



# AIA® Document A101® – 2017

## Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

**AGREEMENT** made as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2021  
(In words, indicate day, month and year.)

**BETWEEN** the Owner:  
(Name, legal status, address and other information)

Town of Apex  
73 Hunter Street  
Apex, NC 27502

and the Contractor:  
(Name, legal status, address and other information)

Engineered Construction Company  
900 Paverstone Drive, Suite 200  
Raleigh, NC 27615

for the following Project:  
(Name, location and detailed description)

Apex Public Safety Station No. 36  
1201 Wimberly Road  
Apex, NC 27523

The Architect:  
(Name, legal status, address and other information)

Davis Kane Architects, PA  
503 Oberlin Road, Suite 300  
Raleigh, NC 27605

The Owner and Contractor agree as follows.

### ADDITIONS AND DELETIONS:

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

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

The parties should complete A101®-2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201®-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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## EXHIBIT A INSURANCE AND BONDS

### ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

### ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

### ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:

*(Check one of the following boxes.)*

- ☐ The date of this Agreement.
- ☒ A date set forth in a notice to proceed issued by the Owner.
- ☐ Established as follows:  
*(Insert a date or a means to determine the date of commencement of the Work.)*

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

#### § 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

*(Check one of the following boxes and complete the necessary information.)*

[ X ] Not later than ( 365 ) calendar days from the date of commencement of the Work.

[ ] By the following date:

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date
Full Project	

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

#### ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be Six Million, Three Hundred and Forty-Two Thousand, Five Hundred Dollars (\$6,342,500.00), subject to additions and deductions as provided in the Contract Documents.

#### § 4.2 Alternates

§ 4.2.1 Alternates, if any, included in the Contract Sum:

Item	Price
Alternate #1: Preferred Brand Building Automation System	\$0.00

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement. (Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance
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§ 4.3 Allowances, if any, included in the Contract Sum:  
(Identify each allowance.)

Item	Price
UC-1: Brick Color 1	\$1,800 / 1,000 nominal
UC-2: Brick Color 2	\$650 / 1,000 nominal
UC-3: Light Fixture 'P'	\$500

§ 4.4 Unit prices, if any:  
(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
Q-1: Rock Removal in open areas (mass rock) & disposal offsite	10 bank cubic yards	\$196.00 / bank cubic yd
Q-2: Rock removal in Trenches and Pits (Trench Rock) and disposal off-site.	100 cubic yards	\$224.00 / cubic yd
Q-3: Unsuitable soils removal and disposal on-site.	200 cubic yards	\$22.00 / cubic yd
Q-4: Unsuitable soils removal and disposal off-site.	800 cubic yards	\$32.00 / cubic yd

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Q-5: Replacement of removed rock or unsuitable soils with on-site suitable soil in-place.	200 cubic yards	\$26.00 / cubic yd
Q-6: Replacement of removed rock or unsuitable soils with off-site suitable soil in-place.	400 cubic yards	\$35.00 / cubic yd
Q-7: Replacement of removed rock or unsuitable soils with Aggregate Base Course in-place.	400 square yards	\$32.00 / cubic yd
Q-8: Replacement of removed rock or unsuitable soils with No. 57 washed stone in-place.	100 square yards	\$36.00 / cubic yd
Q-9: Woven Geo-Textile Fabric in-place.	200 square yards	\$14.00 / sq yd
Q-10: Biaxial Geo-Grid in-place.	200 square yards	\$12.00 / sq yd
Q-11: Smoke Detector.	5	\$392.00 / ea
Q-12: Duplex Receptacle.	5	\$308.00 / ea
Q-13: Data Outlet.	5	\$476.00 / ea
Q-14: Sprinkler Head.	5	\$290.00 / ea

**§ 4.5 Liquidated damages, if any:**

*(Insert terms and conditions for liquidated damages, if any.)*

If the Work is not substantially complete on or before the date provided in Section 3.3 of this Contract, or within a period extension thereof granted by the Owner, the Owner will sustain damage that will be impracticable and extremely difficult to quantify in the event of and by reason of such delays. The Contractor shall pay to the Owner as Liquidated Damages, and not as penalty, the sum of One Thousand & 00/100 Dollars (\$1,000) for each consecutive calendar day of delay. Any sums that may be due the Owner as Liquidated Damages may be deducted from any monies due or to become due the Contractor under the Contract or may be collected from the Contractor's Surety.

**§ 4.6 Other:**

*(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)*

**ARTICLE 5 PAYMENTS**

**§ 5.1 Progress Payments**

**§ 5.1.1** Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

**§ 5.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

**§ 5.1.3** Provided that an Application for Payment is received by the Architect not later than the 25th day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the 10th day of the following

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month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than thirty ( 30 ) days after the Architect receives the Application for Payment.

*(Federal, state or local laws may require payment within a certain period of time.)*

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 In accordance with AIA Document A201™–2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.6.1 The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

§ 5.1.6.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017; and
- .5 Retainage withheld pursuant to Section 5.1.7.

#### § 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*

Retainage is five percent (5%)

§ 5.1.7.1.1 The following items are not subject to retainage:

*(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)*

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:

*(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)*

When the Project is fifty percent (50%) complete, the owner, with written consent of the Surety, shall not retain any further retainage from periodic payments due the Contractor if the Contractor continues to perform satisfactorily and

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any nonconforming work identified in writing prior to that time by the architect, engineer, or Owner has been corrected by the Contractor and accepted by the architect, engineer, or Owner. If the Owner determines the Contractor's performance is unsatisfactory, the Owner may reinstate retainage for each subsequent periodic Application for Payment up to the maximum amount of five percent (5%). The Project shall be deemed fifty percent (50%) complete when the Contractor's gross Project invoices, excluding the value of materials stored off-site, equal or exceed fifty percent (50%) of the value of the Contract, except the value of materials stored on-site shall not exceed twenty percent (20%) of the Contractor's gross Project invoices for the purpose of determining whether the Project is fifty percent (50%) complete.

The Owner is authorized to withhold additional retainage in accordance with N.C.G.S. §143-134.1.

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

*(Insert any other conditions for release of retainage upon Substantial Completion.)*

§ 5.1.8 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

## § 5.2 Final Payment

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

## § 5.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

*(Insert rate of interest agreed upon, if any.)*

%

## ARTICLE 6 DISPUTE RESOLUTION

### § 6.1 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker.

*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*

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## § 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

- ☐ Arbitration pursuant to Section 15.4 of AIA Document A201–2017
- ☒ Litigation in a court of competent jurisdiction
- ☐ Other (Specify)

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

## ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017.

§ 7.1.1 If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor a termination fee as follows:

(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017.

## ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner's representative:

(Name, address, email address, and other information)

Dennis Brown, Construction Project Manager  
Town of Apex  
PO Box 250  
Apex, NC 27502  
dennis.brown@apexnc.org  
919-249-3535

§ 8.3 The Contractor's representative:

(Name, address, email address, and other information)

Scott D. Dawson  
Engineered Construction Company  
900 Paverstone Drive, Suite 200  
Raleigh, NC 27615  
sdawsonsr@engrconst.com  
919-954-9090 x235

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§ 8.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

#### § 8.5 Insurance and Bonds

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™-2017 Exhibit A, and elsewhere in the Contract Documents.

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201-2017, may be given in accordance with AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

*(If other than in accordance with AIA Document E203-2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*

#### § 8.7 Other provisions:

The Contractor shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify). Contractor shall require all of the Contractor's subcontractors to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify).

The Contractor warrants and agrees that no labor supplied by the Contractor or the Contractor's subcontractors in the performance of this Contract shall be obtained by means of deception, coercion, intimidation or force, or otherwise in violation of North Carolina law, specifically Article 10A, Subchapter 3 of Chapter 14 of the North Carolina General Statutes, Human Trafficking.

Pursuant to Section 3-2 of the Town of Apex Code of Ordinances, Contractor hereby warrants and agrees that Contractor will not discriminate against a protected class in employment, subcontracting practices, or the solicitation or hiring of vendors, suppliers, or commercial customers in connection with this Agreement. For the purposes of this Agreement "protected class" includes age, race, religious belief or non-belief, ethnicity, color, national origin, creed, sex, sexual orientation, gender identity, marital status, natural hair style, genetic information, pregnancy, familial status, disability, veteran or military status, or disabled veteran status.

#### ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor
- .2 AIA Document A101™-2017, Exhibit A, Insurance and Bonds
- .3 AIA Document A201™-2017, General Conditions of the Contract for Construction
- .4 ~~AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:~~

~~(Insert the date of the E203-2013 incorporated into this Agreement.)~~

*Deleted for*

- .5 Drawings

Number	Title	Date
G001	TITLE SHEET	08/06/2021
G002	APPENDIX B	08/06/2021
G003	APPENDIX B CONT	08/06/2021

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G004	LIFE SAFETY	08/06/2021
G005	UL DETAILS	08/06/2021
C-0.0	COVER	08/06/2021
C-1.0	SITE STAKING PLAN	08/06/2021
C-2.0	EXIST. CONDITIONS	08/06/2021
C-2.1	OFF-SITE EX. CONDITIONS/DEMO PLAN	08/06/2021
C-3.0	SITE GRADING PLAN	08/06/2021
C-3.1	PRE-DEVELOPMENT AREA PLAN	08/06/2021
C-3.2	POST-DEVELOPMENT AREA PLAN	08/06/2021
C-3.3	SCM DRAINAGE AREA PLAN	08/06/2021
C-3.4	STORM PROFILE	08/06/2021
C-4.0	EROSION & SEDIMENT CONTROL – INITIAL INSTALL PLAN	08/06/2021
C-4.1	OFF-SITE E&SC PLAN – INITIAL INSTALL	08/06/2021
C-4.2	EROSION & SEDIMENT CONTROL PLAN	08/06/2021
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C-5.0	SITE UTILITY PLAN	08/06/2021
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C-7.2	E&SC DETAILS	08/06/2021
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C-7.5	WETLAND PLANTING PLAN	08/06/2021
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A100	FIRST FLOOR PLAN	08/06/2021
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A312	DETAILS	08/06/2021
A320	ROOF DETAILS	08/06/2021
A321	ROOF DETAILS	08/06/2021
A322	ROOF DETAILS	08/06/2021
A323	ROOF DETAILS	08/06/2021
A324	ROOF DETAILS	08/06/2021
A400	STAIR PLANS & DETAILS	08/06/2021
A410	ENLARGED KITCHEN PLANS	08/06/2021

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A411	ENLARGED BATHROOM PLANS	08/06/2021
A412	ENLARGED BATHROOM PLANS	08/06/2021
A500	INTERIOR ELEVATIONS	08/06/2021
A501	INTERIOR PLANS	08/06/2021
A600	CASEWORK DETAILS	08/06/2021
A601	CASEWORK DETAILS	08/06/2021
A700	DOOR SCHEDULE	08/06/2021
A701	DOOR DETAILS	08/06/2021
A702	FENESTRATION SCHEDULE	08/06/2021
A703	FENESTRATION DETAILS	08/06/2021
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I001	TILE SYSTEMS AND DETAILS	08/06/2021
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S504	TYPICAL DETAILS	08/06/2021
S505	TYPICAL DETAILS	08/06/2021
S506	TYPICAL DETAILS	08/06/2021
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FP100	FIRE PROTECTION PLAN	08/06/2021
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**.7 Addenda, if any:**

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Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

**.8 Other Exhibits:**

*(Check all boxes that apply and include appropriate information identifying the exhibit where required.)*

☐ AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:  
*(Insert the date of the E204-2017 incorporated into this Agreement.)*

☐ The Sustainability Plan:

Title	Date	Pages
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☒ Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
Supplementary Conditions to AIA Document A101-2007 General Conditions	As Amended See	Oct. 19, 2021	0000020-1 — 000020-13

**.9 Other documents, if any, listed below:**

*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)*

The Contract Documents include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, and portions of Addenda relating to bidding or proposal requirements and the Notice to Proceed.

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This Agreement entered into as of the day and year first written above.

\_\_\_\_\_  
**OWNER** (Signature)

Catherine Crosby, Town Manager  
(Printed name and title)

  
\_\_\_\_\_  
**CONTRACTOR** (Signature)

Scott D. Dawson, Sr., President  
(Printed name and title)

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PUBLIC SAFETY STATION 36  
TOWN OF APEX

SUPPLEMENTARY CONDITIONS TO AIA DOCUMENT A101-2017 GENERAL CONDITIONS

OCTOBER 19, 2021

GENERAL CONDITIONS

Document A201-2017, GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION, constitutes the General Conditions of this Contract, and is hereinafter called "General Conditions." The General Conditions are further revised and supplemented by the provisions of these Supplementary Conditions. The General Conditions and the Supplementary Conditions are applicable to all of the Work under this Contract and shall apply to the Contractor and all Subcontractors and Sub-subcontractors.

SUPPLEMENTS:

The following supplements modify, change, delete, or add to the General Conditions. Where any article of the General Conditions is modified or any paragraph deleted, subparagraph or clause thereof is modified, or deleted by these supplements, the unaltered provisions of such article, paragraph, subparagraph or clause shall remain in effect. If there is a discrepancy between the General Conditions and these Supplementary Conditions, the Supplementary Conditions shall control.

