

Montgomery County Public Schools Facilities Guide
DIVISION 0 - CONDITIONS OF THE CONTRACT

SECTION 00500 - AGREEMENT BETWEEN OWNER AND CONTRACTOR

The provisions of the following Agreement Between Owner and Contractor are in effect even though the Contract may be issued on a Purchase Order.

**AGREEMENT BETWEEN OWNER AND CONTRACTOR
MONTGOMERY COUNTY PUBLIC SCHOOLS**

THIS AGREEMENT made this «**Day**» day of «**Month**» 20___, by and between the BOARD OF EDUCATION of Montgomery County, Maryland, 850 Hungerford Drive, Rockville, Maryland 20850, hereinafter called the **OWNER**, and «**Contractor**», «**Contractor_Add1**», «**Contractor_Add2**», hereinafter called the **CONTRACTOR**.

For the following Project: «**Project**»
 «**Project_Add1**»
 «**Project_Add2**»

The ARCHITECT is: «**Architect**»
 «**ArchAdd1**»
 «**ArchAdd2**»

WITNESSETH that the OWNER and the CONTRACTOR for the consideration hereinafter agree as follows:

ARTICLE 1 - THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, General Conditions of the Contract at Section 00700 of the Project Specifications ("General Conditions"), any Performance and Payment Bonds required by the Agreement, and all other documents listed in this Agreement and Modifications issued after execution of this Agreement; these form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 9.

| |
|--|
| <p>This contract is executed by the Board of Education of Montgomery County pursuant to Resolution No. «RES» dated «BOE_Date».</p> |
|--|

ARTICLE 2 - THE WORK OF THIS CONTRACT

The CONTRACTOR shall execute the entire Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 - DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

3.1 The date of commencement shall be fixed in the Notice to Proceed issued by the OWNER.

3.2 Work shall be started within ten (10) working days after the Notice to Proceed and shall be substantially complete on or before «Completion_Date». . **In accordance with the following schedule:**

- Phase I - on or before (COMPLETION DATE)**
- Phase 2 - on or before (COMPLETION DATE)**
- Phase 3 - on or before (COMPLETION DATE)**

3.3 In case of failure to complete the Contract Work on or before the Substantial Completion date specified above, the OWNER shall retain out of any monies which may be due the CONTRACTOR under the Contract, as prescribed by the specifications, liquidated damages in the sum of **Two Thousand Five Hundred Dollars (\$2,500)** for each calendar day up to 30 days of delay beyond the completion date of each phase of the project as stipulated in the Contract, and **Five Thousand (\$5,000)** a day for each calendar day thereafter, without limitation. The calculation of liquidated damages will begin again with each phase provided the previous phase has been completed. The daily liquidated damages amounts are not a penalty and reflect a reasonable liquidated sum for the OWNER'S actual damages as a result of the Work not being performed by the CONTRACTOR in a timely fashion. This provision may be waived in whole or in part at the sole discretion of the OWNER.

3.4 The Owner shall retain from any monies which may be due the CONTRACTOR under the Contract the sum of Five Hundred Dollars (\$500) for each calendar day beyond the 60th day after Substantial Completion for failure to complete all Contract requirements. This provision may be waived at the sole discretion of the OWNER.

ARTICLE 4 - CONTRACT SUM.

4.1 The OWNER shall pay the CONTRACTOR in current funds for the CONTRACTOR'S performance of

the Contract the Contract Sum, «ContractAmount» **Dollars (\$«Contract»)**, subject to additions and deductions as provided in the Contract Documents.

4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the OWNER: Alternates «**Alternates**».

4.3 Unit prices are as described in the Bid Documents.

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, the OWNER shall make progress payments on account of the Contract Sum to the CONTRACTOR as provided below and elsewhere in the Contract Documents.

