



Document A102™ – 2007

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

AGREEMENT

day of _____ in the

(In words, indicate day, month and year.)

BETWEEN the Owner:

(Name, legal status, address and other information)

and the Contractor:

(Name, legal status, address and other information)

for the following Project:

(Name, location and detailed description)

The Architect:

(Name, legal status, address and other information)

The Owner and Contractor agree as follows.

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ARTICLE 1 THE CONTRACT DOCUMENTS

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

§ 1.1 Should contradictory language exist between this Agreement and any Contractor supplied exhibits, this Agreement shall be considered the prime contract, and the language of this Agreement shall supersede the language of the exhibits.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others. The Contractor further acknowledges and warrants that it has closely examined all the Contract Documents, that they contain sufficient information to enable the Contractor to complete the portion of the Work then designed (pursuant to the fast track delivery process) in a timely manner for the Contract Sum.

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§ 2.1 Except as expressly provided for in the Contract Documents to the contrary, the Contractor at its sole cost, risk, and expense shall construct, equip, provide, purchase, pay for, and furnish all of the Work in accordance with the Contract Documents, governmental codes and regulations as they apply to performance of the Work.

§ 2.2 It is not the intent of the Drawings and Specifications to set forth in detail or to otherwise direct every item properly necessary to the completion of the Work. It is Contractor's sole responsibility to be fully qualified to complete the Work, and it must, without direction, accomplish everything necessary to provide a workmanlike product within industry standards for good construction, complete in every detail and condition, so as to be ready for use without any additional work being required, other than that explicitly stated elsewhere in this Agreement.

§ 2.3 [NOTE: IS THIS APPLICABLE? IF NOT, TO BE DELETED.] The Project is being constructed on a "fast track" basis. Contractor has not been provided the complete design for all of the Drawings and Specifications. Owner will provide Contractor on a rolling basis completed Drawings and Specifications and such other information to enable Contractor to prepare bid packages ("Bid Packages") for Subcontractors. Attached as Exhibit A is the current schedule of anticipated starts and durations of each major group of activities. Contractor shall advise Owner how far in advance it needs a completed design for a particular segment of the Work, including Drawings and Specifications, related to each contemplated Bid Package in order to maintain the schedule. Contractor understands that the engineering on the Project will be done on a "Just-In-Time" basis and Contractor will be required to adjust its procurement and scheduling activities to meet this approach. Due to the fast track process, Owner acknowledges that it has been advised by Contractor that the Project will be affected by such process. Some of the effects of an accelerated project delivery process, like fast track construction, include the necessity of making early or premature commitments to design decisions and the issuance of incomplete and uncoordinated construction documents for permitting, bidding, and construction purposes in order to maintain a fast track or accelerated schedule, or the actual progress of the Work of the Contractor. The Owner acknowledges that it has been advised that the Project, if developed on an accelerated Project delivery basis, may require associated coordination, design, and redesign of parts of the Project after construction documents are issued and this Contract is executed, and may require removal of work in place, all of which events may cause an increase in the Contract Sum and/or an extension of the Project construction schedule. Therefore, the Owner acknowledges and understands that Change Orders arising from the accelerated Project delivery process should be expected as a part of and related to this process; and the Owner understands the necessity of including sufficient contingencies in the budget for the Contract Sum to account for additional costs and construction schedule extensions arising from this process and agrees to include such contingencies in the Project construction budget commensurate with industry standards for Projects of similar scope and quality of this Project. However, the Contractor agrees to promptly advise Owner in writing whenever Contractor believes that specific aspect of the fast track process could adversely affect the Work in place or current design of portions of the Project to minimize the need to make changes or re-execute portions of the Work, and in the absence of such notification when Contractor has such belief and/or actual knowledge of such fact, Contractor shall be responsible for any additional costs arising therefrom.

ARTICLE 3 RELATIONSHIP OF THE PARTIES

§ 3.1 The Contractor accepts the relationship of trust and confidence established 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 and supervision; to furnish at all times an adequate supply of workers and materials; and 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.

