

ADDENDUM

April 3, 2020

ADDENDUM # 3

Bid 20C10, Multi-Classroom Portable Unit for Oakdale Elementary School

REVISED DUE DATE: FCPS Main Lobby, Wednesday, April 22, 2020, prior to and time stamped no later than 2:00 P.M.

This addendum is being issued to provide additions, corrections, clarifications and answers to certain questions raised referencing the original proposal packages and any resultant contracts for the above bid.

1. Please be advised of the following date/time changes:

- Questions Due: ~~Friday, April 3, 2020~~ **Friday, April 17, 2020, 4:00 p.m.**
- Due Date/Time: ~~Wednesday, April 15, 2020, prior to and time stamped no later than 3:00 P.M~~ **Wednesday, April 22, 2020, prior to and time stamped no later than 2:00 p.m.**

2. Please be advised that photos and videos will be posted to FCPS website by Friday, April 3, 2020:

<http://www.fcps.org/bidlist>

3. Frederick County Public Schools continues to request and receive bids for school construction projects.

Many questions have been asked by bidders about delays in availability and delivery of products, and labor, which can influence starting and completing the projects.

At this time, FCPS will not consider modifying the Standard Contract Language for the upcoming bids. However, FCPS understands that there are uncertainties in both labor, and material markets due to the ongoing COVID-19 Pandemic. Bidders are required to bid what is requested in FCPS bid documents, with the information available to the bidders at the time of bid. FCPS will evaluate situations, and claims arising due to labor, and/or material shortage as a direct result of the Pandemic. This will be done on a project-by-project basis. Contractors will be required to provide detailed documentation of any potential claims for additional time for FCPS review, and approval.

4. Revised language to Supplemental Instructions to Bidders, #29 Employment of Child Sex Offenders and Person with Uncontrolled Access to Students, Page 47:

29. 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 supplier(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 supplier 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 supplier, 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 supplier 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 supplier(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 – FCPS Specific Terms and Conditions.
- c. The awarded supplier(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 supplier(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 supplier 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.
- f. With the passing of Maryland Law MD. Code, Educ. 6-113.2, employers of all contracted staff must obtain background information relating to child sexual abuse or sexual misconduct. This means that all contracted staff having direct contact with students must meet all of the FCPS and Maryland State Department of Education (MSDE) requirements before doing business with FCPS. For additional information, visit:
 - [Maryland State Department of Education Website](#);
 - [House Bill 486 Child Sexual Abuse and Sexual Misconduct Prevention](#);
 - [MSDE Guidelines For MD. Code, Educ. 6113.2](#);
 - [Employment History Review Form for Child Abuse and Sexual Misconduct](#)

Effective immediately, we will not fingerprint staff provided to FCPS by contractors or staffing agencies. Based on recent procedural review and guidance received from the state of Maryland, it is confirmed that the fingerprint records from the state's Criminal Justice Information System (CJIS) are to be processed and kept by employers only. This means that the contractors providing staff to FCPS are responsible to perform the CJIS fingerprint check since they are the employers of staff being provided to FCPS under various agreements. The fingerprint check required by FCPS and all Maryland school districts is the Adam Walsh Act background transaction (commonly referred to as the Child Care background check).

- 5. This Addendum includes the following attachment(s):
 - a. Questions/Answers (10 pages)

Thank you for your interest in bidding with Frederick County Public Schools and we apologize for any inconvenience this may have caused.

