**PROJECT AGREEMENT**
**Cover Sheet**

| | |
|---|---|
| **Owner:** | Plainfield Community School Corporation<br>985 Longfellow Lane<br>Plainfield, Indiana 46168 |
| **Construction Manager:** | C.H. Garmong & Son, Inc.<br>3050 Poplar Street<br>Terre Haute, IN 47803<br>Attn: John Robert Patterson, Project Manager<br>Telephone: (812)234-3714<br>E-mail: jpatterson@garmong.net |
| **Contractor:** | [Contractor Company Name]<br>[Contractor CM]<br>[Address 1]<br>Address 2]<br>Telephone: [xxx-xxx-xxxx]<br>E-mail: [xx@xx.com] |
| **Project:** | Plainfield Community School Corporation Outbuildings<br>1630 W. Oliver Ave. & 401 Elm Dr.<br>Plainfield, IN 46168<br>See Exhibit A for additional details |
| **Agreement Total:** | $[Agreement total] |
| **Commencement Date:** | [Date] |
| **Substantial Completion Date:** | [Date] |

**Exhibits Incorporated by Reference and Made Part of This Project Agreement:**

Exhibit A: Project/Scope of Work/Project Schedule
Exhibit B: Terms and Conditions of Project Agreement
Exhibit C: Application for Payment form
Exhibit D: Contractor's Schedule of Values
Exhibit E: Lien Waiver in Support of Progress Payment
Exhibit F: Lien Waiver in Support of Final Payment
Exhibit G: Contractor Request for Change form
Exhibit H: Change Order form
Exhibit I: Insurance Requirements
Exhibit J: E-Verify Program Compliance Affidavit

Owner retains Contractor to satisfactorily and timely provide and perform the work, labor, supervision, equipment and materials required to fulfill the Scope of Work set forth in Exhibit A pursuant to the Agreement Documents in exchange for Owner's payment of the Agreement Amount in the method and manner provided in this Project Agreement ("Agreement"). The foregoing Exhibits are hereby incorporated into this Agreement as if set forth fully herein.

IN WITNESS WHEREOF, the parties have executed this Project Agreement as of the date indicated below.

[signature page follows]

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|---|---|
| **Plainfield Community School Corporation**<br>***"Owner"*** | **[CONTRACTOR]**<br>***"Contractor"*** |
| **By: _____** | **By: _____** |
| **Name: _Mark Shayotovich_____** | **Name: _____** |
| **Title: Assistant Superintendent, Finance & Operations** | **Title: _____** |
| **Date: _____** | **Date: _____** |

**EXHIBIT A – Project/ Project Schedule/Scope of Work**

1. The Scope of Work set forth in this Exhibit A relates to the following project (the "Project"):

   Plainfield Community School Corporation Outbuildings
   1630 W. Oliver Ave. & 401 Elm Dr.
   Plainfield, IN 46168

2. Contractor Documents List:

   2.1. Project Schedule, dated [DATE]
   2.2. [DESCRIPTION AND DATE OF CONTRACT DOCUMENT 1]
   2.3. [DESCRIPTION AND DATE OF CONTRACT DOCUMENT 2]
   2.4. [DESCRIPTION AND DATE OF CONTRACT DOCUMENT 3]
   2.5. [DESCRIPTION AND DATE OF CONTRACT DOCUMENT 4]

3. Scope of Work:

Contractor awarded this Contract and prior to execution of the Form of Agreement, shall provide a Performance Bond and Payment Bond, covering the faithful performance of this Contract and the payment of obligations arising thereunder in a penal sum equal to 100 percent of the amount of the Contract Sum. Said bonds shall remain in effect for 12 months after date established at start of the one-year warranty period. Premiums shall be included and paid for by the Contractor.

- [DESCRIPTION OF SCOPE 1]
- [DESCRIPTION OF SCOPE 2]
- [DESCRIPTION OF SCOPE 3]
- [DESCRIPTION OF SCOPE 4]
- [DESCRIPTION OF SCOPE 5]
- [DESCRIPTION OF SCOPE 6]
- [DESCRIPTION OF SCOPE 7]
- [DESCRIPTION OF SCOPE 8]

## EXHIBIT B – Terms and Conditions of Project Agreement

These terms and conditions apply to and govern the Project Agreement identified on the cover sheet (i.e., page 1) between the Owner and Contractor. C.H. Garmong & Son, Inc. is hereafter referred to as the "CM."

**1. Work.** Contractor shall furnish, deliver, and pay for all labor, equipment, services, supervision and materials and perform all of the work necessary or incidentally required to complete its obligations strictly pursuant to and as reasonably inferred from: this Agreement and plans and specifications for the Project, any general, special, supplementary conditions, and all Exhibits identified on the cover sheet (i.e., page 1) and/or attached hereto (collectively, the "Agreement Documents"), or that part of the work covered by the Agreement Documents, and the Project Schedule (as defined herein) and all governing laws, regulations and ordinances and including design where required by the Agreement Documents, and the Scope of Work set forth on Exhibit A to this Agreement (collectively, the "Work").

The Agreement Documents (including, without limitation, all Exhibits) are applicable to this Agreement and are, therefore, incorporated herein by reference and made a part of this Agreement. In the event of conflicts between any Agreement Documents, the document that imposes the most stringent requirement will govern. Contractor understands and agrees that the Agreement Documents are complementary, and what is required by one shall be binding as if required by all, unless specifically stated otherwise. In the event of a conflict between Agreement Documents involving quality or quantity, the highest quality and the greatest quantity shall be furnished.

Contractor understands and agrees that the intent of Exhibit A is to define the scope of labor, equipment, material, supervision, and services that are to be provided by Contractor in furtherance of the construction of the Project, and not to define other rights, responsibilities, or liabilities. Notwithstanding any terms or conditions in Exhibit A that purport to define rights, responsibilities, or liabilities related to the Agreement Amount, payments, Contractor's representations or warranties, lien rights, damages, time for prosecuting the Work, changes, Contractor's on-site presence, protection of persons and property, indemnity, termination, Contractor's responsibilities, claims and dispute resolution, assignment, choice of law, damages, or waiver, no such terms or conditions therein shall supplement, supersede or control over any conflicting, inconsistent, or relevant term of this Exhibit B or any other Agreement Document.

Contractor represents and warrants to Owner that it and its employees are experienced and skilled in the construction of structures and improvements of the type described in the Agreement Documents and it has examined the Agreement Documents and the real property on which the Work will be located as indicated as the address or location of the Project identified on the cover page of the Agreement ("Site"), and has familiarized itself with the local conditions and all other factors impacting the successful completion of the Work and Contractor agrees that the design for Work depicted in the Agreement Documents can be constructed on Site. Contractor understands and agrees that the plans and specifications for the Project were prepared by independent design professionals and, as a result, Owner and CM do not warrant the fitness, accuracy or completeness of such plans and specifications. Contractor agrees to promptly report to CM and Owner any errors, inconsistencies, omissions, or violations of legal requirements Contractor discovers. Contractor shall be liable to Owner for damages resulting from any such errors, inconsistencies, omissions, or violations of legal requirements which Contractor discovers and fails to report to CM and Owner.

Contractor acknowledges this Project is being procured by Owner on a multiple prime contract delivery method coordinated and managed by CM. The Contractor shall participate with other contractors, CM, and Owner in reviewing and coordinating all schedules for incorporation into the Project that is prepared by CM (the "Project Schedule"). The Contractor shall make revisions to the Work Schedule (as defined in Section 9 below) and submittal schedule as deemed necessary by CM to conform to the Project Schedule. Should the proper and accurate performance of the Work depend upon the work performed by Owner, other contractors or any other persons engaged in work outside of the Scope of Work, Contractor shall inspect such work and report in writing to CM and Owner any defects which render it unsuitable for proper execution of the Work. Should Contractor fail to notify CM and Owner of any defects or non-conformities then Contractor shall be deemed to have accepted such defects and non-conformities. The Contractor shall coordinate the Contractor's operations with, and secure the approval of, CM before using any portion of the site.

**2. Agreement Amount.** For Work satisfactorily and timely completed hereunder and accepted by Owner, Owner agrees to pay to Contractor the sum set forth on the cover page of the Agreement identified as "Agreement Amount." The duty to make and the right to receive payments are subject to the terms and conditions of this Agreement.

**3. Payments.** Within ten (10) days of the execution of this Agreement, Contractor shall submit to CM and Owner an accurate

**EXHIBIT B – Terms and Conditions of Project Agreement**

W-9 certificate. Contractor may make applications for periodic progress payments, less retainage of 10% or, where applicable, such lower percentage mandated by law, for work satisfactorily performed when set forth in an application for payment submitted, on or before the 30th day of the month, on the form provided in Exhibit C itemizing the estimated percentage of Work performed for each line item set forth in the Schedule of Values provided as Exhibit D. The Contractor's application for payment is an affirmative representation by Contractor to Owner and CM that the Work has progressed in strict accordance with the Agreement Documents to the extent indicated by the application. Each application for payment shall (a) be in the form of Exhibit C, (b) be accompanied by verified partial lien and claim waivers for Work, as well as that of its subcontractors, materialmen and suppliers, in an aggregate amount of the application for payment utilizing the form provided as Exhibit E, and (c) provide evidence reasonably adequate to demonstrate that previous periodic progress payments have been disbursed to agents, subcontractors, materialmen and suppliers in accordance with the applications therefor. Invoices or other applications for payment not presented in this form do not create a right to receive or a duty to make payment; they will not be paid.

Contractor may make an application for final payment, not to exceed one hundred percent (100%) of the Total Agreement Amount set forth on the cover page (i.e., page 1), after Contractor completes its obligations hereunder to the full satisfaction of Owner, CM, and/or any public or governmental authority having jurisdiction. The Contractor's final application for payment is an affirmative representation by Contractor to Owner and CM that all of the Work required by the Agreement Documents has been completed in strict accordance with the Agreement Documents. At the time of submission of its application for final payment, Contractor shall provide the following: (a) an application in the form of Exhibit C with supporting documentation indicating all payments to agents, subcontractors, materialmen and suppliers proving that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Owner's interests; (b) verified conditional final lien and claim waivers for its Work as well as that of its agents, subcontractors, materialmen and suppliers in an aggregate amount of the final contract amount including Change Orders, if any, and utilizing the form included as Exhibit F to the Agreement; (c) consent of Contractor's surety, if any, to final payment; and (d) all operating manuals, warranties and other deliverables required by the Agreement Documents. Invoices or other applications for payment not presented in this form or missing required enclosures do not create a right to receive or a duty to make payment; they will not be paid.