**ARTICLE 1 – GENERAL PROVISIONS**

1.1.1 **THE CONTRACT DOCUMENTS:** Supplement as follows:

1.1.1 Delete the last sentence in Section 1.1.1. and replace as follows:

The Contract Documents include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, and portions of Addenda relating to bidding or proposal requirements.

ADD THE FOLLOWING TO SUBPARAGRAPH 1.1.1:

1.1.1.1 The Drawings and Specifications referred to in the Contract Documents have been prepared by Davis Kane Architects, PA and are identified by the title:

Apex Public Safety Station No. 36, Bid Documents

1.1.6 **THE SPECIFICATIONS:** Supplement as follows:

1.1.6 Add the following sentence to Paragraph 1.1.6:

The Contractor will be furnished with the following quantities of drawings and specifications at no cost. Additional copies will be provided at the cost of reproduction, postage, and handling.

General Contractor                      1 set

1.2 **CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS:** Supplement as follows:

1.2.4 Add the following Subparagraph 1.2.4 to Paragraph 1.2.

SUPPLEMENTARY CONDITIONS

000020-1

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All work shall conform to Contract Documents. No change therefrom shall be made without Contractor first obtaining permission from Architect, in writing. Where detailed information is lacking, Contractor, before proceeding with work, shall refer matter to Architect, who will furnish information with reasonable promptness.

1.2.5.1 Add the following Subparagraph 1.2.5.1 to Paragraph 1.2.

Prior to and during the execution of the Work, the Contractor shall check all drawings, specifications, and job conditions and shall immediately report any error, discrepancies, conflicts and omissions found therein to the Architect in writing and have the same explained or corrected by the Architect before proceeding with the Work. Any Work done by the Contractor after these conditions have been discovered and before the Architect has either explained or made corrections shall be corrected at the Contractor's expense.

1.2.5.2 Add the following Subparagraph 1.2.5.2 to Paragraph 1.2.

Where parts of the Work are indicated, the balance of similar parts shall be considered as a repetition; where any detail is shown and the components there fully described by notation and material designation similar details shall be construed to require equal materials whether fully noted or not, and shall in each case be considered to be called for the full length of the part and similar parts it indicates.

1.2.6 Add the following Subparagraph 1.2.6. to Paragraph 1.2.

Materials, equipment or items obviously required for a complete job but not mentioned in the specifications or required by the specifications or shown on the drawings, shall be furnished and installed the same as though both shown on the drawings and required by the specifications. This material, equipment, or item shall conform to the character and quality of the other work.

## **ARTICLE 2 - OWNER**

2.1 GENERAL: Supplement as follows:

2.1.1 Add the following sentence to Subparagraph 2.1.1:

The term "Design Consultant" or "Architect" shall mean Davis Kane Architects, PA.

2.1.2 Subparagraph 2.1.2 is hereby deleted in its entirety.

2.2 EVIDENCE OF THE OWNER'S FINANCIAL ARRANGEMENTS: Paragraph 2.2, including Subparagraph 2.2.1, 2.2.2, 2.2.3, and 2.2.4 is hereby deleted in its entirety.

## **ARTICLE 3 - CONTRACTOR**

3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR:

Supplement as follows:

3.2.5 Add the following Subparagraph 3.2.5 to Paragraph 3.2:

Prior to submitting a proposal, Contractor examined the site and all conditions thereon. All proposals are presumed to include all such existing conditions as may affect any work on this Project; and failure to familiarize himself/herself with any such conditions will in no way relieve the Contractor from the necessity of furnishing any materials or performing any work that may be required to complete the work in accordance with the Drawings and Specifications, without additional cost to the Owner.



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3.3 SUPERVISION AND CONSTRUCTION PROCEDURES:  
Supplement as follows:

3.3.4 Add the following Subparagraph 3.3.4 to Paragraph 3.3:  
The Architect has no authority, nor accepts any responsibility either direct or implied for construction superintendence of the work. The programming of the work, construction procedures, scheduling, coordination, inspection and supervision of construction personnel required to ensure accurate construction and faithful performance of the Contract requirements is the direct responsibility of the Contractor. Any instruction which the Architect may issue the Contractor shall be adjudged an interpretation of the contract requirements and not an act of supervision.

3.3.5 Add the following Subparagraph 3.3.5 to Paragraph 3.3.  
Where disputes arise between separate Contractors on the accessibility of the surface of one Contractor to receive the work of another Contractor in terms of the Contract Documents, the Architect shall issue a decision in writing.

3.4 LABOR AND MATERIALS: Supplement as follows:

3.4.4 Add the following Subparagraph 3.4.4 to Paragraph 3.4.  
At any time during the construction and completion of the Work covered by the Specifications, if the conduct of any workman of the various crafts be adjudged ungentlemanly and a nuisance to the Owner or Architect; or if any workman be considered incompetent or detrimental to the work, the Contractor shall order such parties removed immediately from the grounds.

3.4.5.1 Add the following Subparagraph 3.4.5.1 to Paragraph 3.4.  
The materials of the building specified in the Contract shall conform to all local codes, laws and ordinances, and to the Building Code of the State. The rules of the local utility companies serving the property shall be observed.

3.4.5.2 Add the following Subparagraph 3.4.5.2 to Paragraph 3.4.  
Mention herein of a specific brand or manufacturer is intended to indicate size, quality, type, capacity, relative price range, etc. Substitutions will be considered by the Architect provided substitution requests are received a minimum of 10 days before bids are received. Substitutions must be approved in writing by the Architect. When a space or area is of sufficient size to accommodate the specific item, then it shall be the responsibility of the Contractor that the substitute item be accommodated by the area of volume shown or specified. No substitutions will be considered after bids are received.

3.4.6 Add the following Subparagraph 3.4.6 to Paragraph 3.4.  
Should the specifications fail to particularly describe the material or kind of goods to be used in any place, then it shall be the duty of the Contractor to make inquiry of the Architect as to what is best suited. The material that would normally be used in this place to give a first quality finished job shall be considered a part of the Contract.

3.4.7 Add the following Subparagraph 3.4.7 to Paragraph 3.4.  
All material shall be new and of quality specified. Workmanship shall be of a grade accepted as the best practice of the particular trade involved. Also, except as exceeded or qualified by the Specifications, workmanship shall be as stipulated in written standards of recognized organizations or institutes of the respective trades.

