

Travaux, Incorporated

Resolution No.: _____

Adopted: _____

RESOLUTION: APPROVING A CONTRACT WITH HIGHLAND GARDENS LLC TO BE THE CONSTRUCTION CONTRACTOR FOR THE REHABILITATION OF HIGHLAND GARDENS PROJECT IN AN AMOUNT NOT-TO-EXCEED \$8,838,593

WHEREAS, the Housing Authority of the City of Milwaukee (“**HACM**”) received an allocation of Low Income Housing Tax Credits from the Wisconsin Housing and Economic Development Authority (“**WHEDA**”) for the rehabilitation of 114 rental housing units at Highland Gardens (the “**Project**”); and

WHEREAS, HACM incorporated Highland Gardens LLC (the “**Project Owner**”) to be the owner entity of Project; and

WHEREAS, HACM is the developer and the Managing Member of the Project Owner through its wholly owned Limited Liability Company, Highland Gardens Development LLC; and

WHEREAS, WHEDA, as lender to the Project, dictates the Contract Form or Document, currently AIA Document A102-2017 titled Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price to be used as contract document; and

WHEREAS, the President recommends that Travaux, Inc. enter into a contract with the Project Owner; now, therefore, be it

RESOLVED, by Travaux, Inc. that they approve entering into a contract with the Project Owner to be the construction manager as constructor for the Project; and, be it

FURTHER RESOLVED, that the proper officers of Travaux, Inc. are hereby authorized and directed to properly execute said contract for and on behalf of Travaux, Inc.; and, be it

FURTHER RESOLVED, that if any extensions of the time of performance and change orders are needed, the Chairman or President may approve such request without any further action of Travaux Inc.; and, be it

FURTHER RESOLVED, that all acts previously performed, relative to this matter, by the Directors and the Present of Travaux, Inc., be and hereby are approved, ratified, and confirmed in all respects.

Attachments:

Project Description

Project Proforma

Draft of Construction Management Contract

Project Description

Highland Gardens is an existing senior independent living rental development totaling 114 rental units targeting senior residents over the age of 55 and/or adults with disabilities. The Highland Gardens site is located on the near west side of the City of Milwaukee on the northwest corner of the intersection of North 18th Street and West Juneau Avenue. More specifically, the subject site is located at 1818 West Juneau Avenue, Milwaukee, WI, approximately 0.8 miles west of the recently redeveloped Milwaukee Bucks “Deer District” and approximately 1.5 miles west of Milwaukee’s central business district.

The existing four-story buildings were originally constructed in 2004 as a low income public housing development whereby existing eligible tenants receive a federal rental subsidy from the US Department of Housing and Urban Development (“HUD”) in the form of Capital and Operations Funding under Section 9 of the United State Housing Act of 1937. The existing subject development is currently operating as LIHTC, Section 8, and Rental Assistance Demonstration (“RAD”) public housing conversion senior and/or disabled development whereby tenants are paying 30 percent of their adjusted gross income (“AGI”) as rent and must income qualify at or below the 80 percent area median income (“AMI”) level.



Project Proforma

See attached.

DRAFT

Highland Gardens

10/26/2023

Low-Income Housing Tax Credit Financial Analysis
WHEDA 2023 - 4% with State - General Set Aside

**Highland Gardens
PROJECT ASSUMPTIONS**

PROJECT INFORMATION

Project Name	Highland Gardens
Developer Name	HACM
Identity of Interest (USE DROPDOWN)	Yes - Buyer and Seller
City	Milwaukee
County (USE DROPDOWN)	Milwaukee
Set Aside (USE DROPDOWN)	General
Tenant Type (USE DROPDOWN)	Elderly
Credit % (USE DROPDOWN)	4% with State
Number of Units	114
LP Formation	
Year	2024
Month	7
Construction Start	
Year	2024
Month	7
Construction Period	13
Operations	
Year	2025
Month	9
Placed in Service Date	
Year	2025
Month	9
Starting Month of Depreciation	9
Starting Month of Lease-Up	9
Absorption Rate (Mos.)	5
Credit % - 70% PV	9.00%
Credit % - 30% PV	4.00%
QCT or DDA?	Yes
Construction Type (USE DROPDOWN)	Acquisition / Rehab
Building Type (USE DROPDOWN)	Elevator Building

FINANCING ASSUMPTIONS

WHEDA Construction - Tax Exempt	\$ 8,083,479
Interest Rate	6.30%
Term (Months)	24
WHEDA Construction - Taxable	\$ -
Interest Rate	6.90%
Term (Months)	24
Total WHEDA Construction Loan	\$ 10,611,101
Construction Loan - Max	\$ 10,611,101
Interest Rate	0.00%
Term (Months)	24
WHEDA Permanent Mortgage	\$ 2,527,622
Interest Rate	6.60%
Amortization	35
Term	35
Start Year	2026
Start Month	5
WHEDA Subordinate Debt	\$ -
Interest Rate	3.00%
Amortization	35
Term	17
Start Year	2026
Start Month	5
WHEDA Subdebt? (USE DROPDOWN)	No
WHEDA HTF	\$ -
Interest Rate	3.00%
Amortization	35
Term	19
Start Year	2024
Start Month	7
WHEDA HTF? (USE DROPDOWN)	Yes
GP Equity	\$ 100
Deferred Developer Fee	\$ 647,721
Interest Rate	0.00%
HACM Seller Note	\$ 8,550,000
Interest Rate	3.86%
Amortization	50
Term	50
Start Year	2024
Start Month	2
CMF	\$ -
Interest Rate	0.00%
Amortization	30
Term	30
Start Year	2
Start Month	2024

SYNDICATION INFORMATION

General Partner's Capital Contribution		
Entry Date:	Year	2024
	Month	7
	Day	1
Investor Combined Tax Rate		21.00%
Total Investor Capital		\$12,358,488
Federal LIHTC Investor Capital - PNC		8,731,894
State LIHTC Investor Capital - Sugar Creek		3,626,594
1st Contribution		
Closing	Date:	7/1/2024
20.00%	Fed LIHTC	1,746,379
	State LIHTC	725,319
	Total	\$2,471,698
2nd Contribution		
Completion	Date:	9/1/2025
65.00%	Fed LIHTC	5,675,731
	State LIHTC	2,357,286
	Total	\$8,033,017
3rd Contribution		
Perm Conversion	Date:	5/1/2026
13.76%	Fed LIHTC	1,201,672
	State LIHTC	499,087
	Total	\$1,700,759
4th Contribution		
8609's	Date:	5/1/2026
1.24%	Fed LIHTC	108,112
	State LIHTC	44,902
	Total	\$153,014
Price per Credit		
Federal Low Income Housing	\$	0.8375
State Low Income Housing	\$	0.7000
Developer Fee Pay-In Schedule		1,530,137
1st Contribution	25.00%	382,534
2nd Contribution	25.00%	382,534
3rd Contribution	40.00%	612,055
4th Contribution	10.00%	153,014

Percent of Ownership	
General Partner	0.01%
Investor	99.99%
Total	100.00%
Cash Flow Distribution	
General Partner	90.00%
Investor	10.00%
Total	100.00%
Income, Loss & Credits	
General Partner	0.01%
Investor	99.99%
Total	100.00%
Sale Proceeds Distribution	
General Partner	90.00%
Investor	10.00%
Total	100.00%

SOURCES OF FUNDS	Construction			Post Construction	Permanent										
WHEDA Permanent Mortgage				2,527,622		2,527,622									
Federal LIHTC Investor Capital - PNC		1,746,379		6,985,515		8,731,894									
State LIHTC Investor Capital - Sugar Creek		725,319		2,901,275		3,626,594									
GP Equity		100		-		100									
HACM Seller Note		8,550,000		-		8,550,000									
Deferred Developer Fee		-		647,721		647,721									
WHEDA Permanent Mortgage Available During Construction		2,527,622		(2,527,622)		-									
WHEDA Construction - Tax Exempt		8,083,479		(8,083,479)		-									
Total Sources Of Funds		21,632,898		2,451,032		24,083,931									
		0		0		0									
USES OF FUNDS	Construction			Post Construction	Total Permanent	Residential Building 27.5 Yr/SL	Personal Property 5 Yr/200%	Land Impr. 15 Yr/150%	Amortization	Non Depreciable/Amortizable	Eligible Basis				
Acquisition															
Land		1,250,000		-	1,250,000					1,250,000					
Purchase of Buildings		7,300,000		-	7,300,000	7,300,000				-	7,300,000				
Other Purchase of Bldgs & Land		-		-	-	-				-	-				
Construction Related Expenses															
<i>New Construction and Rehab</i>															
Hard / Construction Costs - Residential	\$ 68,637	7,824,671		-	7,824,671	7,824,671				-	7,824,671				
Hard / Construction Costs - Community Service Facility	\$ 307	35,000		-	35,000	35,000				-	35,000				
E - Equipment & Furnishings		-		-	-	-				-	-				
F - Special Construction and Demolition		-		-	-	-				-	-				
Accessory Buildings (Garage, storage, etc.)		-		-	-	-				-	-				
Other New Construction / Rehabilitation		-		-	-	-				-	-				
<i>Site Work Costs</i>															
Off Site - Site Work	\$ -	-		-	-	-				-	-				
On Site - Site Work		-		-	-	-				-	-				
Other Site Work		-		-	-	-				-	-				
<i>Contractor Fees</i>															
General Requirements	5.00%	392,984		-	392,984	392,984				-	392,984				
Contractor Overhead	2.00%	165,053		-	165,053	165,053				-	165,053				
Contractor Profit	5.00%	420,885		-	420,885	420,885				-	420,885				
Construction Supervision		-		-	-	-				-	-				
Contingency Funds															
Construction Contingency	10.00%	883,859		-	883,859	883,859				-	883,859				
Other Contingency		-		-	-	-				-	-				
Construction Period Expenses															
<i>Local or State Agency - Residential Related Fees and Expenses</i>															
Construction Loan Origination Fee - WHEDA	1.00%	82,485		-	82,485	-				82,485	-				
Construction Loan Origination Fee - Non WHEDA		-		-	-	-				-	-				
<i>Bond Related Expenses</i>															
Cost of Bond Issuance		-		-	-	-				-	-				
<i>Other Lender and Financing Related Expenses</i>															
Bridge Loan Fees and Expenses		-		-	-	-				-	-				
WHEDA Construction Loan Interest		585,493		-	585,493	456,092				129,401	456,092				
Other Construction Loan Interest		-		-	-	-				-	-				
Legal Fees - Miscellaneous		123,000		-	123,000	123,000				-	123,000				
<i>Other Construction Period Soft Costs</i>															
Construction Loan Credit Enhancement/LOC		-		-	-	-				-	-				
Construction Period Real Estate Taxes		21,909		-	21,909	21,909				-	21,909				
Title and Recording		35,000		-	35,000	35,000				-	35,000				
Construction Insurance		29,685		-	29,685	29,685				-	29,685				
Construction Liability Insurance		-		-	-	-				-	-				
Temporary Relocation Expenses	\$ 4,000	456,000		-	456,000	456,000				-	456,000				
Permanent Relocation Expenses		-		-	-	-				-	-				
Other Interim/Construction Costs		30,000		-	30,000	30,000				-	30,000				
Permanent Financing Expenses															
<i>Lender and Financing Related Expenses</i>															
Permanent Loan Origination Fee - Non WHEDA		-		-	-	-				-	-				
Permanent Loan Origination Fee - WHEDA	1.00%	25,276		-	25,276	-				25,276	-				
Permanent Loan Credit Enhancement		-		-	-	-				-	-				
Legal Fees - Real Estate	\$ 20,000	20,000		-	20,000	-				20,000	-				
Other Financing Fees and Expenses		15,500		-	15,500	-				15,500	-				
Architectural and Engineering Expenses															
Architect's Fee - Design		237,000		-	237,000	237,000				-	237,000				
Architect's Fee - Inspection/Supervision		-		-	-	-				-	-				
Engineering Costs		548,000		-	548,000	548,000				-	548,000				
Survey		86,900		-	86,900	86,900				-	86,900				
Other Architect and Engineering		40,000		-	40,000	40,000				-	40,000				
Syndication Fees & Expenses															
Organizational (Partnership)		30,000		-	30,000	-				30,000	-				
Tax Opinion		-		-	-	-				-	-				
Other Syndication Costs		-		-	-	-				-	-				
Capitalized Reserves															
Operating Reserve	6 Months			475,708	475,708	-				475,708	-				
Replacement Reserve		-		165,000	165,000	-				165,000	-				
Lease-up Operating Deficit		-		-	-	-				-	-				
Debt Service Reserve		-		-	-	-				-	-				
Capital Needs Reserve		-		-	-	-				-	-				
Other Reserves		-		-	-	-				-	-				
Escrows		-		-	-	-				-	-				
Other Capitalized Reserves		-		-	-	-				-	-				
Reports, Studies and Related Work															
Appraisal(s)		11,000		-	11,000	11,000				-	11,000				
Market Study		12,000		-	12,000	12,000				-	12,000				
Capital Needs Assessment Report		25,000		-	25,000	25,000				-	25,000				
Environmental Report		5,000		-	5,000	5,000				-	5,000				
Other Soft Costs															
Tax Credit Application Fee	\$ 2,000	2,000		-	2,000	-				2,000	-				
Tax Credit Allocation Fee		100,394		-	100,394	-				100,394	-				
Tax Credit Compliance Fee		6,270		-	6,270	-				6,270	-				
Water, Sewer, and Impact Fees		-		-	-	-				-	-				
Cost Certification / Accounting Fees		32,500		15,000	47,500	47,500				-	32,500				
Rent Up Marketing Expense		30,000		-	30,000	-				30,000	-				
Mortgage Payoff - N/A for Tax Credit Application		-		-	-	-				-	-				
Other Miscellaneous Costs		290,000		-	290,000	290,000				-	290,000				
Developer Earned Fees and Expenses															
Developer's Fee Received		382,534		1,795,324	2,177,858	2,177,858				-	2,177,858				
Developer Overhead		-		-	-	-				-	-				
Consultants		97,500		-	97,500	97,500				-	97,500				
Other Developer's Fees		-		-	-	-				-	-				
Total Uses Of Funds		\$ 21,632,898		\$ 2,451,032	\$ 24,083,931	\$ 21,751,896	\$ -	\$ -	\$ -	\$ 2,332,034	\$ 21,736,896				

RENTAL INCOME

Apartment Type	Tenancy Type	Bedroom Size	Number of Bathrooms	Net SF Per Unit	Number of Units	AMI Set Aside %	Unit Type	Monthly Net Rent	Total Monthly Net Rent	Rent \$ / SF	Monthly Utility	Monthly Gross Rent	Total Monthly Gross Rent	Max HTC Limit	95%		90%	
															% of Max HTC Limit	Estimated Market Rent	% of Max Market Rent	Estimated Market Rent
Apartment	Elderly	1 Bedroom		650	29	60%	Voucher	\$ 900	\$ 26,100	1.38	\$ -	900	\$ 26,100	\$ 1,062	84.75%	\$ 909	99.01%	
Apartment	Elderly	1 Bedroom		650	46	60%	Voucher	\$ 647	\$ 29,762	1.00	\$ -	647	\$ 29,762	\$ 1,062	60.92%	\$ 909	71.18%	
Apartment	Elderly	1 Bedroom		650	31	60%	Low Income	\$ 900	\$ 27,900	1.38	\$ -	900	\$ 27,900	\$ 1,062	84.75%	\$ 909	99.01%	
Apartment	Elderly	2 Bedroom		928	5	60%	Voucher	\$ 1,050	\$ 5,250	1.13	\$ -	1,050	\$ 5,250	\$ 1,275	82.35%	\$ 1,092	96.15%	
Apartment	Elderly	2 Bedroom		928	3	60%	Low Income	\$ 1,050	\$ 3,150	1.13	\$ -	1,050	\$ 3,150	\$ 1,275	82.35%	\$ 1,092	96.15%	
				76,324	114	60.00%		\$ 92,162.00				\$ 92,162.00						

Income Averaging 60.00%
 AHP 0.00%
 Applicable Fraction (AMI) 100.00%
 Applicable Fraction (Square Footage) 100.00%

Low Income Unit Statistics			
AMI %	# of Units	% of Units	Gross Annual Rental Income
20%	0	0.00%	\$ -
30%	0	0.00%	\$ -
40%	0	0.00%	\$ -
50%	0	0.00%	\$ -
60%	114	100.00%	\$ 1,105,944
70%	0	0.00%	\$ -
80%	0	0.00%	\$ -
Low Income Totals	114	100.00%	1,105,944
Market	0	0.00%	\$ -
Totals	114	100.00%	1,105,944

RESIDENTIAL INCOME

Base Net Residential Rent	\$ 1,105,944
Rent Increases	2.00%
Other Income Increases	2.00%
Residential Vacancy Loss	7.00%
Other Income (PUPM)	\$ 4.59
Other Income (annually)	\$ 6,279
Other Income Vacancy Loss - LIHTC	7.00%
EGI	\$ 1,034,368

CASH FLOW DISTRIBUTION

Asset Management Fee	8,550	3%
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Utility Allowance - ADD SOURCE + DATE

	Studio	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
Heating	0	0	0	0	0
Cooling	0	0	0	0	0
Cooking	0	0	0	0	0
Electricity	0	0	0	0	0
Hot Water	0	0	0	0	0
Other	0	0	0	0	0
	0	0	0	0	0

Other Income

	Explanation
Parking	\$ -
Laundry and Vending	6,279 Laundry Income
Misc. Income	0
Other	0
Total Other Income	\$ 6,279

ACQUISITION CREDIT

Acquisition price (Building and Land)	\$ 8,550,000
Less: Land & other non-depreciable costs	(1,250,000)
Less: Other	-
Adjusted Eligible Basis	\$ 7,300,000
Qualified Census Tract Adjustment Eligible Basis	100% \$ 7,300,000
Applicable Fraction (Low Inc. %)	100.00%
Qualified Basis	\$ 7,300,000
Credit Percentage (30% PV)	4.00%

Potential Annual Credit \$ 292,000

CONSTRUCTION / REHAB CREDIT

Eligible Building Basis	\$ 21,736,896
Less: Acquisition Price	(7,300,000)
Less: Federal Historic Tax Credit Allocation	-
Adjusted Eligible Basis	\$ 14,436,896
QCT or DDA Boost	130%
HFA Boost	100%
Allowed Boost	130%
Eligible Basis	\$ 18,767,965
Applicable Fraction (Low Inc. %)	100.00%
Qualified Basis	\$ 18,767,965
	4,331,069
Federal Credit Percentage	4.00%

Potential Annual Federal Credit \$ 750,719

State Credit Percentage 3.00%

Potential Annual State Credit \$ 563,039

STATE CREDIT ANALYSIS

Annual State Credit Calculated	\$ 855,039
Annual State Credit Reserved	855,039
Minimum Credit or Allocation	\$ 855,039
Bonus Credit - Energy Efficiency	8,550
Bonus Credit - Additional 30% Units	0
Allocation with Bonus	\$ 863,589
Reserved Annual Credit	\$ 863,561
Total State Credit	\$ 5,181,366
Investor Percentage	99.99%
	\$ 5,180,848
Price per Credit	0.700

State Tax Credit Equity Raised \$ 3,626,594

FEDERAL CREDIT ANALYSIS

	Federal Credit	State Fed Credit
Annual LIH Credit Calculated	\$ 1,042,719	\$ 1,042,719
Annual LIH Credit Reserved	1,042,719	1,042,719
Minimum Credit or Allocation	\$ 1,042,719	\$ 1,042,719
Bonus Credit - Energy Efficiency	0	
Bonus Credit - Additional 30% Units	0	
Allocation with Bonus	\$ 1,042,719	
Minimum Credit or Allocation	\$ 1,042,719	
Total Tax Credit	\$ 10,427,186	\$ 10,427,186
Investor Percentage	99.98%	0.01%
Tax Credits for Syndication	\$ 10,425,101	\$ 1,043
Price per Credit	0.838	0.838

Tax Credit Equity Raised \$ 8,731,021 \$ 873

	Annual Expense	Expense per Unit	% Effective Gross Income	
Rent Expenses		114		
Convention and Meeting	900.00	8	0.1%	
Management Consultants	0.00	0	0.0%	
Advertising / Marketing Expense	300.00	3	0.0%	
Other	0.00	0	0.0%	
Subtotal Rent Expense	1,200.00	11	0.1%	
Administrative Expenses				
Office Salaries	56,000.00	491	5.4%	
Office Expenses	3,019.00	26	0.3%	
Office or Model Apartment Rent	0.00	0	0.0%	
Management Fee - Residential Rents	51,426.40	451	5.0%	5.0%
Management Fee - Commercial Rents	0.00	0	0.0%	
Management Fee - Misc. Income	0.00	0	0.0%	0.0%
Manager / Superintendent Salaries	0.00	0	0.0%	
Administrative Rent - Free Unit	0.00	0	0.0%	
Legal Expenses - Project Only	2,148.00	19	0.2%	
Bookkeeping Fees / Accounting Services	21,330.00	187	2.1%	
Tax Credit Monitoring Fees	3,420.00	30	0.3%	
Bad Debt Expense	0.00	0	0.0%	
Other Administrative Expenses	13,960.00	122	1.3%	
Subtotal Administrative Expense	151,303.40	1,327	14.6%	
Utilities Expense				
Fuel Oil	0.00	0	0.0%	
Electricity	68,900.00	604	6.7%	
Water	13,050.00	114	1.3%	
Gas	110,500.00	969	10.7%	
Sewer	13,050.00	114	1.3%	
Owner Paid Amenities	0.00	0	0.0%	
Subtotal: Utilities Expense	205,500.00	1,803	19.9%	
Operating Maintenance Expense				
Payroll	68,432.00	600	6.6%	
Supplies	0.00	0	0.0%	
Contracts	5,000.00	44	0.5%	
Operating and Maintenance Rent Free Unit	0.00	0	0.0%	
Garbage and Trash Removal	39,996.00	351	3.9%	
Security Payroll / Contracts (incl taxes and benefits)	3,496.00	31	0.3%	
Security Rent Free Unit	0.00	0	0.0%	
Heating / Cooling Maintenance	3,180.00	28	0.3%	
Vehicle / Maintenance Equipment Operation & Repairs	4,732.00	42	0.5%	
Snow Removal	0.00	0	0.0%	
Misc. Operating & Maintenance Expenses	59,432.00	521	5.7%	
Subtotal: Operating Maintenance Expense	184,268.00	1,616	17.8%	
Taxes and Insurance				
Real Estate & Property Taxes	21,274.70	187	2.1%	
Property and Liability Insurance (Hazard)	41,004.00	360	4.0%	
Payroll Taxes - Project Share	0.00	0	0.0%	
Fidelity Bond Insurance	0.00	0	0.0%	
Workmen's Compensation	0.00	0	0.0%	
Health Insurance and Other Employee Benefits	33,334.00	292	3.2%	
Misc. Taxes, Licenses, Permits, and Insurance	93,995.90	825	9.1%	
Subtotal: Taxes and Insurance	189,608.60	1,663	18.3%	
Total Services Expense				
Dietary Services	0.00	0	0.0%	
Dietary Purchased Serv	0.00	0	0.0%	
Food	0.00	0	0.0%	
Registered Nurse Salary	0.00	0	0.0%	
Housekeeping Salary	0.00	0	0.0%	
Housekeeping Supply	0.00	0	0.0%	
Other Housekeeping	0.00	0	0.0%	
Medical Supplies	0.00	0	0.0%	
Medical Purchased Serv	0.00	0	0.0%	
Laundry / Linen	0.00	0	0.0%	
Laundry Salaries	0.00	0	0.0%	
Laundry Purchased Serv	0.00	0	0.0%	
Laundry Supplies	0.00	0	0.0%	
Medical Records Salary	0.00	0	0.0%	
Medical Records Supply	0.00	0	0.0%	
Med Records Purchased SERV	0.00	0	0.0%	
Recreation / Rehab	0.00	0	0.0%	
Activities Supplies	0.00	0	0.0%	
Activities Purchased Serv	0.00	0	0.0%	
Rehab Salaries	0.00	0	0.0%	
Rehab Supplies	0.00	0	0.0%	
Rehab Purchased Serv	0.00	0	0.0%	
Other Support Serv	0.00	0	0.0%	
Subtotal: Total Services Expense	0	0	0.0%	
Annual Replacement Reserves	34,200	300	3.3%	
Total Operating Expenses	\$ 766,080			
Per Unit Per Month	\$ 560			
OPEX OUTSIDE OF WHEDA RANGE				
Investor Asset Management Fee	\$ 8,550			

		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	TOTAL
INCOME																	
Gross Potential Income: (Excluding TIF & Other)	2.00%	\$ 1,105,944	\$ 1,128,063	\$ 1,150,624	\$ 1,173,637	\$ 1,197,109	\$ 1,221,052	\$ 1,245,473	\$ 1,270,382	\$ 1,295,790	\$ 1,321,705	\$ 1,348,140	\$ 1,375,102	\$ 1,402,604	\$ 1,430,656	\$ 1,459,270	\$ 19,125,551
Other Income Source	2.00%	6,279	6,405	6,533	6,663	6,797	6,933	7,071	7,213	7,357	7,504	7,654	7,807	7,963	8,123	8,285	108,587
Vacancy - Rental Income	-7.00%	(77,416)	(78,964)	(80,544)	(82,155)	(83,798)	(85,474)	(87,183)	(88,927)	(90,705)	(92,519)	(94,370)	(96,257)	(98,182)	(100,146)	(102,149)	(1,338,789)
Vacancy - Other Income	-7.00%	(440)	(448)	(457)	(466)	(476)	(485)	(495)	(505)	(515)	(525)	(536)	(547)	(557)	(569)	(580)	(7,601)
Total Vacancy		\$ (77,856)	\$ (79,413)	\$ (81,001)	\$ (82,621)	\$ (84,273)	\$ (85,959)	\$ (87,678)	\$ (89,432)	\$ (91,220)	\$ (93,045)	\$ (94,906)	\$ (96,804)	\$ (98,740)	\$ (100,715)	\$ (102,729)	\$ (1,346,390)
Effective Gross Income		1,034,368	1,055,055	1,076,156	1,097,679	1,119,633	1,142,025	1,164,866	1,188,163	1,211,926	1,236,165	1,260,888	1,286,106	1,311,828	1,338,065	1,364,826	17,887,748
EXPENSES																	
Rent Expense	3.00%	1,200	1,236	1,273	1,311	1,351	1,391	1,433	1,476	1,520	1,566	1,613	1,661	1,711	1,762	1,815	22,319
Management Fees	3.00%	51,426	52,969	54,558	56,195	57,881	59,617	61,406	63,248	65,145	67,100	69,113	71,186	73,322	75,521	77,787	956,475
Other Admin Expenses (Less Management Fee)	3.00%	99,877	102,873	105,960	109,138	112,412	115,785	119,258	122,836	126,521	130,317	134,226	138,253	142,401	146,673	151,073	1,857,604
Utilities Expense	3.00%	205,500	211,665	218,015	224,555	231,292	238,231	245,378	252,739	260,321	268,131	276,175	284,460	292,994	301,784	310,837	3,822,077
Operating and Maintenance Expense	3.00%	184,268	189,796	195,490	201,355	207,395	213,617	220,026	226,626	233,425	240,428	247,641	255,070	262,722	270,604	278,722	3,427,185
Real Estate and Personal Property Taxes	3.00%	21,275	21,913	22,570	23,247	23,945	24,663	25,403	26,165	26,950	27,759	28,591	29,449	30,333	31,243	32,180	395,686
Other Taxes and Insurance	3.00%	168,334	173,384	178,585	183,943	189,461	195,145	200,999	207,029	213,240	219,638	226,227	233,013	240,004	247,204	254,620	3,130,828
Service Expense	3.00%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Replacement Reserve	3.00%	34,200	35,226	36,283	37,371	38,492	39,647	40,837	42,062	43,324	44,623	45,962	47,341	48,761	50,224	51,731	636,083
Total Expenses		766,080	789,062	812,734	837,116	862,230	888,097	914,740	942,182	970,447	999,561	1,029,547	1,060,434	1,092,247	1,125,014	1,158,765	14,248,256
Net Operating Income		268,288	265,992	263,422	260,563	257,403	253,929	250,126	245,981	241,479	236,604	231,341	225,672	219,581	213,050	206,061	3,639,492
Debt Service - 1st Mortgage																	
WHEDA Permanent Mortgage		185,337	185,337	185,337	185,337	185,337	185,337	185,337	185,337	185,337	185,337	185,337	185,337	185,337	185,337	185,337	2,780,049
Total Debt Service		185,337	185,337	185,337	185,337	185,337	185,337	185,337	185,337	185,337	185,337	185,337	185,337	185,337	185,337	185,337	2,780,049
DSCR- 1st		1.448	1.435	1.421	1.406	1.389	1.370	1.350	1.327	1.303	1.277	1.248	1.218	1.185	1.150	1.112	
Cash Flow		82,951	80,656	78,085	75,226	72,066	68,592	64,790	60,645	56,143	51,268	46,004	40,335	34,245	27,714	20,725	859,443
Asset Management Fee	8,550	8,550	8,807	9,071	9,343	9,623	9,912	10,209	10,515	10,831	11,156	11,490	11,835	12,190	12,556	12,933	159,021
Cash Flow		74,401	71,849	69,014	65,883	62,443	58,680	54,580	50,129	45,312	40,112	34,514	28,500	22,054	15,158	7,792	700,423
DDF	647,721	74,401	71,849	69,014	65,883	62,443	58,680	54,580	50,129	45,312	40,112	34,514	20,803	-	-	-	647,721
<i>Interest Rate</i>	0%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
		573,320	501,471	432,456	366,573	304,130	245,450	190,869	140,740	95,428	55,316	20,803	-	-	-	-	-

Draft of Construction Management Contract

See attached.