Upon receipt of a timely submitted application for payment, the CM will, by the last day of the next month, either recommend to the Owner that Contractor's application for payment should be paid or return the application for payment to the Contractor and notify the Contractor and Owner in writing of the CM's reasons for not recommending payment. The CM may refuse to recommend payment, in whole or in part, or may nullify previous recommendations made on prior applications for payment, to protect the Owner from loss for which the Contractor is responsible, including loss resulting from: (a) incomplete, non-conforming or defective work; (b) claims filed or reasonable evidence indicating probable filing of claims, including lien claims, involving or arising out of Contractor's performance; (c) damage to Owner's or its contractors' work; (d) failure of Contractor to make payments when due to its agents, subcontractors, materialmen and suppliers; (e) reasonable insecurity regarding Contractor's intention or ability to continue with the proper and timely performance of the Work; (f) failure of Contractor to perform or comply with any of its obligations under the Agreement Documents; (g) failure of Contractor to comply with any federal, state, or local law governing its obligations under the Agreement Documents; or (h) any other breach of this Agreement or any other agreement between Contractor and Contractor.

Notwithstanding any provision in this Agreement or any other Agreement Documents to the contrary, no payment (including, but not limited to, any periodic progress payment or final payment, or payment for extras, Change Orders, delays, or acceleration of the Work) will be due Contractor until CM has made a recommendation of payment to the Owner. Acceptance of final payment shall constitute a waiver of all claims by Contractor relating to the Work but does not relieve Contractor of liability for warranties or for nonconforming or defective work discovered after final payment. Neither partial nor final payment to Contractor shall operate as approval or acceptance of work done or materials furnished under this Agreement. No recommendation made or withheld by CM shall be construed as a representation that CM has made exhaustive inspections of Work, and any Work completed by Contractor recommended by CM for payment shall be subject to further testing, inspection, or evaluation as reasonably necessary which may void all or a portion of CM's recommendation for payment.

Contractor shall keep the Project free of liens and payment claims. Contractor will retain the services of a duly licensed attorney experienced in the area of construction law consented to by CM to defend Contractor from and against such liens or payment claims. Contractor shall solely bear the cost of defense for any liens or payment claims, or any other costs which

may be assigned or adjudged to the Contractor's liability. Within ten (10) days of Owner's demand, Contractor shall discharge or satisfy any lien or payment claim asserted by any individual or entity working for or supplying material to Contractor. CM's recommendations for payment may adjust or deduct from any amounts due or to become due to Contractor from Owner any sum or sums owing by Contractor to Owner; and in the event of any breach by Contractor of any provision or obligation of this Agreement or in the event of the assertion by other parties of any claim or lien against the Owner, Contractor or the premises arising out of Work, Owner may retain all or part of any payments due or to become due to Contractor in amounts sufficient to completely protect Owner from any and all loss, damage or expense therefrom, including actual and anticipated attorneys' fees and costs or bond premiums, until the situation has been satisfactorily remedied or adjusted by Contractor.

In the event Owner or CM has information that Contractor has failed to properly and fully compensate one of its employees, agents, subcontractors, materialmen or suppliers on the Project and monies are otherwise due to Contractor, Contractor agrees that Owner may issue checks jointly payable to Contractor and the unpaid employee, agent, subcontractor, materialmen and supplier.

**4. Submittals and Substitutions.** In accordance with the Agreement Documents and the Project Schedule, Contractor shall deliver to CM and Owner timely submittals, including shop drawings, product data and samples to allow for an orderly and proper coordination of the Work. By submitting shop drawings, product data, samples and similar submittals, the Contractor represents to the Owner and the CM that such submittals do not include any deviation from the Agreement Documents. Any variances from the Agreement Documents shall be specifically identified in Contractor's submittals. CM's and Owner's review of Contractor's submittals (i) is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Agreement Documents; (ii) shall not relieve the Contractor of the obligations to perform the Work in accordance with the Agreement Documents; (iii) shall not constitute approval of safety precautions or, unless otherwise specifically stated by CM, of any construction means, methods, techniques, sequences or procedures. Contractor shall not make any substitutions in the Work or procedures or methods specified in the Agreement Documents unless it first receives written approval for such substitution signed by CM and Owner; and, (iv) shall not relieve Contractor of its responsibilities to perform the Work in accordance with the Agreement Documents unless Contractor gains from Owner prior express written approvals for any such variance. Contractor shall bear any costs and fees related to such substitution.

**5. Records.** Contractor shall keep a complete set of accounts and records on a cost accounting basis, conforming to generally accepted accounting principles for the construction industry, showing all receipts and expenditures under this Agreement. Owner shall have the right to audit and shall be afforded access upon reasonable notice to Contractor to all Contractor's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to this Agreement for a minimum period of three years after final payment, or for the minimum period of record retention set forth in Owner's agreement with its lender, or required by applicable law governing the Project, whichever period is longer.

**6. Confidential Information.** All plans, drawings, specifications and the subject matter contained therein and all other information received by Contractor in connection with performance of this Agreement involve valuable property rights of Owner and shall be held confidential by Contractor, shall remain the property of Owner and shall not be used by Contractor for any purposes other than those for which they have been supplied or prepared. Contractor agrees that it, its employees, agents, subcontractors, materialmen and suppliers will keep confidential the making of this Agreement and the terms hereof. Contractor agrees not to use for publicity purposes any photographs drawings and /or materials in connection with the performance of this Agreement without obtaining the prior written consent of Owner and upon completion of this Agreement, Contractor shall return all material given Contractor as aforesaid. Contractor agrees to include a confidentiality provision substantially similar to this Section 6 in its agreements with its employees, agents, subcontractors, materialmen and suppliers.

**7. Warranty.** Contractor warrants to the Owner that materials and equipment furnished under this Agreement will be new, unless otherwise required by the Agreement Documents, of good quality, free from defects of workmanship or materials and will conform to the requirements of the Agreement Documents, and that the Work performed hereunder will be good and workmanlike, free from defects and will conform to the requirements of the Agreement Documents, and Owner shall have good title, free of encumbrances, to all material and equipment included in the Work. Work (workmanship or materials) not conforming to these requirements, including substitutions not properly approved or authorized, may be considered defective.

**EXHIBIT B – Terms and Conditions of Project Agreement**

Contractor shall defend, pay all costs incurred, and hold Owner and CM harmless from Contractor's failure to adhere to or follow this Agreement including, but not limited to, claims concerning delays or defects in Work.

**8. Correction of Defective Work.** Prior to and within one year of Substantial Completion (as defined herein), or within such longer period to the extent required by the Agreement Documents, Contractor shall, within 48 hours' of receipt of written notice from Contractor that the Work is not in conformance with the Agreement Documents, correct the defective Work at its own cost and time and bear the expense of the additional services required for the correction of any defective Work, including the correction, removal or replacement of the defective Work and any damage caused to other parts of the work or the Project affected by the defective Work. If Contractor fails to correct the defective Work within such 48 hour period, Owner may, without further notice and in addition to any other remedies provided under the Agreement Documents, commence correction of such defective Work on Contractor's account. If the defective Work creates an emergency requiring an immediate response, the 48 hour period identified herein shall be deemed inapplicable. Any time period for the duty to correct work referenced herein or in the Agreement Documents applies only to Contractor's obligation to correct such defective work upon demand and is not intended to constitute a period of limitations for any other rights or remedies Contractor may have regarding Contractor's obligations under the Agreement Documents.

**9. Time.** Contractor acknowledges that it is bound by the scheduling requirements of the Agreement Documents and those of the Project (cumulatively, the "Project Schedule"), which may be amended from time to time prior to the time when the Project achieves "Substantial Completion" which is defined as the time when Work has progressed to the point such that Owner may, in its reasonable discretion, use and occupy Work for its intended purpose. Contractor agrees to promptly begin Work as soon as notified by CM and shall diligently and continuously prosecute and complete the Work in accordance with the requirements of the Agreement Documents including but not limited to the date of Substantial Completion, the Project Schedule, and any other milestone dates set forth therein. Contractor agrees to cooperate with, and coordinate its Work activities so as not to interfere with those parties performing work at the Site, including Owner's separate contractors, so that the Project can be completed pursuant to the Project Schedule in an orderly and coordinated manner without disruption.

Within ten (10) days after execution of the Agreement, Contractor shall prepare and submit to CM (for Owner's approval) a detailed schedule for the performance of the Work ("Work Schedule"). The Work Schedule must conform to all requirements of this Agreement including, without limitation, the Project Schedule. The Work Schedule must account for the work of other contractors and, because the work of other contractors will inherently depend on the timeliness of Contractor's performance, adjustments to the Work Schedule may be required for an orderly performance of the Work to accomplish Substantial Completion of all Work by the Substantial Completion Date.

Contractor shall maintain, and update at the intervals required by CM, the Work Schedule throughout the performance of the Work, and at times requested by CM. All updates to the Work Schedule shall be in accordance with the time and sequence provided for by the Project Schedule as it may be adjusted. Any updates to the Work Schedule shall not relieve Contractor of its obligation to perform as required by the Project Schedule. Contractor warrants that its Work Schedule, as may be amended to accommodate the Project Schedule then in effect, will allow the Project to progress in accordance with the Project Schedule. By submitting the Work Schedule and any requested updates thereto Contractor represents that the Work Schedule and such other schedules, updates, revisions and reports it prepares are reasonable when considering all conditions and factors bearing on the performance of the Work and accurately reflect Contractor's reasonable expectations as to the sequence and duration of Work items, productivity, projected and actual completion of any Work item or activity, and delays or problems expected or encountered and specified float time. Contractor shall maintain the personnel, material and equipment as required to assure the various stages of the Work are completed as required by the Work Schedule. Contractor agrees to re-sequence its work, accelerate its efforts through Saturday / weekend work, weekday overtime and/or provide multiple crews if required to maintain or facilitate the Work Schedule. Contractor acknowledges that Contractor's timely performance of the Work is an essential condition of the Agreement and agrees that any failure to perform and complete the Work consistent with such dates shall be a material default of the Agreement. If Contractor fails to adhere to the Work Schedule, misses any milestone in any such schedule, fails to accelerate or re-sequence when requested to accommodate the Project Schedule, or if Contractor abandons the Work, suspends its Work, or fails to have sufficient workers on site and productively employed for three (3) days or more, Owner may, without prior notice and without waiving any other right or remedy available in law or equity, terminate this Agreement or take steps necessary to complete or expedite the Work, including supplementing Contractor's efforts by completing the Work or any portion thereof by using Owner's own resources or hiring other contractors, at the expense of Contractor.

**EXHIBIT B – Terms and Conditions of Project Agreement**

Contractor shall give timely notices to authorities pertaining to the Work and shall be responsible for all permits, fees, licenses, assessments, inspections, testing and taxes necessary to complete the Work.

Owner shall not be liable to Contractor for any delay, disruption, or interference to the Work caused by the act, omission, neglect or default of the Contractor or its respective employees, agents, subcontractors, materialmen and suppliers, or by any other cause beyond Owner's direct control. Contractor shall be entitled to such extensions of time to the extent they are applicable to Work, but only to the extent where Work on the critical path of the Work Schedule is delayed, and the Contractor did not cause the delay or the Contractor could not have anticipated, avoided or mitigated the effect of the delay, and to no other extensions of time for delays beyond Owner's control. Contractor shall not be entitled to and shall make no other claim for damages, including but not limited to direct, consequential or incidental damages, arising out of or relating to delays, disruptions, suspensions, accelerations, inefficiencies, or impacts upon the Work.

