REQUEST FOR QUALIFICATIONS AND INVITATION TO PREQUALIFY TO BID
FOR

GREENVIEW KNOLLS ELEMENTARY SCHOOL
VRF SYSTEM REPLACEMENT
45711 Military Lane, Great Mills, MD 20634

RFP#: SMCPS-2027-05-DSS-DC

COMMISSIONED BY:

St. Mary's County Public Schools
23160 Moakley Street
Leonardtown, Maryland 20650

Phone: (301) 475-4256

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Mrs. Cathy Allen, Vice Chairman
Mrs. Mary Washington, Member
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Superintendent of Schools

Ms. Paola Laino, Assoc. AIA, Director of Design and Construction
Mr. Wes King, CDT, Project Management Coordinator II

PREPARED BY:
St. Mary's County Public Schools
Department of Design and Construction
27190 Point Lookout Road
Loveville, Maryland 20656

October 29, 2026

PREQUALIFICATION PACKAGE

GREENVIEW KNOLLS ELEMENTARY SCHOOL

VRF SYSTEM REPLACEMENT

RFP# SMCPS-2027-05-DSS-DC

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REQUEST FOR QUALIFICATIONS AND INVITATION TO PREQUALIFY TO BID

Greenview Knolls Elementary School
VRF System Replacement
45711 Military Lane, Great Mills, MD 20634
St. Mary's County Public Schools
Leonardtown, Maryland

Contractors interested in submitting construction bids for the VRF System Replacement at Greenview Knolls Elementary School in Great Mills, Maryland, for the Board of Education of St. Mary's County (hereinafter referred to as the "Board"), are invited to prequalify in accordance with the Prequalification Process of St. Mary's County Public Schools, (herein referred to as "SMCPS") and the requirements of this Prequalification Package. The project is described below and is hereinafter referred to as the "Project".

The Board and SMPCS are conducting the competitive sealed bidding for the Project through a multistep sealed bidding process, to be conducted in accordance with COMAR Title 14, Subtitle 39.03.08. Multistep sealed bidding is a multiphase process in which bidders submit a technical offer (statement of qualifications) and related documentation, and a second phase in which those bidders who are determined qualified during the first phase may have their price bids considered.

Contractors:

General contractors, acting as the prime contractor, are the only contractors permitted and required to prequalify to bid for the Project. Subcontractors are not required to prequalify. "Contractors" as used herein refers to prime contractors.

Only those Contractors who prequalify to bid in accordance with SMCPS's Request for Qualifications and Prequalification Process will be eligible to submit construction bids for the Projects as listed herein. Any Contractors who submit construction bids without prequalifying shall be deemed non-responsible bidders, and any bid submitted without prequalification in accordance with the prequalification process shall be deemed non-responsive for the Contractor's failure to prequalify.

Prequalification Package:

Contractors wishing to Prequalify to Bid may obtain a Prequalification Package from:

eMaryland Marketplace Advantage (eMMA) at https://emma.maryland.gov/ or from the SMCPS Design & Construction website at https://www.smcps.org/offices/design-and-construction/projects-currently-bidding

Deadline for Submittals:

To be considered, Contractors must submit **one (1) copy** of a fully completed prequalification application ("Application") which complies with the requirements of the SMPCS Prequalification Process and the requirements of the Prequalification Package for the Project.

Each copy of the Application must include:

a) Contractor's Application to Prequalify to Bid (Page D-1)
b) Contractor's Project Specific Qualifications and Supporting Documentation Cover Sheet and Certification (Page E-1)
c) Vendor's Qualification Questionnaire (Pages F-1 to F-6) as required by the Instructions to Contractors.
d) Supporting Documentation as listed in the Instructions to Contractors (C-1 to C-8) of this Request for Prequalification.

Only fully and properly completed Applications will be considered. Applications will be evaluated per the Evaluation Factors mentioned on page A-3.

Applications must be received by SMCPS prior to 2:00 p.m., on November 19, 2026. Applications shall be received by hand delivery or email delivery as defined below.

Applications shall be addressed and delivered to:

Attention: St. Mary's County Public Schools
Ms. Vivian Johnston, Contract & Fiscal Specialist
Department of Design and Construction
27190 Point Lookout Road
Loveville, Maryland 20656

The outside of the envelope shall be clearly marked "Prequalification Application RFP: #SMCPS-2027-05-DSS-DC." Timely delivery is the responsibility of the submitting contractors. Late Applications will not be considered unless deemed by SMCPS, in its sole discretion, to be in its best interest. Because of the rural location of the SMCPS, Federal Express will not guarantee delivery to SMCPS by any specific time. It is the Contractor's responsibility to confirm delivery of their submission via email to vajohnston@smcps.org

The Board reserves the right to reject any Application which is in any way incomplete or irregular; which fails to provide the information or supporting documentation requested; and/or which otherwise fails to comply with the requirements of the SMPCS Prequalification Process and the Prequalification Package for the Project. The Board also reserves the right, without obligation, to waive any minor defects or any informalities or irregularities in any Application. The Board also reserves the right to prequalify any, all, or none of the Contractors who have submitted Applications based on consideration of their experience and qualifications.

Deadline for Questions: Any prospective contractor desiring an explanation or interpretation of this invitation to prequalify must request such in writing in advance of **November 12, 2026 at 2:00 p.m.** to allow a reply to reach all prospective contractors before the submission deadline. Questions may be emailed to Wes King at cwking@smcps.org The Owner will have no liability or responsibility for any oral statements or representations made by any of its officers or agents prior to the proposal opening.

Evaluation of Applications:

Contractors will be considered and prequalified without regard to race, religion, color, sex, national origin, sexual orientation, or disability.

Evaluation Factors: Contractor Applications and their qualifications will be evaluated based on the following evaluation factors:

(a) Contractor's understanding of the scope, and schedule of the work;

(b) Contractor's prior experience with projects of similar size and scope;

(c) Contractor's plan for management of the project, and the organizational structure proposed for the project;

(d) Experience of Contractor's individual staff members with projects of similar size and scope;

(e) Contractor's plan to satisfy the Minority Business Enterprise (MBE) requirements for the Project, if applicable; and

(f) Other factors identified by SMCPS in the attached SMCPS Prequalification Process for Construction Projects and Instructions to Contractors.

Minimum Standards: The minimum standards that a Contractor shall meet to be found qualified are set forth in the attached SMCPS Prequalification Process and Instructions to Contractors. In general terms, Contractors are required to demonstrate that they

understand the scope and schedule of the Project, and possess the necessary experience, planning, organizational structure, personnel, history of satisfactory performance, financial capacity, and current abilities to construct the Project in a proper and timely manner, based on their current qualifications and previous experience with projects of a similar size and scope.

Project Description:

This Project is generally comprised of, but not limited to, the following:

- Replacement of an existing VRF System at Greenview Knolls Elementary.
- Rooftop VRF heat pumps, refrigerant lines, thermostats and indoor evaporator units will be replaced in kind with current, A2L type VRF compatible systems.
- All electrical connections and upgrades will be required.
- All existing refrigerant is to be collected and removed in accordance with all EPA requirements.
- Start Date anticipated June of 2027 following the end of the school year. Substantial Completion anticipated August of 2027 prior to the staff and students returning for the school year.
- Work cannot take place in occupied areas. Evenings and weekends may be made available.
- The project is Locally funded therefore Maryland Prevailing Wage or Davis-Bacon Wage scales do not apply.

Addenda:

1. Any clarifications, alterations, or changes made to the Prequalification Package shall not be valid unless included in an Addendum.

2. Addenda will be posted to *eMaryland Marketplace Advantage* at https://emma.maryland.gov/ and to the SMCPS website at https://www.smcps.org/offices/design-and-construction/projects-currently-bidding

3. No addenda modifying the Prequalification Package will be issued within a period of twenty-four (24) hours prior to the deadline for submittals, in addition to intervening Saturdays, Sundays, and legal holidays (if any). If it is necessary to issue an addendum within the twenty-four (24) hour period, the date shall be extended without the requirement of re-advertising.

4. Each Contractor shall verify in submitting their Application, that they have received all addenda issued, and shall acknowledge their receipt of same in the Application.

Incorporation by reference:

The attached SMCPS Prequalification Process; Instructions to Contractors; Application form; Project Specific Qualifications; and Statement of Qualification form are incorporated herein by reference as part of this Request for Qualifications and Invitation to Prequalify to Bid.

END OF INVITATION TO PREQUALIFY TO BID
ST. MARY'S COUNTY PUBLIC SCHOOLS'

PREQUALIFICATION PROCESS FOR CONSTRUCTION PROJECTS

As permitted by the Administrative Procedures Guide of the Public School Construction Programs, St. Mary's County Public Schools ("SMCPS"), on behalf of and with the approval of the Board of Education of St. Mary's County (the "Board"), establishes the following as its prequalification process to prequalify prospective contractors to bid on selected construction projects:

1. SMCPS may require prequalification of prospective Contractors to bid on a specific construction project. The purpose of such prequalification shall be to limit prospective bidders for such construction projects to Contractors who show themselves to be qualified to construct the Project. When the prequalification process is used for a Project, only Contractors who have complied with the prequalification process and requirements, and have been found qualified by SMCPS and the Board will be eligible to submit bids for the Project.

2. The Superintendent or his designee shall develop the appropriate documentation for potential contractors to apply for prequalification in the form of a Prequalification Package. The Superintendent or his designee may prescribe in such documentation minimum standards and specific mandatory requirements Contractors must meet in order to prequalify for a specific project. The Prequalification Package shall include the following documents:
    a. Request for Qualifications and Invitation to Prequalify to Bid
    b. SMCPS Prequalification Process for Construction Projects
    c. Instructions to Contractors
    d. Contractor's Application to Prequalify to Bid
    e. Contractor's Project Specific Qualifications and Supporting Documentation Cover Sheet and Certification, and
    f. Vendor's Qualification Questionnaire

3. The Prequalification Package shall set forth the evaluation factors and criteria upon which the qualifications of prospective contractors will be evaluated and shall identify the minimum standards a Contractor must meet to be found qualified in accordance with COMAR 14.39.03.08. The Prequalification Package shall request of prospective Contractors only such information as is appropriate for an objective evaluation of all prospective Contractors pursuant to such factors, criteria and standards.

4. In all instances in which SMCPS requires prequalification of potential contractors for construction projects, advance notice shall be given of the deadline for the submission of prequalification applications. The deadline for submissions shall be sufficiently in advance of the date set for the submission of bids for such construction so as to allow the prequalification process to be accomplished.

5. All Contractors who desire to be prequalified for the Project must:
    a. Comply with the requirements of this SMCPS Prequalification Process; the requirements of the Request for Qualifications; and the requirements of the Instructions to Contractors; and
    b. Complete and submit the Contractor Application and the Vendor's Qualification Questionnaire; and
    c. Submit the Contractor Project Specific Qualifications and Supporting Documentation Cover Sheet and Certifications requested in the Instructions to Contractors.

6. **At least fifteen (15) days** prior to the date established for submission of bids or proposals under the procurement for which the prequalification applies, SMCPS shall advise in writing each Contractor who submitted an application whether or not that Contractor has been prequalified.

7. SMCPS may deny prequalification to any Contractor who fails to meet the minimum standards for qualification set forth in the Instructions to Contractors. In addition, SMCPS may also deny prequalification for any one of the following reasons:
    a. The Contractor has had a court judgment or arbitration award entered against it within the past ten (10) years based on Contractor's breach or non-performance of a governmental or non-governmental construction contract (including, but not limited to, a general construction contract or a construction management contract);
    b. The Contractor, without good cause, has been declared in default of a prior construction contract with SMCPS, or with any other public body or entity (including without limitation any local, state or federal government or agency).
    c. The Contractor or any officer, director, owner, project manager, procurement manager, or chief financial official thereof has been convicted within the past ten (10) years of a crime related to fraud, theft, bribery, construction contracting, or other form of governmental or non-governmental contracting.
    d. The Contractor or any officer, director or owner thereof has been debarred from bidding or contracting, pursuant to an established debarment procedure, by any public body or entity (including without limitation any local, state or federal government or agency.)

8. SMCPS may establish specific qualifications and/or experience needed to be prequalified for a specific project.

9. In determining if a Contractor has the necessary qualifications and experience to be prequalified, SMCPS will review and consider the Contractor's Application, its Qualification Questionnaire, and its Project Specific Qualifications and supporting documentation. Interviews may be conducted as a component of the qualifications and evaluation process but are not

required. SMCPS will evaluate the Contractor's submissions, qualifications, and responses using the evaluation factors identified in the Request for Qualifications and will determine if the Contractor meets the minimum standards for qualification identified in the Instructions to Contractors.

10. SMPCS shall explain the evaluation of the applications and make recommendations for prequalification to the Board for its final approval and prequalification of the Contractors. SMCPS and the Board shall compile a list of Contractors that are determined to meet the minimum qualification standards. Only the Contractors on that list shall be permitted to submit construction bids for the Project.

11. The provisions of this process and its implementation are intended to be severable, and if any provision is deemed invalid, this shall not be deemed to affect the validity of other provisions.

12. A determination that a Contractor is prequalified does not necessarily preclude the Board or SMCPS from determining that such Contractor is not responsible following bid opening. Among other things, a change in circumstances or change in information, as well as different criteria allowed to be considered for prequalification versus responsibility, may lead to a different result. For example, a prequalified Contractor that becomes debarred between prequalification and bid opening, or a Contractor who was not truthful or failed to make a full disclosure in answering its prequalification questionnaire, might be deemed to be not responsible following bid opening, the Board intends to award the construction contract for the Project to the lowest prequalified responsible and responsive bidder. Bidding requirements shall be set forth in the bid package for the Project, and the failure to provide full and complete bid documents shall render a bid non-responsive.

13. Prequalification of a Contractor to bid on one project does not prequalify that Contractor to bid on a different project and does not mean that the Contractor will necessarily be deemed to be prequalified for a different project.

14. Neither this Prequalification Process nor its implementation by SMCPS or the Board shall be deemed to create any contract right with any prospective Contractor. All prospective Contractors shall be responsible for their own expenses in applying for prequalification, and SMCPS shall have no liability for any such expense.

15. Interested parties may protest a prequalification decision of SMCPS by submitting a protest in writing to the Superintendent of Schools, St. Mary's County Public Schools, 23160 Moakley Street, Leonardtown, Maryland 20650 within ten (10) calendar days of the decision. A complete copy of the protest and all supporting documentation must also be submitted within ten (10)

calendar days of the decision to the Division of Supporting Services, Department of Design and Construction, St. Mary's County Public Schools, 27190 Point Lookout Road, Loveville, Maryland 20656. SMCPS and the Board may deny untimely protests.

The protest shall identify the prequalification decision being protested, and the Project for which the prequalification decision was made. The written protest shall specify the grounds for the protest and shall include a detailed statement of the factual and legal basis for the protest, including:

a. The name, address and telephone number of the protestor
b. The relevant facts relied upon for the protest
c. Any language from the prequalification package relied upon for the protest
d. Any information contained in the Contractor's prequalification Application relied upon for the protest
e. Citation of any rules, regulations, case law, statutes or other legal authority relied upon for the protest
f. Any other information relied upon for the protest

The written protest shall also include copies of all documents, data, records or other evidence relevant to the protest. The burden of producing the foregoing information, documents, data, records and other relevant evidence is on the protestor. The burden of persuasion on the merits of the protest is also on the protestor.

A decision on the protest, and appeals thereof, shall be made in accordance with the requirements of Section 4-205(c) of the Education Article of the Annotated Code of Maryland. Upon receipt of a timely and complete written protest, an initial determination on the protest shall be made by the Superintendent of SMCPS or his/her designee. The decision of the Superintendent may be appealed to the Board, if taken within thirty (30) days after the date of the Superintendent's decision. The decision of the Board may be further appealed to the State Board of Education if taken in writing within thirty (30) days after the decision of the Board.

16. Contractors are advised that SMCPS and the Board shall have unlimited data rights regarding information contained in the Contractor's prequalification Application and supporting documentation. Unlimited data rights means that, except as specified herein, SMCPS and the Board have the right to use, disclose, reproduce, prepare derivative works, distribute copies to the public, or perform publicly and display publicly any information submitted by the Contractor.

    Contractors should give specific attention to any portions of their Application and supporting documentation which they deem to be confidential or proprietary, commercial or financial information, as defined under the Maryland's Public Information Act. See §10-617 of the State Government Article of the Annotated Code of Maryland.

It is the responsibility of the Contractor to clearly identify each part of its Application and supporting documentation which it deems confidential or proprietary commercial or financial information, by stamping the bottom right hand corner of each pertinent page with one inch bold face letters stating the words "confidential" or "proprietary". Any portion of the Application and supporting documentation that is not stamped as proprietary or confidential shall be considered non-proprietary and non-confidential. It is not sufficient to preface an Application or supporting documentation with a statement that it contains confidential or proprietary information.

Information that is designated and stamped as "confidential" or "proprietary" shall be treated as such by SMPCS and the Board. In the event such information is requested pursuant to the Public Information Act, SMCPS and the Board shall endeavor to deny inspection of such information by anyone other than a "person of interest" or other individual entitled to such information under the Act. In the event of a request for such information under the Public Information Act, SMCPS and the Board shall notify the Contractor and Contractor shall promptly provide assistance and support to SMCPS and the Board to demonstrate that the inspection and/or release of such information would cause Contractor competitive harm or other injury.

END OF PREQUALIFICATION PROCESS FOR CONSTRUCTION PROJECTS

INSTRUCTIONS TO CONTRACTORS

REGARDING PREQUALIFICATION PROCESS FOR

Greenview Knolls Elementary School

VRF System Replacement

St. Mary's County Public Schools

Leonardtown, Maryland

A. **Purpose**

1. The Board of Education of St. Mary's County (herein referred to as the "Board") is conducting the competitive sealed bidding for a Fire & Smoke Damper Replacement in St. Mary's County, Maryland (the "Project"), through a multistep sealed bidding process, to be conducted in accordance with COMAR 14.39.03.08. Multistep sealed bidding is a multiphase process in which bidders submit a technical offer (statement of qualifications) and related documentation, and a second phase in which those bidders who are determined qualified during the first phase may have their price bids considered.
2. St. Mary's County Public Schools (herein referred to as "SMCPS") with the approval of the Board has established a Prequalification Process for Construction Projects ("Prequalification Process") and a Prequalification Package for Contractors seeking prequalification for the Project. A copy of the Prequalification Process is included in the Prequalification Package.
3. The purpose of the Prequalification Process is to provide the Board and SMCPS with a means to determine which general contractors (herein referred to as "Contractors") are qualified to participate in bidding for construction of the Project.
4. Only those Contractors who have duly complied with the Prequalification Process and requirements of the Prequalification Package and have been determined to be qualified will be prequalified to bid and be eligible to submit construction bids on the Project.
   The Project is generally defined in the Request for Qualifications and Invitation to Prequalify to Bid. Contractors are instructed to review the Project Description contained therein, to familiarize themselves with the scope, schedule, and requirements of the Project and to comply with the following requirements.

B. **Application**

1. In order to prequalify, Contractors must fully complete and submit their "Application", which shall include the following:
   a. Contractor's Application to Prequalify to Bid (See D-1)
   b. Contractor's Project Specific Qualifications and supporting documentation Cover Sheet and Certification (See E-1), and
   c. Vendor's Qualification Questionnaire (See F-1 – F-6)
2. **Required Certification and Documentation**: The Contractor's Project Specific Qualifications and Supporting Documentation **must** be accompanied by a

duly executed cover sheet and certification in the form attached as E-1 to these Instructions and **must** contain all of the following information and documentation.

a. A statement by the Contractor of its understanding of the Project scope and schedule, together with a summary of its qualifications, capabilities, and capacity to successfully complete the Project within the estimated Project cost and stated schedule.

b. A list of three (3) projects constructed by the Contractor since 2016, that are of similar scope, complexity, schedule, and cost as the Project. **Each cited example must include replacements of VRF Systems and components, must involve an occupied facility, and must have a minimum final contract value of $1,500,000 or more per project. Examples must include VRF replacements at an occupied K-12 school building. At least two (2) projects must be while acting as the prime contractor.** For each project, the Contractor must provide the following information in sufficient detail to permit comparison of the cited example with the Project:

- Name, location, and description of the Project, including a description and square footage of the building; the nature and scope of the work performed on the Project; the complexity of the Project and its components; a description of the phasing of the Project, and the final cost of construction.
- The length of time for construction contained in the original project schedule, and the length of time for construction as constructed (the length of time for construction shall be measured from the date of receipt of notice to proceed to the date of final completion).
- Name, address, and telephone number of the Client and point of contact for the Project.
- The amount of the original construction contract, the final revised contract amount, and the total amount of all change orders under the contract.
- **(When applicable.)** The percentage of total Project cost that the Maryland Department of Transportation (MDOT) certified Minority Business Enterprise (MBE) subcontractor participation on the Project represented, if applicable. If an MBE participation waiver was granted on the Project, provide a summary of the justification provided for such waiver.

c. Resumes of the Contractor's proposed team for the Project including but not limited to, the Project executive(s), project manager(s), and Project superintendent(s). For each such individual, indicate what participation, if any, they had on the projects identified in response to item 2 b. above, and identify the nature and extent of their experience on projects with a size and scope similar to the Project.

d. One (1) example of a Critical Path Method project schedule that is comparable to the requirements of the project schedule for this Project contained in Section 01 32 16 (Attachment A). The cited example should show phased construction and must show the Contractor's as-built performance on that project.

e. Given the complexity of the phasing for the project, provide a phasing narrative that demonstrates an understanding of experience and capability of the firm to successfully complete a project in an occupied school facility with minimum disruptions to school activities.

f. **(When applicable.)** A list of projects performed by Contractor within the last five years which included Minority Business Enterprise subcontracting participation goals. Indicate both the MBE goals that were established for each project and the actual MBE participation rate for each project.

g. Contractor's plan for staffing and management of the Project, and a description of the organizational structure it proposes for the Project.

h. Contractor's plan to outreach to MDOT certified MBE subcontractors and suppliers and its plan to meet the overall goal of **(0%) Zero Percent** MBE participation. (This goal is currently under review by state agencies and the goal may be modified before final bidding of the project).

i. Verification that Contractor is licensed to perform construction as required by the State of Maryland (in accordance with the Business Regulation Article, Annotated Code of Maryland) and is in good standing with the Comptroller of Maryland. Contractor shall submit a copy of its current construction license and a Good Standing Certificate from the Comptroller of Maryland.