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- 3.4.8 Add the following Subparagraph 3.4.8 to Paragraph 3.4.  
Where several materials or processes are specified for one use by trade name, manufacturer's name, or by catalog reference, Contractor may select for use any of those so specified.
- 3.4.9 Add the following Subparagraph 3.4.9 to Paragraph 3.4.  
Wherever item or class of material or process is specified exclusively by trade name, by manufacturer's name, or by catalog reference, only such item shall be used, unless Architect's approval for substitution is secured in writing.
- 3.4.10 Add the following Subparagraph 3.4.10 to Paragraph 3.4.  
Should Contractor desire to substitute another material or process for one or more specified by name, he shall apply in writing for such permission and shall state the credit or extra cost involved. He shall provide, also, supporting data and samples for Architect's consideration.
- 3.4.11 Add the following Subparagraph 3.4.11 to Paragraph 3.4.  
No substitution shall be made for any material, article or process required under the Contract unless approved in writing by Architect.
- 3.4.12 Add the following Subparagraph 3.4.12 to Paragraph 3.4.  
Contractor shall submit a complete list of materials, equipment, suppliers and subcontractors proposed for the Project. Issuance of the second Certificate For Payment may be withheld until substantial portions of these lists have been submitted.
- 3.4.13 Add the following Subparagraph 3.4.13 to Paragraph 3.4.  
Any work necessary to be performed after regular working hours, on Sundays, or Legal Holidays, shall be performed without additional expense to the Owner.
- 3.4.14 Add the following Subparagraph 3.4.14 to Paragraph 3.4.  
The Contractor shall maintain and remove all equipment of the construction; and be responsible for the safe, correct and lawful construction, maintenance and use of same.
- 3.5. WARRANTY: Supplement as follows:
- 3.5.3 Add the following Subparagraph 3.5.3 to Paragraph 3.5.  
The Contractor shall guarantee the Work for a period of one (1) full year following the date of substantial completion.
- 3.5.3.1 Add the following Subparagraph 3.5.3.1 to Subparagraph 3.5.3.  
The Contractor shall further guarantee the roofing systems for a period of 24 months (beginning with the date of final acceptance by Owner) against leaks. The guarantee shall include roofing, flashing (both metal and composition) related to roofing, eave edges and pitch pockets. The guarantee shall include correcting the leaking condition and the replacement or repair of any damage to building and finishes caused by the leaking roofing systems during the guarantee period, at no cost to the Owner. This guarantee shall be in addition to the manufacturers guarantee and any other in the Contract Documents related to the roofing system.
- 3.5.4 Add the following Subparagraph 3.5.4 to Paragraph 3.5.  
Wherever specifications, directions, or recommendations of a manufacturer, association, or organization are mentioned in the Specifications, the Contractor shall provide the Architect

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with one copy of such documents and shall retain one copy at the job site at all times while work is being carried out.

- 3.5.5 Add the following Subparagraph 3.5.5 to Paragraph 3.5.  
All named or numbered products shall be used in accordance with the manufacturer's specifications unless otherwise stated.
- 3.5.6 Add the following Subparagraph 3.5.6 to Paragraph 3.5.  
All fabricated assemblies of electrically operated equipment furnished under this Contract shall have Underwriters' Laboratory approval or U.L. Reexamination listing in every case where such approval has been established for the particular type of devices in question.
- 3.5.7 Add the following Subparagraph 3.5.7 to Paragraph 3.5.  
All manufactured items of electrically operated equipment shall have Underwriters' Laboratory approval or U. L. Reexamination listing in every case where such approval has been established for the particular type of devices in question.
- 3.5.8 Add the following Subparagraph 3.5.8 to Paragraph 3.5.  
Except as required specifically otherwise elsewhere in the Contract Documents, Contractor shall furnish three copies of warranties to be submitted to the Architect. Warranties shall show the name of the Owner, the name of the Project, the Project address and the date on which the warranty period begins or is required by the Contract Documents.
- 3.6 TAXES: Supplement as follows:
- 3.6.1 The first sentence in Paragraph 3.6 shall be labeled Subparagraph 3.6.1.
- 3.6.2 Add the following Subparagraph 3.6.2 to Paragraph 3.6:  
The Contractor shall include local, state and federal sales, use, and consumer, and other similar taxes as required by law in the Contract Sum.
- 3.6.3 Add the following Subparagraph 3.6.3 to Paragraph 3.6.  
When the Owner is tax exempt, the Contractor must submit to the Owner, statements of all sales tax paid so that the necessary forms can be filed to recover the tax. This sales tax report must be completed, notarized and included with each monthly Application for Payment.
- 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES: Supplement as follows:
- 3.10.4 Add the following Subparagraph 3.10.4 to Paragraph 3.10.  
The Contractor immediately after being awarded the Contract, at least within ten (10) days, shall prepare and submit for the Architect's approval an estimated progress schedule for the work. The "Progress Schedule" shall be in graph form and show the date when every major operation is to begin and to be completed, ~~the dollar value to be completed each month, and the date when approved shop drawings will be needed.~~ *sm*
- 3.10.5 Add the following Subparagraph 3.10.5 to Paragraph 3.10.  
The "Progress Schedule" shall be brought up to date and submitted each month with the application for payment.
- 3.12 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES: Supplement as follows:
- 3.12.11 Add the following Subparagraph 3.12.11 to Paragraph 3.12.



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All shop drawings for all contracts shall be submitted to the Architect for approval within ~~forty-five (45)~~ <sup>90</sup> calendar days after the signing of the contracts. <sup>Alameda</sup>

3.12.12 Add the following Subparagraph 3.12.12 to Paragraph 3.12.

If shop drawings are found in error, the Contractor shall return them for correction, check the second submission, and if found in order, forward drawings to the Architect for review and check. Architect will not check shop drawings until they bear the stamp of the Contractor's approval. Submit to the Architect six (6) copies of each shop drawing under all contracts and resubmit six (6) corrected copies where required by the Architect.

3.13 USE OF SITE: Supplement as follows:

3.13.1 The first sentence in Paragraph 3.13 shall be labeled Subparagraph 3.13.1.

3.13.2 Add the following Subparagraph 3.13.2 to Paragraph 3.13.

The Contractor shall immediately upon entering Project site for purpose of beginning work, locate all general reference points and take such action as is necessary to prevent their destruction, layout his own work, and be responsible for all bench marks, lines, elevations, and measurements for the building, grading, utilities, and other work executed by him under the Contract. He shall exercise proper precautions to verify figures shown on drawings before laying out work and will be responsible for any error resulting from his failure to exercise such precaution. All measurements and dimensions on shop drawings shall be verified at the job.

3.13.3 Add the following Subparagraph 3.13.3 to Paragraph 3.13.

The drawings have been prepared on the basis of surveys and inspections of the site and are intended to present an essentially accurate general indication of the physical conditions at the site. This, however, shall not relieve the Contractor(s) of the necessity for familiarizing himself with physical conditions at the site. Any discrepancies found in the drawings shall be reported to the Architect.

3.13.4 Add the following Subparagraph 3.13.4 to Paragraph 3.13.

The Contractor(s) and subcontractors shall verify all levels, dimensions, angles and conditions at the site before ordering any material or executing any work and shall be responsible for the correctness of his measurements. Any difference which may be found shall be submitted to the Architect for consideration and adjustment before proceeding with the work.

