

**DIVISION 0**  
**CONDITIONS OF THE CONTRACT**

BUSHEY FEIGHT MORIN ARCHITECTS INC.  
473 NORTH POTOMAC STREET  
HAGERSTOWN, MARYLAND 21740  
301-733-5600 FAX: 301-733-5612

SECTION 00010

DIRECTORY

## **DIRECTORY**

### OWNER

**BOARD OF COUNTY COMMISSIONERS  
OF WASHINGTON COUNTY**

100 West Washington Street  
Hagerstown, Maryland 21740-4735  
Phone: 240-313-2216  
Fax: 240-313-2201

Contact: Vicki C. Lumm, Clerk

**DIVISION OF ENGINEERING & CONSTRUCTION MANAGEMENT**

80 West Baltimore Street  
Hagerstown, Maryland 21740-6003  
Director: Rob Slocum, P.E.  
Phone: 240-313-2418  
Fax: 240-313-2401

Project Manager: Brennan Garrett  
Phone: 240-313-2474  
Fax: 240-313-2401

### ARCHITECT OF RECORD

**BUSHEY FEIGHT MORIN ARCHITECTS INC.**

473 North Potomac Street  
Hagerstown, Maryland 21701  
Phone: 301-733-5600  
Fax: 301-733-5612

Contact: Aaron House, A.I.A., Project Architect

### STRUCTURAL

**REGAN MATONAK & ASSOCIATES**

931 Sweeney Drive  
Hagerstown, Maryland 21740  
Phone: 301-790-0111  
Fax: 301-790-0222

Contact: Daniel Matonak, P.E.

### MECHANICAL/ELECTRICAL ENGINEER

**RHL ENGINEERING COMPANY INC.**

3 West Second Street  
Frederick, MD 21701  
Phone: 301-695-9424  
Fax: 410-494-1112

Contact: Richard Lawson, P.E.

### AUDIO VISUAL CONSULTANT

**WRIGHT ENGINEERING, LLC**

853 Ripple Stream Court  
Joppa, MD 21085  
Phone: 410-877-6297  
Fax: 866-653-0374

Contact: James Wright, P.E.

**SECTION 00020**

**INVITATION TO BIDDERS**

**PUR-1261**  
**INVITATION TO BID**

**Contract No.: AC-FFR-221-28**

The Board of County Commissioners of Washington County, Maryland, (hereinafter the "Owner") will accept sealed bids for the **Washington County Administration Complex: First Floor Renovation, Contract AC-FFR-221-28**. Bids will be received and time-stamped in the **Washington County Purchasing Department, Washington County Administration Complex, 100 West Washington Street, Third Floor, Room #320, Hagerstown, MD 21740-4748**, until no later than **2:00 P.M. (DST/Local Time) on Wednesday, September 10, 2014**, after which time they will be publicly opened in the Second Floor Conference Room #255 of the County Administration Complex. Bids received after this time will be returned unopened.

NOTE: All Bidders must enter the County Administration Building through the front door, 100 West Washington Street entrance, and must use the elevator to access the Purchasing Department to submit their bid. Alternate routes are now controlled by a door access system.

The Washington County Administration Complex First Floor Renovation project located at 100 and 120 West Washington Street, Hagerstown, Maryland is generally described as the complete renovation of the first floors of both 100 and 120 West Washington Street with fire alarm system installation throughout both buildings. Renovation work shall include a partial roof replacement, window replacement and the installation of floor finishes, partition walls, mechanical systems, plumbing systems, electrical systems, audio visual systems, and security access systems. In addition, the existing sprinkler system shall be extended to serve the entire 120 West Washington Street structure. Demolition of existing walls, and elements will be required throughout the project.

Qualified Contractors may obtain drawings and specifications on CD with loose bid forms provided from the **Washington County Purchasing Department, County Administration Complex, 100 West Washington Street, Third Floor, Room #320 Hagerstown, MD 21740-4748**, (Telephone 240-313-2330), for a **NON-REFUNDABLE** fee of **\$30.00** for each complete set. For mail requests, which must be made in writing, companies who provide a FedEx or UPS account number will receive the documents next or second day at their expense. If a FedEx or UPS account number is not provided, the document will be sent via U.S. mail. Mail requests must include a full mailing address, contact person with e-mail address, and phone / fax number. All checks for bidding documents shall be made payable to the **Washington County Treasurer and sent to the Washington County Purchasing Department at the above address**. Payment must be received before the documents can be mailed. The Owner will provide successful bidder up to **Fifteen (15) sets** of plans and specifications at no cost. Additional copies, or portions thereof, may be charged at established printing costs.

Bid security in the form of a cashier's check, certified check, or bid bond in the amount of five percent (5%) of the bid amount shall be submitted with Contractor's bid. The successful bidder will be required to furnish satisfactory Payment and Performance

Bonds for the full amount of the Contract. Bids shall be executed on bid forms provided with the bidding documents in accordance with the Instructions to Bidders.

The Owner may make such investigations as he deems necessary to determine the ability of the bidder to perform the work, and prospective bidders shall be required to furnish to the Owner's representative all such information as may be requested. The Owner reserves the right to reject any bid if the evidence submitted by, or investigation of, such bidder fails to satisfy the Owner that such bidder is properly qualified to carry out the obligation of the Contract and to complete the work contemplated therein.

A Pre-Bid Conference for the project will be held on Thursday, **August 21, 2014 at 2:00 PM, local time, adjacent to the Public Relations Office on the First Floor of 120 West Washington Street, Hagerstown, MD 21740-4078.** All prospective Bidders are requested to attend. Attendance is not mandatory but is strongly encouraged. A building tour will be held immediately following the Pre-Bid conference.

Washington County shall make positive efforts to utilize MBE/WBE/Disadvantaged Business Enterprises for its supplies and services and shall allow these sources the maximum feasible opportunity to compete for contracts. The Board of County Commissioners does not discriminate on the basis of race, color, national origin, sex, religion, age and disability in employment or the provision of services. Individuals requiring special accommodations are requested to contact the Washington County Purchasing Department at 240-313-2330 Voice, 711 Voice/TDD to make arrangements no later than three (3) and seven (7) calendar days, respectively, prior to the Pre-Bid Conference and Bid Opening.

The Board of County Commissioners of Washington County, Maryland, reserves the right to accept or reject any or all bids, to waive formalities, informalities and technicalities therein. The Board reserves the right to contact a Bidder for clarifications and may, at its sole discretion, allow a Bidder to correct any and all formalities, informalities and technicalities in the best interest of Washington County.

By Authority of:

A handwritten signature in black ink, appearing to read "Karen R. Luther". The signature is fluid and cursive, written in a professional style.

Karen R. Luther, CPPO  
Purchasing Director

BOARD OF COUNTY COMMISSIONERS  
OF WASHINGTON COUNTY, MARYLAND

**SECTION 00100**  
**AIA DOCUMENT A701-1997**  
**INSTRUCTIONS TO BIDDERS**

# **AIA**® Document A701™ – 1997

## ***Instructions to Bidders***

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

*(Name and location or address)*

Washington County Administration Complex  
First Floor Renovation  
100 West Washington Street  
Hagerstown, Maryland 21740  
Washington Co. Project No. 28-221

### **THE OWNER:**

*(Name, legal status and address)*

Board of County Commissioners of Washington County  
100 West Washington Street  
Hagerstown, MD 21740

### **THE ARCHITECT:**

*(Name, legal status and address)*

Bushey Feight Morin Architects Inc.  
473 North Potomac Street  
Hagerstown, Maryland 21740  
BFM Project No. 14028

### **ADDITIONS AND DELETIONS:**

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

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

### **TABLE OF ARTICLES**

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## **ARTICLE 1 DEFINITIONS**

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

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

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

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

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

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

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

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

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

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

§ 2.1 The Bidder by making a Bid represents that:

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

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

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

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

## **ARTICLE 3 BIDDING DOCUMENTS**

### **§ 3.1 COPIES**

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

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

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

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

### § 3.2 INTERPRETATION OR CORRECTION OF BIDDING DOCUMENTS

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

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

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

### § 3.3 SUBSTITUTIONS

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

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

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

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

### § 3.4 ADDENDA

§ 3.4.1 Addenda will be transmitted to all who are known by the issuing office to have received a complete set of Bidding Documents.

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

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

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

## ARTICLE 4 BIDDING PROCEDURES

### § 4.1 PREPARATION OF BIDS

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

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

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

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

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

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

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

#### § 4.2 BID SECURITY

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

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

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

#### § 4.3 SUBMISSION OF BIDS

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

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

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

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

#### § 4.4 MODIFICATION OR WITHDRAWAL OF BID

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

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

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

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

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

## **ARTICLE 5 CONSIDERATION OF BIDS**

### **§ 5.1 OPENING OF BIDS**

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

### **§ 5.2 REJECTION OF BIDS**

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

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

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

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

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

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

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

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

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

### **§ 6.3 SUBMITTALS**

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

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

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

§ 6.3.3 Prior to the execution of the Contract, the Architect will notify the Bidder in writing if either the Owner or Architect, after due investigation, has reasonable objection to a person or entity proposed by the Bidder. If the Owner or Architect has reasonable objection to a proposed person or entity, the Bidder may, at the Bidder's option, (1)

withdraw the Bid or (2) submit an acceptable substitute person or entity with an adjustment in the Base Bid or Alternate Bid to cover the difference in cost occasioned by such substitution. The Owner may accept the adjusted bid price or disqualify the Bidder. In the event of either withdrawal or disqualification, bid security will not be forfeited.

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

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

### **§ 7.1 BOND REQUIREMENTS**

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

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

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

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

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

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

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

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

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

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

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

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 08:54:43 on 08/14/2014.

## **PAGE 1**

Washington County Administration Complex  
First Floor Renovation  
100 West Washington Street  
Hagerstown, Maryland 21740  
Washington Co. Project No. 28-221

...

Board of County Commissioners of Washington County  
100 West Washington Street  
Hagerstown, MD 21740

...

