court selected by Owner which otherwise has jurisdiction over all parties deemed necessary by Owner for the complete resolution of the dispute or claim or other matter in question.

§ 8.1.1 Is deleted

Init.

§ 8.1.2 Is deleted

§ 8.1.3 Is deleted

§ 8.1.4 Is deleted

§ 8.2 Mediation

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them 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 a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution 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 proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 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.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

(Check the appropriate box. If the Owner and Architect 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, the dispute will be resolved in a court of competent jurisdiction.)

☐ Arbitration pursuant to Section 8.3 of this Agreement is deleted

☒ Litigation in a court of competent jurisdiction

☐ Other: *(Specify)*

§ 8.3 Arbitration is Deleted

§ 8.3.1 Is deleted.

§ 8.3.1.1 Is deleted.

§ 8.3.2 Is deleted.

§ 8.3.3 Is deleted.

§ 8.3.4 Consolidation or Joinder is deleted

§ 8.3.4.1 Is deleted

§ 8.3.4.2 Is deleted

§ 8.3.4.3 Is deleted

Init.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 The Owner may terminate the Architect's contract whenever the Owner, in its sole discretion, shall determine that such termination is in the best interests of the Owner (termination for convenience). Any such termination shall be effected by not less than seven (7) days written notice to the Architect. In the event of termination by the Owner under this Subparagraph, the Architect's compensation shall be set as set forth in Paragraph 9.7 hereof. In the event of termination under Paragraph 9.3 or 9.4, the Architect's compensation shall be limited to that set forth in Paragraph 9.7 hereof.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7.

§ 9.7 Termination Expenses are not applicable to this Contract beyond payment for design services completed at the time of termination; the Owner shall compensate the Architect for completed design in compliance with the program and approved reimbursable expenses only, reference Article 11 in its entirety.

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A232-2009, General Conditions of the Contract for Construction as modified by FCPS.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site. The architect shall be responsible for relaying the presence of hazardous materials to contractors via the contract document that are identified by a hazardous materials survey performed and funded by the owner.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. When approved by the Owner the Architect shall be given reasonable access to the completed Project to make such representations however the architect will follow all restrictions of the owner for access and photographs of the project, its contents and students and staff.

§ 10.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

§ 11.2.1 For Additional Services Designated in Article 4 or Additional Services that may arise during the course of the project the owner and architect will negotiate a cost based on the hourly billing rates and estimated hours to be used. If agreement can be reached on cost the owner may grant authorization verbally, followed by written authorization as soon as practical. The architect should then file an official AIA document G802 - Amendment to Professional Services Agreement. If immediate cost resolution cannot be negotiated and schedule is critical the owner may issue an Additional Design Directive that would require the architect and his consultants to begin work on the additional design while the final cost is negotiated. When final agreement is reached on the cost the architect should file AIA document G802 - Amendment to Professional Services Agreement amending the contract. If agreement cannot be reached for the cost of the additional work, the Owner shall compensate the Architect at the same percentage applicable to the construction cost of the basic design fee was in the original construction cost, plus marked up 10%.

§ 11.3 For Additional Services that may arise during the course of the Project the Owner shall compensate the Architect as

(Paragraphs deleted)

listed in 11.2 and 11.2.1 above.

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Architect plus ten percent (10 %), or as otherwise stated below:

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

Schematic Design Phase	percent (%)
Design Development Phase	percent (%)
Construction Documents Phase	percent (%)
Bidding or Negotiation Phase	percent (%)

Construction Phase		percent (%)
As built or record drawings and project close out	One and one half percent of the total contract amount	(1.5	%)
Total Basic Compensation	one hundred	percent (100	%)

(Paragraph deleted)

§ 11.6 Is deleted

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Employee or Category	Rate (\$0.00)
-----------------------------	----------------------

§ 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence for out of town travel authorized by the owner. This doesn't include local travel to the job site or the location project meetings;
- .2 Is deleted;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner other than those listed in this document;
- .8 Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Is deleted;
- .11 Other expenses approved by the owner.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus ten percent (10 %) of the expenses incurred.

§ 11.9 Compensation for Use of Architect's Instruments of Service

If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay as indicated in 9.7 and for purposes of completing, using and maintaining the Project as follows:

§ 11.9.1 Ten percent of the total compensation for Basic and Additional Services earned to date if termination occurs before or during the redesign, site analysis, or Schematic Design Phases; or five percent of the total compensation for Basic and Additional Services earned to date if termination occurs during the Design Development Phase; or 2 ½ percent of the total compensation for Basic and Additional Services earned to date if termination occurs during any subsequent phase.

§11.9.2 In the event that Owner terminates this Agreement for failure of the Architect to substantially perform (Termination for Cause) and it is adjudged that the Owner's Termination is not justified, then the Termination shall be deemed to be a termination by the Owner for convenience under Paragraph 9.4 and the Architect shall be entitled to compensation only as set forth in Paragraph 9.7.

§ 11.9.2.1 Notwithstanding any other provisions of this Paragraph or this Agreement, termination expenses do not include any other or additional sums beyond those specified in Paragraph 9.7 whether in contract or in tort, whether

Init.

for lost profits, overhead, consequential damages, lost business opportunities, delay, direct or indirect damages, or any other sums of any kind or nature.

§ 11.10 Payments to the Architect

§ 11.10.1 The Architect shall submit all invoices in a format and on a form acceptable to Owner. Owner shall not be obligated to pay any invoices which do not adhere to Owner's format and form.

§ 11.10.2 Amounts unpaid shall bear interest at the rate entered below.
(Insert rate of monthly or annual interest agreed upon.)

Zero percent (0.0%)

§ 11.10.3 Is deleted.

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be provided to the Owner upon request.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

§ 12.1 This Agreement shall be governed by the laws of the State of Maryland.

§ 12.2 The Architect shall conform and/or provide services as stipulated by the Board of Education policies.

§ 12.3 The Scope of Services to be provided by the Construction Manager will be provided upon Architect's request.

§ 12.4 The Architect shall coordinate the bid documents with requirements of Frederick County Public Schools and provide such in a form acceptable to the plan room, FCPS purchasing Department and the Construction Manager. Hard copy plans for use by FCPS and the Construction Manager will be furnished by the Construction Manager. Hard Copy plans for the Architect and its consultant will be provided by the Architect.

§ 12.5 The Architect is entitled to Additional Services for design associated with changes resulting from expanded educational requirements.

§ 12.6 The Architect and its Consultants shall conform to all Frederick County Board of Education Policies when they are on Board of Education property, including without limitation, the Board of Education's Policies of no smoking, no consumption of alcohol or illegal drugs and no possession of weapons of any kind. All Frederick County Board of Education policies shall be available to the Architect for inspection upon request.

§ 12.7 At the Owners request, the Architect shall provide a conforming set of drawings as soon as practical after the bid award. The conforming set of drawings shall incorporate all addenda and clarifications made to the set of drawings distributed at the time of bid.

§ 12.8 The Architect shall compile As – Built, record drawings supplied by the Construction Manager and incorporate them into a record drawing set documenting the final as built conditions. The Record Drawings will be provided in electronic AutoCAD format with supporting files and PDF format on removable media acceptable to the Owner. The Architect shall provide Owner two (2) complete paper sets of drawings with the Architect seal. As-built or record drawings shall be reviewed confirming accuracy and completeness of red line changes documenting the actual as built conditions. Minor no cost changes and change order work additions and deletions have been included within the record drawings.