3.14 CUTTING AND PATCHING: Supplement as follows:

3.14.3 Add the following Subparagraph 3.14.3 to Paragraph 3.14.

It is the general intent of the drawings and specifications that the cutting and patching of walls, floors, partitions, roofs, or other materials, necessary and required to effect the completion of work as intended for general construction; or required to install work by the Plumbing, Mechanical, Electrical, or other specialty contractors. The repair of all damages made by cutting shall include restoring those surfaces to their original state of finish including surface texture, design, color, etc., unless new finishes are called for. All such repairs shall be performed by personnel trained and proficient in the particular trades involved, i.e., plaster repairs by plasterers, masonry repairs by masons, tile repairs by tile setters, etc. Any cutting which affects the structural part of the building must be approved by the Architect before cutting is started.

3.14.4 Add the following Subparagraph 3.14.4 to Paragraph 3.14.

To illustrate further, where small areas of a wall are cut and patched and painting is required, the entire wall shall be painted to obtain a uniform color. Masonry repairs shall be toothed to

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maintain bond. It is the intent of this specification that all areas requiring repairs shall be restored to a completely finished condition, acceptable to the Architect.

3.14.5 Add the following Subparagraph 3.14.5 to Paragraph 3.14.

All cutting of existing structures shall be held to an absolute minimum and shall be executed in a clean and neat manner. All cutting for removal, relocating, or installation of new materials for electrical systems shall be done by the Electrical Contractor, and cutting for plumbing shall be by the Plumbing Contractor, and cutting for mechanical work shall be by the Mechanical Contractor, and cutting for general construction work shall be done by the General Contractor. The use of air hammers will not be permitted.

All cutting of floors, walls, and ceilings shall be done with either silent diamond drills for cutting concrete cores or with masonry saws for tile and plaster. All openings shall be cut to clear by 1" insulation on piping and other items.

**ARTICLE 4 – ADMINISTRATION OF THE CONTRACT**

4.2 ADMINISTRATION OF THE CONTRACT: Supplement as follows:

4.2.9.1 The Architect shall provide one final inspection after the Contractor notifies the Architect that the project is complete.

4.2.9.2 The Architect shall, upon final inspection, prepare a written list of items to be completed and promptly provide the list to the Contractor.

4.2.9.3 The Contractor shall be required to complete the project and the items on the list in **30** days and provide all required closeout documents within **60** days of the final inspection.

4.2.9.4 The Architect shall provide one (1) re-inspection to verify that the Contractor has completed the project and the final inspection list. The Owner and the Contractor shall be promptly notified of any deficiencies noted during this inspection. The Contractor shall immediately make the necessary corrections.

4.2.9.5 Any additional re-inspections necessitated due to the deficiencies being noted under 4.2.9.4 above and any additional time required by the Architect, due to closeout documents being incomplete or Contractor not submitting the documents within **60** days of the final inspection, will be billed to the Owner by the Architect.

4.2.9.6 The Owner shall have the right to deduct the charges of the Architect incurred under Section 4.2.9.5 from the Contractor's last application for payment.

**ARTICLE 5 – SUBCONTRACTORS**

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK:  
Supplement as follows:

5.2.1.1 Add the following Subparagraph 5.2.1.1 to the Subparagraph 5.2.1.

Not later than ~~twenty (20)~~ <sup>60 days</sup> days from the Contract Date, the Contractor shall furnish in writing to the Owner through the Architect a list showing the name of persons or entities proposed as manufacturers to be used for each of the products identified in the Contract Documents and where applicable the brand name and the name of the installing Subcontractor.

5.3 SUB-CONTRACTUAL RELATIONS: Supplement as follows:

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5.3.1 The first paragraph in Paragraph 5.3 shall be labeled Subparagraph 5.3.1.

5.3.2 Add the following Subparagraph 5.3.2 to Paragraph 5.3.

The Owner or Architect will not undertake to resolve any differences between the Contractor and his Subcontractors, nor between Subcontractors and Sub-subcontractors.

**ARTICLE 7 – CHANGES IN THE WORK**

7.1 GENERAL: Supplement as follows:

7.1.4 Add the following Subparagraph 7.1.4 to Paragraph 7.1.

Changes in the work Overhead and Profit shall not exceed 15% of the value of labor and material for work performed by any Contractor or Subcontractor. If the work is performed by a Subcontractor, the Prime Contractor's Overhead and Profit shall not exceed 7-1/2%.

7.2 CHANGE ORDERS: Supplement as follows:

7.2.2 Add the following Subparagraph 7.2.2 to Paragraph 7.2

In case where unit prices as shown on the Bid Form apply, they shall be used to determine the amount of addition to or deduction from the Contract price, provided the unit prices are mutually agreed upon to be fair and equitable.

To the cost shall be added a fixed fee to be agreed upon, but not to exceed fifteen percent (15%) of the estimated cost of the work. The fee shall be compensation to cover the cost of supervision, overhead, bond, profit and other general expenses. All changes in the work shall be submitted in the following manner:

For Work Done By The Contractor:

(Type Of Work) Contract Work.

1. Materials (**Itemized Breakdown**) \$

2. Labor (**Itemized Breakdown With Documentation**) \$ \_\_\_\_\_

3. Equipment Rental (List Separately With

Documentation \$ \_\_\_\_\_

SUB TOTAL: \$

\* 4. Contractor's Overhead, Bond, Supervision,

General Expenses, and Profit. Limited to 15% of Items #1, #2, & #3 \$

5. All Sales and Other Applicable Taxes \$ \_\_\_\_\_

6. Total quotation: (Includes Items #1, #2, #3, #4, & #5) \$ \_\_\_\_\_

\* In case of deductible changes, this figure will be 10%.

For Work Done By Subcontractors:

Type of Work Contract Work.

1. Subcontract Work

(Itemized Breakdown With Documentation As Follows):

A. Materials (**Itemized Breakdown With Documentation**) \$ \_\_\_\_\_

B. Labor (**Itemized Breakdown With Documentation**) \$ \_\_\_\_\_

C. Equipment Rental (List Separately With Documentation) \$ \_\_\_\_\_

D. All Sales And Other Applicable Taxes

SUB TOTAL: \$ \_\_\_\_\_

\* 2. Contractor's Overhead, Bond, Supervision,

General Expenses, & Profits, Limited To 7-1/2% Of Sub-Contract Work Shown In Item #1  
\$ \_\_\_\_\_

3. Total quotation:

(Includes Item #1 and #2) \$ \_\_\_\_\_

\* In case of deductible changes, this figure will be 5%.