Bushey Feight Morin Architects Inc.  
473 North Potomac Street  
Hagerstown, Maryland 21740  
BFM Project No. 14028

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

I, Linda L. Deibert, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 08:54:43 on 08/14/2014 under Order No. 1441553741\_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A701™ – 1997, Instructions to Bidders, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

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

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

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

**SECTION 00150**

**SUPPLEMENTAL CONDITIONS TO THE  
INSTRUCTIONS TO BIDDERS A701-1997**



**SUPPLEMENTAL CONDITIONS TO THE  
INSTRUCTIONS TO BIDDERS**

**AIA DOCUMENT A701-1997  
ARTICLE 9**

9.1 Subparagraph 3.1.1; **DELETE** from this section:

The second, third, and fourth sentence.

9.2 Subparagraph; **SUBSTITUTE** Paragraph 3.2.2 with the following subparagraph:

“3.2.2 Should any Contractor find discrepancies in, or omissions from, the documents or be in doubt of their meaning, he (she) should at once request in writing an interpretation from **Karen R. Luther, CPPO – Purchasing Director, Washington County Purchasing Department, Washington County Administration Complex, 100 West Washington Street, Room 320, Hagerstown, Maryland, 21740-4748, Fax 240-313-2331**. All necessary interpretations will be issued to all Bidders as addenda to the specifications, and such addenda shall become part of the contract documents. **Requests received after 4:00 P.M. (local time), Thursday, August 28, 2014 may not be considered**. Every interpretation made by the County will be made as an addendum which, if issued, will be sent by the Purchasing Director to all interested parties.”

9.3 Subparagraph 3.3.2; **CHANGE** to read as follows:

3.3.2 “**No substitution will be considered prior to receipt of Bids unless written request for approval has been received by the County Purchasing Department for submittal to the Architect no later than 4:00 P.M. (local time), Thursday, August 28, 2014** and submitted in accordance with Section 01330. Substitution requests after the bid may mandate a credit change order. Such requests shall include the name...”

9.4 Subparagraph 4.3.1; **ADD** the following subparagraph:

“In addition to the above referenced data which shall appear on the bid envelope, submit only one (1) original set of the Standard Form of Proposal and all required documents.”

9.5 Subparagraph 6.1; **ADD** the following subparagraph:

“Although Not required to be submitted with the Bid Form, the Owner reserves the right to request the Contractor to submit AIA Document A305. In addition, the Contractor shall include a financial statement, a resume’ of five (5) projects completed within the past five (5) years that are similar in scope, cost, and roofing system as specified herein; references; and an affidavit attesting that the firm which the Contractor represents has maintained a continuous practice for a minimum of five (5) years.”

9.6 Subparagraph 7.1.1; **REVISE** to read:

The Bonding Company must be licensed to conduct business in the State of Maryland.

9.7 Subparagraph 7.1.3;

Delete in its entirety.

9.8 Subparagraph 7.2.1; **REVISE** to Read:

The Bonds shall be delivered to the Owner prior to the execution of the Contract.

9.9 Subparagraph 7.2.2; **REVISE** to Read:

That the Bonds shall be written on Washington County's *Performance Bond* and *Labor and Material Payment Bond* forms provided in Section 00 60 00 – Special Provisions.

9.10 Subparagraph Article 8; **REVISE** to Read:

The Agreement for the work will be written on Washington County's standard Contract Agreement form as provided in Section 00250 – Special Provisions.

9.11 Subparagraph 7.1, **ADD** the following subparagraph:

“7.1.3 The Contractor's Performance Bond and Labor and Material Payment Bond shall be supplied in the amount of 100% of the value of the total contracted work and shall be submitted on a Standard Washington County Form made payable to the Owner.”

9.12 **Notice of Political Contributions:** In accordance with Maryland Code, State Finance and Procurement Article, §17-402, the Bidder shall comply with Maryland Code, Election Law Article, Title 14, which requires that every person that enters into contracts, leases, or other agreements with the State, a county, or any incorporated municipality, or their agencies during a calendar year in which the person receives in the aggregate \$100,000 or more, shall file with the State Administrative Board of Election Laws a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Administrative Board of Election Laws: (1) before a purchase or execution of a lease or contract by the State, a county, an incorporated municipality or their agencies, and shall cover the proceeding two (2) calendar years; and (2) if the contribution is made after the execution of a lease or contract, then twice a year, throughout the contract term, on: (a) February 5, to cover the 6-month period ending January 31; and (b) August 5, to cover the 6 month period ending July 31.

9.13 **Payment of County and Municipal Taxes:** Effective October 1, 1993, in compliance with Section 1-106(b)(3) of the Code of the Public Local Laws of Washington County, Maryland, “If a bidder has not paid all taxes owed to the County or a municipal corporation in the County, the County Commissioners may reject the bidder's bid.”

9.14 **Award:** The contract will be awarded to the lowest responsive and responsible bidder who has either the lowest base bid or the lowest base bid plus the Alternate(s) selected upon evaluation of the bid prices and review of the available budget. Any combination of Alternates may be selected.

END OF SUPPLEMENTAL CONDITIONS

**SECTION 00200**  
**STANDARD FORM OF PROPOSAL**

**STANDARD FORM OF PROPOSAL**

Board of County Commissioners of Washington County      Date: **Wednesday, September 10, 2014**  
c/o Washington County Purchasing Department                      Time: No later than **2:00 PM**  
100 West Washington Street, Room 320                                      DST/Local Time  
Hagerstown, Maryland 21740-4748

Project: Washington County Administration Complex: Exterior Accessibility Improvements  
Washington County Bid No.: **PUR-1261**  
Washington County Project No.: **28-221**  
Washington County Contract No.: **AC-FFR-221-28**  
BFM Project No.: 14028

Firm Submitting Proposal \_\_\_\_\_  
Telephone No. \_\_\_\_ (\_\_\_\_) \_\_\_\_\_ Fax: \_\_\_\_ (\_\_\_\_) \_\_\_\_\_  
Contact: Name Printed and Title: \_\_\_\_\_  
E-Mail Address: \_\_\_\_\_  
Address: \_\_\_\_\_  
Federal Employer Identification No.: \_\_\_\_\_

Gentlemen:

We hereby submit our proposal for the Washington County Administration Complex First Floor Renovation.

Having carefully examined the Specifications and Plans for the subject construction -  
Specifications Dated, \_\_\_\_\_  
Drawings Dated, \_\_\_\_\_  
Addenda numbered \_\_\_\_\_

and having received clarification on all items of conflict or upon which any doubt arose, the undersigned proposes to furnish all labor, materials and equipment called for by the said documents for the entire work, in strict accordance with the Contract Documents, for the stipulated sum of:

**1. BASE BID :**

\_\_\_\_\_ Dollars (\$ \_\_\_\_\_)  
written figures

**2. ALTERNATES:**

A. ADD Alternate No. 1: ADD SECOND/THIRD FLOOR CURTAIN WALL REPLACEMENT – provide in accordance with Section 08440 – Alternates.

\_\_\_\_\_ Dollars (\$ \_\_\_\_\_)  
written figures

B. ADD Alternate No. 2: ELEVATOR CAB REPLACEMENT – provide in accordance with Section 14240 – Alternates.

\_\_\_\_\_ Dollars (\$ \_\_\_\_\_)  
written figures

\_\_\_\_\_  
Sign for Identification

3. **ALLOWANCES:** In accordance with Section 01200 – Price and Payment Procedures, include the following allowances in the Base Bid.

A. Allowance No. 1 – Project Identification Sign	\$ 3,000.00
B. Allowance No. 2 – Hazardous Materials Unit Price Contingency	\$ 5,000.00
C. Allowance No. 3 – Appliances	\$ 4,000.00
Total Allowance in Base Bid	\$ 12,000.00

4. **UNIT PRICE SCHEDULE:** In accordance with Section 01200 – Price and Payment Procedures.

- A. Unit Price No. 1 – Removal and Disposal of Asbestos-containing Mudded Fittings  
\_\_\_\_\_ Dollars (\$ \_\_\_\_\_)  
written figures
- B. Unit Price No. 2 – Removal and Disposal of Vinyl Asbestos Tile (VAT) and Mastic  
\_\_\_\_\_ Dollars (\$ \_\_\_\_\_)  
written figures
- C. Unit Price No. 3 – Removal and Disposal of Spray Asbestos Fireproofing  
\_\_\_\_\_ Dollars (\$ \_\_\_\_\_)  
written figures
- D. Unit Price No. 4 – Sampling and Testing of Concealed Spaces  
\_\_\_\_\_ Dollars (\$ \_\_\_\_\_)  
written figures
- E. Unit Price No. 5 – Patching and Repair of Masonry Walls  
\_\_\_\_\_ Dollars (\$ \_\_\_\_\_)  
written figures

5. **SUBCONTRACTORS:**

- A. **All Bidders shall submit their list of subcontractors concurrently with the bid submission to the Washington County Purchasing Department.** No change or deviation from this list shall be allowed except as determined by the Owner. (SEE ATTACHMENT “A”):

**7. CONTRACTOR'S STATE OF MARYLAND REGISTRATION NUMBER:**

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Construction Firm License No.	Date Issued	Place of Issuance
-------------------------------	-------------	-------------------

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Federal Employer Identification No.  
(or Social Security No. if no F.E.I.N.)

It is understood that the bid price will be firm for a time period of **ninety (90)** calendar days from the bid opening date and that if the undersigned by notified of acceptance of this proposal within this time period, the firm shall complete the total work within **365 calendar days** from the date of "Notice to Proceed" for construction has been issued. If this work is not completed within the time period specified, the Contractor will be liable for Liquidated Damages of **\$500.00** per calendar day.

**8. AFFIRMATION REGARDING COLLUSION:**

I AFFIRM THAT:

Neither I nor, to the best of my knowledge, information, and belief, the below stated business has:

- a. Agreed, conspired, connived, or colluded to produce a deceptive show of competition in the compilation of the accompanying bid or offer that is being submitted;
- b. In any manner, directly or indirectly, entered into any agreement of any kind to fix the bid price or price proposal of the Bidder or Offeror or of any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with the contract for which the accompanying bid or offer is submitted.

