

CDA SUPPLEMENTARY GENERAL CONDITIONS—2019 EDITION

*An Addendum to AIA General Conditions of the Contract for Construction
(AIA Document A201—2017)*

GENERAL CONDITIONS

The Community Development Administration ("CDA") is a division within the Department of Housing and Community Development of the State Of Maryland, and is located at 7800 Harkins Road Lanham Maryland, 20706. The CDA Supplementary General Conditions – 2019 Edition (CDA Supplementary Conditions) refers to the articles of, or adds new sub-articles to, the 2017 AIA Document A201—General Conditions of the Contract for Construction. Together with the 2017 AIA Standard Form of Agreement between Owner and Contractor and the AIA General Conditions, CDA's Supplementary General Conditions provides a comprehensive contract agreement that delineates the duties and responsibilities of all relevant parties and serves to clarify and protect the interests of the lender in the construction administration process. **This document shall take precedence over any and all contract provisions, general conditions or addenda issued prior to or after the execution of the CDA Supplementary General Conditions.** The Building Loan Agreement entered into by the Owner and CDA shall take precedence over all conflicting contract provisions.

CDA generally recognizes the compatibility of the AIA Document A201- 2017 General Conditions of the Contract for Construction with its programmatic regulations and its interests in the construction administration process. Whereas much of the revised language appears to enhance the A201-2007 General Conditions rather than substantively change the terms, several provisions vary significantly from those found in the A201-2007 and should be thoroughly reviewed by all affected parties prior to executing the Construction Contract. Some of these revised provisions include, but are not necessarily limited to, procedures addressing changes in work, retainage and the parties' reporting obligations. It is intended that the CDA Supplementary General Conditions shall be incorporated into all project manuals prior to the bidding process.

ARTICLE 1 – GENERAL PROVISIONS

- A. The Contract Documents describe a complete project ready for occupancy and contemplate finished work-in-place of industry standards, or better in character and quality. The Contractor agrees that all work shall be in compliance with (1) customary good industry practices, (2) the final approved plans, specifications and addenda, if any, and (3) to the best of his ability and knowledge, complies with all applicable ordinances, codes and regulations of all public bodies having any jurisdiction over the project. The Contractor shall cooperate with the Owner, Architect, Lender(s), and other contractors in coordinating the work to be performed under separate contracts. The Contractor agrees that in absence of details or the lack of the repetition of details on the drawings or documents, the figures or notes given on one or another shall be used and that the lack of repetition shall not be cause for additional time or money.
- B. Upon completion of construction, the Contractor shall furnish to CDA one set of complete as built drawings. These drawings shall be identified and marked up neatly, legibly, and in a manner as directed by the Architect so as to indicate any and all major and minor variations from the original drawings.
- C. The Contractor and Architect, through the Owner, are obligated to provide written notification

to CDA detailing any deviations from the final approved contract documents in regard to changes in the work, potential liens, cost variations, unusual and unanticipated field conditions, changes or problems in scheduling of the work leading to the inability to complete the project within the time specified in the approved contract agreement and any other significant modifications inconsistent with the provisions of the approved contract documents. In addition to the owner's approval, CDA's written approval must be secured prior to executing any changes in the contract documents after the initial closing of the loan.

- D. The Contractor agrees to make a good faith effort to award the equivalent of 29% of the total approved construction contract to certified minority business enterprises for contracts for professional and technical services and for project related labor and materials. The Contractor shall provide evidence of either (i) compliance with this provision D or (ii) if unable to meet the 29% goal, his good faith effort to comply.

- E. CDA and its agents shall at all times during construction and/or rehabilitation have the right to enter and to inspect all work done, and all materials, equipment and other matters relating to the Project.

- F. A field progress meeting will be held minimally twice a month on a regularly scheduled basis. The Borrower, Contractor, Architect and CDA field representative shall meet to discuss the general progress of the job and any concerns of an administrative or technical nature. Preferably the Architect shall provide, or arrange for, written meeting minutes to be kept and promptly made available to CDA. With CDA approval, the Contractor can assume the responsibility of keeping and distributing the meeting minutes. During one of the bimonthly meetings, a sufficient amount of time shall be set aside to review the application for payment in detail. The Borrower, Contractor, Architect and CDA field representative shall agree on the percentage of work completed and in place and the amount of stored materials on-site and off-site. No variation in the percentage of work complete will be allowed from the amount agreed upon at this meeting.