In addition to the record drawings the Architect shall review 2 sets of Operations and Maintenance Manuals from all Construction Manager/Prime Contractors. The O&M manuals shall be provided in 3 ring binders indexed by prime contractor and specification sections. The Construction Manager shall review, confirm accuracy and completeness of the Operations and Maintenance manuals as follows, grouped together, incorporating an index in the binders,

with each grouped section indexed separately and include the Architects'/engineers review and final approval of the for the completed O&M Manuals:

Electrical, Mechanical, Food service and general trades referencing the specific specification sections. The balance of the contractor packages shall be grouped together and indexed referencing the specifications sections.

Electrical indexed volume(s) 1 through volumes as necessary for the Electrical section of the specifications.

Mechanical indexed volume(s) 1 through volumes as necessary for the Mechanical section of the specifications.

Food Service indexed volume(s) 1 through volumes as necessary for the Food Service section of the specifications.

General Trades indexed volume(s) 1 through volumes as necessary for the General Trades packages.

All other packages shall be indexed volume(s) 1 through volumes as necessary for the balance of the prime contractor packages.

§ 12.9 The architect should be aware of the total listing of State of Maryland Department of Education design guide standards. The listing of standards is available on the MSDE website.

§ 12.10 Frederick County Public School Construction Department has specific preferences for the form and content of progress meeting minutes. These will be provided by the FCPS project manager

§ 12.11 FCPS utilizes third party building commissioning on its projects. The Design teams shall coordinate/cooperate with the commissioning agent during design and construction.

§ 12.12 The Architect shall establish a tabulation of spaces required by the Educational Specification and update the areas allotted at Schematic, Design Development and Construction Document phases. The tabulation shall be presented to the owner at the completion of each phase.

§ 12.13 Color renderings of site plans, floor plans and building elevations shall be provided as a basic service at the Schematic and Construction Document phases of design.

§ 12.14 The Architect shall consider fall protection provisions at mechanical, electrical and other equipment requiring regular maintenance as required.

§ 12.15 The Frederick County Public Schools Design Guide lists the preferences and requirements of the construction department, the Architect shall obtain a copy of such and become familiar with its requirements.

§ 12.16 Document submissions for the State of Maryland review in the Construction Document Reviews phase shall contain the Architects/Engineers Seal.

§ 12.17 See Exhibit D for Reference documents to the Contract.

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document B132™–2009, Standard Form Agreement Between Owner and Architect, Construction Manager as Adviser Edition as modified by FCPS.

.2

(Paragraphs deleted)

The appropriate Educational Specifications, The Frederick County Public School Design Guide, Correspondence between FCPS and the Architect for the purposes of the specific solicitation for services, written documentation and clarifications of interview discussions and the latest version of the "State of Maryland, Public School Construction Program, Administrative Procedures Guide".

- .3 Exhibit A

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

OWNER *(Signature)*

ARCHITECT *(Signature)*

(Printed name and title)

(Printed name and title)

Init.

/

Additions and Deletions Report for AIA® Document B132™ – 2009

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 08:57:48 on 03/20/2017.

PAGE 1

Construction Management Services

...

RFP 17C16

PAGE 2

(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable," "unknown at time of execution" or "to be determined later by mutual agreement.")

§ 1.1.1 The Owner's program for the ~~Project~~Project shall be as identified in the draft or final education specification provided or as specified herein.

...

§ 1.1.1.1 The project is described in the attached **Exhibit A**.

§ 1.1.1.2 The design of the school or facility shall include all amenities to allow efficient functionality including, but not limited to playing fields, roadways, parking areas, landscaping, storm water management systems, utilities, vehicular and pedestrian access and circulation and other items specified herein. The design team shall make every effort to meet the desires of the "FCPS Design Guide" which states preferences for the completed facility. If preferences are found to be unadvisable or not code compliant the design team should bring this to the attention of the FCPS design team.

§ 1.1.1.3 Civil engineering services for the entire site that meet the "Authority having Jurisdiction's" requirements are to be included in the basic fee. Surveying included for meets and bounds descriptions, easements, rights of way, etc. not currently provided by the owner shall be included as a basic service.

§ 1.1.1.4 The school or facility shall be air-conditioned except for areas identified by the owner in writing. The school or facility shall be equipped with a state of the art building automation system; the specific requirements for such will be coordinated with the FCPS Maintenance and Operations Department.

§ 1.1.1.5 The Architect shall provide typical furniture layouts and note such items in equipment schedules where necessary. See Section 4.1.26.

§ 1.1.1.6 The Architect shall conform and/or provide services as stipulated in the Board of Education policy manual, a copy of which shall be available to the Architect upon request.

§ 1.1.1.7 Duties, responsibilities and limitations of authority of the Architect shall not be restricted, modified or extended without written agreement of the Owner and Architect.

PAGE 3

See Exhibit "A"

...

The Construction Budget for the cost of the work – The fixed limit construction budget in current fiscal year dollars including building, site, off-site utilities, off-site road improvements, and other items normally included in the building construction costs to provide a functional efficient facility is: _____ (Not including construction contingency and moveable equipment.) At the Owner's discretion, the Construction Budget can be adjusted to account for any such conditions requiring changes.

§ 1.1.4 The Owner's anticipated design and construction schedule: schedule the Owner may require accelerated or fast track scheduling, multiple bid packages or phased construction to accommodate fiscal and occupancy requirements of the project. Justifiable additional design costs will be considered if these requirements are not a part of this agreement.

...

The State of Maryland has fixed approval dates and review periods for Schematic Design, Design Development and Construction Documents Submissions, Architectural responses as well as Engineering responses that are required to be strictly adhered to by the terms of this contract. The design schedule shall be developed by the architect to meet those dates, review periods and formulate required responses. A design, bid and award schedule shall be developed and submitted to the Owner for review comment 30 days after the formal notice to proceed is issued by FCPS. The schedules shall modified incorporating the Owners review comments.

.2 Commencement of construction:

.3—Substantial Completion date or milestone dates:

.4—Other:

Other :

...

[☒] Multiple Prime Contractors

...

1.1.6 Shall be as defined by the Educational Specification and indicated elsewhere throughout the FCPS documents as modified.

...

New or totally renovated schools funded by or which funding may be requested for are required to achieve a LEED Silver Certification. The Architect shall provide complete designs and specification required to comply with LEED Silver Certification as a minimum requirement. The Architect shall prepare the project charrette for the project scheduling meetings at the beginning of an integrative design process that sets the stage for cooperation and collaboration among all participants, including the design team, engineers, clients, and others involved in the project. Early involvement of the entire project team is fundamental to the successful use of a system approach to green building. The Architect shall address the Contractors green building requirements in the bid documents such that contractors scope requirements are known to include in their bid. The design (Construction Documents and the specifications) shall require services and construction materials supporting the LEED points identified and approved by the Owner as the charrette is being developed and modified during the design process.

PAGE 4

§ 1.1.8 The Owner identifies the following representative in accordance with Section 5-5:5.4:

...

The FCPS Maintenance and Operations Departments,

The FCPS Facilities Services / Constriction Managements / Planning Department,

The FCPS Food Service Department,

The FCPS Transportation Department,

The FCPS Technology Services Department,

The Elementary or Secondary School Improvement, Instruction and Administration Departments, and

The School Administration

(Note: The official names of the above referenced departments may change however the reviews shall cover the intended functional areas regardless of title or FCPS staff member providing review comments.)

...

~~.2 Cost Consultant (if in addition to the Construction Manager):~~

~~(If a Cost Consultant is retained, appropriate references to the Cost Consultant should be inserted in Sections 3.2.6, 3.2.7, 3.3.2, 3.3.3, 3.4.5, 3.4.6, 5.4, 6.3, 6.3.1, 6.4 and 11.6.)~~Commissioning Agent:

...

~~.3 Land Surveyor:~~

.3 Inspection and Testing

...

~~.4 Geotechnical Engineer:~~

.4 Geo-Tech

...

