

January 16, 2026

**New Combination Harford Academy and Elementary School**

**ADDENDUM NO. 1**

**22419**

TO THE CONTRACT DRAWINGS AND SPECIFICATIONS FOR THE REFERENCED PROJECT, DATED JANUARY 12, 2026, AS PREPARED BY GRIMM AND PARKER ARCHITECTS, 11720 BELTSVILLE DRIVE, SUITE 600, CALVERTON, MARYLAND 20705.

This Addendum includes changes and clarifications to the Contract Documents. The information includes the following:

**SPECIFICATION ITEMS:**

ITEM NO. 1: TOC  
00 01 00-1 Division 01- GENERAL REQUIREMENTS  
**DELETE** SECTION 01 21 20 SITE-CIVIL ALLOWANCES

**DELETE** SECTION 01 22 20 SITE-CIVIL UNIT PRICES

ITEM NO. 2: SECTION 00 00 20 INVITATION TO BID  
00 00 20 -1 Last sentence of first paragraph:  
**REVISE** to: "The Board of Education will receive bids until 2:00 pm local time on February 10, 2026, at the Harford County Public Schools Planning & Construction Department Facilities Training Center at 2209 Conowingo Road, Bel Air, MD 21015."

ITEM NO. 3: SECTION 00 01 00 INSTRUCTIONS TO BIDDERS  
00 01 00-1 Part 1.1, first sentence:  
**REVISE** to: "Sealed proposals for: New Combination Harford Academy and Elementary School, 1605 Eva Mar Boulevard, Bel Air, MD shall be received at the Harford County Public Schools Planning & Construction Department Facilities Training Center at 2209 Conowingo Road, Bel Air, MD, until **2:00 p.m.** local time on **February 10, 2026**.

00 10 00-2 Part 1.3.A.1.  
**REVISE** to: 1. A pre-bid conference will be held on January 20, 2026, at 2:00 p.m. local time, at 2209 Conowingo Road, Bel Air, MD, 21015.

00 10 00-4 Part 8.2., first sentence:  
**REVISE** to: "As set forth in the Invitation to Bid, construction contractors wishing to submit proposals issued by Harford County Public Schools shall be pre-qualified by Harford County Public Schools by submitting a Contractor's Qualification Statement (AIA

Document A 305 – 1986) *three (3) days prior to receipt of bids, to Cara Hughes at Harford County Public Schools Planning & Construction Department, 2209 Conowingo Road, Bel Air, MD 21015.*"

ITEM NO. 4: SECTION 00 02 20 SUBSURFACE DRILLING AND SAMPLING INFORMATION  
00 02 20 After Report of Geotechnical Investigation for Harford Academy and Elementary School, Bel Air, Harford County, Maryland, dated April 2025.

**ADD** Test Pit Investigation – Proposed Harford Academy and Elementary School, Bel Air, Harford County Maryland dated August 28, 2025, in its entirety, per attached Test Pit Investigation in Attachment A.

ITEM NO. 5: SECTION 00 03 00 FORM OF PROPOSAL  
00 03 00-2 7. ADD-ALTERNATE 6/6A: Base at Corridors and Equipment Storage  
**DELETE** 7. ADD-ALTERNATE 6/6A: Base at Corridors and Equipment Storage in its entirety.

00 30 00-2 First Line of Unit Prices.  
**REVISE** to: "7. Unit Prices"

ITEM NO. 6: SECTION 00 04 30 BID BOND (AIA A310)  
00 04 30 After page 1  
**ADD** AIA Document A310-2010 in its entirety, per attached AIA Document A310-2010 in Attachment B.

ITEM NO. 7: SECTION 00 05 20 AIA A132 STANDARD FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR  
00 05 20  
**ADD** AIA Document A132-2019 Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition, in its entirety, per attached AIA Document A 132-2019 in Attachment B.

ITEM NO. 8: SECTION 00 07 00 GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION CM ADVISER ADDITION (AIA A232)  
00 70 00  
**ADD** AIA Document A232- 2019 General Conditions of the Contract for Construction, CM Adviser Edition, in its entirety, per attached AIA Document, A232-2019 in Attachment B.

ITEM NO. 9: SECTION 00 83 00  
00 83 00-20 Part 3.02.A, reference spec sections, after 01 74 19 Construction Waste Management and Disposal  
**ADD**

03 10 00	<i>Concrete Forming and Accessories (As Applicable)</i>
03 20 00	<i>Concrete Reinforcing (As Applicable)</i>
03 30 00	<i>Cast-In-Place Concrete (As Applicable)</i>
03 33 00	<i>Architectural Concrete (As Applicable)</i>
03 35 13	<i>High-Tolerance Concrete Floor Finishing (As Applicable)</i>
03 35 46.23	<i>Concrete Floor Enhancement (As Applicable)</i>

00 83 00-44      Part 3.07.A. reference spec sections, after section 10 44 16 Fire Extinguishers  
**ADD**              10 50 00      Lockers  
                        10 56 13      Metal Storage Shelving

00 83 00-47      Part 3.07.B. Item 26  
**REVISE**              to: 26. *Contractor to provide all metal storage shelving and metal lockers throughout. Coordinate housekeeping pads & curbs with 3A contractor.*

00 83 00-73      Part 3.14.A. reference spec sections-  
**DELETE**              10 50 00      Lockers  
                        10 56 13      Metal Storage Shelving

00 83 00      Part 3.17 CONTRACT PACKAGES-SCOPE SKETCHES (sketches not to scale)  
**ADD**              Page 95 - M. Sketch-CMSK013, per attached page 95 in Attachment C.

ITEM NO. 10: SECTION 01 21 20      SITE-CIVIL ALLOWANCES  
**DELETE**              SECTION 01 21 20      SITE-CIVIL ALLOWANCES, in its entirety.

ITEM NO. 11: SECTION 01 22 20      SITE-CIVIL UNIT PRICES  
**DELETE**              SECTION 01 22 20      SITE-CIVIL UNIT PRICES, in its entirety.

ITEM NO. 12: SECTION 01 23 00      ALTERNATE BIDS  
01 23 00-2      Part 1.4.F. Alternate No. 6: Base at Corridors and Equipment Storage Areas in Corridors.  
**DELETE**              Alternate No. 6 in its entirety.

ITEM NO. 13: SECTION 01 30 00      ADMINISTRATIVE PROCEDURES  
01 30 00-2      Part 3.1.B  
**REVISE**              to: B. *"There shall be no cost to the Contractor for access to the service."*

ITEM NO. 14: SECTION 01 30 00      ADMINISTRATIVE PROCEDURES  
01 30 00-2      Part 3.1.C  
**REVISE**              to: C. *"Submittal Service – The selected service is Procore."*

## **BIDDER'S QUESTIONS:**

### **QUESTION NO. 1:**

In reviewing the project documents, we could not find a form of contract. Will the trade packages be directly with Hartford County Public School or through J. Vinton Schafer Construction, LLC. Also, will a contract be available for review prior to submission of the bid proposal.

#### **RESPONSE:**

**AIA Document A132-2019 Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition, and AIA Document A232- 2019 General Conditions of the Contract for Construction, CM Adviser Edition have been provided as part of Addendum No. 1.**

### **QUESTION NO. 2:**

Please add package 02B into 02A.

#### **RESPONSE:**

***We will not be combining the bid packages; however, you can bid both packages by submitting separate bid forms/submissions.***

### **QUESTION NO. 3:**

We are interested in looking at bidding this project. Do you have an estimated project cost or better yet a estimated cost for the 15A package.

#### **RESPONSE:**

***The current overall project estimate is about \$150 Million.***

### **QUESTION NO. 4:**

I see the invite for this project, but don't see a contact or deadline for RFIs.

When would you like questions submitted by?

#### **RESPONSE:**

***This information is made available in Part 3 of the 00100 Instructions to Bidders.***

### **QUESTION NO. 5:**

Sheet T001 Technology Symbols identifies multiple items as Devices by Others. Please clarify By Others

#### **RESPONSE:**

***Contractor to provide pathways and cabling only. Devices labeled as "By Others" to be supplied and installed by Owner.***

### **QUESTION NO. 6:**

Is this a 5 or 6 day work week?

#### **RESPONSE:**

***This will be a 5 Day Work Week with weekends as weather make-up. Refer to 00 83 00 2.04A.***

End of Addendum No. 1

\*\*\*\*\*

## **ATTACHMENT A**

August 28, 2025

Mr. Harry Miller  
Harford County Public Schools  
Planning and Construction Department  
102 S. Hickory Avenue  
Bel Air, Maryland 21014

RE: Test Pit Investigation  
Proposed Harford Academy and Elementary School  
Bel Air, Harford County, Maryland

Dear Mr. Miller:

As requested, Reuling Associates, Inc. performed a test pit survey at the referenced project. The survey was intended to help determine if the rock that will be encountered during construction will be “rippable” with conventional construction equipment, or if rock excavation equipment will be required.

In the project specifications for this project, we recommend that rock be defined as material that cannot be excavated with standard earth excavation equipment as defined as follows: For trench excavations, a 250 horsepower, track mounted hydraulic excavator with a 3 foot rock bucket. For open excavation, a 280 horsepower crawler dozer with a single shank ripper.

Three test pits, TP1 to TP3 were planned for excavation. Based on the materials encountered during excavation, a fourth test pit was excavated. The number of test pits and the test pit locations were limited because of the existing corn fields, which were not disturbed during test pit excavation.

Prior to test pit excavation, the test pit locations were field located, and the existing elevations were determined, by a registered surveyor. Each test pit was backfilled prior to excavation of other pits. The disturbed soil at all four locations was seeded and straw matted.

The materials encountered at the test pits are shown on the attached test pit logs. In general, rippable rock was encountered at 3 of the 4 test pits. In our opinion, this material should be able to be excavated with standard excavation equipment, as defined above.

At TP3, intact rock was encountered at about 16 feet deep, approximately elevation 342.3. At this location, the proposed grade is about elevation 339. We anticipate that approximately 3 feet of rock excavation will be required at this location.

We anticipate that intact rock will not be encountered at the other test pit locations.

We anticipate that intact rock will be encountered at elevations above elevation 342.3 as one moves up hill from TP3 towards the north and northeast. Assuming the depth to rock follows the existing grade moving northeast from TP3, we estimate that rock may be encountered at the approximate area depicted in the attached sketch.