AIA® Document A102® – 2017

Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

CONTRACT 23-006

AGREEMENT made effective as of the 9th day of November in the year 2023
(In words, indicate day, month and year.)

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

Highland Gardens LLC
c/o Housing Authority of the City of Milwaukee
809 North Broadway, 3rd Floor
Milwaukee, WI 53202

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

Travaux Inc.
c/o Housing Authority of the City of Milwaukee
809 North Broadway, 3rd Floor
Milwaukee, WI 53202

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

Highland Gardens
Located at 1818 West Juneau Avenue, Milwaukee, WI 53233
Rehabilitation of 114-unit apartment building and associated site improvements

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

Galbraith Carnahan Architects LLC
6404 West North Avenue
Wauwatosa, WI 53213

The Contractor's Designated Representative:
(Name, address and other information)

Warren B. Jones
Travaux Inc.
401 East Ogden Avenue
Milwaukee, WI 53202

The Architect's Designated Representative:
(Name, address and other information)

Joseph Galbraith
Galbraith Carnahan Architects LLC
6404 West North Avenue

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 A102™–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.

Init.

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User Notes:

(729100899)

Wauwatosa, WI 53213

The Owner's Designated Representative:
(Name, address and other information)

Willie L. Hines, Jr.
Highland Gardens LLC
c/o Housing Authority of the City of Milwaukee
809 North Broadway, 3rd Floor
Milwaukee, WI 53202

The Owner and Contractor agree as follows.



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TABLE OF ARTICLES

1	THE CONTRACT DOCUMENTS
2	THE WORK OF THIS CONTRACT
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4	DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
5	CONTRACT SUM
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16	ENUMERATION OF CONTRACT DOCUMENTS

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), HUD 5370 General Conditions of the Contract for Construction 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. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. The terms of AIA Document A201™-2017, General Conditions of the Contract for Construction (sometimes referred to herein as the "General Conditions") and the terms of HUD 5370 General Conditions of the Contract for Construction shall be construed and interpreted to the full extent possible to give effect to all such terms. In the event of any conflict between the terms, the terms of HUD 5370 General Conditions of the Contract for Construction shall govern and control. This Agreement may be amended only by written instrument signed by both the Owner and Contractor. An enumeration of the Contract Documents, other than a Modification, appears in Article 16.

ARTICLE 2 THE WORK OF THIS CONTRACT

§ 2.1 The Contractor shall perform the services described in this Article. The Contractor has identified a representative above authorized to act on behalf of the Contractor with respect to the Project.

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§ 2.1.2 General

§ 2.1.2.1 For purposes of Section 8.1.2 of the General Conditions, the date of means of the Work shall mean the date of commencement of the Construction Phase. The Construction Phase shall commence upon the Owner's issuance of a Notice to Proceed.

§ 2.1.2.2 The Contractor shall have the control over and charge of and shall be responsible for construction means, methods, techniques, sequences and procedures, and the safety precautions and programs in connection with the Work. The Contractor shall be responsible for its and its Subcontractor's failure to carry out the Work in accordance with the Contract Documents. The Contractor shall coordinate the sequence of the construction and the responsibilities of the Subcontractors and be responsible for the acts and omissions of the Subcontractors and their agents and employees.

§ 2.1.2.3 The Contractor shall monitor the Work of the Contractors, Subcontractors and suppliers, and coordinate their Work with the activities and responsibilities of the Architect, the Contractor, and the Owner to complete the Project in accordance with the Owner's objectives of cost, time and quality.

§ 2.1.2.4 The Contractor shall maintain a competent staff at the Project Site to coordinate and provide general direction of the Work and facilitate progress of the Contractors, Subcontractors and suppliers on the Project.

§ 2.1.2.5 The Contractor shall establish procedures for coordination among the Architect, Contractors, Subcontractors and suppliers and the Contractor with respect to all aspects of the Project and shall implement such procedures.

§ 2.1.2.6 The Contractor shall determine the adequacy of the Contractors', Subcontractors' and suppliers' personnel and equipment and the availability of materials and supplies to meet the schedule. The Contractor shall take appropriate action when requirements of a contract are not being met.

§ 2.1.2.7 If needed, the Contractor shall provide temporary construction office facility for use by Owner, Architect, and Contractor at the Project site.

§ 2.1.2.8 The Contractor shall manage the mobilization activities with the Subcontractors.

§ 2.1.2.9 The Contractor shall arrange for the delivery, storage, protection, and security of Owner-purchased materials, systems, and equipment that (a) are obtained or acquired through the Contractor or the Contractor's purchasing entity, or (b) are items to be installed by the Contractor.

§ 2.1.2.10 The Contractor shall provide assignment of responsibilities for temporary project facilities and equipment, materials and services for common use of the Contractor and the Subcontractors.

§ 2.2.1 Administration

§ 2.2.1.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or by other appropriate agreements with the Contractor. The Owner may designate specific persons from whom, or entities from which, the Contractor shall obtain bids. The Contractor shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Owner and Architect. The Owner shall then determine, with the advice of the Contractor and the Architect, which bids will be accepted. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection. The Contractor shall be responsible for the proper and complete performance of the Work in accordance with the terms and provisions of the Contract Documents, whether performed by the Contractor or by Subcontractors.

§ 2.2.1.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, the Contractor shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Contractor in Article 12.

§ 2.2.1.3 Intentionally omitted..

§ 2.2.1.5 The Contractor shall schedule and conduct meetings at which the Owner, Architect, Contractor and appropriate Subcontractors can discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Contractor shall prepare and promptly distribute minutes to the Owner and Architect.

§ 2.2.1.6 Upon the execution of this Agreement the Contractor shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of the General Conditions.

§ 2.2.1.7 The Contractor shall record the progress of the Project. On a quarterly basis, or otherwise as agreed to by the Owner, the Contractor shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Contractor shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, Work accomplished, number of workers on site, Subcontractors working on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 2.2.1.8 The Contractor shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Contractor shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its quarterly reports to the Owner and Architect, in accordance with Section 2.2.1.7 above.

§ 2.2.1.9 The Contractor shall receive, review and approve all certificates of insurance, lien waivers and similar information and shall forward copies, if requested, to the Architect and the Owner.

§ 2.2.1.10 The Contractor shall develop and implement a system for the preparation, review and processing of change orders, and shall recommend necessary or desirable changes to the Owner.

§ 2.2.1.11 In collaboration with the Architect, the Contractor shall establish and implement procedures for expediting the processing and approval of shop drawings and samples.

§ 2.2.1.12 The Contractor shall work with the Architect to prepare a punch-list of defective or incomplete work, and shall coordinate completion of punch-list items.

§ 2.2.1.13 The Contractor shall secure and transmit to the Owner all required warranties and lien waivers and turn over to the Owner all keys, manuals, record drawings and maintenance stocks. The Contractor shall coordinate the collection of the Contractor and Subcontractor field-annotated record drawings and shall mark up a consolidated print for the Architect's use.

§ 2.2.1.14 The Contractor shall prepare and deliver to the Owner a final accounting for all costs incurred.

ARTICLE 3 RELATIONSHIP OF THE PARTIES

The Contractor accepts the relationship of trust and confidence established with the Owner by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to use the Contractor's best efforts to perform the Work in an expeditious and economical manner consistent with the Owner's interests. All parties shall endeavor to promote harmony and cooperation among the Owner, Architect, Contractor and other persons and entities employed by the Owner for the Project.

ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 4.1 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:

Init.

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User Notes:

(729100899)

(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.

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

§ 4.3 Substantial Completion

§ 4.3.1 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.)

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

[X] By the following date: December 31, 2025

§ 4.3.2 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
NONE	

§ 4.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 4.3, liquidated damages, if any, shall be assessed as set forth in Section 5.1.6.

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Contractor’s performance of the Work as described in Article 2, the Owner shall pay the Contractor the Contract Sum in current funds for the Contractor’s performance of the Contract. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Contractor’s Fee.

§ 5.1.1 The Contractor’s Fee:

(State a lump sum, percentage of Cost of the Work, or other provision for determining the Contractor’s Fee.)

A lump sum of Four Hundred Forty-One Thousand, Nine Hundred Twenty-Nine and 00/100 Dollars (\$441,929.00), exclusive of Architect and Engineer fees, Owner’s FF&E, performance/payment bond, and builder’s risk insurance. Owner FF&E if incorporated into the budget as an allowance would be considered a portion of the Cost of Work for purposes of calculating the fee.

§ 5.1.2 Intentionally omitted.

§ 5.1.3 Intentionally omitted.

§ 5.1.4 Rental rates for Contractor-owned equipment shall not exceed eighty-five percent (85 %) of the rental rates listed in the latest edition of the Associated Equipment Distributors "green book" (a/k/a AED Green Book) of nationally averaged rates. Charges for equipment rented from third parties shall be the actual rental rates, but shall in no even exceed local market rates.

§ 5.1.5 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)
NONE		

§ 5.1.6

(Paragraphs deleted)
Intentionally omitted.

§ 5.1.7 Other:

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

§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The Contract Sum is guaranteed by the Contractor not to exceed Eight Million, Eight Hundred Thirty-Eight Thousand, Five Hundred Ninety-Three and 00/100 Dollars (\$8,838,593.00) Total, subject to additions and deductions by Change Order as provided in the Contract Documents. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner. Attached as Exhibit A is the Schedule of Values allocating the entire amount of the Guaranteed Maximum Price..

To the extent the actual sum of the Cost of the Work and the Contractor’s Fee are less than the final adjusted Guaranteed Maximum Price, such difference ("Savings") shall be shared between Owner and Contractor with Owner receiving 50% of the Savings and Contractor receiving 50% of the Savings. Contractor’s portion of the Savings shall be paid at the time final payment is due pursuant to the terms of the Contract Documents.

§ 5.2.2 Alternates

§ 5.2.2.1 Alternates, if any, included in the Guaranteed Maximum Price:

(Row deleted)

NONE

§ 5.2.2.2 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.)

(Row deleted)

NONE

§ 5.2.3 Allowances, if any, included in the Guaranteed Maximum Price:

(Identify each allowance.)

(Row deleted)

NONE

§ 5.2.4 Assumptions, if any, upon which the Guaranteed Maximum Price is based:

(Identify each assumption.)

The following items are excluded from the Guaranteed Maximum Price:

- Any alterations due to blower door testing results
- Exit signs
- Any parking lot work
- New monument sign
- Green roof replacement or modification
- Existing elevator renovation
- Work in existing elevators or shaft
- Refinishing of kitchen cabinets

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User Notes:

Painting of residential units
Replacement or painting of any doors
Hollow metal entrance door painting or refinishing
Hazardous materials (it is assumed that there are no hazardous materials)

§ 5.2.5 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 5.2.6 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in Section 5.2.4. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions contained in Section 5.2.4 and the revised Contract Documents.

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Article 7 of the General Conditions and any other applicable terms. The Contractor shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 6.2 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as they refer to "cost" and "fee," and not by Articles 5, 7 and 8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of the General Conditions and the term "costs" as used in Section 7.3.4 of the General Conditions shall have the meanings assigned to them in the General Conditions and shall not be modified by Sections 5.1 and 5.2, Sections 7.1 through 7.7, and Section 7.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.4 If no specific provision is made in Article 5 for adjustment of the Contractor's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Article 5 will cause substantial inequity to the Owner or Contractor, the Contractor's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 7 COSTS TO BE REIMBURSED

§ 7.1 Cost of the Work

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work and shall include only the items set forth in this Article 7. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Article 7.

§ 7.1.2 Where any cost is subject to the Owner's prior approval, the Contractor shall obtain such approval prior to incurring the cost.

§ 7.1.3 Intentionally omitted.

§ 7.2 Labor Costs

§ 7.2.1 Intentionally omitted.

§ 7.2.2 Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval.

§ 7.2.2.1

(Paragraphs deleted)
Intentionally omitted.

§ 7.2.3 Wages or salaries of the Contractor's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 7.2.4 Costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments, and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.2 through 7.2.3.

§ 7.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Contractor or paid to any Subcontractor or vendor, with the Owner's prior approval.

§ 7.3 Subcontract Costs

Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts.

§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 7.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Contractor shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Contractor at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal. The total rental cost of any Contractor-owned equipment and quantities of equipment shall be subject to Owner's prior approval.

§ 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 7.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

§ 7.5.5 That portion of the reasonable expenses of the Contractor's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 7.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 7.6 Miscellaneous Costs

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval

§ 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 7.6.1.2 Intentionally omitted.

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Contractor is liable and actually pays.

§ 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Contractor is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13.4.3 of AIA Document A201-2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents and the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents provided Contractor has given Owner notice and opportunity to defend; payments made in accordance with legal judgments against the Contractor resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Contractor's Fee or subject to the Guaranteed Maximum Price. However, such royalties, fees and costs are not part of the Cost of Work if Contractor knows that the required design process, or product is, or could be, an infringement of a copyright or patent and the Contractor fails to promptly furnish such information to the Architect.

§ 7.6.5.1 Intentionally omitted.

§ 7.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.

§ 7.6.7 Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 7.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Contractor, reasonably incurred by the Contractor after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 7.6.9 Subject to the Owner's prior written approval, expenses incurred in accordance with the Contractor's standard written personnel policy for relocation and temporary living allowances of the Contractor's personnel required for the Work.

§ 7.6.10 Costs of additional services or Work required in connection with repairs, removal or replacements necessitated by defects in materials and workmanship with the Owner's prior written approval, which shall not be unreasonably withheld.

§ 7.6.11 The cost of performing warranty work with the Owner's prior written approval, which shall not be unreasonably withheld.

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10.4 of AIA Document A201–2017.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Contractor, and only to the extent that the cost of repair or correction is not recovered by the Contractor from insurance, sureties, Subcontractors, suppliers, or others.

§ 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership or management with the Contractor; (2) any entity in which any stockholder in, or management employee of, the Contractor holds an equity interest in excess of ten percent in the aggregate; or (3) any entity which has the right to control the business or affairs of the Contractor. The term "Related Party" includes any member of the immediate family of any person identified above.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Contractor and a related party, the Contractor shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Contractor shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction in writing, the Contractor shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

ARTICLE 8 COSTS NOT TO BE REIMBURSED

§ 8.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 15;
- .2 Expenses of the Contractor's principal office and offices other than the site office;
- .3 Contractor and Subcontractors overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .4 The Contractor's and Subcontractor's capital expenses, including interest on the Contractor's and Subcontractor's capital employed for the Work;
- .5 Except as provided in Section 7.7.3 of this Agreement, costs due to the acts or omissions of the Contractor or Subcontractors, or failure of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill an obligation set forth in the Contract Documents;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.
- .8 Intentionally omitted.
- .9 Rental costs of machinery and equipment, except as specifically provided herein;
- .10 Costs of removing condemned or rejected materials, resulting from the acts or omissions of the Contractor or Subcontractor;
- .11 Costs in excess of the normal costs for permits and licenses to the extent such costs resulted from Contractor's or Subcontractor's failure to timely obtain permits and licenses required to be obtained by Contractor or Subcontractor;
- .12 Intentionally deleted;
- .13 Costs incurred as a result of any inspection or test which reveals nonconforming or defective work not performed in accordance with the Contract Documents;
- .14 The cost of fines and penalties, including interest thereon, assessed against Contractor or Subcontractor by any federal, state or local government or quasi-governmental authorities;
- .15 Any cost which would cause the Guaranteed Maximum Price to be exceeded, in which case the Contractor shall pay all such costs and indemnify and hold harmless Owner therefrom;
- .16 The cost of bonus and incentive plans for Contractor's executives.

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ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS

§ 9.1 Cash discounts obtained on payments made by the Contractor shall accrue to the Owner if (1) before making the payment, the Contractor included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be obtained.

§ 9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS

§ 10.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or other appropriate agreements with the Contractor. The Owner may designate specific persons from whom, or entities from which, the Contractor shall obtain bids. The Contractor shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Contractor shall deliver such bids to the Architect and Owner with an indication as to which bids the Contractor intends to accept. The Owner then has the right to review the Contractor's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 10.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Contractor of its responsibility to perform the Work in accordance with the Contract Documents. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.

§ 10.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Contractor; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Contractor may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 10.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Contractor shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Contractor in Article 11.

(Paragraphs deleted)

ARTICLE 11 ACCOUNTING RECORDS; RIGHT TO AUDIT

11.1 Contractor agrees to make, keep and maintain in accordance with the Owner's financial reporting requirements and generally accepted accounting principles and practices consistently applied, complete books, records, invoices and records of payments relating to the Work while it is being performed and for a period of seven (7) years following completion of the Work, or such longer time as required based on the Owner's funding requirements. Contractor shall further comply with any and all HUD reporting requirements.

11.2 Owner and Owner's lender shall have the right to examine and/or audit, either directly or through its authorized representatives or agents, during business hours and for a reasonable period of time, all nonfinancial records, correspondence, instructions, specifications, plans, drawings, receipts, manuals and memoranda insofar as they are pertinent to any question relating to an audit. This right of inspection shall not apply to trade secrets or other proprietary information properly designated or asserted as such, or to any documents protected in good faith by Attorney-Client or Attorney Work Product privileges provided such claim of Attorney-Client or Attorney Work Product privilege is not made for purposes of thwarting the intent of this Section.

11.3 Owner and Owner's lender shall be granted access to all of Contractor's internal audit information relating to this Agreement, including reports of corrective actions taken as a result of such audit, but access shall not be granted to (i) general financial records not related to this Agreement except as may be solely necessary to verify the audit; or (ii) documents or other items protected in good faith by Attorney-Client or Attorney Work Product privileges provided

such claim of Attorney-Client or Attorney Work Product privilege is not made for purposes of thwarting the intent of this Section.

11.4 Regardless of the time when the audit is conducted, in the seven year (or longer) audit period, if the audit determines overcharges by Contractor, Contractor shall repay Owner the amount of said overcharges.

ARTICLE 12 PAYMENTS

§ 12.1 Progress Payments

§ 12.1.1 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.

§ 12.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

§ 12.1.3 Payments are due and payable twenty-five (25) days from the date the Construction Manager's Pay Application is received by the Owner.

§ 12.1.4 Payments may be withheld from Construction Manager in accordance with Section 9.5.1 of the General Conditions.

§ 12.1.5 In exchange for final payment for all services and expenses under this Agreement, Construction Manager shall convey full and final lien waivers for its work under this Agreement and any of its consultants or subcontractors.

§ 12.1.5.1 Intentionally omitted.

§ 12.1.5.2 Intentionally omitted.

§ 12.1.5.3 Intentionally omitted.

§ 12.1.6 Provided that Owner has made payments of the amounts due to Construction Manager under this Agreement, Construction Manager shall keep the Project Site free from any liens by Construction Manager or any person or entity retained by Construction Manager, or their respective assigns. If, because of any act or omission of Construction Manager or anyone claiming through or under Construction Manager, any mechanic's or other lien, encumbrance or order is filed against Owner or the Project Site, Construction Manager shall, at Construction Manager's own cost and expense, cause the same to be canceled, bonded-over and discharged of record promptly after receiving notice thereof, and shall indemnify and hold Owner harmless from and against all costs, expenses, claims, losses or damages, including reasonable attorneys' fees, resulting therefrom or by reason thereof. No Uniform Commercial Code (UCC) or similar state statutory filings shall be made by Construction Manager, except upon express written consent of Owner.

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

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of the General Conditions. Contractor shall provide accounting documentation as proof of costs incurred for that portion of the Work that the Contractor self-performs and for all material/equipment expenses. For subcontracts that were competitively bid, the Guaranteed Maximum Price shall be determined by the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work. For subcontracts that were not competitively bid, accounting documentation shall be provided as proof of costs incurred for that portion of the Work;

- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Contractor's Fee, less retainage of five percent (5%) until project completion. The Contractor's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage equal to the amount in the agreement between the Contractor and Subcontractor;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Contractor in the documentation required by Section 12.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of the General Conditions.

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

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
- .4 The Contractor's Fee, computed upon the Cost of the Work described in the preceding Sections 12.1.7.1.1 and 12.1.7.1.2 at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 12.1.7.1.1 and 12.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

§ 12.1.7.2 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;
- .5 The shortfall, if any, indicated by the Contractor in the documentation required by Section 12.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 12.1.8.

§ 12.1.8 Except with the Owner's prior approval, payments to Subcontractors shall be subject to retention of not less than five percent (5%) up to the time the Work is fifty percent (50%) complete and then zero percent (0%) thereafter which amount shall be reduced consistent with the reduction in Section 12.1.7.4. The Owner and Contractor shall agree upon a mutually acceptable procedure for review and approval of payments and retention for Subcontracts and, when necessary, shall adjust the percentage of retainage held on Subcontracts to a mutually agreeable amount.

(Paragraphs deleted)

§ 12.1.9 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.

Init.

§ 12.1.10 In taking action on the Contractor's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 12.1.11 No payment under this Agreement, either final or progress, shall release the Contractor from any obligation under the Contract Documents.

§ 12.1.12 The Owner reserves the right to withhold, on account of subsequently discovered evidence, subsequent observations or otherwise, the whole or any part of any payment which would otherwise be due under this Agreement, to such extent as (a) the Owner may have any claim or offset against the Contractor and/or (b) the Owner, in its reasonable opinion, has a loss or shall consider necessary to protect itself from loss because of any of the items enumerated in Section 9.5.1 of the General Conditions.

§ 12.2 Final Payment

§ 12.2.1 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 12.2 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Contractor has submitted a final accounting for the Cost of the Work and a final Application for Payment, which documents have been reviewed by Owner's representative; and
- .3 a final Certificate for Payment has been issued by the Architect.

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:

§ 12.2.2 The amount of the final payment shall be calculated as follows:

- .1 Take the sum of the Cost of the Work substantiated by the Contractor's final accounting and the Contractor's Fee, but not more than the Guaranteed Maximum Price.
- .2 Subtract amounts, if any, for which the Architect withholds, in whole or in part, a final Certificate for Payment as provided in Section 9.5 of the General Conditions or other provisions of the Contract Documents.
- .3 Subtract the aggregate of previous payments made by the Owner.

§ 12.2.2.1 Intentionally omitted.

§ 12.2.2.2 Intentionally omitted.

§ 12.2.2.3 The Owner's auditors will review and report in writing on the Contractor's final accounting within 30 days after delivery of the final accounting to the Architect by the Contractor. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Contractor's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the General Conditions. The time periods stated in this Section supersede those stated in Section 9.4.1 of the General Conditions. The Architect is not responsible for verifying the accuracy of the Contractor's final accounting.

§ 12.2.3 Intentionally omitted.

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§ 12.2.4 If, subsequent to final payment, and at the Owner's request, the Contractor incurs costs, described in Section Article 7 and not excluded by Article 8, to correct defective or nonconforming Work, the Owner shall reimburse the Contractor for such costs, and the Contractor's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 5.1.7, the amount of those adjustments shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Contractor.

§ 12.3 Interest

(Paragraphs deleted)

Amounts unpaid thirty (30) days from the Owner's receipt of the Construction Manager's approved Pay Application shall bear interest at twelve percent (12%) per annum

ARTICLE 13 DISPUTE RESOLUTION

§ 13.1

(Paragraphs deleted)

Any Claim between the Owner and Contractor shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of the General Conditions

§ 13.2

(Paragraphs deleted)

Intentionally Omitted.

ARTICLE 14 TERMINATION OR SUSPENSION

§ 14.1 Termination

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

(Paragraphs deleted)

§ 14.1.1.2 If the Owner terminates the Contract for convenience, the amount payable to the Contractor pursuant to Section 14.4.3 of the General Conditions shall not exceed the amount the Contractor would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 14.1.1.3 If the Contractor terminates the Contract the amount payable to the Contractor under Section 14.1.3 of the General Conditions shall not exceed the amount the Contractor would otherwise have received under Sections 10.1.2 and 10.1.3 above.

§ 14.2 Suspension

The Work may be suspended by the Owner as provided in Section 14.3 of the General Conditions; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of the General Conditions, except that the term "Contract Sum" in that Section shall be understood to mean the Cost of the Work and the term "profit" shall be understood to mean the Contractor's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 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.

§ 15.2 The Owner's representative:

(Paragraphs deleted) The Owner's Representative shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. This representative shall have the authority to make decisions on behalf of the Owner concerning estimates and schedules, construction budgets, and changes in the Work, and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Contractor. Except as otherwise provided in Section 4.2.1 of the General Conditions, the Architect does not have such authority.

§ 15.3

(Paragraphs deleted)

Intentionally omitted.

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

§ 15.5 Insurance and Bonds

§ 15.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in Article 11 of the General Conditions.

§ 15.5.2 Intentionally omitted.

§ 15.6

(Paragraphs deleted)

Intentionally omitted.

§ 15.7 Other provisions:

§ 15.1.7.1 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials. The Contractor shall, if requested by Owner, assist Owner in furnishing such tests, inspections and reports as the Owner may deem necessary.

§ 15.1.7.2 During the Construction Phase, the Owner shall furnish information or services reasonably required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 15.1.7.3 The Contractor, when such services are reasonably required by the scope of the Project and are requested and approved by Owner, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 15.1.7.4 The Owner shall furnish information or services reasonably required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 15.1.7.5 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 15.1.7.6 Architect. The Owner shall retain an Architect to provide services, duties and responsibilities, including any additional services requested by the Contractor that are necessary for the Construction Phase services under this Agreement. The Owner shall provide the Contractor a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

Governing Law

§ 15.1.7.7 The Contract shall be governed by the law of the State of Wisconsin.

§ 15.1.7.8 Assignment

The Owner and Contractor, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Contractor shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.1 of the General Conditions, neither party to the Contract shall assign the Contract as a whole without written consent of the

other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

SCOPE OF THE AGREEMENT

§ 15.1.7.9 This Agreement represents the entire and integrated agreement between the Owner and the Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Contractor.

ARTICLE 16 ENUMERATION OF CONTRACT DOCUMENTS

§ 16.1 This Agreement is comprised of the following documents:

- .1 AIA Document A102™–2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 Intentionally omitted
- .3 AIA Document A201™–2017, General Conditions of the Contract for Construction, as modified
- .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.)

NOT USED

.5 Intentionally omitted
(Row deleted)

(Paragraph deleted)

.6 Intentionally omitted
(Row deleted)

(Paragraph deleted)

.7 Intentionally omitted
(Row deleted)

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 16.

- .8 Other Exhibits:
(Check all boxes that apply.)

(Paragraphs deleted)

Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
HUD-5370	General Conditions for Construction Contracts – Public Housing Programs	01/2014 exp11/30/2023	19

- .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.)

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- A – Specifications Project Manual Table of Contents, dated xx/xx/xxxx
- B – Drawings Cover Sheet and Index (General and Elevators), dated xx/xx/xxxx
- C – Scope Narrative, dated xx/xx/xxxx
- D – Itemized Statement of the Guaranteed Maximum Price, dated xx/xx/xxxx
- E – Construction Schedule, dated xx/xx/xxxx



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User Notes:

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

HIGHLAND GARDENS LLC
A Wisconsin Limited Liability Company

TRAVAUX INC.

By: Highland Gardens Development LLC
A Wisconsin Limited Liability Company,
its Manager

By: Housing Authority of the City of Milwaukee
A Wisconsin Public Body Corporate and Politic,
its Manager

OWNER *(Signature)*

Willie L. Hines, Jr.
Secretary-Executive Director
(Printed name and title)

CONTRACTOR *(Signature)*

Willie L. Hines, Jr.
President
(Printed name and title)

Additions and Deletions Report for **AIA® Document A102® – 2017**

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 15:38:28 ET on 10/30/2023.

PAGE 1

CONTRACT 23-006

AGREEMENT made effective as of the 9th day of November in the year 2023

...

Highland Gardens LLC
c/o Housing Authority of the City of Milwaukee
809 North Broadway, 3rd Floor
Milwaukee, WI 53202

...

Travaux Inc.
c/o Housing Authority of the City of Milwaukee
809 North Broadway, 3rd Floor
Milwaukee, WI 53202

...

Highland Gardens
Located at 1818 West Juneau Avenue, Milwaukee, WI 53233
Rehabilitation of 114-unit apartment building and associated site improvements

...

(Name, legal status, address and other information)

Galbraith Carnahan Architects LLC
6404 West North Avenue
Wauwatosa, WI 53213

The Contractor's Designated Representative:
(Name, address and other information)

Warren B. Jones
Travaux Inc.
401 East Ogden Avenue
Milwaukee, WI 53202

The Architect's Designated Representative:
(Name, address and other information)

Joseph Galbraith
Calbraith Carnahan Architects LLC
6404 West North Avenue
Wauwatosa, WI 53213

The Owner's Designated Representative:
(Name, address and other information)

Willie L. Hines, Jr.
Highland Gardens LLC
c/o Housing Authority of the City of Milwaukee
809 North Broadway, 3rd Floor
Milwaukee, WI 53202

The Owner and Contractor agree as follows.