Sincerely,

Bill Meekins

Bill Meekins CPPB, CPPO, CSBO, CPCP
Purchasing Agent

BM/ab

cc: Tony Ray, Project Manager III, Construction Management

SUPPLEMENTAL INSTRUCTIONS TO AIA DOCUMENT A701

- Please confirm that contractor is not eligible per the Maryland Comptroller's Office, to utilize the tax exemption certificate for this project. **Confirmed. Vendors are not eligible to utilize the FCPS tax exemption certificate for this project.**
- Please confirm the Dates of Commencement and substantial completion given the current Coronavirus pandemic. **See Addendum related to the current Coronavirus pandemic regarding TIME.**
- Termination for default
 - 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.** IF LIQUIDATED DAMAGES ARE ASSESSED, CAN WE LIMIT LIABILITY TO LDs? **FCPS would use the Contractor's Bond to complete the project.**
- **Termination for Convenience**-Can this be deleted in its entirety? **Not recommended by Construction Management staff, see AIA article 14 below.**
- **Hold Harmless** clause needs to be limited to contractor negligence and performance under this contract. **Construction Management staff does not recommend any changes.**
- **Contract Disputes** needs to include a neutral party and resolution should be mutually agreed upon. Is this negotiable? **Adnan Mamoon will be the initial decision marker in the contract to be executed.**
- **Force Majeure**
- Extends however doesn't make a mention to compensation. They can cancel contract and we won't have recourse against FCPS. Can this be negotiated? **See Article 14 near the bottom of this document, Construction Management staff does not recommend any changes.**

FORM OF PROPOSAL

- Is funding available for the whole project? **Funding is approved for the project however FCPS will not have the full funding until after July 1.**
- You have the right to split up the work Base Bid 1 through 5. Is it acceptable to only bid Base Bid 1? **Yes, the intent for FCPS to obtain the best project.**

Item #8-Are you only looking for our markup percentage here and not a dollar amount? **Yes, the intent is for the firm to obtain a fixed cost for services when requested, provide FCPS a cost for the requested services including mark-up and submitting a vendor quote/s to FCPS as back up to the total cost. The firm may have some oversight/supervision cost included as well. FCPS reserves the right to negotiate cost in the event there is excessive cost or time included.**

A101-2017 Standard Form of Agreement Between Owner and Contractor

- **Dispute Resolution**
 - The Architect will serve as the Initial Decision Maker, we would need a neutral party, followed by litigation if agreement cannot be reached. Is this acceptable? **Adnan Mamoon will be the initial decision marker in the contract to be executed.**

- **8.7 Insurance and Bonds**

- Can we would remove the request for the waiver of subrogation. Construction Management staff does not recommend any changes.
- 10.5 Owner is providing Builders Risk insurance and contractor is responsible for deductible. What is the deductible amount? FCPS has a deductible of \$2,500
- Can we remove the request for Terrorism-Certified & Non Certified? This is not required for this Bid.
- You require our Subcontractors to carry Umbrella coverage of \$8,000,000. This is very high for Subcontractors and they may not have this coverage. Can this be lowered to as more reasonable amount? By this Addendum the Umbrella contract requirement for \$8,000,000.00 is hereby reduced to \$2,000,000.00.

Can Pollution Liability coverage be eliminated. The Pollutant requirement does not apply to Contractors Not engaged in testing for, monitoring, clean-up, removal, containing, detoxifying, neutralizing, transporting, handling, storage treatment, or disposing of or processing any waste pollutants.

AIA201-2017

- 1.1.8 The initial decision maker should be a neutral party and not the architect. Is this acceptable? Adnan Mamoon will be the initial decision maker in the contract for signature.
- 1.2.1 “Agreement” is not defined but used interchangeable. This order may not work as change orders/addenda’s should take precedence. The Agreement is not the only contract document listed in; 1.2 Correlation and Intent of the Contract Documents - The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities: 1. The Agreement, 2. Addenda with those or late date having precedence over those of earlier date, 6. The Supplementary Conditions, 4. The General Conditions of the Contract for Construction, 5. The Contract Specifications, 6. The Contract Drawings. With all these items listed and the items listed to modify the contract within each of the documents, FCPS does not intend to make revisions.
- 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Services-since there isn’t an Architect what drawings are they referring too? Who’s drawings are being used? The Contractor shall provide drawings to FCPS for the New Portable classroom that identifies erection of the portable, shipping walls, foundation plans as well as plans approved for construction, these documents shall become the property of FCPS when the project is completed and final payment processed.
- 1.8 AIA Document E203 2013 and AIA B101 2009 Standard Form of Agreement between Owner and Architect are referenced but copies were not provided. AIA documents E203 2013 and B101 2009 will not be used for this project.
- 2.1.3 Too broad, contractor needs to know which permits and fees are not our responsibility.