Using the approximate area shown on the sketch (about 12000 square feet), and an average rock excavation of 3 feet, we estimate that up to approximately 1300 cubic yards of rock excavation may be required to cut the north end of the site to the proposed grades.

The above estimate is based on the information obtained from the limited test pits, and on assumptions about the depth to intact rock in areas that were not drilled or test pitted. A better rock

# REULING ASSOCIATES Inc.

GEOTECHNICAL AND MATERIALS ENGINEERS

15 West Aylesbury Road · Suite 800 · Timonium, Maryland 21093 · (410) 560-7414

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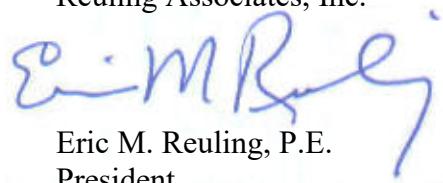
August 28, 2025

excavation estimate could be provided if additional test pits were performed in the cornfield covered areas at the north end of the site where deep undercutting is proposed.

We have attached a test pit location plan, test pit logs, and a sketch of the approximate estimated area where intact rock may be encountered.

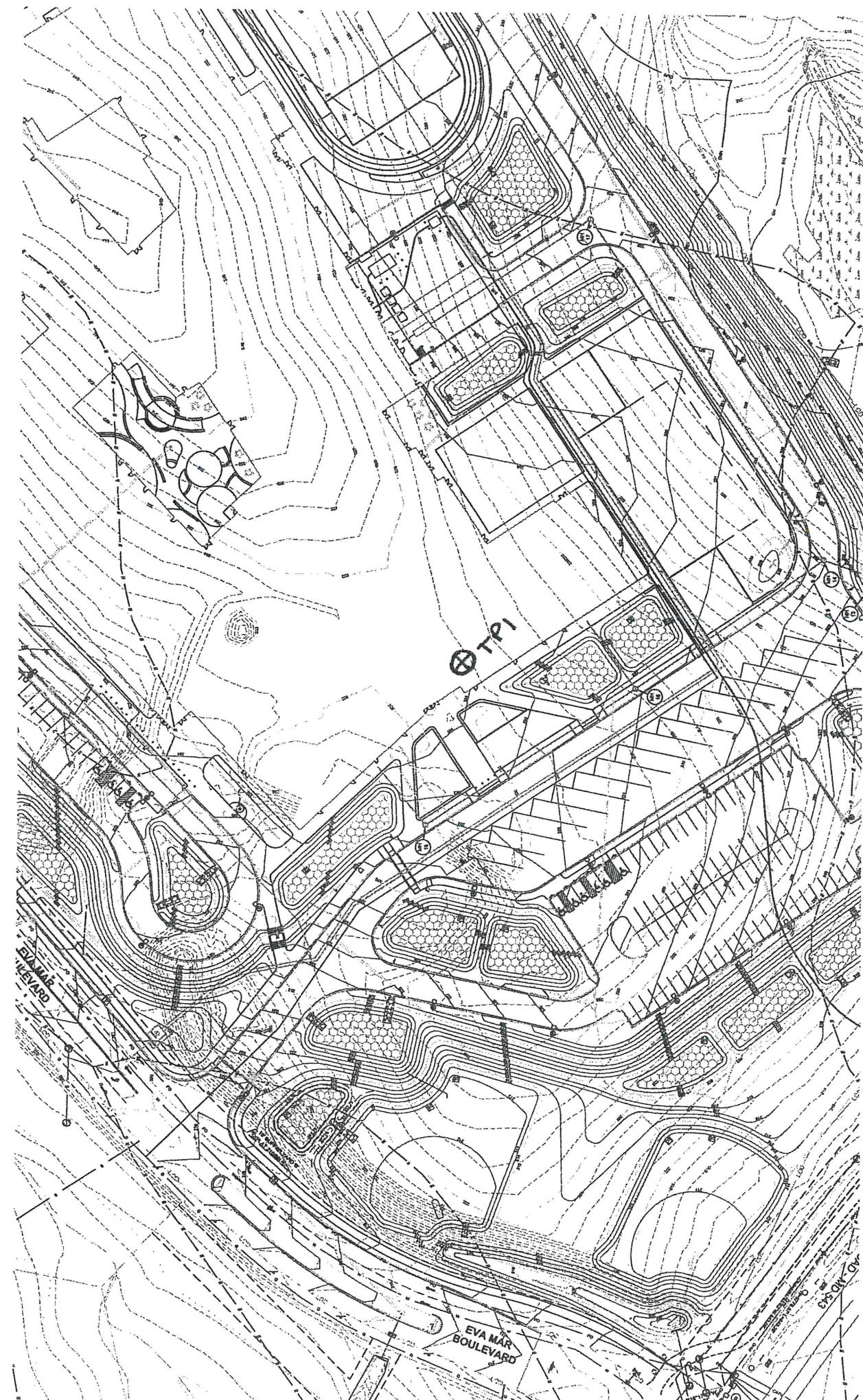
Should you have questions about this report, feel free to contact our office.

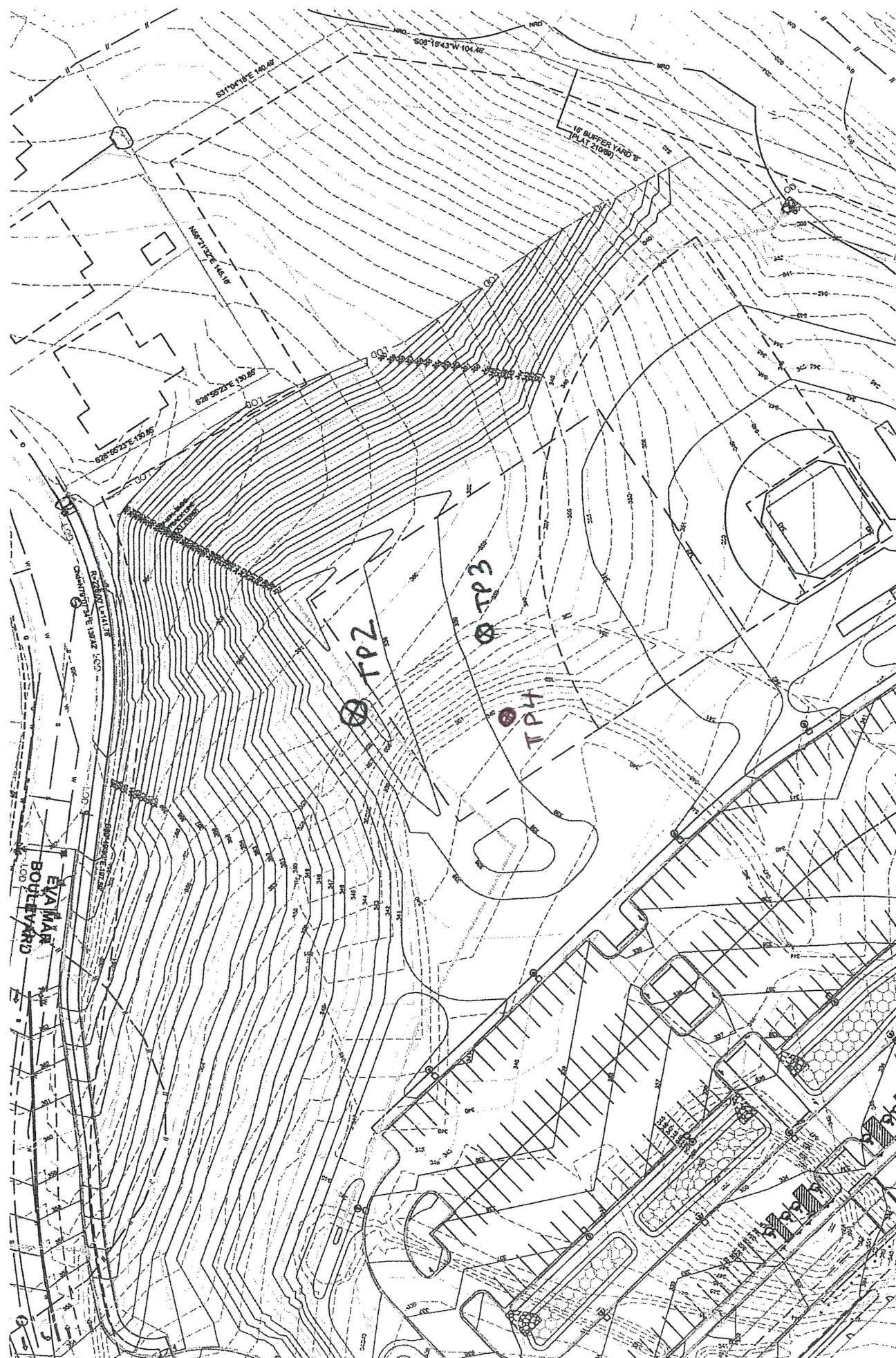
Sincerely,  
Reuling Associates, Inc.