- G. The Contractor shall provide 100% Payment and Performance Bonds each in the amount of 100% of the Construction Contract satisfactory in all respects to CDA and naming the Department of Housing and Community Development or CDA as an Obligee (as determined by the Department of Housing and Community Development). Alternatively, the Contractor may provide two unconditional, irrevocable letters of credit acceptable in all respects to CDA each in an amount equal to 25% of the total contract sum of the Construction Contract.

- H. All funds disbursed for work on the project will be released in a single party check or through wire transfer payable directly to the Ownership entity. CDA shall reserve the right to provide dual party checks payable to the Owner and Contractor or, at CDA's option, directly to the Contractor or such persons and/or entities as have actually supplied labor, material, or services for the construction of the project.

ARTICLE 2—OWNER

- A. The parties acknowledge that the Owner has entered into legally binding agreements with CDA relative to funding from CDA for, among other things, all or part of the construction costs of the project. In connection therewith, the Owner has committed to satisfying certain requirements as set forth in the Building Loan Agreement that governs conditions for disbursements, assurances of completion, retention, change orders, progress meetings, events and remedies for events of default, etc. Although every effort has been made to incorporate the provisions of the Building Loan Agreement that are relevant to the Contractor, Owner and Architect relationships into the CDA Supplementary General Conditions, it is recommended that all parties jointly review the standard form of the document to ensure their understanding and acceptance of the provisions that may affect their contracts and agreements. This document shall take precedence over any and all contract provisions.
- B. The Owner shall provide immediate written notification to CDA of any event or conditions that threaten the quality and timely completion of the project.

ARTICLE 3— CONTRACTOR

- A. The Contractor covenants with the Owner to furnish his best skill and judgment and to cooperate with the Owner, Architect and CDA. The Contractor agrees to furnish efficient and skilled business administration and supervision, to provide an adequate supply of skilled workers and materials, and to execute the work to industry standards in the most efficient and expeditious manner.
- B. Prior to the commencement of the work, the Contractor shall notify CDA and the Architect in writing of the person authorized to execute and deliver on behalf of the Contractor any certificates, affidavits, notices or other instruments the Contractor is required to furnish, which authorization shall remain in full force and affect until the Contractor substitutes another person approved in writing by the Architect and CDA.
- C. The Contractor shall guarantee against (1) any defects in workmanship, and (2) any defects in materials or equipment, and shall warrant that all materials and equipment shall perform and function as specified in the manufacturer's warranty. All such guarantees and warranties shall extend for a period of one year from the date of Substantial Completion (as defined in Article 9 E herein), unless a longer period is specified elsewhere by the contract documents. All warranties for appliances, equipment and other items shall be submitted to the Owner upon completion of the Project.
- D. The Contractor shall immediately notify the Architect and CDA of the delivery of all permits, licenses, certificates and instruments required by law, and shall cause them to be displayed to the Architect or CDA upon request.
- E. The Contractor warrants that he is and will be at all times during the construction of the Project, financially solvent, able to pay his debts as they mature, and has available, sufficient working capital to complete this Contract. The Contractor warrants that at all times during the

construction of the Project, the Contractor will be able to furnish the tools, materials, supplies, equipment and labor to complete the Contract; that it has the experience and competence to perform the work contemplated by this Contract; and it is authorized to do business in the State of Maryland. From time to time, at the request of the Owner or CDA' the Contractor will provide reasonable evidence of its compliance with the foregoing.

- F. The Contractor warrants that it holds such licenses, permits or certifications as required by law to perform all services and obligations contemplated in this Contract, and that it will maintain such licenses, permits and certifications in full force and effect at all times during the construction of the Project.

- G. The Contractor shall supply to the Owner, Architect and CDA, a construction schedule in a bar chart format that provides an outline for scheduling and completing all work phases. The schedule shall be revised at appropriate intervals and copies of updated schedules will be provided to all relevant parties at each progress meeting or as required.

ARTICLE 4—ARCHITECT

- A. CDA shall reserve the right to reject work that does not conform to the contract documents.