~~.5 Civil Engineer:~~.5 Environmental

PAGE 5

~~.6 Other consultants:~~

~~(List any other consultants retained by the Owner, such as a Project or Program Manager, or scheduling consultant.)~~.6 Thermal Conductivity

...

§ 1.1.11 The Architect identifies the following representative in accordance with Section 2-4:2.3:

...

.4 Civil Engineer:

.5 Kitchen Consultant (if required):

.6 Other Consultants required by the Architect to provide basic services as required by this Contract:

§ 1.1.12.2 Consultants retained under Additional Services: Services or funded as a reimbursable expense:

§ 1.1.12.2.1 Geotechnical Engineer for design requirements and reports.

§ 1.1.12.2.2 Traffic Engineer

§ 1.1.12.2.3 Other consultants required by the architect and approved as an additional service by the owner.

PAGE 6

§ 1.1.13.1 Several "add" alternates amounting to approximately 10% of the estimated construction price will be identified and specified by the Architect in the Construction Documents after consultation with the Owner. The Architect shall prepare the necessary Construction Documents as requested by the Owner.

§ 1.1.13.2 In the event that the Construction Manager's estimate or the lowest bona fide bid or negotiated proposal received by the Owner exceeds the Owner's budget for reasons other than those described in Article 4, the modification of Contract Documents shall be the limit of the Architect's responsibility.

§ 1.1.13.3 In the event that the Construction Manager's estimate or the lowest bona fide bid or negotiated proposal received by the Owner exceeds the Owner's budget without additional charge, the Architect shall revise and modify the Contract Documents as necessary to comply with the Construction Budget. Such modifications may be required at any phase or multiple phases of the design.

...

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project, in accordance with the schedule agreed to between the Architect and Owner.

§ 2.2.1 The Architect shall design the project in conformance with all applicable ordinances, building codes, Frederick County Public Schools (FCPS) Education Specifications, FCPS Design Guide, "Standards for the design

of new and renovated facilities" statutes and regulations of all federal, state, and local government authorities as interpreted by the relevant government authorities having jurisdiction over the project. If the Architect determines that adherence to the FCPS Design Preferences would be inconsistent or inappropriate with the design of the project, the Architect shall promptly notify the Owner in writing of its determination and proposed resolution. The Owner shall approve or disapprove the Architect's proposed resolution.

§ 2.2.2 Notwithstanding any other provisions in this agreement to the contrary, the Architect shall promptly, without additional compensation, correct or revise any errors, omissions or deficiencies discovered in the design, drawings, specifications and other services be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the Architect under this Agreement. The Architect shall promptly, without additional compensation, correct or revise any errors or deficiencies discovered in his design, drawings, specifications and other services. Neither the Owner's review, approval, acceptance of, or payment for, the services required under this Agreement shall be construed to be a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and the Architect shall be and remain liable to the Owner for all damages, including costs, to the Owner caused by the Architect's negligent performance of any of the services furnished under this Agreement. The rights and remedies of the Owner provided for by this Agreement are not exclusive and are in addition to any other rights and remedies provided by law.

§ 2.2.3 The Architect shall provide a certification based upon personal knowledge and belief stating that the Project was designed without building materials containing asbestos.

§ 2.3 The Architect shall provide its services in conjunction with the services of a Construction Manager as described in AIA Document C132™-2009, Standard Form of Agreement Between Owner and Construction Manager. Manager as modified by Frederick County Public Schools. The Architect shall not be responsible for actions taken by the Construction Manager.

PAGE 7

§ 2.6 The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost. The Board of Education of Frederick County, Frederick County Council and The State of Maryland shall be named additional insured on policies excluding insurance required by statute. All forms of insurance and carriers shall have an A. M. Best's rating of "A" or better and are subject to the Owner's approval, all Certificates of Insurance shall be provided to the Owner within ten (10) days of award of the Contract. The insurance shall be written on a General Liability policy form, Certificate of insurance shall be ACCORD form 25-s (7/97).

§ 2.6.1 Comprehensive General Liability with policy limits of not less than One Million Dollars and no cents (\$ 1,000,000.00) for each occurrence and in the aggregate for bodily injury and property damage.

§ 2.6.2 Automobile Liability covering owned and rented vehicles operated by the Architect with policy limits of not less than One Million Dollars and no cents (\$ 1,000,000.00) combined single limit and aggregate for bodily injury and property damage.

§ 2.6.3 The Architect may use umbrella or excess liability insurance to achieve the required coverage for Comprehensive General Liability and Automobile Liability, provided that such umbrella or excess insurance results in the same type of coverage as required for the individual policies. The Umbrella or Excess Liability limits will be excess over the underlying General Liability and Automobile Liability limits and there will be no gaps.

§ 2.6.4 Workers' Compensation at statutory limits and Employers Liability with a policy limit of not less than Five Hundred thousand dollars and no cents (\$ 500,000.00).

§ 2.6.5 Professional Liability covering the Architect's negligent acts, errors and omissions in its performance of professional services with policy limits of not less than Two million dollars and no cents (\$ 2,000,000.00) per claim and in the aggregate aggregate with deductible not exceeding \$50,000.00.

§ 2.6.6 The Architect shall provide to the Owner certificates of insurance evidencing compliance with the requirements in this Section 2.6-2.6 in its entirety. The certificates will show the Owner as The Board of Education of Frederick County, The Frederick County Board of Commissioners and The State of Maryland as an additional insured on the Comprehensive General Liability, Automobile Liability, umbrella or excess policies.

§ 2.6.6.1 The Architect shall comply with each of the additional insurance requirements as set forth below:

§ 2.6.6.1.1 The Owner shall receive insurance certificates from the Architect evidencing the compliance of insurance requirements at least 10 days before Work commences.

§ 2.6.6.1.2 Policies shall stipulate the Owner is to receive written notice thirty (30) days before cancellation.

§ 2.6.6.1.3 Insurance policies shall contain a Waiver of Subrogation in favor of the Owner.

§ 2.6.6.1.4 Insurance policies shall provide primary insurance coverage to the Owner and Frederick County Board of Commissioners as additional insureds for loss, injury, and damage arising out of or associated with the Services under this Agreement as opposed to pro-rata with, concurrent with or excess to any other insurance coverage by Owner.

§ 2.6.6.1.5 The Architect's selection of insurer shall be acceptable to the Owner, and the insurer shall be lawfully authorized to do business in the State of Maryland.

§ 2.6.6.1.6 If project insurance purchased by the Architect has been issued on a "claims made" basis, the Architect shall comply with the following additional conditions: Architect will supply certificates of project insurance evidencing the above coverage for a period of two (2) years after final completion of the Project with such certificates evidencing a retroactive date no later than the beginning of the Work under this Agreement, or Architect shall purchase an extended (minimum two years) reporting period endorsement for each such "claims made" policy in force as of the date of final completion and evidence the purchase of this extended reporting period endorsement by means of a certificate of insurance or a copy of the endorsement itself. Such certificate or copy of the endorsement shall evidence a retroactive date no later than the beginning of the Work under this agreement.

§ 2.6.6.1.7 Architect agrees to indemnify and hold the Owner harmless from all losses, claims, liabilities, injuries, damages, and expenses that Owner may incur by reason of any injury or damage sustained to any person or property arising out, or occurring in connection with, Architect's negligent acts, errors, or omissions. Owner agrees to indemnify and hold the Architect harmless from all losses, claims, liabilities, injuries, damages, and expenses that Architect may incur by reason of any injury or damage sustained to any person or property arising out, or occurring in connection with, Owner's negligent acts, errors, or omissions.