Eric M. Reuling, P.E.  
President







**Record of Test Pit**

Page 1 of 4

<b>Project Name:</b>	Harford Academy	<b>Test Pit #</b>	TP1
<b>Location:</b>	See Test Pit Location Plan	<b>Elevation</b>	334.08
<b>Date Excavated:</b>	8/15/25	<b>Logged By:</b>	E.M.Reuling

Depth (feet)	Soil Description	% Moisture	Notes
0			
—	Light brown, medium dense to dense silty sand		
—	Unified Classification SM		
—			
—			
—			
5			
—			
—			
—	Hard, rippable rock layer		
—			
—			
—	Light brown, dense to very dense silty sand		
—	Unified Classification SM		
10			
—			
—			
—			
—			
—			
15			
—			
—			
—			
—			
—			
—	Hard, rippable rock layer		
20			
—	<b>End of Test Pit 20'</b>		
—			

**Record of Test Pit**

Page 2 of 4

<b>Project Name:</b>	Harford Academy	<b>Test Pit #</b>	TP2
<b>Location:</b>	See Test Pit Location Plan	<b>Elevation</b>	358.70
<b>Date Excavated:</b>	8/15/25	<b>Logged By:</b>	E.M.Reuling

<b>Depth (feet)</b>	<b>Soil Description</b>	<b>% Moisture</b>	<b>Notes</b>
0	Light brown, medium dense to dense silty sand Unified Classification SM		No Groundwater Encountered
5			
10	Decomposed rock, rock fragments, and silty sand. Very Dense. Rippable.		
15			
20	<b>End of Test Pit 20'</b>		

# REULING ASSOCIATES Inc.

GEOTECHNICAL AND MATERIALS ENGINEERS

15 West Aylesbury Road Timonium, Maryland 21093 (410) 560-7414

## Record of Test Pit

Page 3 of 4

<b>Project Name:</b>	Harford Academy	<b>Test Pit #</b>	TP3
<b>Location:</b>	See Test Pit Location Plan	<b>Elevation</b>	358.29
<b>Date Excavated:</b>	8/15/25	<b>Logged By:</b>	E.M.Reuling

Depth (feet)	Soil Description	% Moisture	Notes
0	Light brown, medium dense to dense silty sand Unified Classification SM		No Groundwater Encountered
5	Hard, rippable rock layer (with difficulty)		
10			
15			
20	<b>End of Test Pit 16'</b> Hard Rock. Not Rippable		

**Record of Test Pit**

Page 4 of 4

<b>Project Name:</b>	Harford Academy	<b>Test Pit #</b>	TP4
<b>Location:</b>	See Test Pit Location Plan	<b>Elevation</b>	348+/-
<b>Date Excavated:</b>	8/15/25	<b>Logged By:</b>	E.M.Reuling

Depth (feet)	Soil Description	% Moisture	Notes
0			
—	Light brown, medium dense to very dense silty sand		No Groundwater Encountered
—	Unified Classification SM		
—	No rock encountered		
5			
—			
—			
—			
—			
10			
—	End of Test Pit 10'		
—			
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—			
15			
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—			
20			
—			
—			

# POTENTIAL ROCK EXCAVATION

Q44/A47808

## **ATTACHMENT B**

# AIA® Document A310™ – 2010

## Bid Bond

**CONTRACTOR:**

(Name, legal status and address)

**SURETY:**

(Name, legal status and principal place of business)

**OWNER:**

(Name, legal status and address)

**BOND AMOUNT:** \$ [REDACTED]**PROJECT:**

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

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

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

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

**ADDITIONS AND DELETIONS:**

The author of this document may have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes 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 to or deleted from the original AIA text.

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

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



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**CONTRACTOR AS PRINCIPAL** *(Signature)*

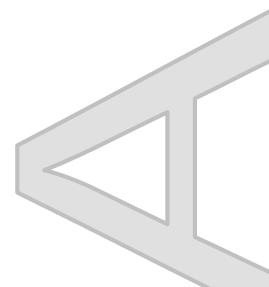
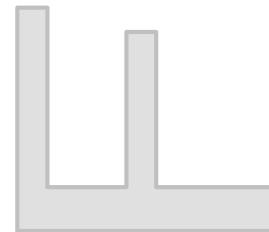
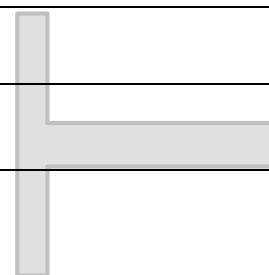
*(Printed name and title)*

*(Witness)*

**SURETY** *(Signature)*

*(Printed name and title)*

*(Witness)*



**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)

Board of Education of Harford County  
102 S. Hickory Avenue  
Bel Air, MD 21014

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

for the following Project:  
(Name, location, and detailed description)  
New Combination Harford Academy and Elementary School  
1605 Eva Mar Boulevard  
Bel Air, MD 21015

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

J. Vinton Schafer Construction, LLC  
1309-Q Continental Drive  
Abingdon, MD 21009

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

Grimm + Parker Architects  
11720 Beltsville Drive, Suite 600  
Calverton, MD 20705

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.

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™-2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; B132™-2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132™-2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser. AIA Document A232™-2019 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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## TABLE OF ARTICLES

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- 2 THE WORK OF THIS CONTRACT
- 3 DATE OF COMMENCEMENT AND DATES OF SUBSTANTIAL COMPLETION
- 4 CONTRACT SUM
- 5 PAYMENTS
- 6 DISPUTE RESOLUTION
- 7 TERMINATION OR SUSPENSION
- 8 MISCELLANEOUS PROVISIONS
- 9 ENUMERATION OF CONTRACT DOCUMENTS



### ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, the Bidding Documents, 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.

### ARTICLE 3 DATE OF COMMENCEMENT AND DATES OF SUBSTANTIAL COMPLETION

**§ 3.1** The date of commencement of the Work shall be:  
(Check one of the following boxes.)

[ « » ] The date of this Agreement.

[ X ] A date set forth in a notice to proceed issued by the Owner.

[ ] Established as follows:  
(Insert a date or a means to determine the date of commencement of the Work.)



If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

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

#### § 3.3 Substantial Completion of the Project or Portions Thereof

**§ 3.3.1** Subject to adjustments of the Contract Time as provided in the Contract Documents, the date of Substantial Completion of the Work of all of the Contractors for the Project will be:  
(Insert the date of Substantial Completion of the Work of all Contractors for the Project.)

May 31, 2025 – (Wakefield) Upper Site Substantial Completion & Occupancy

**§ 3.3.2** Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work of all of the Contractors for the Project are to be completed prior to Substantial Completion of the entire Work of all of the Contractors for the Project, the Contractors shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date
-----------------	-----------------------------

**§ 3.4 When the Work of this Contract, or any Portion Thereof, is Substantially Complete**

**§ 3.4.1** Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall substantially complete the entire Work of this Contract:

*(Check one of the following boxes and complete the necessary information.)*

Not later than « » ( « » ) calendar days from the date of commencement of the Work.

[ « » ] By the following date: « »

**§ 3.4.2** Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work of this Contract are to be substantially complete prior to when the entire Work of this Contract shall be substantially complete, the Contractor shall substantially complete such portions by the following dates:

Portion of Work	Date to be substantially complete
-----------------	-----------------------------------

**§ 3.4.3** If the Contractor fails to substantially complete the Work of this Contract, or portions thereof, as provided in this Section 3.4, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

**ARTICLE 4 CONTRACT SUM**

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

Stipulated Sum, in accordance with Section 4.2 below

[ « » ] Cost of the Work plus the Contractor's Fee, 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 below.)*

**§ 4.2 Stipulated Sum**

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

**§ 4.2.2 Alternates**

**§ 4.2.2.1** Alternates, if any, included in the Contract Sum:

Item	Price
------	-------

**§ 4.2.2.2** Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement. *(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)*

Item	Price	Conditions for Acceptance
------	-------	---------------------------

**§ 4.2.3 Allowances, if any, included in the Contract Sum:**  
(Identify each allowance.)

Item	Price
------	-------

As submitted in Section 003000 Form of Proposal

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

Unit prices will be as provided in Section 003000 Form of Proposal

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

**§ 4.3.1** The Cost of the Work is as defined in Exhibit B, Determination of the Cost of the Work.

**§ 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 rental rate paid at the place of the Project.

**§ 4.3.6** Unit prices, if any:

(Identify the item and state the unit price and 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, within 14 days of executing this Agreement, a written Control Estimate for the Owner's review and approval. The Control Estimate shall include the items in Section B.1 of Exhibit B, 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 Cost of the Work is as defined in Exhibit B, Determination of the Cost of the Work.

**§ 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 rental rate paid at the place of the Project.

**§ 4.4.6** Unit Prices, if any:

*(Identify the item and state the unit price and 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 Contract Sum is guaranteed by the Contractor not to exceed « » (\$ « ), subject to additions and deductions by Change Order as provided in the Contract Documents. This 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.

**§ 4.4.7.2 Alternates**

**§ 4.4.7.2.1** Alternates, if any, included in the Guaranteed Maximum Price:

Item	Price
------	-------

**§ 4.4.7.2.2** Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.  
*(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)*

Item	Price	Conditions for Acceptance
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**§ 4.4.7.3** Allowances, if any, included in the Guaranteed Maximum Price:

*(Identify each allowance.)*

Item	Price
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**§ 4.4.7.4** Assumptions, if any, upon which the Guaranteed Maximum Price is based:

*(Identify each assumption.)*

**§ 4.4.8** To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

**§ 4.4.9** The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in Section 4.4.7.4. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions contained in Section 4.4.7.4 and the revised Contract Documents.

**§ 4.5** Liquidated damages, if any:

*(Insert terms and conditions for liquidated damages, if any, to be assessed in accordance with Section 3.4.)*

Liquidated damages in the sum of one thousand dollars (\$1,000.00) for each calendar day will be assessed for any and all delays in achieving Substantial Completion, except as noted in Article 8 of the General Conditions of the Contract for Construction.

## § 4.6 Other:

*(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)*

« »

## ARTICLE 5 PAYMENTS

### § 5.1 Progress Payments

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

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

The Contractor shall submit to the Construction Manager no later than the twenty-fifth (25<sup>th</sup>) day of each month a draft of a Standard Monthly Contractor's Requisition for payment, IAC/PSCP Form #306.4, for work completed to date, for approval by the Construction Manager. The contractor shall deliver signed and notarized copies with supporting documentation to the Construction Manager within seventy-two (72) hours of the Construction Manager's approval of the draft submittal (*Federal, state or local laws may require payment within a certain period of time.*)

The Construction Manager shall make payment to the Contractor within seven (7) days of receipt of Payment from the Owner.

#### § 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. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Construction Manager and Architect may require. This schedule of values 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 In accordance with AIA Document A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.4.3.1 The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 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; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

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.

§ 5.1.4.3.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A232–2019;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;

- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A232-2019; and
- .5 Retainage withheld pursuant to Section 5.1.7.

**§ 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 B, Determination of the Cost of the Work, along with payrolls, petty cash accounts, received invoices, or invoices with check vouchers attached, and any other evidence required by the Owner, Construction Manager or Architect to demonstrate that payments already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor, plus payrolls for the period covered by the present Application for Payment, less that portion of the payments attributable to the Contractor's Fee.

**§ 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** In accordance with AIA Document A232-2019 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

**§ 5.1.5.3.1** The amount of each progress payment shall first include:

- .1 The Cost of the Work as described in Exhibit B, Determination of the Cost of the Work;
- .2 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
- .3 The Contractor's Fee computed upon the Cost of the Work described in the preceding Section 5.1.5.3.1.1 at the rate stated in Section 4.3.2; or if the Contractor's Fee is stated as a fixed sum in Section 4.3.2 an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work included in Section 5.1.5.3.1.1 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

**§ 5.1.5.3.2** The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A232-2019;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A232-2019;
- .5 The shortfall, if any, indicated by the Contractor in the documentation required by Section 5.1.5.1 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 5.1.7.