The Contractor and Owner agree that in the event Contractor fails to complete the Work within the time required by the Work Schedule, or otherwise causes the Project to be delayed in achieving Substantial Completion under the Project Schedule, the Contractor shall pay to the Owner as damages for delay, and not as a penalty, the sum of $1,000 per day for every calendar day of delay caused by Contractor.

**10. Changes.** When Owner orders changes to the Work in a writing signed by CM or the Owner, Contractor, without nullifying this Agreement, shall make any and all changes in the Work, which are within the general scope of this Agreement, whether additive or deductive, irrespective of the root of such change. Upon receipt of a request for change issued by the CM or Owner, or if Contractor becomes aware of any event or circumstance which Contractor believes necessitates a change in the Agreement Amount, the Project Schedule, or any other provision of the Agreement, Contractor shall submit a written request to Owner for an adjustment to the Agreement Amount, Project Schedule, or other provision of the Agreement Contractor believes is affected thereby using the form included in Exhibit G ("Request for Change"). Contractor's Request for Change shall include documentation sufficient to enable CM and Owner to determine the factors necessitating the adjustment(s) being requested, including without limitation a price breakdown itemized as requested by CM and/or Owner and in sufficient detail to permit an analysis of all material, labor, equipment, and contract costs, and information in sufficient detail to permit an analysis of the proposed adjustment to the Agreement Amount, Project Schedule, or other provision of the Agreement which may be affected. Contractor's Request for Change shall be provided to CM and Owner no later than seven (7) days of receipt of such written order or the occurrence of such event or circumstance which Contractor believes necessitates a change. Contractor's timely submission of Request for Change is a condition precedent to Contractor's recovery. Contractor's failure to submit a Request for Change in the time provided herein shall be deemed a waiver of Contractor's right to recover for any change, delay, resequencing, disruption, or interference to the Work. If, upon review, CM finds Contractor's Request for Change without merit, Contractor may proceed to prosecute its Claim in accordance with the dispute resolution provisions of this Agreement.

Charges for overhead and profit for changed self-performed work are permitted for no more than 10 percent (10%) and 5 percent (5%) for Subcontractors. The percentage markup allowed for the Performance and Payment Bond, if applicable, shall be one percent (1%) of the total cost for the change.

No extra work or claim or request for additional compensation under this Agreement or payment obligations will be due, become due, or will be recognized or paid by Owner unless, before said additional Work or material is furnished, Owner, CM and Contractor execute a written Change Order as those terms are defined and developed in this Agreement. A Change Order is a written instrument issued after execution of the Agreement signed by Owner, CM, and Contractor on the form provided in Exhibit H, stating their agreement upon all of the following: the scope of the change in the Work; the extent of the adjustment to the Agreement Amount; and the extent of the adjustment to the Project Schedule, if any. All changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Agreement Documents. CM and/or Owner and Contractor shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes.

The increase or decrease in the Agreement Amount resulting from a change in the Work shall be determined by one or more of the following methods: (1) Unit prices set forth in the Agreement or as subsequently agreed to between the parties (If unit prices are set forth in the Agreement Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to Owner or Contractor because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted); (2) A mutually accepted, lump sum, properly

itemized and supported by sufficient substantiating data to permit evaluation by CM and Owner; or (3) A cost reimbursable basis providing for recovery of costs, fees and any other markups set forth in the Agreement.

All changes in the Work authorized by Change Order shall be performed under the applicable conditions of the Agreement Documents. No contentions of additional or changed work will be recognized under this Agreement and consequently no payment obligation will be due, become due, or will be recognized or paid by Owner unless, before said additional work or material is furnished Owner's Authorized Representative executes a written Change Order . Timesheets, work tickets, field documents or other related Contractor documents, irrespective of whether signed by Owner's on-site personnel, project management, or any Owner employee, agent, consultant or other individual, shall not constitute a Change Order hereunder, shall neither modify nor alter any term of this Agreement, or its terms, nor serve as a course of dealing to modify this Agreement, and shall serve only to acknowledge performance of work. No individual or entity has any authority to order work or changes on behalf of Owner other than Owner's Authorized Representative.

**11. Contractor's On-Site Presence.** Before performing any Work at the Site, each employee of Contractor or Contractor's agents, subcontractors, materialmen and suppliers must report in-person to CM or his designee. Contractor shall maintain at the Project a superintendent, foreman or other such construction manager and such individual, by such placement, is hereby authorized to make agreements for or otherwise act on behalf of Contractor. Contractor shall attend any and all meetings for which CM or Owner requests Contractor's presence. Contractor shall not place signs of any kind upon the Site without CM's or Owner's prior written approval.

**12. Contractor Furnished Materials**. All equipment, supplies, materials, and other items furnished by Owner ("Owner Furnished Materials"), if any, as part of the Work will be installed or incorporated into the Work at the expense of Contractor, unless otherwise indicated herein. Contractor shall verify the quantity and condition of such Owner Furnished Materials when delivered to it, acknowledge receipt thereof in writing to CM, and immediately report any damage or shortage to CM. Title to Owner Furnished Materials shall at all times remain with Owner. Contractor, upon delivery and acceptance of any Owner Furnished Material, assumes the risk of, and shall be responsible for, any loss thereof or damage thereto.

**13. Protection of Persons and Property.** Contractor shall comply in all respects with any safety policies and/or obligations demanded of Contractor in the Agreement Documents. Without limiting and only in addition to the foregoing, Contractor agrees to the remaining obligations in this section and will at all times be solely responsible for the safety and well-being of its employees, for its work and for complying with all applicable laws, ordinances, codes and regulations in connection with the Work to be performed hereunder, including those relating to safety of all persons and property even if CM or Owner have implemented any safety program or regulations at the Project or jobsite. Contractor shall ensure each of its employees, and the employees or agents of its agents, subcontractors, materialmen, suppliers, or anyone that is present on the Project site that is the responsibility of Contractor, at a minimum, properly wears hardhats, safety glasses, shirts with sleeves, full-length pants and boots at all times. Any person that fails to comply in all respects with any safety policies and/or safety requirements of this Agreement may be provided one warning before being excluded from working or visiting the Project.

Contractor shall take all reasonable precautions for the safety of, and shall provide all necessary protection to prevent damage, injury or loss to: (i) individuals at the Project and other persons who may be affected thereby; (ii) all Work and all materials and equipment to be incorporated therein; and (iii) other property at the Site or adjacent thereto. Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and orders of any public authority bearing on the safety of persons and property and their protection from damage, injury or loss. Contractor shall notify CM and Owner immediately following any accident and promptly confirm the notice in writing. Contractor shall be liable to Owner and CM for and will promptly remedy all damage or loss to any property caused in whole or in part by Contractor, or anyone directly or indirectly employed by Contractor, or by anyone for whose acts Contractor may be liable.

Until such time as the Work is completed and finally accepted by Owner, Contractor shall bear the risk of loss for damage to, or loss or destruction of the Work, and such materials or equipment, and Contractor shall, at its expense, repair or replace to Contractor's satisfaction, all damage to, or loss or destruction of, the Work or such materials or equipment which results from any cause whatsoever.

Contractor shall implement, communicate and enforce a policy designed to ensure the safety of all workers on the Site and complies with all federal, state and local safety statutes, regulations, ordinances, rules and codes governing the Work. Contractor shall defend, indemnify and hold Owner and CM harmless from and against fines and penalties imposed upon or

affecting Contractor resulting from, relating to or concerning Work and/or Contractor's failure to comply with applicable safety laws, ordinances or regulations. CM and/or Owner may deduct the amounts of any unpaid penalties, fines or fees, along with any attorneys' fees or costs incurred by Contractor, from amounts otherwise due Contractor.

Contractor shall comply with all applicable laws, ordinances, codes and regulations related to hazardous substances, including the provision of Material Safety Data Sheets for all hazardous substances brought onto the Site by Contractor or any of its employees, subcontractors, materialmen, suppliers, or agents. In the event Contractor causes hazardous substances to be brought to the Site, through Contractor's own acts or omissions or those of its employees, subcontractors, materialmen, suppliers, or agents or any other person for whom Contractor is responsible, Contractor shall further provide any additional precautions needed to protect individuals that may be affected by such hazardous substances.

No materials, appliances, supplies or equipment delivered for the benefit of the Project may be removed from the job site without Contractor's prior written consent.

Contractor agrees to perform all patching of any character arising from Work. Any failure in this regard may be performed or supplemented by Owner at Contractor's expense. Prior to undertaking any cutting or drilling operations, Contractor shall verify that no structural or other damage will be caused by the cutting or drilling process. No structural member shall be cut or drilled without prior written approval from CM.

**14. Notices.** All reporting, notices or communications required or permitted to be given under this Agreement will be in writing and will be delivered by email to the following email addresses:

| **For Owner:** | **For CM:** | **For Contractor:** |
|---|---|---|
| To the Email address listed on Page 1 of this Agreement, with a copy to Mark Shayotovich at ***mshayotovich@plainfield.k12.in.us*** | To the Email address listed on Page 1 of this Agreement | To the Email address listed on Page 1 of this Agreement |

Notices will be deemed effective on the date the notice is sent by email. If a party sending an email notice under this Agreement receives a machine-generated message that delivery has failed, then for that notice to be valid, the sender must, no later than ten business days after sending the email message, deliver a tangible copy of that notice (by FedEx, UPS, or USPS) with end-to-end tracking.

**15. Duty to Facilitate Jobsite Communications for Non-English-Speaking Individuals.** In addition to and without limiting or modifying Contractor's performance and safety-related obligations in this Agreement and the Agreement Documents, Contractor has a duty to facilitate jobsite communications involving Contractor, its employee and its agents. If Contractor chooses to employ and/or rely upon individuals who CM reasonably believes cannot adequately comprehend written and spoken English so as to promote a safe work environment, Contractor shall, at all times that such non-English speaking individual(s) are present on the jobsite, maintain, at Contractor's expense, a translator at the Site who can interpret to and from English the language spoken or understood by such non-English speaking individual(s). This requirement is a matter of job-site safety and Contractor is free to employ any such individual so long as the conditions herein are consistently met.

**16. Immigration Law Compliance.** Contractor shall employ only United States citizens and aliens who are authorized to work in the United States and shall not unlawfully discriminate on the basis of citizenship or national origin. Contractor acknowledges and agrees that in compliance with the Immigration Reform and Control Act of 1986, each new employee of Contractor, as a condition of employment, must complete the Employment Eligibility Verification Form I-9 and present documentation establishing identity and employment eligibility. Contractor agrees to require that all agents, subcontractors, materialmen and suppliers be subject to the same terms of the Agreement Documents regarding immigration law compliance.

**17. E-Verify.** The Contractor and subcontractors shall fully comply with all E-verify requirements set forth in Ind. Code 22-5-1.7. Accordingly, the Contractor shall enroll in and verify the work eligibility status of all newly hired employees of the Contractor through the E-Verify program; provided, however, the Contractor is not required to verify the work eligibility status of all newly hired employees of the Contractor through the E-Verify program if the E-Verify program no longer exists.