PAGE 8

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Additional Services—civil, and electrical engineering services and design of the project. The basic services definition includes clarifications listed Article 4, Architect's Basic Services Continued. The Construction Documents shall be prepared according to the Architect's best professional knowledge, information, and belief, and shall sufficiently describe and delineate the entire project and be in such detail as is necessary to permit proper construction of the Project and shall comply with all applicable laws, statutes, ordinances, codes, rules, and regulations applicable to the construction and design of the project.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner and the Construction Manager, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner. Projects funded, or may potentially be funded; by the State of Maryland require specific reviews at each design stage. The Architect shall assure the appropriate reviews are made and subsequent comments addressed within the time allotted.

...

§ 3.1.2.1 Any revisions to the plans issued at the time of bid shall be made on the full size plans and re-issued. Any change(s) shall be clouded and referenced with the appropriate Addenda or Directive reference number that generated the change in scope. Minor changes in scope not modifying time or cost as permitted by the contract shall be so noted within the cloud identifying such change(s).

~~§ 3.1.6 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made without the Architect's approval. Is Deleted.~~

...

~~§ 3.1.8 The Architect shall assist the Owner and Construction Manager in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project assisted as necessary by the Construction Manager shall on the behalf of the Owner, procure the required approvals and permits for the project excluding the permits required to be procured by the Contractor's Contracts, including the Occupancy Permit. Examples of these approvals and permits are the Building Permit, Grading Permit, Air Quality Permit, Historical Trusts, Storm Water Management, Water Resources Administration, Corps of Engineers, Frederick County Public Schools Curriculum Department, IAC (Interagency Committee), Maryland State Public School Construction Program Utility Companies and State Boiler Permits. If possible, the Grading Permit and Building Permit shall be procured before the Board of Education approves Prime Contractor(s). The Owner will reimburse the Architect for fees charged by the agencies issuing such Permits. As the time for drawing such permits draws near, the Owner, Architect, and Construction Manager may agree on a division of labor with respect to obtaining permits. The Architect shall file for permits modifying plans as necessary to insure permits are approved and obtained within 30 days of the bid award.~~

...

~~§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval and the Construction Manager's review. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing. The schematic submission shall meet the requirements of the State of Maryland Public School Construction Program, Administrative Procedures Guide from the latest edition.~~

...

~~§ 3.2.5.2 The Architect shall consider with the Owner and the Construction Manager the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics in developing a design for the Project that is consistent with the Owner's program, schedule and budget for the Cost of the Work.~~

~~§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work pursuant to Section 5.4, the Architect shall prepare Design Development Documents for the Owner's approval and the Construction Manager's review. The Design Development Documents shall be based upon information provided, and estimates prepared by, the Construction Manager and shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels. During the Design Development Phase, the Architect shall make all arrangements for and conduct progress and review meetings with the Owner, the Architect, and its Consultants, and the Construction Manager, at the Owner's discretion. The Owner may designate the time and location of such meetings. The Architect shall take minutes of the meetings and distribute copies to attendees within 48 hours.~~

~~§ 3.3.1.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work pursuant to Section 1.1.3, the~~

Architect shall prepare Design Development Documents for the Owner's approval and the Construction Manager's review. The Design Development Documents shall be based upon information provided, and estimates prepared by, the Construction Manager and shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels. The Design Development Submission shall meet the requirements of the State of Maryland, Public School Construction Program, Administrative Procedures Guide, latest edition.

...

§ 3.3.3 Upon receipt of the Construction Manager's Manager and Owner's information and estimate at the conclusion of the Design Development Phase, the Architect shall take action as required under Sections 6.5 and 6.6 and request the Owner's approval of the Design Development Documents.

...

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval and the Construction Manager's review. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4. During the Construction Document Phase, the Architect shall make all arrangements for and conduct progress and review meetings with the Owner, the Architect and its Consultants, and the Construction Manager. The Owner may designate the time and location of such meetings as needed, at the Owner's discretion. The Architect shall take minutes of the meetings and distribute copies to attendees within 48 hours.

§ 3.4.1.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval and the Construction Manager's review. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

PAGE 11

§ 3.4.3 During the development of the Construction Documents, if requested by the Owner, the Architect shall assist the Owner and the Construction Manager in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions); and (4) compile a project manual that includes the Conditions of the Contract for Construction and may include bidding requirements and sample forms, forms and (5) provide the document in the media acceptable to the owner and required by the plan room.

§ 3.4.3.1 The Architect shall assist the Owner and Construction Manager in the preparation of the necessary bidding information, bidding forms, the Conditions of the Contracts, and the forms of Agreement between the Owner and the Contractors. The Architect shall assist the Owner and the Construction Manager in issuing bidding documents to bidders and conducting pre-bid conferences with prospective bidders. The Architect, with the assistance of the Owner and the Construction Manager, shall respond to questions from bidders, and shall assist the Owner and the Construction Manager issuing addenda.

...

§ 3.4.5 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Construction Documents Phase, the Architect shall take action as required under Section 6.7 and request the Owner's approval of the Construction Documents by the State of Maryland, Public School Construction Program, Administrative Procedure Guide will be submitted for review and comment.

...

The Architect shall assist the Owner and Construction Manager in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner and Construction Manager in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and (4) awarding and preparing contracts for construction. Bids for Prime contracts may be "phased" such that various bid packages are bid in different groups at different times due to schedule or financial considerations.

...

§ 3.5.2.4 Should the Contract Documents include any provisions for substitutions or approved equivalent equipment, materials or systems, such provisions shall be written in such a manner to preclude bidders from using as a bid basis any equipment, materials, or systems that are not specifically pre-approved by the Architect, or Engineer, Construction Manager and Owner. Any substitutions not considered "approved equivalent" by the Owner may be accepted at the Owner's sole discretion, on recommendation of the Architect, Engineer, and Construction Manager, provided an appropriate credit is offered with the substituted equipment, materials or systems.

§ 3.5.3 ~~Negotiated Proposals~~ Is deleted

§ 3.5.3.1 ~~Proposal Documents shall consist of proposal requirements, and proposed Contract Documents.~~ Is deleted

§ 3.5.3.2 ~~The Architect shall assist the Owner and Construction Manager in obtaining proposals by~~

- ~~1 — facilitating the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;~~
- ~~2 — participating in selection interviews with prospective contractors; and~~
- ~~3 — participating in negotiations with prospective contractors.~~ Is deleted

§ 3.5.3.3 ~~The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall consult with the Construction Manager and prepare and distribute addenda identifying approved substitutions to all prospective contractors.~~ Is deleted

PAGE 12

§ 3.6.1.1 All references in this document to AIA Document A232, General Conditions of the Contract for Construction, CM Adviser Edition, shall constitute reference to the AIA Document 232 as modified by Frederick County Public Schools. The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A232™-2009, A232™-2009 as modified by Frederick County Public Schools, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition. If the Owner and Contractor modify AIA Document A232-2009, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement. Subject only to Subparagraph 11.5.1, the Architect shall be responsible to provide Basic Services for the Construction Phase under this Agreement commencing with the award of the Contract for construction, though termination of the project by the Owner which requires approval of the final Project Certificate for Payment to construction Manager and the Architect. For purposes of providing a definitive end to the Architect's responsibility to provide Basic Services for the Construction Phase, this responsibility shall terminate at project closeout or eighteen (18) months after building occupancy, whichever comes first.

§ 3.6.1.2 The Architect shall advise and consult with the Owner and Construction Manager during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this

Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Construction Manager, or the Contractor or of any other persons or entities performing portions of the Work. The Architect shall attend regularly scheduled construction progress meetings normally scheduled two times per month.

...

§ 3.6.1.4 The Architect shall provide a "Conforming Set of Drawings" as soon as practical after the bid opening. These drawings shall incorporate all addenda and changes since the publication of the bid drawings. The drawings shall be furnished in electronic format in both PDF and AutoCAD format determined by Owner, or as requested by the owner and construction manager and as stipulated by 3.1.2.1 above.