**§ 5.1.5.4** The Owner, Construction Manager and Contractor shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors and 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 such action shall not be deemed to be a representation that (1) 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; (2) that the Construction Manager and Architect have made exhaustive or continuous on-site inspections; or (3) 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.

**§ 5.1.5.7** If final completion of the Work is materially delayed through no fault of the Contractor, then the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A232-2019.

**§ 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 invoices with check vouchers attached, and any other evidence required by the Owner, Construction Manager or Architect to demonstrate that payments already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee.

**§ 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 Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Contractor's Fee.

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

**§ 5.1.6.2.2** The allocation of the Guaranteed Maximum Price under this Section 5.1.6.2 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

**§ 5.1.6.2.3** When the Contractor allocates costs from a contingency to another line item in the schedule of values, the Contractor shall submit supporting documentation to the Architect and Construction Manager.

**§ 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 and for which the Contractor has made payment or intends to make 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** In accordance with AIA Document A232-2019, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

**§ 5.1.6.4.1** The amount of each progress payment shall first include:

- .1 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 most recent schedule of values;
- .2 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 completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
- .4 The Contractor's Fee, computed upon the Cost of the Work described in the preceding Sections 5.1.6.4.1.1 and 5.1.6.4.1.2 at the rate stated in Section 4.4.2 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 5.1.6.4.1.1 and 5.1.6.4.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

**§ 5.1.6.4.2** The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;

- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A232-2019;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A232-2019;
- .5 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
- .6 Retainage withheld pursuant to Section 5.1.7.

**§ 5.1.6.5** The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors and 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 such action shall not be deemed to be a representation that (1) 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; (2) that the Construction Manager or Architect have made exhaustive or continuous on-site inspections; or (3) 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.

**§ 5.1.6.8** If final completion of the Work is materially delayed through no fault of the Contractor, then the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A232-2019.

### **§ 5.1.7 Retainage**

**§ 5.1.7.1** For each progress payment made prior to when the Work of this Contract is substantially complete, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*

Ten Percent (10%)

**§ 5.1.7.1.1** The following items are not subject to retainage:

*(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)*

« »

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

*(If the retainage established in Section 5.1.7.1 is to be modified prior to when the entire Work of this Contract is substantially complete, including modifications for completion of portions of the Work as provided in Section 3.4.2, insert provisions for such modifications.)*

Upon completion of fifty percent (50%) of the Work and providing that the Contract Work is on schedule and Contractor's performance is deemed by the Owner to be satisfactory, the Owner shall withhold no further retainage on the remainder of the work to be billed. If the Project schedules are not pursued diligently, or if the Contractor's is at any time deemed by the Owner to be unsatisfactory, the withholding of further retainage may be reinstated by the Owner, at his discretion.

**§ 5.1.7.3** Except as set forth in this Section 5.1.7.3, when the Work of this Contract is substantially complete, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for

Payment pursuant to this Section 5.1.7. The Application for Payment submitted when the Work of this Contract is substantially complete shall not include retainage as follows:

*(Insert any other conditions for release of retainage when the Work of this Contract is substantially complete, or upon Substantial Completion of the Work of all Contractors on the Project or portions thereof.)*

If the Contractor intends to request a reduction of retainage, as stated above, he must submit a request thirty (30) days prior to invoicing for a reduction, Consent of Surety to a Reduction of Retention along with a justification of the progress on the job in relation to the overall Project must be submitted. A complete labor and material Schedule of Values for all aspects of the work must also be submitted with the request for approval.

## § 5.2 Final Payment

### § 5.2.1 Final Payment Where the Contract Sum is Based on a Stipulated Sum

§ 5.2.1.1 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 Article 12 of AIA Document A232-2019, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment or Project Certificate for Payment has been issued by the Architect.

§ 5.2.1.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the final Certificate for Payment or Project Certificate for Payment, or as follows:

Final Payment shall be made in accordance with Paragraph 9.10 of the General Conditions.

### § 5.2.2 Final Payment Where the Contract Sum is Based on the Cost of the Work with or without a Guaranteed Maximum Price

§ 5.2.2.1 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 Article 12 of AIA Document A232-2019, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Contractor has submitted a final accounting for the Cost of the Work, pursuant to Exhibit B, Determination of the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment or Project Certificate for Payment has been issued by the Architect in accordance with Exhibit B, Determination of the Cost of the Work.

§ 5.2.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the final Certificate for Payment or Project Certificate for Payment, or as follows:

« »

## ARTICLE 6 DISPUTE RESOLUTION

### § 6.1 Initial Decision Maker

The Architect will serve as Initial Decision Maker pursuant to Article 15 of AIA Document A232-2019, 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 Article 15 of AIA Document A232-2019, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box.)*

[ « » ] Arbitration pursuant to Article 15 of AIA Document A232–2019.

[ X ] Litigation in a court of Harford County

[ « » ] Other: *(Specify)*

« »

If the Owner and Contractor do not select a method of binding dispute resolution, 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.

## 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 A232–2019.

§ 7.1.1.1 If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A232–2019, then the Owner shall pay the Contractor a termination fee as follows:

*(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)*

« »

§ 7.1.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A232–2019.

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

#### § 7.2.1 Termination

§ 7.2.1.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A232–2019.

#### § 7.2.1.2 Termination by the Owner for Cause

§ 7.2.1.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A232–2019, the Owner shall then only pay the Contractor an amount 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 Section 4.3.2 or 4.4.2, as applicable, or, if the Contractor's Fee is stated as a fixed sum in that Section, 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;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A232–2019.

§ 7.2.1.2.2 When the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, if the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A232–2019, the amount, if any, to be paid to the Contractor under Article 14 of AIA Document A232–2019 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed the amount calculated in Section 7.2.1.2.1.

§ 7.2.1.2.3 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 7.2.1.2.1.1. 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. All Subcontracts, purchase orders and rental agreements entered into by the Contractor will contain provisions allowing for assignment to the Owner as described above.

#### **§ 7.2.1.3 Termination by the Owner for Convenience**

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A232–2019, then the Owner shall pay the Contractor a termination fee as follows:

*(Insert the amount of or method for determining the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)*

« »

#### **§ 7.3 Suspension**

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A232–2019;

### **ARTICLE 8 MISCELLANEOUS PROVISIONS**

**§ 8.1** Where reference is made in this Agreement to a provision of AIA Document A232–2019 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

#### **§ 8.2** The Owner's representative:

*(Name, address, email address, and other information)*

#### **§ 8.3** The Contractor's representative:

*(Name, address, email address, and other information)*

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

#### **§ 8.5 Insurance and Bonds**

**§ 8.5.1** The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A132™–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition, Supplementary Conditions, Insurance and Bonds, and elsewhere in the Contract Documents.

**§ 8.5.2** The Contractor shall provide bonds as set forth in the Supplementary Conditions, and elsewhere in the Contract Documents.

**§ 8.6** Notice in electronic format, pursuant to Article 1 of AIA Document A232–2019, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

*(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*

N/A

#### **§ 8.7 Relationship of the Parties**

Where the Contract is based on the Cost of the Work plus the Contractor's Fee, with or without a Guaranteed Maximum Price, the Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

#### **§ 8.8 Other provisions:**

## ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 The Contract Documents inclusive of all Bid Documents, and all Instructions to Bidders.
- .2 AIA Document A132™-2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition
- .3 Supplementary Conditions (00 72 00)
- .4 AIA Document A232™-2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition
- .5 Drawings

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

- .6 Specifications

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

- .7 Addenda, if any:

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

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

- .8 Other Exhibits:

*(Check all boxes that apply and include appropriate information identifying the exhibit where required.)*

[ « » ] AIA Document A132™-2019, Exhibit B, Determination of the Cost of the Work

[ « » ] AIA Document E235™-2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, dated as indicated below:

*(Insert the date of the E235-2019 incorporated into this Agreement.)*

« »

[ « » ] The Sustainability Plan:

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

[ X ] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
00 72 00	Supplementary Conditions	02/07/2023	14

- .9 Other documents, if any, listed below:

*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A232-2019 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)*

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

**OWNER** (*Signature*)

Dr. Sean W. Bulson - Superintendent of Schools  
(Printed name and title)

**CONTRACTOR** (*Signature*)

(Printed name and title)

**OWNER** (*Signature*)

Dr. Carol L. Mueller – President of Board of  
Education of Harford County  
(Printed name and title)

# DRAFT AIA® Document A232™ – 2019

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

### **for the following PROJECT:**

*(Name, and location or address)*

New Combination Harford Academy and Elementary School  
1605 Eva Mar Boulevard  
Bel Air, MD 21015

### **THE CONSTRUCTION MANAGER:**

*(Name, legal status, and address)*

J. Vinton Schafer Construction, LLC  
1309-Q Continental Drive  
Abingdon, MD 21009

### **THE OWNER:**

*(Name, legal status, and address)*

Board of Education of Harford County  
102 S. Hickory Avenue  
Bel Air, MD 21014

### **THE ARCHITECT:**

*(Name, legal status, and address)*

Grimm + Parker Architects  
11720 Beltsville Drive, Suite 600  
Calverton, MD 20705

### **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.

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™-2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; B132™-2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132™-2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser.



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## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 Basic Definitions

**§ 1.1.1 The Contract Documents.** The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not 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 or proposal 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 Contractors, and by the Owner's own forces and Separate Contractors.

**§ 1.1.5 Contractors.** Contractors are persons or entities, other than the Contractor or Separate Contractors, who perform Work under contracts with the Owner that are administered by the Architect and Construction Manager.

**§ 1.1.6 Separate Contractors.** Separate Contractors are persons or entities who perform construction under separate contracts with the Owner not administered by the Architect and Construction Manager.

**§ 1.1.7 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.

**§ 1.1.8 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.

**§ 1.1.8.1 The Project Manual.** The Project Manual is the volume or volumes usually assembled for the Work, which may include the bidding requirements, sample forms, conditions of the contract and specifications.

**§ 1.1.9 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 respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

**§ 1.1.10 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. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

**§ 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 consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

**§ 1.2.1.1** The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

**§ 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. Wherever in the specifications there appears a reference to a "Contractor" or to the "Subcontractor", or a reference to a Contractor, Installer, or Supplier of a particular Trade, or for a particular type of work, such reference, regardless of the language thereof, shall be deemed a reference to the Contractor. It shall not be construed as relieving the Contractor from the duty to perform all of the work and other obligations provided for under this Contract.