§ 3.2 The Contractor shall maintain the confidentiality of Project and Owner information, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent the Contractor from establishing a claim or defense in an adjudicatory proceeding. The Contractor shall require of the Subcontractors similar agreements to maintain the confidentiality of Project and Owner information. This subparagraph is not intended to limit the use by Contractor or its Subcontractors of Project information to perform its Work under this Agreement.

§ 3.2.1 The Contractor, at any time upon the request of the Owner, shall immediately return and surrender to the Owner all copies of any materials, records, notices, memoranda, recordings, drawings, specifications, and mock-ups and any other documents furnished by the Owner or the Architect to the Contractor. Contractor shall require the

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Subcontractors to agree to all of the requirements outlined in Section 3.2. The Contractor may retain copies of any information, at the Contractor's expense, that the Contractor deems necessary for business records or for any regulatory, financing, tax or insurance requirements, or that are necessary to service warrantee obligations after completion.

§ 3.2.2 The covenants contained in this Section 3.2 shall survive the complete performance of the Work or earlier termination of this Agreement.

ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 4.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

If, prior to commencement of the Work, the Owner requires time to file mortgages and other security interests, the Owner's time requirement shall be as follows:

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

§ 4.2.1 Time is of the essence of this Agreement. The Contractor acknowledges and recognizes that the Owner is entitled to full and beneficial occupancy and use of the completed Work following expiration of the Contract Time, that the Owner may enter into binding agreements demising all or part of the premises where Work is to be completed, and that Owner may have entered into financing agreements based upon the Contractor's achieving Substantial Completion of the Work within the Contract Time. The Contractor further acknowledges and agrees that if the Contractor fails to complete substantially or cause the Substantial Completion of any portion of the Work within the Contract Time, the Owner will sustain extensive damages and serious loss as a result of such failure.

§ 4.2.2 As time is of the essence for the performance of this Agreement, Contractor is obligated to meet or exceed the Schedule (**Exhibit B**) and as set forth in Section 4.3 for the Substantial Completion and Final Completion of the Project.

(a) The Contractor, Architect and/or Owner will meet weekly or more often if required by the Owner, at the Project, to review the progress of the Work and determine if the Work is on schedule.

(b) If the Owner, in good faith, determines that the Contractor is behind the Project Schedule, the Owner shall give the Contractor thirty (30) days to bring the Work back on schedule. After such thirty (30) day period, if the Owner determines that the Work is still behind the Project Schedule, and the Work has not been impacted by events beyond the Contractor's control and without its fault, the Owner shall give the Contractor another three (3) days to take whatever action is necessary to return the Work to adherence to the Schedule. After such three (3) day period, if the Owner determines that the Work is still behind schedule, the Owner may terminate the Contract as provided in General Conditions 14.2 or correct the deficiency at the Contractor's expense as provided in General Conditions 2.4.1.

(c) Notwithstanding the foregoing, if the Work is behind the Project Schedule due to unusual severe weather conditions, as defined elsewhere in the Contract Documents, the Contractor will make every reasonable effort to return the Project to adherence with the Schedule but may not be terminated.

(d) It is understood that modifications to the Project Schedule may be required occasionally. Any such modifications to the Contract Time must be agreed to by the Contractor and Owner and contained in a Change Order to the Contract signed by both parties.

§ 4.3 The Contractor shall achieve Substantial Completion of the entire Work not later than To Be Determined () days from the date of commencement, or as follows:

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(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

Portion of Work

Substantial Completion date

To Be Determined

, subject to adjustments of this Contract Time as provided in the Contract Documents.

(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time, or for bonus payments for early completion of the Work.)