PAGE 13

~~§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents and shall notify the Construction Manager about the rejection. Whenever the Architect considers it necessary or advisable, the Architect, upon written authorization from the Owner and notification to the Construction Manager, shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, 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. While full time on-site inspection services are not part of this agreement, it shall nevertheless be the obligation of the Architect, its Engineers, and its Consultants, to visit the site often enough and at appropriate intervals and stages of the construction, and observe the ongoing work closely enough, to endeavor to determine that the construction and the construction materials appear to be in accordance with the Construction Documents, and with applicable laws, statutes, ordinances or codes, and within accepted industry standards and practices. Observations of construction and construction materials not in accordance with applicable requirements or design intent shall be reported in writing within 48 hours of observation, to the Owner, Prime Contractor, and Construction Manager. Such observations shall also be orally communicated to the Owner, Prime Contractor, and Construction Manager immediately. 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 endeavoring to exercise reasonable care and diligence in observing on-going construction work.~~

...

§ 3.6.3.3 Subject to subparagraph 3.6.2.2, The issuance of a Certificate for Payment or a Project Certificate for Payment shall 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) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

PAGE 14

~~§ 3.6.4.1 The Architect shall review the Construction Manager's Project submittal schedule and construction schedules shall not unreasonably delay or withhold approval-review. The Architect's action in reviewing submittals transmitted by the Construction Manager shall be taken in accordance with the approved submittal schedule 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, normally within 14 calendar days.~~

§ 3.6.4.2 In accordance with the Architect-approved Architect reviewed Project submittal schedule, and after the Construction Manager reviews, approves and transmits the submittals, the Architect shall 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 checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. 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 of a specific item shall not indicate approval of an assembly of which the item is a component.

...

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals transmitted by the Construction Manager in accordance with the requirements of the Contract Documents, review and approve or take other appropriate action upon Contractors' submittals for the purpose of (1) endeavoring to determine whether or not the work when completed will be in compliance with the requirements of the Contract Documents, and (2) endeavoring to determine whether the submittals appear to be in compliance with applicable laws, statutes, ordinances, codes, orders, rules, and regulations applicable to the project, but this action on the part of the Architect shall not relieve the Contractor (s) of responsibility in properly preparing, reviewing and submitting said submittals. The Architect's action shall be taken with such reasonable promptness, normally 14 calendar days, as to cause no delay in the Contractors' Work or in construction by the Owner's own forces, 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 designed by the Contractors, all of which remain the responsibility of the Contractors to the extent required by the Contract Documents. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. When professional certification of performance characteristics of materials, systems or equipment is required by the Contract Documents, the Architect shall be entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the Contract Documents.

§ 3.6.4.5.1 The Architect shall maintain a record of submittals and copies of submittals transmitted by the Construction Manager in accordance with the requirements of the Contract Documents.

PAGE 15

§ 3.6.5.1.1 The Architect shall submit to the Owner with each proposal its recommendation, including a technical and cost analysis review. The Architect, or its Engineer or Consultant as appropriate, shall be prepared to personally present all construction Change Orders with a dollar value equal to or exceeding \$25,000.00 to a Board of Education meeting and/or subcommittee meeting as directed by the Owner.

...

§ 3.6.6.1.1 The Architect shall inspect the project for the owner and prepare punch lists of items of work to be completed or reworked in order to comply with the Construction Documents. Any additional inspection beyond those required by the General Conditions of the Contract for Construction shall be performed as an additional service and the Owner shall have the right to back charge the Prime Contractor for the same. The architect, assisted by the construction manager, shall collect "field as-built" records/drawings from the prime contractors and incorporate the changes into an As Built record of the project. The As Built drawings shall be provided to the owner in PDF and AutoCAD format. As-built drawings are to be furnished with architect's seal.

...

ARTICLE 4—ADDITIONAL SERVICES**ARTICLE 4 ARCHITECT'S BASIC SERVICES CONTINUED**

~~§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2.~~

~~(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)~~ Notwithstanding anything to the contrary in this Agreement, Owner shall not be responsible to pay and the Architect shall not be entitled to receive compensation for any additional services, if such services were required due to the fault of the Architect, or his consultants, or the Architect's failure to perform in accordance with this agreement. Under no circumstances will the Owner be obligated to provide compensation for additional services not specifically requested and approved in writing by the Owner. The clarification of services 4.1.1 through 4.2.26 below provides the Owner's expectation for such services, whether basic or additional.

PAGE 16

<u>Services</u>	<u>Responsibility</u>	<u>Additional information</u>
§ 4.1.1 Programming (B202™ 2009)		
§ 4.1.2 Multiple preliminary designs		
§ 4.1.1 Programming - The owner shall provide the Educational Specifications, project budget and General Schedule.	<u>Owner</u>	
§ 4.1.3 Measured drawings § 4.1.2 Multiple preliminary designs - The Architect shall lead the design team through the design process and will receive comments from the owner's staff as well as the construction manager, where applicable as a basic service requirement. Multiple preliminary designs are not required however modifications to the initial proposed design can and should be expected. A major change to an approved "benchmark design stage", SD, DD, CD, will be the basis for additional services. The determination of "major" shall be made by the owner.	<u>Architect</u>	

...

<u>§ 4.1.4 Existing facilities surveys - The owner shall provide the design team with the condition of any associated existing structure or building. The cost of any test or other verification means of such condition will be borne by the owner. The architect and his consultants will be responsible for surveys required to coordinate and properly connect the design for which this document applies to existing buildings, utilities, roadways or other appurtenances as a basic service.</u>	<u>Owner and Architect</u>	
<u>§ 4.1.5 Site evaluation and planning – The architect is responsible for site evaluation and planning as a basic service. Geotechnical exploration and reports should be coordinated with the owner and CM, where applicable, and may be billed as a reimbursable expense.</u>	<u>Architect</u>	
§ 4.1.5 Site evaluation and planning (B203™ 2007)		
<u>§ 4.1.6 Building information modeling</u>	<u>Not required as a basic service</u>	
§ 4.1.6 Building Information Modeling (E202™ 2008)		
<u>§ 4.1.7 Civil engineering – required to obtain a permit to construct and provide an efficient, workable design shall be provided as a basic service.</u>	<u>Architect</u>	

Additions and Deletions Report for AIA Document B132™ – 2009 (formerly B141™ CMA – 1992). Copyright © 1992 and 2009 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 08:57:48 on 03/20/2017 under Order No.8161989522_1 which expires on 10/03/2017, and is not for resale.

User Notes:

Page 213 (50)