**EXHIBIT B – Terms and Conditions of Project Agreement**

The Contractor shall sign an affidavit affirming that the Contractor does not knowingly employ an unauthorized alien. The Contractor and subcontractors shall not knowingly employ or contract with an unauthorized alien or retain an employee or contract with a person that the Contractor or Subcontractor subsequently learns is an unauthorized alien. If the Contractor violates this Section, the Owner shall require the Contractor to remedy the violation not later than thirty (30) days after the Owner notifies the Contractor. If the Contractor fails to remedy the violation within the thirty (30) day period, the Owner shall terminate this Agreement for breach of Contract. If the Owner terminates this Agreement, the Contractor shall, in addition to any other contractual remedies, be liable to the Owner for actual damages. There is a rebuttable presumption that the Contractor did not knowingly employ an unauthorized alien if the Contractor verified the work eligibility status of the employee through the E-Verify Program. If the Contractor employes or contracts with an unauthorized alien but the Owner determines that terminating this Agreement would be detrimental to the public interest or public property, the Owner may allow this Agreement to remain in effect until the Owner procures a new contractor. The Contractor shall, prior to performing any of the Work, require any Subcontractor to certify to the Contractor that the Subcontractor does not knowingly employ or contract with an unauthorized alien and has enrolled in the E-Verify Program. The Contractor shall maintain on file a certification from each Subcontractor throughout the duration of the Project. If the Contractor determines that a Subcontractor is in violation of this Section, the Contractor may terminate its Subcontract with the Subcontractor for such violation. Such termination may not be considered a breach of this Agreement by the Contractor or the Subcontractor. Execution of the provided Exhibit J, E-Verify Program Compliance Affidavit, with this Agreement is a requirement of this section.

**18. Background Checks.** Contractor shall, to the extent applicable, comply with the Owner's criminal history background and child protection index check policy(s) and shall comply with all applicable laws regarding criminal history background and child protection index checks and requirements.

**19. Drug-Free Workplace.** Owner and Contractor are committed to providing all workers a drug-free workplace. To ensure a drug-free workplace, all individuals working on-site on behalf of Contractor (whether directly employed by or retained by Contractor or one of its agents, subcontractors, materialmen or suppliers) shall participate in a program of both annual and random drug-testing. Each employee working on-site on behalf of Contractor (whether directly employed by or retained by Contractor or one of its agents, subcontractors, materialmen or suppliers) must be able to produce proof, upon Contractor's request, demonstrating: (a) that the employee is tested on an annual basis by a facility approved by the National Institute for Drug Abuse ("NIDA"), (b) that the employee, within the 12 month period preceding the request, was tested by a NIDA-approved facility and was determined to be free of illegal substances, (c) that the employee has agreed to submit to random drug testing by a NIDA-approved testing facility upon not more than three business days' prior notice to the employee, and (d) that the employee has not refused a request for random drug testing.

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

Only materials and equipment that are to be used directly in the Work and in the immediate future shall be brought to and stored on the Project site by the Contractor. Equipment no longer required for the Work shall be promptly removed from the Project. Contractor shall be solely responsible for the Project remaining secure at all times and for the protection of materials, tools, and equipment stored at the Project site from weather, theft, damage, and all other adversity.

The Contractor shall keep the Project site, all roads, sidewalks, parking areas, and thoroughfares on and adjacent to the Project free from obstructions which might present a hazard, nuisance, or interference with vehicular or pedestrian traffic. When construction operations necessitate the closing of traffic lanes or sidewalks, the Contractor shall be responsible for arranging such closing in advance with the authorities having jurisdiction, the Owner and any adjacent property owners. The Contractor shall provide adequate barricades, signs, flagmen, traffic control personnel, and other devices for traffic guides and public safety. The Work shall be performed to the fullest extent reasonably possible in such a manner that areas adjacent to the site of the Work shall be free from all debris, building materials, and equipment likely to cause hazardous conditions.

The Contractor shall not permit any of its or its Subcontractors' employees to use any existing facilities at the Project site, including without limitation, lavatories, toilets, entrances, and parking areas other than those designated by the Owner. All the workers of Contractor and its subcontractors, whatever tier, at the Project site shall be clearly identified by company badges, t-shirts or other acceptable identification. Without limitation by any other provision of the Contract Documents, the

**EXHIBIT B – Terms and Conditions of Project Agreement**

Contractor shall comply with any and all rules and regulations promulgated by the Owner in connection with the use and occupancy of the Project site as well as any applicable policies of the Owner, all as may be amended by the Owner from time to time.

**21. Clean Up.** Contractor shall clean and continuously keep its portion of the Project and surrounding area clean and free of debris, including, but not limited to, regularly removing construction trash, waste and debris, and the removal of all dirt and mud from any and all roadway surfaces both on the Site and at the Site's ingress and egress points. Upon Substantial Completion of the Work, or any portion of the Work, Contractor shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Owner to occupy the Project or that portion of the Project for its intended use. If Contractor fails to clean up as provided herein, Contractor shall nonetheless be financially responsible for the such clean up and CM may adjust or deduct from applications for payment all resulting cleanup costs incurred by Owner or on Owner's behalf.

**22. Right of Occupancy.** Whenever it may be useful or necessary to do so, CM or Owner shall be permitted to occupy and use any portion of the Work which has been either partially or fully completed by Contractor before final inspection and acceptance thereof by the Owner, but such use or occupation shall not relieve Contractor of its warranty of said Work and materials nor of its obligation to make good at its own expense any defect in materials and workmanship which may occur or develop prior to Contractor's release from responsibility to the Owner; provided, however, that Contractor shall not be responsible for any damage thereto that is due to or caused by the negligence of Owner during such period of use.

**23. Conduct.** Contractor's employees, agents, subcontractors, materialmen, suppliers, persons, and/or supervisors who are or may be involved in the performance of the Work ("Contractor Personnel") shall conduct themselves in a manner that is lawful, courteous, businesslike and respectful of all others. Owner and CM shall have the right to require removal of any Contractor Personnel failing to comply with this conduct provision. Contractor Personnel shall not utilize any constructed or partially constructed improvements for personal use.

**24. Indemnity.** To the fullest extent permitted by law of the State of Indiana, the Contractor shall indemnify and hold harmless the Owner, Contractor, and their respective agents and employees ("Indemnified Parties") from and against any and all loss, cost, claim, suit, cause of action, damage or expense of every kind and nature (including, without limitation, fines, penalties, remedial obligations, court costs and expenses and reasonable attorney's fees, including attorneys' fees incurred in the enforcement of this indemnity clause)(collectively "Losses") related to, in connection with, or resulting from: (a) actual or alleged failure of Contractor or its employees, agents, subcontractors, materialmen and suppliers to comply with applicable law, applicable codes and standards or safety requirements under this Agreement; (b) actual or asserted violation or infringement of any domestic or foreign patents, copyrights or trademarks or other intellectual property, or any improper use of confidential information or other proprietary rights that may be attributable to Contractor or any employee, agent, subcontractor, materialmen and supplier in connection with the Work; (c) contamination or pollution arising out of acts or omissions of Contractor's or any employee's, agent's, subcontractor's, materialmen's or supplier's use, handling or disposal of hazardous materials brought onto the site, the facility site, the adjacent property or any other property by Contractor or any employee, agent, subcontractor, materialmen and supplier; (d) claims by any governmental instrumentality as a result of a failure by Contractor or any employee, agent, subcontractor, materialmen and supplier to pay taxes; (e) failure of Contractor to make payments to any employee, agent, subcontractor, materialmen and supplier which is not the result of failure by Contractor to timely pay Contractor; (f) breach by Contractor of any covenant, representation, or warranty under this Agreement, and (g) bodily or personal injury (including sickness to or death of persons and losses therefrom to relatives or dependents) of any person and damage to or destruction of property of any person or entity in any way directly or indirectly arising out of or relating to the Work, but only to the extent that such injury or death or property damage or destruction is caused by the negligence of the Contractor's or its agent's, subcontractor's, materialmen's or supplier's personnel. Contractor shall defend at its expense (including attorney fees, expert fees, court costs and other expenses) the Indemnified Parties from any claims, demands, actions or causes of action, whether such claim, demand, action or cause of action is asserted in a legal, judicial, arbitral or administrative proceeding or action or by notice without institution of such legal, judicial, arbitral or administrative proceeding or action, in connection with Contractor's or any employee's, agent's, subcontractor's, materialmen's or supplier's (i) violation of applicable law, (ii) infringement of intellectual property rights, (iii) contamination or pollution, (iv) failure to pay taxes, (v) failure to pay any employee, agent, subcontractor, materialmen or supplier which is not the result of failure by Owner to timely pay Contractor, (vi) negligence, gross negligence or willful misconduct alleged to result in property damage or personal injury (or death), and (vii) breach of any covenant, representation, or warranty of Contractor under this Agreement. The duty to defend is separate from the duty to indemnify and regardless of the degree or

proportion of negligence or comparative fault by Contractor's or any agent's, subcontractor's, materialmen's or supplier's employees alleged. Owner shall give notice to Contractor within fifteen (15) days after receiving notice of the commencement of any claim or legal action for which Owner seeks indemnification and defense. Owner's failure or delay in giving such notice will reduce Contractor's liability only by the amount of damages directly attributable to such failure or delay. Contractor shall not settle or compromise any claim or legal action without Owner's written consent, not to be unreasonably withheld, delayed or conditioned. Owner may at its expense participate in the defense of any such matters, but such participation will not limit or affect Contractor's obligations herein. In the event of the failure of the Contractor to perform fully in accordance with the defense obligations under this section, Owner may, at its option, and without relieving the Contractor of its obligations hereunder, so perform, but all damages, costs and expenses (including all reasonable attorneys' fees and litigation or arbitration expenses, settlement payments and judgments) so incurred by Owner in that event shall be reimbursed by the Contractor to Owner, together with interest on same from the date any such cost and expense was paid by Owner until reimbursed by the Contractor at the interest rate provided by applicable law. Contractor's duties to defend, hold harmless, and indemnify the Indemnified Parties shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or its agents, subcontractors, materialmen or suppliers under worker's compensation acts, disability benefit acts, or other employee benefit acts. All release, defense and indemnity obligations provided for in this Agreement shall survive termination, expiration, or cancellation of the Agreement. In the event that any indemnity provisions in this Agreement are contrary to the law governing this Agreement, then the indemnity obligations applicable hereunder shall be applied to the maximum extent allowed by applicable law. Contractor's indemnity and defense obligations for personal injury, illness or death or property damage shall apply regardless of whether any Indemnified Parties' were concurrently negligent, it being agreed that in this event, Contractor's respective liability or responsibility shall be determined in accordance with the principles of comparative negligence. In the event the laws (whether by statute or court decision) of the State of Indiana provide that contracts or provisions for indemnification of a party's own negligence are against public policy or are otherwise void and unenforceable, the obligation for Contractor to defend, indemnify and hold harmless the Indemnified Parties against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of the Work and due or alleged to be due by the negligent acts or omissions of the Contractor, or any of Contractor's employees, agents, subcontractors, materialmen or suppliers, anyone employed by them or anyone for whose acts they may be liable, will be deemed to be a severable distinct obligation. Contractor shall require that its agents, subcontractors, materialmen and suppliers also indemnify and defend Contractor, Owner, CM, and any other persons that Contractor is required to indemnify and defend under the Agreement Documents, to the same extent that Contractor is required to indemnify and defend such persons.