## **ARTICLE 8**

### **8.2 PROGRESS AND COMPLETION: Supplement as follows:**

- 8.2.4 Add the following Subparagraph 8.2.4 to Paragraph 8.2:  
The Owner reserves the right to withhold the issuance of Notice to Proceed by up to thirty (30) days. For each day that Notice to Proceed is withheld pursuant to this Subparagraph, the dates established for Substantial Completion and Final Completion shall be adjusted. The Contractor shall not be entitled to additional compensation if the Owner withholds the issuance of Notice to Proceed pursuant to this Subparagraph.

## **ARTICLE 9 – PAYMENTS AND COMPLETION**

### **9.2 SCHEDULE OF VALUES: Supplement as follows:**

- 9.2.1 The first paragraph in Paragraph 9.2 shall be labeled Subparagraph 9.2.1.
- 9.2.2 Add the following Subparagraph 9.2.2 to paragraph 9.2.  
Schedule of values shall be broken out to show costs for labor/installation and materials, allowances, and alternates. If there is grading in the project, show cost breakdown between rough grading and fine grading.

### **9.3 APPLICATIONS FOR PAYMENT: Supplement as follows:**

- 9.3.1.3 Add the following Subparagraph 9.3.1.3 to Paragraph 9.3.1.  
The Contractor's application for payment shall be made on AIA Form G-702 and G-703 as most recently revised, and the Certification included thereon shall be executed and notarized.
- 9.3.1.4 Add the following Subparagraph 9.3.1.4 to Paragraph 9.3.1.

When the project is fifty percent (50%) complete, the Owner, with written consent of the surety, shall not retain any further retainage from periodic payments due the Contractor if the Contractor continues to perform satisfactorily and any nonconforming work identified in writing prior to that time by the Architect or Owner has been corrected by the Contractor and accepted by the Architect or Owner. If the Owner determines the Contractor's performance is unsatisfactory, the owner may reinstate retainage for each subsequent periodic payment application up to the maximum amount of five percent (5%). The project shall be deemed fifty percent (50%) complete when the Contractor's gross project invoices, excluding the value of materials stored off-site, equal or exceed fifty percent (50%) of the value of the contract, except the value of materials stored onsite shall not exceed twenty percent (20%) of the contractor's gross project invoices for the purpose of determining whether the project is fifty percent (50%) complete.

- 9.3.1.5 Add the following Subparagraph 9.3.1.5 to Paragraph 9.3.1.  
The full Contract retainage may be reinstated if the manner of completion of the work and its progress do not remain satisfactory to the Architect (or if the Surety withholds its consent) of for other good and sufficient reasons.

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9.6 PROGRESS PAYMENTS: Supplement as follows:

- 9.6.1.1 Provided an Application for Payment is received by the Architect not later than the twenty-fifth (25<sup>th</sup>) day of a month, the Owner shall make payment to the Contractor not later than the tenth (10<sup>th</sup>) day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Architect receives the Application for Payment. This timeline may be adjusted upon agreement by the parties.

9.8 SUBSTANTIAL COMPLETION: Supplements as follows:

- 9.8.6 Add the following Subparagraph 9.8.6 to Paragraph 9.8.  
Additional services and dispute resolution services by the Architect shall be paid by the Contractor at the rate of one hundred and fifty dollars and 00/100 (\$150.00) per hour.

9.10 FINAL COMPLETION AND FINAL PAYMENT: Supplement as follows:

- 9.10.1.1 Add the following Subparagraph 9.10.1.1 to Subparagraph 9.10.1.  
When all work called for under the Contract has been completed and the Contractor has removed from the site of the work all rubbish, unused material, temporary buildings, plant and other structures used by him in carrying on the work, the Owner and the Architect will make a thorough examination of the work. If, after complete examination by the Owner and the Architect, all work is found to comply with the requirements of the contract, it will be accepted and final payment will be made in accordance with the Contract Documents.
- 9.10.1.2 Add the following Subparagraph 9.10.1.2 to Subparagraph 9.10.1.  
In the event that the Architect considers it impractical, because of unusable test conditions, or some other factors, to execute simultaneous final acceptance of all equipment, portions of the installation may be certified by the Architect for final acceptance when that portion of the system is complete and ready for operation.
- 9.10.1.3 Add the following Subparagraph 9.10.1.3 to Subparagraph 9.10.1.  
Substantial completion liquidated damages shall be as detailed in the Contract Documents.

**ARTICLE 10 – PROTECTION OF PERSON AND PROPERTY**

- 10.2 SAFETY OF PERSON AND PROPERTY: Supplement as follows:
- 10.2.4.1 Add the following Subparagraph 10.2.4.1 to Subparagraph 10.2.4.  
When use or storage of explosives other hazardous materials or equipment or unusual methods are necessary, the Contractor shall give the Owner reasonable advance notice.
- 10.3.3 Subparagraph 10.3.3 is hereby deleted in its entirety and Subparagraphs 10.3.4 through 10.3.6 are hereby renumbered accordingly.

**ARTICLE 11 – INSURANCE AND BONDS**

- 11.1 CONTRACTOR'S INSURANCE AND BONDS: Supplement as follows:
- 11.1.5 Add the following Subparagraph 11.1.5 to Paragraph 11.1.  
Insurance coverages required by this Article and the Contract Documents shall be maintained without interruption from the date of commencement of the Work until at least the date of final payment and termination of any coverage required to be maintained after final payment

and at all times thereafter when the Contractor may be correcting, removing, or replacing defective work.

- 11.2.2 FAILURE TO PURCHASE REQUIRED PROPERTY INSURANCE. Supplement as follows:
- 11.2.2 The text of Subparagraph 11.2.2 is hereby deleted in its entirety and replaced as follows: If the Owner does not already have, or in the alternative does not intend to purchase, property insurance as described in the Contract Documents, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner.