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16 ENUMERATION OF CONTRACT DOCUMENTS

EXHIBIT A — INSURANCE AND BONDS

...

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), HUD 5370 General Conditions of the Contract for Construction 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. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. The terms of AIA Document A201™–2017, General Conditions of the Contract for Construction (sometimes referred to herein as the "General Conditions") and the terms of HUD 5370 General Conditions of the Contract for Construction shall be construed and interpreted to the full extent possible to give effect to all such terms. In the event of any conflict between the terms, the terms of HUD 5370 General Conditions of the Contract for Construction shall govern and control. This Agreement may be amended only by written instrument signed by both the Owner and Contractor. An enumeration of the Contract Documents, other than a Modification, appears in Article 16.

...

~~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.~~ § 2.1 The Contractor shall perform the services described in this Article. The Contractor has identified a representative above authorized to act on behalf of the Contractor with respect to the Project.

§ 2.1.2 General

§ 2.1.2.1 For purposes of Section 8.1.2 of the General Conditions, the date of means of the Work shall mean the date of commencement of the Construction Phase. The Construction Phase shall commence upon the Owner's issuance of a Notice to Proceed.

§ 2.1.2.2 The Contractor shall have the control over and charge of and shall be responsible for construction means, methods, techniques, sequences and procedures, and the safety precautions and programs in connection with the Work. The Contractor shall be responsible for its and its Subcontractor's failure to carry out the Work in accordance with the Contract Documents. The Contractor shall coordinate the sequence of the construction and the responsibilities of the Subcontractors and be responsible for the acts and omissions of the Subcontractors and their agents and employees.

§2.1.2.3 The Contractor shall monitor the Work of the Contractors, Subcontractors and suppliers, and coordinate their Work with the activities and responsibilities of the Architect, the Contractor, and the Owner to complete the Project in accordance with the Owner’s objectives of cost, time and quality.

§ 2.1.2.4 The Contractor shall maintain a competent staff at the Project Site to coordinate and provide general direction of the Work and facilitate progress of the Contractors, Subcontractors and suppliers on the Project.

§ 2.1.2.5 The Contractor shall establish procedures for coordination among the Architect, Contractors, Subcontractors and suppliers and the Contractor with respect to all aspects of the Project and shall implement such procedures.

§ 2.2.1.6 The Contractor shall determine the adequacy of the Contractors’, Subcontractors’ and suppliers’ personnel and equipment and the availability of materials and supplies to meet the schedule. The Contractor shall take appropriate action when requirements of a contract are not being met.

§ 2.1.2.7 If needed, the Contractor shall provide temporary construction office facility for use by Owner, Architect, and Contractor at the Project site.

§ 2.1.2.8 The Contractor shall manage the mobilization activities with the Subcontractors.

§ 2.1.2.9 The Contractor shall arrange for the delivery, storage, protection, and security of Owner-purchased materials, systems, and equipment that (a) are obtained or acquired through the Contractor or the Contractor’s purchasing entity, or (b) are items to be installed by the Contractor.

§ 2.1.2.10 The Contractor shall provide assignment of responsibilities for temporary project facilities and equipment, materials and services for common use of the Contractor and the Subcontractors.

§ 2.2.1 Administration

§ 2.2.1.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor’s own personnel shall be performed under subcontracts or by other appropriate agreements with the Contractor. The Owner may designate specific persons from whom, or entities from which, the Contractor shall obtain bids. The Contractor shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Owner and Architect. The Owner shall then determine, with the advice of the Contractor and the Architect, which bids will be accepted. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection. The Contractor shall be responsible for the proper and complete performance of the Work in accordance with the terms and provisions of the Contract Documents, whether performed by the Contractor or by Subcontractors.

§ 2.2.1.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, the Contractor shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Contractor in Article 12.

§ 2.2.1.3 Intentionally omitted..

§ 2.2.1.5 The Contractor shall schedule and conduct meetings at which the Owner, Architect, Contractor and appropriate Subcontractors can discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Contractor shall prepare and promptly distribute minutes to the Owner and Architect.

§ 2.2.1.6 Upon the execution of this Agreement the Contractor shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of the General Conditions.

§ 2.2.1.7 The Contractor shall record the progress of the Project. On a quarterly basis, or otherwise as agreed to by the Owner, the Contractor shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Contractor shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, Work

accomplished, number of workers on site, Subcontractors working on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 2.2.1.8 The Contractor shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Contractor shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its quarterly reports to the Owner and Architect, in accordance with Section 2.2.1.7 above.

§ 2.2.1.9 The Contractor shall receive, review and approve all certificates of insurance, lien waivers and similar information and shall forward copies, if requested, to the Architect and the Owner.

§ 2.2.1.10 The Contractor shall develop and implement a system for the preparation, review and processing of change orders, and shall recommend necessary or desirable changes to the Owner.

§ 2.2.1.11 In collaboration with the Architect, the Contractor shall establish and implement procedures for expediting the processing and approval of shop drawings and samples.

§ 2.2.1.12 The Contractor shall work with the Architect to prepare a punch-list of defective or incomplete work, and shall coordinate completion of punch-list items.

§ 2.2.1.13 The Contractor shall secure and transmit to the Owner all required warranties and lien waivers and turn over to the Owner all keys, manuals, record drawings and maintenance stocks. The Contractor shall coordinate the collection of the Contractor and Subcontractor field-annotated record drawings and shall mark up a consolidated print for the Architect's use.

§ 2.2.1.14 The Contractor shall prepare and deliver to the Owner a final accounting for all costs incurred.

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The Contractor accepts the relationship of trust and confidence established with the Owner by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient ~~business administration~~ construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to use the Contractor's best efforts to perform the Work in an expeditious and economical manner consistent with the Owner's interests. ~~The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.~~ All parties shall endeavor to promote harmony and cooperation among the Owner, Architect, Contractor and other persons and entities employed by the Owner for the Project.

...

A date set forth in a notice to proceed issued by the Owner.

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By the following date: December 31, 2025

...

NONE

...

~~ARTICLE 5 — CONTRACT SUM~~

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 The For the Contractor's performance of the Work as described in Article 2, the Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Contractor's Fee.

...

A lump sum of Four Hundred Forty-One Thousand, Nine Hundred Twenty-Nine and 00/100 Dollars (\$441,929.00), exclusive of Architect and Engineer fees, Owner's FF&E, performance/payment bond, and builder's risk insurance. Owner FF&E if incorporated into the budget as an allowance would be considered a portion of the Cost of Work for purposes of calculating the fee.

§ 5.1.2 The method of adjustment of the Contractor's Fee for changes in the Work:
Intentionally omitted.

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:
Intentionally omitted.

§ 5.1.4 Rental rates for Contractor-owned equipment shall not exceed ~~percent (—%)~~ eighty-five percent (85%) of the standard rental rate paid at the place of the Project. eighty-five percent (85%) of the rental rates listed in the latest edition of the Associated Equipment Distributors "green book" (a/k/a AED Green Book) of nationally averaged rates. Charges for equipment rented from third parties shall be the actual rental rates, but shall in no even exceed local market rates.

...

NONE

§ 5.1.6 ~~Liquidated damages, if any:~~
~~(Insert terms and conditions for liquidated damages, if any.)~~

Intentionally omitted.
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§ 5.2.1 The Contract Sum is guaranteed by the Contractor not to exceed (~~\$—~~), Eight Million, Eight Hundred Thirty-Eight Thousand, Five Hundred Ninety-Three and 00/100 Dollars (\$8,838,593.00) Total, subject to additions and deductions by Change Order as provided in the Contract Documents. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner. Attached as Exhibit A is the Schedule of Values allocating the entire amount of the Guaranteed Maximum Price..

To the extent the actual sum of the Cost of the Work and the Contractor's Fee are less than the final adjusted Guaranteed Maximum Price, such difference ("Savings") shall be shared between Owner and Contractor with Owner receiving 50% of the Savings and Contractor receiving 50% of the Savings. Contractor's portion of the Savings shall be paid at the time final payment is due pursuant to the terms of the Contract Documents.

...

Item	Price
<u>NONE</u>	

...

Item	Price	Conditions for Acceptance
<u>NONE</u>		

...

Item

Price

NONE

...

The following items are excluded from the Guaranteed Maximum Price:

Any alterations due to blower door testing results

Exit signs

Any parking lot work

New monument sign

Green roof replacement or modification

Existing elevator renovation

Work in existing elevators or shaft

Refinishing of kitchen cabinets

Painting of residential units

Replacement or painting of any doors

Hollow metal entrance door painting or refinishing

Hazardous materials (it is assumed that there are no hazardous materials)

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§ 6.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work may be determined by any of the methods listed in Article 7 of AIA Document A201™-2017, General Conditions of the Contract for Construction. The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Article 7 of the General Conditions and any other applicable terms. The Contractor shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

...

§ 6.3 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201-2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Contractor's Fee as defined in Section 5.1.1 of this Agreement. ~~subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee),~~ the terms "cost" and "fee" as used in Section 7.3.3.3 of the General Conditions and the term "costs" as used in Section 7.3.4 of the General Conditions shall have the meanings assigned to them in the General Conditions and shall not be modified by Sections 5.1 and 5.2, Sections 7.1 through 7.7, and Section 7.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

...

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the ~~Work~~ Work and shall include only the items set forth in this Article 7. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in ~~this Article 7.~~ Article 7.

§ 7.1.2 ~~Where, pursuant to the Contract Documents,~~ Where any cost is subject to the Owner's prior approval, the Contractor shall obtain such approval ~~in writing~~ prior to incurring the cost.

§ 7.1.3 ~~Costs shall be at rates not higher than the standard paid at the place of the Project, except with prior approval of the Owner.~~ Intentionally omitted.

...

~~§ 7.2.1 Wages or salaries of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.~~ Intentionally omitted.

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~~§ 7.2.2.1 Wages or salaries of the Contractor's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:~~

~~(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)~~

Intentionally omitted.

~~§ 7.2.3 Wages or salaries of the Contractor's supervisory or administrative personnel engaged at factories, workshops or while traveling, on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.~~

~~§ 7.2.4 Costs paid or incurred by the Contractor, as required by law or collective bargaining agreements, Contractor for taxes, insurance, contributions, assessments, and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections ~~7.2.1-7.2.2~~ through 7.2.3.~~

~~§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification. Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Contractor or paid to any Subcontractor or vendor, with the Owner's prior approval.~~

...

~~Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.~~ subcontracts.

...

~~§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Contractor at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Contractor, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item. removal. The total rental cost of any Contractor-owned equipment and quantities of equipment shall be subject to Owner's prior approval.~~

...

~~§ 7.5.4 Costs of the Contractor's site office, including general office equipment and supplies, document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.~~

~~§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval. That portion of the reasonable expenses of the Contractor's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.~~

~~§ 7.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.~~

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§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval

§ 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 7.6.1.2 ~~Costs for insurance through a captive insurer owned or controlled by the Contractor, with the Owner's prior approval.~~Intentionally omitted.

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Contractor is ~~liable.~~liable and actually pays.

...

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13-13.4.3 of AIA Document A201-2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 ~~Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents. Documents and the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents provided Contractor has given Owner notice and opportunity to defend; payments made in accordance with legal judgments against the Contractor resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Contractor's Fee or subject to the Guaranteed Maximum Price. However, such royalties, fees and costs are not part of the Cost of Work if Contractor knows that the required design process, or product is, or could be, an infringement of a copyright or patent and the Contractor fails to promptly furnish such information to the Architect.~~

§ 7.6.5.1 ~~The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Contractor resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Contractor had reason to believe that the required design, process or product was an infringement of a copyright or a patent, and the Contractor failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201-2017. The costs of legal defenses, judgments, and settlements, shall not be included in the Cost of the Work used to calculate the Contractor's Fee or subject to the Guaranteed Maximum Price.~~Intentionally omitted.

§ 7.6.6 ~~Costs for communications services, electronic equipment, electronic equipment and software, directly related to the Work and located at the site, with the Owner's prior approval.~~

§ 7.6.7 ~~Costs of document reproductions and delivery charges. Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility in the Contract Documents.~~

§ 7.6.8 ~~Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility in the Contract Documents. Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Contractor, reasonably incurred by the Contractor after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.~~

§ 7.6.9 ~~Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Contractor, reasonably incurred by the Contractor after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld. Subject to the Owner's prior written approval, expenses incurred in accordance with the Contractor's standard written personnel policy for relocation and temporary living allowances of the Contractor's personnel required for the Work.~~

~~§ 7.6.10 Expenses incurred in accordance with the Contractor's standard written personnel policy for relocation and temporary living allowances of the Contractor's personnel required for the Work, with the Owner's prior approval. Costs of additional services or Work required in connection with repairs, removal or replacements necessitated by defects in materials and workmanship with the Owner's prior written approval, which shall not be unreasonably withheld.~~

~~§ 7.6.11 That portion of the reasonable expenses of the Contractor's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work. The cost of performing warranty work with the Owner's prior written approval, which shall not be unreasonably withheld.~~

...

~~§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval. Work if, and to the extent, approved in advance in writing by the Owner.~~

~~§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10-10.4 of AIA Document A201-2017.~~

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~~§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, or management with the Contractor; (2) any entity in which any stockholder in, or management employee of, the Contractor holds an equity interest in excess of ten percent in the aggregate; or (3) any entity which has the right to control the business or affairs of the Contractor; or (4) any person, or Contractor. The term "Related Party" includes any member of the immediate family of any person, who has the right to control the business or affairs of the Contractor-person identified above.~~

~~§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Contractor and a related party, the Contractor shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Contractor shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 10-Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction in writing, the Contractor shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 10-Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.~~

...

- ~~.2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Contractor or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;~~
- ~~.3 Expenses of the Contractor's principal office and offices other than the site office;~~
- ~~.4 Overhead. 3 Contractor and Subcontractors overhead and general expenses, except as may be expressly included in Article 7; Sections 7.1 to 7.7;~~
- ~~.5 4 The Contractor's and Subcontractor's capital expenses, including interest on the Contractor's and Subcontractor's capital employed for the Work;~~
- ~~.6 5 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Contractor, Subcontractors, and suppliers, acts or omissions of the Contractor or Subcontractors, or failure of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable; liable to fulfill an obligation set forth in the Contract Documents;~~
- ~~.7 6 Any cost not specifically and expressly described in Article 7; and Sections 6.1 to 6.7;~~
- ~~.8 7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.~~
- ~~.8 Intentionally omitted.~~
- ~~.9 Rental costs of machinery and equipment, except as specifically provided herein;~~
- ~~.10 Costs of removing condemned or rejected materials, resulting from the acts or omissions of the~~

- Contractor or Subcontractor:
- .11 Costs in excess of the normal costs for permits and licenses to the extent such costs resulted from Contractor's or Subcontractor's failure to timely obtain permits and licenses required to be obtained by Contractor or Subcontractor;
 - .12 Intentionally deleted;
 - .13 Costs incurred as a result of any inspection or test which reveals nonconforming or defective work not performed in accordance with the Contract Documents;
 - .14 The cost of fines and penalties, including interest thereon, assessed against Contractor or Subcontractor by any federal, state or local government or quasi-governmental authorities;
 - .15 Any cost which would cause the Guaranteed Maximum Price to be exceeded, in which case the Contractor shall pay all such costs and indemnify and hold harmless Owner therefrom;
 - .16 The cost of bonus and incentive plans for Contractor's executives.

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§ 9.1 Cash discounts obtained on payments made by the Contractor shall accrue to the Owner if (1) before making the payment, the Contractor included ~~the amount to be paid, less such discount, them~~ in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be obtained.

...

ARTICLE 11 — ACCOUNTING RECORDS

~~The Contractor shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Contractor's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Contractor shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.~~

ARTICLE 11 ACCOUNTING RECORDS; RIGHT TO AUDIT

11.1 Contractor agrees to make, keep and maintain in accordance with the Owner's financial reporting requirements and generally accepted accounting principles and practices consistently applied, complete books, records, invoices and records of payments relating to the Work while it is being performed and for a period of seven (7) years following completion of the Work, or such longer time as required based on the Owner's funding requirements. Contractor shall further comply with any and all HUD reporting requirements.

11.2 Owner and Owner's lender shall have the right to examine and/or audit, either directly or through its authorized representatives or agents, during business hours and for a reasonable period of time, all nonfinancial records, correspondence, instructions, specifications, plans, drawings, receipts, manuals and memoranda insofar as they are pertinent to any question relating to an audit. This right of inspection shall not apply to trade secrets or other proprietary information properly designated or asserted as such, or to any documents protected in good faith by Attorney-Client or Attorney Work Product privileges provided such claim of Attorney-Client or Attorney Work Product privilege is not made for purposes of thwarting the intent of this Section.

11.3 Owner and Owner's lender shall be granted access to all of Contractor's internal audit information relating to this Agreement, including reports of corrective actions taken as a result of such audit, but access shall not be granted to (i) general financial records not related to this Agreement except as may be solely necessary to verify the audit; or (ii) documents or other items protected in good faith by Attorney-Client or Attorney Work Product privileges provided such claim of Attorney-Client or Attorney Work Product privilege is not made for purposes of thwarting the intent of this Section.

11.4 Regardless of the time when the audit is conducted, in the seven year (or longer) audit period, if the audit determines overcharges by Contractor, Contractor shall repay Owner the amount of said overcharges.

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

month.

§ 12.1.3 ~~Provided that an Application for Payment is received by the Architect not later than the day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the day of the 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 () days after the Architect receives the Application for Payment. (Federal, state or local laws may require payment within a certain period of time.)~~ Payments are due and payable twenty-five (25) days from the date the Construction Manager's Pay Application is received by the Owner.

§ 12.1.4 ~~With each Application for Payment, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee.~~ Payments may be withheld from Construction Manager in accordance with Section 9.5.1 of the General Conditions.

§ 12.1.5 ~~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 Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Contractor's Fee. In exchange for final payment for all services and expenses under this Agreement, Construction Manager shall convey full and final lien waivers for its work under this Agreement and any of its consultants or subcontractors.~~

§ 12.1.5.1 ~~The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.~~ Intentionally omitted.

§ 12.1.5.2 ~~The allocation of the Guaranteed Maximum Price under this Section 12.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.~~ Intentionally omitted.

§ 12.1.5.3 ~~When the Contractor allocates costs from a contingency to another line item in the schedule of values, the Contractor shall submit supporting documentation to the Architect.~~ Intentionally omitted.

§ 12.1.6 ~~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. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work and for which the Contractor has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.~~ Provided that Owner has made payments of the amounts due to Construction Manager under this Agreement, Construction Manager shall keep the Project Site free from any liens by Construction Manager or any person or entity retained by Construction Manager, or their respective assigns. If, because of any act or omission of Construction Manager or anyone claiming through or under Construction Manager, any mechanic's or other lien, encumbrance or order is filed against Owner or the Project Site, Construction Manager shall, at Construction Manager's own cost and expense, cause the same to be canceled, bonded-over and discharged of record promptly after receiving notice thereof, and shall indemnify and hold Owner harmless from and against all costs, expenses, claims, losses or damages, including

reasonable attorneys' fees, resulting therefrom or by reason thereof. No Uniform Commercial Code (UCC) or similar state statutory filings shall be made by Construction Manager, except upon express written consent of Owner.

§ 12.1.7 In accordance with AIA Document A201–2017 and subject ~~Subject~~ to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of the General Conditions. Contractor shall provide accounting documentation as proof of costs incurred for that portion of the Work that the Contractor self-performs and for all material/equipment expenses. For subcontracts that were competitively bid, the Guaranteed Maximum Price shall be determined by the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work. For subcontracts that were not competitively bid, accounting documentation shall be provided as proof of costs incurred for that portion of the Work;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Contractor's Fee, less retainage of five percent (5%) until project completion. The Contractor's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage equal to the amount in the agreement between the Contractor and Subcontractor;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Contractor in the documentation required by Section 12.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of the General Conditions.

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§ 12.1.8 ~~Retainage~~ Except with the Owner's prior approval, payments to Subcontractors shall be subject to retention of not less than five percent (5%) up to the time the Work is fifty percent (50%) complete and then zero percent (0%) thereafter which amount shall be reduced consistent with the reduction in Section 12.1.7.4. The Owner and Contractor shall agree upon a mutually acceptable procedure for review and approval of payments and retention for Subcontracts and, when necessary, shall adjust the percentage of retainage held on Subcontracts to a mutually agreeable amount.

§ 12.1.8.1 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.)

§ 12.1.8.1.1 The following items are not subject to retainage:
(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

§ 12.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:
(If the retainage established in Section 12.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

~~§ 12.1.8.3~~ Except as set forth in this Section 12.1.8.3, 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 12.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

~~(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)~~

~~§ 12.1.9~~ 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. 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.

~~§ 12.1.10~~ Except with the Owner's prior written approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site. In taking action on the Contractor's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

~~§ 12.1.11~~ The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements. No payment under this Agreement, either final or progress, shall release the Contractor from any obligation under the Contract Documents.

~~§ 12.1.12~~ In taking action on the Contractor's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 12.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner. The Owner reserves the right to withhold, on account of subsequently discovered evidence, subsequent observations or otherwise, the whole or any part of any payment which would otherwise be due under this Agreement, to such extent as (a) the Owner may have any claim or offset against the Contractor and/or (b) the Owner, in its reasonable opinion, has a loss or shall consider necessary to protect itself from loss because of any of the items enumerated in Section 9.5.1 of the General Conditions.

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- .1 the Contractor has fully performed the Contract, except for the Contractor's responsibility to correct Work as provided in Article ~~12.2~~ of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Contractor has submitted a final accounting for the Cost of the Work and a final Application for ~~Payment; Payment,~~ which documents have been reviewed by Owner's representative; and
- .3 a final Certificate for Payment has been issued by ~~the Architect in accordance with Section 12.2.2; the~~ Architect.

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:

~~§ 12.2.2 Within 30 days of the Owner's receipt of the Contractor's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit. The amount of the final payment shall be calculated as follows:~~

- ~~.1 Take the sum of the Cost of the Work substantiated by the Contractor's final accounting and the Contractor's Fee, but not more than the Guaranteed Maximum Price.~~
- ~~.2 Subtract amounts, if any, for which the Architect withholds, in whole or in part, a final Certificate for Payment as provided in Section 9.5 of the General Conditions or other provisions of the Contract Documents.~~
- ~~.3 Subtract the aggregate of previous payments made by the Owner.~~

~~§ 12.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect. Intentionally omitted.~~

~~§ 12.2.2.2 Within seven days after receipt of the written report described in Section 12.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 12.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201-2017. The time periods stated in this Section 12.2.2 supersede those stated in Article 9 of AIA Document A201-2017. The Architect is not responsible for verifying the accuracy of the Contractor's final accounting. Intentionally omitted.~~

~~§ 12.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as The Owner's auditors will review and report in writing on the Contractor's final accounting within 30 days after delivery of the final accounting to the Architect by the Contractor. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Contractor's final accounting, is less than claimed by the Contractor, the Contractor shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201-2017. A request for mediation shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Contractor. Pending a final resolution of the disputed amount, the Owner shall pay the Contractor the amount certified in the Architect's final Certificate for Payment, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the General Conditions. The time periods stated in this Section supersede those stated in Section 9.4.1 of the General Conditions. The Architect is not responsible for verifying the accuracy of the Contractor's final accounting.~~

~~§ 12.2.3 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:~~

~~Intentionally omitted.~~

~~§ 12.2.4 If, subsequent to final payment, and at the Owner's request, the Contractor incurs costs, described in Section Article 7 and not excluded by Article 8, to correct defective or nonconforming Work, the Owner shall reimburse the Contractor for such costs, and the Contractor's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 5.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 12.2.4 recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Contractor.~~

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~~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.)~~

~~—%~~ Amounts unpaid thirty (30) days from the Owner's receipt of the Construction Manager's approved Pay Application shall bear interest at twelve percent (12%) per annum

...

§ 13.1 Initial Decision Maker

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

Any Claim between the Owner and Contractor shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of the General Conditions

§ 13.2 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 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. Intentionally Omitted.

...

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

§ 14.1.2 Termination by the Owner for Cause

§ 14.1.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Contractor under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- ~~.1 Take the Cost of the Work incurred by the Contractor to the date of termination;~~
- ~~.2 Add the Contractor's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;~~
- ~~.3 Subtract the aggregate of previous payments made by the Owner; and~~
- ~~.4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.~~

§ 14.1.2.2 The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 14.1.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 14, execute and deliver all such papers and take all such steps, including the legal

assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.

§ 14.1.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for 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.)

§ 14.1.1.2 If the Owner terminates the Contract for convenience, the amount payable to the Contractor pursuant to Section 14.4.3 of the General Conditions shall not exceed the amount the Contractor would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 14.1.1.3 If the Contractor terminates the Contract the amount payable to the Contractor under Section 14.1.3 of the General Conditions shall not exceed the amount the Contractor would otherwise have received under Sections 10.1.2 and 10.1.3 above.

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; Section 14.3 of the General Conditions; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, except that the term Section 14.3.2 of the General Conditions, except that the term "Contract Sum" in that Section shall be understood to mean the Cost of the Work and the term "profit" shall be understood to mean the Contractor's Fee as described in Article 5 and Section 6.4 Sections 5.1 and 5.3.5 of this Agreement.

...

(Name, address, email address and other information)

The Owner's Representative shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. This representative shall have the authority to make decisions on behalf of the Owner concerning estimates and schedules, construction budgets, and changes in the Work, and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Contractor. Except as otherwise provided in Section 4.2.1 of the General Conditions, the Architect does not have such authority.

§ 15.3 The Contractor's representative:

(Name, address, email address and other information)

Intentionally omitted.

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§ 15.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A102™–2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of

the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents. Article 11 of the General Conditions.

§ 15.5.2 The Contractor shall provide bonds as set forth in AIA Document A102™ 2017 Exhibit A, and elsewhere in the Contract Documents. Intentionally omitted.

§ 15.6 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.)

Intentionally omitted.

...

§ 15.1.7.1 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials. The Contractor shall, if requested by Owner, assist Owner in furnishing such tests, inspections and reports as the Owner may deem necessary.

§ 15.1.7.2 During the Construction Phase, the Owner shall furnish information or services reasonably required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner’s control and relevant to the Contractor’s performance of the Work with reasonable promptness after receiving the Contractor’s written request for such information or services.

§ 15.1.7.3 The Contractor, when such services are reasonably required by the scope of the Project and are requested and approved by Owner, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 15.1.7.4 The Owner shall furnish information or services reasonably required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner’s control and relevant to the Contractor’s performance of the Work with reasonable promptness after receiving the Contractor’s written request for such information or services.

§ 15.1.7.5 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner’s needs and interests.

§ 15.1.7.6 Architect. The Owner shall retain an Architect to provide services, duties and responsibilities, including any additional services requested by the Contractor that are necessary for the Construction Phase services under this Agreement. The Owner shall provide the Contractor a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

Governing Law

§ 15.1.7.7 The Contract shall be governed by the law of the State of Wisconsin.

§ 15.1.7.8 Assignment

The Owner and Contractor, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Contractor shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner’s rights and obligations under this Agreement. Except as provided in Section 13.2.1 of the General Conditions, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

SCOPE OF THE AGREEMENT

§ 15.1.7.9 This Agreement represents the entire and integrated agreement between the Owner and the Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Contractor.

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- .1 AIA Document A102™–2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 ~~AIA Document A102™–2017, Exhibit A, Insurance and Bonds~~ Intentionally omitted
- .3 AIA Document A201™–2017, General Conditions of the Contract for ~~Construction~~ Construction, as modified

...

~~.5 Drawings~~ NOT USED

~~.5~~ Intentionally omitted

Number	Title	Date
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...

~~.6 Specifications~~

~~.6~~ Intentionally omitted

Section	Title	Date	Pages
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...

~~.7 Addenda, if any:~~

~~.7~~ Intentionally omitted

Number	Date	Pages
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...

~~[] 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
--------------	-------------	--------------

[X] Supplementary and other Conditions of the Contract:

...

HUD-5370

General Conditions for
Construction Contracts –
Public Housing Programs

01/2014
exp11/30/2023

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- A – Specifications Project Manual Table of Contents, dated xx/xx/xxxx
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- C – Scope Narrative, dated xx/xx/xxxx
- D – Itemized Statement of the Guaranteed Maximum Price, dated xx/xx/xxxx
- E – Construction Schedule, dated xx/xx/xxxx



HIGHLAND GARDENS LLC
A Wisconsin Limited Liability Company

TRAVAUX INC.

By: Highland Gardens Development LLC
A Wisconsin Limited Liability Company,
its Manager

By: Housing Authority of the City of Milwaukee
A Wisconsin Public Body Corporate and Politic,
its Manager

...