<u>§ 4.1.8 Landscape design – required to obtain a permit to construct will be provided as a basic service.</u>	<u>Architect</u>	
<u>§ 4.1.9 Architectural interior design - The interior design required to provide color, finish, and materials for walls, floors and ceilings and adapt built-in aspects of the design to an efficient operating facility shall be included in the basic services.</u>	<u>Architect</u>	
§ 4.1.9 Architectural interior design (B252™ 2007)		
<u>§ 4.1.10 Value analysis</u>	<u>Architect</u>	<u>Life Cycle cost analysis as required by The State of Maryland and specified by this document.</u>
§ 4.1.10 Value analysis (B204™ 2007)		
<u>§ 4.1.11 Detailed cost estimating - Detailed Cost Estimating shall be provided by the construction manager where applicable.</u>	<u>Construction Manager</u>	
<u>§ 4.1.12 On-site project representation - Daily on-site representation will be provided by the owner and construction manager.</u>	<u>Owner and Construction Manager</u>	<u>Architect shall provide on-site services as required through-out this contract.</u>
§ 4.1.12 On-site project representation (B207™ 2008)		
<u>§ 4.1.13 Conformed construction documents - Conformed documents incorporating all addenda items shall be a basic service. They shall be provided as soon as practical after the bid award. Reproduction costs are not included.</u>	<u>Architect</u>	
<u>§ 4.1.14 As-designed record drawings - As designed record drawings are considered the same as the Bid Set of drawings and shall be considered part of the basic service.</u>	<u>Architect</u>	
<u>§ 4.1.15 As-constructed record drawings - As-constructed record drawings are considered "As Built" drawings and are to be provided in electronic format PDF and AutoCAD (including supporting files) and one hard copy. These will be provided as a part of the basic services.</u>	<u>Architect</u>	
<u>§ 4.1.16 Post occupancy evaluation - The FCPS Construction Department performs a post occupancy evaluation referred to as a De-briefing. Architect will attend and participate in such as a part of the basic service.</u>	<u>Owner and Architect</u>	
§ 4.1.17 Facility support services (B210™ 2007)		
<u>§ 4.1.18 Tenant-related services</u>	<u>Not required by Architect as a basic service</u>	
<u>§ 4.1.19 Coordination of Owner's consultants</u>	<u>Not required by Architect as a basic service</u>	
<u>§ 4.1.20 Telecommunications/data design - FCPS has design criteria and standards for the telecommunications and data systems. The architect will provide the design adaptation and construction detail to the new or renovated facility as a basic service.</u>	<u>Owner and Architect</u>	
<u>§ 4.1.21 Security evaluation and planning – FCPS has design criteria, standardized equipment and standards for the physical and electronic security for its facilities. The architect will provide design adaptation and construction detail required for a complete installation as a Basic Service.</u>	<u>Owner and Architect</u>	
§ 4.1.21 Security evaluation and planning (B206™ 2007)		
<u>§ 4.1.22 Commissioning –The Architect and their</u>	<u>Owner and</u>	

consultants will be coordinating with a commissioning agent hired directly by FCPS as a Basic Service.	Architect	
§ 4.1.22 Commissioning (B211™ 2007)		
<u>§ 4.1.23 Extensive environmentally responsible design - FCPS will be required to comply with a LEED silver classification, or equal, for any project that has State of Maryland funding or has the potential for future State funding. The Architect shall provide the consulting and design required to achieve this rating as a Basic Service. Fees for actual certification will be billed as reimbursable or paid directly by FCPS.</u>	Architect	
<u>§ 4.1.24 LEED® certification (B214™ 2012) - see 4.1.23 above</u>	Architect	
<u>§ 4.1.25 Historic preservation - Not required by Architect as a basic Service unless noted elsewhere in the project description.</u>	Owner and Architect	
§ 4.1.25 Historic preservation (B205™ 2007)		
<u>§ 4.1.26 Furniture, furnishings, and equipment design - Furnishings and equipment planning and purchasing is performed by FCPS. The Architect shall provide general equipment coordination and layouts to assure the spaces are functional and adequate storage is furnished for the equipment purchased as a Basic Service.</u>	Owner and Architect	
§ 4.1.26 Furniture, furnishings, and equipment design (B253™ 2007)		

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Architect's responsibility, if not A description of each Service designated in Section 4.1 is described as the Architect's, Owner's, Construction Managers' responsibility as a basic service or identified as Not required as a basic service, and may be further described in an exhibit attached to or indicated within this document.

PAGE 18

- ~~.1 Services necessitated by a change in the Initial Information, previous instructions or recommendations given by the Construction Manager or the Owner, or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, building systems, the Owner's schedule or budget for Cost of the Work, constructability considerations, procurement or delivery method, or bid packages in addition to those listed in Section 1.1.6; Information or previous instructions given by the Owner;~~
- ~~.2 Making revisions in Drawings, Specifications, or other documents (as required pursuant to Section 6.7), when such revisions are required because the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget, except where such excess is due to changes initiated by the Architect in scope, capacities of basic systems, or the kinds and quality of materials, finishes or equipment;~~
- ~~.3 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;~~
- ~~.4 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;~~
- ~~.5 Services necessitated by decisions of the Owner or Construction Manager not rendered in a timely manner or any other failure of performance on the part of the Owner, Construction Manager or the Owner's other consultants or contractors;~~
- ~~.6 Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;~~
- ~~.7 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner or Construction Manager;~~

- ~~.8 — Preparation for, and attendance at, a public presentation, meeting or hearing;~~
- ~~.9 — Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto; and~~
- ~~.10 — Evaluation of the qualifications of bidders or persons providing proposals;~~
- ~~.11 — .4 Consultation concerning replacement of Work resulting from fire or other cause during construction; or~~
- ~~.12 — Assistance to the Initial Decision Maker, if other than the Architect.~~

§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

- ~~.1 — Reviewing a Contractor's submittal out of sequence from the initial Project submittal schedule agreed to by the Architect;~~
- ~~.2 — Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;~~
- ~~.3 — Preparing Change Orders, and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;~~
- ~~.4 — Evaluating an extensive number of Claims as the Initial Decision Maker;~~
- ~~.5 — Evaluating substitutions proposed by the Owner, Construction Manager or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or~~
- ~~.6 — To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion, identified in Initial Information, whichever is earlier. The original information identified by this section is enumerated in other sections of this agreement.~~

§ 4.3.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- ~~.1 — () reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor~~
- ~~.2 — () visits to the site by the Architect over the duration of the Project during construction~~
- ~~.3 — () inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents~~
- ~~.4 — () inspections for any portion of the Work to determine final completion as a basic service of this Contract.~~

§ 4.3.4 If the services covered by this Agreement have not been completed within sixty (60) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

§ 4.3.5 The Architect shall lead the design team through the design process and will receive comments from the owner's staff as well as the construction manager, where applicable as a basic service requirement. Modifications comments and suggested changes to the initial proposed design can and should be expected. A major change to an approved "benchmark design stage" (SD, DD, CD) or program or funding change affecting the design in a major way may be the basis for additional services. The determination of "major" shall be made by the owner.

PAGE 19

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including Educational Specifications, tentative schedule or special requirements. The Owner shall furnish information required by the Architect in a reasonable time a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within

15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.2 The Owner shall retain a Construction Manager to provide services, duties and responsibilities as described in AIA Document C132–2009, Standard Form of Agreement Between Owner and Construction Manager, Manager as modified by FCPS. The Owner shall provide the Architect a copy of the executed agreement between the Owner and the Construction Manager, and any further modifications to the agreement, the Construction Manager if requested by the Architect and Construction Manager a copy of the agreement between the Owner and Architect if requested by the Construction Manager.

§ 5.3 The Owner shall furnish the services of a Construction Manager that shall be responsible for creating the overall Project schedule. The Owner shall adjust the Project schedule, if necessary, as the Project proceeds bidding and construction phase schedule.

...

§ 5.4.1 ~~The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it associated risks. Such risks include the Owner incurring costs for the Architect to coordinate and redesign portions of the Project affected by procuring or installing elements of the Project prior to the completion of all relevant Construction Documents, and costs for the Contractor to remove and replace previously installed Work. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs. Is deleted.~~

...

§ 5.6 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark to the architect existing surveys and other information about the site that it has available at the time of architect contract award, and will provide legal services required throughout the project. Other information required for the design and permitting of the project shall be provided by the Architect and it's consultants as a basic service.

§ 5.6.1 The physical characteristics and utility locations described in Article 5.6 & 5.6.1 shall be limited to those known to the owner. It shall be the responsibility of the Architect to furnish such geotechnical and consulting services to determine any other physical characteristics, subsurface conditions or utility locations as the Architect deems necessary for the proper design and construction of the project. The Architect shall coordinate the geotechnical investigation and report with the design team members, the cost of such investigation and report can be billed as a reimbursable expense.