5.2 The period covered by each Application for Payment shall be one calendar month ending on the 25th day of the month. Provided that an Application for Payment is received by the ARCHITECT not later than the 25th day of a month, the OWNER shall make payment to the CONTRACTOR thirty (30) calendar days after the ARCHITECT approves the Application for Payment and issues a certificate for payment signed by the ARCHITECT. If an Application for Payment is received by the ARCHITECT after the Application date fixed above, the OWNER shall make payment to the CONTRACTOR thirty (30) calendar days after the ARCHITECT receives and approves the Application for Payment and issues a certificate for payment signed by the ARCHITECT

5.3 Each Application for Payment shall be based upon the Schedule of Values submitted by the CONTRACTOR in accordance with the Contract Documents. The Schedule of Values shall allocate the entire Contract Sum among the various portions of the Work and be prepared in such form and supported by such data to substantiate its accuracy as the OWNER and/or ARCHITECT may require. This Schedule of Values, unless objected to by the OWNER and/or ARCHITECT, shall be used as a basis for reviewing the CONTRACTOR'S Applications for Payment.

5.4 Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

5.5 Subject to the provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

5.5.1 Take that portion of the Contract Sum properly allocable to completed Work as determined by

multiplying the percentage of completion of each portion of the Work by the share of the total Contract Sum allocated to that portion of the Work in the Schedule of Values, less retainage of five percent (5%);

5.5.2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the OWNER, suitably stored off the site at a location agreed upon in writing), less retainage of five percent (5%);

5.5.3 Subtract the aggregate of previous payments made by the OWNER; and

5.5.4 Subtract amounts, if any, for which the OWNER and/or ARCHITECT has withheld or nullified a Certificate for Payment as provided in Section 9.5 of the General Conditions.

5.6 Provided that all conditions precedent to any reduction in retention are met, the following must occur:

5.6.1 The CONTRACTOR must furnish the OWNER a "Consent of Surety to Reduction In or Final Release of Retainage" AIA Document G707A, which will be executed by a duly appointed attorney-in-fact and shall have a "live" bona fide Power of Attorney bearing the Seal of the Surety attached thereto;

5.6.2 The OWNER must receive adequate assurance from the ARCHITECT that the CONTRACTOR'S Work is scheduled to be finished on or before the Substantial Completion date;

5.6.3 The OWNER and/or ARCHITECT must recommend in favor of the CONTRACTOR'S request for reduction of retainage; and

5.6.4 The ARCHITECT must furnish OWNER with a writing stating that there is no demonstrated need to make increased retainage withholdings.

5.7 Provided that CONTRACTOR has fully achieved Substantial Completion of the Work, the OWNER shall pay CONTRACTOR a sum sufficient to increase the total payments to 100% of the Contract Sum, less such amounts as the OWNER and ARCHITECT determine for incomplete and punch list work and unsettled claims.

ARTICLE 6 - FINAL PAYMENT.

6.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall not be made by the OWNER to the CONTRACTOR until all of the following conditions precedent have been fulfilled:

6.1.1 The Contract has been fully performed by the CONTRACTOR except for the CONTRACTOR'S responsibility to correct non-conforming Work as provided in Section 12.2.2 of the General Conditions and to

satisfy other requirements, if any, which necessarily survive final payment;

6.1.2 The CONTRACTOR has submitted satisfactory evidence to the ARCHITECT and OWNER that all payrolls, material bills, and any other indebtedness connected with the Work have been paid in full, or are otherwise satisfied;

6.1.3 A final Project Certificate for Payment has been issued by the ARCHITECT;

6.1.4 The OWNER has inspected, accepted, and approved the Work (the CONTRACTOR is responsible for preparing the Work for inspection by the OWNER); and

6.1.5 The CONTRACTOR'S Application for Final Payment shall be authorized by the Surety, as evidenced by a "Consent of Final Payment" AIA Document G707 which will be executed by a duly appointed Attorney-in-Fact and shall have a "live" Power of Attorney-in-Fact bearing the Seal of the Surety attached thereto.

ARTICLE 7 - MISCELLANEOUS PROVISIONS.

7.1 Where reference is made in this Agreement to a provision of the General Conditions or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

7.2 Upon execution of the Agreement, the CONTRACTOR shall immediately prepare Preliminary and Baseline Project Schedules in strict accordance with Section 3.10.3 of the General Conditions for approval by the OWNER. The CONTRACTOR shall fully cooperate in furnishing OWNER with Project Schedule Updates and Recovery Schedules in strict accordance with Sections 3.10.4 and 3.10.5 of the General Conditions.