#### ARTICLE 15 – CLAIMS AND DISPUTES

- 15.1 CLAIMS: Supplement as follows:
- 15.1.3.3 Add the following Subparagraph 15.1.3.3 to Subparagraph 15.1.3  
Claims for additional compensation for additional work, due to alleged errors in spot elevations of the site, contour lines, or bench marks, will not be recognized unless accompanied by certified survey data, made prior to the time the original ground was disturbed, clearly showing that errors exist which resulted, or would result, in handling more material, or performing more work, than would be reasonably estimated from the drawings. Any discrepancies which may be discovered between actual conditions and those represented by the drawings shall at once be reported to the Architect, and work shall not proceed, except at the Contractor's risk, until written instructions have been received by him from the Architect.
- 15.1.6 CLAIMS FOR ADDITIONAL TIME: Supplement as follows:
- 15.1.6.3 Add the following Subparagraph 15.1.6.3 to Subparagraph 15.1.6.  
If the Contractor is delayed at any time in the progress of his work by abnormal weather conditions not reasonably anticipated for the locality where the work is performed, then the contract time may be extended by change order for the time which the Architect and Owner may determine is reasonable.
- 15.1.6.4 Add the following Subparagraph 15.1.6.4 to Subparagraph 15.1.6  
Time Extensions will not be granted for rain, wind, snow or other natural phenomena of **normal intensity** for the locality where work is performed. For purpose of determining extent of delay attributable to unusual weather phenomena, a determination shall be made by comparing the weather for the contract period involved with the average of the preceding five (5) year climatic range during the same time interval based on the National Oceanic and Atmospheric Administration National Weather Service statistics for the locality where work is performed and on daily weather logs kept on the job site by the Contractor reflecting the effect of the weather on progress of the work and initialed by the Architect's representative. Time extensions for weather delays do not entitle the Contractor to "extended overhead" recovery.
- 15.1.6.5 Add the following Subparagraph 15.1.6.5 to Subparagraph 15.1.6.  
If the Contractor is delayed at any time in the progress of the Work by any act or negligence of the Owner or the Architect, or by any employee of either; by any separate contractor employed by the Owner; by changes ordered in the Work; by abnormal weather conditions not reasonably anticipated for the locality where the work is performed; by unavoidable casualties; by any causes beyond the Contractor's control; or by any other causes which the Architect and Owner



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determine may justify the delay, then the contract time may be extended by Change Order for the time which the Architect and Owner may determine is reasonable.

- 15.1.6.6 Add the following Subparagraph 15.1.6.6 to Subparagraph 15.1.6.  
Daily logs showing work activity and weather that could impact the progress of the Work shall be submitted each month with the Application for Payment. Applications for Payment will not be processed unless all documentation is provided with the application.
- 15.1.6.7 Add the following Subparagraph 15.1.6.7 to Subparagraph 15.1.6.  
Request for extension of time shall be made in writing within twenty-one (21) days following the cause of delay. In case of continuing cause for delay, the Contractor shall notify the Architect of the delay within twenty-one (21) days of the beginning of the delay and only one claim is necessary.
- 15.1.6.8 Add the following Subparagraph 15.1.6.8 to Subparagraph 15.1.6.  
Claims for additional time and additional cost will not be allowed if the actual construction time does not exceed the actual completion time as stated in the Contract Documents.
- 15.1.7 WAIVER OF CLAIMS FOR CONSEQUENTIAL DAMAGES: Supplement as follows:  
15.1.7.1 Subparagraph 15.1.7.1 is hereby deleted in its entirety and replaced as follows:  
damages incurred by the Owner for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- 15.1.7.3 Add subparagraph 15.1.7.3 to Subparagraph 15.1.7 as follows:  
damages incurred by the Owner for rental expenses for furniture, equipment, or other storage expenses that result from Contractor's failure to complete the Project within the time specified in the Contract Documents are not waived as part of this Section 15.1.7.
- 15.3 MEDIATION: Supplement as follows:  
15.3.2 The first sentence of Subparagraph 15.3.2 is hereby deleted and replaced as follows:  
The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall follow the Rules Implementing Mediated Settlement Conferences in North Carolina Public Construction Projects, as adopted by the State Building Commission on February 26, 2002, as amended and in effect when the procedures are invoked. The Rules relating to non-State projects shall apply.
- 15.3.3 Subparagraph 15.3.3 is hereby deleted in its entirety and Subparagraph 15.3.4 is renumbered 15.3.3.

END OF SUPPLEMENTARY CONDITIONS

# Performance Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

**CONTRACTOR (Name and Address):**

Engineered Construction Company  
900 Paverstone Drive, 2nd Floor  
Raleigh, NC 27615

**SURETY:**

Fidelity and Deposit Company of Maryland  
Attn: Surety Claims, 1299 Zurich Way, 5th Floor  
Schaumburg, IL 60196-1056

**OWNER (Name and Address):**

Town of Apex  
73 Hunter Street  
Apex, NC 27502

**CONSTRUCTION CONTRACT**

Date:

Amount: \$ 6,342,500.00

Six Million Three Hundred Forty Two Thousand Five Hundred Dollars and 00/100 Dollars

Description (Name and Location):

Apex Public Safety Station No. 36, 1201 Wimberly Road, Apex, NC 27523

**BOND:**

Date: (Not earlier than Construction Contract Date)

Amount: \$ 6,342,500.00

Six Million Three Hundred Forty Two Thousand Five Hundred Dollars and 00/100 Dollars

Modifications to this Bond: ☒ None ☐ See Section 16**CONTRACTOR AS PRINCIPAL**

Company

Engineered Construction Company

Signature:

Name: Scott D. Dawson, Jr.

Title: President

(Any additional signatures appear on the last page of this Performance Bond)

**SURETY**

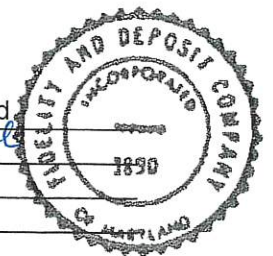
Company

Fidelity and Deposit Company of Maryland

Signature:

Name: Wendy E Lahm

Title: Attorney-in-Fact



FOR INFORMATION ONLY – Name, address and telephone

AGENT OR BROKER:

Marsh &amp; McLennan Agency LLC

5605 Carnegie Boulevard, Suite 300

Charlotte, NC 28209

704-365-6213

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party)

Davis Kane Architects, PA

503 Oberlin Road, Suite 300

Raleigh, NC 27605

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.
2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after:
  - .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless, the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
  - .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
  - .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.
4. Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.
5. When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
  - 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;
  - 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;
  - 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or
  - 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:
    - .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
    - .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.
6. If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.
7. If the Surety elects to act under Section 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the



commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- .3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

8. If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.
9. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.
10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.
11. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
12. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.
13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

#### **14. DEFINITIONS**

- 14.1 **Balance of the Contract Price.** The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.
  - 14.2 **Construction Contract.** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.
  - 14.3 **Contractor Default.** Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.
  - 14.4 **Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.
  - 14.5 **Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.
15. If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

16. Modifications to this Bond are as follows:

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*(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)*

CONTRACTOR AS PRINCIPAL

SURETY

Company

Company

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

# Payment Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

**CONTRACTOR (Name and Address):**

Engineered Construction Company  
 900 Paverstone Drive, 2nd Floor  
 Raleigh, NC 27615

**SURETY:**

Fidelity and Deposit Company of Maryland  
 Attn: Surety Claims, 1299 Zurich Way, 5th Floor  
 Schaumburg, IL 60196-1056

**OWNER (Name and Address):**

Town of Apex  
 73 Hunter Street  
 Apex, NC 27502

**CONSTRUCTION CONTRACT**

Date:

Amount: \$ 6,342,500.00

Six Million Three Hundred Forty Two Thousand Five Hundred Dollars and 00/100 Dollars

Description (Name and Location):

Apex Public Safety Station No. 36, 1201 Wimberly Road, Apex, NC 27523

**BOND:**

Date: \_\_\_\_\_ (Not earlier than Construction Contract Date)

Amount: \$ 6,342,500.00

Six Million Three Hundred Forty Two Thousand Five Hundred Dollars and 00/100 Dollars

Modifications to this Bond:



None



See Section 18

**CONTRACTOR AS PRINCIPAL**

Company: \_\_\_\_\_ (Corporate Seal)  
 Engineered Construction Company

Signature: \_\_\_\_\_

Name: Scott D. Dawson, Jr.