3. A letter to SMCPS from an acceptable surety confirming that the Contractor has sufficient bonding capacity and standing with the surety for the surety to issue a bid bond for the Contractor in the amount of five percent (5%) of the **$1,500,000** Estimated Construction Cost should the Contractor be prequalified to bid, and performance, and labor and

material payment bonds for the Contractor each in amount of **$1,500,000** should the Contractor be awarded the construction contract for the Project. Acceptable surety companies are those with active claims offices in the State of Maryland, licensed by the Maryland Commission of Insurance and with an "A-"or better rating in the Best's Key Rating Guide.

4. If questions arise concerning the Prequalification Process or the Project, contact **Mr. Wes King, Project Management Coordinator** for information and clarifications.
5. Prequalification Packages are available in accordance with the Invitation.
6. The Application and all supporting data must be submitted **for each of the number of copies** required by the Invitation. **(One copy)**
7. Each copy of the Contractor's Statement of Qualification Statement and Questionnaire and each copy of its cover sheet for Contractor's Project Specific Qualifications and supporting documentation must have **original** signatures (and shall be sealed if a corporation) and shall be notarized and sealed by a Notary Public.
8. Applications shall be submitted prior to the Deadline for Submittals as described in the Invitation. It will be the General Contractor's responsibility to obtain a receipt from SMCPS as to the date and time of the submission of their Application.
9. Applications, which are incomplete or illegible, may be rejected at the discretion of SMCPS. Determination of the completeness of the application will be at the sole discretion of SMCPS.
10. SMCPS reserves the right to waive any minor defects, irregularities or informalities in an Application, and/or request additional information from Contractors, at its discretion.
11. By submitting as Application, the Contractor agrees that SMCPS and/or its representative(s) may research and/or verify the information provided and contact third parties regarding such information, at its discretion.

C. **Addenda**

1. Any clarifications, alterations, or changes made to this Prequalification Package shall not be valid unless included in an Addendum.
2. Addenda will be posted to eMaryland Marketplace Advantage at https://emma.maryland.gov/ and to https://www.smcps.org/offices/design-and-construction/projects-currently-bidding
3. No addenda modifying the Prequalification Package will be issued within a period of twenty-four (24) hours prior to the deadline for submittals, in addition to intervening Saturdays, Sundays, and legal holidays (if any). If it is necessary to issue an addendum within the twenty-four (24) hour period, the date shall be extended without the requirement of re-advertising.
4. Each Contractor shall verify in submitting their Application, that they have received all addenda issued, and shall acknowledge their receipt of same in the Application.

D. **Evaluation**

1. The evaluation factors and criteria upon which the qualifications of Contractors will be evaluated are set out in the attached Request for Qualifications and Invitation to Bid; the SMCPS Prequalification Process for Construction Projects, and these Instructions to Contractors. The objective of the evaluation is to objectively determine which Contractor(s), in the opinion of SMCPS, are qualified to successfully perform the construction work required for the Project and complete the construction contract in a cost effective and timely manner. Each Contractor retains the sole responsibility for adequately demonstrating its own capacities, capabilities, and qualifications for prequalification.
2. **Additional Evaluation Factors**: In addition to the evaluation factors and criteria set forth in the Request for Qualifications and Invitation to Bid, and the SMCPS Prequalification Process for Construction Projects, the Contractor's qualifications will be evaluated by following additional evaluation factors:
    a. The Contractor's submission of a complete and properly executed Application and supporting documentation and certifications as required by the Prequalification Package.

    b. The Contractor's general construction experience, history, bonding capacity, and financial condition as requested in the Vendor's Qualification Questionnaire.

    c. The Contractor's specific construction experience, history and bonding capacity as requested in the Contractor's Project Specific Qualifications and supporting documentation, as requested in Section 2 of these Instructions to Contractors.

3. **Minimum Standards for Qualification:** The minimum standards Contractor shall meet to be found pre-qualified for the Project are as follows:
    a. Contractor must have the following minimum construction experience and qualifications:
        i. Successful completion, since 2016, of a minimum of three (3) VRF system replacement projects, each of which has a total construction cost of **$1,500,000** or more.
        ii. Successful completion of three (3) HVAC renovation or replacement projects of similar complexity as this Project including an occupied facility.
    b. Contractor's Project Executive, Project Manager and Superintendent for the Project must have the following minimum years of experience on HVAC renovation or replacement projects, each of which involves a commercial building, has a total construction cost of **$1,500,000** or more and was completed within one (1) calendar year of receipt of notice to proceed.

i. Project Executive: ten (10) years of experience as a primary project executive.
ii. Project Manager: The Contractor's project manager shall possess a minimum of five (5) years of experience as a primary project manager.
iii. Project Superintendent five (5) years of experience as a primary superintendent.

c. Contractor must demonstrate, when applicable, the capacity to properly schedule and manage the Project by submitting an example of an actual CPM project schedule on construction projects completed by the Contractor that are comparable to the requirements of the construction schedule for this Project contained in Section 01 32 16 (Attachment A). The project schedule, for this project, must be submitted prior to starting work. The Contractor is to submit a complete schedule indicating start and completion dates. The sample must show the originally scheduled duration of construction for the project, and the duration of Contractor's actual as-built construction on that Project. To meet minimum standards for prequalification, the as-built schedule must show that the duration of the as-built construction on the project did not exceed the originally scheduled duration by more than 25%.

d. Contractor must demonstrate the experience and capacity to meet the schedule of the Project in an occupied school, ensuring the safety of students and staff while minimizing disruptions to educational activities.

e. Contractors must demonstrate, when applicable, the capability to comply with Maryland MBE procedures in a school construction project by submitting evidence of its achievement of applicable MBE participation goals on at least three (3) previous construction projects, and by submitting a plan that describes the actions the Contractor intends to take on this Project to outreach to MDOT certified MBE subcontractors and suppliers in order meet the overall goal of 0% MBE participation.

f. Contractor's financial stability and bonding capacity must be demonstrated by Contractor submitting a letter to SMCPS from an acceptable surety confirming that the Contractor has sufficient bonding capacity and standing with the surety for the surety to issue a bid bond for the Contractor in the amount of five percent (5%) of the **$1,500,000** Estimated Construction Cost should the Contractor be prequalified to bid, and performance, and labor and material payment bonds for the Contractor each in amount of **$1,500,000** should the Contractor be awarded the construction contract for the Project. Acceptable surety companies are those with active claims

offices in the State of Maryland, licensed by the Maryland Commission of Insurance and with an "A-"or better rating in the Best's Key Rating Guide.

g. Contractor must be licensed to perform construction as required by the State of Maryland (in accordance with the Business Regulation Article, Annotated Code of Maryland) and be in good standing with the Comptroller of Maryland.

4. Additional information or clarification may be requested after the Application has been submitted. Contractors shall respond to such requests within three (3) calendar days after receipt of such requests. SMCPS and the Board reserve the right to interview any or all of the Contractors in order to make final decisions on qualifications.
5. Any information found to be incorrect, misleading, or non-responsive in the Application or in the supporting statement(s) or documentation submitted by Contractor may, in the discretion of SMCPS and the Board, be sufficient cause to refuse prequalification and reject the Application.

E. **Notification of Eligibility for Bidding**

1. All Contractors submitting as Application will be notified of SMCPS's determination of their prequalification status as provided in the SMCPS Prequalification Process for School Construction.
2. SMCPS will only consider bids received from Contractors that have been prequalified in accordance with the procedures described in this Prequalification Package.

F. **Cover sheet and Certification**

Attached hereto is the Cover Sheet and Certification that must be completed and submitted as part of Contractor's Project Specific Qualifications and Supporting Documentation submission. (E-1)

G. **Confidential and Proprietary Information**

It is the responsibility of the Contractors to identify and stamp any and all confidential and proprietary information included in the Contractor's Application and supporting documentation. See paragraph 16 (B-4) of the Prequalification Process included with this Prequalification Package for requirements in this regard.

END OF INSTRUCTIONS TO CONTRACTORS REGARDING PREQUALIFICATION PROCESS

CONTRACTOR'S APPLICATION TO PREQUALIFY TO BID

(The Application)

● *REPRODUCE "THE APPLICATION" ON CONTRACTORS LETTERHEAD* ●

To: St. Mary's County Public Schools
Department of Design and Construction
Wes King, Project Management Coordinator
27190 Point Lookout Road
Loveville, Maryland 20656

Re: Application to Prequalify to Bid

The undersigned Contractor, being familiar with the project description outlined in the Request for Qualifications and Prequalification Package provided by SMCPS, hereby requests, and submits for Prequalification to Bid for the Greenview Knolls Elementary School VRF System Replacement, St. Mary's County Public Schools, in Leonardtown, Maryland in accordance with the Prequalification Package.

The undersigned acknowledges and authorizes SMCPS to conduct additional inquiries and research into this Contractor's history and past work experience and certifies that insurance and bonding requirements for the Project can be met by the Contractor.

Enclosed is one (1) complete copy of the following documents and information comprising this Application:

1. This Application to Prequalify to Bid (D-1)
2. Contractor's Project Specific Qualifications and Supporting Documentation Cover Sheet and Certification as required by the Instructions to Contractors. (E-1); and
3. The Vendor's Qualification Questionnaire (F-1 – F-6).

The undersigned Contractor acknowledges receipt of the following prequalification package addenda.

_____
_____
_____

Sincerely,

_____

(Authorized Signature of Contractor's Representative)

_____
(Title)

END OF CONTRACTOR'S APPLICATION TO PREQUALIFY TO BID

FY 2027
CONTRACTOR'S PROJECT SPECIFIC QUALIFICATIONS
AND SUPPORTING DOCUMENTATION
FOR THE

GREENVIEW KNOLLS ELEMENTARY SCHOOL

VRF SYSTEM REPLACEMENT

Cover Sheet and Certification

In support of its application for Prequalification, the undersigned Contractor submits the attached information and documentation as required by the Instructions to Contractors contained in the Prequalification Package for the above referenced project.

Contractor, by and through its undersigned representative, certifies that the statements and information contained in the attached responses and documentation are true and accurate.

Dated at _____this_____ day of _____20_____.

By: _____

_____

(Title of Person Signing)

_____

(Name of Organization)

State of _____

County of_____,

_____ being duly sworn states that he is _____

_____

(Office) (Name of Organization)

_____

and that the statements and information contained in the attached documentation are true and correct.

_____

Sworn to before me, this _____ day of _____20_____.

_____

Notary Public

My Commission expires_____

END OF CONTRACTOR'S PROJECT SPECIFIC QUALIFICATIONS & SUPPORTING DOCUMENTATION COVER SHEET AND CERTIFICATION

St. Mary's County Public Schools

ST. MARY'S COUNTY PUBLIC SCHOOLS
Department of Design and Construction
27190 Point Lookout Road
Loveville, MD 20656
301-475-4256

FY 2027

VENDOR'S QUALIFICATION QUESTIONNAIRE

This questionnaire is intended as a basis for establishing the qualifications of Vendors for undertaking construction work under the jurisdiction of the Board of Education of St. Mary's County.

If a Vendor has completed a questionnaire and delivered such to the local education agency having jurisdiction setting forth his qualifications to the satisfaction of the Superintendent of Schools, he (the Vendor) will be eligible to receive construction documents for bidding, but may be ineligible to be considered for a contract. Failure to have a completed qualification questionnaire delivered to St. Mary's County Public Schools prior to delivery of a bid may result in the rejection of said bid. Certification of qualification shall be valid for one fiscal year only.

SECTION I. – GENERAL INFORMATION

A. Legal Title and Address of Organization:
_____
_____
_____

B. Telephone Number: _____

C. Website and Email Address of Organization:
_____

D. Maryland Representative's Name, Title and Address: _____
_____

E. Check if: ___ Corporation ___ LLC ___ Co-Partnership ___ Individual

1. If a Corporation or LLC, please state: _____Date of Incorporation ____ State in which Incorporated

Name, Title and Date Assuming Position of Principal Officers:
_____
_____
_____
_____

2. If a Co-Partnership, please state: _____ Date of Organization

Nature of Partnership: _____ General, _____ Limited, _____ Association

Names and Addresses of Partners (Attach separate sheet, if necessary):

_____
_____
_____

3. If an Individual, please state full Name and Address of Owner:

_____
_____
_____

F. Is any member of your organization employed by St. Mary's County Public Schools or in any way officially connected with the Local Government? If yes, please explain:

_____
_____
_____

G. Provide name and data about any construction projects you have failed to complete:

_____
_____
_____

H. Has your organization ever been involved in any criminal litigation as a result of construction methods, costs, etc.? _____ If yes, please explain:

_____
_____
_____

I. Has your firm ever been formally barred from performing work for the State of Maryland, a county agency in Maryland, or a school system in Maryland? _____ If yes, please provide the following information for each such action:

1. Facility and Project Name: _____
2. Date of Disqualification and Duration: _____
3. Reason for Disqualification: _____

J. If operating as a General Contractor, has your present or past bonding company ever been requested to act against you due to performance or payment related issues? _____ If yes, please explain:

_____
_____
_____

SECTION II. – FINANCIAL INFORMATION

A. Give the value of all construction equipment (if applicable) fully owned by your organization:
$ _____ If not fully owned, so state: (Attach separate sheet, if necessary.)

_____
_____
_____

B. Give the value of total assets of your organization (including equipment value in II.A. above):
$ _____

C. Give the value of the organization's total liabilities: $ _____

D. Give the total contract value of the work accomplished by your organization in each of the last three (3) years: 20 ___ $ _____ 20 ___ $ _____ 20 ___ $ _____

E. Give the contact value of work presently being accomplished by, or pending award to your organization:
$ _____

F. Give the value of any judgments or liens outstanding against your organization: $ _____

G. Has any bonding company refused to write you a bond on any construction work? If yes, please explain:
_____
_____

H. Give the maximum value per project for which you could obtain Bond: $ _____

I. Give the maximum aggregate amount for which you could obtain Bond: $ _____

J. Is your firm able to obtain Performance and Payment bonds from a Surety registered in Maryland with a financial rating of "A-" or better in the Best's Key Rating Guide? _____

SECTION III. – EXPERIENCE

A. Indicate the type of contracting undertaken by your organization and years of experience:

____ General Contractor Years _____

____ Subcontractor : Trade _____ Years _____

Trade _____ Years _____

____ Architect/Engineer Years _____

B. Provide an Organizational Chart of your Firm. Either provide below or attach to this document.

C. State experience of principal members of your organization (Attach additional sheets, as necessary):

Member No. 1:

Name and Title: _____

Years of Experience: Total _____ With Current Firm: _____

Education (degree and specialization): _____

Current Professional Registration or License: _____

Other Professional Qualifications (publications, organizations, training, awards, etc.):_____

_____

Type of Work (e.g. Schools, Residential, Hospitals): _____

Member No. 2:

Name and Title: _____

Years of Experience: Total _____ With Current Firm: _____

Education (degree and specialization): _____

Current Professional Registration or License: _____

Other Professional Qualifications (publications, organizations, training, awards, etc.): _____

_____

Type of Work (e.g. Schools, Residential, Hospitals): _____

Member No. 3:

Name and Title: _____

Years of Experience: Total _____ With Current Firm: _____

Education (degree and specialization): _____

Current Professional Registration or License: _____

Other Professional Qualifications (publications, organizations, training, awards, etc.): _____

_____

Type of Work (e.g. Schools, Residential, Hospitals): _____

D. Give any special qualifications of firm members (Master Electrician, Plumber, Registered Engineer, etc.):

_____

_____

E. List a minimum of 3 projects (maximum 10) completed by your organization that are relevant :
(Attach additional sheets, as necessary)

Project No. 1:

Project Name and Location: _____

Describe the Project: _____

_____

Name and Telephone number of Reference Contact: _____

Date construction contract was completed: _____

Contract amount: $ _____

Project No. 2:

Project Name and Location: _____

Describe the Project: _____

_____

Name and Telephone number of Reference Contact: _____

Date construction contract was completed: _____

Contract amount: $ _____

Project No. 3:

Project Name and Location: _____

Describe the Project: _____

_____

Name and Telephone number of Reference Contact: _____

Date construction contract was completed: _____

Contract amount: $ _____

F. If General Contractor, list subcontractors in various fields who have worked under you:

_____
_____
_____
_____
_____

G. If Subcontractor, list some general contractors for whom you have worked:

_____
_____
_____

H. Does your organization have previous experience working in a K-12 school environment? _____
If yes, please provide 3 examples including Project Name and School Agency:

_____
_____
_____

I. Does your organization have previous experience working with St. Mary's County Public Schools? _____
If yes, please provide up to 3 examples including Project Name and your organization's role or trade:

_____
_____
_____

J. What is the monetary value of the largest project accomplished by your organization? $ _____

K. What is the monetary value of the largest project accomplished in the last three years? $ _____

L. Maximum value of a project you prefer to undertake: $ _____

M. Price range of work your organization is deemed best adapted to undertake: $ _____

N. Is your organization licensed in the State of Maryland for the current year? _____
If yes, provide Expiration Date and License Number: _____

- Please include a copy of your current Maryland Contractor's License with this questionnaire

O. Provide at least three (3) Client References for whom your company has provided services in the last 3 years:
Reference No. 1:
Company Name and Contact: _____
Contact Phone and Email : _____
Project Location and Description: _____
_____

Reference No. 2:
Company Name and Contact: _____
Contact Phone and Email : _____
Project Location and Description: _____
_____

Reference No. 3:
Company Name and Contact: _____
Contact Phone and Email : _____
Project Location and Description: _____
_____

The above statements are certified to be true and accurate.

Dated at _____this_____day of _____20_____.

By: _____

_____
(Title of Person Signing)

_____
(Name of Organization)

State of _____
County of_____, S.S.
_____ being duly sworn states that he is

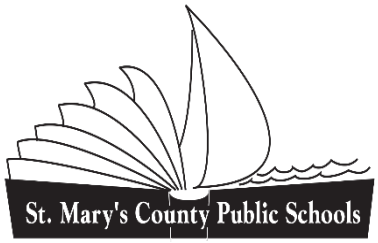
_____
(Office) (Name of Organization)

And that the answers to the foregoing questions and all statements therein contained are true and correct.

Sworn to before me, this _____ day of _____20_____.

_____
My Commission expires_____ Notary Public

DO NOT FILL IN THESE SPACES	
Year Filed:	
Application No.:	
Reviewed by:	
Date:	



Attachment A

SECTION 01 32 16 Construction Schedule

Section 01 32 16 Construction Schedule

PART 1 GENERAL

1.1 QUALIFICATIONS

The Contractor shall designate an authorized representative who shall be responsible for the preparation of all required project schedule reports and diagrams. This person shall have previously created and reviewed computerized schedules.

1.2 POSTING SCHEDULE

The Contractor is responsible for posting a copy of latest project schedule in Contractor's and Owner's field offices. Posted schedules shall be marked by the General Contractor weekly so that actual progress can be compared with scheduled progress.

PART 2-PRODUCTS (Not Used)

PART 3-EXECUTION

3.1 GENERAL

The scheduling of construction shall be the responsibility of the Contractor. The Contractor's management personnel shall actively participate in the development of the schedule. Subcontractors and suppliers working on the project shall also contribute in developing and maintaining an accurate project schedule. The accepted project schedule shall be used to measure the progress of the work, to aid in evaluating time extensions and to provide the basis of all progress payments.