7.3 CONTRACTOR acknowledges and agrees hereon to compliance with all legal requirements of Title VII of the Civil Rights Act of 1964, amendments thereto and Guidelines issued in connection therewith of Equal Employment Opportunity and all statutes and administrative rules and regulations enacted and promulgated by the State of Maryland thereon.

7.4 The CONTRACTOR shall perform the Work in accordance with the representations made in the Certified MBE Utilization and Fair Solicitation Affidavit and the MBE Participation Schedule submitted as part of the bid proposal. The MBE participation may be revised upward during the course of the Contract. Failure to so perform without prior written consent of the OWNER shall constitute a violation of a material term of the Contract.

7.5 In the event that the Contract Sum is in excess of One Hundred Thousand Dollars (\$100,000), the CONTRACTOR shall provide performance and payment bonds covering the Work, each in the penal sum of

one Hundred Percent (100%) of the Contract Sum and made in strict accordance with Section 11.5 of the General Conditions. Such bonds shall name the OWNER (and any second parties required by the Contract Documents) as dual obligees thereunder. The cost of all such performance and payment bonds shall be included in the Contract Sum.

ARTICLE 8 - TERMINATION OR SUSPENSION.

8.1 The Contract may be terminated by the OWNER or the CONTRACTOR as provided in Article 14 of the General Conditions.

8.2 The Work may be suspended by the OWNER as provided in Article 14 of the General Conditions.

ARTICLE 9 - ENUMERATION OF CONTRACT DOCUMENTS.

9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

9.1.1 The General Conditions at Section 00700 of the Project Specifications;

9.1.2 The Schedule of Values, as submitted by the CONTRACTOR and approved by the OWNER;

9.1.3 The Notice to Proceed to Contractor issued by the OWNER;

9.1.4 The Instruction to Bidders and the Specifications are those contained in the Project Manual dated «ProjectManualDate», prepared by «Architect», acting as, and in these Contract Documents entitled, the ARCHITECT;

9.1.5 The Drawings are as follows, and are dated «DrawingsDate», unless a different date is shown below:

| <u>Number</u> | <u>Title</u> |
|---------------|--------------|
|---------------|--------------|

9.1.6 The Addenda, if any, are as follows:

| <u>Number</u> | <u>Date</u> |
|---------------|-------------|
| | «Add1Date» |
| | «Add2Date» |
| | «Add3Date» |
| | «Add4Date» |

9.1.7 The CONTRACTOR'S Bid Form as submitted;

9.1.8 Technical Offer Instructions for prime construction contracts for MCPS projects. **(DELETE IF THIS IS NOT A TECHNICAL OFFER PROJECT.)**

9.1.9 Instructions to Bidders.

ARTICLE 10 - INSURANCE REQUIRED BY THE CONTRACTOR.

10.1 The CONTRACTOR shall purchase and maintain insurance as set forth in Section 11.1 of the General Conditions. Such insurance shall be written for not less than the following limits, or greater if required by law:

10.1.1 Commercial General Liability with a combined single limit for Bodily Injury, Personal Injury and Property Damage of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate. This insurance shall be primary insurance with respect to any other insurance or self-insured programs afforded to, or maintained by the OWNER. The policy is to include a per project/per location general aggregate limit and a Waiver of Subrogation is to be added in favor of the OWNER, its directors, employees, representatives, and agents in strict accordance with Section 11.1.8 of the General Conditions. If deductibles apply to any coverages herein, other than a "large deductible" programs, deductibles may not exceed \$5,000.00. If a large deductible program applies to the coverages hereunder, collateral shall be provided to the carriers providing said coverages.

Coverage shall be written on an occurrence form and include coverage for:

- .1 premises/operations resulting from performance of the Work provided for in this Contract, or due to or arising in any manner from the negligence of CONTRACTOR, its respective employers or agents;
- .2 products and completed operations with a provision that coverage is to be maintained for two years after final payment and acceptance of the Project. Coverage will apply to the goods, products, materials, or equipment used or installed under the Contract;
- .3 actions of Independent Contractors;
- .4 blanket contractual liability, to meet to the fullest extent possible, the CONTRACTOR'S obligations under Section 3.18 of the General Conditions;
- .5 explosion, collapse, or underground hazards (X, C, U);

- .6 broad form property damage, including completed operations;
- .7 personal injury liability, with employee exclusion deleted; and
- .8 Commercial General Liability policy shall be endorsed with ISO Form CG 20 10 10 01 and CG 20 37 10 01 or their equivalent naming the Architect, the OWNER, its directors, employees, representatives and agents as additional insureds.