Willie L. Hines, Jr.
Secretary-Executive Director

Willie L. Hines, Jr.
President

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, _____, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 15:38:28 ET on 10/30/2023 under Order No. 2114399858 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A102™ – 2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)



AIA® Document A201® – 2017

General Conditions of the Contract for Construction

for the following PROJECT:
(Name and location or address)

CONTRACT 23-006

Highland Gardens
Located at 1818 West Juneau Avenue, Milwaukee, WI 53233
Rehabilitation of 114-unit apartment building and associated site improvements

THE OWNER:

(Name, legal status and address)

Highland Gardens LLC
c/o Housing Authority of the City of Milwaukee
809 North Broadway, 3rd Floor
Milwaukee, WI 53202

THE ARCHITECT:

(Name, legal status and address)

Galbraith Carnahan Architects LLC
6404 West North Avenue
Wauwatosa, WI 53213

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- 10 PROTECTION OF PERSONS AND PROPERTY
- 11 INSURANCE AND BONDS
- 12 UNCOVERING AND CORRECTION OF WORK

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.

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

Init.

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14	TERMINATION OR SUSPENSION OF THE CONTRACT
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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, (4) a written order for a minor change in the Work issued by the Architect, or (5) Field Change (as defined herein). Unless specifically enumerated in the Agreement, the Contract Documents do not 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, or portions of Addenda relating to bidding or proposal requirements.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties and the Owner shall be entitled to performance and enforcement of obligations under the agreement between Contractor and Subcontractors intended to complete the Work.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, diagrams, and any building information modeling (BIM).

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services. The Specifications shall also include performance specifications necessary for Contractor to complete any design-assist portion of the Work.

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements, in addition to any tangible and intangible creative work performed by Contractor related to any design-assist portion of the Work. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

(Paragraphs deleted)

§ 1.1.8 INTENTIONALLY OMITTED

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The Contract Documents shall include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. In the event of any inconsistency among the Contract Documents, at Owner's discretion, the better quality or more stringent requirement shall apply.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.2.4 The general character and scope of Work is indicated by the Drawings. Where a portion of the Work is fully drawn and the remainder is merely indicated, the portion fully drawn shall apply to all similar parts of the Work to the extent it can be reasonably inferred.

§ 1.2.5 Lists of "work included" and "work excluded" are not intended to enumerate each and every item of work or appurtenants required. All work indicated shall be supplied except items specially noted as "by others", "by Owner", "not in contract", "existing", or similarly noted. Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings and consistent with the Stipulated Sum and the detail provided therein.

§ 1.2.6 Where items of material, equipment and labor are referred to in the singular, such item or items shall be provided in the number necessary for the proper completion of the Work.

§ 1.2.7 Unless otherwise specifically indicated, all references to "days" refers to calendar days. The term "calendar day" shall mean the period from midnight of one day to the following midnight of the next day. The term "working day" shall mean the calendar days Mondays through Fridays, excluding holidays recognized by the City of Milwaukee, Wisconsin."

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Owner shall be deemed the owner of the Instruments of Service, including the Drawings and Specifications. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them, solely and exclusively for execution of the Work. All

copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, and, where applicable, Architect and the Architect's consultants.

§ 1.5.3 Contractor shall indemnify, hold harmless and defend Owner, Architect, Architect's Consultants, against any claim, loss, damage or injury resulting from Contractor's or Subcontractor's: (1) unauthorized use of the Instruments of Service; or (2) use of the Instruments of Service on any other project. This duty shall include the reasonable attorneys' fees incurred by Owner in enforcing the terms set forth in this section.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. Unless otherwise indicated in the Agreement or herein, the parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

(Paragraphs deleted)

§ 1.8 Building Information Models Use

Contractor shall provide Drawings and BIM as necessary to meet permitting and design coordination requirements for the Work.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing those representatives who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen (15) days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract.

§ 2.2.2 Thereafter, the Contractor may only request such reasonable evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen (14) days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the

Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

§ 2.2.3 INTENTIONALLY OMITTED

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. Owner shall furnish and pay for water and utilities utilized by the Contractor, Subcontractors, Sub-subcontractors and Architect in connection with their performance of the Work.

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 Except as set forth in the Contract Documents, the Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. Contractor shall notify Owner of any discrepancies or information which is lacking in the information provided by the Owner of which Contractor is aware or reasonably should be aware.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control that are necessary for completion of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.4 Owner's Right to Stop the Work

If the Contractor: (a) fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 after fifteen (15) days prior written notice; or (b) repeatedly fails to carry out Work in accordance with the Contract Documents and, after fifteen (15) days prior written notice, and in the case under either (a) or (b) the Contractor does not undertake efforts to cure the non-conforming Work, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a fifteen-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's

expenses and compensation for the Architect's additional services and expenses made necessary by such default, neglect, or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor and all applicable Subcontractors and suppliers shall be lawfully licensed and registered, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents and Submittals approved pursuant to Section 3.12 herein.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents. Notwithstanding such observations, the Contractor shall nevertheless be entitled to rely upon any Owner provided information about the Project, Work or site, including, but not limited to, surveys, subsurface tests and data, the identification and location of hazardous substances and the condition and characteristics of structures on the site, unless Contractor has specific knowledge that the Owner provided information contrary to existing conditions. If that occurs, then Contractor shall ask for clarification from Owner or Architect. Whenever possible, the Contractor and all of its necessary Subcontractors, as appropriate, shall endeavor to verify existing field conditions that are visible (i.e., accessible through normal and customary methods of observation and investigation). Where existing field conditions are not visible (e.g., below grade) or concealed within construction assemblies, and existing items are indicated on the drawings, such items shall be considered as being shown schematically only, if so represented or designated as such by Architect.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents. The Contractor shall promptly report to the Architect and Owner any errors, inconsistencies or omissions discovered, including design errors or omissions, by or made known to the Contractor as a request for information in such form as the Architect may require. The Contractor shall halt all affected work until such discrepancies have been corrected or until directed otherwise by Owner or Architect. The direct out-of-pocket costs related to this Work stoppage shall be reimbursed to the Contractor and, if the Work stoppage results in a delay in the Project Schedule, the Completion Date shall be extended by Change Order. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 Except as specifically set forth in the Contract Documents, the Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, or the Architect's failure to respond to such requests for information or notices, the Contractor shall make Claims as

provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, unless the Contractor recognized such error, inconsistency, omission or difference and failed to report it to the Architect. If the Contractor performs any construction activity involving an error, inconsistency, omission or difference in the Contract Documents that Contractor knowingly recognized or should have reasonably recognized without such notice to the Architect and Owner, the costs for correction will be allocated among the responsible parties.

§ 3.2.5 The Contractor shall provide reasonably necessary estimating and coordination services to evaluate the value engineering and cost savings options. Contractor shall not be entitled to an increase in the Contract Price for such services. For those options the Owner approves as a lump sum adjustment, the Contract Price shall be reduced by the full amount of direct costs associated with the change through the Change Order process.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect, and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences, or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising from those Owner-required means, methods, techniques, sequences, or procedures, unless Contractor is negligent.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, heat, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. The Owner will not be liable to assume any responsibility for the damage or wear to the Contractor's tools, materials and/or equipment except to the extent covered by any applicable insurance or to the extent that the Owner and its agents, employees or contractors are responsible for the damage or wear.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions of specified materials or equipment only with the consent and approval of the Owner, after evaluation and recommendation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.2.1 Where a definite material or method is specified, it is not the intention to discriminate against any "approved equal" product by another manufacturer. Rather, it is the intention to set a definite standard. Open competition is expected. The Contractor shall submit to the Architect the substitutions it proposes together with samples, complete evidence of quality and any credits that may accrue to the Owner for allowing the various substitutions. The Architect shall investigate all proposed substitutions, consult with the Owner for its review and approval, and render final decisions as is necessary to avoid any delay in the Work.

§ 3.4.2.2 The Contractor shall ascertain that items offered as equals to specified items will fit the physical limits of space shown on the Drawings, and leave ample clearance for proper installation, operation and servicing of the item and all adjacent items.

§ 3.4.2.3 Materials and equipment proposed as substitutes for specified items may be rejected by the Architect and Owner.

§ 3.4.2.4 If during the performance of Work any materials or equipment specified in the Contract Documents become unavailable because of government restrictions or because of other market conditions (which are not the result of Contractor's delay in order or purchasing), the Owner, Architect and Contractor shall collectively suggest and consider alternatives and substitutes. The Architect shall then issue a final recommendation for consideration and approval by Owner. Contractor will be entitled to an increase in the Contract Sum for actual increased costs incurred directly as a result of an alternative or substitution required because of government restrictions or other market conditions to the extent such cost could not be mitigated or otherwise avoided. Contractor will provide Owner with invoices or such other documents as Owner may reasonably require to verify Contractor's increased costs.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor shall promptly remove any persons of whom Owner has a reasonable objection to their fitness for work.

§ 3.4.4 Contractor shall provide to Architect the required information for all materials and equipment which, pursuant to the Contract Documents must be approved by Architect. The Contractor shall provide such information to the Architect according to the submittal schedule included in the Construction Schedule, or, if not specifically included in the Construction Schedule, then timely enough to allow for Architect's review and to otherwise not cause a delay in the Project Schedule.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 The Contractor's warranty under this Section is not exclusive, and any other express warranties stated elsewhere, may also be exercised by Owner at its option. In addition, the Contractor shall assign to the Owner all manufacturers' and suppliers' warranties, express or implied, respecting any part of the Work which Contractor or Subcontractors receive not later than at the time Final Payment is made. The assignments, copies of all warranties and all product operation manuals for proper use and maintenance of equipment shall be conveyed to the Owner prior to Final Payment for the Work (i.e., final retainage). Owner may, at its option, release final retainage for that portion of the Work for which all contract close-out requirements have been satisfied.

§ 3.5.3 The Contractor and any applicable Subcontractors agree, as part of its post completion Work and its warranty obligations, to participate in warranty walk-throughs at the Project Site with the Owner and its Architect eleven (11) months after Substantial Completion of each phase of the Work to identify warranty work and any other items which must be corrected to conform with the requirements of the Contract Documents.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction. However, if the Contractor observes that portions of the Contract Documents are at variance therewith and promptly notifies the Architect and Owner in writing, necessary changes shall be accomplished by appropriate Modification. Any Modification shall be in accordance with Article 7. Notwithstanding the above, for those trades requiring licensed tradesmen, Work depicted for those trades shall be installed in a code conforming manner irrespective of references or representations in the documents to the contrary, at no additional cost to the Owner.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend, for Owner's review and approval or disapproval, an equitable adjustment in the Contract Time. Any adjustment to the Contract Sum recommended by the Architect will be based on the factors set forth in Sections 7.3.4.1 to 7.3.4.5. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor of its recommendation in writing, stating the reasons. If either party disputes the Architect's recommendation, that party proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. If requested by Contractor, any adjustment to the Contract Sum or Contract Time will be based on the factors set forth in Sections 7.3.4.1 to 7.3.4.5.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

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§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be at the Project site as necessary for the performance of the Work, and who shall not be replaced without the consent of the Owner. If the superintendent or an assistant leaves the employment of the Contractor, the replacement shall be subject to Owner's approval. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. All communications shall be confirmed in writing.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner the name and qualifications of a proposed superintendent. The Owner may reply within fourteen (14) days to the Contractor in writing, stating whether the Owner (1) has reasonable objection to the proposed superintendent or (2) requires additional time to review. Failure to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.9.4 The Contractor shall have the Superintendent and other competent representatives familiar with the Work attend meetings which may be held at the job site or at such place as Owner designates.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 If the Owner requires, the Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's review and Architect's approval a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare a submittal schedule promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule for the Architect's and Owner's review and approval, which approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect and Owner reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 Documents and Samples at the Site

§ 3.11.1 The Contractor shall maintain at the Project site, one (1) copy of the Contract Documents, including Drawings, Specifications, Addenda, Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate Field Changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed and prior to final payment (i.e. final retainage). Owner may, at its option, release final retainage for that portion of the Work for which all contract close-out requirements have been satisfied.

§ 3.11.2 At completion of each phase of the Work, record drawings of all mechanical and electrical systems, if any, shall be submitted to the Architect, which indicate all Field Changes. If not submitted, Applications for Payment will not be processed.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect and Owner or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such

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professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor appropriate performance and design criteria that such services must satisfy. The Architect will review and approve, reject, or take other appropriate action on submittals (i.e., "revise and resubmit" or "proceed as revised") in accordance with Section 4.2.7 herein. Except to the extent Contractor is provided Design-Build services or has retained Subcontractors that are performing design-build services (e.g., MEP Subcontractors), the Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents, but shall be responsible to promptly report to the Architect and Owner any errors, inconsistencies or omissions discovered in the performance and design criteria.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 3.12.11 Contractor shall furnish three (3) complete sets of manuals containing the manufacturers' warranties and instructions necessary for maintenance and operation of each item of equipment and apparatus it furnishes under the Contract Documents, warranty information and any additional data specifically requested under the various sections of the Specifications for each division of the Work to the Architect for subsequent conveyance with all Contractors' manuals to the Owner at or before Final Payment. Each manual shall be arranged in logical order, indexed and suitably bound. Alternatively, the Contractor may provide this information in the as-built BIM for the Work.

§ 3.13 Use of Site

§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.13.2 The Contractor shall store materials on the site where directed and in such a manner as will not damage the area in which they are stored. Material deliveries shall be scheduled so that they are not stored longer than necessary. All items furnished to the site by the Owner shall be stored as directed.

§ 3.13.3 Where the Contractor's operations will affect the Owner's operation and use of existing facilities, the Contractor will arrange its work to minimize its effect on the existing facility, and will coordinate the timing, sequencing and duration of the disruptions with the Owner's representative and proceed with such work only after receiving authority to do so.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, and patching shall be restored to the condition existing prior to the cutting, fitting, and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a Separate Contractor except with written consent of the Owner and of such Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or produce is an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the Owner and its board members, officers, directors, agents and employees from and against claims, damages, losses, and expenses, including, but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner and written notice of such change is provided to the Contractor.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative (1) during construction, (2) until the date the Architect issues the final Certificate for Payment, and (3) with the Owner's concurrence, from time to time during the one-year period of correction of Work described in Section 12.2.2. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, (1) to become generally familiar with the progress and quality of the portion of the Work completed, (2) to inspect the Work, (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents, and (4) when applicable, to determine whether to issue a Certificate for Payment. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents, except as set forth herein. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

Except as otherwise provided in the Contract Documents, the Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise stated by the Architect, of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such Project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 10 days of receipt of the information, the Owner or Architect may notify the Contractor in writing whether the Owner or the Architect has reasonable objection to any such proposed person or entity or that the Owner or the Architect requires additional time for review. Failure of the Owner or Architect to provide notice within the 10-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection. It shall be considered reasonable for the Contractor to reject a Subcontractor who fails or refuses to sign a form of subcontract reasonably acceptable to the Contractor.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 Subcontractual Relations

§ 5.3.1 By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the

Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.3.2 Owner is an intended third-party beneficiary of all subcontracts and material supply contracts of whatever tier, with the right to directly enforce, both during and after the construction period, subcontractor and material supplier obligations to meet prevailing standards or workmanship and to comply with the contract documents including but not limited to all applicable express and implied warranties. During the construction period, that right shall only be exercised in cooperation with Contractor, unless Contractor is in default under the Contract and fails to cure the same.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for actual increases in the direct costs resulting from the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained in connection with other portions of the Project or other construction or operations on the Project site under Conditions of the Contract identical or substantially similar to those of this Contract, including those provisions related to insurance and waiver of subrogation.

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

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor has under the Conditions of the Contract, as stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction or operations that would render it unsuitable for such proper execution. Failure of the Contractor to so report shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for actual and direct costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5, but only to the extent caused by Contractor.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.1.4 Except for reasons of emergency or for minor changes in the Work (see Sections 7.4 herein), there will be no Changes in the Work unless first authorized in writing by Owner and Architect pursuant to the terms of this Article 7.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in Section 7.3.3.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Owner and signed by the Owner and Architect, the form of which is attached hereto as "Exhibit 3," directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

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

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount, all on a not to exceed basis unless otherwise agreed. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Actual costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance,;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance (itemized separately and subject to the provisions of the Agreement), permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 The Contractor may request payment for changes in the Work not in dispute in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the

Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor reach an agreement concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order. The Contractor shall be responsible for preparation of the Change Order. The Contractor's agreement with a Change Order constitutes a waiver and release by the Contractor and its Subcontractors and suppliers for any claim for delay, cumulative impact, cost of extended general conditions, and any other indirect cost associated with the Owner-directed change in Work.

§ 7.4 Minor Changes in the Work

The Architect has the authority to order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing signed by the Architect and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

§ 7.5 FIELD CHANGES

§ 7.5.1 Upon the written request of Contractor, Owner may authorize minor changes in the Work which occur in the field ("Field Change(s)") without prior presentation to the Architect, so long as each of the following criteria is satisfied:

- .1 the proposed Field Change is consistent with the intent of the Contract Documents;
- .2 the proposed Field Change will not result in an extension of the Contract Time;
- .3 the proposed Field Change will not result in a cumulative increase in the GMP or the Contract Sum by more than \$5,000.00.

§ 7.5.2 By presenting the proposed Field Change, the Contractor is verifying that each of the criteria listed above is satisfied with respect to the proposed Field Change.

§ 7.5.3 If a Field Change may result in a cumulative increase in the Contract Sum of more than \$5,000.00, the Field Change set forth in Section 7.5.1 above does not apply. Rather, the Contractor must follow the written change order provisions set forth in Sections 7.1 and 7.2 above.

§ 7.5.4 The issuance of a Field Change and the provisions of this Section 7.5 shall not limit the Owner's right of review and approval of any Field Change in the progress payment process or as part of final payment.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

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

§ 8.1.3 The date of Substantial Completion of the Work or designated portion thereof is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work and the dates established for Substantial Completion and Final Completion are reasonable.

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§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the Project site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Contract Documents or a notice to proceed given by the Owner, the Contractor shall notify the Owner in writing not less than five (5) days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act of negligence of the Owner or Architect, or of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect and/or Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may allow .

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 Contractor's remedy for delays caused by the Owner or Architect shall be limited solely to (a) extra time; and (b) any applicable "general conditions" expenses allowed by Section 9.7 and Section 14.3 of the General Conditions. With respect to any delays caused by Owner or Architect, if Owner contends that acceleration of the Work is necessary, Contractor shall accelerate the Work as directed by Owner. Owner shall pay Contractor only the Contractor's extra labor cost over the amount for regular time during the period of such overtime, including additional insurance and taxes incurred by the Contractor with respect thereto. Time slips covering said overtime must be submitted to Owner's designated representative for checking and approval.

Contractor's sole remedy in the event of (i) any delay not caused by or attributable to the Owner; or (ii) a delay excusable per Section 8.3.1 above; shall be an equitable extension of the Contract Time and Contractor shall not obtain any monetary damages for the delay or any addition to the Contract Sum or Guaranteed Maximum Price; however, Contractor shall be entitled to use Contractor's construction contingency funds (if any) to cover additional costs incurred as a result of any such delay.

Notwithstanding any implication to the contrary in Section 8.3.1 or elsewhere herein, Contractor shall not be entitled to any time extension for any delay that is the fault of Contractor or any of its Subcontractors or suppliers, or their Subcontractors or suppliers at any level. There shall be no adjustment of compensation for acceleration efforts undertaken by Contractor to meet the Substantial Completion date, as the same may be modified as provided for herein, as a result of any delay that is the fault of Contractor or any of its Subcontractors or suppliers, or their Subcontractors or supplier at any level. However, Contractor shall be entitled to use Contractor's construction contingency funds (if any) to cover additional costs incurred as a result of any such delay.

§ 8.3.4 If there is a delay or anticipated delay of the Construction Schedule because of the actions or omissions of the Contractor or any Subcontractor and the Contractor is unable to produce within fifteen (15) working days after notice by the Owner a recovery schedule for its Work to address such delay or anticipated delay acceptable to the Owner, then the Owner shall have the right to order the Contractor to take such actions as may be necessary, consistent with the same performance of the Work affected thereby, to recapture the time lost by any such delay. Such action shall include increasing staff; increase in shifts or hours worked per day, or performance of work on Saturdays, Sundays or national holidays; use of any available work float in the Project schedule; and changing the sequence of work activities. Owner shall pay Contractor only the Contractor's extra labor cost over the amount for regular time during the period of such overtime, including additional insurance and taxes incurred by the Contractor with respect thereto. Time slips covering said overtime must be submitted to Owner's designated representative for checking and approval.

The Owner, at its option, shall also be entitled to accelerate performance of the Work where there is no delay or anticipated delay. The costs of such acceleration where there is no delay or anticipated delay shall be paid for by the

Owner.

§ 8.3.5 If Contractor intends to claim an extension of time to perform as a result of a delay not caused by Contractors or any of its Subcontractors or suppliers, Contractor must give Owner written notice within seven (7) days after the event giving rise to the claim and follow the procedures in Article 7 for securing a Change Order; otherwise such a claim shall be deemed waived.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

(Paragraph deleted)

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Owner and Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Owner or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Owner and Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work.

§ 9.3.4 With each Application for Payment, the Contractor shall provide to Owner; (a) a partial lien waiver and release from each subcontractor or supplier who was to receive funds from the previous Application for Payment, and (b) the Contractor's own conditional lien waiver for all funds to be received for that Application.

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§ 9.3.5 Provided that Owner shall make payment of amounts due to Contractor, Contractor shall keep the Project site free from any liens by Contractor, its Subcontractors, Architect or engineers retained by Contractor, or their respective assigns. No Uniform Commercial Code (UCC) or similar state statutory filings shall be made by Contractor, Subcontractors, or such Architect or engineers, except upon express prior written consent of Owner. If, because of any act or omission of Contractor or anyone claiming through or under Contractor, any mechanic's or other lien, encumbrance or order is filed against Owner or the Project site, Contractor shall, at Contractor's own cost and expense, cause the same to be canceled and discharged of record or bonded over within thirty (30) days after receiving notice thereof, and shall indemnify and hold Owner harmless from and against all costs, expenses, claims, losses or damages, including reasonable attorneys' fees, resulting therefrom or by reason thereof.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect and/or Owner may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Owner's or Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner and the Owner shall pay Contractor in accordance with Section 9.6.1. The Architect and/or Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Owner's or Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims not resulting from the Owner's failure or refusal to pay Contractor filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor and not covered by insurance;
- .6 reasonable evidence that the Work will not be completed within the Contract Time as a result of the Contractor's fault, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 repeated failure to carry out the Work in accordance with the Contract Documents;
- .8 failure of the Contractor to comply with the most current approved Project construction schedule; or
- .9 the existence of any event of material default under the Contract Documents

§ 9.5.2 INTENTIONALLY OMITTED

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§ 9.5.3 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.4 If the Owner or Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect shall reflect such payment on the next Certificate for Payment.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, either by agreement or by reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 INTENTIONALLY OMITTED

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and material and equipment suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or material or equipment supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by material and equipment suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended

appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when (i) the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use, subject only to the completion of Punch list items or other Work that cannot be completed because of weather conditions or because of unavailability of products or materials, none of which may materially affect Owner's intended use and enjoyment of the Project or cause unreasonable disruption or interference of Owner's intended use or otherwise affect Owner's ability to fully utilize the Project for its intended use; (ii) all required permits and approvals, including a certificate of occupancy, have been issued and obtained, unless any such permit, approval or certificate has not been issued through no fault of the Contractor; and (iii) all utilities required for Owner's operation of the Project are in place and operational, including gas, electricity, water, sanitary, sewer, and telephone; (iv) a Certificate of Substantial Completion is issued and signed-off on by Owner; and (v) Contractor has complied with all terms and conditions of the Agreement.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. The Contractor shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Observation by the Architect and/or the Owner during the construction shall not be considered as acceptance of any part of the Work, and the conditions found when final inspection is made shall be taken as governing the fitness of the Work and whether or not it conforms to the provisions of the Contract.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.8.6 Contractor shall reach Final Completion of the Work within 60 days of the date of Substantial Completion except for those items which cannot be completed because of weather conditions or because of unavailability of products or materials or that Owner agrees do not have to be completed within the 60-day period.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.2.9 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract

Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon in writing and signed by Owner, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection, and when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, (6) a marked-up version of all Construction Documents showing the record condition of the Work; (7) a Final Lien Waiver and Release from Contractor and from all subcontractors and suppliers who provided any labor, materials or Work for the Project; and (8) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If such lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees, unless Contractor is proceeding diligently and in good faith to contest such lien, claim, security interest, or encumbrance and has furnished to Owner reasonable security, such as a bond, title insurance, or letter of credit to reasonably protect Owner against such lien, claim, security interest, or encumbrance.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or

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.3 terms of special warranties required by the Contract Documents.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a material or equipment supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

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

§ 10.2 Safety of Persons and Property

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

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

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

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 to the extent caused by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property

Contractor shall promptly report in writing to the Architect and Owner all accidents whatsoever arising out of, or in connection with, the performance of the Work, whether on or off the Site, which caused death, personal injury or property damage, giving full details and statements of witnesses, if Contractor reasonably believes there may be a claim made against Owner. In addition, if death or serious injury or damages are caused, the accident shall be reported immediately to Owner by telephone or messenger. If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written

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notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. A Change Order shall be issued to the Contractor as provided in Article 7, providing for an equitable adjustment in the Contract Sum or Contract Time for an increase or delay in the Work or the cost thereof in the event the Contractor encounters hazardous substances.

§ 10.3.3 The Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, despite Owner's representations to the contrary, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents and are used, stored, transported, handled and installed properly by Contractor. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use, handling, storage, transportation or installation of such materials or substances.

§ 10.3.5 The Contractor shall indemnify, defend and hold the Owner harmless against any and all liabilities, damages, losses, costs, penalties, expenses or responsibilities (1) for remediation of materials or substances the Contractor brings to the site and negligently handles, (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence, and (3) materials and substances which are Contractor's responsibility under Section 10.3.4.

§ 10.3.6 Owner assumes the risk of, and shall indemnify, defend and hold Contractor harmless against any and all liabilities, damages, losses, costs, penalties, expenses or responsibilities, including reasonable attorneys' fees and disbursements, sustained in connection with any request or order arising directly or indirectly out of the release, threatened release, or handling of hazardous substances or materials at the Project site or at any site to which a hazardous substance is moved or alleged to have been moved provided that Contractor provides written notice to Owner of any such claim, demand, cause of action, suit, judgment, subpoena or administrative proceeding within 5 days of receipt of same. The duties and responsibilities of the Owner as set forth in this section shall not apply to the extent that the liability, damage, loss, economic loss, cost, penalty, expense or responsibility results from hazardous substances or material brought onto the Project site by Contractor or arises out of negligence of Contractor after the

hazardous substance or materials is discovered on the Project site and, if applicable, written notice of the discovery along with documents identifying the materials provided to the Contractor.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18;
- .9 claims arising out of or relating to the use of Contractor's autos, trucks and other vehicles in connection with the Project; and
- .10 claims arising from Contractor's professional services, if any.

The Contractor shall purchase and maintain the required insurance from an insurance company or companies rated A or better by A.M. Best and lawfully authorized to do business in the jurisdiction in which the Project is located.

§ 11.1.2 The Contractor shall to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder (including the Guaranteed Maximum Price, as may be amended by Change Order(s)). The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located. Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished. The Contractor may require its Subcontractors to furnish bonds in its discretion.

§ 11.1.3 The Owner, its board members, directors, officers, agents (including the Architect) and employees, and PNC Bank National Association, its successors and/or assigns, and Columbia Housing SLP Corporation, its successors and/or assigns, shall be named as additional insureds, on a primary and non-contributory basis, on all insurance policies providing coverage for the claims identified in Sections 11.1.1.3 through 11.1.1.9 above, including the completed operations coverage therein and the endorsements thereto. (See Exhibit to Agreement for the Certificate of Insurance). Any insurance maintained by Owner will be in excess of and not contribute with additional insured coverage provided by Contractor regardless of any "other insurance" clause. "Vertical exhaustion" shall apply when determining responsibility for coverage.

§ 11.1.4 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment and, with respect

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to the Contractor's completed operations coverage, for the period identified in 11.1.8.1 below. If any of the insurance required by Section 11.1.1 is maintained on a claims-made basis, then prior to final payment, Contractor shall purchase tail insurance affording the same coverage and having the same limits, for a period of not less than three years from the date of Final Payment.

§ 11.1.5 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance.

§ 11.1.6 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.1.7 Workers' Compensation and Employers' Liability: Contractor agrees that it and all its Subcontractors will comply with all statutes and law with regard to Workers' Compensation/Occupational Disease applying to employees or their beneficiaries. Minimum limits shall be:

.1 Workers' Compensation-Statutory Limits	
.2 Employers' Liability	
Bodily Injury by Accident	Not Less Than: \$100,000 Each Accident
Bodily Injury by Disease	\$100,000 Each Employee \$500,000 Policy Limit

This insurance shall contain provisions waiving each underwriter's rights of subrogation against Owner.