3.2 MEASUREMENT OF CONTRACTOR'S PROGRESS

The schedule shall be the basis for measuring the Contractor's progress. Lack of an approved schedule or scheduling personnel will result in an inability of the Architect to evaluate the Contractor's progress for the purposes of evaluation of the request for payment. Failure of the Contractor to provide all information as specified will result in the disapproval of the entire project schedule submission and the inability of the Architect to evaluate the Contractor's progress for payment purposes.

3.3 PROJECT SCHEDULE

The following aspects are requirements of all project progress schedules (initial, preliminary and updates):

A. The Critical Path Method (CPM) of network calculation shall be used to generate the project schedule. The Contractor shall provide the project schedule in either the Precedence Diagram Method (PDM) or the Arrow Diagram Method (ADM). Once the initial and preliminary schedules have been accepted, the Contractor shall "save" the schedule as a "baseline" so that future revisions will reflect against the original projection of the project schedule (Tracking Gantt Schedule).

B. With the exception of the initial and preliminary schedule submission, the project schedule shall include an appropriate level of detail. Failure to develop or update the project schedule or provide data at the appropriate level of detail, as

specified, will result in the rejection of the schedule. The Architect will use, but is not limited to, the following conditions to determine the appropriate level of detail to be used in the project schedule.

C. Contractor submissions shall be required to reflect reasonable activity durations.

D. Tasks related to the procurement of long lead materials or equipment shall be included as separate activities in the project schedule. Long lead materials and equipment are those materials that have a procurement cycle of over 90 days.

E. All activities shall be identified in the project schedule by the phase of work in which the activity occurs. Activities shall not be allowed to contain work in more than one phase of work.

F. The schedule interval shall extend from the notice of award or notice to proceed to the contract completion date.

G. Contractually specified interim completion dates shall also be constrained to show negative float if the early finish date of the last activity in that phase falls after the interim completion date.

H. The Contractor shall include a hammock type activity for each project phase called "Phase X" where "X" refers to the phase of work as identified within the contract drawings. The "Phase X" activity shall be logically tied to the earliest and latest activities in the phase.

I. The Contractor shall incorporate expected weather days based on historical averages into the baseline schedule.

3.4 PROJECT SCHEDULE SUBMISSIONS

The Contractor shall provide the following submissions as described below.

A. PRELIMINARY SCHEDULE: The preliminary project schedule shall define the Contractor's planned operations for the first sixty (60) calendar days shall be submitted for review within ten (10) calendar days after the date of Notice to Proceed or Notice of Award. The schedule will be reviewed and either accepted or rejected by the Architect and Owner. An accepted preliminary schedule is required prior to the Contractor submitting his first application for payment.

B. INITIAL PROJECT SCHEDULE SUBMISSION: The initial project schedule shall be submitted for approval within thirty (30) calendar days after the notice of award or notice to proceed. The schedule shall provide a reasonable sequence of activities that represent work through the entire project and shall be at a reasonable level of detail.

C. PERIODIC SCHEDULE UPDATES: Based on the result of periodic schedule meetings, specified in paragraph 3.6, "PERIODIC SCHEDULE MEETINGS", the Contractor shall submit monthly schedule updates. These submissions shall enable the Architect to assess the Contractor's progress. If the Contractor fails or refuses to furnish the information and project schedule data that is necessary for VERIFYING the Contractor's progress, the Contractor shall be deemed not to have provided an estimate upon which progress payment may be made.

3.5 SUBMISSION REQUIREMENTS

The following items shall be submitted by the Contractor for the initial submission, and every periodic project schedule update throughout the project:

A. ELECTRONIC COPIES: submit electronic pdf and scheduling software versions as directed by the Architect, containing the project schedule shall be provided.

FILE NAME: Each file submitted shall have a name related to either the schedule data date and project name. The Contractor shall develop a naming convention that will insure that the names of the files submitted are unique. The Contractor shall utilize the name format throughout the duration of the Work.

DISTRIBUTION: To Architect and Owner.

B. NARRATIVE REPORT: A narrative report shall be provided with each update of the project schedule. The narrative report shall include: a description of activities along the four (4) most critical paths, a description of current and anticipated problem areas or delaying factors and their impact, and an explanation of Contractor's anticipated corrective action that will be implemented to bring the work back on schedule, also referred to as a recovery schedule. Within the Contractor's recovery schedule, the Contractor shall identify the duration of time expected to fully recover the delay(s) encountered. The narrative report shall specifically reference, on an activity by activity basis, all changes made since the previous period.

C. SCHEDULE REPORTS: The format for each activity for the schedule reports listed below shall contain: Activity Numbers, Activity Description, Original Duration, Remaining Duration, Early Start Date, Early Finish Date, Late Start Date, Late Finish Date, and Total Float. Actual Start and Actual Finish Dates shall be printed for those activities in-progress or completed.

1. LOGIC REPORT: A list of preceding and succeeding activities for every activity in ascending order by activity number.

2. TOTAL FLOAT REPORT: A list of all activities sorted in ascending order of total float. Activities that have the same amount of total float shall be listed in ascending order of Early Start Dates.

D. NETWORK DIAGRAM: The network diagram shall be required on the initial schedule submission and on monthly schedule update submissions. The network diagram shall depict and display the order and interdependence of activities and the sequence in which the work is to be accomplished. The Architect will use, but is not limited to, the following conditions to review compliance with this paragraph:

1. Continuous flow diagrams shall show a continuous flow from left to right with no arrows from right to left. The activity or event number, description and duration shall be shown on the diagram.

2. Project milestone dates shall be shown on the diagram for start of project, any contract required interim completion dates, and contract completion dates.

3. The critical path shall be clearly shown.

E. PROJECT SCHEDULE "HARD COPIES". Contractor shall submit four (4) copies of the Project Schedule depicting the critical path for the project. Copies shall be not less than 24" x 36", nor larger than 30" x 42" and in color. Each month's schedule shall show all incomplete tasks for the project.

3.6 PERIODIC SCHEDULE MEETINGS

Progress meetings to discuss the project schedule shall take place at the project site on a monthly basis. During this meeting the Contractor will describe, on an activity-by-activity basis, all proposed revisions and adjustments to the project schedule required to reflect the current status of the project.

A. The Contractor's Project Manager and Scheduler shall attend the project schedule discussion meeting.

B. A complete update of the project schedule in accordance with paragraph 3.5, "SUBMISSION REQUIREMENTS", containing all progress, revisions, and adjustments, based on the progress meeting shall be submitted not later than 4 working days after the monthly schedule meeting.

3.7 REQUESTS FOR TIME EXTENSIONS

In the event the Contractor requests an extension of the contract completion date, for whatever reason, he shall furnish such justification, project schedule data and supporting evidence as the Architect may deem necessary for a determination as to whether or not the Contractor is entitled to an extension of time under the provisions of the contract. Submission of proof of delay based on revised activity logic and duration is obligatory to any approval. The Contractor must comply with the following requirements. These requirements are in addition to any other information, data or requirements found in other portion(s) of the contract documents.

A. JUSTIFICATION OF DELAY: The project schedule must clearly display that the Contractor has used, in full, all the float time available for the work involved with this request. The Architect's determination as to the number of allowable days of contract extension, shall be based upon the project schedule updates in effect for the time period in question and other factual information. Actual delays that are found to be caused by the Contractor's own actions, which result in the extension of the schedule, shall not be a cause for a time extension to the contract completion date.

B. SUBMISSION REQUIREMENTS: The Contractor shall submit a justification for each request for a change in the contract completion date of under two weeks based upon the most recent schedule update. Such a request shall be in accordance with the requirements of other appropriate Contract Clauses and shall include, as a minimum:

1. A list of affected activities, with their associated project schedule activity number.

2. A brief explanation of the causes of the change.

3. An analysis of the overall impact of the changes proposed.

4. A sub-network of the affected area.

Activities impacted in each justification for change shall be identified by a unique activity code contained in the required data file.

3.8 OWNERSHIP OF FLOAT

Float available in the schedule, at any time, shall be exclusively the Owner's.

*****END OF SECTION*****

Attachment B

Section 00 52 00 Agreement Between Owner and Contractor

SAMPLE

AGREEMENT BETWEEN OWNER

AND CONTRACTOR

where the basis of payment is a

STIPULATED SUM

AGREEMENT DATED: _____

BETWEEN the **OWNER:** THE BOARD OF EDUCATION OF ST. MARY'S COUNTY
23160 MOAKLEY STREET
LEONARDTOWN, MARYLAND 20650

and the **CONTRACTOR:** _____

PROJECT: VRF System Replacement at
Greenview Knolls Elementary School
45711 Military Lane
Great Mills, MD 20634

ENGINEER: RTM Engineering Consultants, LLC
303 International Circle, Suite 450
Hunt Valley, MD 21030

The OWNER and the CONTRACTOR agree as set forth below.

ARTICLE 1

THE CONTRACT DOCUMENTS

SAMPLE

1.1 The Contract Documents consist of this Agreement, the Conditions of the Contract (General, Supplementary and other Conditions), the Drawings, the Specifications, all Addenda issued prior to and all Modifications issued after execution of this Agreement and other documents listed in this Agreement. These form the Contract, and all are as fully a part of the Contract as if attached to this Agreement or repeated herein. An enumeration of the Contract Documents as of the date hereof appears in Article 7. The Contract represents the entire and integrated agreement between the parties hereto for the Project, and supersedes prior negotiations, representations or agreements, either written or oral.

ARTICLE 2

THE WORK

2.1 The Contractor shall perform all the Work required by the Contract Documents for the Greenview Knolls Elementary School VRF System Replacement in St. Mary's County, Maryland.

The Contract Work shall include the following alternates which are identified in the Project Manual and have been accepted by the Owner: **TO BE DETERMINED**

ARTICLE 3

TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

3.1 Time is of the Essence under this Agreement.

3.2 The Work to be performed under this Contract shall commence on the Commencement Date (as defined in the General Conditions), which shall be no later than ten (10) days after date of Notice award and shall be substantially complete by_____ in strict accordance with the Plans (or designated portion thereof)**.**

3.3 In the event the Contractor fails to obtain substantial completion for any phase of the Work (or designated portion thereof) by the date established for substantial completion under the Contract Documents, the Contractor shall be liable to the Owner for, and the Owner shall be entitled to assess, as liquidated damages, the sum of _____, for each calendar day of delay until substantial completion is achieved. The parties agree that the aforesaid liquidated damages sum is not a penalty but is a mutually agreed upon amount intended to reasonably compensate the Owner for damages and costs of delay sustained as a result of delayed completion of the Project.

3.4 Contractor shall diligently pursue and complete all punch list items within **forty-five (45) days** of the Architect's issuance of the punch list. In the event the Contractor fails to complete all punch list items within **forty-five (45) days** after issuance of the punch list by the Architect, the Contractor shall be liable for, and the Owner shall be entitled to assess, as liquidated damages, the sum of _____, for each calendar day of delay until the punch list is fully completed. The parties agree that the aforesaid liquidated damages sum is not a penalty but is a mutually agreed upon amount intended to reasonably compensate the Owner for damages and costs of delay sustained as a result of delayed completion of the Work.

3.5 Contractor shall diligently provide and complete the documentation, demonstrations, certification and other processes necessary to fully closeout the project as required by the Contract Documents within **one hundred twenty (120)** calendar days of the date of Substantial Completion. In addition to any assessments of liquidated damages for delayed completion of the punch list, in the event the Contractor fails to complete all closeout requirements within the time provided, the Contractor shall be liable for, and the Owner shall be entitled to assess, as liquidated damages, the sum of (_____) per day, for each calendar day of delay until the close-out is completed. The parties agree that the aforesaid liquidated damages sum is not a penalty but is a mutually agreed upon amount intended to reasonably compensate the Owner for damages and costs of delay sustained as a result of delayed completion of the Work.

ARTICLE 4

CONTRACT SUM

4.1 The Owner shall pay the Contractor in current funds for the performance of the Work, subject to additions and deductions as provided in the Contract Documents, the Contract Sum of _____ dollars and no cents ($____).

SAMPLE

The Contract Sum is determined as follows:

Base Bid: $
Add Alternates: $ (As selected by Owner, if any)

Total Contract: $

4.2 The parties acknowledge that the Contract will be funded by appropriations at both the State and Local levels. Appropriations are made annually and are limited to annual appropriations. It is understood and agreed that the Owner's obligation to pay the Contract Sum in accordance with the provisions of the Contract and of these General Conditions, shall be dependent, as a condition precedent, upon the State of Maryland County Government approving its share of the appropriations needed to fund the Contract Sum, and upon the Owner's receipt of such funding from the State of Maryland and County Government. In the event such appropriations are not made, or such funding is not received, the Owner shall have the right to terminate this Contract for its own convenience, in accordance with the provisions of Article 14.2.3 of the General Conditions. In such event, the Owner's obligation to make any further payments to the Contractor shall be limited to those described in Article 14.2.3. The terms of this subparagraph shall not be construed to limit the Owner's right to a termination for convenience for any other reason under Article 14.2.3.

ARTICLE 5

PROGRESS PAYMENTS

5.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect and accepted by the Owner, the Owner shall make progress payments on account of the Contract Sum to the Contractor, as provided in the Contract Documents, for the period ending the final day of the month as follows:

Provided an Application for Payment is received by the Architect not later than the twenty-fifth (25th) day of a month, the Owner shall make payment to the Contractor of amounts due within forty-five (45) calendar days after the day in which the Owner receives the Architect approved Application for Payment. Progress payments shall include ninety-five percent (95%) of the portion of the Contract Sum properly allocable to labor, materials and equipment incorporated in the Work and ninety-five percent (95%) of the portion of the Contract Sum properly allocable to materials and equipment properly stored at the site or at some other secure location agreed upon in writing by the Owner and Architect, less the aggregate of previous payments made by the Owner. Upon Substantial Completion of the final phase of the Work, the Owner shall pay Contractor ninety-five percent (95%) of the Contract Sum, less such amounts as the Architect or Owner shall determine for any incomplete or defective Work, and for any liquidated damages, back charges, or unsettled claims of the Owner. All payments are subject to the requirements of the General Conditions and other Contract Documents.

ARTICLE 6

FINAL PAYMENT

6.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be paid by the Owner to the Contractor when the Work has been fully completed, the Contract fully performed, including, but not limited to, all punch list and close out requirements, a certificate of Final Completion has been issued by the Architect, final Use and Occupancy documentation required for Owner to secure permit, release of liens and/or bonds have been provided in accordance with Paragraph 9.9.2, and a final Certificate for Payment has been issued by the Architect and accepted by the Owner.

ARTICLE 7

MISCELLANEOUS PROVISIONS

7.1 Terms used in this Agreement which are defined in the Conditions of the Contract shall have the meanings designated in those Conditions.

7.2 The Contract Documents which constitute the entire agreement between the Owner and the Contractor, except for Modifications issued after execution of this Agreement, include this Agreement and the following incorporated documents:

A. General Conditions of the Contract including supplementary and other conditions of the Contract (Appendix A).
B. Bid Proposal Form (Appendix B).

SAMPLE

C. The Project Manual (Specifications) with the contents as listed in the supplement to this Agreement entitled "Table of Contents" (Appendix C).

D. Drawings consisting of those listed on the supplement to this Agreement entitled "List of Drawings" (Appendix D).

E. The following Addenda to the Project Manual (Appendix E).

No.	Date

F. Other documents included as part of the Contract Document (Appendix F) are:

_____

_____

This Agreement is effective on the date executed by The Board of Education of St. Mary's County as shown below.

OWNER - The Board of Education of St. Mary's County

_____ _____

Dr. James Scott Smith
Superintendent of Schools

Notary Public

(Seal)

_____

Date Executed

My Commission Expires:

_____ _____

Witness for the Owner

CONTRACTOR –

_____ _____

(Contractor)

Notary Public

(Seal)

_____

Title

_____

Date Executed

My Commission Expires:

_____ _____

Witness for the Contractor

SAMPLE

APPENDIX A

GENERAL CONDITIONS OF THE

CONTRACT FOR CONSTRUCTION

TABLE OF ARTICLES

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SAMPLE

ARTICLE 1
CONTRACT DOCUMENTS

1.1 **DEFINITIONS**

1.1.1 THE CONTRACT DOCUMENTS: The Contract Documents consist of the Owner-Contractor Agreement, the Conditions of the Contract (General, Supplementary and other Conditions), the Drawings, the Specifications, the Contractors Proposal, and all Addenda issued prior to and all 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 change directive, (4) a written interpretation issued by the Architect pursuant to Sub-paragraph 2.2.8 or (5) a written order for a minor change in the Work issued by the Architect pursuant to Paragraph 12.4. The Contract Documents do not include Bidding Documents such as the Advertisement or Notice to Contractors, the Instructions to Bidders, sample forms, the Contractor's Bid or portions of Addenda relating to any of these, or any other documents, unless specifically enumerated in the Owner-Contractor Agreement.

1.1.2 THE CONTRACT: The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification as defined in Subparagraph 1.1.1. The Contract Documents shall not be construed to create any third party beneficiary or other contractual relationship of any kind between the Owner and any third parties. The Contract shall be executed on the SMCPS Document 203A - Agreement Between Owner and Contractor. The Drawings, Specification and all addenda are incorporated therein by reference.

1.1.3 THE WORK: The Work comprises the completed construction required by the Contract Documents, including all labor necessary to produce such construction, and all materials, systems, and equipment incorporated or to be incorporated in such construction.

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.

1.1.5 MISCELLANEOUS DEFINITIONS

1.1.5.1 The term "Product" as used in these Contract Documents refers to materials, systems and equipment provided by the Contractor.

1.1.5.2 The term "Project Manual" as used in these Contract Documents includes the Conditions of the Contract and the Specifications.

1.2 EXECUTION, CORRELATION AND INTENT

1.2.1 The original Contract Documents shall be signed in not less than triplicate by the Owner and Contractor. If either the Owner or Contractor or both do not sign the Conditions of the Contract, Drawings, Specifications, or any of the other Contract Documents, and a disagreement arises as to which version applies, the Architect shall identify such Documents.

1.2.2 By executing the Contract, the Contractor represents that he has visited the site, familiarized himself with the local conditions under which the Work is to be performed, correlated his observations with the requirements of the Contract Documents, and acknowledges that the Contract Documents and the Contract Price and time are adequate to enable the Contractor to fully complete the Work and his obligations under the Contract. It is understood that the Contractor has obtained, before executing the Contract, clarification of all questions as to intent of Contract Documents, or of assumed, or actual ambiguities in, or conflict between any items or requirements of the Contract Documents. Should Contractor fail to obtain such clarification prior to execution of the Contract, then Architect shall direct Work to proceed by the manner, which in the Architect's judgment, will produce the best results for the Project, and such Work or direction by the Architect shall not entitle the Contractor to any additional compensation or any claim for extra cost. No additional charges will be allowed for Work needed to properly complete the Contract when the Contractor has failed to determine the scope of Work prior to executing the Contract. By executing the Contract, the Contractor further acknowledges that he has investigated and satisfied himself as to the conditions affecting the Work, including but not restricted to those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power, roads and uncertainties of weather, river stages, tides or similar physical conditions at the site, the conformation and conditions of the ground, the character of equipment and facilities needed preliminary to and during prosecution of the Work. The Contractor further acknowledges that he has satisfied himself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory Work done by the Owner, as well as from information presented by the Drawings and Specifications made a part of this Contract. Any failure by the Contractor to acquaint himself with the available information will not relieve him from responsibility for estimating properly the difficulty or cost of successfully performing the Work. The Owner assumes no responsibility for any conclusions or interpretations made by the Contractor on the basis of the information made available by the Owner. If a conflict exists between Drawings, Specifications, or other Contract Documents the more stringent (which is generally considered to be the more expensive) requirement shall apply. Items shown on or required by the drawings, but not specified shall be provided.

1.2.3 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. Work not covered in the Contract Documents will not be required unless it is consistent therewith and is reasonably inferable therefrom as being necessary to produce the intended results. Words and abbreviations which have well known technical or trade meanings are used in the Contract

SAMPLE

Documents in accordance with such recognized meanings.

1.2.4 The organization of the Specifications into divisions, sections and articles, and the arrangement of Drawings are for convenience only and shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. It is the general intent of the Specifications to describe the Work of each trade under its title, but when required material or Work are described under some other title or elsewhere in the Contract Documents, the Contractor shall make the necessary adjustment in its subcontracts so that no controversy shall arise among the trades, and the progress of the work will not be delayed. Divisions apply to each and every component of the Work.

1.2.5 Where reference is made to publications, tests, specifications, manufacturer's directions or literature, the latest edition published before the date of the Specifications shall apply, except as otherwise specified. Such items shall be incorporated as part of the Contract with full force and effect as though printed in full.