**25. Insurance.** Contractor shall procure and maintain the insurance coverage required by the Agreement Documents and as set forth in Exhibits I. Contractor's insurance must be in effect before Work commences and must remain in effect through the longer of the warranty period expressed in the Agreement Documents or the time period provided in Exhibit I. Work on the Site may not begin nor will any payment be due to Contractor until Contractor has secured such insurance and delivered to CM and Owner a certificate of insurance fulfilling the requirement(s) expressed in the Agreement Documents. Failure to secure and maintain the insurance identified in this Agreement (and related Exhibits) or provide notices herein will be a material breach of this Agreement. Any delays or related effects associated with failure to deliver the required documentation will be borne solely by Contractor.

To the fullest extent permitted by law, Contractor, for itself and on behalf of its insurers waives all rights of subrogation against Owner and CM, their agents and employees, as respects loss, damage, claims, suits or demands howsoever caused: (a) to real or personal property, vehicles, equipment and tools owned, leased or used by Contractor or Contractor's employees, agents, subcontractors, materialmen and suppliers; and (b) to the extent such loss, damage, claims, suits or demands are, or should be, afforded coverage by the Contractor's insurance maintained as required by this Agreement or any other insurance (except professional liability to which this requirement does not apply) maintained by Contractor. This waiver shall apply to all first party property, equipment, vehicle and worker's compensation claims, and to all third-party liability claims. This waiver shall apply to all deductibles, retentions or self-insured layers applicable to the required or any other insurance maintained by Contractor. If necessary, Contractor agrees to endorse the required insurance policies to permit waivers of subrogation in favor of Owner and CM. Contractor further agrees to hold harmless and indemnify Owner and CM for any loss or expense incurred as a result of Contractor's failure to obtain such waivers of subrogation.

Material suppliers and equipment suppliers contracted by Contractor, if delivering to jobsite, must adhere to the insurance requirements herein.

**EXHIBIT B – Terms and Conditions of Project Agreement**

Without any obligation to do so, should CM or Owner become aware of Contractor's failure to procure or maintain the insurance required by this Agreement, Owner may obtain such insurance on Contractor's behalf and deduct from payment(s) otherwise due and owing those amounts expended in obtaining the required insurance policies.

**26. Termination for Convenience.** Owner may terminate this Agreement at any time for its convenience and without cause by providing written notice to Contractor. Within three (3) days of notification of termination, this Agreement shall be terminated and Contractor shall immediately stop Work, follow all of CM's and/or Owner's instructions and mitigate all costs. In the event of a termination for convenience Owner's liability to Contractor shall be limited to the extent of Contractor's proven costs for Work performed on-site and accepted by Owner. Contractor shall not be entitled to overhead or profit on Work not executed.

**27. Termination for Cause.** If at any time Contractor: (a) fails or refuses to supply sufficient labor, materials, tools, equipment or supervision; (b) fails or refuses to perform the Work promptly and diligently; (c) fails to meet the Work Schedule; (d) causes delay, disruption, interference or stops the work of Owner or any other contractors; (e) fails or refuses to perform any of its obligations under this Agreement; (f) commits an act or omission that is a breach or default of this Agreement; or (g) becomes bankrupt, insolvent, or goes into liquidation (either voluntarily or under an order of a court of competent jurisdiction), or makes a general assignment for the benefit of creditors, or otherwise evidences financial incapacity; then in any of such events, each of which shall constitute a material default under this Agreement, Owner shall have the right, in addition to all other rights and remedies provided under this Agreement or by law, after three (3) days' written notice to Contractor: (1) to order Contractor to add manpower or to work overtime or additional shifts at no additional cost to Owner; (2) to delay payment of all or part of the Agreement Amount until Contractor conforms to the Work Schedule; (3) to take over and perform through Owner, or through third parties selected by Owner, the Work until, in CM's and/or Owner's judgment, Contractor's default has been cured, and deduct from the Agreement Amount the cost thereof plus a management fee of twenty percent (20%), which is a fair reimbursement of Owner's resources to manage Contractor's obligations and not a liquidated damage; (4) to augment Contractor's forces with additional labor, service and materials until, in CM's and/or Owner's judgment, Contractor's default has been cured and deduct from the Agreement Amount the cost thereof plus a management fee of twenty percent (20%); and/or (5) to terminate all or any portion of Contractor's right to proceed under the Agreement and to enter upon the premises and take possession, for the purpose of completing that portion of the Work affected by such termination, of all Contractor's records, drawings, documents, materials, tools and equipment and all other items relating to that subject portion of the Work, including materials stored off-site for use in completing the Work. In case of such termination of Contractor, Contractor shall not be entitled to receive any further payment under this Agreement with respect to such portion of the Work until that portion of the Work shall be wholly completed to the satisfaction of CM and Owner, and shall have been accepted by them, at which time, if the unpaid balance of the amount to be paid under this Agreement shall exceed the cost and expense incurred by Owner in completing said portion of the Work, such excess shall be paid by Owner to Contractor as set forth below; but if such cost and expense shall exceed such unpaid balance, then Contractor shall pay the difference to Owner as set forth below. Such cost and expense shall include not only the cost of completing said portion of the subject portion of the Work to the satisfaction of CM and Owner, and of performing and furnishing all labor, services, materials, equipment, and other items required therefore, but also all losses, damages, costs and expenses, including reasonable attorneys' fees and disbursements sustained, incurred or suffered by reason of or resulting from Contractor's default. If the unpaid balance of the Agreement Amount exceeds the cost incurred by Owner, plus a management fee of twenty percent (20%), and no claims arising from the Work are threatened or pending, Contractor will be paid the excess less any amounts Contractor owes Owner for any other project; but if such cost plus the 20% management fee exceeds the unpaid balance, then Contractor shall pay the difference to Owner within ten (10) days of written demand by Owner or CM.

In addition to the costs specified in the immediately preceding paragraph, CM and/or Owner may deduct from the Agreement Amount and/or otherwise recover from Contractor an amount sufficient to indemnify and hold Owner and CM harmless from any loss or liability arising out of the Work or other involvement in the Project, including, but not limited to, the costs of any claims by others resulting from Contractor's acts or omissions including any judgment or award to or settlement with the claiming party and reasonable attorneys' fees and disbursements incurred defending or resolving such claims.

In the event it is determined that Owner wrongfully terminated Contractor for cause, then the termination shall be treated as a termination for convenience and Contractor's remedy shall be as described in Section 23 of this Agreement.

## EXHIBIT B – Terms and Conditions of Project Agreement

**28. Labor Relations; Prevailing Wage.** Contractor agrees to be bound by and comply with all applicable federal, state and local laws and regulations bearing on labor or employment, including but not limited to all provisions of the Fair Labor Standards Act, the Americans with Disabilities Act, the federal Family and Medical Leave Act, and the Affordable Care Act. Contractor shall indemnify, defend and hold Owner and CM harmless from and against, all claims, suits, losses, causes of action, damages, liabilities, taxes, fines, penalties and expenses, including attorneys' fees, arising from or related to Contractor's failure to comply with applicable law.

Contractor accepts the duty to maintain harmony between labor groups. In the event of a strike, stoppage or other disruption of any work at the Project resulting from a dispute involving or affecting the labor employed by Contractor or its employees, agents, subcontractors, materialmen and suppliers, Owner may immediately terminate this Agreement. Where Owner terminates Contractor under this provision, Owner shall compensate Contractor for the value of the labor and material theretofore furnished or delivered to the Site proportioned upon the Agreement amount, but Contractor will not be paid and shall not be entitled to incidental or consequential damages, compensation for prospective profits on portions of the project not performed or any costs associated with materials not furnished to the Site.

**29. Disadvantaged, Minority, Women, Disabled Veteran, Business Enterprises.** Contractor hereby acknowledges that it is familiar with all DBE/MBE/WBE/DVBE requirements pertaining to the Project. If Contractor claims status as a DBE/MBE/WBE/DVBE Contractor shall take all steps necessary and shall make all necessary records available to CM and Owner to assure that Contractor is in compliance with such requirements. In the event that any subcontractor or employee, agent, subcontractor, materialmen or supplier of Contractor is designated as or is required to be a DBE/MBE/WBE/DVBE, Contractor agrees to be responsible for insuring that said employee, agent, subcontractor, materialmen or supplier meets all applicable requirements. Contractor acknowledges that Owner and CM are relying upon Contractor's representations regarding the validity of Contractor's status, if any, as a DBE/MBE/WBE/DVBE and that misrepresentation of the status of Contractor or any of its employees, agents, subcontractors, materialmen and supplier is a material breach and grounds for immediate termination of this Agreement. Contractor shall save, hold harmless, indemnify and defend Owner and CM from any and all loss, liability, claims, demands, suits at law or in equity, judgments (including attorneys' fees and court costs) and awards, arising out of or related to Contractor's not having or losing the DBE/MBE/WBE/DVBE status it represented it possessed.

**30. Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Agreement Documents or geotechnical report or (2) unknown subsurface physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Agreement Documents, the Contractor shall promptly provide notice to the CM and Owner before conditions are disturbed and in no event later than two business days after first observance of the conditions. CM will promptly investigate such conditions and, if it determines that the conditions differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, CM will recommend an equitable adjustment in the Agreement Sum or Agreement Time, or both, which shall be subject to Owner's approval. If CM determines that the conditions at the site are not materially different from those indicated in the Agreement Documents or that the physical conditions were not of an unusual nature that the Contractor should have discovered such conditions before signing the Agreement and that no change in the terms of the Agreement is justified, CM shall promptly notify the Owner and Contractor in writing, stating the reasons. If the Contractor disputes CM's determination or recommendation, Contractor may proceed as provided in Section 30.

**31. Patents and Royalties.** Contractor shall pay all royalties and patent license fees applicable to Work. Contractor agrees to indemnify and hold harmless Owner and CM from and against any and all loss, liability, damages and expenses (including cost of defense, settlement, legal fees and disbursements) arising out of claims or litigation on account of infringement or alleged infringement of any letters patent or patent rights by reason of the Work or any product used by Contractor.

**32. Independent Contractor.** Contractor is an independent contractor of Owner. Nothing contained in this Agreement shall be construed to create the relationship of employer and employee, principal and agent, partnership or joint venture, or any other fiduciary relationship. Contractor has no authority to bind Owner or CM or create obligations on the part of Owner or CM. Contractor shall, at its sole cost and expense, and without increase in the Agreement Amount, comply with all laws, rules, ordinances and regulations of all governing bodies having jurisdiction over the Work; obtain all necessary permits and licenses

therefor; pay all manufacturers' taxes, sales taxes, use taxes, processing taxes, and all federal and state taxes, insurance and contributions for social security and unemployment.