ARTICLE 5—SUBCONTRACTORS

- A. The Contractor shall not subcontract more than 50% of the work hereunder to any one subcontractor, or more than 75% of the work hereunder to three or less subcontractors and remain entitled to a standard fee. The term subcontractor shall include material suppliers and equipment leases. Any two or more subcontractors having an identity of interest or common ownership shall be considered as one subcontractor. Identity of interest subcontractors will be allowed to perform on the job consistent with the provisions noted above but must provide evidence that their bids are competitive or lower than non-related firms engaged in the same work.

ARTICLE 6—CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

- A. Any request by the Owner to perform construction or operations related to the Project with the Owner's own employees must be approved in advance by CDA.

ARTICLE 7—CHANGES IN THE WORK

- A. Any proposed amendment or modification to the contract documents regarding specifications, scope of work, drawings, costs, time, etc., must be presented to CDA for written approval prior to the commencement of the work item. Failure to secure CDA's written approval shall be construed as an act outside the Contract Agreement and CDA shall not be responsible for any claims or payments associated with unapproved change orders. CDA will provide independent approval of change orders. CDA has no obligation to recognize change orders

approved by others. Change orders should be submitted to CDA for approval prior to obtaining approval from other financing entities. If the change order is approved by CDA, a sum of money equal to the cost of the change order increasing the cost of the project must be escrowed with CDA from funds other than the proceeds of the loan if CDA determines loan funds are insufficient to cover the costs to complete the project. Where contingency funds have been incorporated into the loan for potential changes, these funds may be utilized for CDA approved change orders. CDA reserves the right to approve a change order for construction purposes only and not to approve it for disbursement of loan funds. CDA will disburse any funds escrowed by the Owner for the cost of a change order as the work is completed in the same manner as disbursements are made on the loan.

- B. The cost of the change shall not exceed an amount agreed to in advance by the owner, Architect, Contractor and CDA, and shall be limited to the percentage markup established within the Owner/Contractor Agreement identified as the contractor's fee. For projects where the Contractor is in an identity of interest relationship with the Owner, the mark-up for changes in the work will be identical to the percentage allowed as Builder's Overhead. Notwithstanding the foregoing, in no event will a mark-up in excess of 8% be allowed for non-identity of interest contractors and 3% for identity of interest contractors.
- C. Presentation or notification of pending change orders to be submitted to CDA must occur prior to the project reaching Substantial Completion.
- D. Change order work will be subject to the same bonding requirements as the Contract work. In addition to the Contractor's mark-up, the cost for the additional bond premium can be added to individual change orders provided it does not exceed the rate applied to the Contract work. The Contractor alternately may elect to submit a separate change order for the increased bond premium costs in total for all the approved change orders.

ARTICLE 8—TIME

- A. Any act of premature commencement of construction on the project site without prior knowledge and approval of CDA, shall be construed as an act outside the Contract Agreement and CDA shall not be responsible for any claims or payments.
- B. The Owner or CDA may suffer financial loss if the project is not completed within the time period designated within the Owner/ Contractor Agreement. The Contractor will notify the Owner and CDA at such time as he is aware that this obligation cannot be met and will simultaneously submit a change order for a time extension.

ARTICLE 9—PAYMENTS AND COMPLETION

- A. The basis for reviewing the Contractor's Application for Payment (AIA forms G702 and G703) will be based on the schedule of values previously submitted to CDA on the CDA form documents 212 and 215.