**§ 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 and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, sub-subcontractors, and 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 the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

**§ 1.5.2** The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, 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 suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

**§ 1.6 Notice**

**§ 1.6.1** Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

**§ 1.6.2** Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

**§ 1.6.3** All proposals, approvals, instructions, requests, claims, demands, shall be provided on the Contractor's stationary and as provided in Sections 1.6.1 and 1.6.2 as required; meeting minutes and facsimile transmissions will not be considered written notice.

### **§ 1.7 Digital Data Use and Transmission**

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

### **§ 1.8 Building Information Models Use and Reliance**

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™-2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

## **ARTICLE 2 OWNER**

### **§ 2.1 General**

**§ 2.1.1** The Owner is the Board of Education of Harford County identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative.

**§ 2.1.2** Contractor understands that the Board of Education of Harford County, Maryland is a public agency and no mechanic's liens are permitted against its property.

### **§ 2.3 Information and Services Required of the Owner**

**§ 2.3.1** 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, assisted by the Construction Manager, shall secure and pay for the building permit.

**§ 2.3.2** 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.

**§ 2.3.3** The Owner shall retain a construction manager adviser 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.

**§ 2.3.4** In case of termination of employment of the Construction Manager or Architect, the Owner shall appoint a construction manager or architect whose status under the Contract Documents shall be that of the former construction manager or architect, respectively.

**§ 2.3.5** The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site to the extent reasonably required for the execution of the work and requested by the Contractor in writing within one (1) month of the date of the contract. The Owner does not warrant or undertake responsibility for the location of utilities or accuracy of tests concerning the soil, surface, and subsurface conditions.

**§ 2.3.6** 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.

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

**§ 2.3.8** The Owner shall forward all communications to the Contractor through the Construction Manager. Other communication shall be made as set forth in Section 4.2.6.

#### **§ 2.4 Owner's Right to Stop the Work**

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or persistently fails to carry out Work in accordance with the Contract Documents, the Owner, by written order signed personally or by an agent specifically so empowered by the Owner in writing, may order 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. This right shall be in addition to and not in restriction or derogation of the Owner's rights under Section 3.7.4 and under Article 14 of the General Conditions

**§ 2.4.1** If unforeseen conditions occur or are encountered which may substantially impair the quality of the Work unless the Work is suspended. The Owner may, with the written concurrence of the Architect, suspend the Work by written notice to the Contractor, the Construction Manager, and Architect. In the event of such a suspension, the Contractor shall be entitled to only adjustments in the Contract Time and an adjustment in the Contract Sum for costs actually incurred at the Project site by reason of such suspension. In any event where the Contractor reasonably determines that a suspension is required in such circumstances, the Contractor shall promptly provide written notification to the Owner and Architect for such a determination.

#### **§ 2.5 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 scheduled progress and fails within a three (3) day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such three (3) day period give the Contractor a second written notice to correct such deficiencies within a second three (3) day period. If the Contractor, within such a second three (3) day period after receipt of such second notice fail to commence and continue to correct deficiencies, The Construction Manager or Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent necessary to reimburse the Owner for the cost of correcting such deficiencies, including Owner's expenses and compensation for the Construction Manager's and Architect's and their respective consultants' additional services and expenses made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

### **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 this Agreement as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative. When separate contracts are awarded for different portions of the Project or other work on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

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

**§ 3.1.3** The Contractor shall not be relieved of its 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 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 generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

**§ 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 2.3.5, 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 to the Construction Manager 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.

**§ 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 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 submit 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, subject to section 15.1.7, 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. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be 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 notice to the Owner, the Construction Manager, and the Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. The Construction Manager shall review the proposed alternative for sequencing, constructability, and coordination impacts on the other Contractors. Unless the Architect or the Construction Manager objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

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

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

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

**§ 3.3.5** All inspections required by law shall be obtained by the Contractor including, but not limited to, those required by law to be obtained by the Owner and no failure of the Owner to obtain such inspection shall constitute a waiver of the Contractor's obligation hereunder. The Contractor shall notify the Owner of any application for inspection required to be executed by the Owner.

**§ 3.3.6** Pursuant to COMAR Title 13A.02.04, the sale or use of tobacco in any form is prohibited on school property. The Annotated Code of Maryland, Education Article 26-103 prohibits the possession of alcoholic beverages on public school property. Harford County Public Schools reserves the right to bar any individual violating these policies and regulations from school property and to pursue to the full extent of the law, civil or criminal actions against any individual in possession of illegal substances on school property. First time offenders shall be assessed a fine in the amount of One Hundred Dollars (\$100) issued as a deduct change order against the employing Contractor.

#### **§ 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 approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 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.

#### **§ 3.5 Warranty**

**§ 3.5.1** The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects and that Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor shall furnish satisfactory evidence as to the kind and quality of material and equipment.

**§ 3.5.2** All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

**§ 3.5.3** The warranty provided in section 3.5.1 shall be concurrent with and not in limitation of any other warranty or remedy required by law or the Contract Documents.

#### **§ 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 or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

#### **§ 3.7 Permits, Fees, Notices, and Compliance with Laws**

**§ 3.7.1** Unless otherwise provided in the Contract Documents, the Owner shall secure and pay for the building permit and the Contractor shall secure and pay for all other permits and government fees, licenses, and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required when bids are received. The Owner will not reimburse the Contractor for the cost of elective permits, which the Contractor chooses to secure in conjunction with their means and methods of executing the work, or for any offsite permits.

**§ 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.

**§ 3.7.3** The Contractor shall review the Contract Documents to ascertain that the Contract Documents are, to the best of the Contractor's knowledge, in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. The Contractor shall promptly notify the Construction Manager, Architect, and Owner in writing of any variance therewith and necessary changes shall be accomplished by appropriate Modification.

**§ 3.7.3.1** If the Contractor performs Work contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice the Contractor shall assume full responsibility for such Work and shall bear the attributed costs.

**§ 3.7.4 Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) 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, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than ten (10) days after first observance of the conditions. The Architect will promptly investigate such conditions and, if 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 that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall so notify the Owner and Contractor, stating the reasons. Claims by either party in opposition to such a determination must be made within ten (10) days after the Architect has given notice of the decision. If the Owner and the Contractor cannot agree on an adjustment in the Contract Sum, the adjustment shall be referred to the Architect for initial determination, subject to further proceedings pursuant to 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 Construction Manager may direct, but the Contractor shall not be required to employ persons or entities against which the Contractor makes 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.

### **§ 3.9 Superintendent**

**§ 3.9.1** The Contractor shall employ a competent, English-speaking superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case. The Owner shall have the right to require the Contractor to replace any Superintendent whose performance the Owner deems to be unsatisfactory.

**§ 3.9.2** The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect, through the Construction Manager, of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Construction Manager may notify the Contractor, stating whether the Owner, the Construction Manager, or the Architect (1) has reasonable objection to the proposed superintendent or (2) require additional time for review. Failure of the Construction Manager to provide notice within the 14-day period shall constitute notice of no reasonable objection.

**§ 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.

#### **§ 3.10 Contractor's Construction and Submittal Schedules**

**§ 3.10.1** The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information, and the Construction Manager's use in developing the Project construction schedule, a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

**§ 3.10.2** The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Construction Manager's and Architect's approval. The Architect and Construction Manager's approval shall not be unreasonably 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, or fails to provide submittals in accordance with the approved 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 cooperate with the Construction Manager in scheduling and performing the Contractor's Work to avoid conflict, delay in or interference with the Work of other Contractors or the construction or operations of the Owner's own forces. The Construction Manager is the sole and final judge of durations necessary to complete the work. The Construction Manager will publish a construction schedule with input from the Contractors. The Construction Manager's schedule is the baseline to measure acceptable progress. The Construction Manager will make update, as necessary to the schedule, with input from the Contractors. In the event a Contractor fails to maintain scheduled progress, the Owner and Construction Manager will supplement Contractor's forces as necessary and deduct any costs incurred from the Contractor's contract sum.

**§ 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 make available, at the Project site, the one record copy of the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate record changes and selections made during construction, and in addition the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be available to the Construction Manager no later than the twenty-fifth (25<sup>th</sup>) day of each month as part of the Construction Manager's review and approval of the Contractor's draft of his monthly Requisition. The Construction Manager will not review monthly Requisitions if the record documents are not posed and current. These shall be in electronic form or paper copy, available to the Construction Manager, Architect, and Owner, and delivered to the Construction Manager for submittal to the Owner in good condition upon completion of the Work and before final payment is made and shall be executed by the

Contractor certifying that they have been kept in accordance with the provisions of this subparagraph and accurately reflect the construction of the Work as built.

### **§ 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, equipment, or systems 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 how 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 4.2.10 through 4.2.12. 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 Contractors, Separate 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 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 the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Construction Manager and Architect 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 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.

**§ 3.12.10.1** 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 be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately 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, the Architect, and the Construction Manager shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and 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 Construction Manager shall review submittals for sequencing, constructability, and coordination impacts on other Contractors.

**§ 3.12.10.2** If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Construction Manager and Architect at the time and in the form specified by the Architect.

### **§ 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, 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, or patching shall be restored to the condition existing prior to the cutting, fitting, or 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, Separate Contractors, or of other Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner, Separate Contractors, or by other Contractors except with written consent of the Construction Manager, Owner, and such other Contractors or Separate Contractors. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Separate Contractors, other Contractors, or the Owner, its 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 and rubbish caused by operations under the Contract on a daily basis or more often if necessary. At completion of the Work, the Contractor shall remove from the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials.

**§ 3.15.2** If the Contractor fails to clean up as provided in the Contract Documents, the Construction Manager may, without prior notice, do so and the cost thereof shall be charged to the Contractor and the contract sum adjusted accordingly.

### **§ 3.16 Access to Work**

The Contractor shall provide the Owner, Construction Manager, Architect, Consultants and any persons or firms employed by and of them safe 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 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 an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the 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, but only to the extent caused in whole or in part by 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. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18.

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

**§ 3.18.3** The obligations of the Contractor under this Section 3.18 shall not extend to the liability of the Architect, their consultants, and agents and employees of any of them arising out of (1) the preparation of approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the Architect, their consultants, and agents and employees of any of them provided such giving or failure to give is the primary cause of the injury or damage.