§ 11.1.8 Other insurance required is as follows:

.1 Commercial General Liability	
Limits not less than:	
Bodily Injury and Property	\$1,000,000 Each Occurrence
Damage Combined Single Limit:	\$2,000,000 Annual General Aggregate – Per Policy \$2,000,000 Products Liability/Completed Operations
Fire Damage	\$50,000
Medical Payment	\$5,000
Personal Injury and Advertising Injury	\$1,000,000

Commercial General Liability coverage must provide:
General Aggregate Limit must apply per project
Premises and Operations
Products Liability/Completed Operations Liability
Contractual Liability
XCU Coverage (explosion, collapse and underground property damage)

Note: Products Liability/Completed Operations Coverage shall continue in force for two (2) years from the earlier of 90 days following Substantial Completion or final payment by the Owner.

.2 Auto

Limits not less than:

Bodily injury and Property Damage

Combined Single Limit Policy must be intended to cover all owned,
Non-owned and hired vehicles: \$1,000,000 Each Accident

.3 Umbrella Liability

Not less than:

Bodily Injury and Property Damage \$10,000,000 Each Occurrence

Combined Single Limit \$10,000,000 Annual

§ 11.1.9 Insurance required of Subcontractors:

.1 All MEP Subcontractors and any other Subcontractor who will perform Work on the Project Site where the aggregate amount to be paid to the Subcontractor totals \$1,000,000.00 or more of the construction budget shall:

(a) Maintain the same limits as the Contractor for insurance required under Sections 11.1.7, 11.1.8.1 and 11.1.8.2 herein; and

(b) Umbrella coverage of \$5,000,000.

.2 Any other Subcontractor who will perform Work on Site shall maintain the same insurance as the Contractor for insurance required under Sections 11.1.7, and 11.1.8, excluding pollution liability, but for per occurrence amounts of not less than \$250,000.00 up to the amount of Subcontractor's contract, whichever is more; and maintain umbrella coverage of not less than \$1,000,000.

.3 All other Subcontractors (not performing Work on site) shall have adequate insurance coverage up to the minimum amount required by law. If a Subcontractor does not have the insurance required above, then Contractor shall advise Owner and Owner may, in its sole discretion, waive and/or modify the above insurance requirements for Subcontractors.

§ 11.1.10 The Owner and Architect assume no responsibility for Contractor's or Subcontractors' liabilities in the event that the limits set above are not adequate or coverage is not properly obtained by either of them.

§ 11.1.11 Contractor's insurance policies, terms and conditions shall govern unless otherwise modified, in writing, by the parties.

§ 11.1.12 Unless otherwise agreed by Owner, Contractor shall ensure that the insurance required of Subcontractors in Section 11.1.9 be maintained in an insurance company or companies rated A or better by A.M. Best and lawfully authorized to do business in the jurisdiction in which the Project is located.

§ 11.2 Owner's Insurance

§ 11.2.1 Owner's Liability Insurance. The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or companies rated A or better by A.M. Best and lawfully authorized to do business in the jurisdiction in which the Project is located.

(Paragraph deleted)

§ 11.2.2 Owner's Property Insurance. The Owner shall purchase and maintain property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract

Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.2 to be covered, whichever is later. This insurance shall include interests as named insureds, but not as "first-named insureds" of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project. Such insurance shall be purchased and maintained from a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located.

§ 11.2.3 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.2.4 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.5 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; and (2) the Contract Time and Contract Sum shall be equitably adjusted. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 11.2.6 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.2.7 Except to the extent covered by insurance, the Owner shall not be liable for loss or damage to any tools owned by mechanics, any other tools, equipment, staging, towers, and forms owned or rented by the Contractor, the capital value of which is not included in the Cost of the Work, or any shanties, houses or other temporary structures.

§ 11.2.8 The Owner shall provide the Contractor with a certificate of insurance for each policy that includes insurance coverages required by this Section 11.2.

§ 11.2.9 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance.

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the

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Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss.

§11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the Owner's property insurance shall be adjusted by the Owner and made payable to the Owner for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction, shall be at the Contractor's expense, unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated,

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installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5 and the requirements under Clause 23 of the HUD 5370 General Conditions of the Contract for Construction, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2, except for Work not properly completed in the first instance.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the State of Wisconsin.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 Rights and Remedies

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

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing or as set forth herein.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated testing, inspection, or approval procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made

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payment on a Certificate for Payment within the time stated in the Contract Documents and none of the circumstances prescribed in Sections 9.5.1.1 through 9.5.1.9 exist; or

- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, actual and direct costs incurred by reason of such termination, and damages.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 refuses or fails to supply enough properly skilled workers or proper materials in accordance with Contractor's schedule for attaining Substantial Completion;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors if and only if Contractor fails to provide Owner with reasonable evidence that funds have been placed by Contractor in a commercial escrow account sufficient to pay Subcontractor for the disputed items, fails to post a bond for the amount due Subcontractors, fails to obtain an endorsement to a title policy with respect to liens of Subcontractor, or if the portion of the Contract Sum owing to the Contractor held in retainage by Owner pursuant to Article 9 is less than the amount allegedly owed by Contractor to Subcontractor;
- .3 disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents; or
- .5 becomes insolvent, is in bankruptcy, or is in receivership.

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Architect that sufficient cause exists to justify such action, may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice and provided the Contractor, within such seven (7) day period, has not cured such cause or breach, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case

may be, shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.2.5 Upon termination of the Contract, Contractor shall immediately stop the Work hereunder except such as shall be essential to preserve and safeguard existing Work and immediately advise Owner of the status of all outstanding subcontracts and purchase orders. Such outstanding purchase orders and subcontracts shall be canceled or assigned to Owner as Owner may direct. In the event of any such termination, Contractor shall deliver all of the Work completed and in process to the date thereof to Owner and shall deliver to Owner all documents of title, reports, estimates, schedules, and other documents and data as Owner shall require.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

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

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work properly executed (including Contractor's fee for the Work completed), and costs incurred by reason of such termination.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, adjustment or interpretation of the terms of this Agreement, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

INTENTIONALLY OMITTED

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

(Paragraph deleted)

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§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

(Paragraph deleted)

§ 15.1.5 Claims for Additional Cost

Subject to all other applicable provisions of the Contract Documents, if the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided herein shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time for the geographical region where the Project is located, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 15.1.7 Waiver of Claims for Consequential Damages

Except to the extent that it is a covered loss under insurance required for this Project, the Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, 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
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Resolution of Claims and Disputes

§ 15.2.1 The Owner and Contractor shall endeavor to resolve Claims through good faith direct discussions between the parties' representatives. If, at any time, the Owner's and Contractor's representatives are unable to resolve their differences, a senior executive from either party may refer such dispute to a senior executive (of the requesting party's choice) of the other party. Within 21 calendar days of such referral, the executives shall meet to resolve the dispute.

§ 15.2.2 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.3 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

(Paragraphs deleted)

§ 15.3 Mediation/Litigation

§ 15.3.1 Claims, disputes, or other matters in controversy unresolved per Section 15.2 and arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims unresolved per Section 15.2 by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ 15.3.3 INTENTIONALLY OMITTED

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

(Paragraphs deleted)

§ 15.3.5 If the parties do not resolve a dispute through mediation pursuant to this Section 15.3, the method of binding dispute resolution shall be the following litigation in a court of competent jurisdiction located in Milwaukee, Wisconsin. The parties hereby agree and consent to personal jurisdiction in state or federal court located in Milwaukee, Wisconsin.

§ 15.3.6 In the event of litigation arising out of this Agreement, the prevailing party's attorneys' fees and costs shall be paid by the non-prevailing party. The "prevailing party" means the party in whose favor a judgment, decree, or final order is rendered.

Additions and Deletions Report for AIA® Document A201® – 2017

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

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CONTRACT 23-006

Highland Gardens

Located at 1818 West Juneau Avenue, Milwaukee, WI 53233

Rehabilitation of 114-unit apartment building and associated site improvements

...

(Name, legal status and address)

Highland Gardens LLC

c/o Housing Authority of the City of Milwaukee

809 North Broadway, 3rd Floor

Milwaukee, WI 53202

...

Galbraith Carnahan Architects LLC

6404 West North Avenue

Wauwatosa, WI 53213

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3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5, 10.2.8, 13.3.2, 14.1, ~~15.1.2, 1~~, 15.2

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The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, ~~or~~ (4) a written order for a minor change in the Work issued by the ~~Architect~~ Architect, or (5) Field Change (as defined herein). Unless specifically enumerated in the Agreement, the Contract Documents do not 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, or portions of Addenda relating to bidding or proposal requirements.

...

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner

and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's ~~duties~~ duties and the Owner shall be entitled to performance and enforcement of obligations under the agreement between Contractor and Subcontractors intended to complete the Work.

...

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, ~~and diagrams~~ diagrams, and any building information modeling (BIM).

...

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services. The Specifications shall also include performance specifications necessary for Contractor to complete any design-assist portion of the Work.

...

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services ~~agreements~~ agreements, in addition to any tangible and intangible creative work performed by Contractor related to any design-assist portion of the Work. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker

~~The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.~~

§ 1.1.8 | INTENTIONALLY OMITTED

~~§ 1.2.1 The intent of the Contract Documents is to~~ Contract Documents shall include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. In the event of any inconsistency among the Contract Documents, at Owner's discretion, the better quality or more stringent requirement shall apply.

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§ 1.2.4 The general character and scope of Work is indicated by the Drawings. Where a portion of the Work is fully drawn and the remainder is merely indicated, the portion fully drawn shall apply to all similar parts of the Work to the extent it can be reasonably inferred.

§ 1.2.5 Lists of "work included" and "work excluded" are not intended to enumerate each and every item of work or appurtenants required. All work indicated shall be supplied except items specially noted as "by others", "by Owner", "not in contract", "existing", or similarly noted. Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings and consistent with the Stipulated Sum and the detail provided therein.

§ 1.2.6 Where items of material, equipment and labor are referred to in the singular, such item or items shall be provided in the number necessary for the proper completion of the Work.

§ 1.2.7 Unless otherwise specifically indicated, all references to "days" refers to calendar days The term "calendar day"

shall mean the period from midnight of one day to the following midnight of the next day. The term "working day" shall mean the calendar days Mondays through Fridays, excluding holidays recognized by the City of Milwaukee, Wisconsin."

...

~~§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and Specifications. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.~~

~~§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to the this Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants and, where applicable, Architect and the Architect's consultants.~~

~~§ 1.5.3 Contractor shall indemnify, hold harmless and defend Owner, Architect, Architect's Consultants, against any claim, loss, damage or injury resulting from Contractor's or Subcontractor's: (1) unauthorized use of the Instruments of Service; or (2) use of the Instruments of Service on any other project. This duty shall include the reasonable attorneys' fees incurred by Owner in enforcing the terms set forth in this section.~~

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The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. ~~The Unless otherwise indicated in the Agreement or herein, the parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.~~

~~§ 1.8 Building Information Models Use and Reliance~~

~~Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.~~

§ 1.8 Building Information Models Use

Contractor shall provide Drawings and BIM as necessary to meet permitting and design coordination requirements for the Work.

...

~~§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative those representatives who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.~~

§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen (15) days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

...

~~§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.~~

~~§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only. Thereafter, the Contractor may only request such reasonable evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen (14) days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.~~

~~§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.~~INTENTIONALLY OMITTED
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§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. Owner shall furnish and pay for water and utilities utilized by the Contractor, Subcontractors, Sub-subcontractors and Architect in connection with their performance of the Work.

...

~~§ 2.3.4 The Except as set forth in the Contract Documents, the Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. Contractor shall notify Owner of any discrepancies or information which is lacking in the information provided by the Owner of which Contractor is aware or reasonably should be aware.~~

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control ~~and relevant to the Contractor's performance~~ that are necessary for completion of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

...

If the ~~Contractor~~ Contractor: (a) fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 after fifteen (15) days prior written notice; or (b) repeatedly fails to carry out Work in accordance with the Contract Documents, Documents and, after fifteen (15) days prior written notice, and in the case under either (a) or (b) the Contractor does not undertake efforts to cure the non-conforming Work., the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has

been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

...

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ~~ten-day~~ fifteen-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct ~~such default or neglect~~. ~~Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services and expenses made necessary by such default, neglect, or failure. If current and future payments payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.~~

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§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor ~~shall be lawfully licensed, and all applicable Subcontractors and suppliers shall be lawfully licensed and registered,~~ if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract ~~Documents~~. Documents and Submittals approved pursuant to Section 3.12 herein.

...

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents. Notwithstanding such observations, the Contractor shall nevertheless be entitled to rely upon any Owner provided information about the Project, Work or site, including, but not limited to, surveys, subsurface tests and data, the identification and location of hazardous substances and the condition and characteristics of structures on the site, unless Contractor has specific knowledge that the Owner provided information contrary to existing conditions. If that occurs, then Contractor shall ask for clarification from Owner or Architect. Whenever possible, the Contractor and all of its necessary Subcontractors, as appropriate, shall endeavor to verify existing field conditions that are visible (i.e., accessible through normal and customary methods of observation and investigation). Where existing field conditions are not visible (e.g., below grade) or concealed within construction assemblies, and existing items are indicated on the drawings, such items shall be considered as being shown schematically only, if so represented or designated as such by Architect.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract ~~Documents; however, the Documents.~~ The Contractor shall promptly report to the Architect and Owner any errors, inconsistencies or omissions ~~discovered~~ discovered, including design errors or omissions, by or made known to the Contractor as a request for information in such form as the Architect may require. The Contractor shall halt all affected work until such discrepancies have been corrected or until directed otherwise by Owner or Architect. The direct out-of-pocket costs related to this Work stoppage shall be reimbursed to the Contractor and, if the Work stoppage results in a delay in the Project Schedule, the

Completion Date shall be extended by Change Order. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 ~~The~~ Except as specifically set forth in the Contract Documents, the Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit or the Architect's failure to respond to such requests for information or notices, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, authorities, unless the Contractor recognized such error, inconsistency, omission or difference and failed to report it to the Architect. If the Contractor performs any construction activity involving an error, inconsistency, omission or difference in the Contract Documents that Contractor knowingly recognized or should have reasonably recognized without such notice to the Architect and Owner, the costs for correction will be allocated among the responsible parties.

§ 3.2.5 The Contractor shall provide reasonably necessary estimating and coordination services to evaluate the value engineering and cost savings options. Contractor shall not be entitled to an increase in the Contract Price for such services. For those options the Owner approves as a lump sum adjustment, the Contract Price shall be reduced by the full amount of direct costs associated with the change through the Change Order process.

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§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the ~~Contract~~ Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures. not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences, or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising from those Owner-required means, methods, techniques, sequences, or procedures, unless Contractor is negligent.

...

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, ~~water, heat, utilities, transportation,~~ and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. The Owner will not be liable to assume any responsibility for the damage or wear to the Contractor's tools, materials and/or equipment except to the extent covered by any applicable insurance or to the extent that the Owner and its agents, employees or contractors are responsible for the damage or wear.

§ 3.4.2 Except in the case of minor changes in the Work approved-authorized by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section Sections 3.12.8 or 7.4, the Contractor may make substitutions of specified materials or equipment only with the consent and approval of the Owner, after evaluation and recommendation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.2.1 Where a definite material or method is specified, it is not the intention to discriminate against any "approved equal" product by another manufacturer. Rather, it is the intention to set a definite standard. Open competition is expected. The Contractor shall submit to the Architect the substitutions it proposes together with samples, complete evidence of quality and any credits that may accrue to the Owner for allowing the various substitutions. The Architect shall investigate all proposed substitutions, consult with the Owner for its review and approval, and render final decisions as is necessary to avoid any delay in the Work.

§ 3.4.2.2 The Contractor shall ascertain that items offered as equals to specified items will fit the physical limits of space shown on the Drawings, and leave ample clearance for proper installation, operation and servicing of the item and all adjacent items.

§ 3.4.2.3 Materials and equipment proposed as substitutes for specified items may be rejected by the Architect and Owner.

§ 3.4.2.4 If during the performance of Work any materials or equipment specified in the Contract Documents become unavailable because of government restrictions or because of other market conditions (which are not the result of Contractor's delay in order or purchasing), the Owner, Architect and Contractor shall collectively suggest and consider alternatives and substitutes. The Architect shall then issue a final recommendation for consideration and approval by Owner. Contractor will be entitled to an increase in the Contract Sum for actual increased costs incurred directly as a result of an alternative or substitution required because of government restrictions or other market conditions to the extent such cost could not be mitigated or otherwise avoided. Contractor will provide Owner with invoices or such other documents as Owner may reasonably require to verify Contractor's increased costs.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor shall promptly remove any persons of whom Owner has a reasonable objection to their fitness for work.

§ 3.4.4 Contractor shall provide to Architect the required information for all materials and equipment which, pursuant to the Contract Documents must be approved by Architect. The Contractor shall provide such information to the Architect according to the submittal schedule included in the Construction Schedule, or, if not specifically included in the Construction Schedule, then timely enough to allow for Architect's review and to otherwise not cause a delay in the Project Schedule.

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§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements-requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4. The Contractor's warranty under this Section is not exclusive, and any other express warranties stated elsewhere, may also be exercised by Owner at its option. In addition, the Contractor shall assign to the Owner all manufacturers' and suppliers' warranties, express or implied, respecting any part of the Work which Contractor or Subcontractors receive not later than at the time Final Payment is made. The assignments, copies of all warranties and all product operation

manuals for proper use and maintenance of equipment shall be conveyed to the Owner prior to Final Payment for the Work (i.e., final retainage). Owner may, at its option, release final retainage for that portion of the Work for which all contract close-out requirements have been satisfied.

§ 3.5.3 The Contractor and any applicable Subcontractors agree, as part of its post completion Work and its warranty obligations, to participate in warranty walk-throughs at the Project Site with the Owner and its Architect eleven (11) months after Substantial Completion of each phase of the Work to identify warranty work and any other items which must be corrected to conform with the requirements of the Contract Documents.

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§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction. However, if the Contractor observes that portions of the Contract Documents are at variance therewith and promptly notifies the Architect and Owner in writing, necessary changes shall be accomplished by appropriate Modification. Any Modification shall be in accordance with Article 7. Notwithstanding the above, for those trades requiring licensed tradesmen, Work depicted for those trades shall be installed in a code conforming manner irrespective of references or representations in the documents to the contrary, at no additional cost to the Owner.

...

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than ~~14~~21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will ~~recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both.~~ recommend, for Owner's review and approval or disapproval, an equitable adjustment in the Contract Time. Any adjustment to the Contract Sum recommended by the Architect will be based on the factors set forth in Sections 7.3.4.1 to 7.3.4.5. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and ~~Contractor, Contractor of its recommendation in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim recommendation, that party proceed as provided in Article 15.~~

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. ~~Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.~~ If requested by Contractor, any adjustment to the Contract Sum or Contract Time will be based on the factors set forth in Sections 7.3.4.1 to 7.3.4.5.

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§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be ~~in attendance at the Project site during performance of the Work.~~ at the Project site as necessary for the performance of the Work, and who shall not be replaced without the consent of the Owner. If the superintendent or an assistant leaves the employment of the Contractor, the replacement shall be subject to Owner's approval. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. All communications shall be confirmed in writing.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall ~~notify~~ furnish in writing to the Owner and Architect of the name and qualifications of a proposed superintendent. ~~Within 14 days of receipt of the~~

~~information, the Architect may notify the Contractor, stating whether the Owner or the Architect. The Owner may reply within fourteen (14) days to the Contractor in writing, stating whether the Owner (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice to review. Failure to reply within the 14-day period shall constitute notice of no reasonable objection.~~

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner ~~or Architect~~ has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.9.4 The Contractor shall have the Superintendent and other competent representatives familiar with the Work attend meetings which may be held at the job site or at such place as Owner designates.

...

§ 3.10.1 ~~The-If the Owner requires, the Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's review and Architect's information approval a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.~~ Project shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 ~~The Contractor, Contractor shall prepare a submittal schedule promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit a submittal the schedule for the Architect's approval. The Architect's and Owner's review and approval, which approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect and Owner reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.~~

...

~~The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.~~

§ 3.11.1 The Contractor shall maintain at the Project site, one (1) copy of the Contract Documents, including Drawings, Specifications, Addenda, Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate Field Changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed and prior to final payment (i.e. final retainage). Owner may, at its option, release final retainage for that portion of the Work for which all contract close-out requirements have been satisfied.

§ 3.11.2 At completion of each phase of the Work, record drawings of all mechanical and electrical systems, if any, shall be submitted to the Architect, which indicate all Field Changes. If not submitted, Applications for Payment will not be processed.

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§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate ~~how~~ the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents

require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect and Owner or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

...

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar ~~submittals~~, submittals until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically ~~notified~~ informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

...

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall ~~be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall~~ cause such services or certifications to be provided by an ~~appropriately~~ properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the ~~adequacy and accuracy~~ adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor ~~the appropriate performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the~~ The Architect will review and ~~approve~~ approve, reject, or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents (i.e., "revise and resubmit" or "proceed as revised") in accordance with Section 4.2.7 herein. Except to the extent Contractor is provided Design-Build services or has retained Subcontractors that are performing design-build services (e.g., MEP Subcontractors), the Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents, but shall be responsible to promptly report to the Architect and Owner any errors, inconsistencies or omissions discovered in the performance and design criteria.

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§ 3.12.11 Contractor shall furnish three (3) complete sets of manuals containing the manufacturers' warranties and instructions necessary for maintenance and operation of each item of equipment and apparatus it furnishes under the Contract Documents, warranty information and any additional data specifically requested under the various sections of the Specifications for each division of the Work to the Architect for subsequent conveyance with all Contractors' manuals to the Owner at or before Final Payment. Each manual shall be arranged in logical order, indexed and suitably bound. Alternatively, the Contractor may provide this information in the as-built BIM for the Work.

~~The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.~~ § 3.13.1 The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.13.2 The Contractor shall store materials on the site where directed and in such a manner as will not damage the area in which they are stored. Material deliveries shall be scheduled so that they are not stored longer than necessary. All items furnished to the site by the Owner shall be stored as directed.

§ 3.13.3 Where the Contractor's operations will affect the Owner's operation and use of existing facilities, the Contractor will arrange its work to minimize its effect on the existing facility, and will coordinate the timing, sequencing and duration of the disruptions with the Owner's representative and proceed with such work only after receiving authority to do so.

...

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, ~~or~~ and patching shall be restored to the condition existing prior to the cutting, fitting, ~~or~~ and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a Separate Contractor except with written consent of the Owner and of ~~the such~~ Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

...

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials ~~and~~ or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

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The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or produce is an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for ~~the such~~ loss unless ~~the such~~ information is promptly furnished to the Architect.

...

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall ~~indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them~~ indemnify, defend, and hold harmless the Owner and its board members, officers, directors, agents and employees from and against claims, damages, losses, and expenses, ~~including including~~ but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible ~~property (other than the Work itself), property,~~ property, but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused

in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

...

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the ~~Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.~~ Owner and written notice of such change is provided to the Contractor.

...

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative ~~during construction~~ (1) during construction, (2) until the date the Architect issues the final Certificate for ~~Payment~~, and (3) with the Owner's concurrence, from time to time during the one-year period of correction of Work described in Section 12.2.2. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, (1) to become generally familiar with the progress and quality of the portion of the Work completed, and (2) to inspect the Work, (3) to determine in general if the Work ~~observed~~ is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract ~~Documents~~, and (4) when applicable, to determine whether to issue a Certificate for Payment. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract ~~Documents~~, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract ~~Documents~~, (2) known deviations ~~Documents~~ and from the most recent construction schedule submitted by the Contractor, and (3) (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract ~~Documents~~, except as set forth herein. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

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~~The~~ Except as otherwise provided in the Contract Documents, the Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

...

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not ~~the~~ such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions ~~or or, unless otherwise stated by the Architect,~~ of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may ~~order~~ authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

...

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. ~~The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives. such Project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.~~

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§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to ~~either,~~ either and will not be liable for results of interpretations or decisions rendered in good faith.

...

§ 5.2.1 Unless otherwise stated in the Contract ~~Documents, Documents or the bidding requirements,~~ the Contractor, as soon as practicable after award of the Contract, shall ~~notify the Owner and Architect of the~~ furnish in writing to the Owner through the Architect the names of persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within ~~14-10~~ days of receipt of the information, the Owner or Architect may notify the Contractor in writing whether the Owner or the Architect ~~(+)~~ has reasonable objection to any such proposed person or entity or ~~(-)~~ that the Owner or the Architect requires additional time for review. Failure of the Owner or Architect to provide notice within the ~~14-day~~ 10-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection. It shall be considered reasonable for the Contractor to reject a Subcontractor who fails or refuses to sign a form of subcontract reasonably acceptable to the Contractor.

...

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity ~~for one~~ previously selected if the Owner or Architect makes reasonable objection to such substitution.

...

~~By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the~~

~~Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.~~

§ 5.3.1 By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.3.2 Owner is an intended third-party beneficiary of all subcontracts and material supply contracts of whatever tier, with the right to directly enforce, both during and after the construction period, subcontractor and material supplier obligations to meet prevailing standards or workmanship and to comply with the contract documents including but not limited to all applicable express and implied warranties. During the construction period, that right shall only be exercised in cooperation with Contractor, unless Contractor is in default under the Contract and fails to cure the same.

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- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and ~~Contractor~~; Contractor in writing; and

...

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights ~~and obligations~~ under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for actual increases in ~~cost~~ the direct costs resulting from the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

...

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained in connection with other portions of the Project or other construction or operations on the Project site under Conditions of the Contract identical or substantially similar to those of this Contract, including those provisions of the ~~Conditions of the Contract~~ related to insurance and waiver of subrogation.

...

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with ~~any other~~ Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to ~~its~~ the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall ~~have the same obligations and rights that be deemed to be subject to the same obligations and to have the same rights that apply to~~ the Contractor has under the Conditions of the Contract, ~~including, without excluding others, those as stated in Article 3, this Article 6, and Articles 10, 11, and 12.~~

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§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly ~~notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor report to the Architect apparent discrepancies or defects in such other construction or operations that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work such proper execution. Failure of the Contractor to so report shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent. Work, except as to defects not then reasonably discoverable.~~

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for actual and direct costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in ~~Section 10.2.5. Section 10.2.5, but only to the extent caused by Contractor.~~

...

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up ~~and the Architect will allocate the cost among those responsible.~~

...

§ 7.1.4 Except for reasons of emergency or for minor changes in the Work (see Sections 7.4 herein), there will be no Changes in the Work unless first authorized in writing by Owner and Architect pursuant to the terms of this Article 7.

...

§ 7.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in Section 7.3.3.

§ 7.3.1 A Construction Change Directive is a written order prepared by the ~~Architect~~ Owner and signed by the Owner and Architect, ~~directing the form of which is attached hereto as "Exhibit 3," directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both.~~ The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable ~~amount~~ amount, all on a not to exceed basis unless otherwise agreed. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, ~~in such form as the Architect may prescribe,~~ an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- ~~1~~ 1 ~~Costs of labor, including applicable payroll taxes, Actual costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect; and workers' compensation insurance.;~~

...

- ~~4~~ 4 ~~Costs of premiums for all bonds and insurance, insurance (itemized separately and subject to the provisions of the Agreement), permit fees, and sales, use, or similar taxes, directly related to the change; and~~
- ~~5~~ 5 ~~Costs~~ Additional costs of supervision and field office personnel directly attributable to the change.

...

§ 7.3.9 ~~Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Contractor may request payment for changes in the Work not in dispute in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.~~

§ 7.3.10 ~~When the Owner and Contractor agree with a determination made by the Architect reach an agreement concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive shall be recorded by preparation and execution of an appropriate Change Order. The Contractor shall be responsible for preparation of the Change Order. The Contractor's agreement with a Change Order constitutes a waiver and release by the Contractor and its Subcontractors and suppliers for any claim for delay, cumulative impact, cost of extended general conditions, and any other indirect cost associated with the Owner-directed change in Work.~~

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The Architect ~~may have the authority to order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.~~ writing signed by the Architect and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

§ 7.5 FIELD CHANGES

§ 7.5.1 Upon the written request of Contractor, Owner may authorize minor changes in the Work which occur in the field ("Field Change(s)") without prior presentation to the Architect, so long as each of the following criteria is

satisfied:

- .1 the proposed Field Change is consistent with the intent of the Contract Documents;
- .2 the proposed Field Change will not result in an extension of the Contract Time;
- .3 the proposed Field Change will not result in a cumulative increase in the GMP or the Contract Sum by more than \$5,000.00.

§ 7.5.2 By presenting the proposed Field Change, the Contractor is verifying that each of the criteria listed above is satisfied with respect to the proposed Field Change.

§ 7.5.3 If a Field Change may result in a cumulative increase in the Contract Sum of more than \$5,000.00, the Field Change set forth in Section 7.5.1 above does not apply. Rather, the Contractor must follow the written change order provisions set forth in Sections 7.1 and 7.2 above.

§ 7.5.4 The issuance of a Field Change and the provisions of this Section 7.5 shall not limit the Owner's right of review and approval of any Field Change in the progress payment process or as part of final payment.

...

§ 8.1.2 The date of commencement of the Work is the date established in the ~~Agreement~~-Notice to Proceed. If there is no Notice to Proceed, it shall be the date of the Owner-Contractor Agreement or such other date as may be established therein.