1.2.6 It is the purpose of these documents to require and provide for the best possible installation of each material, system, and item of equipment, utilizing the best installation materials, methods and workmanship obtainable to achieve the desired result.

1.2.7 Abbreviations and symbols used on or in the Contract Documents have the normal meanings in standard use by Architects and Engineers in the United States. If there are any questions regarding the meaning of any abbreviation or symbol, they should be brought to the attention of the Architect during the Bidding Phase.

1.3 OWNERSHIP AND USE OF DOCUMENTS

1.3.1 All Drawings, Specifications and copies thereof furnished by the Architect are and shall remain the property of the Owner. They are to be used only with respect to this Project and are not to be used on any other project. With the exception of one record set for the Contractor, such documents are to be returned or suitably accounted for to the Owner on request at the completion of the Work. Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Owner's reserved rights.

ARTICLE 2
ARCHITECT

2.1 DEFINITION

2.1.1 The Architect is the person lawfully licensed to practice architecture, or an entity lawfully practicing architecture identified as such in the Owner-Contractor Agreement, and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term Architect means the Architect or his authorized representative.

2.1.2 The term Architect shall also refer to the Engineer of Record for the project, when applicable.

2.2 ADMINISTRATION OF THE CONTRACT

2.2.1 The Architect will provide administration of the Contract as hereinafter described.

2.2.2 The Architect will be the Owner's representative during construction and until final payment is due. The Architect will advise and consult with the Owner. The Owner's instructions to the Contractor shall be forwarded through the Architect. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified by written instrument in accordance with Subparagraph 2.2.18.

2.2.3 The Architect will visit the site at intervals appropriate to the stage of construction to familiarize himself generally with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous onsite inspections to check the quality or quantity of the Work. On the basis of his on-site observations, he will keep the Owner informed of the progress of the Work, and will endeavor to guard the Owner against defects and deficiencies in the Work of the Contractor.

2.2.4 The Architect will not be responsible for and will not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and he will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Architect will not be responsible for or have control or charge over the acts or omissions of the Contractor, Subcontractors, or any of their agents or employees, or any other persons performing any of the Work.

2.2.5 The Architect and Owner shall at all time have access to the Work wherever it is in preparation and progress. The Contractor shall provide facilities for such access so the Architect may perform his functions under the Contract Documents.

2.2.6 Based on the Architect's observations of the Work and evaluation of the Contractor's Applications for Payment, the Architect will determine the amounts owing to the Contractor and will issue Certificates for Payment in such amounts, as provided in Paragraph 9.4.

2.2.7 The Architect will be the final interpreter of the requirements of the Contract Documents and the final judge of the performance thereunder by both the Owner and Contractor.

2.2.8 The Architect will render interpretations necessary for the proper execution or progress of the Work, with reasonable promptness and in accordance with any time limit agreed upon. Either party to the Contract may make written request to the Architect for such interpretations.

2.2.9 Claims, disputes and other matters in question between the Contractor and the Owner relating to the

SAMPLE

execution or progress of the Work or the interpretation of the Contract Documents shall be referred initially to the Architect for decision which he will render in writing within a reasonable time.

2.2.10 All interpretations and decisions of the Architect shall be consistent with the intent of the Contract Documents including any requirements that are reasonably inferable therefrom and will be in writing and/or in the form of drawings. In his capacity as interpreter and judge, he will endeavor to secure faithful performance by both the Owner and the Contractor, will not show partiality to either, and will not be liable for the result of any interpretation or decision in good faith in such capacity.

2.2.11 The Architect's decisions in matters relating to artistic effect will be final if consistent with the intent of the Contract Documents.

2.2.12 The Architect will have authority to reject Work which does not conform to the Contract Documents. Whenever, in his opinion, he considers it necessary or advisable for the implementation of the intent of the Contract Documents, he will have authority to require special inspection or testing of the Work in accordance with Subparagraph 7.7.2 whether or not such Work is then fabricated, installed or completed. However, neither the Architect's authority to act under this Subparagraph 2.2.13, nor any decision made by him in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the Architect to the Contractor, any Subcontractor, any of their agents or employees, or any other person performing any of the Work.

2.2.13 The Architect will review and approve or take other appropriate action upon Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for conformance with the design concept of the Work and with the information given in the Contract Documents. Such action shall be taken with reasonable promptness so as to cause no delay. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

2.2.14 The Architect will prepare Change Orders in accordance with Article 12, and will have authority to order minor changes in the Work as provided in Subparagraph 12.4.1.

2.2.15 The Architect will conduct inspections to determine the dates of Substantial Completion and Final Completion, will receive and forward to the Owner for the Owner's review, written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of Paragraph 9.9.

2.2.16 If the Owner and Architect agree, the Architect will provide one (1) or more Project Representatives to assist the Architect in carrying out his responsibilities at the site. The duties, responsibilities and limitations of authority of any such Project Representative shall be as set forth in an exhibit to be incorporated in the Contract Documents.

2.2.17 The duties, responsibilities and limitations of authority of the Architect as the Owner's representative during construction as set forth in the Contract Documents will not be modified or extended without written consent of the Owner, the Contractor and the Architect.

2.2.18 In case of the termination of the employment of the Architect, the Owner shall appoint an architect whose status under the Contract Documents shall be that of the former architect.

ARTICLE 3
OWNER

3.1 DEFINITION

3.1.1 The Owner is the person or entity identified as such in the Owner-Contractor Agreement and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term Owner means The Board of Education of St. Mary's County and/or its authorized representatives. References to St. Mary's County Public Schools are intended to refer to The Board of Education of St. Mary's County.

3.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

3.2.1 The Owner shall furnish all necessary surveys describing the physical characteristics, legal limitations and known utility locations for the site of the Project, and a legal description of the site. The Contractor shall verify and be responsible for determining the locations of all utilities before starting work. This responsibility shall include, the Contractor's hiring or employing of contractors(s) specializing in locating underground utilities.

3.2.2 Except for fees that are the responsibility of the Contractor under the Contract Documents, the Owner shall secure and pay for necessary approvals, easements, assessments and changes required for the construction, use and occupancy of permanent structure or for the permanent changes in existing facilities.

3.2.3 Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in the orderly progress of the Work.

3.2.4 The Contractor will be furnished free of charge (__) sets of working Drawings,__(__) sets of Specifications, and __(___) copies of later details. Contractor shall pay the actual cost of reproduction for all additional sets requested by him.

3.2.5 The Owner whenever reasonably practical shall forward all instructions to the Contractor through the Architect.

3.2.6 The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein and especially those in respect to Work by Owner or by Separate Contractors, Payments and Completion, and Insurance in Articles 6, 9 and 11 respectively.

SAMPLE

3.3 OWNER'S RIGHT TO STOP THE WORK

3.3.1 If the Contractor fails to correct defective Work as required by Paragraph 13.2 or fails to carry out the Work in accordance with the Contract Documents, the Owner, by a written order, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the Owner to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

3.4 OWNER'S RIGHT TO CARRY OUT THE WORK

3.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails, within five (5) days 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, upon further written notice and without prejudice to any other remedy he may have, make good such deficiencies. In such case the cost of such corrective action shall be assessed against, and be the responsibility of the Contractor, and the Owner may deduct from the payments then or thereafter due the Contract the cost of correcting such deficiencies, including compensation for the Architect's additional services and any additional emergency and administrative services made necessary by such default, neglect or failure. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

ARTICLE 4
CONTRACTOR

4.1 DEFINITION

4.1.1 The Contractor is the person or entity identified as such in the Owner-Contractor Agreement and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term Contractor means the Contractor or his authorized representative.

4.2 REVIEW OF CONTRACT DOCUMENTS

4.2.1 The Contractor shall carefully study and compare the Contract Documents and shall at once report to the Architect and Owner any error, conflict, discrepancy, inconsistency or omission he may discover. Contractor further agrees that if he becomes aware of such errors, discrepancies, omissions, ambiguities, or conflicts in the Contract Documents, he will promptly notify Owner and Architect of such fact. The Owner shall not be responsible for any errors, discrepancies, omissions, ambiguities or conflicts in the Contract Documents which the Contractor knowingly fails to report, or which the Contractor reasonably should have recognized and fails to report. If the Contractor performs any construction activity which he knows or reasonably should know involves an error, discrepancy, omission, code violation, or ambiguity or conflict in the Contract Documents, without giving notice to the Owner and Architect, the Contractor shall assume responsibility for such performance and shall bear all attributable cost for correction. The Contractor shall perform no portion of the Work at any time without Contract Documents or, where required, approved Shop Drawings, Product Data or Samples for such portion of the Work.

4.3 SUPERVISION AND CONSTRUCTION PROCEDURES

4.3.1 The Contractor shall supervise and direct the Work, using his best skill and attention. He shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract.

4.3.2 The Contractor shall be responsible to the Owner for the acts and omissions of his employees, Subcontractors and their agents and employees, and other persons performing any of the Contractor's Work. The Contractor shall at all times enforce strict discipline and good order among his employees and subcontractors, and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to him.

4.3.3 The Contractor shall not be relieved from his obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the Architect in his administration of the Contract, or by inspections, tests or approvals required or performed under Paragraph 7.7 by persons other than the Contractor.

4.3.4 Manufactured articles, materials, systems, or equipment shall be prepared, mixed, applied, installed, connected, erected, used, cleaned, or conditioned in accordance with manufacturer's recommendations and directions, unless specified to the contrary by the Owner in writing. Packaged materials shall be delivered and stored in original containers until ready for use. Contractor shall schedule deliveries to avoid unnecessary exposure of materials.

4.3.5 All Work shall be performed and installed in accordance with the applicable building codes, construction codes, and other laws, ordinances or regulations of the State and local governmental authorities having jurisdiction over the Project.

4.3.6 The Contractor shall review, approve and submit all Shop Drawings, Product Data and Samples required by the Contract Documents. The Work shall be performed in accordance with approved submittals.

4.4 WARRANTY

4.4.1 The Contractor warrants to the Owner and the Architect that all materials, systems, and equipment furnished under this Contract will be new unless otherwise specified, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. The Contractor further warrants that the work shall be performed in accordance with the generally accepted industry standards and practices for projects of similar design and complexity. The Contractor further warrants that in the performance of the work, it shall exercise that degree of care and skill which a reasonably prudent

SAMPLE

Contractor would exercise under the same or similar circumstances and that it will use only properly skilled and experienced subcontractors and workmen. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials, systems, and equipment. This warranty is not limited by the provisions of paragraph 13.2.

4.4.2 Except for those specifically identified in writing by the Contractor, the Contractor further warrants to the Owner upon completion of the Project that to the best of his information, knowledge and belief no mold, polychlorinated biphenyl (PCB), asbestos containing building materials (ACBM) or other hazardous materials are contained in the Project. This warranty shall not apply to refrigerants or other materials within self-contained systems or equipment as furnished by the manufacturer.

4.4.3 The Contractor shall promptly respond to all issues that are warranty related. The Owner will present all warranty items to the Contractor in writing. The Contractor will be responsible for arranging the applicable subcontractors and completion of all corrections. The corrective work must start within 24-hours of the date of written notice from the Owner, unless other arrangements have been made with the Owner.

4.5 TAXES

4.5.1 The Contractor shall pay all sales, consumer, use and other similar taxes for the Work or portions thereof provided by the Contractor which are legally enacted at the time bids are received, whether or not yet effective.

4.5.2 Products which are incorporated in the Work under this Contract are not exempt from Maryland States Sales or Use Tax.

4.6 SUPERINTENDENT AND PROJECT MANAGER

4.6.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during the progress of the Work. If the project is left without this required supervision, the Owner or Architect has the right to require that all work be terminated until such a time where the supervision has returned. Such a stoppage of work will not be grounds for a claim by the Contractor or entitle the Contractor to additional time or compensation.

4.6.2 The superintendent shall represent the Contractor and all communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be so confirmed on written request in each case.

4.6.3 The Contractor shall submit in writing to the Architect and Owner the qualifications of the proposed superintendent and project manager. Approvals from the Owner must be secured before the start of any construction. The proposed superintendent and project manager shall meet with the approval of the Owner and Architect. The superintendent shall be on the job at all times and shall not be responsible for any other project being constructed by the Contractor.

4.6.4 At any time during the project, for whatever reason, the Architect or Owner may request a change in the superintendent or project manager. This request will be made in writing to the General Contractor. Upon receipt of notification, the General Contractor shall provide the required change in personnel within two-weeks.

4.6.5 The Superintendent that has been approved by the Owner and Architect shall remain in place as Superintendent until the final completion of all Work, including but not limited to required commissioning of systems and completion of Punch List work.

4.6.6 The Superintendent and Project Manager shall assure that all workmen are using only specified and approved products and are performing their work in accordance with requirements of the Contract Document, whether employed by the Contractor or by Subcontractors. This responsibility shall not be delegated.

4.7 COMMUNICATIONS

4.7.1 The Contractor shall to the extent practicable forward all communications to the Owner through the Architect.

4.7.2 Copies of all correspondence from the Contractor to the Architect shall also be forwarded to the Owner and the Owner's on-site representative.

4.8 ROYALTIES AND PATENTS

4.8.1 The Contractor shall pay all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from any loss on account thereof, except when a particular design, process or the product of a particular manufacturer or manufacturers is specified. If the Contractor has reason to believe that the design, process or the product specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information to the Architect and Owner.

4.9 INDEMNIFICATION

4.9.1 To the fullest extent permitted by law, the Contractor covenants to save, defend, hold harmless and indemnify the Owner and all of its elected or appointed officials, agents and employees from and against any and all claims, loss, damage, injury, cost (including courts costs and attorney's fees), charge, liability or exposure, however caused, resulting from, arising out of, or in any way connected with the Contractor's performance or non-performance of the terms of the Contract Documents or its obligations under the Contract.

4.9.2 The Contractor shall be responsible for the Work performed under the Contract Documents and every part thereof, and for all materials, tools, equipment, systems, appliances, property of any and all description used in connection with the Work. The

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Contractor assumes all risks for direct and indirect damage or injury to the property or persons used or employed or in connection with Work contracted for and of all damage or injury to any person or property wherever located, resulting from the action, omission or operation under the Contract, or in connection in any way whatsoever with the contracted Work, until final acceptance of the Work by the Owner.

4.9.3 Precaution shall be executed by the Contractor at all times for the protection of persons (including employees) and property. All existing structures, utilities, roads, services, trees and shrubbery shall be protected against damages or interruption of service at all times by the Contractor and its Subcontractors during the term of the Contract, and the Contractor shall be held responsible for any damage to property occurring by reason of its operation on the property.

4.9.4 Nothing contained in the Specifications shall be construed as creating any contractual relationship between Subcontractors and the Owner. The Contractor shall be fully responsible to the Owner for the acts and omissions of the Subcontractors and of persons employed by them as it is for acts and omission of persons directly employed by it.

4.9.5 The obligations of the Contractor under this Paragraph 4.9 shall not extend to the liability of the Architect, his agents or employees, arising out of (1) the preparation or approval of maps, drawings, submittals, opinions, reports, surveys, Change Orders, designs or Specifications, or (2) the giving of or the failure to give directions or instructions by the Architect, his agents or employees.

4.10 HAZARDOUS MATERIALS

4.10.1 At the request of the Owner, and/or to the extent required by law, the General Contractor and each Subcontractor shall provide material safety data sheets (MSDS), for all hazardous materials contained in any building material, systems, building component or parts thereof.

4.10.2 In the event the Contractor encounters on the site any material reasonably believed to be polychlorinated biphenyl (PCB), or asbestos containing material (ACM) that has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and Architect in writing. The Work in the affected area shall not be resumed except by written agreement of the Owner and Contractor if in fact the material is polychlorinated biphenyl (PCB) or asbestos containing material (ACM) and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of polychlorinated biphenyl (PCB) or asbestos containing material (ACM), or when it has been rendered harmless. Costs associate with testing of materials to determine if they are hazardous will be borne by the Contractor. If the tests return positive, confirming the material to be hazardous, the Owner shall be responsible for the abatement of the hazard on the site.

ARTICLE 5

SUBCONTRACTORS

5.1 DEFINITION

5.1.1 A Subcontractor is a person or entity who has a direct Contract with the Contractor to perform any of the Work or provide any materials, systems, or equipment for the Project. The term Subcontractor is referred to throughout the Contract Documents as if singular in number and masculine in gender and means a Subcontractor or his authorized representative. The term Subcontractor does not include any separate Contractor or his Subcontractors.

5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect Contract with a Subcontractor to perform any of the Work or providing products for the Project. The term Sub-subcontractor is referred to throughout the Contract Documents as if singular in number and masculine in gender and means a Sub-subcontractor or any authorized representative thereof.

5.2 AWARD OF SUBCONTRACT AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.2.1 The Owner has the right, without obligation, to reject the use of any Subcontractor. Within ten (10) days after signing of the Contract or Notice of Award (whichever comes first), the Contractor shall submit in writing to the Owner, through the Architect, the names of those Subcontractors and persons or organizations (including manufacturers who are to furnish materials, systems or equipment fabricated to a special design) proposed for use in the early stages of construction for acceptance. Prior to application for first payment, a complete list of all proposed Subcontractors shall be submitted for acceptance to the Owner and the Architect. The Architect shall notify the Contractor in writing, within ten (10) days, if either the Owner or the Architect, after due investigation, has reasonable objection to any proposed Subcontractor and does not accept him. Failure of the Owner or Architect to make objection to any proposed subcontractor, within the aforementioned time, shall constitute notice of no reasonable objection.

5.2.1.1 Each Subcontractor may be required to furnish the Owner, in duplicate, through the Architect, proof of his financial stability and experience to perform the particular work in which he will be engaged.

5.2.2 The Owner shall also have the right to require the Contractor to replace any Subcontractor during the performance of the Work, who in the reasonable judgment of the Owner and Architect has persistently failed to comply with the Contract Documents and/or failed to provide sufficiently skilled workmen as required for the proper performance of the Work.

5.3 SUBCONTRACTUAL RELATIONS

5.3.1 By an 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 the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Documents, assumes toward the Owner and the

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Architect. Said agreement shall preserve and protect the rights of the Owner and the Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the Contractor-Subcontractor agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with his Sub-contractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the Subcontract, copies of the Contract Documents to which the Subcontractor will be bound by this Paragraph 5.3, and identify to the Subcontractor any terms or conditions of the proposed Subcontract which may be at variance with the Contract Documents. Each Subcontractor shall similarly make copies of such Documents available to his Sub-subcontractors.

5.4 COOPERATION AMONG SUBCONTRACTORS

5.4.1 Each Subcontractor shall coordinate his work with adjacent work and cooperate with other trades so as to facilitate the orderly and reasonable progress of work. Each trade shall afford other trades every reasonable opportunity for installation of work and for storage of materials. Each Subcontractor shall thoroughly examine all existing and connecting work before starting work under his own trade section and shall report to the Contractor, any conditions which would impair the quality or function of any work to be performed under this Contract. In absence of any such report, each Subcontractor, upon the beginning of his work, will be considered as having accepted all preceding Work, and as having waived all claims to the contrary.

ARTICLE 6
WORK BY OWNER OR BY SEPARATE CONTRACTORS

6.1 OWNER'S RIGHT TO PERFORM WORK AND TO AWARD SEPARATE CONTRACTS

6.1.1 The Owner reserves the right to perform work related to the Project with his own forces, and to award separate Contracts in connection with other portions of the Project or other work on the site under these or similar Conditions of the Contract. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, he shall make such claim as provided in the Contract Documents.

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

6.1.3 The Owner will provide the coordination of the Work of his own forces and of each separate Contractor with the Work of the Contractor, who shall cooperate therewith as provided in Paragraph 6.2.

6.2 MUTUAL RESPONSIBILITY

6.2.1 The Contractor shall afford the Owner and separate Contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their Work, and shall connect and coordinate his Work with theirs as required by the Contract Documents.

6.2.2 If any part of the Contractor's Work depends for proper execution or results upon the Work of the Owner of any separate Contractor, the Contractor shall, prior to proceeding with the Work, promptly report to the Architect any apparent discrepancies or defects in such other Work that render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acceptance of the Owner's or separate Contractors' work as fit and proper to receive his Work.

6.2.3 Any costs caused by defective or ill-timed work shall be borne by the party responsible therefore.

6.2.4 Should the Contractor wrongfully cause damage to the Work or property of the Owner, or to other Work on the site, the Contractor shall promptly pay for and remedy such damage.