§ 4.3.1 LIQUIDATED DAMAGES

A. The parties acknowledge and agree to the following:

- .1 The Owner shall be entitled to damages attributable to delays that are caused by any act or omission of Contractor or any entity under contract with Contractor (whether directly or indirectly) or for whom Contractor is otherwise responsible ("Delays").
- .2 At the time of execution of the Agreement, it is extremely difficult, if not impossible, to ascertain with precise accuracy the amount of actual damages that the Owner would incur as a result of any Delays.
- .3 The Liquidated Damages sums specified in Section 4.3.1C below ("Stipulated Sum"), however, bear a substantial relationship to and approximate the actual damages the Owner is expected to incur from Delays, represent reasonable compensation to the Owner from damages anticipated from such Delays, and are not a penalty. The Stipulated Sum is based on a fair and methodically reasonable attempt to predict damages resulting from Delays, including, but not limited to, (a) the Owner's loss of revenues from lost rents; (b) the Owner's increased costs of financing and other costs of carry; and (c) the Owner's increased costs of taxes and insurance. Accordingly, neither party may change the Stipulated Sum, or the basis therefor, in any future setting.
- .4 A material part of the consideration for which the Owner has bargained is the Contractor's willingness to assume the risk of pre-determined damages for Delays. The Contractor has attempted to bargain for additional consideration (e.g. an increased fee) in return for this risk and in fact is free to decline the Agreement altogether.
- .5 Liquidated Damages shall constitute the Owner's sole remedy for unexcused delay.

B. The Contractor hereby warrants and represents that it is familiar with liquidated damages provisions generally, and has received advice of counsel with respect to this Section 4.3.1.

C. Liquidated Damages. In the event the Contractor does not achieve Substantial Completion within the Contract Time, as defined in Section 4.3, including approved extensions, the Contractor shall pay Owner as Liquidated Damages and not as a penalty a Stipulated Sum of _____ Dollars (\$ _____) per calendar day until such time that the Contractor has achieved Substantial Completion in accordance with A201, Section 9.8 hereto (as modified). The Liquidated Damages shall begin to accrue on the first day after the Substantial Completion date as set forth in Section 2.3.1.2 hereto. In addition, Contractor shall pay Owner as Liquidated Damages and not as a penalty a Stipulated Sum of _____ Dollars (\$ _____) per calendar day for each day that the time from Substantial Completion to Final Completion exceeds _____ (____) days. In the event of early Substantial Completion by Contractor, Contractor shall be awarded _____ Dollars (\$ _____) per calendar day for each day it achieves Substantial Completion ahead of the Substantial Completion date as measured from the original Substantial Completion Date plus extensions of the Substantial Completion date as a

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result of Owner directed changes, not weather delays, subject to a maximum of _____ Dollars (\$ _____). There is no incentive payment for early Final Completion. The Owner shall be entitled to set off from monies due to the Contractor during the course of the Project amounts sufficient to reimburse the Owner for these agreed upon Liquidated Damages.

ARTICLE 5 CONTRACT SUM

§ 5.1 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.)

____ % of the Cost of the Work.

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

§ 5.1.2.1 The rate of the Contractor's Fee for changes in the Work shall not be adjusted and shall remain the same as the rate specified in Section 5.1.1 above. Consequently, the total amount earned by the Contractor as the Fee may increase or decrease, depending upon the nature of the changes in the Work, and shall be adjusted by multiplying the amount of the change in the Cost of the Work attributable to the changes in the Work by the rate specified in Section 5.1.1 above.

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work shall be calculated by the same methods as specified for the Contractor in Section 5.1.2 above:

§ 5.1.4 The "Contractor's General Conditions" costs shall be Contractor's actual costs for the items described in Sections ____ and ____ and further identified on Exhibit C. The Contractor's General Conditions costs shall be a Cost of the Work. [NOTE: Do you want them to be fixed?]

§ 5.1.4.1 The Contractor shall maintain daily equipment usage time reports noting the hours and activity for which the equipment was used, standby time, idle time, etc. Such equipment usage reports will be used by Contractor to determine whether hourly, daily, weekly, or monthly rates shall apply; and the rates used for billing purposes will be those most economical to the Owner based on the circumstances of actual usage.