- **The owner will provide the Building Permit, the contractor is responsible for all other permits, inspections and fees for the work provided by the contractor in connection with delivery, setting up the portable sprinkler work in the portable and final inspections. Work provided by FCPS contractors shall not be permitted by the contractor. The contractor may need to have final inspection after FCPS contractors complete their work in the event FCPS assumes the water, sewer, electrical or sprinkler piping entering or leaving the building.**

- 2.2.2 They are providing 3 days to commence cure (not enough time); they can withhold or nullify and we would want to exclude damages or can file a claim. Can this be negotiated? If the delay jeopardizes the completions of the project action must be taken within in the 3-day period. FCPS must have the portable completed for student use. **No change will be made to the contract.**
 - 3.1.3 If they do something wrong we are not relieved. Can this be negotiated? **FCPS will not hold the contractor responsible for work provided by an FCPS alternative contractors, FCPS will not relieve the contractor for his own contractor or sub contractor's work errors, omissions or delays completing the project.**

- 3.2.1 XXXXX to perform site visit and familiar with local conditions; last two sentences need to be deleted. We would need reports to know what we are dealing with. § 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. **See Addendum related to the current Coronavirus pandemic regarding TIME. No Change will be made to the Contract for section 3.2.1.**
 -

- 3.2.2 XXXXX should verify the information provided by Owner. § 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 2.1.6, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report in writing to the Architect and Owner any errors, inconsistencies or omissions discovered by or in the exercise of due diligence should have been discovered or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. If the Contractor performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without providing written notice to the Owner and Architect, the Contractor shall assume appropriate responsibility for such performance and shall bear the costs for correction. **See Addendum related to the current Coronavirus pandemic regarding TIME. No Change will be made to the Contract for section 3.2.2.**

- 3.6 Contractor is responsible for taxes. Can you be clear on what taxes we are responsible for and taxes the Town is responsible for. *As the vendor is unable to utilize the FCPS tax exemption certificate, Contractors are responsible for taxes paid.*
- 3.18 Indemnity needs to be limited to contractor negligence and section 2 needs to be deleted as contractor would not waive their rights. Is this acceptable? *No changes permitted.*
- **4 -Architect** needs to be amended to include reasonable time frames for Architect to respond and perform.
 - 4.2.2 Contractor cannot rely on Architect we need to comply with the contract documents. No inspection or approval or failure to inspect or approve by the Architect shall relieve contractor. Is this negotiable? *The Architect is employed by the Factory or other entity to design the Modular building.*
 - 4.2.3.1 If we do something wrong or ask too many questions we can be charged and it's an unknown amount. Is this negotiable? *The Architect is employed by the Factory or other entity to design the Modular building. FCPS will not charge the Contractor for questions related to the bid.*
 - 4.2.7 Contractor has to have FCPS engineer certify our drawings. The cost for such additional engineering certification shall be borne by the Contractor. What is this fee? *§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of reviewing the adequacy of the structural elements of the building and checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences, or procedures. The Architect's review of a specific item shall not indicate approval of an assembly of which the item is a component. Should any local Government authorities require certification or correctness of any structural shop drawings by the Architect of record, the Architect will sign and certify the shop drawings only after the shop drawings have been signed and certified by 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. FCPS will review your Architects modular building drawing designs to attempt confirmation that your firm, the factory and your architect have complied with the minimum requirements of the contract. This review shall not relieve the contractor from providing the minimum requirements of the contract. FCPS will not approve but will review attempting identifying items that are not meeting the minimum requirements. It will be up to the contractor to*

provide documentation substantiating the minimum requirements, additional documentation may be requested from the contractor should the documentation be unclear or incomplete. The contractor must also provide erection drawings for the modular building to the Owner.