§ 8.1.3 The date of Substantial Completion of the Work or designated portion thereof is the date certified by the Architect in accordance with Section 9.8.

...

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the ~~Work~~-Work and the dates established for Substantial Completion and Final Completion are reasonable.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, ~~commence the Work~~ prematurely commence operations on the Project site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Contract Documents or a notice to proceed given by the Owner, the Contractor shall notify the Owner in writing not less than five (5) days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

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§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act ~~or neglect of negligence~~ of the Owner or Architect, or of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable ~~casualties~~, adverse weather conditions ~~documented in accordance with Section 15.1.6.2,~~ casualties or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect ~~determines,~~ and/or Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the ~~Architect may determine~~-Owner may allow.

...

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents. Contractor's remedy for delays caused by the Owner or Architect shall be limited solely to (a) extra time; and (b) any applicable "general conditions" expenses allowed by Section 9.7 and Section 14.3 of the

General Conditions. With respect to any delays caused by Owner or Architect, if Owner contends that acceleration of the Work is necessary, Contractor shall accelerate the Work as directed by Owner. Owner shall pay Contractor only the Contractor's extra labor cost over the amount for regular time during the period of such overtime, including additional insurance and taxes incurred by the Contractor with respect thereto. Time slips covering said overtime must be submitted to Owner's designated representative for checking and approval.

Contractor's sole remedy in the event of (i) any delay not caused by or attributable to the Owner; or (ii) a delay excusable per Section 8.3.1 above; shall be an equitable extension of the Contract Time and Contractor shall not obtain any monetary damages for the delay or any addition to the Contract Sum or Guaranteed Maximum Price; however, Contractor shall be entitled to use Contractor's construction contingency funds (if any) to cover additional costs incurred as a result of any such delay.

Notwithstanding any implication to the contrary in Section 8.3.1 or elsewhere herein, Contractor shall not be entitled to any time extension for any delay that is the fault of Contractor or any of its Subcontractors or suppliers, or their Subcontractors or suppliers at any level. There shall be no adjustment of compensation for acceleration efforts undertaken by Contractor to meet the Substantial Completion date, as the same may be modified as provided for herein, as a result of any delay that is the fault of Contractor or any of its Subcontractors or suppliers, or their Subcontractors or supplier at any level. However, Contractor shall be entitled to use Contractor's construction contingency funds (if any) to cover additional costs incurred as a result of any such delay.

§ 8.3.4 If there is a delay or anticipated delay of the Construction Schedule because of the actions or omissions of the Contractor or any Subcontractor and the Contractor is unable to produce within fifteen (15) working days after notice by the Owner a recovery schedule for its Work to address such delay or anticipated delay acceptable to the Owner, then the Owner shall have the right to order the Contractor to take such actions as may be necessary, consistent with the same performance of the Work affected thereby, to recapture the time lost by any such delay. Such action shall include increasing staff; increase in shifts or hours worked per day, or performance of work on Saturdays, Sundays or national holidays; use of any available work float in the Project schedule; and changing the sequence of work activities. Owner shall pay Contractor only the Contractor's extra labor cost over the amount for regular time during the period of such overtime, including additional insurance and taxes incurred by the Contractor with respect thereto. Time slips covering said overtime must be submitted to Owner's designated representative for checking and approval.

The Owner, at its option, shall also be entitled to accelerate performance of the Work where there is no delay or anticipated delay. The costs of such acceleration where there is no delay or anticipated delay shall be paid for by the Owner.

§ 8.3.5 If Contractor intends to claim an extension of time to perform as a result of a delay not caused by Contractors or any of its Subcontractors or suppliers, Contractor must give Owner written notice within seven (7) days after the event giving rise to the claim and follow the procedures in Article 7 for securing a Change Order; otherwise such a claim shall be deemed waived.

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§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Owner and Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Owner or Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

...

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Owner and Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. ~~The Such~~ application shall be notarized, if required, and supported by all such data substantiating the Contractor's right to payment ~~that as~~ the Owner or Architect may require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

...

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the ~~site,~~ site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities ~~that making a claim by reason of having~~ provided labor, materials, and equipment relating to the Work.

§ 9.3.4 With each Application for Payment, the Contractor shall provide to Owner; (a) a partial lien waiver and release from each subcontractor or supplier who was to receive funds from the previous Application for Payment, and (b) the Contractor's own conditional lien waiver for all funds to be received for that Application.

§ 9.3.5 Provided that Owner shall make payment of amounts due to Contractor, Contractor shall keep the Project site free from any liens by Contractor, its Subcontractors, Architect or engineers retained by Contractor, or their respective assigns. No Uniform Commercial Code (UCC) or similar state statutory filings shall be made by Contractor, Subcontractors, or such Architect or engineers, except upon express prior written consent of Owner. If, because of any act or omission of Contractor or anyone claiming through or under Contractor, any mechanic's or other lien, encumbrance or order is filed against Owner or the Project site, Contractor shall, at Contractor's own cost and expense, cause the same to be canceled and discharged of record or bonded over within thirty (30) days after receiving notice thereof, and shall indemnify and hold Owner harmless from and against all costs, expenses, claims, losses or damages, including reasonable attorneys' fees, resulting therefrom or by reason thereof.

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§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment Contractor for such amount as the Architect determines is properly due, ~~and or~~ notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) ~~withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.~~ Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data ~~in comprising~~ the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, and that the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to

correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

...

§ 9.5.1 The Architect and/or Owner may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Owner's or Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the ~~Owner. The Architect-Owner and the Owner shall pay Contractor in accordance with Section 9.6.1.~~ The Architect and/or Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Owner's or Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

...

- .2 third party claims not resulting from the Owner's failure or refusal to pay Contractor filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or ~~suppliers~~ for labor, materials or equipment;

...

- .5 damage to the Owner or a Separate ~~Contractor; Contractor and not covered by insurance;~~
- .6 reasonable evidence that the Work will not be completed within the Contract ~~Time, Time as a result of the Contractor's fault,~~ and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; ~~or~~
- .7 repeated failure to carry out the Work in accordance with the Contract ~~Documents--Documents;~~
- .8 failure of the Contractor to comply with the most current approved Project construction schedule; or
- .9 the existence of any event of material default under the Contract Documents

§ 9.5.2 ~~When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.~~ INTENTIONALLY OMITTED

§ 9.5.3 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.4 If the Owner or Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor ~~or supplier or material or equipment suppliers~~ to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the ~~Contractor~~ Architect shall reflect such payment on its ~~next Application~~ the next Certificate for Payment.

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§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, either by agreement or by reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by

appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor. INTENTIONALLY OMITTED

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and material and equipment suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or material or equipment supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

...

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by material and equipment suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

...

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

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§ 9.8.1 Substantial Completion is the stage in the progress of the Work when (i) the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use; for its intended use, subject only to the completion of Punch list items or other Work that cannot be completed because of weather conditions or because of unavailability of products or materials, none of which may materially affect Owner's intended use and enjoyment of the Project or cause unreasonable disruption of interference of Owner's intended use or otherwise affect Owner's ability to fully utilize the Project for its intended use; (ii) all required permits and approvals, including a certificate of occupancy, have been issued and obtained, unless any such permit, approval or certificate has not been issued through no fault of the Contractor; and (iii) all utilities required for Owner's operation of the Project are in place and operational, including gas, electricity, water, sanitary, sewer, and telephone; (iv) a Certificate of Substantial Completion is issued and signed-off on by Owner; and (v) Contractor has complied with all terms and conditions of the Agreement.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. The Contractor shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Observation by the Architect and/or the Owner during the construction shall not be considered as acceptance of any part of the Work, and the conditions found when final

inspection is made shall be taken as governing the fitness of the Work and whether or not it conforms to the provisions of the Contract.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, ~~which is list~~ not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in ~~the such~~ Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to ~~the such~~ Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.8.6 Contractor shall reach Final Completion of the Work within 60 days of the date of Substantial Completion except for those items which cannot be completed because of weather conditions or because of unavailability of products or materials or that Owner agrees do not have to be completed within the 60-day period.

...

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.2.9 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

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§ 9.9.3 Unless otherwise agreed ~~upon~~, upon in writing and signed by Owner, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

...

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such ~~inspection. When inspection, and when~~ the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will

constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, ~~effect and will not be cancelled or allowed to expire until at least 30 days' prior written notice has been given to the Owner,~~ (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, ~~and (6) (6) a marked-up version of all Construction Documents showing the record condition of the Work; (7) a Final Lien Waiver and Release from Contractor and from all subcontractors and suppliers who provided any labor, materials or Work for the Project; and (8) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a such lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging ~~the such~~ lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' ~~fees-fees, unless Contractor is proceeding diligently and in good faith to contest such lien, claim, security interest, or encumbrance and has furnished to Owner reasonable security, such as a bond, title insurance, or letter of credit to reasonably protect Owner against such lien, claim, security interest, or encumbrance.~~~~

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully ~~completed, corrected, completed~~ and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of ~~the surety~~ to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

...

- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract ~~Documents; or~~
- .4 ~~audits performed by the Owner, if permitted by the Contract Documents, after final payment.~~ Documents.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a material or equipment supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

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§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 ~~caused in whole or in part to the extent caused by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.~~

...

Contractor shall promptly report in writing to the Architect and Owner all accidents whatsoever arising out of, or in connection with, the performance of the Work, whether on or off the Site, which caused death, personal injury or property damage, giving full details and statements of witnesses, if Contractor reasonably believes there may be a claim made against Owner. In addition, if death or serious injury or damages are caused, the accident shall be reported immediately to Owner by telephone or messenger. If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of the such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

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§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify-report the condition to the Owner and Architect of the condition in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the such material or substance or who are to perform the task of removal or safe containment of the such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up. A Change Order shall be issued to the Contractor as provided in Article 7, providing for an equitable adjustment in the Contract Sum or Contract Time for an increase or delay in the Work or the cost thereof in the event the Contractor encounters hazardous substances.

§ 10.3.3 ~~To the fullest extent permitted by law, the~~ The Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, despite Owner's representations to the contrary, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for ~~hazardous~~ materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. Documents and are used, stored, transported, handled and installed properly by Contractor. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the ~~use and handling~~ use, handling, storage, transportation or installation of such materials or substances.

§ 10.3.5 The Contractor shall ~~reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous~~ indemnify, defend and hold the Owner harmless against any and all liabilities, damages, losses, costs, penalties, expenses or responsibilities (1) for remediation of materials or substances the Contractor brings to the site and negligently handles, ~~or~~ (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the

extent that the cost and expense are due to the Owner's fault or ~~negligence~~-negligence, and (3) materials and substances which are Contractor's responsibility under Section 10.3.4.

§ 10.3.6 ~~If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.~~ Owner assumes the risk of, and shall indemnify, defend and hold Contractor harmless against any and all liabilities, damages, losses, costs, penalties, expenses or responsibilities, including reasonable attorneys' fees and disbursements, sustained in connection with any request or order arising directly or indirectly out of the release, threatened release, or handling of hazardous substances or materials at the Project site or at any site to which a hazardous substance is moved or alleged to have been moved provided that Contractor provides written notice to Owner of any such claim, demand, cause of action, suit, judgment, subpoena or administrative proceeding within 5 days of receipt of same. The duties and responsibilities of the Owner as set forth in this section shall not apply to the extent that the liability, damage, loss, economic loss, cost, penalty, expense or responsibility results from hazardous substances or material brought onto the Project site by Contractor or arises out of negligence of Contractor after the hazardous substance or materials is discovered on the Project site and, if applicable, written notice of the discovery along with documents identifying the materials provided to the Contractor.

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§ 11.1.1 ~~The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents, such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:~~

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18;
- .9 claims arising out of or relating to the use of Contractor's autos, trucks and other vehicles in connection with the Project; and
- .10 claims arising from Contractor's professional services, if any.

~~The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents, companies rated A or better by A.M. Best and lawfully authorized to do business in the jurisdiction in which the Project is located.~~

§ 11.1.2 ~~The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents, to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder (including the Guaranteed Maximum Price, as may be amended by Change Order(s)). The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located. Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the~~

Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished. The Contractor may require its Subcontractors to furnish bonds in its discretion.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished. The Owner, its board members, directors, officers, agents (including the Architect) and employees, and PNC Bank National Association, its successors and/or assigns, and Columbia Housing SLP Corporation, its successors and/or assigns, shall be named as additional insureds, on a primary and non-contributory basis, on all insurance policies providing coverage for the claims identified in Sections 11.1.1.3 through 11.1.1.9 above, including the completed operations coverage therein and the endorsements thereto. (See Exhibit to Agreement for the Certificate of Insurance). Any insurance maintained by Owner will be in excess of and not contribute with additional insured coverage provided by Contractor regardless of any "other insurance" clause. "Vertical exhaustion" shall apply when determining responsibility for coverage.

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage. The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment and, with respect to the Contractor's completed operations coverage, for the period identified in 11.1.8.1 below. If any of the insurance required by Section 11.1.1 is maintained on a claims-made basis, then prior to final payment, Contractor shall purchase tail insurance affording the same coverage and having the same limits, for a period of not less than three years from the date of Final Payment.

§ 11.1.5 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance.

§ 11.1.6 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.1.7 Workers' Compensation and Employers' Liability: Contractor agrees that it and all its Subcontractors will comply with all statutes and law with regard to Workers' Compensation/Occupational Disease applying to employees or their beneficiaries. Minimum limits shall be:

<u>.1</u>	<u>Workers' Compensation-Statutory Limits</u>	
<u>.2</u>	<u>Employers' Liability</u>	<u>Not Less Than:</u>
	<u>Bodily Injury by Accident</u>	<u>\$100,000 Each Accident</u>
	<u>Bodily Injury by Disease</u>	<u>\$100,000 Each Employee</u>
		<u>\$500,000 Policy Limit</u>

This insurance shall contain provisions waiving each underwriter's rights of subrogation against Owner.

§ 11.1.8 Other insurance required is as follows:

- .1 Commercial General Liability

Limits not less than:

Bodily Injury and Property \$1,000,000 Each Occurrence
Damage Combined Single Limit: \$2,000,000 Annual General Aggregate – Per Policy
\$2,000,000 Products Liability/Completed Operations

Fire Damage \$50,000

Medical Payment \$5,000

Personal Injury and Advertising Injury \$1,000,000

Commercial General Liability coverage must provide:

General Aggregate Limit must apply per project
Premises and Operations
Products Liability/Completed Operations Liability
Contractual Liability
XCU Coverage (explosion, collapse and underground property damage)

Note: Products Liability/Completed Operations Coverage shall continue in force for two (2) years from the earlier of 90 days following Substantial Completion or final payment by the Owner.

.2 Auto

Limits not less than:

Bodily injury and Property Damage

Combined Single Limit Policy must be intended to cover all owned,
Non-owned and hired vehicles: \$1,000,000 Each Accident

.3 Umbrella Liability

Not less than:

Bodily Injury and Property Damage \$10,000,000 Each Occurrence

Combined Single Limit \$10,000,000 Annual

§ 11.1.9 Insurance required of Subcontractors:

.1 All MEP Subcontractors and any other Subcontractor who will perform Work on the Project Site where the aggregate amount to be paid to the Subcontractor totals \$1,000,000.00 or more of the construction budget shall:

(a) Maintain the same limits as the Contractor for insurance required under Sections 11.1.7, 11.1.8.1 and 11.1.8.2 herein; and

(b) Umbrella coverage of \$5,000,000.

.2 Any other Subcontractor who will perform Work on Site shall maintain the same insurance as the Contractor for insurance required under Sections 11.1.7, and 11.1.8, excluding pollution liability, but for per occurrence amounts of not less than \$250,000.00 up to the amount of Subcontractor's contract, whichever is more; and maintain umbrella coverage of not less than \$1,000,000.

.3 All other Subcontractors (not performing Work on site) shall have adequate insurance coverage up

to the minimum amount required by law. If a Subcontractor does not have the insurance required above, then Contractor shall advise Owner and Owner may, in its sole discretion, waive and/or modify the above insurance requirements for Subcontractors.

§ 11.1.10 The Owner and Architect assume no responsibility for Contractor's or Subcontractors' liabilities in the event that the limits set above are not adequate or coverage is not properly obtained by either of them.

§ 11.1.11 Contractor's insurance policies, terms and conditions shall govern unless otherwise modified, in writing, by the parties.

§ 11.1.12 Unless otherwise agreed by Owner, Contractor shall ensure that the insurance required of Subcontractors in Section 11.1.9 be maintained in an insurance company or companies rated A or better by A.M. Best and lawfully authorized to do business in the jurisdiction in which the Project is located.

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§ 11.2.1 Owner's Liability Insurance. The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where companies rated A or better by A.M. Best and lawfully authorized to do business in the jurisdiction in which the Project is located.

~~**§ 11.2.2 Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.~~

§ 11.2.2 Owner's Property Insurance. The Owner shall purchase and maintain property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.2 to be covered, whichever is later. This insurance shall include interests as named insureds, but not as "first-named insureds" of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project. Such insurance shall be purchased and maintained from a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located.

~~**§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance. Property insurance shall be on an "all-risk" or~~

equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.2.4 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.5 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; and (2) the Contract Time and Contract Sum shall be equitably adjusted. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 11.2.6 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.2.7 Except to the extent covered by insurance, the Owner shall not be liable for loss or damage to any tools owned by mechanics, any other tools, equipment, staging, towers, and forms owned or rented by the Contractor, the capital value of which is not included in the Cost of the Work, or any shanties, houses or other temporary structures.

§ 11.2.8 The Owner shall provide the Contractor with a certificate of insurance for each policy that includes insurance coverages required by this Section 11.2.

§ 11.2.9 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance.

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The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

...

§ 11.5.1 A loss insured under the Owner's property insurance ~~required by the Agreement~~ shall be adjusted by the Owner as ~~fiduciary~~ and made payable to the Owner as ~~fiduciary~~ for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

...

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, ~~the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate.~~ costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, ~~the costs of uncovering the Work, such costs and the cost of correction, shall be at the Contractor's expense.~~ expense, unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

...

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

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§ 12.2.2.1 In addition to the Contractor's obligations under ~~Section 3.5,~~ Section 3.5 and the requirements under Clause 23 of the HUD 5370 General Conditions of the Contract for Construction, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of ~~any an~~ applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. ~~During the one year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty.~~ If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

...

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this ~~Section 12.2,~~ Section 12.2, except for Work not properly completed in the first instance.

...

The Contract shall be governed by the law of the ~~place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern~~ Section 15.4.State of Wisconsin.

...

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate ~~the~~ such assignment.

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§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed ~~upon in writing~~ in writing or as set forth herein.

...

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. ~~The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.~~

...

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated testing, inspection, or approval procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

...

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at ~~the rate~~ such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

...

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of ~~30~~ 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the ~~Work, Work under direct or indirect contract with the Contractor,~~ for any of the following reasons:

...

- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract ~~Documents;~~ Documents and none of the circumstances prescribed in Sections 9.5.1.1 through 9.5.1.9 exist; or

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§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the ~~Work, Work under direct or indirect contract with the Contractor,~~ repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, ~~as well as reasonable overhead and profit on Work not executed, and including reasonable overhead and profit, actual and direct costs incurred by reason of such termination.~~ termination, and damages.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions

of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

...

- .1 ~~repeatedly~~-refuses or fails to supply enough properly skilled workers or proper ~~materials~~; materials in accordance with Contractor's schedule for attaining Substantial Completion;
- .2 fails to make payment to Subcontractors ~~or suppliers for materials or labor~~ in accordance with the respective agreements between the Contractor and the Subcontractors ~~or suppliers~~; if and only if Contractor fails to provide Owner with reasonable evidence that funds have been placed by Contractor in a commercial escrow account sufficient to pay Subcontractor for the disputed items, fails to post a bond for the amount due Subcontractors, fails to obtain an endorsement to a title policy with respect to liens of Subcontractor, or if the portion of the Contract Sum owing to the Contractor held in retainage by Owner pursuant to Article 9 is less than the amount allegedly owed by Contractor to Subcontractor;
- .3 ~~repeatedly~~-disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; ~~or~~
- .4 otherwise is guilty of substantial breach of a provision of the Contract ~~Documents~~. Documents; or
- .5 becomes insolvent, is in bankruptcy, or is in receivership.

§ 14.2.2 When any of the ~~reasons described in Section 14.2.1 exist, and above reasons exist,~~ the Owner, upon certification by the Architect that sufficient cause exists to justify such action, ~~the Owner may,~~ without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' ~~notice, written notice and provided the Contractor,~~ written notice and provided the Contractor, within such seven (7) day period, has not cured such cause or breach, terminate employment of the Contractor and may, subject to any prior rights of the surety:

...

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the ~~Initial Decision Maker, Architect,~~ upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.2.5 Upon termination of the Contract, Contractor shall immediately stop the Work hereunder except such as shall be essential to preserve and safeguard existing Work and immediately advise Owner of the status of all outstanding subcontracts and purchase orders. Such outstanding purchase orders and subcontracts shall be canceled or assigned to Owner as Owner may direct. In the event of any such termination, Contractor shall deliver all of the Work completed and in process to the date thereof to Owner and shall deliver to Owner all documents of title, reports, estimates, schedules, and other documents and data as Owner shall require.

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§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption ~~under as described in~~ Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

...

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

...

§ 14.4.3 In case of such termination for the Owner's convenience, the ~~Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of~~

~~Subcontracts; and the termination fee, if any, set forth in the Agreement. Contractor shall be entitled to receive payment for Work properly executed (including Contractor's fee for the Work completed), and costs incurred by reason of such termination.~~

...

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, ~~a change in the Contract Time, adjustment or interpretation of the terms of this Agreement,~~ or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

...

~~The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.~~ INTENTIONALLY OMITTED

...

~~§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.~~

~~§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.~~

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~~§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.~~

~~If Subject to all other applicable provisions of the Contract Documents, if the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 herein shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.~~

...

~~§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided in Section 15.1.3 herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.~~

~~§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, time for the geographical region~~

where the Project is located, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

...

The Except to the extent that it is a covered loss under insurance required for this Project, the Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

...

§ 15.2 Initial Decision Resolution of Claims and Disputes

§ 15.2.1 ~~Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner. The Owner and Contractor shall endeavor to resolve Claims through good faith direct discussions between the parties' representatives. If, at any time, the Owner's and Contractor's representatives are unable to resolve their differences, a senior executive from either party may refer such dispute to a senior executive (of the requesting party's choice) of the other party. Within 21 calendar days of such referral, the executives shall meet to resolve the dispute.~~

§ 15.2.2 ~~The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim. In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.~~

§ 15.2.3 ~~In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense. If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.~~

§ 15.2.4 ~~If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.~~

§ 15.2.5 ~~The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.~~

§ 15.2.6 ~~Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.~~

~~§ 15.2.6.1~~ Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

~~§ 15.2.7~~ In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

~~§ 15.2.8~~ If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 Mediation

~~§ 15.3.1~~ Claims, disputes, or other matters in controversy unresolved per Section 15.2 and arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

~~§ 15.3.2~~ The parties shall endeavor to resolve their Claims unresolved per Section 15.2 by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. ~~If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~

~~§ 15.3.3~~ Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision. INTENTIONALLY OMITTED

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§ 15.4 Arbitration

~~§ 15.4.1~~ If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

~~§ 15.4.1.1~~ A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

~~§ 15.4.2~~ The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

~~§ 15.4.3~~ The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

~~§ 15.4.4 Consolidation or Joinder~~

~~§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~

~~§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~

§ 15.3.5 If the parties do not resolve a dispute through mediation pursuant to this Section 15.3, the method of binding dispute resolution shall be the following litigation in a court of competent jurisdiction located in Milwaukee, Wisconsin. The parties hereby agree and consent to personal jurisdiction in state or federal court located in Milwaukee, Wisconsin.

§ 15.3.6 In the event of litigation arising out of this Agreement, the prevailing party's attorneys' fees and costs shall be paid by the non-prevailing party. The "prevailing party" means the party in whose favor a judgment, decree, or final order is rendered.

~~§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.~~

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, _____, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 15:38:55 ET on 10/30/2023 under Order No. 2114399858 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2017, General Conditions of the Contract for Construction, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

General Conditions for Construction Contracts - Public Housing Programs

U.S. Department of Housing and Urban
Development
Office of Public and Indian Housing
OMB Approval No. 2577-0157 (exp. 11/30/2023)

**Applicability. This form is applicable to any
construction/development contract greater than \$250,000.**

Public reporting burden for this collection of information is estimated to average 1.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding the accuracy of this burden estimate and any suggestions for reducing this burden can be sent to the Reports Management Officer, Office of Policy Development and Research, REE, Department of Housing and Urban Development, 451 7th St SW, Room 4176, Washington, DC 20410-5000. When providing comments, please refer to OMB Approval No. 2577-0157. This form includes those clauses required by OMB's common rule on grantee procurement, implemented at HUD in 2 CFR 200, and those requirements set forth in Section 3 of the Housing and Urban Development Act of 1968 and its amendment by the Housing and Community Development Act of 1992, implemented by HUD at 24 CFR Part 75. The form is required for construction contracts awarded by Public Housing Agencies (PHAs). The form is used by Housing Authorities in solicitations to provide necessary contract clauses. If the form were not used, PHAs would be unable to enforce their contracts. Responses to the collection of information are required to obtain a benefit or to retain a benefit. The information requested does not lend itself to confidentiality. HUD may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB number.

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1. Definitions

- (a) "Architect" means the person or other entity engaged by the PHA to perform architectural, engineering, design, and other services related to the work as provided for in the contract. When a PHA uses an engineer to act in this capacity, the terms "architect" and "engineer" shall be synonymous. The Architect shall serve as a technical representative of the Contracting Officer. The Architect's authority is as set forth elsewhere in this contract.
- (b) "Contract" means the contract entered into between the PHA and the Contractor. It includes the forms of Bid, the Bid Bond, the Performance and Payment Bond or Bonds or other assurance of completion, the Certifications, Representations, and Other Statements of Bidders (form HUD-5370), these General Conditions of the Contract for Construction (form HUD-5370), the applicable wage rate determinations from the U.S. Department of Labor, any special conditions included elsewhere in the contract, the specifications, and drawings. It includes all formal changes to any of those documents by addendum, change order, or other modification.
- (c) "Contracting Officer" means the person delegated the authority by the PHA to enter into, administer, and/or terminate this contract and designated as such in writing to the Contractor. The term includes any successor Contracting Officer and any duly authorized representative of the Contracting Officer also designated in writing. The Contracting Officer shall be deemed the authorized agent of the PHA in all dealings with the Contractor.
- (d) "Contractor" means the person or other entity entering into the contract with the PHA to perform all of the work required under the contract.
- (e) "Drawings" means the drawings enumerated in the schedule of drawings contained in the Specifications and as described in the contract clause entitled Specifications and Drawings for Construction herein.
- (f) "HUD" means the United States of America acting through the Department of Housing and Urban Development including the Secretary, or any other person designated to act on its behalf. HUD has agreed, subject to the provisions of an Annual Contributions Terms and Conditions (ACC), to provide financial assistance to the PHA, which includes assistance in financing the work to be performed under this contract. As defined elsewhere in these General Conditions or the contract documents, the determination of HUD may be required to authorize changes in the work or for release of funds to the PHA for payment to the Contractor. Notwithstanding HUD's role, nothing in this contract shall be construed to create any contractual relationship between the Contractor and HUD.
- (g) "Project" means the entire project, whether construction or rehabilitation, the work for which is provided for in whole or in part under this contract.
- (h) "PHA" means the Public Housing Agency organized under applicable state laws which is a party to this contract.
- (j) "Specifications" means the written description of the technical requirements for construction and includes the criteria and tests for determining whether the requirements are met.
- (l) "Work" means materials, workmanship, and manufacture and fabrication of components.

2. Contractor's Responsibility for Work

- (a) The Contractor shall furnish all necessary labor, materials, tools, equipment, and transportation necessary for performance of the work. The Contractor shall also furnish all necessary water, heat, light, and power not made available to the Contractor by the PHA pursuant to the clause entitled Availability and Use of Utility Services herein.
- (b) The Contractor shall perform on the site, and with its own organization, work equivalent to at least [] (12 percent unless otherwise indicated) of the total amount of work to be performed under the order. This percentage may be reduced by a supplemental agreement to this order if, during performing the work, the Contractor requests a reduction and the Contracting Officer determines that the reduction would be to the advantage of the PHA.
- (c) At all times during performance of this contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the work site a competent superintendent who is satisfactory to the Contracting Officer and has authority to act for the Contractor.
- (d) The Contractor shall be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence, and shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others. The Contractor shall hold and save the PHA, its officers and agents, free and harmless from liability of any nature occasioned by the Contractor's performance. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract.
- (e) The Contractor shall lay out the work from base lines and bench marks indicated on the drawings and be responsible for all lines, levels, and measurements of all work executed under the contract. The Contractor shall verify the figures before laying out the work and will be held responsible for any error resulting from its failure to do so.
- (f) The Contractor shall confine all operations (including storage of materials) on PHA premises to areas authorized or approved by the Contracting Officer.
- (g) The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. After completing the work and before final inspection, the Contractor shall (1) remove from the premises all scaffolding, equipment, tools, and materials (including rejected materials) that are not the property of the PHA and all rubbish caused by its work; (2) leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer; (3) perform all specified tests; and, (4) deliver the installation in complete and operating condition.
- (h) The Contractor's responsibility will terminate when all work has been completed, the final inspection made, and the work accepted by the Contracting Officer. The Contractor will then be released from further obligation except as required by the warranties specified elsewhere in the contract.