6.2.5 Should the Contractor wrongfully cause damage to the Work or property of any separate contractor, the Contractor shall upon due notice promptly attempt to settle with such other contractor by agreement, or otherwise to resolve the dispute. If such separate contractor sues the Owner on account of any damage alleged to have been caused by the Contractor, the Owner shall notify the Contractor who shall indemnity and hold the Owner harmless from such claims and shall defend such proceedings at the Contractor's expense and if any judgment or award against the Owner arises therefrom the Contractor shall pay or satisfy it, and shall reimburse the Owner for all attorneys' fees and court costs, if any, which the Owner has incurred.

6.3 OWNER'S RIGHT TO CLEAN UP

6.3.1 The Contractor at all times shall keep the Project free from accumulation of waste materials or rubbish caused by his operations. At the completion of the Work, he shall remove all his waste materials and rubbish from and about the Project as well as his tools, construction equipment, machinery and surplus materials.

6.3.2 If a dispute arises between the Contractor and separate contractors as to their responsibility for cleaning up as required, the Owner may clean up and charge the cost thereof to the Contractors responsible thereof.

ARTICLE 7
MISCELLANEOUS PROVISIONS

7.1 GOVERNING LAW

7.1.1 The Contractor shall be governed by the State, Federal and local laws of the place where the Project is located.

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7.2 SUCCESSORS AND ASSIGNS

7.2.1 The Owner and the Contractor each binds himself, his partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract or sublet it as a whole without the written consent of the other, now shall the Contractor assign any moneys due or to become due to him hereunder, without the previous written consent of the Owner.

7.3 WRITTEN NOTICE

7.3.1 Written notice shall be deemed to have been duly served if delivered in person or if delivered at or sent by registered or certified mail to the last business address known to him who gives the notice. In the case of the Owner, Contractor and Architect, notice shall be delivered to the addresses listed on the first page of the Owner-Contractor Agreement.

7.3.2 Electronic mail (e-mail) will not qualify as written notice or written communication.

7.4 CLAIMS

7.4.1 Definition: A Claim is a demand or assertion by one of the parties seeking as a matter of right, adjustment or interpretation of Contract terms, payment of money, an extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims must be made by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

7.4.1.1 Notice of Claim: Claims must be in writing addressing the issues surrounding the claim. Formal written notice by the party making such claim must be made in within the timeframe indicated in paragraph 7.4.2. Formal written notice is further defined as a formal typewritten letter noting the claim and the intent of the party to make a claim for additional dollars and/or contract time. This letter shall be written solely on the topic of the claim.

7.4.2 Time Limits on Claims: Claims by the Contractor must be made within ten (10) days after occurrence of the event giving rise to such Claim or within ten (10) days after the Contractor first recognizes or reasonably should have recognized the condition giving rise to the Claim, whichever is later. An additional Claim made after the initial Claim has been implemented by Change Order will not be considered unless submitted in a timely manner.

7.4.3 Continuing Contract Performance: Pending final resolution of a Claim and unless otherwise agreed in writing the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments of undisputed amounts in accordance with the Contract Documents.

7.4.4 Claims for Additional Cost: As set forth in Paragraph 8.3, Contractor shall not be entitled to assert a Claim for delay damages. If the Contractor wishes to make Claim for an increase in the Contract Sum (other than a Claim for delay damages) written notice as provided herein shall be given before proceeding to execute the Work. Said notice shall itemize all Claims and shall contain sufficient detail and substantiating data to permit evaluation of same by Owner and Architect. No such Claim shall be valid unless so made. Any change in the Contract Sum resulting from such Claim shall be authorized by Change Order.

7.4.4.1 Once written notice of a change involving a claim for additional cost has been presented by the Contractor, he shall be entitled to ninety [90] days in which to compile and complete a written accounting of the total impact of the claim, thereby representing a change proposal. In the event the Contractor fails to submit a proposal within the ninety [90] day period the Contractor shall loss his right to compensation and shall be deemed to have waived his claim.

7.4.5 Claims for Additional Time: If the Contractor wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that such weather conditions were abnormal for the period of time and could not have been reasonably anticipated and that the weather conditions had an adverse effect on the scheduled construction. Contractor shall be entitled to sixty (60) days in which to compile and submit such documentation. In the event the Contractor fails to submit such documentation within the sixty (60) day period, the Contractor shall lose his right to additional time and shall be deemed to have waived his claim.

7.4.6 The aforesaid provisions shall not relieve Contractor of his obligations to give timely notices under Paragraphs 12.2.1 or 12.3 or elsewhere in the Contract Documents. If the above conditions on submitting a claim are not met, the Owner reserves the right to reject the claim in its entirety.

7.5 PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND

7.5.1 Prior to and in conjunction with execution of the Contract, the Contractor shall furnish a Performance Bond in an amount equal to one hundred percent (100%) of the Contract Sum as security for the faithful performance of the Contract and also a Labor and Material Payment Bond in an amount equal to one hundred percent (100%) of the Contract Sum, as security for the payment of all persons performing labor on the Project under this Contract and furnishing materials in connection with this Contract. The Performance Bond shall be written on SMCPS Document 302A, and the Labor and Material Payment Bond shall be written on SMCPS Document 302B. 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 his power of attorney. The Performance Bond and Labor and Material Payment Bond shall be delivered to the Owner ten (10) days after the date of Notice of Award of the Contract and in no event shall the bonds be furnished later than the Date of Execution

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of the Contract. The Bonds shall each be provided in triplicate. If additional work is authorized, the Contractor's Bond shall be increased to cover the value of the additional work authorized. Acceptable surety companies are those with active claims offices if the State of Maryland, licensed by the Maryland Commission of Insurance and with an "A-" or better rating in the Best's Key Rating Guide.

7.5.2 The following Documents shall all bear the same date as the Contract:

- General Contractor's Labor and Material Payment Bond
- General Contractor's Performance Bond
- Insurance Certificates

7.6 RIGHTS AND REMEDIES

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

7.6.2 Whenever the Contract Documents provide that the Owner shall have a specific right or remedy, such provision shall not obligate the Owner to exercise such right, and the failure of the Owner to exercise such right shall not constitute a waiver thereof. The rights and remedies of the Owner under the Contract shall be cumulative and concurrent with any other legal rights of the Owner, and may be pursued or exercised singularly, successively, or concurrently at the sole discretion of the Owner, and may be exercised as often as the Owner deems necessary or desirable, without prejudice to any other right or remedy. No action or failure to act by the Owner shall constitute a waiver of any right or duty afforded it under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereof, except as may be specifically agreed in writing.

7.6.3 In the event the Owner employs counsel and/or incurs other costs or expenses to enforce the Contract or any other provisions thereof, to institute suit or pursue a claim, to recover damages for breach of Contract, or to otherwise protect its interests in any claim, action, or other matter in dispute arising under the Contract, the Owner shall be entitled to recover from the Contractor its reasonable attorney fees, court costs, or other charges or expense associated therewith.

7.7 TESTS

7.7.1 If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any portion of the Work to be inspected, tested or approved, the Contractor shall give the Architect timely notice thereof so the Architect may observe such inspection, testing or approval. The Contractor shall bear all costs of such inspections, tests or approvals conducted by public authorities. Unless otherwise provided, the Owner shall bear all costs of other inspections, tests or approvals.

7.7.2 If the Architect determines that any Work requires special inspection, testing or approval which Subparagraph 7.7.1 does not include, he will, upon written authorization from the Owner, instruct the Contractor to order such special inspection, testing or approval, and the Contractor shall give notice as provided in Subparagraph 7.7.1. If such special inspection or testing reveals a failure of Work to comply with the requirements of the Contract Documents, the Contractor shall bear all costs thereof, including compensation for the Architect's additional service made necessary for such failure; otherwise the Owner shall bear such costs, and an appropriate Change Order shall be issued.

7.7.3 Except as noted in the Summary of Work Supplement, the Contractor shall secure and pay for all building permits and governmental inspections necessary for the Work and occupancy of the Project. Required certificates of inspection, testing or approval shall be secured by the Contractor and promptly delivered by him to the Architect.

7.7.4 If the Architect is to observe the inspections, tests or approvals required by the Contract Documents, he will do so promptly and, where practicable, at the source of supply.

7.8 DISPUTE RESOLUTION

7.8.1 Any claim, action, or dispute between parties to the Contract including any dispute involving the Contractor's surety, which does not reach an amicable settlement shall be subject to litigation and resolution in the State Civil Courts of St. Mary's County, Maryland and not by arbitration. The Contractor shall carry on the Work and maintain the progress schedule pending final resolution of any claim or dispute, unless directed otherwise by the Owner.

7.8.2 The Contract and any claim, action, or dispute between the parties shall be governed in all respects, whether as to validity, construction, capacity, performance or otherwise, by the law of the State of Maryland, without regard to the principals of conflict of laws, and without regard to any presumption of other rule requiring construction of the Contract against the party who drafted it. The Contractor and the surety(s) by the execution of the Contract and bonds, irrevocably consent and submit to the jurisdiction of the State Courts in and for St. Mary's County, Maryland and further agree that such Courts shall constitute the exclusive venue for any suit, action, or judicial proceeding arising out of or relating to the Contract, bonds, or any claim, action, or dispute between any of the parties.

ARTICLE 8
TIME

8.1 DEFINITIONS

8.1.1 CONTRACT TIME: Unless otherwise provided, the Contract Time is the period of time allotted in the Contract Documents from the commencement date to Substantial Completion of the Work as defined in Subparagraph 8.1.3, including authorized adjustments thereto.

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8.1.2 COMMENCEMENT DATE: The date of commencement of the Work is the date established in a Notice of Award. If there is no Notice to Award, it shall be the date of the Owner-Contractor Agreement or such other date as may be established therein.

8.1.3 SUBSTANTIAL COMPLETION: The Date of Substantial Completion of the Work, or designated portion thereof, is the Date certified by the Architect when construction is 100 percent (100%) complete, including commissioning (if applicable), with the exception of incidental minor punch list items delayed for reasons beyond the Contractor's control and the exception of final close out documentation, demonstrations, certificates and requirements. The punch list remaining must be minor or incidental in nature as determined by the Architect and Owner. Upon completion of the punch list for the Project, and all remaining Contract requirements to the reasonable satisfaction of the Architect and the Owner, the Architect shall certify Final Completion.

8.1.4 DAY: The term day as used in the Contract Documents shall mean calendar day unless otherwise specifically designated.

8.2 PROGRESS AND COMPLETION

8.2.1 Time is of the Essence under the Contract and all time limits stated in the Contract Documents are of the essence of the Contract.

8.2.2 The Contractor shall begin the Work on the date of commencement as defined in Subparagraph 8.1.2. He shall carry the Work forward expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

8.2.3 Contractor shall, within ten (10) days of signing the Contract, submit in triplicate for the Owner and Architect's acceptance, a detailed time schedule for completion of the Project, giving the dates of commencement and completion of the various components of the Work. The schedule shall indicate the proposed starting and completion dates for all phases of Work, as well as the totality of the Work. The Owner shall have the right to make reasonable adjustments to the Project schedule as deemed necessary in the reasonable discretion of the Owner. Contractor shall prosecute the Work in accordance with the accepted schedule. In the event Contractor's progress fails to comply with the schedule of Work, or if any schedule submitted by Contractor identifies a date for Substantial Completion for all or any portion of its Work which is beyond the date established in the Contract, then Contractor shall, upon request of the Architect and/or Owner, submit a narrative description of the means and methods which the Contractor intends to employ to expedite the progress of the Work to ensure timely completion of the various phases of subdivisions of the Work as well as the totality of the Work, and, upon the request of the Architect and/or Owner, shall take all necessary action, including, without limitation, increasing the number of personnel and labor on the Project, and implementing double time and double shifts, to ensure such timely completion. Upon the request of the Owner, the Contractor shall also make any and all adjustments to its construction schedule deemed necessary in the reasonable discretion of the Owner. The revised construction schedule shall then constitute the schedule to be used by the Contractor and the Owner until subsequently revised. In addition to its rights set forth above, the Owner shall have the right, in its reasonable discretion to accelerate the Contractor's schedule, if necessary, for any reason. Contractor shall be entitled to an equitable adjustment in the Contract Amount for an acceleration directed by the Owner provided Contractor is not behind schedule or otherwise in default of this Agreement.

8.2.4 If the Contract Documents require the Work or a designated portion thereof to be completed in phases, and the Owner encounters additional costs or other damages as a result of the Contractor's failure to complete the work within the time requirements of the phasing plans, the General Contractor shall indemnify damages incurred as a result of the Contractor's failure to meet the phasing plan time requirements. This obligation is in addition to the Contractor's responsibility and liability for any liquidated damages assessed as a result of the Contractor's failure to complete the overall Contract within the Contract Time.

8.3 DELAYS AND EXTENSIONS OF TIME

8.3.1 For purposes of the Contractor's claims "delay" shall include delays, disruptions or other occurrences which adversely impact the execution, scheduling or progress of the Work.

8.3.2 If the Contractor is delayed at any time in the progress of the Work by any act or neglect of the Owner or the Architect, or by any employee of either, or by any separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, adverse weather conditions not reasonably anticipatable, unavoidable casualties, or any causes beyond the Contractor's control, or by any other cause which the Architect determines may justify the delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

8.3.3 Any claim for extension of time by the Contractor shall be made in writing to the Architect not more than ten (10) days after the commencement of the delay; otherwise it shall be waived. In the case of a continuing delay only one claim is necessary. The Contractor shall provide an estimate of the probable effect of such delay on the progress of the Work, clearly stated reasons for the delay and detailed proof of such delay.

8.3.4 If no agreement is made stating the dates upon which interpretations as provided in Subparagraph 2.2.8 shall be furnished, then no claim for delay shall be allowed on account of failure to furnish such interpretations until fifteen (15) days after written request is made for them, and not then unless such claim is reasonable.

8.3.5 If necessary to reach a proper stopping place in any portion of the Work or to complete Work within the Contract limit time, Contractor shall work overtime with both his forces and forces of his Subcontractors without

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addition to the Contract Sum. Contractor shall be responsible for all incidental cost in connection with such overtime work.

8.3.6 If Work falls behind schedule, as determined by the Architect, the Contractor shall provide at his own expense, additional labor and/or equipment, overtime pay, etc., as required to overcome the delay.

8.3.7 The time of completion shall be as specified in the Owner Contractor Agreement. For each day of delay in obtaining Substantial Completion beyond the scheduled completion date, as modified in accordance with the Owner-Contractor Agreement, the Owner will assess as liquidated damages the sum listed in the Contract for each day, including Saturdays, Sundays and legal holidays. This sum shall not be considered as a penalty but as a sum mutually agreed upon as the reasonably ascertained damage suffered by the Owner because of the delay in the completion of the Work.

8.3.8 Requests for extension of completion time due to strikes, lack of materials or any condition over which the Contractor has no control 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 Contractor warrant such an extension with reasons clearly stated and 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 by formal approval of the Owner.

8.3.8.1 In establishing the time of construction completion, the weather conditions as recorded by the National Weather Service over the past five (5) years have been taken in consideration and no request for an extension of time due to weather conditions will be considered unless accompanied by National Weather Service documentary evidence showing by comparison that such weather is abnormal to the average of the past five (5) years for the same dates and period of time.

8.3.8.2 The Contractor is fully responsible for acquiring all documentation to support any claim due to adverse weather conditions.

8.3.8.3 Upon the submission of the first claim for an extension due to adverse weather conditions, the Contractor is then responsible to collect weather data in accordance with paragraph 8.3.7.1 for all months of the Contract thereafter until such a time when "Substantial Completion" for the entire project has been reached. Additional time due to adverse weather conditions will be allocated to the Contract time in calculating the number of days to allocate to the Contract time for adverse weather, the Owner shall be given credit for the number of days during the Project that the adverse weather days were below the five-year average.

8.3.9 Reasonable extensions of time in the event of delays which are beyond the control of the Contractor may be granted by the Owner upon written request of the Contractor, provided, however, that such extension of Contract Time shall be net of any delays caused by or due to the fault or negligence of the Contractor or which are otherwise the responsibility of the Contractor and shall also be net of any contingency or "float" time allowance included in the Contractor's construction schedule. The Contractor will be required to demonstrate the effect of the delay by means of the project schedule. The Contractor shall, in the event of any occurrence likely to cause a delay, cooperate in good faith with the Architect and the Owner to minimize and mitigate the impact of any such occurrence and do all things reasonable under the circumstances to achieve this goal. It is the Contractor's responsibility to provide written justification for any requested time extension.

8.3.10 In the event the Contractor or any of his Subcontractors or suppliers are delayed in the prosecution of their Work by any act, omission, neglect, or default of Owner or Architect or any of their agents, employees, consultants, representatives or separate contractors, or by any unforeseen conditions, the Contractor shall not be entitled to and shall make no claim for, damages for such delay in the performance of this Contract. Any such delay, and/or claim based thereon, shall be fully compensated for by an equitable extension of the time to complete the Work. Such extension of time shall be the Contractor's sole remedy for delay.

8.3.11 Claims relating to time shall also be made in accordance with applicable provisions of Article 7.4.

ARTICLE 9
PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

9.1.1 The Contract Sum is stated in the Owner-Contractor Agreement and, including authorized adjustments thereto, is the total amount payable by the Owner to the Contractor for the performance of the Work under the Contract Documents to the extent the contract sum includes allowances specified under the Contract Documents, all unused allowances for any unused portion thereof, shall incur 100% to the Owner and shall be credited to the Owner.

9.2 SCHEDULE OF VALUES

9.2.1 Before the First Application for Payment, the Contractor shall submit to the Architect a schedule of values allocated to the various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Architect or Owner may require. This schedule, unless objected to by the Architect or the Owner, shall be used only as a basis for the Contractor's Applications for Payment.

9.3 APPLICATIONS FOR PAYMENT

9.3.1 On or before the twenty-fifth (25th) day of each month, the Contractor shall submit to the Architect an itemized Application for Payment, notarized, supported by such data substantiating the Contractor's right to payment as the Owner or the Architect may require, and reflecting retainage, if any, as provided elsewhere in the Contract Documents. Prior to obtaining a Progress Payment, and in conjunction with submission of its Application for Payment, the Contractor must

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certify, in writing, that he has paid for previous Progress Payments and will pay from the current Progress Payment his subcontractors and suppliers in accordance with Contractual arrangements with them.

To this effect, the following statement shall be added be added to each Application for Payment:

"I/We certify that the above is a true statement of the status of the Work and of the accounts; that work and products conform with the Contract and duly authorized changes; that all just and lawful bills against the undersigned and his Subcontractors for labor, materials, and equipment required by the Contract have been paid in full through prior certificates and will be paid in full with the current certificate."

9.3.1.1 Each month, the Owner will make payments on account of the Contract as follows: Ninety-five percent (95%) of the value of the work completed up to the date of the requisition, as approved by the Architect and the Owner's Representative, including the value of materials suitably stored at the Job Site (or other approved locations in accordance with Subparagraph 9.3.2), less the aggregate of any previous payments.

9.3.1.2 Each month, on or about the 20th; the Contractor shall prepare a draft copy of the requisition for payment for review by the Architect, Owner and when applicable, the Owner's representative. This process requires the Contractor marking the changes to the prior month's request for payment (increases and decreases) and distributing it to all parties for review. Changes shall be made to the percentages complete when referring to work in place; dollar values shall be changed when referring to stored materials. Comments from the Contractor further justifying or clarifying the notations shall be included within the cover letter or transmittal. The marks and notations made on the draft copy shall be legible and allow for the prior requisition's value to remain visible. The Contractor is required to receive the Architect's approval of the draft prior to proceeding with the preparation of the formal requisition copy.

9.3.1.3 Until conditions of Paragraph 9.9, Final Completion and Final Payment, have been fully met, the Owner will pay ninety-five percent (95%) of the amount due the Contractor on account of Progress Payments. All payments are subject to the requirements of the General Conditions and other Contract Documents. The Contractor will have all required shop drawings, samples, product data, submitted and approved by the Architect before any reduction in retainage will be considered.

9.3.1.4 The Contractor will have all required shop drawings, samples, product data, submitted and approved by the Architect before any reduction in retainage will be considered.

9.3.1.5 The full Contract retainage may be reinstated if the manner of completion of the Work or its progress do not remain satisfactory to the Architect or Owner or if the Surety withholds his consent or for other good and sufficient reasons.

9.3.1.6 Each request for payment shall be prepared by the Contractor on the "Application for Payment" form contained in the Project Manual. Each approved requisition shall bear the signature of the Contractor, Architect and Owner's Representative; and shall be notarized.

9.3.1.7 The Contractor shall present the original plus two (2) copies (total of three) for review and acceptance by the Architect. The Architect shall deliver the original plus all copies to the Owner for processing.

9.3.2 When the Application for Payment includes material or equipment stored off the job site, the Application for Payment shall be accompanied by a certified statement including:

a. Description of items stored off site

b. Bill of Sale for each item

c. Location of storage (must be within the State of Maryland and within a 75 mile radius of project site).

d. An insurance company certificate stating that the item is currently covered by all contractual requirements, including liability and fire insurance. Insured party listed shall be St. Mary's County Public Schools.

e. A notarized and sealed statement from the contractor stating that the item or any part thereof will not be installed in any other construction project other than Work under this Contract.