## **ARTICLE 4 ARCHITECT AND CONSTRUCTION MANAGER**

### **§ 4.1 General**

**§ 4.1.1** The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

**§ 4.1.2** The Construction Manager is the person or entity retained by the Owner pursuant to Section 2.3.3 and identified as such in the Agreement.

**§ 4.1.3** Duties, responsibilities, and limitations of authority of the Construction Manager and Architect as the Owner's Representative during the construction as set forth in the Contract Documents will not be restricted, modified, or extended without written consent of the Owner, Construction Manager, Architect, and Contractor provided, however, that the Architect or Construction Manager may be discharged and replaced by the Owner without such consent. Consent shall not be unreasonably withheld and failure of the Contractor to respond within (10) days to a written request shall constitute consent by the Contractor.

### **§ 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 Architect 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. On the basis of the site visits, the Architect will keep the Owner and the Construction Manager reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner and Construction Manager known deviations from the Contract Documents and defects and deficiencies observed in the Work.

**§ 4.2.3** The Construction Manager shall provide 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 and Architect reasonably informed of the progress of the Work, and will promptly report to the Owner and Architect known deviations from the Contract Documents and the most recent Project schedule, and defects and deficiencies observed in the Work.

**§ 4.2.4** The Construction Manager will schedule and coordinate the activities of the Contractor and other Contractors in accordance with the latest approved Project schedule. The Contractor shall participate with other Contractors and the Construction Manager and Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule deemed necessary by the Construction Manager. The construction schedules shall constitute the schedules to be used by the Contractor, other Contractors, the Construction Manager and the Owner until subsequently revised.

**§ 4.2.5** The Construction Manager, except to the extent required by Section 4.2.4, and Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, 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.** The Owner shall 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 and Construction Manager shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Construction Manager otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with other Contractors shall be through the Construction Manager. Communications by and with the Owner's own forces and Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

**§ 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. Whenever the Construction Manager considers it necessary or advisable, the Construction Manager will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, upon written authorization of the Owner, whether or not the 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, suppliers, their agents or employees, or other persons performing any of the Work.

**§ 4.2.9** Utilizing the submittal schedule provided by the Contractor, the Construction Manager shall prepare, and revise as necessary, a Project submittal schedule incorporating information from other Contractors, the Owner, Owner's consultants, Owner's Separate Contractors and vendors, governmental agencies, and 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.

**§ 4.2.10** The Construction Manager will receive from the Contractor and review all Shop Drawings, Product Data and Samples, coordinate them with the information received from other Contractors, and transmit to the Architect those recommended for approval. The Construction Manager's actions will be with such reasonable promptness as to cause not delay in the Work of the Contractor or in the activities of other Contractors, the Owner, or the Architect.

**§ 4.2.11** 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 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.

**§ 4.2.12** 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 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.

**§ 4.2.13** The Construction Manager will prepare Change Orders.

**§ 4.2.14** 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.

**§ 4.2.15** 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 will be delivered to the Owner upon completion of the Project.

**§ 4.2.16** The Construction Manager will assist the Architect in conducting inspections to determine the date or dates of Substantial Completion and the date of final completion 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.

**§ 4.2.18** The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request the Construction Manager. The Architect's response to such requests will be made with reasonable promptness and within any time limits agreed upon. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Section 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until 15 days after written request is made for them.

**§ 4.2.19** 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.

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

**§ 4.2.21** The Construction Manager will receive and review requests for information from the Contractor, and forward each request for information to the Architect. The Architect will review and respond in writing, through the Construction Manager, to requests for information about the Contract Documents. 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.

## 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 Contractors or Separate Contractors or the subcontractors of other Contractors or Separate 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** Within ten (10) days of the award of the Contract, the Contractor shall notify the Construction Manager, for review by the Owner, Construction Manager and Architect, of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within ten (10) days of receipt of the information, the Construction Manager will notify the Contractor whether the Owner, the Construction Manager or the Architect, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Construction Manager to reply shall constitute notice of no reasonable objection. Subcontractors required to be named on the Bidding Documents shall be used on the work for which they are proposed unless reasonable objection is indicated by the Owner, Construction Manager, or the Architect.

**§ 5.2.2** The Contractor shall not contract with a proposed person or entity 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 a Subcontractor, person, or entity for one previously selected without approval of the Owner.

### § 5.3 Subcontractual Relations

By appropriate written agreement, 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 responsibilities which the Contractor, by these Contract 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 which may be at variance with the Contract Documents, Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors. Submit copies of Subcontractors to the Construction Manager upon request.

#### **§ 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 or stoppage of the work pursuant to Subparagraph 2.3 and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor; 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.

**§ 5.4.3** Upon 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.

**§ 5.4.4** The Contractor shall pay each subcontractor upon receipt of payment from the Owner, an amount equal to the percentage of completion allowed to the Contractor on account of each subcontractor's work, less the percentage retained for payments to the Contractor. The Contractor shall also require each subcontractor to make similar payments to its sub-subcontractors.

**§ 5.4.5** If the Owner fails to approve a Requisition for Payment for a cause which the Owner determines is the fault of the Contractor and not the fault of a particular subcontractor-or if the Contractor fails to make a payment which is properly due to a particular subcontractor, the Owner may pay each subcontractor directly, less the amount to be retained under the subcontract. The Contractor in the manner set forth in Subparagraph 2.4.1 shall repay any amount so paid by the Owner to the Owner.

**§ 5.4.6** The Owner shall have no obligation to pay or see to the payment of any monies to any Subcontractor.

Nothing contained in Paragraph 5.4 shall be deemed to create any contractual relationship between the Owner and any subcontractor or to create any rights in any subcontractor against the Owner.

### **ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE 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 to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

**§ 6.1.2** When the Owner performs construction or operations with the Owner's own forces or Separate Contractors, the Owner shall provide for coordination of such forces and Separate Contractors with the Work of the Contractor, who shall cooperate with them.

#### **§ 6.2 Mutual Responsibility**

**§ 6.2.1** The Contractor shall afford the Owner's own forces, Separate Contractors, Construction Manager and other 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, Separate Contractors or other Contractors, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Construction Manager and Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor or other Contractors that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Construction Manager and the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's or other Contractors' completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractors or other Contractors that are not apparent.

**§ 6.2.4** The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction, or to property of the Owner, Separate Contractors, or other Contractors as provided in Section 10.2.5.

### **§ 6.3 Owner's Right to Clean Up**

If a dispute arises among the Contractor, Separate Contractors, other 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 as described in Section 3.15, the Owner or Construction Manager may clean up and allocate the cost among those responsible as the Construction Manager determines to be just.

## **ARTICLE 7 CHANGES IN THE WORK**

### **§ 7.1 General**

**§ 7.1.1** Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

**§ 7.1.2** A Change Order shall not relieve the Contractor of obligations under the Contract.

**§ 7.1.3** Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work. When agreement cannot be reached on contract adjustments for changes, and the Construction Manager determines that work must proceed to mitigate cost and schedule impact, the Contractor shall proceed as directed and submit a claim.

**§ 7.1.4** Except in an emergency which might endanger life or property, no extra work or charge shall be made unless a written Change Order from the Owner and/or Architect has been received by the Contractor.

### **§ 7.2 Change Orders**

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.

**§ 7.2.2** Methods used in determining adjustments to the Contract Sum may include those listed in Section 7.3.3

**§ 7.2.3** Change Order Requests shall not be considered unless they are submitted in proper format with all required supporting documents. All portions of the proposed change work shall use the change order request format. All Change Orders shall be submitted in the Change Order Request format.

**§ 7.2.4** A written request for a change in the Work may be made by the Owner, Architect, Construction Manager, or the Contractor, but only the Owner shall authorize and approve the change.

### **§ 7.3 Construction Change Directives**

**§ 7.3.1** A Construction Change Directive is a written order prepared by the Architect and signed by the Owner, Construction Manager and Architect, directing a change in the Work and stating a proposed basis for 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 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 7.3.4.

**§ 7.3.4** If the Contractor does not respond within five (5) days or disagree with the method for adjustment in the Contract Sum, the adjustment shall be determined by the Construction Manager on the basis of reasonable expenditures and savings of those performing the Work attributed to the change, including, in case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. 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 appropriate supporting data.

**§ 7.3.5** If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

**§ 7.3.6** Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Construction Manager 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.

**§ 7.3.8** 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. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

### **§ 7.4 Minor Changes in the Work**

The Architect, with concurrence of the Owner, may order 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. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Construction Manager and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Construction Manager that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

## 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 Notice to Proceed. If there is no Notice to Proceed, it shall be such other date as may be established in the Owner-Contractor Agreement or elsewhere in the Contract Documents. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.

**§ 8.1.3** The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8 and when the Owner has received Certificate of Use and Occupancy.

**§ 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, commence the Work prior to the effective date of insurance required to be furnished by the Contractor. Unless the date of commencement is established by a notice to proceed given by the Owner, the Contractor shall notify the Owner in writing not less than five (5) days or other agreed period before commencing the work.

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

**§ 8.2.4** Should the progress of the Work be delayed by any fault, neglect, act, or omission of the Contractor or any person or firm employed by them or should it be necessary to complete the Work within the time permitted for the Contractor’s work, the Contractor shall, at their own expense, work such overtime as may be necessary to make up for all the lost time and to avoid delay in the completion of the Work. The Contractor shall compensate the Owner for and hold them harmless against any and all cost, expense, losses, liability, and damage, which the Owner may sustain or incur by reason of such delay.

### § 8.3 Delays and Extensions of Time

**§ 8.3.1** The Owner will review requests for extension of completion time due to conditions over which the Contractor has no control after written application is made to the Architect for a time extension. Any request for an extension of time is to be made within ten (10) days of occurrence of conditions which, in the opinion of the Contractor, warrant such an extension, with reasons stated clearly, and detailed proof given for all delays beyond the Contractor’s control. Not time extension will be allowed except by written and specific approval of the Owner. Delays beyond the Contractor’s control may include: (1) an act or neglect of the Architect, Construction Manager, or an employee of any of them, or of the Owner’s own forces, Separate Contractors, or other Contractors; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor’s control; (4) by delay authorized by the Owner; or (5) by other causes which the Contractor asserts and the Architect, based on the recommendation of the Construction Manager, determines justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine, without additional compensation.