§ 5.7 ~~The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations. Is deleted.~~

§ 5.8 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. ~~Upon the Architect's request, request the Architect or the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants them and their consultants. The Owner and Architect shall require their consultants to maintain professional liability insurance and other liability insurance as appropriate to the services provided.~~

§ 5.11 The Owner shall provide prompt written notice to the Architect and Construction Manager if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

...

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include the contractors' general conditions costs, overhead and profit. The Cost of the Work includes the compensation of the Construction Manager and Construction Manager's consultants during the Construction Phase only, including compensation for reimbursable expenses at the job site, if any. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, and contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.4 and 6.4. ~~Evaluations of the Owner's budget for the Cost of the Work represent the Architect's judgment as a design professional.~~ 6.5.

...

§ 6.4 If, prior to the conclusion of the Schematic Design Phase, Design Development Phase, or Construction Document phase, the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect, in consultation with the Construction Manager, shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget, and the Owner shall cooperate with the Architect in making such ~~adjustments~~ adjustments or direct the Architect as indicated in one of the options identified by 6.5.

§ 6.5 If the estimate of the Cost of the Work at the conclusion of the Schematic Design Phase or Design Development Phase or Construction Document Phase, exceeds the Owner's budget for the Cost of the Work, the Owner shall

- .3 implement any other mutually acceptable ~~alternative~~ alternative; or
- .4 redesign the project to comply with the current budget.

§ 6.6 If the Owner chooses to proceed under Section ~~6.5.2, 6.5,~~ the Architect, without additional compensation, shall incorporate the required modifications in the Schematic Design Phase, Design Development Phase or Construction Documents Phase as necessary to comply with the Owner's budget for the Cost of the ~~Work at the conclusion of the Design Development Phase Services, Work,~~ or the budget as adjusted under Section 6.5.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility as a Basic Service under this Article 6.

§ 6.7 After incorporation of modifications under Section 6.6, the Architect shall, as ~~an Additional part of the Architects Basic Service,~~ make any required revisions to the Drawings, Specifications or other documents necessitated by subsequent cost estimates that exceed the Owner's budget for the Cost of the Work, except when the excess is due to changes initiated by the Architect in scope, basic systems, or the kinds and quality of materials, finishes or equipment.

ARTICLE 7 — COPYRIGHTS AND LICENSES

ARTICLE 7 USE OF DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

§ 7.1 ~~The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect 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. Drawings, Specifications and other documents prepared by the Architect for this Project are instruments of the Architect's service for this Project and, unless otherwise provided, the Architect shall be deemed the author of these documents however Frederick County Public Schools shall retain all common law, statutory and other reserved rights, including the copyright. The Owner shall be permitted to retain copies, including reproducible copies, of the Architects Drawings, Specifications and other documents for information and reference in connection with the Owner's use and occupancy of the Project.~~

~~§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service Submission or distribution of documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants. Owner's reserved rights.~~

~~§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Construction Manager, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate. Conditioned upon the Architect's being paid in full for all amounts due under this Agreement, or if this Work under this Agreement is still in progress, conditioned upon the Architect being paid an amount consistent with his progress in providing services under this Agreement, the Architect specifically grants to the Board of Education of Frederick County, Maryland the right to use the space layouts, detailing, means of identifying through specifications, and other concepts and features in the documents prepared by the Architect for this Project as the basis of other designs for Frederick County Public Schools. The Architect shall not be liable to the Owner or to any third party as a result of the Owner's reuse of the drawings, specifications, other concepts and features in the documents on the on the other projects. The Owner shall hold the Architect harmless and indemnify the Architect against all losses, claims and liabilities including legal and court costs, should any arise as a direct result of the reuse of the drawings and specifications in this manner.~~

~~§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4. Is deleted~~

~~§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants. Is deleted~~

...

~~§ 8.1 General~~ Claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be resolved in the Circuit or District Courts for Frederick County and the parties hereby consent to and agree to the jurisdiction of those Courts. Provided, however, in the event that the presence of third parties is required for the complete resolution of any dispute over whom the Circuit or District Courts do not have jurisdiction, then the Architect consents to the jurisdiction of any court selected by Owner which otherwise has jurisdiction over all parties deemed necessary by Owner for the complete resolution of the dispute or claim or other matter in question.

~~§ 8.1.1~~ The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the 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 Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1. ~~Is deleted~~

~~§ 8.1.2~~ To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A232-2009, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the Construction Manager, contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein. ~~Is deleted~~

~~§ 8.1.3~~ The Architect shall indemnify and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Architect, its employees and its consultants in the performance of professional services under this Agreement. The Architect's duty to indemnify the Owner under this provision shall be limited to the available proceeds of insurance coverage. ~~Is deleted~~

~~§ 8.1.4~~ The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7. ~~Is deleted~~

PAGE 22

[] Arbitration pursuant to Section 8.3 of this Agreement ~~is deleted~~

[XXX] Litigation in a court of competent jurisdiction

...

§ 8.3 Arbitration is Deleted

~~§ 8.3.1~~ If the parties have selected arbitration as the method for binding dispute resolution in this Agreement any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration which shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement, unless the parties mutually agree otherwise. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration. ~~Is deleted.~~

~~§ 8.3.1.1~~ 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, dispute or other matter in question 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, dispute or other matter in question. ~~Is deleted.~~

~~§ 8.3.2 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof. Is deleted.~~

~~§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. Is deleted.~~

§ 8.3.4 Consolidation or Joinder is deleted

~~§ 8.3.4.1 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 issues of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s). Is deleted~~

~~§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of fact or law 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. Is deleted~~

~~§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement. Is deleted~~

PAGE 23

~~§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.~~

~~§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.~~

...

~~§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination. The Owner may terminate the Architect's contract whenever the Owner, in its sole discretion, shall determine that such termination is in the best interests of the Owner (termination for convenience). Any such termination shall be effected by not less than seven (7) days written notice to the Architect. In the event of termination by the Owner under this Subparagraph, the Architect's compensation shall be set as set forth in Paragraph 9.7 hereof. In the event of termination under Paragraph 9.3 or 9.4, the Architect's compensation shall be limited to that set forth in Paragraph 9.7 hereof.~~

...

~~§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect not applicable to this Contract beyond payment for design services completed at the time of termination; the Owner shall compensate the~~

Architect for completed design in compliance with the program and approved reimbursable expenses only, reference Article 11 in its entirety.

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 ~~and Section 11.9.7.~~

...

§ 10.1 This Agreement 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 8.3 located.~~

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A232-2009, General Conditions of the Contract for ~~Construction.~~ Construction as modified by FCPS.

PAGE 24

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site. The architect shall be responsible for relaying the presence of hazardous materials to contractors via the contract document that are identified by a hazardous materials survey performed and funded by the owner.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. ~~The~~ When approved by the Owner the Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project representations however the architect will follow all restrictions of the owner for access and photographs of the project, its contents and students and staff.

...

§ 11.2.1 For Additional Services Designated in Article 4 or Additional Services that may arise during the course of the project the owner and architect will negotiate a cost based on the hourly billing rates and estimated hours to be used. If agreement can be reached on cost the owner may grant authorization verbally, followed by written authorization as soon as practical. The architect should then file an official AIA document G802 - Amendment to Professional Services Agreement. If immediate cost resolution cannot be negotiated and schedule is critical the owner may issue an Additional Design Directive that would require the architect and his consultants to begin work on the additional design while the final cost is negotiated. When final agreement is reached on the cost the architect should file AIA document G802 - Amendment to Professional Services Agreement amending the contract. If agreement cannot be reached for the cost of the additional work, the Owner shall compensate the Architect at the same percentage applicable to the construction cost of the basic design fee was in the original construction cost, plus marked up 10%.

§ 11.3 For Additional Services that may arise during the course of the ~~Project, including those under Section 4.3;~~ Project the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

listed in 11.2 and 11.2.1 above.