**9. AFFIRMATION REGARDING BRIBERY CONVICTIONS**

I FURTHER AFFIRM:

Neither I nor, to the best of my knowledge, information, and belief, the below business (as is defined in Section 16-101 (b) of the State Finance and Procurement Article of the Annotated Code of Maryland), or any of its officers, directors, partners, or any of its employees directly involved in obtaining or performing contracts with public bodies (as is defined in Section 16-101(f) of the State Finance and Procurement Article of the Annotated Code of Maryland), has been convicted of, or has had probation before judgment imposed pursuant to Criminal Procedure Article, Section 6-220 of the Annotated Code of Maryland, or has pleaded nolo contendere to a charge of, bribery, attempted bribery, or conspiracy to bribe in violation of Maryland law, or of the law of any other State or federal law, except as follows (indicate the reasons why the affirmation cannot be given and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of person(s) involved, and their current positions and responsibilities with the business):

---

Sign for Identification

Bid Security Bonds shall be submitted with each proposal in the amount of five (5%) percent of the total of the Base Bid and requested alternates.

Bid Bonds, except those of three (3) low bidders will be returned after the bid opening. Other bid bonds will be returned after the related contract has been executed. If no bid has been accepted within **ninety (90)** calendar days after the bid opening, then any bond may be returned upon demand of the bidder.

Failure to properly and completely fill in all blanks may be cause for rejection of this proposal. All alternates and unit prices called for in the Contract Documents must be submitted herewith.

**INDIVIDUAL PRINCIPAL**

In Presence of Witness: \_\_\_\_\_ FIRM NAME \_\_\_\_\_  
\_\_\_\_\_  
SIGNED \_\_\_\_\_  
ADDRESS \_\_\_\_\_  
TELEPHONE \_\_\_\_\_

**CO-PARTNERSHIP PRINCIPAL**

In Presence of Witness: \_\_\_\_\_  
\_\_\_\_\_  
ADDRESS \_\_\_\_\_ (Name of Corporation)  
TELEPHONE \_\_\_\_\_  
as to BY \_\_\_\_\_  
as to BY \_\_\_\_\_

**CORPORATE PRINCIPAL**

\_\_\_\_\_  
(Name of Corporation)  
ADDRESS \_\_\_\_\_  
\_\_\_\_\_  
TELEPHONE \_\_\_\_\_  
(Corporate Secretary)  
BY \_\_\_\_\_

\_\_\_\_\_  
(AFFIX CORPORATE SEAL)

\_\_\_\_\_  
Sign for Identification

The bidder represents, and it is a condition precedent to acceptance of this bid, that the bidder has not been a part to any agreement to bid a fixed or uniform price.

WITNESS:

\_\_\_\_\_  
(SEAL)

SUBSCRIBED AND SWORN TO Before me, a Notary Public of the State of \_\_\_\_\_  
County or City of \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

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

For Information Purposes Only: Has your company/firm been certified by the State of Maryland as a Minority Business Enterprise (Please check below.)

\_\_\_\_\_ Yes \_\_\_\_\_ No

***Forms to be Completed and submitted with the Bid:***

- 1. Standard Form of Proposal***
- 2. Bid Bond***
- 3. Attachment 'A' – Subcontractors***



**SUBCONTRACTORS:** All bidders shall submit their list of subcontractors concurrently with the Bid submission to the Washington County Purchasing Department. No change or deviation from this list shall be allowed except as determined by the Owner or the Owner's Representative:

- a. Concrete: \_\_\_\_\_
- b. Masonry: \_\_\_\_\_
- c. Roofing: \_\_\_\_\_
- d. Painting: \_\_\_\_\_
- e. Plumbing: \_\_\_\_\_
- f. Sprinkler: \_\_\_\_\_
- g. Mechanical: \_\_\_\_\_
- h. Mechanical Control Systems \_\_\_\_\_
- i. Electrical: \_\_\_\_\_
- j. Data and Telecom Systems (AMP Certified) \_\_\_\_\_
- k. Hazardous Materials Abatement \_\_\_\_\_
- l. Fire Alarm: \_\_\_\_\_
- m. Casework/Millwork: \_\_\_\_\_
- n. Floor and Wall Tile: \_\_\_\_\_

**SECTION 00250**

**SPECIAL PROVISIONS**

**(This SECTION must be Executed by the Successful Bidder)**

Contract No.: AC-FFR-221-28, (PUR-1261)

(This Document must be Executed by the Successful Bidder)

CONTRACT AGREEMENT BY AND BETWEEN THE

BOARD OF COUNTY COMMISSIONERS OF  
WASHINGTON COUNTY, MARYLAND

AND

Contractor

THIS CONTRACT AGREEMENT (hereinafter the "Contract"), is made this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by and between \_\_\_\_\_, (hereinafter the "Contractor") and the BOARD OF COUNTY COMMISSIONERS OF WASHINGTON COUNTY, MARYLAND, a body corporate and politic and a subdivision of the State of Maryland, (hereinafter the "County").

RECITALS

A. The contract is for the construction of Contract No. AC-FFR-221-28, (PUR-1261), Washington County Administration Complex: First Floor Renovation, Hagerstown, Maryland 21740, as shown in the drawings identified in the same manner, with a final approval date of August 15, 2014, on file at the Washington County Engineering Department, 80 West Baltimore Street, Hagerstown, Maryland, subject to all the conditions, covenants, stipulations, terms and provisions contained in the Specifications, the Specifications being in all respects incorporated herein by reference and made a part hereof as if attached or entirely stated herein, has recently been awarded to the Contractor by the County, at and for a sum equal to the prices and rates respectively named therefore in the bid.

B. One of the conditions of said award is that a formal contract should be executed by and between the Contractor and the County evidencing the terms of said award.

NOW, THEREFORE, in consideration of the mutual covenants, conditions and agreements herein contained, the parties hereby agree as follows:

1. The Contract Documents, except for modifications issued after the execution of this Contract, are enumerated as follows and are incorporated herein by reference and made a part hereof:

The executed Contract Agreement between the County and the Contractor, Bid Documents consisting of:

The Following Specifications:

Specifications:

- Division 0 – Conditions of the Contract
- Division 1 – General Requirements
- Division 2 – Site Construction
- Division 3 – Concrete
- Division 4 – Masonry
- Division 5 – Metals

*Division 6 – Wood and Plastic*  
*Division 7 – Thermal and Moisture Protection*  
*Division 8 – Doors and Windows*  
*Division 9 – Finishes*  
*Division 10 – Specialties*  
*Division 12 - Furnishings*  
*Division 15 – Mechanical*  
*Division 16 – Electrical*  
*Division 17 – Communications and Security*  
*Appendix*

*The Completed Project Bid Form:*

*Standard Form of Proposal*  
*Bid Bond*  
*Attachment “A” (Subcontractors)*

*Labor and Material Payment Bond*  
*Performance Bond*  
*Certificate of Insurance provided by Contractor*

*The following Drawings:*

**INDEX OF SHEET(S):**

CS-1            COVER SHEET  
CS-2            WALL TYPES & ABBREVIATIONS  
CS-3            FIRE PROTECTION PLAN & NOTES  
CS-4            PHASING PLAN

**ARCHITECTURAL**

D1.1            FIRST FLOOR DEMOLITION PLAN  
D3.1            DEMO ELEVATIONS  
A1.0            BASEMENT PLAN  
A1.1            FIRST FLOOR PLAN  
A1.2            FIRST FLOOR FURNITURE PLAN  
A1.3            ROOF PLAN  
A1.4            ROOF DETAILS  
A1.5            ROOF DETAILS  
A2.1            ROOM FINISH SCHEDULE  
A2.2            DOOR SCHEDULE  
A2.3            DOOR & WINDOW DETAILS  
A2.4            DOOR TYPES & FRAME ELEVATIONS  
A3.1            BUILDING ELEVATIONS  
A3.2            BUILDING ELEVATIONS  
A6.1            PARTIAL PLANS & INTERIOR ELEVATIONS  
A6.2            CASEWORK ELEVATIONS & DETAILS  
A6.3            INTERIOR ELEVATIONS  
A6.4            INTERIOR ELEVATIONS  
A8.1            FIRST FLOOR REFLECTED CEILING PLAN

**STRUCTURAL**

S1.1            TYPICAL STRUCTURAL NOTES & DETAILS

**MECHANICAL**

M0.1	BASEMENT FLOOR PLAN – HVAC DEMOLITION
M0.2	FIRST FLOOR PLAN – HVAC DEMOLITION
M1.1	BASEMENT FLOOR PLAN – HVAC NEW
M1.2	FIRST FLOOR PLAN – HVAC NEW
M1.3	ROOF PLAN – HVAC NEW
M1.4	FIRST FLOOR PLAN – REFRIGERANT PIPING
M2.1	DETAILS HVAC
M2.2	DETAILS HVAC
M2.3	SCHEDULES, NOTES & LEGEND – HVAC
M2.4	SCHEDULES – HVAC
M3.1	AUTOMATIC TEMP CONTROLS
M3.2	AUTOMATIC TEMP CONTROLS

**PLUMBING**

P0.1	BASEMENT FLOOR PLAN – PLUMBING DEMO/NEW
P0.2	FIRST FLOOR PLAN – PLUMBING DEMO
P1.1	FIRST FLOOR PLAN – PLUMBING NEW
P1.2	PARTIAL FIRST FLOOR PLANS – PLUMBING NEW
P2.1	PLUMBING/PIPING/SCHEDULES/DETAILS