3. Architect's Duties, Responsibilities, and Authority

- (a) The Architect for this contract, and any successor, shall be designated in writing by the Contracting Officer.

- (b) The Architect shall serve as the Contracting Officer's technical representative with respect to architectural, **Schedule** engineering, and design matters related to the work performed under the contract. The Architect may provide direction on contract performance. Such direction shall be within the scope of the contract and may not be of a nature which: (1) institutes additional work outside the scope of the contract; (2) constitutes a change as defined in the Changes clause herein; (3) causes an increase or decrease in the cost of the contract; (4) alters the Construction Progress Schedule; or (5) changes any of the other express terms or conditions of the contract.
- (c) The Architect's duties and responsibilities may include but shall not be limited to:
- (1) Making periodic visits to the work site, and on the basis of his/her on-site inspections, issuing written reports to the PHA which shall include all observed deficiencies. The Architect shall file a copy of the report with the Contractor's designated representative at the site;
 - (2) Making modifications in drawings and technical specifications and assisting the Contracting Officer in the preparation of change orders and other contract modifications for issuance by the Contracting Officer;
 - (3) Reviewing and making recommendations with respect to - (i) the Contractor's construction progress schedules; (ii) the Contractor's shop and detailed drawings; (iii) the machinery, mechanical and other equipment and materials or other articles proposed for use by the Contractor; and, (iv) the Contractor's price breakdown and progress payment estimates; and,
 - (4) Assisting in inspections, signing Certificates of Completion, and making recommendations with respect to acceptance of work completed under the contract.

4. Other Contracts

The PHA may undertake or award other contracts for additional work at or near the site of the work under this contract. The Contractor shall fully cooperate with the other contractors and with PHA employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by PHA employees

Construction Requirements

5. Pre-construction Conference and Notice to Proceed

of the work, and that it has investigated and satisfied itself

- (a) Within ten calendar days of contract execution, and prior to the commencement of work, the Contractor shall attend a preconstruction conference with representatives of the PHA, its Architect, and other interested parties convened by the PHA. The conference will serve to acquaint the participants with the general plan of the construction operation and all other requirements of the contract. The PHA will provide the Contractor with the date, time, and place of the conference.
- (b) The contractor shall begin work upon receipt of a written Notice to Proceed from the Contracting Officer or designee. The Contractor shall not begin work prior to receiving such notice.

6. Construction Progress

- (a) The Contractor shall, within five days after the work commences on the contract or another period of time determined by the Contracting Officer, prepare and submit to the Contracting Officer for approval three copies of a practicable schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the several salient features of the work (including acquiring labor, materials, and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If the Contractor fails to submit a schedule within the time prescribed, the Contracting Officer may withhold approval of progress payments or take other remedies under the contract until the Contractor submits the required schedule.
- (b) The Contractor shall enter the actual progress on the chart as required by the Contracting Officer, and immediately deliver three copies of the annotated schedule to the Contracting Officer. If the Contracting Officer determines, upon the basis of inspection conducted pursuant to the clause entitled Inspection and Acceptance of Construction, herein that the Contractor is not meeting the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to the PHA. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.
- (c) Failure of the Contractor to comply with the requirements of the Contracting Officer under this clause shall be grounds for a determination by the Contracting Officer that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the Contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the Default clause of this contract.

7. Site Investigation and Conditions Affecting the Work

- (a) The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location as to the general and local conditions which can affect the work or its cost, including but not limited to, (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is

reasonably ascertainable from an inspection of the site, including all exploratory work done by the PHA, as well as from the drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the PHA.

- (b) The PHA assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the PHA. Nor does the PHA assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract.

8. Differing Site Conditions

(a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or (2) unknown physical conditions at the site(s), of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.

(b) The Contracting Officer shall investigate the site conditions promptly after receiving the notice. Work shall not proceed at the affected site, except at the

Contractor's risk, until the Contracting Officer has provided written instructions to the Contractor. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, the Contractor shall file a claim in writing to the PHA within ten days after receipt of such instructions and, in any event, before proceeding with the work. An equitable adjustment in the contract price, the delivery schedule, or both shall be made under this clause and the contract modified in writing accordingly.

(c) No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required; provided, that the time prescribed in (a) above for giving written notice may be extended by the Contracting Officer.

(d) No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.

9. Specifications and Drawings for Construction

(a) The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be

promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. The Contracting Officer shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

(b) Wherever in the specifications or upon the drawings the words "directed", "required", "ordered", "designated", "prescribed", or words of like import are used, it shall be understood that the "direction", "requirement", "order", "designation", or "prescription", of the Contracting Officer is intended and similarly the words "approved", "acceptable", "satisfactory", or words of like import shall mean "approved by", or "acceptable to", or "satisfactory to" the Contracting Officer, unless otherwise expressly stated.

(c) Where "as shown" "as indicated", "as detailed", or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place" that is "furnished and installed".

(d) "Shop drawings" means drawings, submitted to the PHA by the Contractor, subcontractor, or any lower tier subcontractor, showing in detail (1) the proposed fabrication and assembly of structural elements and (2) the installation (i.e., form, fit, and attachment details) of materials of equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Contractor to explain in detail specific portions of the work required by the contract. The PHA may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(e) If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with other contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be returned for resubmission. The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the PHA's reasons therefore. Any work done before such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with (f) below.

(f) If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Architect approves any such variation and the Contracting Officer concurs, the Contracting Officer shall issue an appropriate modification to the contract, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.

(g) It shall be the responsibility of the Contractor to make timely requests of the PHA for such large scale and full size drawings, color schemes, and other additional information, not already in his possession, which shall be

required in the planning and production of the work. Such requests may be submitted as the need arises, but each such request shall be filed in ample time to permit appropriate action to be taken by all parties involved so as to avoid delay.

- (h) The Contractor shall submit to the Contracting Officer for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by the PHA and one set will be returned to the Contractor. As required by the Contracting Officer, the Contractor, upon completing the work under this contract, shall furnish a complete set of all shop drawings as finally approved. These drawings shall show all changes and revisions made up to the time the work is completed and accepted.
- (i) This clause shall be included in all subcontracts at any tier. It shall be the responsibility of the Contractor to ensure that all shop drawings prepared by subcontractors are submitted to the Contracting Officer.

10. As-Built Drawings

- (a) "As-built drawings," as used in this clause, means drawings submitted by the Contractor or subcontractor at any tier to show the construction of a particular structure or work as actually completed under the contract. "As-built drawings" shall be synonymous with "Record drawings."
- (b) As required by the Contracting Officer, the Contractor shall provide the Contracting Officer accurate information to be used in the preparation of permanent as-built drawings. For this purpose, the Contractor shall record on one set of contract drawings all changes from the installations originally indicated, and record final locations of underground lines by depth from finish grade and by accurate horizontal offset distances to permanent surface improvements such as buildings, curbs, or edges of walks.
- (c) This clause shall be included in all subcontracts at any tier. It shall be the responsibility of the Contractor to ensure that all as-built drawings prepared by subcontractors are submitted to the Contracting Officer.

11. Material and Workmanship

- (a) All equipment, material, and articles furnished under this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. References in the contract to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of, and as approved by the Contracting Officer, is equal to that named in the specifications, unless otherwise specifically provided in this contract.
- (b) Approval of equipment and materials.
- (1) The Contractor shall obtain the Contracting Officer's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to the Contracting Officer the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the

machinery and mechanical and other equipment. When required by this contract or by the Contracting Officer, the Contractor shall also obtain the Contracting Officer's approval of the material or articles which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

- (2) When required by the specifications or the Contracting Officer, the Contractor shall submit appropriately marked samples (and certificates related to them) for approval at the Contractor's expense, with all shipping charges prepaid. The Contractor shall label, or otherwise properly mark on the container, the material or product represented, its place of origin, the name of the producer, the Contractor's name, and the identification of the construction project for which the material or product is intended to be used.
- (3) Certificates shall be submitted in triplicate, describing each sample submitted for approval and certifying that the material, equipment or accessory complies with contract requirements. The certificates shall include the name and brand of the product, name of manufacturer, and the location where produced.
- (4) Approval of a sample shall not constitute a waiver of the PHA right to demand full compliance with contract requirements. Materials, equipment and accessories may be rejected for cause even though samples have been approved.
- (5) Wherever materials are required to comply with recognized standards or specifications, such specifications shall be accepted as establishing the technical qualities and testing methods, but shall not govern the number of tests required to be made nor modify other contract requirements. The Contracting Officer may require laboratory test reports on items submitted for approval or may approve materials on the basis of data submitted in certificates with samples. Check tests will be made on materials delivered for use only as frequently as the Contracting Officer determines necessary to insure compliance of materials with the specifications. The Contractor will assume all costs of retesting materials which fail to meet contract requirements and/or testing materials offered in substitution for those found deficient.
- (6) After approval, samples will be kept in the Project office until completion of work. They may be built into the work after a substantial quantity of the materials they represent has been built in and accepted.
- (c) Requirements concerning lead-based paint. The Contractor shall comply with the requirements concerning lead-based paint contained in the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846) as implemented by 24 CFR Part 35.

12. Permits and Codes

- (a) The Contractor shall give all notices and comply with all applicable laws, ordinances, codes, rules and regulations. Notwithstanding the requirement of the Contractor to comply with the drawings and specifications in the contract, all work installed shall comply with all applicable codes and regulations as amended by any

waivers. Before installing the work, the Contractor shall examine the drawings and the specifications for compliance with applicable codes and regulations bearing on the work and shall immediately report any discrepancy it may discover to the Contracting Officer.

Where the requirements of the drawings and specifications fail to comply with the applicable code or regulation, the Contracting Officer shall modify the contract by change order pursuant to the clause entitled Changes herein to conform to the code or regulation.

- (b) The Contractor shall secure and pay for all permits, fees, and licenses necessary for the proper execution and completion of the work. Where the PHA can arrange for the issuance of all or part of these permits, fees and licenses, without cost to the Contractor, the contract amount shall be reduced accordingly.

13. Health, Safety, and Accident Prevention

(a) In performing this contract, the Contractor shall:

- (1) Ensure that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his/her health and/or safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation;
- (2) Protect the lives, health, and safety of other persons;
- (3) Prevent damage to property, materials, supplies, and equipment; and,
- (4) Avoid work interruptions.

(b) For these purposes, the Contractor shall:

- (1) Comply with regulations and standards issued by the Secretary of Labor at 29 CFR Part 1926. Failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act (Public Law 91-54, 83 Stat. 96), 40 U.S.C. 3701 et seq.; and
 - (2) Include the terms of this clause in every subcontract so that such terms will be binding on each subcontractor.
- (c) The Contractor shall maintain an accurate record of exposure data on all accidents incident to work performed under this contract resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or equipment, and shall report this data in the manner prescribed by 29 CFR Part 1904.
- (d) The Contracting Officer shall notify the Contractor of any noncompliance with these requirements and of the corrective action required. This notice, when delivered to the Contractor or the Contractor's representative at the site of the work, shall be deemed sufficient notice of the noncompliance and corrective action required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to take corrective action promptly, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not base any claim or request for equitable adjustment for additional time or money on any stop order issued under these circumstances.
- (e) The Contractor shall be responsible for its subcontractors' compliance with the provisions of this clause. The Contractor shall take such action with respect to any subcontract as the PHA, the Secretary of Housing and Urban Development, or the Secretary of Labor shall direct as a means of enforcing such provisions.

14. Temporary Heating

The Contractor shall provide and pay for temporary heating, covering, and enclosures necessary to properly protect all work and materials against damage by dampness and cold, to dry out the work, and to facilitate the completion of the work. Any permanent heating equipment used shall be turned over to the PHA in the condition and at the time required by the specifications.

15. Availability and Use of Utility Services

- (a) The PHA shall make all reasonably required amounts of utilities available to the Contractor from existing outlets and supplies, as specified in the contract. Unless otherwise provided in the contract, the amount of each utility service consumed shall be charged to or paid for by the Contractor at prevailing rates charged to the PHA or, where the utility is produced by the PHA, at reasonable rates determined by the Contracting Officer. The Contractor shall carefully conserve any utilities furnished without charge.
- (b) The Contractor, at its expense and in a manner satisfactory to the Contracting Officer, shall install and maintain all necessary temporary connections and distribution lines, and all meters required to measure the amount of each utility used for the purpose of determining charges. Before final acceptance of the work by the PHA, the Contractor shall remove all the temporary connections, distribution lines, meters, and associated paraphernalia.

16. Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements

- (a) The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed under this contract, and which do not unreasonably interfere with the work required under this contract.
- (b) The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during performance of this contract, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Contracting Officer.
- (c) The Contractor shall protect from damage all existing improvements and utilities (1) at or near the work site and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. Prior to disturbing the ground at the construction site, the Contractor shall ensure that all underground utility lines are clearly marked.
- (d) The Contractor shall shore up, brace, underpin, secure, and protect as necessary all foundations and other parts of existing structures adjacent to, adjoining, and in the vicinity of the site, which may be affected by the excavations or other operations connected with the construction of the project.
- (e) Any equipment temporarily removed as a result of work under this contract shall be protected, cleaned, and replaced in the same condition as at the time of award of this contract.

- (f) New work which connects to existing work shall correspond in all respects with that to which it connects and/or be similar to existing work unless otherwise required by the specifications.
- (g) No structural members shall be altered or in any way weakened without the written authorization of the Contracting Officer, unless such work is clearly specified in the plans or specifications.
- (h) If the removal of the existing work exposes discolored or unfinished surfaces, or work out of alignment, such surfaces shall be refinished, or the material replaced as necessary to make the continuous work uniform and harmonious. This, however, shall not be construed to require the refinishing or reconstruction of dissimilar finishes previously exposed, or finished surfaces in good condition, but in different planes or on different levels **Construction** when brought together by the removal of intervening work, unless such refinishing or reconstruction is specified in the plans or specifications.
- (i) The Contractor shall give all required notices to any adjoining or adjacent property owner or other party before the commencement of any work.
- (j) The Contractor shall indemnify and save harmless the PHA from any damages on account of settlement or the loss of lateral support of adjoining property, any damages from changes in topography affecting drainage, and from all loss or expense and all damages for which the PHA may become liable in consequence of such injury or damage to adjoining and adjacent structures and their premises.
- (k) The Contractor shall repair any damage to vegetation, structures, equipment, utilities, or improvements, including those that are the property of a third party, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses to repair the damage promptly, the Contracting Officer may have the necessary work performed and charge the cost to the Contractor.

17. Temporary Buildings and Transportation of Materials

- (a) Temporary buildings (e.g., storage sheds, shops, offices, sanitary facilities) and utilities may be erected by the Contractor only with the approval of the Contracting Officer and shall be built with labor and materials furnished by the Contractor without expense to the PHA. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon completion of the work. With the written consent of the Contracting Officer, the buildings and utilities may be abandoned and need not be removed.
- (b) The Contractor shall, as directed by the Contracting Officer, use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by the Contracting Officer. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any federal, state, or local law or regulation. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

18. Clean Air and Water

The contractor shall comply with the Clean Air Act, as amended, 42 USC 7401 et seq., the Federal Water Pollution Control Water Act, as amended, 33 U.S.C. 1251 et seq., and standards issued pursuant thereto in the facilities in which this contract is to be performed.

19. Energy Efficiency

The Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub.L. 94-163) for the State in which the work under the contract is performed.

20. Inspection and Acceptance of

- (a) Definitions. As used in this clause -
- (1) "Acceptance" means the act of an authorized representative of the PHA by which the PHA approves and assumes ownership of the work performed under this contract. Acceptance may be partial or complete.
 - (2) "Inspection" means examining and testing the work performed under the contract (including, when appropriate, raw materials, equipment, components, and intermediate assemblies) to determine whether it conforms to contract requirements.
 - (3) "Testing" means that element of inspection that determines the properties or elements, including functional operation of materials, equipment, or their components, by the application of established scientific principles and procedures.
- (b) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. All work is subject to PHA inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.
- (c) PHA inspections and tests are for the sole benefit of the PHA and do not: (1) relieve the Contractor of responsibility for providing adequate quality control measures; (2) relieve the Contractor of responsibility for loss or damage of the material before acceptance; (3) constitute or imply acceptance; or, (4) affect the continuing rights of the PHA after acceptance of the completed work under paragraph (j) below.
- (d) The presence or absence of the PHA inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specifications without the Contracting Officer's written authorization. All instructions and approvals with respect to the work shall be given to the Contractor by the Contracting Officer.
- (e) The Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. The PHA may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. The PHA shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the contract.

- (f) The PHA may conduct routine inspections of the construction site on a daily basis.
- (g) The Contractor shall, without charge, replace or correct work found by the PHA not to conform to contract requirements, unless the PHA decides that it is in its interest to accept the work with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.
- (h) If the Contractor does not promptly replace or correct rejected work, the PHA may (1) by contract or otherwise, replace or correct the work and charge the cost to the Contractor, or (2) terminate for default the Contractor's right to proceed.
- (i) If any work requiring inspection is covered up without approval of the PHA, it must, if requested by the Contracting Officer, be uncovered at the expense of the Contractor. If at any time before final acceptance of the entire work, the **Construction PHA** considers it necessary or advisable, to examine work already completed by removing or tearing it out, the Contractor, shall on request, promptly furnish all necessary facilities, labor, and material. If such work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray all the expenses of the examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the contract, the Contracting Officer shall make an equitable adjustment to cover the cost of the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.
- (j) The Contractor shall notify the Contracting Officer, in writing, as to the date when in its opinion all or a designated portion of the work will be substantially completed and ready for inspection. If the Architect determines that the state of preparedness is as represented, the PHA will promptly arrange for the inspection. Unless otherwise specified in the contract, the PHA shall accept, as soon as practicable after completion and inspection, all work required by the contract or that portion of the work the Contracting Officer determines and designates can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the PHA's right under any warranty or guarantee.

21. Use and Possession Prior to Completion

- (a) The PHA shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, the Contracting Officer shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that the PHA intends to take possession of or use. However, failure of the Contracting Officer to list any item of work shall not relieve the Contractor of responsibility for complying with the terms of the contract. The PHA's possession or use shall not be deemed an acceptance of any work under the contract.
- (b) While the PHA has such possession or use, the Contractor shall be relieved of the responsibility for (1) the loss of or damage to the work resulting from the PHA's possession or use, notwithstanding the terms of the clause entitled Permits and Codes herein; (2) all maintenance costs on the areas occupied; and, (3) furnishing heat, light, power, and water used in the areas

occupied without proper remuneration therefore. If prior possession or use by the PHA delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment shall be made in the contract price or the time of completion, and the contract shall be modified in writing accordingly.

22. Warranty of Title

The Contractor warrants good title to all materials, supplies, and equipment incorporated in the work and agrees to deliver the premises together with all improvements thereon free from any claims, liens or charges, and agrees further that neither it nor any other person, firm or corporation shall have any right to a lien upon the premises or anything appurtenant thereto.

23. Warranty of

- (a) In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (j) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or workmanship performed by the Contractor or any subcontractor or supplier at any tier. This warranty shall continue for a period of _____ (one year unless otherwise indicated) from the date of final acceptance of the work. If the PHA takes possession of any part of the work before final acceptance, this warranty shall continue for a period of (one year unless otherwise indicated) from the date that the PHA takes possession.
- (b) The Contractor shall remedy, at the Contractor's expense, any failure to conform, or any defect. In addition, the Contractor shall remedy, at the Contractor's expense, any damage to PHA-owned or controlled real or personal property when the damage is the result of—
- (1) The Contractor's failure to conform to contract requirements; or
 - (2) Any defects of equipment, material, workmanship or design furnished by the Contractor.
- (c) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for (one year unless otherwise indicated) from the date of repair or replacement.
- (d) The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect or damage.
- (e) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the PHA shall have the right to replace, repair or otherwise remedy the failure, defect, or damage at the Contractor's expense.
- (f) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall:
- (1) Obtain all warranties that would be given in normal commercial practice;
 - (2) Require all warranties to be executed in writing, for the benefit of the PHA; and,
 - (3) Enforce all warranties for the benefit of the PHA.
- (g) In the event the Contractor's warranty under paragraph (a) of this clause has expired, the PHA may bring suit at its own expense to enforce a subcontractor's, manufacturer's or supplier's warranty.

- (h) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defect of material or design furnished by the PHA nor for the repair of any damage that results from any defect in PHA furnished material or design.
- (i) Notwithstanding any provisions herein to the contrary, the establishment of the time periods in paragraphs (a) and (c) above relate only to the specific obligation of the Contractor to correct the work, and have no relationship to the time within which its obligation to comply with the contract may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to its obligation other than specifically to correct the work.
- (j) This warranty shall not limit the PHA's rights under the Inspection and Acceptance of Construction clause of this contract with respect to latent defects, gross mistakes or fraud.

24. Prohibition Against Liens

The Contractor is prohibited from placing a lien on the PHA's property. This prohibition shall apply to all subcontractors at any tier and all materials suppliers.

Administrative Requirements

25. Contract Period

this contract within _____ calendar days of the effective date of the contract, or within the time schedule established in the notice to proceed issued by the Contracting Officer.

26. Order of Provisions

accordance with the terms and conditions of the

In the event of a conflict between these General Conditions and the Specifications, the General Conditions shall prevail. In the event of a conflict between the contract and any applicable state or local law or regulation, the state or local law or regulation shall prevail; provided that such state or local law or regulation does not conflict with, or is less restrictive than applicable federal law, regulation, or Executive Order. In the event of such a conflict, applicable federal law, regulation, and Executive Order shall prevail.

27. Payments

- (a) The PHA shall pay the Contractor the price as provided in this contract.
- (b) The PHA shall make progress payments approximately every 30 days as the work proceeds, on estimates of work accomplished which meets the standards of quality established under the contract, as approved by the Contracting Officer. The PHA may, subject to written determination and approval of the Contracting Officer, make more frequent payments to contractors which are qualified small businesses.
- (c) Before the first progress payment under this contract, the Contractor shall furnish, in such detail as requested by the Contracting Officer, a breakdown of the total contract price showing the amount included therein for each principal category of the work, which shall substantiate the payment amount requested in order to provide a

basis for determining progress payments. The breakdown shall be approved by the Contracting Officer and must be acceptable to HUD. If the contract covers more than one project, the Contractor shall furnish a separate breakdown for each. The values and quantities employed in making up this breakdown are for determining the amount of progress payments and shall not be construed as a basis for additions to or deductions from the contract price. The Contractor shall prorate its overhead and profit over the construction period of the contract.

- (d) The Contractor shall submit, on forms provided by the PHA, periodic estimates showing the value of the work performed during each period based upon the approved submitted not later than _____ days in advance of the date set for payment and are subject to correction and revision as required. The estimates must be approved by the Contracting Officer with the concurrence of the Architect prior to payment. If the contract covers more than one project, the Contractor shall furnish a separate progress payment estimate for each.
- (e) Along with each request for progress payments and the required estimates, the Contractor shall furnish the following certification, or payment shall not be made: I hereby certify, to the best of my knowledge and belief, that:

- (1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;
- (2) Payments to subcontractors and suppliers have been made from previous payments received under the contract, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements; and,
- (3) This request for progress payments does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in subcontract.

Name:

Title:

Date:

- (f) Except as otherwise provided in State law, the PHA shall retain ten (10) percent of the amount of progress payments until completion and acceptance of all work under the contract; except, that if upon completion of 50 percent of the work, the Contracting Officer, after consulting with the Architect, determines that the Contractor's performance and progress are satisfactory, the PHA may make the remaining payments in full for the work subsequently completed. If the Contracting Officer subsequently determines that the Contractor's performance and progress are unsatisfactory, the PHA shall reinstate the ten (10) percent (or other percentage as provided in State law) retainage until such time as the Contracting Officer determines that performance and progress are satisfactory.
- (g) The Contracting Officer may authorize material delivered on the site and preparatory work done to be taken into consideration when computing progress payments.

Material delivered to the Contractor at locations other than the site may also be taken into consideration if the Contractor furnishes satisfactory evidence that (1) it has acquired title to such material; (2) the material is properly stored in a bonded warehouse, storage yard, or similar suitable place as may be approved by the Contracting Officer; (3) the material is insured to cover its full value; and (4) the material will be used to perform this contract. Before any progress payment which includes delivered material is made, the Contractor shall furnish such documentation as the Contracting Officer may require to assure the protection of the PHA's interest in such materials. The Contractor shall remain responsible for such stored material notwithstanding the transfer of title to the PHA.

- (h) All material and work covered by progress payments made shall, at the time of payment become the sole property of the PHA, but this shall not be construed as (1) relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or, (2) waiving the right of the PHA to require the fulfillment of all of the terms of the contract. In the event the work of the Contractor has been damaged by other contractors or persons other than employees of the PHA in the course of their employment, the Contractor shall restore such damaged work without cost to the PHA and to seek redress for its damage only from those who directly caused it.
- (i) The PHA shall make the final payment due the Contractor under this contract after (1) completion and final acceptance of all work; and (2) presentation of release of all claims against the PHA arising by virtue of this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. Each such exception shall embrace no more than one claim, the basis and scope of which shall be clearly defined. The amounts for such excepted claims shall not be included in the request for final payment. A release may also be required of the assignee if the Contractor's claim to amounts payable under this contract has been assigned.
- (j) Prior to making any payment, the Contracting Officer may require the Contractor to furnish receipts or other evidence of payment from all persons performing work and supplying material to the Contractor, if the Contracting Officer determines such evidence is necessary to substantiate claimed costs.
- (k) The PHA shall not; (1) determine or adjust any claims for payment or disputes arising there under between the Contractor and its subcontractors or material suppliers; or, (2) withhold any moneys for the protection of the subcontractors or material suppliers. The failure or refusal of the PHA to withhold moneys from the Contractor shall in no wise impair the obligations of any surety or sureties under any bonds furnished under this contract.

28. Contract Modifications

- (a) Only the Contracting Officer has authority to modify any term or condition of this contract. Any contract modification shall be authorized in writing.
- (b) The Contracting Officer may modify the contract unilaterally (1) pursuant to a specific authorization stated in a contract clause (e.g., Changes); or (2) for administrative matters which do not change the rights or

responsibilities of the parties (e.g., change in the PHA address). All other contract modifications shall be in the form of supplemental agreements signed by the Contractor and the Contracting Officer.

- (c) When a proposed modification requires the approval of HUD prior to its issuance (e.g., a change order that exceeds the PHA's approved threshold), such modification shall not be effective until the required approval is received by the PHA.

29. Changes

- (a) The Contracting Officer may, at any time, without notice to the sureties, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract including changes:
- (1) In the specifications (including drawings and designs);
 - (2) In the method or manner of performance of the work;
 - (3) PHA-furnished facilities, equipment, materials, services, or site; or,
 - (4) Directing the acceleration in the performance of the work.
- (b) Any other written order or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause; provided, that the Contractor gives the Contracting Officer written notice stating (1) the date, circumstances and source of the order and (2) that the Contractor regards the order as a change order.
- (c) Except as provided in this clause, no order, statement or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.
- (d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for the performance of any part of the work under this contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing. However, except for an adjustment based on defective specifications, no proposal for any change under paragraph (b) above shall be allowed for any costs incurred more than 20 days (5 days for oral orders) before the Contractor gives written notice as required. In the case of defective specifications for which the PHA is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.
- (e) The Contractor must assert its right to an adjustment under this clause within 30 days after (1) receipt of a written change order under paragraph (a) of this clause, or (2) the furnishing of a written notice under paragraph (b) of this clause, by submitting a written statement describing the general nature and the amount of the proposal. If the facts justify it, the Contracting Officer may extend the period for submission. The proposal may be included in the notice required under paragraph (b) above. No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.
- (f) The Contractor's written proposal for equitable adjustment shall be submitted in the form of a lump sum proposal supported with an itemized breakdown of all increases and decreases in the contract in at least the following details:

- (1) Direct Costs. Materials (list individual items, the quantity and unit cost of each, and the aggregate cost); Transportation and delivery costs associated with materials; Labor breakdowns by hours or unit costs (identified with specific work to be performed); Construction equipment exclusively necessary for the change; Costs of preparation and/ or revision to shop drawings resulting from the change; Worker's Compensation and Public Liability Insurance; Employment taxes under FICA and FUTA; and, Bond Costs when size of change warrants revision.
- (2) Indirect Costs. Indirect costs may include overhead, general and administrative expenses, and fringe benefits not normally treated as direct costs.
- (3) Profit. The amount of profit shall be negotiated and may vary according to the nature, extent, and complexity of the work required by the change. The allowability of the direct and indirect costs shall be determined in accordance with the Contract Cost Principles and Procedures for Commercial Firms in Part 31 of the Federal Acquisition Regulation (48 CFR 1-31), as implemented by HUD Handbook 2210.18, in effect on the date of this contract. The Contractor shall not be allowed a profit on the profit received by any subcontractor. Equitable adjustments for deleted work shall include a credit for profit and may include a credit for indirect costs. On proposals covering both increases and decreases in the amount of the contract, the application of indirect costs and profit shall be on the net-change in direct costs for the Contractor or subcontractor performing the work.
- (g) The Contractor shall include in the proposal its request for time extension (if any), and shall include sufficient information and dates to demonstrate whether and to what extent the change will delay the completion of the contract in its entirety.
- (h) The Contracting Officer shall act on proposals within 30 days after their receipt, or notify the Contractor of the date when such action will be taken.
- (i) Failure to reach an agreement on any proposal shall be a dispute under the clause entitled Disputes herein. Nothing in this clause, however, shall excuse the Contractor from proceeding with the contract as changed.
- (j) Except in an emergency endangering life or property, no change shall be made by the Contractor without a prior order from the Contracting Officer.