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Architect plus ten percent (10 %), or as otherwise stated below:

PAGE 25

As built or record drawings and project close out One and one half percent of the total contract amount (1.5 %)

...

The Owner acknowledges that with an accelerated Project delivery or multiple bid package process, the Architect may be providing its services in multiple Phases simultaneously. Therefore, the Architect shall be permitted to invoice monthly in proportion to services performed in each Phase of Services, as appropriate.

~~§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work prepared by the Construction Manager for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced. Is deleted~~

...

- .1 Transportation and authorized out-of-town travel and ~~subsistence~~; subsistence for out of town travel authorized by the owner. This doesn't include local travel to the job site or the location project meetings;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets; Is deleted;

...

- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner; Owner other than those listed in this document;

...

- .10 Site office expenses; and Is deleted;
- .11 Other ~~similar Project related expenditures~~; expenses approved by the owner.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus ten percent (10 %) of the expenses incurred.

...

If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay ~~a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely as indicated in 9.7~~ and for purposes of completing, using and maintaining the Project as follows:

§ 11.9.1 Ten percent of the total compensation for Basic and Additional Services earned to date if termination occurs before or during the redesign, site analysis, or Schematic Design Phases; or five percent of the total compensation for Basic and Additional Services earned to date if termination occurs during the Design Development Phase; or 2 ½ percent of the total compensation for Basic and Additional Services earned to date if termination occurs during any subsequent phase.

§11.9.2 In the event that Owner terminates this Agreement for failure of the Architect to substantially perform (Termination for Cause) and it is adjudged that the Owner's Termination is not justified, then the Termination shall be deemed to be a termination by the Owner for convenience under Paragraph 9.4 and the Architect shall be entitled to compensation only as set forth in Paragraph 9.7.

§ 11.9.2.1 Notwithstanding any other provisions of this Paragraph or this Agreement, termination expenses do not include any other or additional sums beyond those specified in Paragraph 9.7 whether in contract or in tort, whether for lost profits, overhead, consequential damages, lost business opportunities, delay, direct or indirect damages, or any other sums of any kind or nature.

§ 11.10.1 An initial payment of (\$——) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice. The Architect shall submit all invoices in a format and on a form acceptable to Owner. Owner shall not be obligated to pay any invoices which do not adhere to Owner's format and form.

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid (——) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect: below.

PAGE 26

%—Zero percent (0.0%)

§ 11.10.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding. Is deleted.

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available provided to the Owner at mutually convenient times upon request.

...

§ 12.1 This Agreement shall be governed by the laws of the State of Maryland.

§ 12.2 The Architect shall conform and/or provide services as stipulated by the Board of Education policies.

§ 12.3 The Scope of Services to be provided by the Construction Manager will be provided upon Architect's request.

§ 12.4 The Architect shall coordinate the bid documents with requirements of Frederick County Public Schools and provide such in a form acceptable to the plan room, FCPS purchasing Department and the Construction Manager. Hard copy plans for use by FCPS and the Construction Manager will be furnished by the Construction Manager. Hard Copy plans for the Architect and its consultant will be provided by the Architect.

§ 12.5 The Architect is entitled to Additional Services for design associated with changes resulting from expanded educational requirements.

§ 12.6 The Architect and its Consultants shall conform to all Frederick County Board of Education Policies when they are on Board of Education property, including without limitation, the Board of Education's Policies of no smoking, no consumption of alcohol or illegal drugs and no possession of weapons of any kind. All Frederick County Board of Education policies shall be available to the Architect for inspection upon request.

§ 12.7 At the Owners request, the Architect shall provide a conforming set of drawings as soon as practical after the bid award. The conforming set of drawings shall incorporate all addenda and clarifications made to the set of drawings distributed at the time of bid.

§ 12.8 The Architect shall compile As – Built, record drawings supplied by the Construction Manager and incorporate them into a record drawing set documenting the final as built conditions. The Record Drawings will be provided in electronic AutoCAD format with supporting files and PDF format on removable media acceptable to the Owner. The Architect shall provide Owner two (2) complete paper sets of drawings with the Architect seal. As-built or record drawings shall be reviewed confirming accuracy and completeness of red line changes documenting the

Additions and Deletions Report for AIA Document B132™ – 2009 (formerly B141™ CMA – 1992). Copyright © 1992 and 2009 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 08:57:48 on 03/20/2017 under Order No.8161989522_1 which expires on 10/03/2017, and is not for resale.

User Notes:

(1248818550)
Page 234

actual as built conditions. Minor no cost changes and change order work additions and deletions have been included within the record drawings.

In addition to the record drawings the Architect shall review 2 sets of Operations and Maintenance Manuals from all Construction Manager/Prime Contractors. The O&M manuals shall be provided in 3 ring binders indexed by prime contractor and specification sections. The Construction Manager shall review, confirm accuracy and completeness of the Operations and Maintenance manuals as follows, grouped together, incorporating an index in the binders, with each grouped section indexed separately and include the Architects'/engineers review and final approval of the for the completed O&M Manuals:

Electrical, Mechanical, Food service and general trades referencing the specific specification sections. The balance of the contractor packages shall be grouped together and indexed referencing the specifications sections.

Electrical indexed volume(s) 1 through volumes as necessary for the Electrical section of the specifications.

Mechanical indexed volume(s) 1 through volumes as necessary for the Mechanical section of the specifications.

Food Service indexed volume(s) 1 through volumes as necessary for the Food Service section of the specifications.

General Trades indexed volume(s) 1 through volumes as necessary for the General Trades packages.

All other packages shall be indexed volume(s) 1 through volumes as necessary for the balance of the prime contractor packages.

§ 12.9 The architect should be aware of the total listing of State of Maryland Department of Education design guide standards. The listing of standards is available on the MSDE website.

§ 12.10 Frederick County Public School Construction Department has specific preferences for the form and content of progress meeting minutes. These will be provided by the FCPS project manager

§ 12.11 FCPS utilizes third party building commissioning on its projects. The Design teams shall coordinate/cooperate with the commissioning agent during design and construction.

§ 12.12 The Architect shall establish a tabulation of spaces required by the Educational Specification and update the areas allotted at Schematic, Design Development and Construction Document phases. The tabulation shall be presented to the owner at the completion of each phase.

§ 12.13 Color renderings of site plans, floor plans and building elevations shall be provided as a basic service at the Schematic and Construction Document phases of design.

§ 12.14 The Architect shall consider fall protection provisions at mechanical, electrical and other equipment requiring regular maintenance as required.

§ 12.15 The Frederick County Public Schools Design Guide lists the preferences and requirements of the construction department, the Architect shall obtain a copy of such and become familiar with its requirements.

§ 12.16 Document submissions for the State of Maryland review in the Construction Document Reviews phase shall contain the Architects/Engineers Seal.

§ 12.17 See Exhibit D for Reference documents to the Contract.

PAGE 27

- .1 AIA Document B132™–2009, Standard Form Agreement Between Owner and Architect, Construction Manager as Adviser Edition as modified by FCPS.
- .2 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:
- .3 AIA Document E202™–2008, Building Information Modeling Protocol Exhibit, if completed, or the following:

~~.4~~ Other documents:

~~(List other documents, if any, including additional scopes of service forming part of the Agreement.)~~ The appropriate Educational Specifications, The Frederick County Public School Design Guide, Correspondence between FCPS and the Architect for the purposes of the specific solicitation for services, written documentation and clarifications of interview discussions and the latest version of the "State of Maryland, Public School Construction Program, Administrative Procedures Guide".

.3 Exhibit A

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 08:57:48 on 03/20/2017 under Order No. 8161989522_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 B132™ – 2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition, 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)