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

**§ 8.3.3** The Contractor shall make no charges or claims for damages for any delays or hindrances from any cause whatsoever. Such delays or hindrances, if any, may be compensated for by an extension of time for such reasonable period as the Owner may decide. Time extensions may be granted for only excusable delays beyond the control of and without the fault or negligence of the Contractor as is more particularly provided in these General Conditions. No Change Order and no Construction Change Directive may grant any compensation to the Contractor for any

delays or hindrances. The Owner shall have the right to claim and charge liquidated damages for any delay or hindrance.

## **ARTICLE 9 PAYMENTS AND COMPLETION**

### **§ 9.1 Contract Sum**

**§ 9.1.1** 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.

**§ 9.1.2** If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

### **§ 9.2 Schedule of Values**

Before the first Requisition for Payment, the Contractor shall submit to the Architect, through the Construction Manager, a schedule of values allocated to various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Construction Manager and the Architect. This schedule, unless objected to by the Construction Manager or Architect, shall be used as a basis for reviewing the Contractor's Requisition for Payment. Any changes to the schedule of values shall be submitted to the Construction Manager and supported by such data to substantiate its accuracy as the Construction Manager and the Architect may require, and unless objected to by the Construction Manager or the Architect, shall be used as a basis for reviewing the Contractor's subsequent Requisition for Payment. Submit to the Construction Manager copies of Subcontractors and Purchase Orders to support Schedule of Values.

### **§ 9.3 Applications for Payment**

**§ 9.3.1** The Contractor shall submit to the Construction Manager, no later than the twenty-fifth (25<sup>th</sup>) day of each month, a draft of a Standard Monthly Contractor's Requisition for Payment, IAC/PSCP Form #306.4, and such other forms as may be designated by Owner for operations completed in accordance with the Schedule of Values for the value of the work completed to date, including the value of material suitable stored at the Project site or other approved locations as provided in Subparagraph 9.3.2; less the aggregate of any previous payments and retainages and less retainages required by the Contract Documents for approval by the Construction Manager. The Contractor shall deliver five (5) signed and notarized copies with supporting documentation to the Construction Manager within seventy-two (72) hours of the Construction Manager's approval of the draft submittal. No changes to the Contract Sum shall be made by the Contractor on any Requisition for Payment without an approved Change Order. Facsimile submittal of the Requisition for Payment will not be accepted.

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

**§ 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 supplier, unless such Work has been performed by others whom the Contractor intends to pay.

**§ 9.3.2** Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site. When the Requisition for Payment includes material or equipment stored off the Project site, the Contractor shall include with Requisition for Payment a certified statement including: (1) description of items, (2) bill of sale, (3) location of storage facility and delivery receipts, (4) items are currently covered by all contractual requirements including liability and fire insurance, and (5) items, or any part thereof, will not be installed in other construction projects other than Work under this contract.

**§ 9.3.3** The Contractor warrants that title to all Work covered by Requisition for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of Requisition 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, suppliers, or other persons or entities that provided labor, materials and equipment relating to the Work. Contractor shall indemnify and hold Owner harmless for any liens, claims, security interests and encumbrances claimed by 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 or any person claiming through them and from all costs and expenses including attorney fees, incurred by Owner in connection therewith.

#### **§ 9.4 Certificates for Payment**

**§ 9.4.1** The Construction Manager will assemble a Project Requisition for Payment by combining the Contractor's requisitions with similar requisitions for progress payments from other Contractors and, after certifying the amounts due on such requisitions, forward them to the architect within seven (7) days.

**§ 9.4.2** The Contractor shall submit five (5) copies of the agreed upon Requisition for Payment to the Construction Manager, which shall be signed by the Contractor, Owner, Architect, and Construction Manager and notarized. If approval is not obtained, the Construction Manager shall notify the Architect of non-approval and the Architect shall either issue a Project Certificate for Payment to the Owner with a copy to the Construction Manager for distribution to the Contractor for such amounts as the Architect determines are properly due or notifying the Construction Manager in writing of the reasons for withholding a Certificate as provided in Subparagraph 9.5.1. The Construction Manager will forward such notification to the Contractor. The Contractor shall then submit a Requisition for Payment pursuant to such Project Certificate for Payment, if any, in five (5) copies based on the Architect's determination which the Owner, Architect and Construction Manager shall sign and on which each may but shall not be required to note this objection and which shall be notarized. The Construction Manager shall file notice of approval or non-approval within fourteen (14) days of the Owner's receipt of the draft Requisition for Payment and the Architect shall issue the Project Certificate for Payment within seven (7) days of receipt of the Construction Manager's notice.

**§ 9.4.2.1** After the Architect has issued a Project Certificate for Payment and the Owner has received either the executed agreed upon Requisition for Payment or the Requisition for Payment, as the case may be, the Owner shall either request the Construction Manager to submit a composite Requisition for Payment for such month for monies for construction on the Project for Contractors or make a payment within twenty-five (25) days after receipt of the Certificate and appropriate Requisition for Payment and Architect's Project Certificate for Payment. The Construction Manager shall make payment to the Contractor within four (4) days after receipt of payment from the Owner.

**§ 9.4.3** The Construction Manager's certification of an Application for Payment or, in the case of more than one Contractor, a Project Application and Certificate for Payment, shall be based upon the Construction Manager's evaluation of the Work and the data in the Application or Applications 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, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is, or Contractors are, entitled to payment in the amount certified.

**§ 9.4.4** The Architect's issuance of a Certificate for Payment or, in the case of more than one Contractor, Project Application and Certificate for Payment, shall be based upon the Architect's evaluation of the Work, the recommendation of the Construction Manager, and data in 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, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is, or Contractors are, entitled to payment in the amount certified.

**§ 9.4.4.1** In any event where the Architect does not certify payment or withholds certification to any extent, the Contractor shall nonetheless continue to fully perform the Work.

**§ 9.4.5** The representations made pursuant to Sections 9.4.3 and 9.4.4 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 or Architect.

**§ 9.4.6** The issuance of a 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 construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and 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 9.4.3 and 9.4.4 cannot be made. If the Construction Manager or Architect is unable to certify payment in the amount of the Application, the Construction Manager will notify the Contractor and Owner as provided in Section 9.4.1 and 9.4.2. 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, 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 suppliers 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 or other 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 either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

**§ 9.5.3** When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

**§ 9.5.4** 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 supplier 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.

### **§ 9.6 Progress Payments**

**§ 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 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 and suppliers 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 or supplier, except as may otherwise be required by law.

**§ 9.6.5** The Contractor's payments to 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 or provided by 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, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

**§ 9.6.8** Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

## **§ 9.7 Failure of Payment**

If the Construction Manager should fail to issue notice of approval or disapproval within fourteen (14) days of Owner's receipt of the Contractor's draft Requisition for Payment, or if, through no fault of the Contractor, the Architect does not issue a Project Certificate for Payment within seven (7) days after receipt of the Construction Manager's notice of approval or disapproval of the draft Requisition for Payment, or if the Owner does not pay the Contractor within seven (7) days after the date established in the Contract Documents, the amount certified by the Architect, then the Contractor may, upon thirty (30) additional days written notice to the Owner, the Architect, and the Construction Manager, stop the work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and such extension shall be the only remedy in such event.

## **§ 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 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 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.

**§ 9.8.4** When the Architect, assisted by the Construction Manager, determines that the Work of all of the Contractors, or designated portion thereof, is 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; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and 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 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 the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

**§ 9.8.6** When the Architect, Construction Manager, and Owner agree that the project has reached "Substantial Completion" as set forth in Paragraph 8.1.3 is on schedule, and it appears that there are not complications or problems in completing the job, the retainage may be reduced to five percent (5%) at the Owner's discretion.

**§ 9.8.7** Except as stated in Paragraph 9.8.2, after the payment due to the Contractor at Substantial Completion has been made by the Owner, no other payment shall be made until the Project has been fully completed and the Contract fully performed.

### **§ 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.

**§ 9.9.2** Immediately prior to such partial occupancy or use, the Owner, Construction Manager, 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 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 shall perform an inspection to confirm the completion of Work of the Contractor. The Construction Manager shall make recommendations to the Architect when the Work of all of the Contractors is ready for final inspection, and shall then forward the Contractors' notices and Application for Payment or Project Application for Payment, 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 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 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, (3) a written statement that the Contractor knows of no 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 with AIA Form (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and

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 and release of liens on the "Contractors Affidavit of Release of Liens and Payment of Debts and Claims" AIA Form, (7) all records, drawings, and specifications, addenda, change orders, and other modifications maintained at the site under the Subparagraph 3.11 all warranties, instructions, and maintenance manuals required. 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, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance 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 the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees. Final payment to the Contractor shall not become due until all close-out documents have been properly submitted to and received by the Architect through the Construction Manager and certified to the Architect and delivered by the Architect to the Owner.

**§ 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, corrected, 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 the 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 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

**§ 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.

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 Safety Precautions and Programs

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

### § 10.2 Safety of Persons and Property

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

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor;
- .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, Separate Contractors, 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 implement, 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 the owners and users of adjacent sites and utilities of the safeguards.

**§ 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 exercise utmost care and carry on such activities under supervision of properly qualified personnel.

**§ 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. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is 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 load or permit any part of the construction site to be loaded so as to endanger its safety or the safety of persons or property and the Contractor shall protect adjoining properties, streets, walkways, sidewalks, and paths so as to protect the safety of persons and properties using such adjoining properties, walkways, sidewalks, and paths.

#### **§ 10.2.8**

The Contractor shall protect excavations and structures from damage by rainwater, ground water, or water from any other source. The Contractor shall use tarpaulins or other temporary protection to afford protection.

**§ 10.2.9** The Contractor shall provide constant protection to maintain work, materials, apparatus, and fixtures free from injury and damage by rain, snow, wind, storms, frost or heat and shall cover work likely to be damaged at the end of each day's work.

**§ 10.2.10** The Contractor shall remove work damaged due to failure to provide specified protection and replace at no additional cost to the Owner.

### **§ 10.3 Hazardous Materials**

**§ 10.3.1** The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances.

### **§ 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 Insurance and Bonds**

**§ 11.1.1** The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Construction Manager and Construction Manager's consultants, and the Architect and Architect's consultants, shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

**§ 11.1.2** The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

**§ 11.1.3** 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.

**§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice directly to the Owner, and separately to the Construction Manager, of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

### **§ 11.2 Owner's Insurance**

**§ 11.2.1** The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

**§ 11.2.2 Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform both the Contractor and the Construction Manager, separately and in writing, prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

**§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice directly to the Contractor, and separately to the Construction Manager, of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

### **§ 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 Construction Manager and Construction Manager's consultants; (3) the Architect and Architect's consultants; (4) other Contractors and any of their subcontractors, sub-subcontractors, agents, and employees; and (5) 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 Construction Manager, Construction Manager's consultants, Architect, Architect's consultants, other Contractors, 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.