**ELECTRICAL**

E0.1	BASEMENT FLOOR PLAN – ELECTRICAL DEMO
E0.2	FIRST FLOOR PLAN – ELECTRICAL DEMO
E0.3	SECOND, THIRD, ROOF PLANS – ELECTRICAL DEMO
E1.1	BASEMENT FLOOR PLAN – ELECTRICAL
E1.2	FIRST FLOOR PLAN – GENERAL POWER
E1.3	FIRST FLOOR PLAN – POWER
E1.4	ROOF PLAN – POWER
E2.1	FIRST FLOOR PLAN – LIGHTING
E3.1	BASEMENT FLOOR PLAN – FIRE ALARM
E3.2	FIRST FLOOR PLAN – FIRE ALARM
E3.3	SECOND FLOOR PLAN – FIRE ALARM
E3.4	THIRD FLOOR PLAN – FIRE ALARM
E4.1	ELECTRICAL SCHEDULES, DETAILS & RISERS
E4.2	PANELBOARDS

**COMMUNICATIONS AND SECURITY**

TE0.0	TELECOM LEGEND & ABBREVIATIONS
TE0.1	FIRST FLOOR PLAN – TELECOM DEMO
TE1.1	BASEMENT FLOOR PLAN – TELECOM
TE1.2	FIRST FLOOR PLAN – TELECOM
TE2.1	FIRST FLOOR – SECURITY
TE2.2	PART PLANS- TELECOM
TE3.1	TELECOM DETAILS
TE3.2	TELECOM DETAILS
TE3.3	TELECOM DETAILS
TE3.4	AUDIO VIDEO DETAILS & DIAGRAMS
TE3.5	AUDIO VIDEO DETAILS & DIAGRAMS
TE4.1	TELECOM NOTES

**SPECIAL PROVISIONS**

**CONTRACT NO. AC-FFR-221-28  
(PUR-1261)**

The following Addenda:

Addenda No. \_\_\_\_\_ Date \_\_\_\_\_; No. \_\_\_\_\_ Date \_\_\_\_\_; No. \_\_\_\_\_ Date \_\_\_\_\_  
No. \_\_\_\_\_ Date \_\_\_\_\_; No. \_\_\_\_\_ Date \_\_\_\_\_; No. \_\_\_\_\_ Date \_\_\_\_\_

2. The date of commencement and substantial completion of the project contemplated herein shall be as set forth in the Invitation to Bidders and stipulated by the Notice to Proceed or an authorized extension thereof.

3. The Contractor shall complete **Contract No. AC-FFR-221-28, (PUR-1261) Washington County Administration Complex: First Floor Renovation, Hagerstown, Maryland 21740** in accordance with each and every one of the conditions, covenants, stipulations, terms and provisions contained in the aforementioned Specifications, which in all respects are incorporated herein by reference and made a part hereof, and as shown on the aforementioned drawings, at and for a sum equal to the prices and rates respectively named therefore in the Standard Form Of Proposal and shall comply with and perform each and every obligation imposed upon it by the said Specifications or by the terms of said award.

4. The County shall comply with and perform each and every obligation imposed upon it by the said Specifications or by the terms of the said award.

5. The County shall pay the Contractor for the Contractor’s performance of the Contract the sum of \_\_\_\_\_ (\$ \_\_\_\_\_) hereinafter (The “Contract Sum”), based on the **Total Base Bid** when due and payable under the terms of the said Specifications and the terms of said award and shall be subject to additions and deductions as provided for in the Contract Documents.

6. Progress payments shall be made on account of the Contract Sum to the Contractor as set forth in the Contract Documents.

7. The Contractor hereby certifies that it is a corporation registered to do business in the State of Maryland with the Maryland State Department of Assessments and Taxation and shall remain so throughout the term of this Contract.

8. The Contractor hereby certifies that it has read and understood the provisions of the Washington County Purchasing guidelines dealing with conflicts of interest, and that it further certifies, represents and warrants to the County that there is no current conflict of interest and that the Contractor shall refrain from any such conflict of interest for the duration of this Contract.

9. This Contract was made and entered into in the State of Maryland and shall be governed and construed in accordance with the laws of the State of Maryland. As to the Contractor, this Agreement is intended to be a contract under seal and specialty.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Contract under their respective seals under the day and year first written above.

Attest:

\_\_\_\_\_  
Name of Corporation

**SPECIAL PROVISIONS**

**CONTRACT NO. AC-FFR-221-28  
(PUR-1261)**

\_\_\_\_\_  
Corporate Secretary

Attest:

\_\_\_\_\_  
Vicki C. Lumm, County Clerk

Approved for Execution:

\_\_\_\_\_  
Robert Slocum, P.E., Director  
Division of Engineering & Construction Management

Approved as to form and legal sufficiency:

\_\_\_\_\_  
John M. Martirano  
County Attorney

By: \_\_\_\_\_ (SEAL)  
Officer of Corporation

BOARD OF COUNTY COMMISSIONERS  
OF WASHINGTON COUNTY, MARYLAND

By: \_\_\_\_\_ (SEAL)  
Terry L. Baker, President

LABOR AND MATERIAL PAYMENT BOND

(This Document must be Executed by the Successful Bidder)

**Board of County Commissioners of Washington County, Maryland**

**Bond No.:** \_\_\_\_\_ **Bond Date:** \_\_\_\_\_ **Contract No.:** AC-FFR-221-28  
(PUR-1261)

KNOW ALL MEN BY THESE PRESENTS, that we \_\_\_\_\_

\_\_\_\_\_  
(Here insert full name and address or legal title of Contractor, including zip code)

hereinafter called the “**Principal**” and

\_\_\_\_\_  
(Here insert full name and address or legal title of Surety, including zip code)

a corporation organized and existing under the laws of the State of \_\_\_\_\_, and authorized to transact business in the State of Maryland, hereinafter called the “**Surety**”, are held and firmly bound unto the Board of County Commissioners of Washington County, Maryland, a body corporate and politic, hereinafter called the “**County**”, for the use and benefit of claimants as hereinafter defined, in the Penal Sum of \_\_\_\_\_ (\$ \_\_\_\_\_) lawful money, for the payment of which Penal Sum we bind ourselves, our heirs, executors, administrators, personal representatives, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into or will enter into a contract with the County, for *Contract No. AC-EAI-217-28, (PUR-1259), Washington County Administration Complex: First Floor Renovation, Hagerstown, Maryland 21740.* The contract referenced above and all items incorporated into the contract, together with any and all changes, extensions of time, alterations, modifications, or additions to the contract or to the work to be performed thereunder or to the Plans, Specifications, and Special Provisions, or any of them, or to any other items incorporated into the contract shall hereinafter be referred to as the “**Contract**”.

WHEREAS, it is one of the conditions precedent to the final award of the Contract that these presents be executed.

NOW, THEREFORE, the condition of this obligation is such that if the Principal shall promptly make payment to all claimants as hereinafter defined, for all labor and materials furnished, supplied and reasonably required for use in the performance of the Contract, then this obligation shall be null and void, otherwise it shall remain in full force and effect, subject to the following conditions:

1. A **Claimant** is defined to be any and all of those persons supplying labor and materials (including lessors of the equipment to the extent of the fair market value thereof) to the Principal or its subcontractors and sub-subcontractors in the prosecution of the work



**SPECIAL PROVISIONS**

**CONTRACT NO. AC-FFR-221-28  
(PUR-1261)**

provided for the Contract, entitled to the protection provided by Md. Code Ann., State Finance and Procurement Article, §17-101, *et seq.*, as from time to time amended.

- 2. The above-named Principal and Surety hereby jointly and severally agree with the County that every claimant as herein defined, who has not been paid in full may, pursuant to and when in compliance with the provisions of the aforesaid State Finance and Procurement Article, §17-101, *et seq.*, sue on this Bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant and have execution thereon. The County shall not be liable for the payment of any costs or expenses of any such suit.

The Surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract or to the work to be performed thereunder of the Specifications accompanying the same shall in any way affect its obligations on this Payment Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work or the Specifications.

This Payment Bond shall be governed and construed in accordance with the laws of the State of Maryland and any reference herein to the Principal or Surety in the singular shall include all entities in the plural who or which are signatories under the Principal or Surety heading below.

IN WITNESS WHEREOF, the Principal and Surety have set their hands and seals to this Payment Bond this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

**WITNESS:**

\_\_\_\_\_  
(Typed Name of Principal)

\_\_\_\_\_  
(Signed Name of Principal)

\_\_\_\_\_  
(Typed Name and title of witness)

\_\_\_\_\_  
(Signed Name of Witness)

\_\_\_\_\_  
(Seal)

\_\_\_\_\_  
(Typed Name and Telephone Number of Contact)

**WITNESS:**

\_\_\_\_\_  
(Typed Name of Surety)

\_\_\_\_\_  
(Signed Name of Surety)

\_\_\_\_\_  
(Typed Name and title of witness)

\_\_\_\_\_  
(Signed Name of Witness)

\_\_\_\_\_  
(Seal)

\_\_\_\_\_  
(Typed Name and Telephone Number of local agent)

**PERFORMANCE BOND**

(This Document must be Executed by the Successful Bidder)

**Board of County Commissioners of Washington County, Maryland**

**Bond No.:** \_\_\_\_\_ **Bond Date:** \_\_\_\_\_ **Contract No.:** AC-FFR-221-28  
(PUR-1261)

KNOW ALL MEN BY THESE PRESENTS, that we

\_\_\_\_\_  
(Here insert full name and address or legal title of Contractor, including zip code)

a corporation of the State of **Maryland** and authorized to do business in the State of Maryland,  
hereinafter called the “**Principal**” and

\_\_\_\_\_  
(Here insert full name and address or legal title of Surety, including zip code)

hereinafter called the “**Surety**”, are held and firmly bound unto the Board of County Commissioners of Washington County, Maryland, hereinafter called the “**County**”, Sum of \_\_\_\_\_ (\$ \_\_\_\_\_) lawful money of the United States for the payment of which sum well and truly to be made, the Principal and the Surety bind themselves, their heirs, personal representatives, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into or will enter into a contract with the County, for **Contract No. AC-FFR-221-28, (PUR-1261), Washington County Administration Complex: First Floor Renovation, Hagerstown, Maryland 21740**

(Here insert Project name, description, and location)

The contract referenced above and all items incorporated into the contract, together with any and all changes, extensions of time, alterations, modifications, or additions to the contract or to the work to be performed thereunder or to the Plans, Specifications, and Special Provisions, or any of them, or to any other items incorporated into the contract shall hereinafter be referred to as the “**Contract**”.