- B. Each month after the commencement of the work, the Contractor shall make a monthly request for payment (in two original forms) through the Owner for work done during the preceding month. Only work in place at the time of the progress/requisition meeting will be considered for payment. Requests for projected or anticipated future work completion will not be approved. Subject to the approval of the Owner Architect, and CDA, the Contractor shall be entitled to payment in an amount equal to (1) the total value of classes of the work acceptably completed; plus (2) the value of materials and equipment not incorporated in the work, but delivered to and suitably stored and insured at the site or in bonded warehouses; less (3) 10% holdback and less prior payments. The values of both (1) and (2) shall be computed in accordance with the amounts assigned to classes of the work in the CDA form documents 212 and 215. The Contractor agrees that no materials or equipment required by the Specifications will be purchased under a conditional sale contract or with the use of any security agreement or other vendor's title or lien retention instrument. The Contractor shall attach to each request for payments its acknowledgment of payment, and all sub-contractors and suppliers acknowledgments of payment, for work done and materials, equipment and fixtures furnished through the date covered by the previous payment. Concurrently with the final payment, the Contractor shall execute a waiver or release of lien for all work performed and materials furnished hereunder. Applications for payment may include requests for payment resulting from changes in the work only if such changes have formally been approved by CDA. A copy of the approved change order must accompany the application.
- C. CDA shall endeavor to make payments to the Owner within ten working days of receipt of an application for payment provided that (1) the payment application has previously been approved by the Owner, Architect, Contractor and the CDA field representative, and (2) all necessary supporting documents, invoices, liens, etc. are in satisfactory order.
- D. CDA shall reserve the right to make any and all final decisions on the completeness and quality of the work and the amount approved for any payment request.
- E. Substantial completion shall occur when (1) the construction and equipping of the Project shall have been fully completed in an acceptable and workmanlike manner according to the Contract Documents, in full compliance with all applicable legal requirements of any legal authority, except for punch list items approved by CDA, and (2) all certificates of use and occupancy have been issued by all appropriate legal authorities for every unit in the Project; and (3) the Architect has issued an AIA G704—The Architects Certificate of Substantial Completion. Partial certificates of Substantial Completion can be issued when phased occupancy will occur.
- F. Retention shall be held and released as follows:

Standard Retention Process

A 10% holdback will be retained on all construction progress payments until the project reaches Substantial Completion.

- (1) The first 50% the Retention will be released at the time of Substantial Completion of the Project regardless of the nature of the corporate relationship between the Ownership and General Contracting entities.

- (2) Under a lump sum contract, the final 50% of the retention will be released when all remaining punch list items have been completed and all documents on the CDA Construction Document Close-out List have been reviewed and approved by CDA. A lump sum arrangement is permissible only when no identity of interest exists between the Contractor and Owner.
- (3) Under a guaranteed maximum price with a fixed fee arrangement and no identity of interest relationship exists, 25% of the retention will be released when all punch list items have been completed and all documents on the CDA Construction Document Close-out List have been reviewed and approved by CDA. The final 25% retention under this arrangement will be released upon review and approved of the construction cost certification by the Owner and CDA.
- (4) Under a guaranteed maximum price with a fixed fee arrangement in which an identity of interest between the Owner and the Contractor does exist, 25% of the Retention, will be released when all punch list items have been completed and all documents on the CDA Construction Document Close-out Lists and a total project cost certification have been reviewed and approved by CDA. The balance of the retention under this arrangement will be released at final closing.
- (5) Notwithstanding subsections (3) and (4) above, the final disbursement of the Retention may be withheld by the Lender until the expiration of any period in which subcontractors, mechanics and materialmen may file liens or while any causes of action may be pending for the non-payment for work performed on the Project, unless the Lender has received and approved releases of liens or lien waivers from all subcontractors and materialmen who would have a right to file liens against the Project.
- (6) If the Lender has withheld any of the Retention authorized for release pursuant to this Section 6.1 to correct deficiencies as provided above, then, upon correction of any and all deficiencies to the satisfaction of the Lender, the Lender will release any and all of the remaining Retention not needed to make repairs.

Reduced Retention Process

Contractors who have successfully completed two or more CDA projects in the past four years with all CDA projects completed during that time period by the Contractor achieving high construction standards, completion on schedule, maintaining the approved construction budget and adhering to CDA policies and conditions, especially those within the CDA Supplementary General Conditions, can request a reduced retention arrangement. A 10% holdback will be imposed on construction payment requests until the value of work in place reaches 50% of the contract work, including adjustments for change orders, at which point no additional retention will be held on payment requests from 50% to 100% of the contract amount. Approval of the reduced retention arrangement is at the discretion of CDA. In the event CDA determines the reduced retention arrangement is not in the best interest of a successful completion of the project or if the CDA Supplementary General Conditions are not being followed on a project under construction, CDA may elect to implement a Standard Retention Process.