**33. Claims and Dispute Resolution.** Within ten (10) days of the occurrence of any event for which Contractor claims it is entitled to additional compensation or an extension of time, Contractor shall compile and present to Owner and CM such quantified claim along with the following supporting documentation to permit timely and appropriate evaluation of the claim, determination of responsibility and any remaining opportunity for mitigation and any failure to timely provide this information shall be cause for denial: (1) a narrative of the circumstances which gave rise to the Claim, including the start date of the event or events involved and the actual, or anticipated, finish date; (2) detailed identification of the Work (e.g., activity codes from the Work Schedule) affected by the circumstances which gave rise to the Claims; (3) detailed calculation of amount of the Claim; (4) time impact analysis, consistent with critical path methodology for scheduling and demonstrating the impact to the Work Schedule and the actual delay to the critical path of the Work Schedule; (5) copies of the Contractor's daily log for each day of impact; (6) copies of relevant correspondence and other information regarding or supporting Contractor entitlement; (7) copies of Contractor's payroll records for labor impacts claimed by Contractor and any employee, agent, subcontractor, materialmen or supplier affected by the event or events; (8) copies of invoices for material impacts claimed by the Contractor and any employee, agent, subcontractor, materialmen and supplier affected by the event or events; (9) copies of equipment records, or rental invoices, for any equipment, impacts claimed by the Contractor and any employee, agent, subcontractor, materialmen and supplier affected by the event or events; (10) copies of the most recent income statement, including segregated general and administrative expenses for the most recent reporting period, and for the Agreement Time, if available, and similar information for any Contractor and employee, agent, subcontractor, materialmen and supplier claim included; and (11) a statement, signed by an authorized representative of the Contractor, certifying that the Claim is made in good faith, the supporting data is accurate and complete to the best of the Contractor's knowledge and belief and the amount, time or other matter requested accurately reflects the entire remedy for the claim and is a fair, reasonable and necessary adjustment for which the Contractor believes the Owner is liable in accordance with the Agreement Documents.

Any Party may from time to time call a special meeting for the resolution of disputes that would have a material impact on the cost or progress of the Project. Such meeting shall be held at the Contractor's offices within three (3) working Days of written request therefore, which request shall specify in reasonable detail the nature of the dispute. The meeting shall be attended by CM, the Contractor's Authorized Representative and any other person who may be affected in any material respect by the resolution of such dispute. Such Authorized Representatives shall have authority to settle the dispute and shall attempt in good faith to resolve the dispute. If the dispute has not been resolved within five (5) working Days after the special meeting has been held, a mediator, mutually acceptable to the Parties and experienced in construction matters shall be appointed. The cost of the mediator shall be shared by the Parties. Any controversy or dispute not resolved through mediation, including all claims, counterclaims, disputes or other matter in question arising out of or related to this Agreement, or the alleged breach thereof by either party (except for claims which have been waived under the terms of the Agreement) shall be resolved through binding arbitration. The parties agree this Agreement involves interstate commerce and the parties invoke the Federal Arbitration Act in their commitment to arbitrate. This agreement to arbitrate and any other agreement or consent to arbitrate entered into will be specifically enforceable under the prevailing law of any court having jurisdiction over the Project, the parties and any dispute arising with respect to any of the foregoing. The parties irrevocably waive the right to trial by jury or trial by judge. The demand for arbitration shall be filed in writing with the other party to this Agreement. The demand for arbitration shall be filed within thirty (30) days of the occurrence of the event giving rise to such claim(s), dispute(s) or other matter in question and in no event shall any demand be made after the date when institution of legal or equitable proceedings based upon such claim or other dispute or matter in question would be barred by the applicable statute of limitations. Upon service of the demand for arbitration, the parties shall endeavor to agree upon and select a neutral third party to serve as their arbitrator. If the parties cannot agree upon a neutral third party to serve as their arbitrator within ten (10) days of the service of the written demand for arbitration, either party may file the demand for arbitration with the American Arbitration Association ("AAA") or JAMS to promptly facilitate the selection and assignment of a neutral third party to serve as the arbitrator. The parties desire to resolve disputes expediently and economically. Notwithstanding any other agreement or rule of procedure, the parties agree: disputes shall be resolved by a single arbitrator rather than a panel of neutrals; the final evidentiary hearing before the arbitrator shall be conducted not more than ninety (90) days from the selection/appointment of the neutral third party to serve as the arbitrator; prior to the final evidentiary hearing each party shall be limited in discovery to five interrogatories, five requests for production of documents, two fact depositions and two expert depositions; and the hearing shall be conducted in the jurisdiction where the work was performed and as close to the Project as is convenient to the parties and the arbitrator. In all instances of dispute, Contractor shall continue performance

of all obligations hereunder despite any dispute that may develop and Contractor shall pay Owner's costs and legal fees incurred enforcing or defending this Agreement. The award rendered by the arbitrator shall be consistent with the agreement of the parties, in writing, and include: (i) a concise breakdown of the award; (ii) a written explanation of the award specifically citing any applicable documents and agreement provisions deemed applicable and relied upon when making the award. The award will be final. Judgment may be entered upon it in any court having jurisdiction thereof, and it will not be subject to modification or appeal, subject only to the controlling law of the jurisdiction where the arbitration is conducted relating to vacating or modifying an arbitral award. The fees and expenses of the arbitrator and any arbitration service shall be shared equally by the parties. In all instances of dispute, Contractor shall continue performance of all obligations hereunder despite any dispute that may develop and Contractor shall pay Owner's costs and legal fees incurred enforcing or defending this Agreement.

**34. Taxes.** Contractor shall be responsible for all sales tax, withholding taxes upon its agents and employees, FICA, unemployment compensation and any taxes upon the labor and materials furnished pursuant to the Agreement. The Owner is Indiana Sales Tax exempt and an Indiana Sales Tax Exemption form from the Owner will be provided.

**35. Lawful employees.** Contractor warrants that all of its employees and the employees of its agents, subcontractors, suppliers and materialmen are, and throughout the course of the Project will be, lawfully employed under all Federal, State and Local, laws, regulations, rules, orders, codes and ordinances.

**36. Non-discrimination.** Contractor shall fulfill the obligations of this Agreement in a manner free from all forms of discrimination made unlawful or otherwise prohibited by or recommended against by governmental or quasi-governmental authorities having jurisdiction at the Project.

**37. No Waiver.** The failure of Owner or CM to insist, in any one or more instances, on the performance of any of the obligations required or rights granted under the Agreement Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

**38. Headings.** The headings used in this Agreement, or any other Agreement Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

**39. Assignment and Subcontracting.** Neither this Agreement nor any right, privilege or obligation hereunder shall be assigned, sublet, subcontracted or transferred in whole or in part by Contractor without prior written consent of the Owner, and any attempted assignment, subletting, subcontracting or transfer thereof without the written consent of the Owner shall be void.

Contractor must receive written approval from CM prior to subcontracting the Work or any portion thereof. The subcontracting of all or any part of the Work by Contractor shall not relieve Contractor from any of the obligations or conditions of this Agreement. The acts and omissions of each employee, agent, subcontractor, materialmen and supplier and all persons either directly or indirectly acting for each employee, agent, subcontractor, materialmen and supplier shall be deemed to be the acts and omissions of Contractor, and Contractor shall remain liable and responsible to Owner hereunder as if no subcontract had been made. Contractor shall bind all employees, agents, subcontractors, materialmen and suppliers to the provisions of the Agreement Documents applicable to the subcontracted Work.

**40. Choice of Law.** This Agreement shall be construed, enforced, and performed in accordance with the laws of the state where the Project is located without regard to that state's principles of conflicts of laws.

**41. Jointly Drafted.** The parties expressly agree that this Agreement was jointly drafted, and that they both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement shall be construed neither against nor in favor of either party due to it being considered the drafter.

**42. Subcontractor Compliance.** All agents, subcontractors, materialmen and suppliers are subject to Owner's prior written approval. Contractor, as soon as practicable after execution of this Agreement, shall notify the Owner and CM of the employees, agents, subcontractors, materialmen and suppliers proposed for each of the principal portions of the Work. Contractor shall not contract with any agent, subcontractor, materialmen or supplier to whom the Owner or CM has made reasonable written objection within ten (10) days after receipt of the Contractor's list of agents, subcontractors, materialmen

and suppliers. Contractor agrees to require all approved agents, subcontractors, materialmen and suppliers to agree, in writing, to adhere to all requirements as stated herein.

**43. CM.** Unless otherwise specified herein, Contractor shall communicate to Owner all matters related to the Project and this Agreement through CM. Contractor shall receive and take all communications and directives from CM as if received directly from Owner. Notwithstanding the foregoing, nothing in this Agreement shall be construed to (a) create any contractual arrangement or relationship between Contractor and CM; or (b) make Contractor or CM a third-party beneficiary to any contract between the Owner and Contractor or Owner and CM. CM will not have control over, or charge of, construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Agreement Documents and will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Agreement Documents. CM will have no control over or charge of or be responsible for acts or omissions of the Contractor, , or Contractor's agents, employees, subcontractors, materialmen or suppliers, or of any other persons or entities performing portions of the Work. The Contractor shall not be relieved of obligations to perform the Work in accordance with the Agreement Documents either by activities or duties of CM in administration of the Agreement, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

**44. Counterparts.** This Agreement may be executed in one or more counterparts each of which is deemed an original and together constitute one document. Owner and Contractor covenant and agree that the signatures executing this Agreement, provided by facsimile or electronic transmission, shall stand as and for the original, and Owner and Contractor agree to be bound thereby.

**45. Entire Agreement.** This Agreement reflects the complete and full agreement between the parties and there exist no other agreements or understandings, whether verbal or written. Contractor's bid, proposal other exclusionary or limiting language are not part of this Agreement.