30. Suspension of Work

- (a) The Contracting Officer may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contracting Officer determines appropriate for the convenience of the PHA.
- (b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contracting Officer in the administration of this contract, or (2) by the Contracting Officer's failure to act within the time specified (or within a reasonable time if not specified) in this contract an adjustment shall be made for any increase in the cost of performance of the contract (excluding profit) necessarily caused by such unreasonable suspension, delay, or interruption and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have

- been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor or for which any equitable adjustment is provided for or excluded under any other provision of this contract.
- (c) A claim under this clause shall not be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and, (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

31. Disputes

- (a) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. A claim arising under the contract, unlike a claim relating to the contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim by complying with the requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.
- (b) Except for disputes arising under the clauses entitled Labor Standards - Davis Bacon and Related Acts, herein, all disputes arising under or relating to this contract, including any claims for damages for the alleged breach thereof which are not disposed of by agreement, shall be resolved under this clause.
- (c) All claims by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the PHA against the Contractor shall be subject to a written decision by the Contracting Officer.
- (d) The Contracting Officer shall, within 60 (unless otherwise indicated) days after receipt of the request, decide the claim or notify the Contractor of the date by which the decision will be made.
- (e) The Contracting Officer's decision shall be final unless the Contractor (1) appeals in writing to a higher level in the PHA in accordance with the PHA's policy and procedures, (2) refers the appeal to an independent mediator or arbitrator, or (3) files suit in a court of competent jurisdiction. Such appeal must be made within (30 unless otherwise indicated) days after receipt of the Contracting Officer's decision.
- (f) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

32. Default

- (a) If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with the diligence that will insure its completion within the time specified in this contract, or any extension thereof, or fails to complete said work within this time, the Contracting Officer may, by written notice to the Contractor, terminate the right to

proceed with the work (or separable part of the work) that has been delayed. In this event, the PHA may take over the work and complete it, by contract or otherwise, and may take possession of and use any materials, equipment, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the PHA resulting from the **Convenience** Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the PHA in completing the work.

- (b) The Contractor's right to proceed shall not be terminated or the Contractor charged with damages under this clause if—
- (1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (i) acts of God, or of the public enemy, (ii) acts of the PHA or other governmental entity in either its sovereign or contractual capacity, (iii) acts of another contractor in the performance of a contract with the PHA, (iv) fires, (v) floods, (vi) epidemics, (vii) quarantine restrictions, (viii) strikes, (ix) freight embargoes, (x) unusually severe weather, or (xi) delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and
- (2) The Contractor, within days (10 days unless otherwise indicated) from the beginning of such delay (unless extended by the Contracting Officer) notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of the delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, time for completing the work shall be extended by written modification to the contract. The findings of the Contracting Officer shall be reduced to a written decision which shall be subject to the provisions of the Disputes clause of this contract.
- (c) If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been for convenience of the PHA.

33. Liquidated Damages

- (a) If the Contractor fails to complete the work within the time specified in the contract, or any extension, as specified in the clause entitled Default of this contract, the Contractor shall pay to the PHA as liquidated damages, the sum of \$ _____ [Contracting Officer insert amount] for each day of delay. If different completion dates are specified in the contract for separate parts or stages of the work, the amount of liquidated damages shall be assessed on those parts or stages which are delayed. To the extent that the Contractor's delay or nonperformance is excused under another clause in this contract, liquidated damages shall not be due the PHA. The Contractor remains liable for damages caused other than by delay.
- (b) If the PHA terminates the Contractor's right to proceed, the resulting damage will consist of liquidated damages until such reasonable time as may be required for final

completion of the work together with any increased costs occasioned the PHA in completing the work.

- (c) If the PHA does not terminate the Contractor's right to proceed, the resulting damage will consist of liquidated damages until the work is completed or accepted.

34. Termination for

- (a) The Contracting Officer may terminate this contract in whole, or in part, whenever the Contracting Officer determines that such termination is in the best interest of the PHA. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which the performance of the work under the contract is terminated, and the date upon which such termination becomes effective.
- (b) If the performance of the work is terminated, either in whole or in part, the PHA shall be liable to the Contractor for reasonable and proper costs resulting from such termination upon the receipt by the PHA of a properly presented claim setting out in detail: (1) the total cost of the work performed to date of termination less the total amount of contract payments made to the Contractor; (2) the cost (including reasonable profit) of settling and paying claims under subcontracts and material orders for work performed and materials and supplies delivered to the site, payment for which has not been made by the PHA to the Contractor or by the Contractor to the subcontractor or supplier; (3) the cost of preserving and protecting the work already performed until the PHA or assignee takes possession thereof or assumes responsibility therefore; (4) the actual or estimated cost of legal and accounting services reasonably necessary to prepare and present the termination claim to the PHA; and (5) an amount constituting a reasonable profit on the value of the work performed by the Contractor.
- (c) The Contracting Officer will act on the Contractor's claim within days (60 days unless otherwise indicated) of receipt of the Contractor's claim.
- (d) Any disputes with regard to this clause are expressly made subject to the provisions of the Disputes clause of this contract.

35. Assignment of Contract

The Contractor shall not assign or transfer any interest in this contract; except that claims for monies due or to become due from the PHA under the contract may be assigned to a bank, trust company, or other financial institution. Such assignments of claims shall only be made with the written concurrence of the Contracting Officer. If the Contractor is a partnership, this contract shall inure to the benefit of the surviving or remaining member(s) of such partnership as approved by the Contracting Officer.

36. Insurance

- (a) Before commencing work, the Contractor and each subcontractor shall furnish the PHA with certificates of insurance showing the following insurance is in force and will insure all operations under the Contract:
- (1) Workers' Compensation, in accordance with state or Territorial Workers' Compensation laws.
- (2) Commercial General Liability with a combined single limit for bodily injury and property damage of not less than \$ _____ [Contracting Officer insert amount]

per occurrence to protect the Contractor and each subcontractor against claims for bodily injury or death and damage to the property of others. This shall cover the use of all equipment, hoists, and vehicles on the site(s) not covered by Automobile Liability under (3) below. If the Contractor has a "claims made" policy, then the following additional requirements apply: the policy must provide a "retroactive date" which must be on or before the execution date of the Contract; and the extended reporting period may not be less than five years following the completion date of the Contract.

- (3) Automobile Liability on owned and non-owned motor vehicles used on the site(s) or in connection therewith for a combined single limit for bodily injury and property damage of not less than \$ _____

[Contracting Officer insert amount] per occurrence.

- (b) Before commencing work, the Contractor shall furnish the PHA with a certificate of insurance evidencing that Builder's Risk (fire and extended coverage) Insurance on all work in place and/or materials stored at the building site(s), including foundations and building equipment, is in force. The Builder's Risk Insurance shall be for the benefit of the Contractor and the PHA as their interests may appear and each shall be named in the policy or policies as an insured. The Contractor in installing equipment supplied by the PHA shall carry insurance on such equipment from the time the Contractor takes possession thereof until the Contract work is accepted by the PHA. The Builder's Risk Insurance need not be carried on excavations, piers, footings, or foundations until such time as work on the superstructure is started. It need not be carried on landscape work. Policies shall furnish coverage at all times for the full cash value of all completed construction, as well as materials in place and/or stored at the site(s), whether or not partial payment has been made by the PHA. The Contractor may terminate this insurance on buildings as of the date taken over for occupancy by the PHA. The Contractor is not required to carry Builder's Risk Insurance for modernization work which does not involve structural alterations or additions and where the PHA's existing fire and extended coverage policy can be endorsed to include such work.
- (c) All insurance shall be carried with companies which are financially responsible and admitted to do business in the State in which the project is located. If any such insurance is due to expire during the construction period, the Contractor (including subcontractors, as applicable) shall not permit the coverage to lapse and shall furnish evidence of coverage to the Contracting Officer. All certificates of insurance, as evidence of coverage, shall provide that no coverage may be canceled or non-renewed by the insurance company until at least 30 days prior written notice has been given to the Contracting Officer.

37. Subcontracts

- (a) Definitions. As used in this contract -
- (1) "Subcontract" means any contract, purchase order, or other purchase agreement, including modifications and change orders to the foregoing, entered into by a subcontractor to furnish supplies, materials, equipment, and services for the performance of the prime contract or a subcontract.

- (2) "Subcontractor" means any supplier, vendor, or firm that furnishes supplies, materials, equipment, or services to or for the Contractor or another subcontractor.
- (b) The Contractor shall not enter into any subcontract with any subcontractor who has been temporarily denied participation in a HUD program or who has been suspended or debarred from participating in contracting programs by any agency of the United States Government or of the state in which the work under this contract is to be performed.
- (c) The Contractor shall be as fully responsible for the acts or omissions of its subcontractors, and of persons either directly or indirectly employed by them as for the acts or omissions of persons directly employed by the Contractor.
- (d) The Contractor shall insert appropriate clauses in all subcontracts to bind subcontractors to the terms and conditions of this contract insofar as they are applicable to the work of subcontractors.
- (e) Nothing contained in this contract shall create any contractual relationship between any subcontractor and the PHA or between the subcontractor and HUD.

38. Subcontracting with Small and Minority Firms, Women's Business Enterprise, and Labor Surplus Area Firms

The Contractor shall take the following steps to ensure that, whenever possible, subcontracts are awarded to small business firms, minority firms, women's business enterprises, and labor surplus area firms:

- (a) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (b) Ensuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;
- (c) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises;
- (d) Establishing delivery schedules, where the requirements of the contract permit, which encourage participation by small and minority businesses and women's business enterprises; and
- (e) Using the services and assistance of the U.S. Small Business Administration, the Minority Business Development Agency of the U.S. Department of Commerce, and State and local governmental small business agencies.

39. Equal Employment Opportunity

During the performance of this contract, the Contractor/Seller agrees as follows:

- (a) The Contractor/Seller shall not discriminate against any employee or applicant for employment because of race color, religion, sex, sexual orientation, gender identity, disability, or national origin.
- (b) The Contractor/Seller shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, disability, or national origin. Such action shall include, but not be limited to, (1) employment, (2) upgrading demotion, (4) transfer, (5) recruitment or recruitment advertising, (6) layoff or termination, (7) rates of pay or other forms of compensation, and (8) selection for training, including apprenticeship

(c) The Contractor/Seller agrees to post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

(d) The Contractor/Seller shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor/Seller, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(e) The Contractor/Seller shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(f) The Contractor/Seller shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(g) The Contractor/Seller shall furnish all information and reports required by Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Contractor/Seller shall permit

access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(h) In the event of a that the Contractor/Seller is in noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor/seller may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(i) The contractor/seller will include the provisions of paragraphs (a) through (h) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each sub[contractor/seller] or vendor. The [contractor/seller] will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the [contractor/seller] becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the [contractor/seller] may request the United States to enter into such litigation to protect the interests of the United States.

(j) Compliance with the requirements of this clause shall be to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act and the Indian Preference clause of this contract.

40. Employment, Training, and Contracting Opportunities for Low-Income Persons, Section 3 of the Housing and Urban Development Act of 1968.

(a) The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

(b) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 75, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 75 regulations.

(c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 prioritization requirements and shall state the minimum percentages of labor hour requirements established in the Benchmark Notice (FR-6085-N-04).

(d) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 75, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 75. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 75.

(e) Noncompliance with HUD's regulations in 24 CFR Part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

(f) Contracts, subcontracts, grants, or subgrants subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5307(b)) or subject to tribal preference requirements as authorized under 101(k) of the Native American Housing Assistance and Self-Determination Act (25 U.S.C. 4111(k)) must provide preferences in employment, training, and business opportunities to Indians and Indian organizations, and are therefore not subject to the requirements of 24 CFR Part 75.

41. Interest of Members of Congress

No member of or delegate to the Congress of the United States of America shall be admitted to any share or part of this contract or to any benefit that may arise therefrom.

42. Interest of Members, Officers, or Employees and Former Members, Officers, or Employees

No member, officer, or employee of the PHA, no member of the governing body of the locality in which the project is situated, no member of the governing body of the locality in which the PHA was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, shall, during his or her tenure, or for one year thereafter, have any interest, direct or indirect, in this contract or the proceeds thereof.

43. Limitations on Payments made to Influence Certain Federal Financial Transactions

- (a) The Contractor agrees to comply with Section 1352 of Title 31, United States Code which prohibits the use of **Acts** Federal appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.
- (b) The Contractor further agrees to comply with the requirement of the Act to furnish a disclosure (OMB Standard Form LLL, Disclosure of Lobbying Activities) if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

44. Royalties and Patents

The Contractor shall pay all royalties and license fees. It shall defend all suits or claims for infringement of any patent rights and shall save the PHA harmless from loss on account thereof; except that the PHA shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified and the Contractor has no reason to believe that the specified design, process, or product is an infringement. If, however, the Contractor has reason to believe that any design, process or product specified is an infringement of a patent, the Contractor shall promptly notify the Contracting Officer. Failure to give such notice shall make the Contractor responsible for resultant loss.

45. Examination and Retention of Contractor's Records

- (a) The PHA, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until 3 years after final payment under this contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.
- (b) The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above. "Subcontract," as used in this clause, excludes purchase orders not exceeding \$10,000.
- (c) The periods of access and examination in paragraphs (a) and (b) above for records relating to (1) appeals under the Disputes clause of this contract, (2) litigation or settlement of claims arising from the performance of this contract, or (3) costs and expenses of this contract to which the PHA, HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

46. Labor Standards - Davis-Bacon and Related

If the total amount of this contract exceeds \$2,000, the Federal labor standards set forth in the clause below shall apply to the development or construction work to be performed under the contract.

- (a) Minimum Wages.
 - (1) All laborers and mechanics employed under this contract in the development or construction of the project(s) involved will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the regular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall

be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(2) (i) Any class of laborers or mechanics, including

helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met: (A) The work to be performed by the classification requested is not performed by a classification in the wage determination; and (B) The classification is utilized in the area by the construction industry; and (C) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

- (ii) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employee Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary.
- (iii) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary.
- (iv) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (a)(2)(ii) or (iii) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in classification.
- (3) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (4) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the

amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

- (b) Withholding of funds. HUD or its designee shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime Contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working in the construction or development of the project, all or part of the wages required by the contract, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or subcontractor to the respective employees to whom they are due.
- (c) Payrolls and basic records.
- (1) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working in the construction or development of the project. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under 29 CFR 5.5(a)(1)(iv), that the wages of any laborer or mechanic include the amount of costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(2) (i) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under subparagraph (c)(1) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The Contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1214-0149.)

(ii) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

- (A) That the payroll for the payroll period contains the information required to be maintained under paragraph (c) (1) of this clause and that such information is correct and complete;
 - (B) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3; and
 - (C) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (iii) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirements for submission of the "Statement of Compliance" required by subparagraph (c)(2)(ii) of this clause.
- (iv) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(3) The Contractor or subcontractor shall make the records required under subparagraph (c)(1) available for inspection, copying, or transcription by authorized representatives of HUD or its designee, the Contracting Officer, or the Department of Labor and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to

make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

- (d) (1) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship and Training, Employer and Labor Services (OATELS), or with a State Apprenticeship Agency recognized by OATELS, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in this paragraph, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (2) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under

- the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (3) Equal employment opportunity. The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.
- (e) Compliance with Copeland Act requirements. The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.
- (f) Contract termination; debarment. A breach of this contract clause may be grounds for termination of the contract and for debarment as a Contractor and a subcontractor as provided in 29 CFR 5.12.
- (g) Compliance with Davis-Bacon and related Act requirements. All rulings and interpretations of the Davis-Bacon and related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.
- (h) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this clause shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the PHA, HUD, the U.S. Department of Labor, or the employees or their representatives.
- (i) Certification of eligibility.
- (1) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a United States Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (3) The penalty for making false statements is prescribed in the U. S. Criminal Code, 18 U.S.C. 1001.
- (j) Contract Work Hours and Safety Standards Act. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.
- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics, including watchmen and guards, shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the provisions set forth in subparagraph (j)(1) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic (including watchmen and guards) employed in violation of the provisions set forth in subparagraph (j)(1) of this clause, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in subparagraph (j)(1) of this clause. DOL posts current fines at: <https://www.dol.gov/whd/govcontracts/cwhssa.htm#cmp>
- (3) Withholding for unpaid wages and liquidated damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any Federal contract with the same prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in subparagraph (j)(2) of this clause.
- (k) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts all the provisions contained in this clause, and such other clauses as HUD or its designee may by appropriate instructions require, and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all these provisions.

47. Non-Federal Prevailing Wage Rates

(a) Any prevailing wage rate (including basic hourly rate and any fringe benefits), determined under State or tribal law to be prevailing, with respect to any employee in any trade or position employed under the contract, is inapplicable to the contract and shall not be enforced against the Contractor or any subcontractor, with respect to employees engaged under the contract whenever such non-Federal prevailing wage rate exceeds:

(1) The applicable wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 3141 et seq.) to be prevailing in the locality with respect to such trade;

(b) An applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the U.S. Department of Labor (DOL) or a DOL-recognized State Apprenticeship Agency; or

(c) An applicable trainee wage rate based thereon specified in a DOL-certified trainee program.

48. Procurement of Recovered Materials.

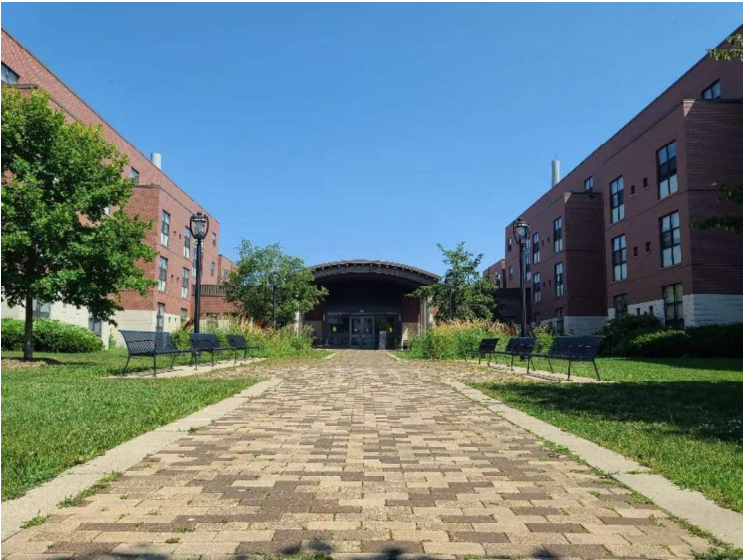
(a) In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.

() Paragraph (a) of this clause shall apply to items purchased under this contract where: (1) the Contractor purchases in excess of \$10,000 of the item under this contract; or (2) during the preceding Federal fiscal year, the Contractor: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of \$10,000 of the item both under and outside that contract.

HIGHLAND GARDENS



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The below information is Travaux Inc.'s interpretation of the scope and is based solely on the existing documents. It is Travaux Inc's intent to include everything the D3G scope has identified. This schematic budget will be used as a guide to maintaining the project budget going forward.

- Site
 - Concrete Paver Replacement
 - The pavers are to be removed and salvaged for reuse, the sand bed is to be leveled, and the existing pavers are to be reinstalled
 - No sealing is included in cost
- Building Exterior
 - Exterior Double HM Doors
 - Frames are to be reused
 - Frames are not to be repainted
 - Exterior Single HM Doors
 - Frames are to be reused
 - Frames are not to be repainted
 - All windows to be replaced with a Quaker or equal
 - No exterior architectural metal work is included
 - Roof overlay with built up system at areas without green roof.
- Equipment
 - (1) New Fuel Tank for Generator
 - (2) New Trash Compactors
 - (2) 3/4HP Water Circulating Pumps
 - (2) 1HP DHW Circulating Pumps
 - (3) DHW Boilers
 - (3) 4-Ton Roof-Top Units
 - (1) 3-Ton Roof-Top Unit
 - (2) 5-Ton Roof-Top Units
 - (1) 10-Ton Roof-Top Unit
 - (1) 16-Ton Roof-Top Unit
 - Fire Control Panel & Associated Devices
 - All devices throughout the building are to be replaced along with the fire alarm control panels.
 - Key Card Panel
 - Only panel to be replaced, not card readers.
- Common Areas
 - Existing Flooring Replacement
 - No flooring replacement at ceramic tile, wood floors, or workout room flooring.
 - The assumption is that all LVT is to be overlaid on existing flooring with the exception of the carpet which will be removed.
 - Carpeting Replacement
 - All carpeting to be removed and replaced with LVT.
 - Lighting Replacement
 - All fixtures through the building to be replaced or retrofit with LED fixtures
 - Exit Signs not included

- Repair of Cracking Mortar Joints in Common Bathrooms
- Remodel/Upgrade Neighborhood Network
 - Computers, furniture and equipment not included
- Paint walls and drywall ceilings in area shown on map attached
 - Common Ceilings
 - Assuming 1 coat of primer and 2 coats of paint (sprayed and back rolled different color from existing walls).
 - Common Walls
 - Assuming 1 coat of primer and 2 coats of paint (sprayed and back rolled different color from existing walls).
 - No epoxy paints
- Units
 - Under-Counter Scald and Abrasion Protection in ADA Units
 - VCT Replacement & Carpet Replacement with LVT
 - Some units will not have flooring replacement as it was replaced recently
 - Bathroom Vanity Replacement with Countertop
 - Refrigerator, Range & Range Hood Replacement
 - All appliances to be black or white (not stainless)
 - Range hoods assumed to be recirculating
 - Window Replacement
 - Replacement from exterior, no interior work is assumed
 - No interior sills or drywall work assumed
 - Kitchen Counter Replacement
 - Counters to be replaced
 - New sinks are to be installed
 - Installation of Non-Skid Surface to Showers
 - Replacement of Showerheads and Faucets with Low Flow
 - Window Covering Replacement
 - Aluminum blinds are assumed
 - Replacement of T-Stats
 - Standard wired t-stat not “Nest” brand or similar
 - Lighting Replacement
 - All fixtures through the building to be replace or retrofit with LED fixtures
 - Exhaust Fan Replacement
 - Includes the supply and installation of new fan and new ducting
 - Emergency call system replacement with like product
- New Elevator Towers
 - Schindler 3300 Elevator is basis of estimate
 - 3500 lb capacity, general purpose - class A
 - 150 FPM Speed
 - 32 Ft. travel distance
 - 4 stops
 - 208 volt - 60 Hz 3 phase power supply
 - Non-sprinklered Hostway
 - Two speed side opening doors
 - Cab interior elevations 6’ 9-5/16” Wide x 5’ 6-7/8” Deep

- Elevator shaft overall size is assumed to be 10 by 9 outside dimension, 44 feet in height construction with 8" CMU and 8" split face on the outside.
- 4th floor extension is assumed to use the existing precast deck as the floor of the infill
- We have included 6 HEILCO PIERS at each tower 30' deep located under elevator pit
- Electrical / HVAC / Plumbing cost is within the line item budget.
- Infill Areas

We have included 8 eight infill areas that connect the main building to the elevator towers.

- Included is masonry demolition of exterior split face only on each side of the infill area on 8 locations.
- Wall demolition on new wall opening in the existing building so to allow access to the infills.
- Included in finish budget funds to finish out the infill areas.
- Included are eight (8) containment doors for new elevators. Did not include any of the existing elevators.

EXCLUSIONS

- Any alterations due to blower door testing results
- Replacement or painting of any doors
- Exit signs
- Any parking lot work
- New monument sign
- Green Roof replacement or modification
- Existing elevator revitalization
- Refinish Kitchen Cabinets
- Painting of residential units
- No hollow metal entrance door painting or refinishing included
- No work in existing elevators or shaft
- No hazardous materials assumed

CLARIFICATIONS

- Travaux Inc. will work with the mechanical and electrical engineers to maintain the plumbing, mechanical and electrical budgets as stands. We have established the MEPs as a not-to-exceed value.
- No Allowances at this time

D - ITEMIZED STATEMENT OF THE GUARANTEED MAXIMUM PRICE 10/26/2023

AIA DOCUMENT G703

PAGE 1 OF 1 PAGES

CONTINUATION SHEET

AIA Document G702, APPLICATION AND CERTIFICATION FOR PAYMENT

containing Contractor's signed certification is attached.

In tabulations below, amounts are stated to the nearest dollar.

Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO:

PERIOD TO:

ARCHITECT'S PROJECT NO:

A	B	C	D	E	F	G	H	I	J
Item Number	Description of Work	Scheduled Value	Adjustment	Adjusted Schedule Value	From Previous Application	Total Completed and Stored to Date (D+E+F)	% (G/C)	Balance to Finish (C - G)	Retainage (if Variable Rate)
	Highland Gardens Remodel				This Period				
1	Demolition	46,320.00		46,320.00			0.00%	46,320.00	
2	Footings, Foundations, SOG	24,000.00		24,000.00			0.00%	24,000.00	
3	Site Utilities	0.00		0.00			0.00%	-	
4	Asphalt Paving	0.00		0.00			0.00%	-	
5	Site Pavers	30,000.00		30,000.00			0.00%	30,000.00	
6	Curb and Gutters	0.00		0.00			0.00%	-	
7	Landscape Allowance	0.00		0.00			0.00%	-	
8	Building Concrete & SOG	50,368.00		50,368.00			0.00%	50,368.00	
9	Thermal Insulation and Vapor Barrier	0.00		0.00			0.00%	-	
10	Masonry	412,008.00		412,008.00			0.00%	412,008.00	
11	Expansion Joints	7,680.00		7,680.00			0.00%	7,680.00	
12	Structural Steel	60,000.00		60,000.00			0.00%	60,000.00	
13	Handrail	0.00		0.00			0.00%	-	
14	Rough Carpentry	0.00		0.00			0.00%	-	
15	Finish Carpentry-Labor	0.00		0.00			0.00%	-	
16	Millwork/Cabinets/Slits	239,400.00		239,400.00			0.00%	239,400.00	
17	Roofing and Flashing	974,000.00		974,000.00			0.00%	974,000.00	
18	Sealant	0.00		0.00			0.00%	-	
19	Metal Fabrications	2,400.00		2,400.00			0.00%	2,400.00	
20	Apartment Doors and Frames	0.00		0.00			0.00%	-	
21	Solid Doors, Frames and Hardware	94,000.00		94,000.00			0.00%	94,000.00	
22	Windows	1,071,635.00		1,071,635.00			0.00%	1,071,635.00	
23	Install Wood Window and Pairor Doors	0.00		0.00			0.00%	-	
24	Glass and Glazing	0.00		0.00			0.00%	-	
25	Drywall and Framing	9,300.00		9,300.00			0.00%	9,300.00	
26	Acoustic Ceiling	5,676.00		5,676.00			0.00%	5,676.00	
27	Carpet and Flooring	436,092.00		436,092.00			0.00%	436,092.00	
28	Painting and Staining	154,719.00		154,719.00			0.00%	154,719.00	
29	Specialties/Wall Protection/Toilet Partitions	0.00		0.00			0.00%	-	
30	Appliances	211,000.00		211,000.00			0.00%	211,000.00	
31	Trash Compactors	35,000.00		35,000.00			0.00%	35,000.00	
32	Window Blinds and Shades	20,800.00		20,800.00			0.00%	20,800.00	
33	Elevators	606,000.00		606,000.00			0.00%	606,000.00	
34	Fire Protection System	0.00		0.00			0.00%	-	
35	Plumbing	430,004.00		430,004.00			0.00%	430,004.00	
36	HVAC- Mechanical	609,000.00		609,000.00			0.00%	609,000.00	
37	Electrical	1,730,000.00		1,730,000.00			0.00%	1,730,000.00	
38	Fire Protection System	0.00		0.00			0.00%	-	
39	Bond/Builders Risk	423,561.00		423,561.00			0.00%	423,561.00	
40	General Conditions / PP/Bonds	95,000.00		95,000.00			0.00%	95,000.00	
41	Overhead	441,929.00		441,929.00			0.00%	441,929.00	
42	CM Fees	176,772.00		176,772.00			0.00%	176,772.00	
		441,929.00		441,929.00			0.00%	441,929.00	
	TOTAL	8,838,593.00	0.00	8,838,593.00			0.00%	8,838,593.00	

Total before GC/OH/CM Fees
 GC 8,838,593.00
 OH 441,929.65
 CMFees 176,771.86
 441,929.65