10.1.2 Excess and/or Umbrella Liability in the amount of \$5,000,000 providing coverage for Bodily Injury, Property Damage and Personal Injury is required over General Liability, Employers Liability and Automobile Liability Policies.

- .1 Umbrella and/or Excess policies are on a true following form basis and may not contain a self-insured retention in excess of \$10,000 and they shall include all additional insureds as set forth in 10.1.1.8.
- .2 Severability of interest exclusion shall be deleted.
- .3 A Waiver of Subrogation is to be added in favor of the OWNER its directors, members, employees, representatives and agents in strict accordance with Section 11.1.8 of the General Conditions.
- .4 This insurance shall be primary insurance with respect to any other insurance or self-insured programs afforded to, or maintained by the OWNER.

10.1.3 Commercial Automobile Liability including all owned, non-owned or hired automobiles with a combined single limit of at least \$1,000,000 per occurrence for Bodily Injury or Property Damage.

- .1 The OWNER, its directors, employees, representatives and agents are to be added as additional insureds.

10.1.4 Workers Compensation and Employers' Liability.

- .1 Workers Compensation per Statutory limits established by the State of Maryland.
- .2 Include All States coverage – applicable in all but monopolistic states.
- .3 Workers Compensation policy shall contain a voluntary compensation endorsement if required.
- .4 Employers' Liability with limits of \$100,000 bodily injury by accident/each accident; \$1,000,000 bodily injury by disease/policy limit; \$1,000,000 bodily injury by disease/each employee.

.5 Waiver of Subrogation is to be added in favor of the OWNER in strict accordance with Section 11.1.8 of the General Conditions.

10.1.5 Property Insurance Builders' Risk – New Construction and Structural Additions to Existing Buildings. A Builders' Risk policy with a Special Causes of Loss Form is to be purchased by Contractor to cover the interests of Contractor, Owner, Subcontractors and Sub-subcontractors in an amount equal to the full amount of the Guaranteed Maximum Price or the full replacement cost of the Work performed, whichever is greater. The policy will not be subject to a co-insurance clause and shall be written on an Agreed Value basis. The policy is to cover the Project, property stored off-site or on-site, and property in transit. Coverage is to provide for "all risks" of physical damage including:

- .1 collapse, damage, resulting damage from faulty workmanship, and resulting damage from faulty material;
- .2 a named insured provision that includes the Contractor, Owner, and all subcontractors as insured;
3. a waiver of subrogation is to be added in favor of the Owner, its directors, members, employees, representatives, and agents in strict accordance with Section 11.4.3 of the General Conditions;
4. if deductibles apply to any coverages herein, deductibles may not exceed \$1,000.00; and
5. in the event the building(s) are occupied prior to final completion of the Work and acceptance by the Owner, the Builders' Risk policy shall be endorsed with a "permission to occupy" endorsement.

10.1.6 Installation Floater (Renovation Work) and/or Upgrades of Existing Material and Equipment. CONTRACTOR is to provide an Installation Floater written on an Inland Marine form providing Special Causes of Loss coverage for all materials, equipment, and work that is either installed, or stored on or off site or in transit. Coverage is to provide for:

- .1 testing and startup;
- .2 a waiver of subrogation is to be added in favor of the OWNER its Directors, employees, representatives, and agents in strict accordance with Section 11.4.3 of the General Conditions;
- .3 if deductibles apply to any coverages herein, deductibles may not exceed \$1,000.00;

.4 OWNER is to be added as additional interest/loss payee; and

.5 a certificate of insurance in strict accordance with Section 11.4.2 of the General Conditions.

10.1.7 The Contractor shall provide certificates of insurance for all insurance coverages in strict accordance with Section 11 of the General Conditions. The Certificate of Insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the CONTRACTOR'S Work.

This Agreement is entered into as of the day and year first written above and is executed in at least four (4) original copies of which one is to be delivered to the CONTRACTOR, one to the ARCHITECT for use in the administration of the Contract, and the remainder to the OWNER.