Title: President

(Any additional signatures appear on the last page of this Payment Bond)

(FOR INFORMATION ONLY - Name, address and telephone)

**AGENT OR BROKER:**

Marsh & McLennan Agency LLC  
 5605 Carnegie Boulevard, Suite 300  
 Charlotte, NC 28209  
 704-365-6213

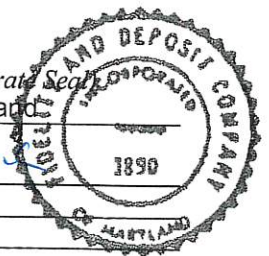
**SURETY**

Company: \_\_\_\_\_ (Corporate Seal)  
 Fidelity and Deposit Company of Maryland

Signature: \_\_\_\_\_

Name: Wendy E Lahm

Title: Attorney-in-Fact

**OWNER'S REPRESENTATIVE:**

(Architect, Engineer or other party):

Davis Kane Architects, PA  
 503 Oberlin Road, Suite 300  
 Raleigh, NC 27605



1. The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.
2. If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.
4. When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.
5. The Surety's obligation to a Claimant under this Bond shall arise after the following:
  - 5.1 Claimants, who do not have a direct contract with the Contractor
    - .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
    - .2 have sent a Claim to the Surety (at the address described in Section 13)
  - 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).
6. If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor that is sufficient to satisfy a Claimant's obligations to furnish a written notice of non-payment under Section 5.1.1.
7. When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:
  - 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
  - 7.2 Pay or arrange for payment of any undisputed amounts.
  - 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.
8. The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
9. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the

performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

10. The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs, or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.
11. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.
12. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
13. Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.
14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
15. Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.
16. **DEFINITIONS**

**16.1 Claim.** A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or furnished or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the claim.

**16.2 Claimant.** An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for a which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

**16.3 Construction Contract.** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the Agreement and the Contract Documents.

**16.4 Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as onstruction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

**16.5 Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

17. If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

18. Modifications to this Bond are as follows:

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*(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)*

CONTRACTOR AS PRINCIPAL

Company: \_\_\_\_\_ *(Corporate Seal)*

SURETY

Company: \_\_\_\_\_ *(Corporate Seal)*

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



Bond Number 9381485

Obligee Town of Apex

**ZURICH AMERICAN INSURANCE COMPANY  
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY  
FIDELITY AND DEPOSIT COMPANY OF MARYLAND  
POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS: That the ZURICH AMERICAN INSURANCE COMPANY, a corporation of the State of New York, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, a corporation of the State of Illinois, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND a corporation of the State of Illinois (herein collectively called the "Companies"), by **Robert D. Murray, Vice President**, in pursuance of authority granted by Article V, Section 8, of the By-Laws of said Companies, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, do hereby nominate, constitute, and appoint **Wendy E Lahm**, its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings**, and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Companies, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the ZURICH AMERICAN INSURANCE COMPANY at its office in New York, New York., the regularly elected officers of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at its office in Owings Mills, Maryland., and the regularly elected officers of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at its office in Owings Mills, Maryland., in their own proper persons.

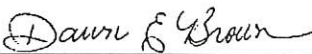
The said Vice President does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article V, Section 8, of the By-Laws of said Companies, and is now in force.

IN WITNESS WHEREOF, the said Vice-President has hereunto subscribed his/her names and affixed the Corporate Seals of the said ZURICH AMERICAN INSURANCE COMPANY, COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 19th day of June, A.D. 2019.

**ATTEST:**  
ZURICH AMERICAN INSURANCE COMPANY  
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY  
FIDELITY AND DEPOSIT COMPANY OF MARYLAND

  
By: *Robert D. Murray*  
Vice President




  
By: *Dawn E. Brown*  
Secretary

State of Maryland  
County of Baltimore

On this 19th day of June, A.D. 2019, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, **Robert D. Murray, Vice President and Dawn E. Brown, Secretary** of the Companies, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and acknowledged the execution of same, and being by me duly sworn, depose and saith, that he/she is the said officer of the Company aforesaid, and that the seals affixed to the preceding instrument are the Corporate Seals of said Companies, and that the said Corporate Seals and the signature as such officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporations.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.



  
Constance A. Dunn, Notary Public  
My Commission Expires: July 9, 2023

## EXTRACT FROM BY-LAWS OF THE COMPANIES

"Article V, Section 8, Attorneys-in-Fact. The Chief Executive Officer, the President, or any Executive Vice President or Vice President may, by written instrument under the attested corporate seal, appoint attorneys-in-fact with authority to execute bonds, policies, recognizances, stipulations, undertakings, or other like instruments on behalf of the Company, and may authorize any officer or any such attorney-in-fact to affix the corporate seal thereto; and may with or without cause modify or revoke any such appointment or authority at any time."

### CERTIFICATE

I, the undersigned, Vice President of the ZURICH AMERICAN INSURANCE COMPANY, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that Article V, Section 8, of the By-Laws of the Companies is still in force.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the ZURICH AMERICAN INSURANCE COMPANY at a meeting duly called and held on the 15th day of December 1998.

RESOLVED: "That the signature of the President or a Vice President and the attesting signature of a Secretary or an Assistant Secretary and the Seal of the Company may be affixed by facsimile on any Power of Attorney...Any such Power or any certificate thereof bearing such facsimile signature and seal shall be valid and binding on the Company."

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at a meeting duly called and held on the 5th day of May, 1994, and the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seals of the said Companies, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.



Brian M. Hodges, Vice President

**TO REPORT A CLAIM WITH REGARD TO A SURETY BOND, PLEASE SUBMIT A COMPLETE DESCRIPTION OF THE CLAIM INCLUDING THE PRINCIPAL ON THE BOND, THE BOND NUMBER, AND YOUR CONTACT INFORMATION TO:**

Zurich Surety Claims  
1299 Zurich Way  
Schaumburg, IL 60196-1056  
[www.reportsfclains@zurichna.com](mailto:www.reportsfclains@zurichna.com)  
800-626-4577