9.3.3 The Contractor warrants that title to all Work, materials and equipment covered by an Application for Payment will pass to the Owner either by incorporation in the construction or upon the receipt of payment by the Contractor, whichever occurs first, free and clear or all liens, claims, security interests or encumbrances, hereinafter referred to in this Article 9 as "liens", and that no Work, materials, systems or equipment covered by an Application for Payment will have been acquired by the Contractor, or by any other person performing Work at the site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller of otherwise imposed by the Contractor or such other person.

9.3.4 The Contractor shall provide partial and final release of liens from each of the sub-contractors and suppliers covering Work for which each progress payment is made.

9.3.5 Five percent retainer of the full contract value plus all change orders shall be held until all contract work is completed and all punch list items have been completed.

9.4 CERTIFICATES FOR PAYMENT

9.4.1 The Architect will, within ten (10) days after the receipt of the Contractor's Application for Payment, either issue a Certificate for Payment to the Owner, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the

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Contractor in writing his reasons for withholding a Certificate as provided in Subparagraph 9.6.1.

9.4.2 The issuance of a Certificate of Payment will constitute a representation by the Architect to the Owner, based on his observations at the site as provided in Subparagraph 2.2.3 and the data comprising the Application for Payment, that the Work has progressed to the point indicated; that, to the best of his knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in his Certificate); and that the Contractor is entitled to payment in the amount certified. However, by issuing a Certificate for Payment, the Architect shall not thereby be deemed to represent that he has made exhaustive or continuous on-site inspections to check the quality or quantity of the Work or that he has reviewed the construction means, methods, techniques, sequences or procedures, or that he has made any examination to ascertain how or for what purpose the Contractor has used the moneys previously paid on account of the Contract Sum.

9.5 PROGRESS PAYMENTS

9.5.1 After the Architect has issued a Certificate for Payment, the Owner shall review same and if acceptable, make payment in the manner and within the time provided in the Contract Documents.

9.5.1.1 The Owner will make partial payments within forty-five (45) calendar days after receipt of a duly certified and approved Application for Payment. Materials delivered to the site and preparatory work shall be taken into consideration.

9.5.2 The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's Work, the amount to which said Subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to the Contractor on account of such Subcontractor's Work. The Contractor shall by an appropriate agreement with each Subcontractor, require each Subcontractor to make payments to his Sub-subcontractors in similar manner.

9.5.3 The Architect or Owner may, on request and at his discretion, furnish to any Subcontractor, if practicable, information regarding the percentages of completion or the amounts applied for by the Contractor and the action taken thereon by the Architect or Owner on account of Work done by such Subcontractor.

9.5.4 Neither the Owner nor the Architect shall have any obligation to pay or to see to the payment of any moneys to any Subcontractor except as may otherwise be required by law.

9.5.5 No approval or acceptance of a Certificate for a progress payment, nor any progress payment, nor any partial or entire use or occupancy of the Project by the Owner, shall constitute an acceptance of any Work not in accordance with the Contract Documents. Unless otherwise agreed upon, partial occupancy or use of any completed or partially completed portion of the Work by the Owner shall not: (1) constitute final acceptance of the Work; (2) relieve the Contractor of responsibility for loss or damage because of or arising out of defects in, or malfunctioning of, any Work, material or equipment, nor from any other unfulfilled obligations or responsibilities under the Contract Documents; or (3) commence any warranty period under the Contract Documents. Contractor shall not be liable for ordinary wear and tear resulting from such Partial Occupancy or use.

9.6 PAYMENTS WITHHELD

9.6.1 The Architect may decline to certify payment and may withhold his Certificate in whole or in part, to the extent necessary reasonably to protect the Owner, if in his opinion he is unable to make representations to the Owner as provided in Subparagraph 9.4.2. If the Architect is unable to make representations to the Owner as provided in Subparagraph 9.4.2 and to certify payment in the amount of the Application, he will notify the Contractor as provided in Subparagraph 9.4.1. If the Contractor and the Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which he is able to make such representations to the Owner. The Architect may also decline to certify payment, or because of subsequently discovered evidence or subsequent observations, he may nullify the whole or any part of any Certificate for Payment previously issued, to such extent as may be necessary in his opinion to protect the Owner from loss, and the Owner also may withhold any payments otherwise due because of:

1. defective work not remedied,
2. third party claims filed or reasonable evidence indicating probable filing of such claims,
3. failure of the Contractor to make payment 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 another contractor,
6. reasonable evidence that the Work will not be completed within the Contract Time, or
7. failure to carry out the Work in accordance with the Contract Documents,
8. other default(s) by the Contractor under this Agreement.

9.6.2 When the above grounds in Subparagraph 9.6.1 are removed, payment shall be made for amounts withheld because of them, unless other grounds for non-payment apply.

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9.7 FAILURE OF PAYMENT

9.7.1 If the Architect does not issue a Certificate of Payment, through no fault of the Contractor, within fourteen (14) days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within fourteen (14) days after the date established in the Contract Documents any amount certified by the Architect which is not in dispute by the Owner, then the Contractor may, upon seven (7) additional days' written notice to the Owner and the Architect, stop the Work until payment of the undisputed amount owing has been received.

9.8 SUBSTANTIAL COMPLETION

9.8.1 When the Contractor considers that the Work, or a designated portion thereof is substantially complete as defined in Subparagraph 8.1.3, the Contractor shall notify the Architect and Owner and shall prepare for submission to the Owner and Architect a list of items remaining to be completed and workmanship that is below that which is expected. The Contractor's failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. When the Architect, on the basis of an inspection, determines that the Work or designated portion thereof is substantially complete, he will then prepare the Certificate of Substantial Completion that shall establish the Date of Substantial Completion. Certificate shall state the responsibilities of the Owner and the Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall complete the items listed therein. Warranties required by the Contract Documents for materials, equipment, and items in or serving the various phases of the project shall commence upon the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion or other Contract Documents. The Certificate of Substantial Completion, or other Contract Documents shall be submitted to the Owner and the Contractor for their written acceptance of the responsibilities assigned to them in such Certificate.

9.8.1.1 Substantial completion will have been reached when, in the opinion of the Architect, the Work is 100 percent (100%) completed, including commissioning (if applicable), with the exception of incidental minor punch list items delayed for reasons beyond the Contractor's control. However, items late in completion because of the Contractor's negligence or lack of foresight will not be deemed as valid exceptions and will be a basis for not reaching substantial completion.

9.9 FINAL COMPLETION AND FINAL PAYMENT

9.9.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect shall promptly make such inspection and, when he finds the Work acceptable under the Contract Documents and the Contract fully performed, he will promptly issue a Certificate of Final Completion and a final Certificate for Payment stating that to the best of his knowledge, information and belief, and on the basis of his observations and inspections, the Work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor, and noted in said final Certificate, is due and payable. The Architect's final Certificate of Payment will constitute a further representation that the conditions precedent to the Contractor's being entitled to final payment as set forth in Subparagraph 9.9.2 and elsewhere in the Contract Documents has been fulfilled.

9.9.2 Neither the final payment nor the remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or his property might in any way be responsible, have been paid or otherwise satisfied, (2) consent of surety, if any, to final payment and (3) if required by the Owner, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens arising out of the Contract, to the extent and in such form as may be designated by the Owner. If any Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify him against any such lien. If any such lien remains unsatisfied after all payments are made, the Contractor shall refund to the Owner all moneys that the latter may be compelled to pay in discharging such lien, including all costs and attorneys' fees.

9.9.2.1 The final payment to the Contractor shall not become due and the final completion certificate shall not be issued until all requirements covered under Section 01700-CONTRACT CLOSEOUT have been certified by the Architect.

9.9.2.2 On the date of final completion, and as a condition precedent of final payment, the Contractor shall furnish to the Architect for submittal to the Owner a complete and current set of record drawings showing all Contractor's field changes and selections affecting the general construction of the Project and Contractor's Work, which drawings shall indicate and illustrate the Work as actually installed. These shall consist of carefully shown and legible markings on a set of reproducible prints of the Architect's drawings for the Work obtained and paid for by the Contractor. The Contractor shall maintain at the job site three (3) sets of the Project's drawings for the Work and shall indicate thereon each field change as it occurs.

9.9.2.3 On or before the date of final completion and as a condition precedent to final payment, the Contractor shall provide the following close out requirements and comply with any other close out requirements contained in the Contract Documents:

(a) instruction of Owners' representatives in the operation of mechanical, electrical, plumbing and other systems included in the Work.

(b) delivery of keys to Owner with keying schedule; master, sub-master and special keys,

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(c) delivery to Owner of manufacture's product and equipment warranties and any necessary assignment thereof prepared in duplicate, together with any specified certificates of inspections, and bonds for Architect's review and delivery to Owner,

(d) delivery to Owner of printed or typewritten operating, servicing, maintenance and cleaning instructions for all Work; parts lists and special tools for mechanical and electrical Work, in approved forms,

(e) delivery to the Owner of specified Project record drawings and documents.

9.9.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by the 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 the portion of the Work completed and accepted. If the remaining balance for Work is not fully completed or corrected is less than the retainage stipulated in the Contract Documents, and if bonds have been furnished as provided in Paragraph 7.5, the written consent of the surety to the payment of the balance due for the 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 the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

9.9.4 The acceptance of final payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of final Application for Payment.

9.10 STATE FUNDING

9.10.1 The parties acknowledge that the Contract will be funded by appropriations at the State **and/or** Local levels. Appropriations are made annually and are limited to annual appropriations. It is understood and agreed that the Owner's obligation to pay the Contract Sum in accordance with the provisions of the Contract and of these General Conditions, shall be dependent, as a condition precedent, upon the State of Maryland and St. Mary's County Government approving its share of the appropriations needed to fund the Contract Sum, and upon the Owner's receipt of such funding from the State of Maryland and St. Mary's County Government. In the event such appropriations are not made or such funding is not received, the Owner shall have the right to terminate this Contract for its own convenience, in accordance with the provisions of Article 14.2.3 of the General Conditions. In such event, the Owner's obligation to make any further payments to the Contractor shall be limited to those described in Article 14.2.3. The terms of this subparagraph shall not be construed to limit the Owner's right to a termination for convenience for any other reason under Article 14.2.3.

ARTICLE 10
PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

10.2 SAFETY OF PERSONS AND PROPERTY

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

1. all employees on the Work and all other persons who may be affected thereby:
2. all the Work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Contractor or any of his Subcontractors or Sub-subcontractors; and
3. other property at the site or adjacent thereto, including 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 give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss. All work on this Project shall, at a minimum, be accomplished in strict accordance with the most recent regulations promulgated by the MOSHA.

10.2.3 The Contractor shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owner and users of adjacent utilities.

10.2.4 When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the Work, the Contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.

10.2.5 To the extent not otherwise covered under insurance obtained in accordance with paragraph 11.3, the Contractor shall promptly remedy all damage or loss to any property referred to in Clauses 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, any subcontractor, any Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable and for which the Contractor is responsible under Clauses 10.2.1.2 and 10.2.1.3, except damage or loss attributable solely to the 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 his obligations under Paragraph 4.9.

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10.2.6 The Contractor shall designate a responsible member of his 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 the Architect.

10.2.7 The Contractor shall not load or permit any part of the Work to be loaded so as to endanger its safety.

10.3 EMERGENCIES

10.3.1 In any emergency affecting the safety of persons or property, the Contractor shall act, at his discretion, to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Contractor on account of emergency work shall be determined as provided in Article 12 for Changes in the Work. The Contractor shall provide an emergency number(s) whereby he can assure that a responsible person-in-charge can be reached should an emergency occur after hours.

10.3.2 The Owner may consider the existence of certain contractor imposed conditions as an emergency. In the event of this occurrence, the Owner shall notify the Contractor in writing of such an emergency. The contractor is required to begin action to correct the cause of the problem within 24 hours, with total resolution to the problem corrected within 48 hours. If it is determined that the cause cannot be remedied within the 48 hours, the contractor is required to take whatever temporary steps required in as much to eliminate or decrease the emergency.

10.4 WEATHER PROTECTION

10.4.1 Contractor shall protect the work, including all excavation, trenches, and buildings from damage by rain water, spring water, ground water, backing up of drains or sewers and water from any other source; shall maintain excavation, trenches and floor below grade free from water, and shall furnish pumps, hoses and other equipment required to provide proper drainage.

10.4.2 Contractor shall provide constant protection against rain, snow, storms, frost, heat and such so as to maintain Contract work, materials, apparatus, and fixtures free from injury and damage. At end of each day's work, Contractor shall protect work likely to be damaged.

10.4.3 During cold weather, Contractor shall protect work from freezing by methods approved by the Architect. If low temperatures make it impossible to continue operations safely in spite of cold weather precautions, Contractor shall cease work and notify the Architect.

10.4.4 Contractor shall remove work damaged by failure to provide specified weather protection and replace with new work at no extra cost to the Owner.

ARTICLE 11
INSURANCE

11.1.1 The Contractor shall not commence Work under this Contract until the Contractor has obtained at the Contractor's own expense all the insurance as required hereunder and such insurance has been approved by the Owner; nor shall the Contractor allow any Subcontractor to commence work on his subcontract until all similar insurance required of the Subcontractor has been so obtained and approved by the Contractor. The Contractor shall have full responsibility for obtaining the following insurance and shall be liable for all damages, losses and expenses of Owner and/or to the Work in the event Contractor fails to obtain and/or maintain such insurance. Approval of insurance required of the Contractor will be granted only after submission to the Architect and Owner of original, signed certificates of insurance signed by authorized representatives of the insurers, or alternately, at the Owner's request, certified copies of the required insurance policies.

11.1.2 Insurance as required hereunder shall be in force throughout the term of the Contract and for two years after final acceptance of the Project by Owner in accordance with 11.2.1.1.iv. Original certificates signed by authorized representatives of the insurers or, at the Owner's request, certified copies of insurance policies, evidencing that the required insurance is in effect, shall be maintained with the Owner throughout the term of the Contract and for two years after final acceptance of the Project by Owner.

11.1.3 The Contractor shall require all the Subcontractors to maintain during the term of this agreement, commercial general liability insurance, business automobile liability insurance (and umbrella excess or excess liability insurance), workers compensation and employers liability insurance in the same manner as specified for the Contractor. The Contractor shall furnish Subcontractor's certificates of insurance to the Owner immediately upon request.

11.1.4 All insurance required hereunder shall include the following provision:

> "It is agreed that this policy is not subject to cancellation, non-renewal, material change, or reduction in coverage until sixty (60) days prior written notice has been given to both the Architect and the Owner."
>
> Therefore phrases "endeavor to" and "... but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agent or representatives" are to be eliminated from the cancellation provisions of the standard ACORD certificates of insurance.

11.1.5 The requiring of any and all insurance as set forth in these Specifications, or elsewhere, shall be in addition to and not in any substitution for all their other protection provided under the Contract Documents. No acceptance and/or approval on any insurance by the Owner shall be construed as relieving or excusing the Contractor, or the Contractor's Surety, from any liability or obligation imposed under either or both of them by the provisions of the Contract Documents.

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11.1.6 Insurance coverage required in these specifications shall be in force throughout the Contract term. Should the Contractor fail to provide acceptable evidence of current insurance within seven (7) days of written notice at any time during the Contract term, the Owner shall have the absolute right to terminate the Contract without any further obligation to the Contractor, and the Contractor shall be liable to the Owner for the entire additional cost of procuring performance and the cost of performing the incomplete portion of the Contract at the time of termination.

11.1.7 If the Contractor does not meet the insurance requirements of the specifications, alternate insurance coverage, satisfactory to the Owner, may be considered. Written requests for consideration of alternate coverages must be received by the Owner at least ten (10) working days prior to the date set for receipt of bids or proposals. If the Owner denies the request for alternate coverages, the Contractor must comply with the insurance requirements as specified in this Contract.

11.1.8 All required insurance coverages must be acquired from insurers allowed to do business in the State of Maryland and acceptable to the Owner. The insurers must also have policyholder's ratings of "A-" or better and financial sizes of "Class VII" or better in the latest evaluation by A. M. Best Company, unless Owner grants specific approval for an exception. The Owner hereby grants specific approval for the acquisition of workers compensation and employers liability insurance from the Injured Workers Insurance Fund of Maryland.

11.1.9 Any deductibles or retentions in excess of $10,000 shall be disclosed by the Contractor, and are subject to Owner's written approval. Any deductible or retention amounts elected by the Contractor or imposed by the Contractor's insurer(s) shall be the sole responsibility of the Contractor.

11.1.10 Any and all return premiums and/or dividends for insurance or coverage directly charged to the Owner by the Contractor in connection with this Contract shall belong to and be payable to the Owner.

11.1.11 If the Owner is damaged by the failure or neglect of the Contractor to purchase and maintain insurance as described and required herein, without so notifying the Owner, then the Contractor shall bear all reasonable costs properly attributable thereto.

11.2 CONTRACTOR'S LIABILITY INSURANCE

11.2.1 The Contractor shall purchase and maintain the following insurance coverages which will insure against claims which may arise out of or result from the Contractor's 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. Insurance shall be written for not less than the limits specified below or required by law, whichever is greater.

11.2.1.1 Commercial general liability insurance or its equivalent for bodily injury, personal injury and property damage including loss of use, with minimum limits of:

$1,000,000 each occurrence;
$1,000,000 personal and advertising injury;
$2,000,000 general aggregate; and
$2,000,000 products/completed operations aggregate.

This insurance shall include coverage for all of the following:

i. General aggregate limit applying on a per project basis;
ii. Liability arising from premises and operations;
iii. Liability arising from the actions of independent contractors;
iv. Liability arising from products and completed operations with such coverage to be maintained for two years after completion of the Work;
v. Contractual liability including protection for the Contractor from bodily injury and property damage claims arising out of liability assumed under this Contract; and
vi. Liability arising from the explosion, collapse, or underground (XCU) hazards.

11.2.1.2 Business auto liability insurance or its equivalent with a minimum limit of $1,000,000 per accident and including coverage for all of the following:

i. Liability arising out of the ownership, maintenance or use of any auto; and
ii. Automobile contractual liability.

11.2.1.3 Workers compensation insurance or its equivalent with statutory benefits as required by any state or Federal law, including standard "other states" coverage; employers liability insurance or its equivalent with minimum limits of:

$100,000 each accident for bodily injury by accident;
$100,000 each employee for bodily injury by disease; and
$500,000 policy limit for bodily injury by disease.

11.2.1.4 Contractor's pollution liability insurance or its equivalent for bodily injury, property damage, including loss of use, and cleanup costs on and off the Project site, with minimum limits of:

($1,000,000) each pollution incident; and
($2,000,000) annual aggregate.

11.2.1.5 Umbrella excess liability or excess liability insurance or its equivalent with minimum limits of:

($ 5,000,000) per occurrence;
($ 5,000,000) aggregate for other than products/completed operations and auto liability; and

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($ 5,000,000) products/completed operations aggregate

and including all of the following coverages on the applicable schedule of underlying insurance:

i. Commercial general liability;
ii. Business auto liability; and
iii. Employer's liability.

11.2.1.6 Umbrella excess liability or excess liability insurance or its equivalent with minimum limits of:

($ 5,000,000) per occurrence;
($ 5,000,000) aggregate for other than products/completed operations and auto liability; and
($ 5,000,000 products/completed operations aggregate

and including all of the following coverages on the applicable schedule of underlying insurance:

i. Commercial general liability;
ii. Business auto liability; and
iii. Employer's liability.

11.2.1.7 Owner and Owner's elected and appointed officials, officers, consultants, agents and employees shall be named as additional insureds on the Contractor's commercial general liability insurance and umbrella excess or excess liability insurance policies with respect to liability arising out of the Contractor's work under this Contract. Such coverage shall extend to cover the additional insured(s) for liability arising out of the following:

i. On-going operations; and
ii. Completed operations.

The commercial general liability policy and the umbrella excess liability or excess liability policies, if required herein, must include additional insured language, which shall afford liability coverage for the exposures listed above in i. and ii.

***Special Note*:** Policies endorsed with the following combinations of ISO forms shall be acceptable:

- **CG 2010** entitled "Additional Insured - Owners, Lessees or Contractors – Scheduled Person or Organization" and **CG 2037** entitled "Additional Insured - Owners, Lessees or Contractors – Completed Operations";

OR

- **CG 2033** entitled "Additional Insured - Owners, Lessees or Contractors - Automatic Status When Required in Construction Agreement With You" and **CG 2037** entitled "Additional Insured - Owners, Lessees or Contractors – Completed Operations".

***Both** endorsements are required to afford coverage to the additional insured for both on-going operations and completed operations.* Additionally, the schedules on these endorsements must properly reference the Owner and Owner's elected and appointed officials, officers, consultants, agents and employees.