NOW, THEREFORE, during the original term of said Contract, during any extensions thereto that may be granted by the County, and during the guarantee and warranty period, if any, required under the Contract, unless otherwise stated therein, this Performance Bond shall remain in full force and effect unless and until the following terms and conditions are met:

1. Principal shall well and truly perform the Contract; and
2. Principal and Surety shall comply with the terms and conditions in this Performance Bond.

Whenever Principal shall be declared by the County to be in default under the Contract, the Surety may, within fifteen (15) days after notice of default from the County, notify the County of its election to either promptly proceed to remedy the default or promptly proceed to complete

**SPECIAL PROVISIONS**

**CONTRACT NO. AC-FFR-221-28  
(PUR-1261)**

the contract in accordance with and subject to its terms and conditions. In the event the Surety does not elect to exercise either of the above stated options, then the County thereupon shall have the remaining contract work completed, Surety to remain liable hereunder for all expenses of completion up to but not exceeding the penal sum stated above.

The Surety for value received hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract or to the work to be performed thereunder of the Specifications accompanying the same shall in any way affect its obligations on this Performance Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder of the specifications accompanying the same.

This Performance Bond shall be governed by and construed in accordance with the laws of the State of Maryland and any reference herein to Principal or Surety in the singular shall include all entities in the plural who or which are signatories under the Principal or Surety heading below.

IN WITNESS WHEREOF, Principal and Surety have set their hands and seals to this Performance Bond. If any individual is a signatory under the Principal heading below, then each such individual has signed below on his or her own behalf, has set forth below the name of the firm, if any, in whose name he or she is doing business, and has set forth below his or her title as a sole proprietor. If any partnership or joint venture is a signatory under the Principal heading below, then all members of each such partnership or joint venture, and each member has set forth below his or her title as a general partner, limited partner, or member of joint venture, whichever is applicable. If any corporation is a signatory under the Principal or Surety heading below, then each such corporation has caused the following: the corporation's name to be set forth below, a duly authorized representative of the corporation to affix below the corporation's seal and to attach hereto a notarized corporate resolution or power of attorney authorizing such action, and each such duly authorized representative to sign below and to set forth below his or her title as a representative of the corporation. If any individual acts as a witness to any signature below, then each such individual has signed below and has set forth below his or her title as a witness. All of the above has been done as of the Date of Bond shown above.

Signed, and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 2014, in four counterparts each of which shall without proof of accounting for the other counterparts be deemed an original hereof.

**WITNESS:**

\_\_\_\_\_  
(Typed Name of Principal)

\_\_\_\_\_  
(Signed Name of Principal)

\_\_\_\_\_  
(Typed Name and title of witness)

\_\_\_\_\_  
(Signed Name of Witness)

**SPECIAL PROVISIONS**

**CONTRACT NO. AC-FFR-221-28  
(PUR-1261)**

\_\_\_\_\_  
(Seal)

\_\_\_\_\_  
(Typed Name and Telephone Number of Contact)

**WITNESS:**

\_\_\_\_\_  
(Typed Name of Surety)

\_\_\_\_\_  
(Signed Name of Surety)

\_\_\_\_\_  
(Typed Name and title of witness)

\_\_\_\_\_  
(Signed Name of Witness)

\_\_\_\_\_  
(Seal)

\_\_\_\_\_  
(Typed Name and Telephone Number of local agent)

**END OF DOCUMENT**

**SECTION 00300**

**AIA DOCUMENT A201-1997**

**GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION**

 **AIA<sup>®</sup> Document A201<sup>™</sup> – 2007****General Conditions of the Contract for Construction****for the following PROJECT:***(Name and location or address)*

Washington County Administration Complex  
First Floor Renovation  
100 West Washington Street  
Hagerstown, Maryland 21740  
Washington Co. Project No. 28-221

**THE OWNER:***(Name, legal status and address)*

Board of County Commissioners of Washington County  
100 West Washington Street  
Hagerstown, MD 21740

**THE ARCHITECT:***(Name, legal status and address)*

Bushey Feight Morin Architects Inc.  
473 North Potomac Street  
Hagerstown, Maryland 21740  
BFM Project No. 14028

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**ADDITIONS AND DELETIONS:**

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

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

14 TERMINATION OR SUSPENSION OF THE CONTRACT

15 CLAIMS AND DISPUTES

Init.

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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 requirements.

#### **§ 1.1.2 THE CONTRACT**

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

#### **§ 1.1.3 THE WORK**

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

#### **§ 1.1.4 THE PROJECT**

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

#### **§ 1.1.5 THE DRAWINGS**

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

#### **§ 1.1.6 THE SPECIFICATIONS**

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

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

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

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

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

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

**§ 1.2.1** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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

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

### § 1.3 CAPITALIZATION

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

### § 1.4 INTERPRETATION

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

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

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

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

### § 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

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

## ARTICLE 2 OWNER

### § 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

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

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

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the

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portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 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. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

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

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

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

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

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

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

## ARTICLE 3 CONTRACTOR

### § 3.1 GENERAL

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

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

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

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### **§ 3.2 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 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

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

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

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

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

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

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

### **§ 3.4 LABOR AND MATERIALS**

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

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

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

### § 3.5 WARRANTY

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

### § 3.6 TAXES

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

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

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 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 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

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

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

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### § 3.8 ALLOWANCES

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

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

### § 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent 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.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

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

### § 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

### § 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

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

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

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

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

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

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

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

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

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

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

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

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completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

### **§ 3.13 USE OF SITE**

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

### **§ 3.14 CUTTING AND PATCHING**

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

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

### **§ 3.15 CLEANING UP**

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

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

### **§ 3.16 ACCESS TO WORK**

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

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

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

### **§ 3.18 INDEMNIFICATION**

**§ 3.18.1** To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

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

#### ARTICLE 4 ARCHITECT

##### § 4.1 GENERAL

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

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

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

##### § 4.2 ADMINISTRATION OF THE CONTRACT

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

§ 4.2.2 The 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. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

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

##### § 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

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

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

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

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§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

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

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

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

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

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

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

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

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 DEFINITIONS

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

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

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

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

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

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

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

## § 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

## § 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

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

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

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

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the

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Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

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

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

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

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

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

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

### **§ 6.2 MUTUAL RESPONSIBILITY**

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

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

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

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

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

### **§ 6.3 OWNER'S RIGHT TO CLEAN UP**

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

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## 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 be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

### § 7.2 CHANGE ORDERS

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

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

### § 7.3 CONSTRUCTION CHANGE DIRECTIVES

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

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

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

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

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

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

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

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount

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for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

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

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

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

#### § 7.4 MINOR CHANGES IN THE WORK

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

### ARTICLE 8 TIME

#### § 8.1 DEFINITIONS

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

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

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

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

#### § 8.2 PROGRESS AND COMPLETION

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

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

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

### § 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

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

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 CONTRACT SUM

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

### § 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

### § 9.3 APPLICATIONS FOR PAYMENT

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

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

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

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

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or

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encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

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

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

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

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

**§ 9.5.1** The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

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

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

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

#### **§ 9.6 PROGRESS PAYMENTS**

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

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

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

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

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

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

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

#### § 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

#### § 9.8 SUBSTANTIAL COMPLETION

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

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

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

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§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

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

#### § 9.9 PARTIAL OCCUPANCY OR USE

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

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

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

#### § 9.10 FINAL COMPLETION AND FINAL PAYMENT

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

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

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§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

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

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

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

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

### § 10.2 SAFETY OF PERSONS AND PROPERTY

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

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

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

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

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall 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 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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

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

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

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

#### § 10.3 HAZARDOUS MATERIALS

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

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

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

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

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

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

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## § 10.4 EMERGENCIES

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

## ARTICLE 11 INSURANCE AND BONDS

### § 11.1 CONTRACTOR'S LIABILITY INSURANCE

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

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

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

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

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

### § 11.2 OWNER'S LIABILITY INSURANCE

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

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### § 11.3 PROPERTY INSURANCE

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

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

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

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

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

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

### § 11.3.2 BOILER AND MACHINERY INSURANCE

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

### § 11.3.3 LOSS OF USE INSURANCE

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

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

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment

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property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

#### § 11.3.7 WAIVERS OF SUBROGATION

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

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

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

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

#### § 11.4 PERFORMANCE BOND AND PAYMENT BOND

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

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

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## ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

### § 12.1 UNCOVERING OF WORK

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

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

### § 12.2 CORRECTION OF WORK

#### § 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

#### § 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 an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year 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 or Architect, the Owner may correct it in accordance with Section 2.4.

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

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the 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.

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### § 12.3 ACCEPTANCE OF NONCONFORMING WORK

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

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

### § 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 such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

### § 13.3 WRITTEN NOTICE

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

### § 13.4 RIGHTS AND REMEDIES

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

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

### § 13.5 TESTS AND INSPECTIONS

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

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

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by

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such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

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

#### § 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

#### § 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

### 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 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

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

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

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**§ 14.2 TERMINATION BY THE OWNER FOR CAUSE**

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

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

**§ 14.2.2** When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

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

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

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

**§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE**

**§ 14.3.1** The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

**§ 14.3.2** The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

**§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE**

**§ 14.4.1** The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

**§ 14.4.2** Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

**§ 14.4.3** In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

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## **ARTICLE 15 CLAIMS AND DISPUTES**

### **§ 15.1 CLAIMS**

#### **§ 15.1.1 DEFINITION**

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

#### **§ 15.1.2 NOTICE OF CLAIMS**

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

#### **§ 15.1.3 CONTINUING CONTRACT PERFORMANCE**

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

#### **§ 15.1.4 CLAIMS FOR ADDITIONAL COST**

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

#### **§ 15.1.5 CLAIMS FOR ADDITIONAL TIME**

**§ 15.1.5.1** If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

**§ 15.1.5.2** 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, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

#### **§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES**

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

### **§ 15.2 INITIAL DECISION**

**§ 15.2.1** Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

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§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

### § 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

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§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

#### § 15.4 ARBITRATION

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

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

#### § 15.4.4 CONSOLIDATION OR JOINDER

§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.