- (1) Under a guaranteed maximum price contract, the first 50% of the Retention will be released when the project has achieved Substantial Completion, all work is complete, and all documents on the CDA Construction Document Close-out List have been reviewed and

approved. The final 50% will be released when the Contractor's Cost Certification has been reviewed and approved.

- (2) Under a lump sum contract, 100% of the Retention will be released when the project has achieved Substantial Completion, all work is complete, and all documents on the CDA Construction Document Close-out List have been reviewed and approved.
- (3) All or a portion of the Retention can be withheld by CDA for the purposes of correcting any work deficiencies or satisfying claims for unpaid work or materials.

G. At the point in time when the project is nearly 100% complete, the Contractor and the Owner understand that for administrative purposes in expediting the loan to final closing, CDA may require the owner to escrow construction loan funds, with CDA for incomplete work items. The Architect and the CDA representative will jointly compile a list of incomplete improvements with an estimate of the cost required to complete each item. The Contractor hereby authorizes the Owner to withhold from the final payment to the Contractor a sum equal to twice the estimate of the cost of any incomplete items, and to deposit such sum with CDA, it being understood and agreed that such monies are monies of the Contractor (and not of the Owner) subject only to the completion by the Contractor of the improvements established by the Architect and the CDA representative. The Contractor understands and agrees that no interest will be paid on the funds so deposited.

ARTICLE 10—PROTECTION OF PERSONS AND PROPERTY

- A. The provisions for indemnification incorporated into the AIA General Conditions shall be extended to any and all employees of CDA engaged in the project.

ARTICLE 11—INSURANCE AND BONDS

- A. CDA's current Project Insurance Requirements shall supplement and, where in conflict, take precedence over Article 11 of the General Conditions. The Department of Housing and Community Development or CDA (as determined by the Department of Housing and Community Development) shall be recorded as an additional insured on all insurance policies.
- B. The Department of Housing and Community Development or CDA (as determined by the Department of Housing and Community Development) shall be listed as an obligee on the payment and performance bonds, latent defect bonds and letters of credit.
- C. A latent defect bond equal to 2 ½% of the contract sum shall be required from the Contractor to cover any defects that may occur up to one year after Substantial Completion.

ARTICLE 12—UNCOVERING AND CORRECTION OF WORK

- A. CDA shall reserve the right to make the final determination regarding work not in conformance with the requirements of the Contract Documents. In the event of CDA acceptance of non-conforming work, the Contract sum will be reduced by this amount from the total funds payable to the Contractor. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13—MISCELLANEOUS PROVISIONS

- A. The Owner or Contractor shall not assign the Contract without prior written consent of CDA.
- B. The Contractor shall give the Architect and the CDA field representative timely notice of when and where tests and inspections required by the Contract Documents or by laws, ordinances and regulations of public authorities having jurisdiction over the project are to be made so that all parties may observe such procedures. CDA must be promptly informed when test results or inspections fail to meet Contract standards.
- C. Required certificates of testing, inspection and approval shall be secured by the Contractor and made available to the CDA field representative.
- D. CDA loan proceeds shall not be used for any interest on payments due and unpaid under the Contract Provisions or elsewhere.

ARTICLE 14—TERMINATION OR SUSPENSION OF THE CONTRACT

- A. Any proposed termination or suspension of the contract by the Owner or Contractor must be brought to the immediate attention of CDA in writing and sent as a registered mail delivery.
- B. In the event the contract is terminated, the amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Architect and approved by CDA, and this payment shall survive termination of the contract.
- C. If, for any cause whatsoever, except for worker/ union strikes, acts of God, issuance of a court order or other causes beyond the reasonable control of the Contractor, work on the project is at any time discontinued for a period of twenty consecutive calendar days, or construction is not carried on with such reasonable dispatch as to permit completion of the work on or before the completion date, including any CDA executed approval for a time extension, the Contractor shall be in default of the contract.

ARTICLE 15 — CLAIMS AND DISPUTES

- A. Projects which enter a dispute process must consult CDA to determine if CDA proceeds can be used in the resolution process.

ARTICLE 16—APPROVAL

A. The undersigned hereby acknowledge they have read and agree to the provisions established in the CDA Supplementary General Conditions. These provisions shall be considered an integral part of the contract between the Owner and the Contractor.

Owner

Date

Contractor

Date

Architect

Date