**EXHIBIT C – Application for Payment Form**

## APPLICATION AND CERTIFICATION FOR PAYMENT

PAGE ONE OF PAGES

TO OWNER: PROJECT: APPLICATION NO: Distribution to:

PERIOD TO: ☐ OWNER ☐ ARCHITECT ☐ CONTRACTOR

FROM CONTRACTOR: VIA ARCHITECT:

PROJECT NOS:

CONTRACT FOR: CONTRACT DATE:

## CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract.
Continuation Sheet, G703, is attached.

1. ORIGINAL CONTRACT SUM $ _____
2. Net change by Change Orders $ _____
3. CONTRACT SUM TO DATE (Line 1 ± 2) $ _____
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703) $ _____
5. RETAINAGE:
   a. _____ % of Completed Work (Column D + E on G703) $ _____
   b. _____ % of Stored Material (Column F on G703) $ _____
   Total Retainage (Lines 5a + 5b or Total in Column I of G703) $ _____
6. TOTAL EARNED LESS RETAINAGE (Line 4 Less Line 5 Total) $ _____
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate) $ _____
8. CURRENT PAYMENT DUE $ _____
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6) $ _____

| CHANGE ORDER SUMMARY | ADDITIONS | DEDUCTIONS |
|---|---|---|
| Total changes approved in previous months by Owner | | |
| Total approved this Month | | |
| TOTALS | | |
| NET CHANGES by Change Order | | |

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR:

By: _____ Date: _____

State of: Indiana County of: Vigo
Subscribed and sworn to before me this day of
Notary Public:
My Commission expires:

## ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising the application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED . . . . . $ _____

*(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and onthe Continuation Sheet that are changed to conform with the amount certified.)*
ARCHITECT:

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

**EXHIBIT D – Contractor's Schedule of Values**

## CONTINUATION SHEET

*AIA DOCUMENT G703*

PAGE OF PAGES

AIA Document G702, APPLICATION AND CERTIFICATION FOR PAYMENT, containing
Contractor's signed certification is attached.
In tabulations below, amounts are stated to the nearest dollar.
Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO:
APPLICATION DATE:
PERIOD TO:
ARCHITECT'S PROJECT NO:

| A | B | C | D | E | F | G | | H | I |
|---|---|---|---|---|---|---|---|---|---|
| ITEM NO. | DESCRIPTION OF WORK | SCHEDULED VALUE | WORK COMPLETED FROM PREVIOUS APPLICATION (D + E) | WORK COMPLETED THIS PERIOD | MATERIALS PRESENTLY STORED (NOT IN D OR E) | TOTAL COMPLETED AND STORED TO DATE (D+E+F) | % (G ÷ C) | BALANCE TO FINISH (C - G) | RETAINAGE (IF VARIABLE RATE) |
| 1 | | | | | | | | | $0.00 |
| 2 | | | | | | | | | $0.00 |
| 3 | | | | | | | | | $0.00 |
| 4 | | | | | | | | | $0.00 |
| 5 | | | | | | | | | $0.00 |
| 6 | | | | | | | | | $0.00 |
| 7 | | | | | | | | | $0.00 |
| 8 | | | | | | | | | $0.00 |
| 9 | | | | | | | | | $0.00 |
| 10 | | | | | | | | | $0.00 |
| 11 | | | | | | | | | $0.00 |
| 12 | | | | | | | | | $0.00 |
| 13 | | | | | | | | | $0.00 |
| 14 | | | | | | | | | $0.00 |
| 15 | | | | | | | | | $0.00 |
| 16 | | | | | | | | | $0.00 |
| 17 | | | | | | | | | $0.00 |
| 18 | | | | | | | | | $0.00 |
| 19 | | | | | | | | | $0.00 |
| 20 | | | | | | | | | $0.00 |
| 21 | | | | | | | | | $0.00 |
| 22 | | | | | | | | | $0.00 |
| 23 | | | | | | | | | $0.00 |
| 24 | | | | | | | | | $0.00 |
| 25 | | | | | | | | | $0.00 |
| 26 | | | | | | | | | $0.00 |
| 27 | | | | | | | | | $0.00 |
| 28 | | | | | | | | | $0.00 |
| 29 | | | | | | | | | $0.00 |
| 30 | | | | | | | | | $0.00 |

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G703-1992

# CONTINUATION SHEET

*AIA DOCUMENT G703*

PAGE OF PAGES

AIA Document G702, APPLICATION AND CERTIFICATION FOR PAYMENT, containing
Contractor's signed certification is attached.
In tabulations below, amounts are stated to the nearest dollar.
Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO:
APPLICATION DATE:
PERIOD TO:
ARCHITECT'S PROJECT NO:

| A | B | C | D | E | F | G | | H | I |
|---|---|---|---|---|---|---|---|---|---|
| ITEM NO. | DESCRIPTION OF WORK | SCHEDULED VALUE | WORK COMPLETED FROM PREVIOUS APPLICATION (D + E) | WORK COMPLETED THIS PERIOD | MATERIALS PRESENTLY STORED (NOT IN D OR E) | TOTAL COMPLETED AND STORED TO DATE (D+E+F) | % (G ÷ C) | BALANCE TO FINISH (C - G) | RETAINAGE (IF VARIABLE RATE) |
| 31 | | | | | | | | | $0.00 |
| 32 | | | | | | | | | $0.00 |
| 33 | | | | | | | | | $0.00 |
| 34 | | | | | | | | | $0.00 |
| 35 | | | | | | | | | $0.00 |
| 36 | | | | | | | | | $0.00 |
| 37 | | | | | | | | | $0.00 |
| 38 | | | | | | | | | $0.00 |
| 39 | | | | | | | | | $0.00 |
| 40 | | | | | | | | | $0.00 |
| 41 | | | | | | | | | $0.00 |
| 42 | | | | | | | | | $0.00 |
| 43 | | | | | | | | | $0.00 |
| 44 | | | | | | | | | $0.00 |
| 45 | | | | | | | | | $0.00 |
| 46 | | | | | | | | | $0.00 |
| 47 | | | | | | | | | $0.00 |
| 48 | | | | | | | | | $0.00 |
| 49 | | | | | | | | | $0.00 |
| 50 | | | | | | | | | $0.00 |
| 51 | | | | | | | | | $0.00 |
| 52 | | | | | | | | | $0.00 |
| 53 | | | | | | | | | $0.00 |
| 54 | | | | | | | | | $0.00 |
| 55 | | | | | | | | | $0.00 |
| 56 | | | | | | | | | $0.00 |
| 57 | | | | | | | | | $0.00 |
| 58 | | | | | | | | | $0.00 |
| 59 | | | | | | | | | $0.00 |
| 60 | | | | | | | | | $0.00 |

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G703-1992

# CONTINUATION SHEET

*AIA DOCUMENT G703*

PAGE OF PAGES

AIA Document G702, APPLICATION AND CERTIFICATION FOR PAYMENT, containing
Contractor's signed certification is attached.
In tabulations below, amounts are stated to the nearest dollar.
Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO:
APPLICATION DATE:
PERIOD TO:
ARCHITECT'S PROJECT NO:

| A | B | C | D | E | F | G | | H | I |
|---|---|---|---|---|---|---|---|---|---|
| ITEM NO. | DESCRIPTION OF WORK | SCHEDULED VALUE | WORK COMPLETED FROM PREVIOUS APPLICATION (D + E) | WORK COMPLETED THIS PERIOD | MATERIALS PRESENTLY STORED (NOT IN D OR E) | TOTAL COMPLETED AND STORED TO DATE (D+E+F) | % (G ÷ C) | BALANCE TO FINISH (C - G) | RETAINAGE (IF VARIABLE RATE) |
| 61 | | | | | | | | | $0.00<br>$0.00 |
| | **GRAND TOTALS** | | | | | | | | $0.00 |

G703-1992

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G703-1992

**EXHIBIT E – Lien Waiver in Support of Progress Payments**
**PARTIAL WAIVER OF LIEN CONDITIONED ON RECEIPT OF PAYMENT**

| | |
|---|---|
| "Contractor" | _____ |
| "Project:" | Brentwood Elementary Renovations<br>1630 W. Oliver Ave<br>Plainfield, IN 46168 |
| "Owner" | Plainfield Community School Corporation |

This Partial Waiver is made by Contractor as of the date indicated below, a contractor or supplier to Hendricks County, Indiana Board of County Commissioners ("Owner"), in connection with construction of improvements for and to the Project.

1. Contractor represents that the following are true and accurate statements concerning the price of, and payments received for, the work, labor, services, materials, supplies and/or equipment performed and/or furnished by or on behalf of Contractor in connection with the Project ("Work"):

| | | |
|---|---|---|
| Date of the current application for payment: | _____ | "Application Date" |
| Total of All Payments Previously Received: | $_____ | |
| Current application for payment: | $_____ | "Requested Payment" |
| Accrued Retainage | $_____ | "Accrued Retainage" |

2. Contractor represents that it has received full and final payment for all Work performed or furnished on or before the date of the most recently submitted Partial Waiver (the "Paid-Through Date"), if any, except for Accrued Retainage. Contractor hereby unconditionally waives, releases and forever discharges the Project, Owner, general contractor (if one exists), the Contractor, and their respective owners, parent companies, affiliates, successors, assigns, agents, employees, lenders and sureties (hereinafter "Releasees") of and from all causes of action, suits, debts, accounts, bonds, contracts, promises, damages, liens, encumbrances, judgments, claims and demands whatsoever, in law or equity, known or unknown, accrued or unaccrued, which Contractor ever had, now has or might hereafter have ( hereinafter "Claims"), that are in any way connected with or related to Work performed or furnished on or before the Paid-Through Date, without waiving Contractor's claim for payment of Accrued Retainage.
3. Contractor seeks the Requested Payment as all amount due for all Work performed during the period between the Paid-Through Date and Application Date (the "Applicable Payment Period"). Conditioned only on the receipt of the Requested Payment, Contractor hereby waives, releases and forever discharges the Releasees of and from all Claims that are in any way connected with or related to Work performed or furnished before or during the Applicable Payment Period, without waiving Contractor's claim for payment of Accrued Retainage.
4. Contractor represents that it has fully paid all employees, agents, subcontractors, materialmen and suppliers and others entitled to payment for Work performed or furnished before Paid-Through Date and warrants that it has completed all work required under the above-identified Agreement and all changes and amendments thereto, if any; and that it has complied with all the terms and conditions of said Agreement. To the greatest extent permitted by law, Contractor agrees to defend, indemnify and hold harmless the Releasees from and against all Claims that are in any way connected with or related to Work performed or furnished by or on behalf of Contractor.

CONTRACTOR

By: _____
Name: _____
Title: _____
Date: _____

State of:
County of:
SUBSCRIBED and SWORN before me the _____ day of _____ 20__, by
_____, who is personally known to me.

_____
Name:
Notary Public

My commission expires: _____

**EXHIBIT F – Lien Waiver in Support of Final Payment**
**FINAL WAIVER OF LIEN CONDITIONED ON RECEIPT OF PAYMENT**

| | |
|---|---|
| "Contractor" | _____ |
| "Project:" | Brentwood Elementary Renovations<br>1630 W. Oliver Ave.<br>Plainfield, IN 46168 |
| "Owner" | Plainfield Community School Corporation |

This Final Waiver is made by Contractor as of the date indicated below, a contractor or supplier to Hendricks County, Indiana Board of Commissioners ("Owner"), in connection with construction of improvements for and to the Project.