#### **§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance**

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor, Architect, and Construction Manager for loss of use of the Owner's property, due to fire or other hazards however caused.

#### **§ 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 Construction Manager, Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Construction Manager, 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.

### **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 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 Construction Manager or Architect has not specifically requested to examine 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, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

## § 12.2 Correction of Work

### § 12.2.1 Before 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, discovered before 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.

**§ 12.2.1.1** Defective work shall include, but is not limited to, Work which may be caused by deterioration or failure to perform due to: premature wear (not occasioned by abuse), inherent defects in materials, workmanship of manufacturer, fabrication, or improper execution of work.

**§ 12.2.1.2** Cost of correcting such related work also includes all contingent damages arising therefrom, including damages to the work (whether installed by the Contractor or another) and to other property of the Owner.

**§ 12.2.1.3** Such warranties as provided herein do not deprive the Owner of the Owner's right to prosecute any claim for breach of contract.

**§ 12.2.1.4** Any defect or nonconforming work during this period causing a hazard to life, safety, property, or use causing the Owner a financial loss shall be corrected immediately without regard to normal working hours. The Owner will immediately endeavor to make telephone notice to the Contractor on the next working day.

**§ 12.2.1.5** The Owner shall direct, if endeavors to contact the Contractor fail, certain telephone notification to subcontractors in order to expedite emergency repairs. The Contractor shall not be relieved of responsibility by this procedure, and they shall supervise and direct correction of defects as required by the Contract Documents.

**§ 12.2.1.6** The manufacturer of a product may be specifically mentioned as a party to a warranty. Then in such cases it shall be the Contractor's obligation to produce the required warranty of the manufacturer and submit it to the Architect for examination and approval. Inclusion of a manufacturer as a party to a warranty does not relieve the Contractor from the requirements of the Contract Documents.

**§ 12.2.1.7** Warranties on operating systems, equipment, or components placed in operation prior to Substantial Completion or acceptance, shall begin on the date of Substantial Completion.

### § 12.2.2 After Substantial Completion

**§ 12.2.2.1** In addition to the Contractor's obligations under Section 3.5, if, within one 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 any 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 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 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 after receipt of notice from the Owner, Construction Manager or Architect, the Owner may correct it in accordance with Section 2.5.

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

**§ 12.2.2.3** The one-year 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, including attorney fees and expenses, of correcting destroyed or damaged construction of the Owner, Separate Contractors, or other Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work which 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 one-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.

**§ 12.2.6** Inspection, failure to inspect, approval or acceptance of an art of the Work or any payment on account thereof, shall not, in any way, limit the right to reject materials or equipment later found by the Architect, Owner, Construction Manager, or any government agency to be defective or not in accordance with requirements of the Contract Documents.

### **§ 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 place where the Project is located.

### **§ 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. 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 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 the assignment.

### **§ 13.3 Rights and Remedies**

**§ 13.3.1** 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.

**§ 13.3.2** 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 upon in writing.

### **§ 13.4 Tests and Inspections**

**§ 13.4.1** Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. 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 Contractor shall give the Construction Manager and Architect timely notice of when and where tests and inspections are to be made so the Construction Manager and Architect may observe such procedures. The Owner shall bear costs of tests, inspections or approvals which do not become requirements until after bids are received.

**§ 13.4.2** 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 13.4.1, 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 13.4.3, shall be at the Owner's expense.

**§ 13.4.3** If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 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.

**§ 13.4.4** 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.

**§ 13.4.5** 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.

**§ 13.4.6** Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

### **§ 13.5 Interest**

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties 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.

## **ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT**

### **§ 14.1 Termination by the Contractor**

**§ 14.1.1** The Contractor may terminate the Contract if the Work is stopped for a period of 30 days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction;
- .2 An act of government, such as a declaration of national emergency, making material unavailable.

**§ 14.1.2** If one of the above reasons exists, the Contractor may, upon seven additional days' written notice to the Owner, Construction Manager, and Architect, terminate the Contract and recover from the Owner payment for Work executed.

### **§ 14.2 Termination by the Owner for Cause**

#### **§ 14.2.1** The Owner may terminate the Contract if the Contractor

- .1 persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 persistently disregards laws, ordinances or rules, regulations, or orders of a public authority having jurisdiction ; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents such as, but not limited to: (1) Maintain progress in accordance with the project schedule, (2) Prevents other Contractors from meeting their scheduled progress.

When the Owner terminates the Contractor for one of the reasons stated in Subparagraph 14.2.1, the surety shall not, without written consent of the Owner, retain the Contractor for the work and the Contractor shall not, without written consent of the Owner, perform any of the Work.

**§ 14.2.2** When any of the reasons described in Section 14.2.1 exist, 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 take possession of the site and 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.

**§ 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, such excess shall be paid to the Contractor. If such costs 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 Architect after consultation with the Construction Manager, and this obligation for payment shall survive termination of the Contract.

**§ 14.2.5** If, after termination of the Contractor under the provisions of this clause, it is determined for any reason that the Contractor was not in default, the termination for default shall be converted to a termination for convenience of the Owner.

#### **§ 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.

#### **§ 14.4 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.

**§ 14.4.2** Upon receipt of 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** In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

In case of such termination for the Owner's convenience, the Contractor shall be paid all reasonable costs incurred up to the date of the termination and all reasonable costs associated with the termination of the contract together with profit on the work so performed. However, the Contractor shall not be reimbursed for anticipatory profits.

### **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, adjustment or interpretation of Contract terms, payment of money, extension of time 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. Claims must be made by written notice on the Contractor's stationary;

meeting minutes and facsimile transmission will not be considered written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

**§ 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.

**§ 15.2** Decision of the Architect. Any claim, dispute or other matter between the Contractor and Owner referred to the Architect through the Construction Manager, except those relating to artistic effect as provided in Subparagraph 4.2.19 and those which have been waived by the making or acceptance of final payment as provided in Article 9, shall be subject to litigation. However, no litigation of any such claim, dispute, or other matter may be made until the earlier if (1) the date on which the Architect has rendered a written decision, or (2) the tenth day after parties have presented their evidence to the Architect or have given a reasonable opportunity to do so, if the Architect has not rendered a written decision by that date. When such a written decision of the Architect states (1) that the decision is final but subject to appeal, and (2) that any litigation or claim, dispute or other matter covered by such decision must be made within ten (10) days after the date on which the party making the demand receives the written decision. Failure to file suit within said thirty (30) day period will result in the Architect's decision becoming final and binding upon the Owner and Contractor. If the Architect renders a decision after litigation proceedings have been filed, such decision may be entered as evidence but not supersede any litigation proceedings unless the decision is acceptable to all parties concerned.

**§ 15.3** Time Limit on Claims. Claims by either party must be made within ten (10) days after occurrence of the event giving rise to such Claim or within ten (10) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later, Claims must be made by written notice. An additional Claim made after the initial Claim as been implement by Change Order will not be considered unless submitted in a timely manner.

**§ 15.4** Continuing Contract Performance. Pending final resolution of a Claim, unless otherwise agreed in writing the Contractor shall proceed diligently with performance of the Contract including proceeding with that portion in dispute, as directed by the Construction Manager and the Owner shall continue to make payments in accordance with the Contract Documents, except the Owner may withhold payment to the extent reasonable necessary to secure or compensate for a claim.

**§ 15.5** Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) 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, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than ten (10) days after first observance of the conditions. The Architect will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that do not change in the terms of the Contract are justified, the Architect shall so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within ten (10) days after the Architect has given notice of the decision. If the Owner and Contractor cannot agree on an adjustment in the Contract Sum, the adjustment shall be referred to the Architect for initial determination, subject to further proceedings pursuant to this Article 15.

**§ 15.6** Claims for Additional Cost. If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4 If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure for payment by the Owner, (5) termination of the

Contract by the Owner, (6) Owner's suspension or (&) other reasonable grounds, Claim shall be filed in accordance with the procedure established herein.

**§ 15.7** If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice shall be made in writing to the Construction Manager not more than ten (10) days after the commencement of the delay, otherwise it shall be waived. The Contractor's Claim shall include an estimate of probable effect of delay on progress of the Work. In the Case of a continuing delay only one Claim is necessary.

**§ 15.8** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled construction. In establishing the time of construction completion, the weather conditions, as recorded by the National Oceanographic Atmospheric Administration (NOAA) at the National Climatic Data Center, Asheville, NC, over the past five (5) years will be taken into consideration. No extension of time, due to weather conditions, will be considered unless accompanied by the NOAA documentary evidence showing, by comparison, that such weather is abnormal to any of the past five (5) years and that such abnormality caused the delay. Notwithstanding any other provision of the contract to the contrary, the Contractor agrees that its right to receive an extension of time shall be the Contractor's sole and exclusive remedy with regard to any delays or interferences with the completion of the Contractor's work and the Contractor, hereby, waives any and all claims for monetary damages arising out of or related to any such delay or interference, including, but not limited to, claims for delay damages, interference damages, impact damages, acceleration damages, and any other form of time-related damages.

**§ 15.9** Injury or Damage to Person or Property. If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, 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 first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in this Article 15.

**§ 15.10** The Owner shall in no way be obligated to enter into mediation or arbitration proceedings with a Contractor for any purposes whatsoever. The Owner will reserve onto itself the right to determine what form of litigation and its location are appropriate at the time the dispute arises.

## ARTICLE 16 EQUAL OPPORTUNITY

### § 16.1 POLICIES OF EMPLOYMENT

**§ 16.1.1** The Contractor shall maintain policies of employment as follows:

1. The Contractor and all subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or age. 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, national origin, or age. Such action shall include but not be limited to the following:
  - A. 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 shall post in conspicuous places, available for employees and applicants for employment, notices setting forth the policies of nondiscrimination.

**§ 16.1.2** The Contractor and all 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, national origin, or age.

Requirement of Section 00660 – Minority Business Enterprise (MBE) Requirements form a part of the Conditions of the Contract, including Exhibits A and B included with Form of Proposal.

## **ATTACHMENT C**