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

11.2.1.9 Insurance or self-insurance provided to the Owner and Owner's elected and appointed officials, officers, consultants, agents and employees as specified herein shall be primary, and any other insurance, self-insurance, coverage or indemnity available to the Owner and Owner's elected and appointed officials, officers, consultants, agents and employees shall be excess of and non-contributory with insurance or self-insurance provided to the Owner and Owner's elected and appointed officials, officers, consultants, agents and employees as specified herein.

11.2.2 If any liability insurance purchased by the Contractor has been issued on a "claims made" basis, the Contractor must comply with the following additional conditions:

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

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

11.2.3 Contractual and other liability insurance required under this Contract should not contain a supervision, inspection or engineering services exclusion that would preclude the Owner from supervising or inspecting the Work as to the end result. The Contractor shall assume all on-the-job responsibilities as to the control of persons directly employed by it and of the

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Subcontractors and any persons employed by the Subcontractors.

11.3 OWNER'S LIABILITY INSURANCE

11.3.1 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance, or solely at the Owner's option, the Owner may self-insure the Owner's liability exposures.

11.4 BUILDERS RISK INSURANCE

11.4.1 The Owner shall purchase and maintain builders risk insurance on a replacement cost basis with a limit at least equal to the initial Contract Sum. This insurance shall be maintained until final acceptance of the Project by the Owner or until no person or entity other than the Owner has an insurable interest in the covered property, whichever is earlier. This builder's risk insurance shall include the interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Project.

11.4.2 Insurance shall be on an "all-risk" or equivalent policy form and shall insure against the perils of fire, extended coverage, theft, vandalism, malicious mischief, collapse and windstorm. Coverage is to apply for debris removal including demolition occasioned by a covered loss. This insurance shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such covered loss. Coverage for other perils such as flood and earthquake or for loss caused by the enforcement of any applicable ordinance or law shall not be required unless otherwise provided in the Contract.

11.4.3 This builders risk insurance shall cover all of the following types of property:

i. All structures to be constructed, under construction, and/or already constructed which are part of the Project;
ii. All materials, equipment, machinery and supplies which are to be incorporated into the Project;
iii. Temporary structures of any nature whatsoever; and
iv. Underground property, including but not limited to, foundations, pump stations, pumps, pipes, drains, tanks and connections.

11.4.4 The Contractor shall be responsible for payment of any deductibles applicable under this builders risk insurance, boiler and machinery insurance or other property insurance applicable to the Project. The current deductible is $2,500.

11.4.5 Unless otherwise provided in the Contract Documents, this builder's risk insurance shall cover materials to be incorporated into the Project which are off the site, and also such materials in transit.

11.4.6 This builders risk insurance shall insure (or shall be amended to insure) against loss or damage caused by the boiler and machinery perils with limits and scope of coverage that are deemed by the Owner to be satisfactory. This insurance shall also include the interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Project.

11.4.7 The Owner and Contractor waive all rights against each other and against the Architect, Owner's other Contractors and own forces described in Article 6, if any, and the subcontractors, sub-subcontractors, elected and appointed officials, officers, agents, employees and consultants of any of them, for property damage to or loss of use of the Work to the extent that such property damage or loss of use is covered by this builders risk insurance, boiler and machinery insurance or other property insurance applicable to the Work. The policies shall provide such waivers of subrogation by endorsement or otherwise.

11.4.8 Any loss covered under this builders risk insurance, boiler and machinery insurance or other property insurance applicable to the Work shall be payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to any mortgagee clause. 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.

11.4.9 Owner, as fiduciary, shall have the power to adjust and settle a loss with insurers.

11.4.10 Partial occupancy or use in accordance with the provisions of the Contract that pertain to partial occupancy or use shall not commence until the builders risk insurer has granted permission by endorsement or otherwise for the Owner to partially occupy or use any completed or partially completed portion of the Work at any stage of construction. The Owner and Contractor shall take reasonable steps to obtain such permission.

11.4.11 The insurance required by this Paragraph 11.4 is not intended to cover machinery, tools or equipment owned or rented by the Contractor, or its Subcontractors, which are utilized in the performance of the Work but not incorporated into the permanent improvements. The Contractor and its Subcontractors shall, at their own expense, purchase and maintain property insurance coverage for owned, leased or rented machinery, tools or equipment. The Contractor, and its Subcontractors, hereby waive all rights against the Owner and its elected and appointed officials, officers, agents, employees and consultants for property damage to or loss of use of such machinery, tools or equipment to the extent that such property damage or loss of use is covered by the Contractor's or Subcontractor's property or equipment floater insurance or other similar property insurance maintained by the Contractor or its Subcontractors. The policies shall provide such waivers of subrogation by endorsement or otherwise.

11.5 LOSS OF USE INSURANCE

11.5.1 The Owner, at his option without obligation to do so, may purchase and maintain such insurance as will

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insure him against loss of use of this property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of this property, including consequential losses due to fire or other hazards however caused, to the extent covered by insurance purchased by the Owner under this Paragraph 11.5.

ARTICLE 12
CHANGES IN THE WORK

12.1 CHANGE ORDERS

12.1.1 A Change Order is a written order to the Contractor signed by the Owner, Architect and Contractor, issued after execution of the Contract, authorizing a change in the Work or an adjustment in the Contract Sum or the Contract Time. The Contract Sum and the Contract Time may be changed only by Change Order. A Change Order signed by the Contractor indicates his agreement therewith, including the adjustment in the Contract Sum or the Contract Time.

12.1.2 Should it be desired at any time, or times, during the progress of the Work to make any alterations or changes, or to add to or delete Work, the Owner shall have the undisputed right, without invalidating the Contract, to make such changes, omissions, additions or alterations by Change Order or Construction Change Directive. The Architect shall also have the right to order minor changes in the Work as described in Paragraph 12.4.

12.1.2.1 A written request for a change in the Work may be made by the Owner, the Architect or the Contractor, but the Owner must authorize and approve all changes except for minor changes ordered by the Architect as described in Paragraph 12.4.

12.1.2.2 A Change Order will be issued in the form of a written "Change Order Form" signed by the Owner, Architect and the Contractor, which authorizes the change in the Work, indicates the mutually agreed upon price which shall be added to or deducted from the Contract price and the extent to which the Contract Time shall be increased or decreased.

12.1.2.3 The Contractor shall furnish to the Owner, Owner's Representative and the Architect a fully itemized breakdown of the quantities and prices used in computing the value of any change requested.

12.1.2.4 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 supplier or other supporting data to substantiate the Contractor's cost shall be furnished.

12.1.2.5 All proposals and breakdowns shall be submitted promptly.

12.1.3 When changes, alterations, deductions or additions are ordered by Change Order, the value of such Work will be determined in the following ways:

1. By means of applicable unit prices as established within the project contract specifications.
2. By means of a lump sum price agreed to by both the Owner and the Contractor.
3. If job conditions or the extent of the change prohibit the use of paragraph 1, above, a price arrived at by performing the Work on a cost plus not-to-exceed basis.
4. 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; however, the Contractor and Subcontractor will be allowed to retain a sum not in excess of three percent (3%) of the amount for handling.
5. If a change involves both an extra and a credit, both sums shall be shown and the two (2) sums balanced determine the adjusted total cost or credit. No allowances to the Contractor shall be made or allowed for loss of anticipated profits on account of any changes in the Work.
6. 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:

COMBINED VALUE OF WORK OVERHEAD AND PROFIT

Total of Proposed Change	Allowed %
$0 to $1,000	20%
$1,000 to $5,000	18%
$5,000 to $10,000	14%
$10,000 to $25,000	12%
Over $25,000	Negotiated, but not more than 10%

7. For Work performed by a Subcontractor with his own organization, the percentages for combined overhead and profit will be as outlined in sub-paragraph 6 above. On Work partly or solely performed by a Subcontractor, the Contractor will be allowed for its Markup of eight percent (8%) of the total cost of the Subcontractor's labor, materials, overhead and profit only.
8. Overhead and profit shall include all costs of bonding, insurance, labor burden, all employees' benefits and all such administrative costs related to the change. Administrative costs are further defined to include (but not limited to) estimating, project management, secretarial support and additional communication (facsimile and telephone calls) required to complete the change or prepare the proposal. No additional changes related to the above tasks

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or burdens will be permitted to be included in the General Contractor or sub-contractor's proposals. All such costs are considered to be included in the allowable overhead and profit percentages quoted in sub-paragraph 6 above.

12.1.4 The following shall apply to Change Orders:

12.1.4.1 No work on proposed changes will be started until the estimate of proposed changes has been approved by the Architect and Owner.

12.1.4.2 Where an emergency requires that changes in Contract work be done prior to approval of the Change Order Estimate, Contractor will be issued a Construction Change Directive and must maintain an accurate account of all labor and material involved in the change.

12.1.4.2.1 In the event that the Contractor is afforded the right to proceed with work on a time and material basis, the Contractor must submit to the Architect and Owner daily summaries of the cost of labor, equipment, and materials and upon completion, must submit a complete change proposal package inclusive of all costs for material, labor, and equipment involved in the directed change no later than 60 days after the completion of the work. Change proposal must be completed in accordance with the provisions indicated in this section. In the event that the Contractor fails to produce and provide the Owner with a proposal within the aforementioned 60 days the Contractor relinquishes all rights to additional dollars.

12.1.4.3 All such time and material is subject to verification by Architect's and Owner's representative. Contractor will notify Architect when work on changes is to start and when completed.

12.1.4.4 To receive full recognition, labor assigned to Contract changes must, insofar as possible, work continuously and exclusively on the change, rather than interchanging between Contract work and the change.

12.1.4.5 The process to execute a Change Order shall be as follows. The Architect shall be responsible to prepare; four (4) original AIA Change Order documents, signed in the appropriate location (with all support information attached to each), a letter to the Owner recommending approval of the Change Order, and an IAC/PSCP Form 305.1. The Architect shall forward four (4) original Change Order documents to the Contractor and forward the letter of recommendation and the IAC/PSCP form to the Owner. The General Contractor is responsible for signing the Change Order in the appropriate location, followed by forwarding all originals to the Owner within fifteen (15) days after the date that the Change Order is executed by the Architect. Failure of the Contractor to comply with the aforementioned requirements will result in non-payment for work that is included in the Change Order. Upon receipt of the Architect and Contractor signed Change Order, the Owner will sign in the appropriate location and forward one (1) fully executed original Change Order to the Architect and the General Contractor.

12.1.4.6 The Contractor shall not include costs for small or incidental tools necessary to execute the work included in a Change Order. Examples of small or incidental tools include, small hand tools (hammers, screw-drivers etc.), non-electric or non-pneumatic digging devices (shovels, picks etc.), and manual hauling devices such as wheelbarrows, etc. Typical apparel required by construction professionals (hard hats, boots, gloves, etc.) will not be considered. The Architect and Owner's interpretation of what is included in the definition of small or incidental hand tools is final.

12.1.4.7 Costs for travel, overnight accommodations, and meals are not expenses that shall be passed on to the Owner. It is expected and anticipated that reimbursement for these expenses are covered under the allowable overhead and profit provided within the above referenced percentages.

12.1.5 CONSTRUCTION CHANGE DIRECTIVES

12.1.5.1 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 and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

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

12.1.5.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one (1) of the following methods:

1. mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
2. costs to be determined in a manner agreed upon by the parties and a mutually agreed fixed or percentage fee; or
3. as provided in Subparagraph 12.1.5.6

12.1.5.4 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.

12.1.5.5 A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in the 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.

12.1.5.6 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Architect on the basis of reasonable

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expenditures and savings of those performing the Work attributable to the change, including, in the case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In no case shall the allowable overhead and profit exceed the percentages allowed in subparagraph 12.1.3.6. In such case, and also under Clause 12.1.5.3.3, 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 Subparagraph 12.1.5.6 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 worker's or workmen's compensation insurance;
2. costs of materials, supplies and equipment, including the 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 field supervision and field office personnel directly attributed to the change.

12.1.5.7 Pending final determination of cost to the Owner, amounts not in dispute may be included in Applications for Payment. The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which 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.

12.1.5.8 If the Owner and Contractor do not agree with the adjustment in Contract Time or the method of determining it, the adjustment or the method shall be referred to the Architect for initial determination.

12.1.5.9 When the Owner and the Contractor agree with the determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustment, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

12.1.6 On all work defined in Article 12, neither the Contractor nor the Subcontractor will be allowed any expenses, overhead or profit for the employment of another Subcontractor to perform work for him.

12.1.7 Except when directed by the Architect or Owner, or acting himself in an emergency, Contractor shall make no change in Work without written instructions from the Architect or Owner. Work which Contractor claims is a deviation from Contract shall not be performed without written authorization of Architect and Owner, except on Contractor's responsibility.

12.1.8 Conditions of paragraph 12.1.4.6 shall apply to costs relating to small or incidental tools that are used to complete Work relating to Construction Change Directives.

12.2 CONCEALED CONDITIONS

12.2.1 Should concealed conditions encountered in the performance of the Work below the surface of the ground or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Contract Documents, or should unknown physical conditions below the surface of the ground or should concealed or unknown conditions in an existing structure of an unusual nature, differing materially from those originally encountered and generally recognized as inherent in work of the character provided for this Contract, be encountered, the Contract Sum shall be equitably adjusted by Change Order upon claim by either party made within twenty (20) days after the first observance of the conditions. The Contractor shall promptly notify the Architect and Owner in writing of all concealed or unknown conditions when encountered, and before said conditions are disturbed.

12.2.2 Conditions of paragraph 12.2.1 do not apply to existing utilities that may not be shown on the Contract Documents, or existing utilities that are not shown in the location depicted on the Contract Documents. Contractor shall coordinate efforts as required by paragraph 3.2.1 to locate all existing utilities.

12.2.3 In the event of an unexpected or unintended disruption in services, the Contractor shall employ all labor, materials and equipment necessary to restore services within twelve (12) hours. If restoration is temporary in nature, full permanent restoration shall occur within seventy-two (72) hours. Any claim for additional time or costs related to disruption in service, or restoration or services will not be considered by the Owner.

12.2.4 Damages that the Owner experiences related to disruptions to the existing utilities shall be borne by the Contractor. Such damages shall include, but not be limited to, costs for labor, materials and equipment utilized to offset the effects of the disruption. Payment for such damages shall be made to the Owner within forty-five (45) days after date of claim. If payment is not received within this time frame, the Owner will reduce the Contract amount accordingly.

12.3 CLAIMS FOR ADDITIONAL COST

12.3.1 If the Contractor wishes to make a claim for an increase in the Contract sum, he shall give the Architect and Owner written notice thereof within ten (10) days after the occurrence of the event giving rise to such claim. This notice shall be given by the Contractor before proceeding to execute the Work, except in an emergency endangering life or property in which case the Contractor shall proceed in accordance with Paragraph 10.3. No such claim shall be valid unless so

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made. If the Owner and the Contractor cannot agree on the amount of the adjustment in the Contract Sum, it shall be referred initially for consideration to the Architect. Any change in the Contract Sum resulting from such claim shall be authorized by Change Order.

12.3.2 If the Contractor claims that additional cost is involved because of, but not limited to, (1) any written interpretation pursuant to Subparagraph 2.2.8, (2) any order by the Owner to stop the Work pursuant to Paragraph 3.3 where the Contractor was not at fault, (3) any written order for a minor change in the Work issued pursuant to Paragraph 12.4, or (4) failure of payment by the Owner pursuant to Paragraph 9.7, the Contractor shall make such claim as provided in Subparagraph 12.3.1.

12.4 MINOR CHANGES IN THE WORK

12.4.1 The Architect will have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order, and shall be binding on the Owner and the Contractor. The Contractor shall carry out such written orders promptly.

ARTICLE 13
UNCOVERING AND CORRECTION OF WORK

13.1 UNCOVERING OR WORK

13.1.1 If any portion of the Work should be covered contrary to the request of the Architect or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Architect, be uncovered for his observation and shall be replaced at the Contractor's expense.

13.1.2 If any other portion of the Work has been covered which the Architect or Owner has not specifically requested to observe prior to being covered, the Architect or Owner may request to see such Work and it shall be uncovered by the Contractor. If such Work is found in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work is found not in accordance with the Contract Documents, the Contractor shall pay such costs unless it is found that this condition was caused by the Owner or a separate contractor as provided in Article 6, in which event the Owner shall be responsible for the payment of such costs.

13.2 CORRECTION OF WORK

13.2.1 The Contractor shall promptly correct all Work rejected by the Architect or Owner as defective or as failing to conform to the Contract Documents whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work, including compensation for the Architect's additional services made necessary thereby.

13.2.2 If, within one (1) year after the Date of Substantial Completion of the Work or designated portion thereof or within one (1) year after acceptance by the Owner of designated equipment or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective or not in accordance with 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 written acceptance of such condition. This obligation shall survive termination of the Contract. The Owner shall give such notice promptly after discovery of the condition.

13.2.3 The Contractor shall remove from the site all portions of the Work which are defective or non-conforming and which have not been corrected under Subparagraph 5.4.1, 13.2.1 and 13.2.2, unless removal is waived by the Owner.

13.2.4 If the Contractor fails to correct defective or non-conforming Work as provided in Subparagraph 5.4.1, 13.2.1. and 13.2.2, the Owner may correct it in accordance with Paragraph 3.4.

13.2.5 If the Contractor does not proceed with the correction of such defective or non-conforming Work within a reasonable time period fixed by written notice from the Architect or Owner, the Owner may remove it and may store the materials or equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within ten (10) days thereafter, the Owner may upon ten (10) additional days' written notice sell such Work at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the Contractor, including compensation for the Architect's additional services made necessary thereby. If such proceeds of the sale do not cover all costs which the Contract should have borne, the difference shall be charged to the Contractor and an appropriate Change Order shall be issued. If the payments then or thereafter due to the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

13.2.6 The Contractor shall bear the cost of making good all Work of the Owner or separate contractors destroyed or damaged by such correction or removal.

13.2.7 Nothing contained in this Paragraph 13.2 shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents, including Paragraph 4.5 hereof. The establishment of the time period of one (1) year after the Date of Substantial Completion or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which his 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

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Contractor's liability with respect to his obligations other than specifically to correct the Work.

13.3 ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK

13.3.1 If the Owner prefers to accept defective or non-conforming Work, he may do so instead of requiring its removal and correction, in which case a Change Order will be issued to reflect a reduction in the Contract Sum where appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 14
TERMINATION/SUSPENSION OF THE CONTRACT

14.1 TERMINATION BY THE CONTRACTOR

14.1.1 If the Work is stopped for a period of thirty (30) days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing any of the Work under a Contract with the Contractor, or if the Work should be stopped for a period of thirty (30) days by the Contractor because the Architect has wrongfully not issued a Certificate for Payment as provided in Paragraph 9.7 or because the Owner has wrongfully not made payment thereon as provided in Paragraph 9.7, then the Contractor may, upon seven (7) additional days' written notice to the Owner and the Architect, terminate all further Work under the Contract until the causes for such suspension are remedied.

14.2 TERMINATION BY THE OWNER

14.2.1 If the Contractor is adjudged as bankrupt, or if he makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of his insolvency, or if he refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or if he fails to make prompt payment to Subcontractors or for materials or labor, or disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is in default or fails to comply with the requirements of the Contract Documents, then the Owner may, without prejudice to any right of remedy and after giving the Contractor and his surety, if any, five (5) days' written notice, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever method he may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Work is finished.

14.2.2 If the unpaid balance of the Contract Sum exceeds the cost of finishing the Work, including compensation for the Architect's additional services made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner, as the case may be, shall be certified by the Architect, upon application, in the manner provided in Paragraph 9.4, and this obligation for payment shall survive the termination of the Contract.

14.2.3 In addition to the Owner's right to terminate under Article 14.2.1, the Owner may, in its sole discretion, at any time, at will and without cause, terminate the Contract for any reason whatsoever including its own convenience, by giving written notice to Contractor, specifying the effective date of termination. Contractor shall be entitled to payment for the reasonable direct costs of Work properly executed in accordance with the Contract Documents prior to the date of termination, plus a total of fifteen percent (15%) of such direct cost for the Contractor's overhead and profit. Contractor shall also be entitled to payment for any costs incurred by Contractor in terminating its Work including reasonable demobilization and cancellation charges, provided said charges and costs are authorized in advance by the Architect and Owner. The aforesaid payments are intended to fully compensate Contractor for the Owner's termination for convenience, and the Contractor shall not be entitled to any further payment as a result of such termination, including but not limited to payment for lost profits on work not performed. Notwithstanding the foregoing provisions, the Owner shall not be required to make any payments to the Contractor under the terms of the subparagraph if and to the extent the Contract is, was, or could have been terminated for cause under the Contract Documents or an equitable adjustment is otherwise made available to the Contractor under another provisions of the Contract.