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# **Additions and Deletions Report for** **AIA® Document A201™ – 2007**

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 08:57:03 on 08/14/2014.

## **PAGE 1**

Washington County Administration Complex  
First Floor Renovation  
100 West Washington Street  
Hagerstown, Maryland 21740  
Washington Co. Project No. 28-221

...

Board of County Commissioners of Washington County  
100 West Washington Street  
Hagerstown, MD 21740

...

Bushey Feight Morin Architects Inc.  
473 North Potomac Street  
Hagerstown, Maryland 21740  
BFM Project No. 14028

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

I, Linda L. Deibert, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 08:57:03 on 08/14/2014 under Order No. 1441553741\_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2007, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

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

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

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

**SECTION 00350**  
**SUPPLEMENTAL CONDITIONS TO THE 2007 - GENERAL CONDITIONS**  
**OF THE CONTRACT FOR CONSTRUCTION**

## **SUPPLEMENTARY GENERAL CONDITIONS**

The "Supplementary General Conditions" contains changes and additions to the "General Conditions of the Contract for Construction". Where any part of the General Conditions is modified as bound by the Supplementary General Conditions, the unaltered provisions shall remain in effect.

### **TABLE OF ARTICLES**

#### **Articles in General Conditions of the Contract for Construction:**

Articles 1 through 15 (See AIA Document A201-2007).

#### **Article(s) - Amended in Supplementary General Conditions:**

- 1      General Provisions**
- 2      Owner**
- 3      Contractor**
- 4      Architect**
- 7      Changes in the Work**
- 8      Time**
- 9      Payments and Completion**
- 10     Protection of Persons and Property**
- 11     Insurance and Bonds**
- 13     Miscellaneous Provisions**
- 14     Termination or Suspension of the Contract**
- 15     Claims and Disputes**



## **Amendment to Article 1 of General Conditions – GENERAL PROVISIONS:**

### **Revisions to Article 1:**

**§1.1.1** Delete paragraph §1.1.1. in its entirety and substitute the following:

**§1.1.1.** The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Standard Form of Proposal, Pre-Bid Meeting Minutes (when incorporated by reference through Addenda), Conditions of the Contract (General, supplementary, Special and other Conditions), drawings, Specifications, Addenda issued prior to execution of the Contract, other documentations listed in the Agreement 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 requirements.

**§1.5.1.** Delete all of Paragraph §1.5.1 in its entirety and substitute the following:

**§1.5.1.** The Drawings, Specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultant are Instruments of Service through which the Work to be executed by the Contractor is described. The Contractor may retain one record set. Neither the Contractor nor any Subcontractor, or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Owner, the Architect or the Architect's consultants, and the Owner shall retain ownership of all documents. All copies of Instruments of Service, except the Contractor's record set, shall be returned or suitably accounted for to the Architect, on request, upon completion of the Work. Specifications and other documents prepared by the Architect and the Architect's consultants, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractors, Sub-subcontractors or material or equipment supplier on other projects.

### **Additions to Article 1:**

#### **§1.1.9. STANDARD FORM OF PROPOSAL:**

Any reference in the Contract Documents to the "Bid Form" shall be interpreted to mean the "Standard Form of Proposal".

#### **§1.1.10. COMPLETED IN EVERY RESPECT:**

1. After the Contractor notifies the Architect in writing that work is ready for final inspection, and:
2. A "punch list" of deficiencies is prepared by the Architect and Owner at the time of the final inspection, and:
3. Items on the "punch list" have been corrected by the Contractor and their correction

- verified by the Architect, and:
4. The Architect issues a Certificate of Final Completion.

**§1.1.11. Additional Definitions:**

“Provide” means to furnish and install.

“Exposed” means showing in any or all parts at completion of the work under this Contract.

“Where shown” means as-shown or where indicated referring to the drawings, details, shop drawings and schedules.

“Approved” means approved, selected, directed and/or authorized by the Architect unless otherwise specified.

“Excludes”, under the headings of SCOPE; means from this section only.

**§1.2.4. CONVENIENCE OF REFERENCE**

For convenience of reference and to facilitate letter of subcontractors, specifications are separated into titled sections. Such separation, however, shall not make the Architect an arbiter to establish limits to the contracts between the Contractor and Subcontractors. The Contractor only shall be recognized as a part of this Contract and it shall be his responsibility to turn over to the Owner a project complete in all respects and in accordance with the Contract Documents. Unless a provision within a specification section provides alternatives, the specifications are written in the form of a directive to the Contractors, using imperative statements. For brevity and to avoid repetition, such phrases as "The Contractor shall" are intentionally omitted; omitting words or phrases shall be supplied in inference.

**§1.2.5. RESOLVING CONFLICTS AND INCONSISTENCIES AMONG THE CONTRACT DOCUMENTS**

The Contract Documents shall be interpreted as a whole. It shall be assumed that every provision was intended to have some effect; however it may be necessary to prefer one provision over another.

Where one clause deals generally with a problem and another deal more specifically with the same problem, the specific takes precedence over the general. Operative clauses take precedence over “whereas” clauses that seek to give the background of the issue. Inconsistencies between printed, typed and handwritten provisions, handwritten provisions will be preferred over typed and typed preferred to printed. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. Specification includes the furnishing of all material, labor equipment, plant, tools, services and appliances and performing all operations in connection with the fabrication and installation of items, complete, as shown on the drawings and/or specified, subject to the General Conditions and Supplementary Conditions (if any) and terms of the Contract. Where Supplementary General or Special Conditions conflict with General Conditions, the former shall govern. In the event of conflict or inconsistency within the drawings, within the specifications, or between drawings and specifications, Architect's decision as to intent of the Contract Documents shall be final.

**§1.4.2. INCONSISTENCIES FOUND DURING THE BIDDING PHASE**

Conflicts and inconsistency found during the bidding phase shall be called to the Owner’s attention immediately. A correction or clarification will be made by Addendum.

### **§1.4.3. DIMENSIONING AND SCALE**

Adhere to dimensions though differing from scale measurements; in the absence of dimensions or in case of doubt as to the proper measurements, consult Architect. Detailed drawings take precedence over those of small scale and specifications take precedence over drawings.

### **Amendment to Article 2 of General Conditions - OWNER:**

#### **Revisions to Article 2:**

**§2.1.1.** Delete Paragraph §2.1.1. in its entirety and substitute the following:

**§2.1.1** The Owner is the Board of County Commissioners of Washington County, MD and is referred to throughout the Contract Documents as if singular in number. The Director of the Division Engineering and Construction Management for Washington County is the Owner's authorized representative with respect to all matters requiring the Owner's approval or authorization. The Director shall designate a Project Manager who will interact on a daily basis with the Contractor and Architect to facilitate completion of the project. The Architect's authority is provided in Subparagraph 4.2.1. The term "Owner" means the Owner or the Owner's authorized representative.

**§2.1.2.** Delete Paragraph §2.1.2 in its entirety.

**§2.2.2.** Delete Paragraph §2.2.2 in its entirety and substitute the following:

**§2.2.2.** Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under section 3.7.1., the Owner shall secure and pay for necessary approvals, easements, assessment and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. Any permits, fees, approvals, easements, assessments and/or charges required for construction associated with the Contractors means and methods shall be the responsibility of the Contractor.

**§2.2.3.** Delete Paragraph §2.2.3 in its entirety and substitute the following:

**§2.2.3.** The Owner may furnish surveys describing the physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of the information when specific dimensions, elevations and physical locations are stipulated in the contract documents, but shall exercise proper precautions relating to the safe performance of the work. It shall be the express responsibility of the Contractor to contact Miss-Utility to mark the location of utilities and exercise extreme care while excavating as to prevent contact with any underground utility system. Information and data furnished from subsurface soil investigations are furnished for the Contractor's information and the Owner does not represent or warrant that this available information is either accurate or complete. Subsurface information is to be expressly understood that the Architect, Owner, Soils Engineer (Geotechnical Engineer), will not be responsible for any interpretation or conclusion drawn there from. The Contractor shall excavate to the grades, slopes, lines, and levels indicated irrespective of the materials encountered with no increase in the contract cost, unless stipulated otherwise elsewhere in the contract documents. The Contractor shall

be responsible for verifying or supplementing the subsurface data to the extent that he considers necessary.

**§2.2.5.** Delete Paragraph §2.2.5 in its entirety and substitute the following:

**§2.2.5** The Owner will provide, free of charge, fifteen (15) complete sets of plans and specifications to the Contractor for execution of the Work.

### **Amendment to Article 3 of General Conditions - CONTRACTOR**

#### **Revisions to Article 3:**

**§3.4.3.** Delete Paragraph §3.4.3. in its entirety and substitute the following:

**§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 Owner may require removal of anyone from the site who is deemed disruptive behaving in an inappropriate manner. The Contractor shall not permit employment of unfit persons or persons not properly skilled in assigned tasks to them or illegal aliens meeting the federal government definition, as such.

**§3.9.2.** Revise Paragraph §3.9.2. in its entirety and substitute the following:

**§3.9.2.** Within (10) calendar days following Award of the Contract, the Contractor shall furnish to the Owner a detailed resume of the proposed Superintendent for the project. The Owner may make such investigations as he deems necessary to determine the qualifications of the proposed Superintendent to perform his duties, and the Contractor shall furnish to the Owner all such information and data for this purpose as the Owner may request. The Owner reserves the right to reject the Superintendent if the evidence submitted by or investigation of, the Contractor fails to satisfy the Owner that the Superintendent is qualified to perform his duties.