- 4.2.10 Owner and Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities. Are they are a certified representative. FCPS will have the project manager and maintenance staff on site, FCPS may also have a structural engineer to review the contractors work / progress.
- 4.2.11 No time frame for a response from the Architect. Is this negotiable? The Architect is employed by the Factory or other entity to design the Modular building.
- **6. Construction by Owner or by Separate Contractors**
 - 6.1.1 You deleted the definition for Separate Contractors yet the clause is still included. Can you define this? The Owner, FCPS retains the right to have work completed by FCPS separate contractors.
 - 7.1.1. Excessive access to Contractor's records, books, Subcontracts, including wages. No changes will be made to the contract for section 7.1.1
 - Delete 7.3 & 7.4 Construction Change Directive and Minor Changes because any change should be mutually agreed upon and executed by both parties. All references to Construction Change Directive and Minor Changes would need to be removed. Is this negotiable? No changes will be made to the contract for section 7.3 or 7.4.
- **8- Time**
 - Given the current Coronavirus circumstances the unknown time frames need to be mutually agreed upon. Is this negotiable? See Addendum related to the current Coronavirus pandemic regarding TIME. No changes will be made to the contract for section 8.
 - 8.3 Excusable Delays- We would want to amend to cover events outside of our control. The Architect should not determine it should be mutually agreed upon. Is this negotiable? As FCPS does not have an architect for this project a third party will not be interjected, the term "mutually agree upon" will be the governing factor. FCPS issues the AIA Substantial Completion form opposed to an Architect.
- **9.5 Decisions to Withhold Certification**
 - 9.5.6 Owner shall not be deemed to be in breach of this contract by reason of the withholding of any payment; provided Architect has approved the Owner's action. This should be more defined and we would want someone neutral in lieu of the Architect. Is this negotiable? FCPS does not have an Architect for this project, FCPS will be withholding funds for work not completed and or defects in the completed work. The FCPS Project Manager will review a pencil copy of requisitions.
- 9.10.2 All submittals that have to be provided that will affect final payment.
 - 9.10.5 Accept final payment waives all XXXXX claims. We would need to rework the clause as we may have future claims. Is this negotiable? § 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a 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. **No changes will be made to the contract for section 9.10.5.**

- 11 Insurance

Can we Delete 11.3 Waivers of Subrogation? § 11.3 Waivers of Subrogation § 11.3.1 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; (2) the Architect and Architect's consultants; and (3) Separate Contractors, 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 those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property. § 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance. **No changes will be made to the contract for section 11.3.**

○

11.5 Can we amend this as we should settle our own claims. §11.5 Adjustment and Settlement of Insured Loss §

11.5.1 A loss insured under the property insurance required by the Agreement 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 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work. **No changes will be made to the contract for section 11.3.**

- 12.2.1 Before Substantial Completion and 12.2.2 After Substantial Completion

It's missing a written notice from Owner to contractor; contractor should have the opportunity to cure before they take over. You should not be allowed to do the work and bill us. Is this negotiable? § 12.1 Uncovering of Work

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

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs. The cost to repair nonconforming work shall be considered a latent defect and the contractor responsible for the work or as appropriate the damage to the work shall be responsible for the cost to make repairs to said work and return the uncovered work to the condition before the work was uncovered. § 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

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

§ 12.2.2 After Substantial Completion

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

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

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

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

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, 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. **No changes will be made to the contract for section 12, FCPS requires a 2-year warranty period for this contract.**