14.2.4 Upon a determination by a Court of competent jurisdiction that a termination of Contractor pursuant to subparagraph 14.2.1 was wrongful, such termination will be deemed converted to a termination for convenience pursuant to subparagraph 14.2.3 and Contractor's remedy for wrongful termination shall be limited to the recovery of payments permitted under a termination for convenience as set forth in subparagraph 14.2.3.

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 An adjustment shall be made for increases in the cost of performance of the Contract, including profit on the increased cost of performance caused by suspension, delay or interruption. No adjustment shall be made to the extent:

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

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14.3.3 Adjustments made in the cost of performance may have a mutually agreed fixed or percentage fee.

ARTICLE 15
MINORITY BUSINESS ENTERPRISE PROCEDURE

15.1 PURPOSE

15.1.1 The Contractor shall attempt to purchase a minimum of **(0%) zero percent** of the Contract Value directly or indirectly, from minority business enterprises certified by the Maryland State Department of Transportation (MDOT) as stipulated in the Contract Award and in accordance with the model Minority Business Enterprise Procedures for State Funded Public Schools Construction Projects as amended and adopted by the Board of Education of St. Mary's County.

15.2 The definitions that apply to Minority Business Enterprise Participation and MBE Attachments are provided in Section 007339 of the Project Manual.

15.3 DOCUMENTATION REQUIRED

The following documentation shall be considered as part of the Contract:

15.3.1 Attachment D: Minority Business Enterprise (MBE) Forms submitted by the Contractor based on the Contract Sum and approved by the Owner's MBE Liaison as part of the Contract Award and for all of the MBE subcontractors listed in Part 3 – MBE Participation Schedule as part of the Contract Award.

15.3.1.2 The Contractor shall complete the Standard Monthly Contractor's Requisition for Payment (IAC/PSCP Form 306.4), specifically page 3 of 16, *Minority Business Enterprise Participation*, with each requisition submitted for payment. This submittal should accurately reflect the payments to be made that month to MBEs, and the cumulative total for the period specified. Any and all MBE firms that are identified on Part 3 – MBE Participation Schedule should be included on page 3 of the first and all subsequent requisitions for payment. Any MBEs identified during the life of the project should be added as soon as the Contractor engages them.

15.3.1.3 At the completion of the Project, the Contractor shall prepare a written summary of the final certified MBE participation in the Contract as compared to the proposed participation at the time of Contract Award. This should include the name of each certified MBE, the amount that was anticipated to be paid at the time of contract award, the amount actually paid, and an explanation of any differences that have occurred. Special attention should be given to any situations where the final payments to any MBE was below the level of commitment at the time of Contract Award.

15.4 IMPLEMENTING PROCEDURE

15.4.1 The Contractor shall perform the Contract in accordance with the representations made in Attachment D – Minority Business Enterprise (MBE) Forms, submitted as part of the bid or proposal.

15.4.2 Failure to perform the Contract as specified and presented in the bid or proposal submission without prior written consent of the Owner shall constitute a violation of a material term of the contract.

15.4.3 The Contractor shall structure his/her operations for the performance of the contract to attempt to achieve the MBE goals as stated in the solicitation document.

15.4.4 The Contractor agrees to use his/her best efforts to carry out these requirements consistent with the efficient and effective performance of the Contract.

15.4.5 The Contractor must ensure that all certified MBEs shall have the maximum practical opportunity to compete for additional subcontract work under the contract, even after the award of the Contract.

15.4.6 The Contractor shall submit monthly to the MBE Liaison or the school system's designated representative a report listing any unpaid invoices, over 30 days old, received from any certified MBE subcontractor, the amount of each invoice and the reason payment has not been made.

15.4.7 The Contractor shall include in its agreements with its certified MBE subcontractors, a requirement that those subcontractors submit monthly to the MBE Liaison or appropriate representative a report that identifies the prime contract and lists all payments received from the Contractor in the preceding 30 days, as well as any outstanding invoices, and the amount of those invoices.

15.4.8 The Contractor shall cooperate in any reviews of the Contractor's procedures and practices with respect to minority business enterprises, which the MBE Liaison, the Public School Construction Program, and/or the Governor's Office of Minority Affairs may, from time to time, conduct.

15.4.9 The Contractor shall maintain such records as are necessary to confirm compliance with its MBE participation obligations. These records must indicate the identity of certified minority and non-minority subcontractors employed on the contract, the type of work performed by each, and the actual dollar value of work performed. Subcontract agreements documenting the work performed by all MBE participants must be retained by the Contractor and furnished to the MBE Liaison and or appropriate representative on request.

15.4.10 All records concerning MBE participation must be retained by the Contractor for a period of five years after final completion of the contract and will be available for inspection by the MBE Liaison, representatives from the Public School Construction Program and/or other designated official entities.

15.4.11 Any desired change in Part 2 - MBE Participation Schedule shall be approved in advance by the procurement officer and shall indicate the Contractor's efforts to substitute another certified MBE subcontractor to perform the work.

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15.4.12 A business that presents itself as a minority business may participate in a project, but the contract value may not be counted toward the MBE goal or subgoals, if applicable, until the business is certified by MDOT. If it is not certified at the time of contract award it may not be counted toward the goal or subgoals, if applicable, at that time. Only the funds paid after MDOT certification can be counted toward meeting the MBE goal or subgoals, if applicable. If a certified MBE fails to meet the standards specified in State Finance and Procurement Article.14-301, Annotated Code of Maryland, the payments made to the MBE can be recorded and counted under a contract entered into when the MBE was eligible and certified. Ineligibility of an MBE to participate in the MBE program may not be the sole cause of the termination of the MBE contractual relationship for the remainder of the term of the contract.

15.4.13 Contractors are encouraged to seek additional MBE participation in their contracts during the life of the project. Any additional MBE participation from certified MBEs should be reported to the MBE Liaison and should be included in subsequent monthly requisitions for payment.

15.5 LIQUIDATED DAMAGES

MBE Program Liquidated Damages. This contract requires the Contractor to make good faith efforts to comply with the Owner's Minority Business Enterprise ("MBE") Program and contract provisions. The Owner and the Contractor acknowledge and agree that the Owner will incur damages, including but not limited to loss of goodwill, detrimental impact on economic development, and diversion of internal staff resources, if the Contractor does not make good faith efforts to comply with the requirements of the MBE Program and contract provisions. The parties further acknowledge and agree that the damages the Owner might reasonably be anticipated to accrue as a result of such lack of compliance are difficult to ascertain with precision.

Therefore, upon a determination by the Owner that the Contractor failed to make good faith efforts to comply with one or more of the specified MBE Program requirements or MBE contract provisions, the Contractor agrees to pay liquidated damages to the Owner at the rates set forth below. The Contractor expressly agrees that the Owner may withhold payment on any invoices as a set-off against liquidated damages owed. The Contractor further agrees that for each specified violation, the agreed upon liquidated damages are reasonably proximate to the loss the Owner is anticipated to incur as a result of such violation

a. Failure to submit the MBE participation report (page 3 of 16) with each monthly payment requisition, in full compliance with Article 15.3.1.1: $26 per day until the properly completed and compliant requisition and MBE participation report is submitted as required.

b. Failure to submit the written summary of final certified MBE participation, in full compliance with Article 15.3.1.4: $26 per day until a properly completed and compliant summary is submitted as required.

c. Failure to submit each monthly report to the MBE Liaison and school system's designated representative of unpaid MBE invoices, in full compliance with Article15.4.6: $26 per day until a properly completed and compliant report is submitted as required.

d. Failure to include in its agreements with its certified MBE subcontractors a provision requiring those subcontractors to submit to the MBE Liaison or appropriate representative monthly payment reports, as required in Article 15.4.7: $ 90 per MBE Subcontractor

e. Failure to comply with COMAR 21.11.03.12 and Article 15.4.11 in terminating, canceling, or changing the scope of work/value of a contract with an MBE subcontractor and/or amendment of the MBE participation schedule (Part 2): The difference between the dollar value of the MBE participation commitment on the MBE participation schedule for that specific MBE firm, and the dollar value of the work performed by that MBE firm for the contract

f. Failure to meet the Contractor's total MBE participation goal and sub goal commitments: The difference between the dollar value of the total MBE participation commitment on the MBE participation schedule and the MBE participation actually achieved.

g. Failure to promptly pay all undisputed amounts to any MBE subcontractors in full compliance with the prompt payment provisions of this contract: $90 per day until the undisputed amount due to the MBE subcontractor is paid.

Notwithstanding the assessment of these MBE program liquidated damages, the Owner reserves the right to exercise all other rights and remedies provided in the contract or by law, including but not limited to the rights to assess liquidated damages in accordance with Article 3.5 and/ or the right to terminate the contract.

ARTICLE 16
PROCUREMENT LAWS and BOARD OF EDUCATION POLICIES

16.1 All applicable Federal, State, and Local laws and regulations shall apply to the Contract including, but not limited to, the applicable sections of the Education Article and the State Finance and Procurement Article of the Annotated Code of Maryland apply to the Contract.

16.2 Consistent with the provisions □17-301 et. seq. of the State Finance and Procurement Article of the

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Annotated Code of Maryland, known as the "Maryland Buy American Steel" Act. Contractor shall use or supply only "American Steel Products" in the performance of the Work, unless otherwise ordered by the Owner in writing.

16.3 The "Maryland Buy American Steel" Act of Maryland defines "American Steel Product" as any Product "produced from steel made in any state by the open hearth, basic oxygen, electric furnace, Bessemer, or other steel making process; and rolled, forged, drawn, cast extruded, or otherwise similarly processed."

16.4 Unless the requirements of the "Maryland Buy American Steel" Act are waived by the Owner in writing, the Contractor shall, in addition to all other requirements mandated for performance hereafter in the Project manual, and all documents issued in conjunction therewith, as a further condition precedent to the obtaining of Final Payment from Owner, furnish Owner with a certificate under oath that all "Steel Products" supplied, delivered or constructed were of domestic origin.

16.5 The Contractor and all of its subcontractors, vendors, and delivery personnel shall comply with all Board of Education policies and regulations when on Board of Education property with regard to their interactions with Board of Education personnel, and/or students.

ARTICLE 17
SUBSTITUTIONS

17.1 The materials, products and equipment described in the Bidding Documents establish a standard of required function, dimension, appearance and quality to be met.

17.2 Where less than three (3) products, systems or items of material or equipment are listed in a specification, bidders may propose substitutions for approval after bids are received as a part of the submittal process, unless the item is referred to as no substitutions. Where three (3) or more products, systems or items of materials or equipment are listed in the specification, the contractor must supply one of the three (3) listed, substitutions will not be considered.

17.3 If requested by the Architect as a means of determining whether or not a material or item submitted by the Contractor is equal to the standards established by the Contract Documents, the Contractor shall submit data for both the specified and proposed item or materials in the form of engineering data or calculations; results of data conducted by independent testing laboratories; experience records of the material or equipment used under conditions similar to that proposed in the Project; any other means required by the Architect to establish the fact that the proposed item is equal to that specified. The furnishings of all such data will be at the expense of the Contractor and without cost to the Owner. In case of a difference in price, the Owner shall receive all benefit of the difference in cost involved in any substitutions, and the Contract altered by Change Order to credit the Owner with any savings so obtained. Request for approval of proposed substitutions shall not be considered a justifiable cause for delay in any part of the Work.

17.4 The decisions of the Architect shall be final regarding questions of acceptability of products, materials, equipment, or methods submitted for approval.

17.5 If, for any reasons whatsoever, the Contractor or his Subcontractor cannot guarantee his Work using a material or item that has been specified, he shall so notify the Architect, in writing, prior to submission of applicable shop drawings, giving the reasons and furnishing full information, including delivery date of proposed substitute product.

17.6 Request for such approval or reconsideration shall not be considered a justifiable cause for delay in any part of the Work.

17.7 Where it is shown that the Contractor has neglected to place his orders for materials and labor early enough to conform to material and labor requirements, color schemes, etc., such failure shall not be deemed as legitimate grounds for extension of time under his Contract.

ARTICLE 18
PREVAILING WAGES

18.1 PREVAILING WAGES

18.1.1 Unless otherwise provided in the Bidding or Contract Documents, prevailing wages shall apply to performance of the Contract and the following prevailing wage provisions shall apply.

18.1.2 The Contractor shall include labor rates based on the Maryland State Prevailing Wage requirements included within the Documents.

18.1.3 The Contractor shall register with the Maryland Division of Labor and Industry (DLLR) and submit electronically all payroll records and the payroll records of each of the subcontractors. The Contractor is solely responsible for meeting all the responsibilities and obligations under COMAR Title 21, Subtitle 11.

18.1.4 A Contractor or subcontractor may make deductions that are (1) required by law; (2) required by collective bargaining agreement between bona fide labor organization and the Contractor or subcontractor; or (3) contained in written agreement between an employee and the employer undertaking at the beginning if the agreement is submitted by the employer to DLLR.

18.1.5 If the Contractor is delinquent in submitting payroll records, processing of partial payment estimates may be held in abeyance pending the receipt of the records. In addition, if the contractor is delinquent in submitting the payroll records, the Contractor is liable to the DLLR for liquidated damages. The Liquidated damages shall constitute the sum of $10.00 for each calendar day the records are late.

18.1.6 Only apprentices registered with the Maryland Apprentice and Training Council shall be employed on

SAMPLE

the Prevailing Wage Projects. Apprentices shall be paid a percentage of the determined journeyman's wage for the specific craft.

18.1.7 Overtime rates shall be paid by the general Contractor and subcontractors under its contracts and agreements with their employees which in no event shall be less than time and one-half the prevailing hourly wages for all hours worked in excess of ten (10) hours in one calendar day; in excess of forty (40) hours per week; and for work performed on Sundays and legal holidays.

18.1.8 Contractors and subcontractors employing a classification of workers for which a wage rate was not issued shall notify the Commissioner of Labor and Industry, Prevailing Wage Section, for the purpose of obtaining the wage rate for said classification prior to being employed on this project.

18.1.9 The prevailing wages for the Contract are included within the Project Manual and immediately follow this specification section.

18.1.10 Contract shall comply with all posting requirements of Maryland's Prevailing Wage Law.

*****END OF SECTION*****

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SECTION 00 41 13 BID PROPOSAL FORM –Attachment C

BID PROPOSAL

DATE: _____

PROJECT TITLE: **Greenview Knolls Elementary School VRF System Replacement**

BID NUMBER: **RFP# SMCPS-2027-05-DSS-DC**

THIS BID IS SUBMITTED BY: _____

SUBMITTED TO: **BOARD OF EDUCATION OF ST. MARY'S COUNTY**
ST. MARY'S COUNTY PUBLIC SCHOOL
DEPARTMENT OF DESIGN AND CONSTRUCTION
27190 POINT LOOKOUT ROAD
LOVEVILLE, MARYLAND 20656

1. The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with the Owner in the form included in the Contract Documents to complete all Work as specified or indicated in the Contract Documents for the Contract Sum and within the Contract Time indicated in this Bid in accordance with the Contract Documents.

2. Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation, those dealing with the disposition of Bid Security. This Bid will remain open for one hundred fifty (150) days after the day of Bid opening. Bidder will sign the Agreement and submit the Contract security and other documents required by the Contract Documents within ten (10) days after the date of Owner's Notice of Award.

3. In submitting this Bid, Bidder represents, as more fully set forth in the Bidding Documents that:

   (a) Bidder has examined copies of all the Contract Document and the following Addenda:

DATE	ADDENDA NUMBER	DATE	ADDENDA NUMER
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____		
_____	_____		

   Receipt of all Addenda is hereby acknowledged as well as the Advertisement or Notice to Contractors, Instruction to Bidders, and all other Bidding Documents.

   (b) Bidder has examined the site, existing buildings, and locality where the Work is to be performed, the legal requirements (Federal, State and Local laws, ordinances, rules and regulations) applicable to the work and the conditions affecting cost,

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progress or performance of the Work and has made such independent investigations as Bidder deems necessary to submit an informed, accurate, and reliable bid.

(c) This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham bid. Bidder has not solicited or induced any person, firm, or corporation to refrain from bidding; and Bidder has not sought by collusion to obtain for himself any advantage over other Bidders or over the Owner.

(d) Bidder affirmatively makes all other representations required of the Bidder under the Bidding Documents, including those set forth in Article 2 of the Instructions to Bidders.

4. Bidder hereby agrees to furnish all labor, materials, equipment, and services required to complete the Work, and having visited the site and examined all conditions affecting the Work and having received clarification of all items and doubt, uncertainty, or possible conflict, the undersigned hereby agrees to furnish all labor, materials, supplies, equipment, and other facilities necessary and proper for the completion of the Project as required by and in strict accordance with the Contract Documents for the following price:

   TOTAL BASE BID (include total price of Unit Price Schedule): _____

   _____

   _____**Dollars (**_____).

   Alternates:

   Alternate No. One:

   Add _____ Dollars (_____)

5. Bidder acknowledges that the Work shall commence no earlier than **TBD**, and shall be Substantially Complete no later than **TBD**.

   Bidder accepts the provisions of the Agreement as Liquidated Damages in the event of failure to complete the Work on time.

6. The Bidder acknowledges that all specified allowances have been included in the Base Bid price previously noted.

7. The following documents are attached to and made a condition of this Bid:

   (a) Section 00410- Bid Bond - Required Bid Security in the amount of five percent (5%) of the Base Bid plus all alternates in the form of _____.
   (b) Section 00350 - Affidavit, signed and notarized.
   (c) Section 00360 - Sex Offender Certification, Signed.

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8. The provision for the letter of surety was met during the prequalification process. Accompanying this Proposal is a duly notarized letter from _____ _____ (Surety Company) agreeing to bond the Contractor in accordance with the Bidding Documents if the Bidder is awarded the Contract, and certifying that the Surety Company is licensed to do business in the state of Maryland.

9. The terms used in this Bid which are defined in the Bidding Documents, including the General Conditions of the Construction Contract included as part of the Contract Documents have the meanings assigned to them in the Bidding Documents.

10. The undersigned Bidder affirms that the Company, its officers, directors, or partners, or its employees have not been convicted of bribery, attempted to bribery, or conspiracy to bribe under the laws of any State or the Federal Government.

11. The undersigned Bidder affirms that it does not discriminate with respect to individual political affiliation, religious beliefs, race, creed, national origin, sex, age, sexual orientation, or handicap in employment practices.

12. The undersigned Bidder affirms that it has attempted to achieve a minimum of **(0%)** Z**ero Percent** of the total dollar value, directly or indirectly, from certified Minority Business Enterprises, with no sub-goals. The Bidder or Offeror agrees to make a good faith effort to assure that this amount of the Contract will be performed by Certified Minority Business Enterprises.

13. The undersigned Bidder affirms that this Bid is made without any previous understanding, agreement, or connection with any person, firm, or corporation submitting a bid for the same items and/or services and is, in all respects, fair and without collusion or fraud; and that no member of the Board of Education of St. Mary's County Public School, the Administrative or Supervisory Personnel, or other employees of the St. Mary's County Public Schools will benefit from the award of this bid in violation of Maryland law.

14. In submitting this Proposal, it is understood that the right is reserved by the Board of Education, St. Mary's County Public Schools to reject any and all Bids and to accept whichever Bid is deemed to be in their best interest. It is understood that the lowest bid will be determined by the Owner, using the Base Bid amount plus all, some of, or none of the alternates as set forth in Section "Alternates" of the Project Specifications and as selected by the Owner in any combination or order of section selected.

15. The Bidder understands and agrees to the terms and conditions required Maryland's Prevailing Wage Program which unless otherwise provided in the Bidding Documents must be utilized for all work associated with this project.

16. The Bidder affirms that the firm will not knowingly employ an individual to work at a school or school site if the individual is a Registered Sexual Offender, pursuant to section 11-722 (C) of the Criminal Procedure Article of the Annotated Code of Maryland. A firm or person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 5 years or a fine not exceeding $5,000 or both.

Please sign in <u>only</u> <u>one</u> of the appropriate spaces provided below and complete all the information requested.

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(a) IF A CORPORATION		
Officers' Signature:		**Date:**
Printed Name:		**Title:**
Name of Corporation:		
State of Incorporation:		
Business Address:		
City, State & Zip Code		
Phone Number:		
Email Address:		
(b) IF AN INDIVIDUAL DOING BUSINESS		
Individual's Signature:		**Date:**
Printed Name:		**Title:**
Name of Business:		
Business Address:		
City, State & Zip Code:		
Phone Number:		
Email Address:		
(c) IF A PARTNERSHIP		
Partner's Signature:		**Date:**
Printed Name:		**Title:**
Name of Corporation:		
State of Incorporation:		
Business Address:		
City, State & Zip Code		
Phone Number:		
Email Address:		

SAMPLE