#### **Additions to Article 3:**

**§3.4.4.** The Contractor shall comply with the Immigration and Nationality Act (INA) which includes provisions addressing employment eligibility, employment verification, and nondiscrimination. Under the INA, the Contractor may hire only persons who may legally work in the United States (i.e., citizens and nationals of the U.S.) and aliens authorized to work in the U.S. The Contractor shall verify the identity and employment eligibility of anyone employed or to be employed, including completion of the Employment Eligibility Verification Form (I-9). The Contractor shall establish appropriate procedures and controls to insure that no services under this Contract will be performed by any worker who is not legally eligible to perform such services or for employment.

**§3.4.5.** Failure by the Contractor or his/her Sub-Contractors to comply with the provisions of above paragraph (a) will be grounds for termination of the Contract.

**§3.8.3.2.** The Contractor shall allow reasonable time for the Owner to make such selections.

**§3.9.3.** If the Superintendent does not perform his duties to the Owner's satisfaction, the Owner may order him removed and the Contractor shall comply therewith. The Owner under this provision will allow no claim for actions.

### **§3.10.3. SCHEDULE MEETINGS**

The Contractor shall meet with the Owner and the Architect (unless the architect's absence is excused by the Owner) at least monthly to discuss in detail the Contractor's updating of the schedule, the necessity for revisions or corrections in the schedule or updates, and all other issues or matters relating to the scheduling of the project and the Contractor's obligation under the project respecting scheduling. This meeting shall be in addition to the progress meetings required elsewhere in the Contract Documents.

### **Amendment to Article 4 of General Conditions: ARCHITECT**

#### **Revisions to Article 4:**

**§4.2.1.** Delete all of Paragraph §4.2.1 in its entirety.

### **Amendment to Article 7 of General Conditions: CHANGES IN THE WORK:**

#### **Revisions to Article 7:**

**§7.3.10.** Delete Paragraph §7.3.10. in its entirety and substitute the following:

**§7.3.10.** When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Project Manager will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

1. A written request for a change in the work may be made by Owner, the Architect, or the Contractor, but only the Owner shall authorize and approve the change.
2. The change will be issued in the form of a written "Change Order Form", signed by the Owner and the Contractor, which authorizes the change in the work, indicates the mutually agreed upon price which shall be added or deducted from the contract price, and the extent to which the contract time shall be increased or decreased.
3. The Contractor shall furnish in duplicate to the Owner and the Architect a fully itemized breakdown of the quantities and prices used in computing the value of any change that might be requested. All written requests for a change in the work and/or time extensions must include the full explanation and justification for the change regardless of its nature.
4. For all work to be performed by a subcontractor, the Contractor shall furnish the subcontractor's itemized proposal, which shall contain original signature by an authorized representative of the subcontracting firm. If requested by the Owner or

Architect, proposals from suppliers or other supporting data to substantiate the Contractor's or the subcontractor's cost shall be furnished.

5. All proposals and breakdowns shall be submitted promptly.
6. When changes, alterations, deductions or additions are so ordered, the value of such work will be determined in the following ways:
  - A. When unit prices are stated in the Contract or have been subsequently agreed upon, by application of these unit prices.
  - B. A lump sum price agreed to by both the Owner and the Contractor.
  - C. If job conditions or the extent of the change prohibit the use of either 6-A or 6-B a price arrived at by performing the work on a cost plus not to exceed basis.
  - D. If a change involves merely a credit, the Contract price will be reduced by the amount it would have cost the Contractor if the omitted item or work had not been eliminated; including overhead and profit. However, the Contractor and the subcontractor will be allowed to retain a sum not in excess of three percent (3%) for handling.
  - E. If a change involves both an extra and a credit, both sums shall be shown and the two sums balanced to determine the adjusted total cost or credit. No allowance to the Contractor shall be made or allowed for loss of anticipated profits on account of any changes in the work.
  - F. Unless otherwise specified, the allowable mark-up for combined overhead and profit for work performed by the Contractor with his own forces will be based on the monetary value of the work in accordance with the following schedule:

Value of the Work	Combined Overhead and Profit
\$0 to \$1,000	25%
\$1,001 to \$5,000	20%
\$5,001 to \$10,000	17%
\$10,001 to \$25,000	15%
Over \$25,000	Negotiated but not to exceed 15%

- G. For work performed by a subcontractor with his own organization the percentages for combined overhead and profit will be as outlined in 6-F. On work partly or solely performed by a subcontractor, the Contractor will be allowed eight percent (8%) of the total cost of the subcontractor's labor, materials, overhead, net profit only, + 1 1/2% for bond/insurance.

**Additions to Article 7:**

**§7.3.11.** When the Contractor and the Owner fail to agree upon a lump sum price or method as outlined in §7.3.10.6., above, the Owner shall have the right to issue a Construction Change Directive for the work to be accomplished on a time and material basis. A correct account shall be kept by the contractor and approved by the Owner and/or the Architect of the actual cost of all labor and materials as directed by the Owner and/or the Architect. To these costs shall be added percentage allowances for overhead and profit as stated in Paragraph F, above. Receipted invoices shall be submitted to the

Owner to validate the cost of all shop fabricated material and all other materials supplied. Certified payrolls shall be submitted for labor costs.

**§7.3.12.** On all work as defined in Article 12, no Contractor will be allowed any expenses, overhead or profit for employment of another subcontractor to perform work for him.

**§7.3.13.** Further on work covered by Change Order the Contractor will be reimbursed for his expenditures for Workmen's Compensation insurance, Social Security Taxes and Unemployment compensation covering men actually engaged upon the work and the actual increased cost of bond. These without any percentage added.

**§7.3.14.** The cost of foremen and superintendents may be added only when the Change Order makes necessary the hiring or additional supervisory personnel or makes their employment for time additional to that required by the basic Contract.

**§7.3.15.** If the Contractor and the Owner cannot agree as to the extent that the contract time shall be increased for extra work or the extent the contract time shall be reduced for work omitted by the Owner, the increase or decrease, as the case may be, shall be in the same proportion of the original Contract as the cost of the additional work; including overhead and profit or the amount of the omitted work; including overhead.

**§7.3.16.** No order for change at any time or place shall in any manner or to any extent relieve the Contractor of any of his obligations under the Contract.

**§7.3.17.** The Architect with the concurrence from the Owner shall have authority to make minor changes in the work not involving extra cost, and not inconsistent with the purposes of the building. Otherwise, except in any emergency endangering life or property, no extra work or change shall be made unless a written order from the Owner and/or the Architect has been received by the Contractor. No claim for addition to the contract sum or time of completion shall be valid unless so ordered.

**Amendment to Article 8 of General Conditions: TIME:**

**Revisions to Article 8**

**§8.3.** Delete Article §8.3 Delays and Extension of Time, in its entirety and substitute the following:

**§8.3. DELAYS AND EXTENSION OF TIME**

It is hereby understood and mutually agreed, by and between the Contractor and the Owner, that the date of beginning and the time for completion as specified in the Contract of the work to be done hereunder are essential conditions of this Contract. It is intended that the work shall commence within ten (10) calendar days immediately after the date of Notice to Proceed and that the entire work shall be substantially complete in every respect so that the Owner may occupy the work or designated portion thereof for the use for which it is intended.

**§8.3.2.** If the Contractor shall neglect, fail or refuse to complete the work within the time herein

specified, or any proper extension thereof granted by the Owner, then the Contractor does hereby agree, as a part consideration for the awarding of this Contract, to pay to the Owner liquidated damages as stipulated in the Contract Documents, not as a penalty but as liquidated damages for such breach of Contract as hereinafter set forth, for each and every calendar day that the Contractor shall be in default after the time stipulated in the Contract for completing the work. The said amount is fixed and agreed upon by and between the Contractor and the Owner because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain, and said amount is agreed to be the amount of damages which the Owner would sustain.

**§8.3.3.** It is further agreed that where under the Contract, additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be of the essence of this contract; provided, that the Contractor shall not be charged with liquidated damages when the Owner determines that the Contractor is without fault and the Contractor's reasons for the time extensions are acceptable to the Owner; provided, further, that the Contractor shall not be charged with liquidated damages when the delay in completion of the work is due.

1. To any preference, priority or allocation order duly issued by the Government.
2. To unforeseeable cause beyond the control and without the fault or negligence of the Contractor, including but not restricted to changes ordered in the work, or by labor disputes, fire, unusual delay in transportation, unavoidable casualties or any cause beyond the Contractor's control, or by delay authorized by the Owner pending determination, or by any other cause which the Architect (with the Owner's approval) determines may justify the delay.

**§8.3.4.** Requests for extensions of completion time will be reviewed by the Owner, after written application is made for a time extension to the Architect. Any request for an extension of time is to be made immediately upon occurrence of conditions which in the opinion of the detailed proof given for all delays beyond the Contractor's control, these to be made in writing to the Architect. No time extension will be allowed except after written concurrence of the Architect and formal approval thereof by Owner.

### **§8.3.5. WEATHER**

**§8.3.5.1.** Definition of rain and drying days:

1. Rainfall sufficient to result in a workday being potentially lost due to rain (rain day) shall be defined as liquid precipitation greater than 0.10 inch, measured in general vicinity to the jobsite as determined by the Architect.
2. It shall be considered normal for the workday immediately following a rain day of precipitation greater than 1.00 inch to potentially be lost due to wet ground conditions (drying day). The Owner may allow additional drying days if deemed reasonable, in its discretion. It shall be the Contractor's obligation to provide sufficient justification and supporting documentation to the Owner for review and approval for designation of a rain day or drying day.



## **§8.3.5.2. UNUSUALLY SEVERE WEATHER**

### **§8.3.5.2.1. RAIN**

To qualify as usually severe weather due to rain, the number of actual weekdays lost due to rain and drying days must be greater than that calculated for the month in question using the following procedure.