○

- **12.2.5 Statutes of Limitations- we would need to amend this article.** Is this negotiable? **No changes will be made to the contract for section 12.2.5, FCPS has requires a 2-year warranty period for this contract.**
- 13.1 Governing Law needs to specify the location, such as the laws of Texas or Maryland. **No changes will be made to the contract for section 13.1, Maryland law shall prevail, the contract and the project location is in Maryland.**
- 13.5 They have removed remedy from contractor to collect interest on late payments. Is this negotiable? **No changes will be made to the contract for section 13.5**
- **13.6.1 Commencement of Statutory Limitations Period and Statute of Repose shall be in accordance with the laws of the State of Maryland. We would need to amend this article.** Is this negotiable? **No changes will be made to the contract for section 13.6.1, The Statutes of Limitations is defined by Maryland law and the contract is issued by a Maryland entity.**
- **14 Termination by Contractor**

We cannot agree to the 100%/120 days- we would need to delete. We would amend to reflect the 30 days as previously stated. Is this negotiable? § 14.1 Termination by the Contractor § 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 120 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, under direct or indirect contract with the Contractor, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment as set forth in the provisions of this Agreement regarding termination by the Owner for convenience. **No changes will be made to the contract for section 14**

14.2 Termination by Owner for Cause needs to include a notice for time to cure and exclude incidental, consequential damages, etc. We need to limit the applicable laws, statutes, ordinances, etc to what is included in the proposal. You also removed reasonable profit and overhead on work not executed and costs incurred by reason of such termination. Is this negotiable? § 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 or suppliers for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or

.4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner 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' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.2.5 In the event that is adjusted that the Owner's termination for cause is not justified, then the Termination shall be deemed to be a termination by the Owner for convenience and the Contractor shall be entitled to compensation as only set forth in the provisions of this Agreement regarding termination by Owner for Convenience. **No changes will be made to the contract for section 14 in its entirety.**

- 14.2.5 and 14.4 Termination by Owner for Convenience- We would delete in its entirety. Is this negotiable? **No changes will be made to the contract for section 14.2.5 or 14.4**
- 14.4.3 Upon termination for convenience they are asking we hold warranties. Is this negotiable? **No changes will be made to the contract for section 14.4.3**

15.1.2 -10 year time limit for claims. We would need to amend. Is this negotiable? § 15.1.2 Time Limits on Claims

- The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and 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 Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2. **No changes will be made to the contract for section 15.1.2**

15.1.3 After 21 days XXXXX waives all rights. Is this negotiable? § 15.1.3 Notice of Claims

§ 15.1.3. Claims by the Contractor must be made by written notice to the Owner and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by Contractor must be made within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the Contractor first recognizes the condition giving rise to the Claim, whichever is later. Contractor claim(s) shall not be valid unless made in strict accordance with this subparagraph. § 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required. **No changes will be made to the contract for section 15.1.3**

15.1.4 Despite any claims we need to continue working. Is this negotiable?

§ 15.1.4 Continuing Contract Performance § 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker. **No changes will be made to the contract for section 15.1.4.**

15.1.7 Consequential damages clause- we need to address recovery in the event of termination. We would need to amend to allow remedies and to completely exclude our liability for consequential damages. Is this negotiable? § 15.1.7 Waiver of 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 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents. **No changes will be made to the contract for section 15.1.7.**

- 15.2.1 We would need a neutral party not the architect. Is this negotiable? **Adnan Mamoon will be the initial decision marker in the contract to be executed.**

15.4 Arbitration-Delete in its entirety and all references to arbitration. Is this negotiable? § 15.4 Arbitration

§ 15.4.1 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. **No changes will be made to the contract for section 15.4.**

- **We will want to include when Risk of Loss passes as the AIA document doesn't address this. Is this negotiable?** As stated in AIA 101 ARTICLE 1 THE CONTRACT DOCUMENTS The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9. **No changes will be made to the contract for this issue, the laws of the state of Maryland shall prevail in the issue of risk of loss.**