2. Contractor represents that the following are true and accurate statements concerning the price of, and payments received for, the work, labor, services, materials, supplies and/or equipment performed and/or furnished by or on behalf of Contractor in connection with the Project ("Work"):

| | | |
|---|---|---|
| Date of the current application for payment: | _____ | "Application Date" |
| Total of All Payments Previously Received: | $_____ | |
| Current application for payment: | $_____ | "Requested Payment" |

2. Contractor represents that it has received full and final payment for all Work performed or furnished except for Requested Payment. Contractor hereby unconditionally waives, releases and forever discharges the Project, Owner, general contractor (if one exists), the Contractor, and their respective owners, parent companies, affiliates, successors, assigns, agents, employees, lenders and sureties (hereinafter "Releasees") of and from all causes of action, suits, debts, accounts, bonds, contracts, promises, damages, liens, encumbrances, judgments, claims and demands whatsoever, in law or equity, known or unknown, accrued or unaccrued, which Contractor ever had, now has or might hereafter have ("Claims"), that are in any way connected with or related to the Project, without waiving Contractor's claim for the Requested Payment.

3. Contractor seeks the Requested Payment as all amount due for all Work performed for the Project. Conditioned only on the receipt of the Requested Payment, Contractor hereby waives, releases and forever discharges the Releasees of and from all Claims that are in any way connected with or related to the Project.

4. Contractor represents that it has fully paid all employees, agents, subcontractors, materialmen and suppliers and others entitled to payment for Work performed or furnished for or to the Project. And warrants that it has completed all work required under the above-identified Agreement and all changes and amendments thereto, if any; and that it has complied with all the terms and conditions of said Agreement. To the greatest extent permitted by law, Contractor agrees to defend, indemnify and hold harmless the Releasees from and against all Claims that are in any way connected with or related to Work performed or furnished by or on behalf of Contractor.

CONTRACTOR

By: _____
Name: _____
Title: _____
Date: _____

State of:
County of:

SUBSCRIBED and SWORN before me the _____ day of _____ 20__, by _____, who is personally known to me.

_____
Name:
Notary Public

My commission expires: _____

**EXHIBIT G – Contractor Request for Change**

"Project:" Brentwood Elementary Renovations
985 Longfellow Lane
Plainfield, IN 46168

"Owner": Plainfield Community School Corporation

"CM": C.H. Garmong & Son, Inc.

"Contractor": [Name]
[Address]

Effective Date: _____, 20___

REQUEST FOR CHANGE NO. _____

Contractor submits this Request for Change as of the Effective Date and hereby requests the terms of the agreement entered into by and between Owner and Contractor for the Project (the "Agreement") change as follows:

[DESCRIPTION OF CHANGE]

for which the Agreement Amount is (increased / decreased) by: $

and for which the Project Schedule is (increased / decreased) by: _____days.

This Request for Change seeks the final adjustment for any and all amounts due or to become due to Contractor for the changes or work referred to herein. In consideration for a Change Order executed consistent with this Request for Change, Contractor will release all other claims, if any except those claims previously submitted in writing in strict accordance with the Agreement for additional compensation under the Agreement, including without limitation any rights Contractor may have for additional compensation arising out of delays or disruption of the Project Schedule as may have arisen prior to the date of such Change Order.

All other terms of the Agreement will remain in full force and effect and are not modified or abrogated by this Change Order.

SUBMITTED BY:

CONTRACTOR:

Signed: _____

Printed: _____

Title: _____

Date: _____

**EXHIBIT H –Change Order Form**

"Project:" Brentwood Elementary Renovations
985 Longfellow Lane
Plainfield, IN 46168

"Owner": Plainfield Community School Corporation

"CM": C.H. Garmong & Son, Inc.

"Contractor": [Name]
[Address]

Effective Date: _____, 20___

AGREEMENT FOR CHANGE ORDER NO._____

This Change Order is entered into by and between Owner and Contractor as of the Effective Date and hereby changes the terms of the Agreement entered into by and between Owner and Contractor for the Project (the "Agreement") as follows:

| Scope: | Amount: |
|---|---|
| 1. [Description of Change] | $ |
| Total | $ |

for which the Agreement Amount is (increased / decreased/unchanged) by: $
and for which the Project Schedule is (increased / decreased/unchanged) by: _____days.

1. Except as otherwise expressly provided herein, Contractor agrees to perform the work described above in accordance with all of the terms and conditions of the Agreement.
2. Contractor's payment applications or invoices must show any charges for the work in this Change Order separately and identified by the Change Order number.
3. This Change Order represents the final adjustment for any and all amounts due or to become due to Contractor for the changes or work referred to herein. Contractor further releases all other claims, if any, for additional compensation under the Agreement or for additional time related to the work in this Change Order, including without limitation any rights Contractor's agents, subcontractors, materialmen and suppliers may have for additional compensation arising out of delays or disruption of Contractor's time for performance.
4. All other terms of the Agreement remain in full force and effect and are not modified or abrogated by this Change Order.

| | |
|---|---|
| Original Agreement Sum was | $0.00 |
| Net Change by Previously Authorized Change Orders | $0.00 |
| The Agreement Sum Prior to this Change Order was | $0.00 |
| The Agreement Sum (increased/decreased/unchanged) by this Change Order in the Amount of | $0.00 |
| The New Agreement Sum including this Change Order will be | $0.00 |

SEEN AND AGREED TO BY:

Plainfield Community School Corporation

C.H. Garmong & Son, Inc.

By: _____ By: _____ By: _____

Its: _____ Its: _____ Its: _____

Date: _____ Date: _____ Date: _____

"Owner" "Contractor" "CM"

**EXHIBIT I - Insurance Requirements**

**1. General Requirements.** Contractor shall, at its sole expense, maintain in effect at all times, as required under the Agreement Documents, insurance coverage with limits not less than those required by the Agreement Documents so as to protect CM, Owner, and their respective employees, agents and invitees, from claims of any kind which may arise out of or result from Contractor's performance of the Work, whether performed individually or collectively by Contractor, any of Contractor's employees, agents, subcontractors, materialman or suppliers , or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable. The stated limits of insurance required by this Exhibit are minimums only and it shall be the Contractor's exclusive responsibility to determine what additional limits are adequate, and the length of time the coverage shall be maintained, to fully meet its obligations under this Agreement. The minimum limits may be basic policy limits or any combination of primary limits and umbrella limits. Contractor shall pay all deductibles and self-insured retention amounts associated with the required insurance. The amount of deductible and self-insured retention for the insurance coverage required by the Contracts Documents shall not exceed $5,000 per occurrence. No form or endorsement shall be deemed equivalent to a form or endorsement specified herein unless Contractor determines that such form or endorsement is equivalent and acceptable. Contractor shall provide proof of coverage including, but not limited to, a current Certificate of Insurance upon request by Contractor. Contractor shall provide Owner with written notice within five (5) business days of first knowing or having reason to know that any insurance required by the Agreement Documents will expire, be cancelled or be modified. Contractor shall keep all coverages required hereunder for a period of three (3) years or for the statute of limitations or repose applicable to breach of contract and/or tort claims in the state in which the Project is located, whichever is longer.

**2. Standards.** Insurance coverage shall be procured from reputable insurers licensed to do business in the state in which the Project is located, and such insurers shall maintain a current A.M. Best rating of at least "A," a Financial Size Category of a "VII" or better, and being Treasury rated at a level satisfactory to Owner. All insurance policies shall be of an "Occurrence" type except Professional Liability Insurance coverage. "Claims Made" type policies shall not be permitted otherwise.

**3. Certificates of Insurance.** Contractor shall furnish to Owner and CM evidence of the insurance coverage required to be maintained by Contractor and its agents, subcontractors, materialmen and suppliers hereunder, including Certificates of Insurance issued by the insurance carrier, prior to Contractor commencing performance of the Work. The Certificates of Insurance shall state that Owner will be notified in writing thirty (30) days prior to a cancellation, material change, or non-renewal of insurance.

**4. Minimum Limits.**

**a.** Contractor will carry and maintain in full force and effect, insurance with minimum limits, as noted below, in such company or companies as are acceptable to Owner:

- Commercial General Liability insurance with the following minimum limits:
  - $1,000,000 Each Occurrence/$2,000,000 General Aggregate
  - $2,000,000 Products & Completed Operations Liability Each Occurrence and Aggregate
  - $1,000,000 Personal and Advertising Injury Each Occurrence
- Professional Liability insurance covering performance of the professional services with the following minimum limits:
  - $1,000,000 Each Occurrence/$1,000,000 General Aggregate
- Auto Liability insurance with the following minimum limits:
  - $1,000,000 Hired/Non-owned Automobile Liability
  - $1,000,000 Owned Automobile Liability
- Excess & Umbrella
  - $4,000,000 Excess to General Liability, Auto Liability and Employers Liability
- Workers Compensation and Employers Liability with the following minimum limits:
  - <u>Workers Compensation</u>: Statutory per IC 22-3-2-14
  - <u>Employers Liability</u>:
    - $1,000,000 Bodily Injury by Accident, Each Accident
    - $1,000,000 Bodily Injury by Disease, Each Employee
    - $1,000,000 Bodily Injury by Disease, Policy Limit

Commercial General Liability and Automobile policies must be written using the latest edition ISO forms and endorsed to add "Plainfield Community School Corporation (Owner); C.H. Garmong & Son, Inc. (Construction Manager) as additional insureds on a primary and non-contributory basis, including the Completed Operations Hazard. These are minimum limits and do not limit access to higher additional insured limits. Owner reserves the

right to require additional insurance coverages and/or higher limits for certain Contractor activities and operations. A waiver of subrogation will be provided in favor of the additional insureds above and for Workers Compensation. If any employees of Contractor will be on premises, those employees must be covered by Workers Compensation insurance with a waiver of subrogation in favor of Owner.

**b.** Contractor shall purchase such insurance as may be required for the protection of his own tools and construction equipment as he may desire. Owner does not assume any liability for temporary tools and equipment of others, prior to starting work, Contractor shall require his insurance carrier or agent to complete and return to Owner a Certificate of Insurance, in a form satisfactory to Owner, evidencing the required Insurance coverages for agents, subcontractors, materialmen and suppliers. However, Contractor's failure to provide such Certificate of Insurance prior to commencing work does not release Owner from liability from any claims whatsoever and Contractor hereby agrees to release, defend and hold harmless Owner for any liabilities arising from Work during such time and until such date when Contractor provides said Certificate of Insurance, which shall be backdated to the date Contractor's Work commenced.

**c.** The contractor shall disclose to the Owner any deductible or self-insured retentions appliable to any insurance required to be provided by Contractor.

**d.** Owner will purchase builder's risk insurance to insure the Project on a completed value basis in the amount of the replacement cost of the Project until Substantial Completion. The Builder's Risk policy shall include insurance for physical loss or damage to the Project, temporary buildings or falsework at the Project, and materials and equipment in transit.

**EXHIBIT J**

**E-VERIFY PROGRAM COMPLIANCE AFFIDAVIT**

The undersigned being duly sworn upon (his)(her) oath, now says that I, _____(Name), _____(Position) at _____(Subcontractor Name), a subcontractor to Garmong Construction, do hereby state that _____(Subcontractor Name) does not knowingly employ unauthorized aliens and participates in the E-Verify Program when it hires new employees to confirm their work eligibility.

**I swear or affirm, under penalties of perjury, that the foregoing statements are true.**

_____

Signature of affiant

_____

Printed Name

Its:_____