1. Using the last ten (10) years of weather data for the project location from the National Oceanic and Atmospheric Administration (NOAA) or the Greg Keefer Local Weather Observer website (<http://i4weather.net/>) or similar source acceptable to the Owner, Contractor shall compute the average number of weekdays lost due to rain days and drying days for the month in question and the standard deviation from the average.
2. Contractor shall then add the average number of weekdays lost to the standard deviation. The sum (the average plus the standard deviation) shall be considered normal for the month in question.
3. Actual weather impact shall be calculated by first determining the actual lost rain weekdays during each month in question. If any of the following conditions existed on a given weekday, the day will be deducted from the total actual rain days for the month to determine the net number of weekdays lost due to rain:
  - A. Rainfall occurred on a non-work weekday such as a holiday;
  - B. Rainfall occurred at a time when no weather-dependant work was in Progress or occurred during planned or unplanned shutdowns due to other (non-weather) circumstances such as equipment failure, strikes, delays, etc.; or
  - C. Contractor was still working or able to work on all weather dependant activities to the extent that production was or could have been within actual normal levels established on the project (average plus or minus the standard deviation).

### **§8.3.5.2.2. TIME EXTENSIONS FOR RAIN**

If the net number of weekdays lost to rain is less than the normal in question (average rain days and drying days plus one standard deviation), no time adjustment will be made. If the net number of weekdays lost to rain is more than the normal number for the month in question, an excusable and non-compensable time extension will be granted. No adjustments will be made for the time between the start date stated in the Notice to Proceed and the first day of the following month or for the last partial month.

### **§8.3.5.3. OTHER WEATHER CONDITIONS**

Time extensions for delays due to unusual weather conditions other than rain (such as snow, extreme cold or heat, high winds, etc.) will be considered only to the extent Contractor can prove conditions were unusually severe, and they caused actual delay to the adjusted as-planned/as-built critical path. Any extension authorized by the Owner under this provision shall be excusable and non-compensable.

**§8.3.5.4. SCHEDULING OF ADVERSE WEATHER DAYS**

The Contractor’s progress schedule must reflect all phases of the work and anticipate adverse weather delays in all weather dependant activities. The following schedule of monthly adverse weather delays based on National Oceanic Atmospheric Administration (NOAA), Local Weather Observer or similar data source acceptable to the Owner may constitute a baseline for monthly weather time evaluations:

Monthly Anticipated Adverse Weather Delays Workdays Based on 5 Day Work Week					
January	February	March	April	May	June
82	7	8	8	8	7
July	August	September	October	November	December
5	6	4	6	5	5

The above summary reflects the total average number of weekdays lost using the weather data from BWI Airport and is described as: days of rainfall greater than 0.10 inch and days considered normal weekdays that follow a rain day greater than 1.0 inch.

**Amendment to Article 9 of General Conditions: PAYMENTS AND COMPLETION**

**Revisions to Article 9**

**§9.3.1.** Delete Paragraph §9.3.1 in its entirety and substitute the follows:

**§9.3.1.** At least ten (10) days before the date established for each progress payment, the Contractor shall submit to the Architect and itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2., for completed portions of the work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor’s right to payment as the Owner or Architect may require, such as copies of requisitions from subcontractors and material suppliers, and shall reflect a five (5%) percent retainage on all Contractor’s Applications for Payment.

**Amendment to Article 10 of General Conditions: PROTECTION OF PERSONS AND PROPERTY**

**Revisions to Article 10**

**§10.2.4.** Delete Paragraph §10.2.4 in its entirety and substitute the following:

**§10.2.4.** When use or storage of explosives or other hazardous materials or equipment or usual 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. No use or storage of explosives or other hazardous materials will be permitted on the premises without prior written notification and approval from the Owner.

**§10.3.3.** Delete all of Paragraph §10.3.3 in its entirety.

**Amendment to Article 11 of General Conditions: INSURANCE AND BONDS**

**Revisions to Article 11**

**§11.3.** Delete Section §11.3 PROPERTY INSURANCE in its entirety.

**Additions to Article 11:**

**§11.5. INSURANCE REQUIREMENTS FOR INDEPENDENT CONTRACTORS**

**§11.5.1.** The Contractor shall provide the following additional insurance limits beyond the County's contractor limits, stipulated in Paragraph 11.5.2.:

1. Primary General Liability: \$2,000,000 each occurrence and \$2,000,000 aggregate.
2. Umbrella Liability: \$5,000,000 each occurrence and \$5,000,000 aggregate.
3. Automobile Liability: \$1,000,000 each occurrence and \$1,000,000 aggregate.
4. Worker's compensation: Statutory
5. Builder's Risk: Full replacement cost of the structure under construction, plus debris removal coverage and ordinance coverage for all risk perils, and cost of materials onsite that have not yet been installed.

All other provisions and requirements of the County's Insurance policy remain in effect for the Washington County INSURANCE REQUIREMENTS FOR INDEPENDENT CONTRACTORS (below).

§11.5.2. Additional insurance requirements for independent contractors shall be consistent with the Owner’s policy regarding same, as follows:

**POLICY TITLE:**                   **Insurance Requirements for Independent Contractors**

**ADOPTION DATE:**           August 29, 1989

**EFFECTIVE DATE:**           September 1, 1989

**FILING INSTRUCTIONS:**

**I.     PURPOSE**

To protect Washington County against liability, loss or expense due to damaged property, injury to or death of any person or persons and for care and loss of services arising in any way, out of, or in connection with or resulting from the work or service performed on behalf of Washington County.

**II.    ACTION**

The following should be inserted in all Independent Contractor Contracts:

“The Contractor shall procure and maintain at his sole expense and until final acceptance of the work by the County, insurance as hereinafter enumerated in policies written by insurance companies admitted in the State of Maryland, have A.M. Best rating of A- or better or its equivalent, and acceptable to the County.”

1.     **Workers Compensation:** The Contractor agrees to comply with Workers Compensation laws of the State of Maryland and to maintain a Workers Compensation and Employers Liability Policy.

Minimum Limits Required:

Workers Compensation-	Statutory
Employers Liability -	\$100,000 (Each Accident)
	\$500,000 (Disease - Policy Limit)
	\$100,000 (Disease - Each Employee)

2.     **Comprehensive General Liability Insurance:** The Contractor shall provide Comprehensive General Liability including Products and Completed Operations.

Minimum Limits Required:

\$1,000,000 combined single limit for Bodily Injury and Property Damage.

Such insurance shall protect the County, its agents, elected and appointed officials, commission members and employees, and name Washington County on the policy as additional insured against liability, loss or expense due to damaged property (including loss of use), injury to or death of any person or persons and for care and loss of services arising in any way, out of, or in connection with or resulting from the work of service performed on behalf of Washington County.

The Contractor is ultimately responsible that Subcontractors, if subcontracting is authorized, procure and maintain, at their sole expense and until final acceptance of the work by the County, insurance as hereinafter enumerated in policies written by insurance companies admitted in the State of Maryland, have A.M. Best rating of A- or better or its equivalent, and acceptable to the County.

- 3. **Business Automobile Liability:** The Contractor shall provide Business Auto Liability including coverage for all leased, owned, non-owned and hired vehicles.

Minimum Limits Required:  
\$1,000,000 combined single limit for bodily Injury or Property Damage.

**Certificate(s) of Insurance:** The Contractor shall provide certificates of insurance requiring a 30 day notice of cancellation to the Insurance Department, Board of County Commissioners of Washington County prior to the start of the applicable project.

Approval of the insurance by the County shall not in any way relieve or decrease the liability of the Contractor. It is expressly understood that the County does not in any way represent that the specified limits of liability or coverage or policy forms are sufficient or adequate to protect the interest or liabilities of the Contractor.

All responsibility for payment of any sums resulting from any deductible provisions, corridor, or self-insured retention conditions of the policy or policies shall remain with the Contractor.

**General Indemnity:** The Contractor shall indemnify, defend and save harmless the Board of County Commissioners of Washington County, its appointed or elected officials, commission members, employees and agents for any and all suits, legal actions, administrative proceedings, claims, demands, damages, liabilities, interest, attorneys fees, costs and expenses of whatsoever kind of nature, whether arising before or after final acceptance and in any manner directly or indirectly caused, occasioned or contributed to in whole or in part by reason of any act, error or omission, fault or negligence whether active or passive by the Contractor, or any one acting under its direction, control or on its behalf in connection with or incident to its performance of the Contract.

Revision Date: August 27, 1991  
Effective Date: August 27, 1991  
Revision Date: March 4, 1997  
Effective Date: March 4, 1997

**SECTION 00500**  
**DRAWING INDEX**

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**Amendment to Article 13 of General Conditions: MISCELLANEOUS PROVISIONS**

**Revisions to Article 13:**

§13.2.2. Delete all of Paragraph §13.2.2 in its entirety.

**Amendment to Article 14 of General Conditions: TERMINATION OR SUSPENSION OF THE CONTRACT**

§14.1. Delete all of Section §14.1 in its entirety.

**Amendments to Article 15 of General Conditions: CLAIMS AND DISPUTES**

**Revisions to Article 15:**

**Additions to Article 15:**

**§15.1.7. CLAIMS FOR CONCEALED OR UNKNOWN CONDITIONS**

The Contract Sum shall be equitably adjusted by Change Order upon claim by either party made within twenty-one (21) calendar days after the first observance of any one of the following conditions:

1. Concealed conditions encountered in the performance of the Work below the surface of the ground be at variance with the conditions indicated by the Contract Documents;
2. Should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Contract Documents be encountered;
3. Should unknown physical conditions below the surface of the ground or should concealed or unknown structure of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this contract, be encountered.

In addition to the above, the Contractor shall not disturb or alter the differing site conditions before giving proper notification to the Owner's Representative and the Architect opportunity for inspection.

**§15.1.8. CLAIMS ALLEGING DESIGN ERROR OR OMISSION**

Claims, including those alleging an error or omission by the Architect shall be referred initially to the Architect for recommendation to the Owner. An initial decision by the Architect shall be required as a condition precedent to mediation or litigation of all Claims between the Contractor and Owner arising prior to the date final payment is due, unless (30) calendar days have passed after the Claim has been referred to the Architect with no decision having been rendered by the Architect.

**END OF SUPPLEMENTARY CONDITIONS TO THE GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION.**

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