§ 5.1.4.2 The aggregate rentals chargeable for each piece of Contractor owned, or related party owned tools or equipment shall not exceed 50% of the fair market value of such equipment at the time of its commitment to the Work. The original purchase price and date of purchase of the equipment will be documented with a copy of the purchase invoice and submitted to the Owner along with a proposed fair market value. The fair market values to be used for purposes of this contract clause will be subject to advance approval of the Owner. Such aggregate limitations will apply and no further rentals shall be charged even if a piece of equipment is later replaced by a similar piece of equipment.

§ 5.1.5 Unit prices are to be used only for items where the plans, specifications or conditions do not allow for quantities to be established before bidding. Unit prices, if any, are set forth in the "Schedule of Unit Prices" attached hereto and made a part hereof as an Exhibit D. Such unit prices are considered complete and include (a) all materials, equipment, labor, delivery, installation, overhead and profit, and (b) any other costs or expenses in connection with, or incidental to, the performances of that portion of the Work to which such unit prices apply.

Item	Units and Limitations	Price Per Unit (\$0.00)
Refer to "Schedule of Unit Prices"		

§ 5.2 GUARANTEED MAXIMUM PRICE

§ 5.2.1 The Contract Sum is guaranteed by the Contractor not to exceed (\$ _____), subject to additions and deductions by Change Order as provided

in the Contract Documents. Such 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.

(Paragraph deleted)

The shared savings based on initial GMP versus final GMP shall be one hundred percent (100 %) to Owner. The shared savings based on final GMP versus the final Cost of the Work will be _____ percent (____%) to Owner and _____ percent (____%) to Contractor.

§ 5.2.2 The Guaranteed Maximum Price

(Paragraphs deleted)

includes the alternates specified in the "Schedule of Alternates" attached hereto and made a part hereof as an Exhibit E. The Contractor shall furnish the Owner with no less than fourteen (14) days prior written notice of the date upon which the alternates set forth in the "Schedule of Alternates" must be accepted by the Owner in order for the Contractor to perform the Work covered by such alternates for the price set forth in the "Schedule of Alternates" and without any adjustment to a milestone date or in the Contract Time.

§ 5.2.3 Allowances included in the Guaranteed Maximum

(Paragraphs deleted)

Price are set forth in the "Schedule of Allowances" attached hereto and made a part hereof as Exhibit F. Such allowances are considered complete and include (a) all materials, equipment, labor, delivery, installation, fees, overhead and profit, and (b) any other costs or expenses in connection with, or incidental to, the performances of that portion of the Work to which such allowances apply.

(Table deleted)

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

§ 5.2.5 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Contractor has provided in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as 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 [NOTE: IS THIS APPLICABLE?] A "Contractor's Contingency" in the amount of \$ ____ shall be included in the GMP for the exclusive use of the Contractor for any unexpected Cost of the Work items that are not otherwise reimbursable and do not constitute a change in the Work as defined in **Exhibit G** to this Agreement, such as: errors in estimating; correction of Subcontractor scope deficiencies; acceleration of construction Schedule; issues related to coordination of the Drawings and Specifications; issues related to omissions in the Drawings and Specifications; issues related to the completeness of the Drawings and Specifications; and changes in the Drawings and Specifications between the set issued for Final Guaranteed Maximum Price (see **Exhibits H and H-I** to this Agreement) and the set to be issued for construction after execution of this Agreement. The Owner's approval in writing, which will not be unreasonably withheld, is required in order for Contractor to access and utilize the Contractor's Contingency. The Contractor's Contingency shall not be used for the Article 8 Costs Not To Be Reimbursed. [NOTE: We could include some additional fast track costs here.]

ARTICLE 6 CHANGES IN THE WORK

§ 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 Section 7.3.3 of AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 6.2 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 AIA Document A201-2007 shall have the meanings assigned to them in AIA Document A201-2007 and shall not be modified by Articles 5, 7 and 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 this Agreement, unless the Owner has furnished the Contractor with

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prior written approval of the form and substance of a subcontract, in which case such adjustment shall be calculated in accordance with the terms and conditions of that subcontract.

§ 6.3 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201–2007 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.

§ 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. Costs as defined herein shall be actual costs paid by the Contractor, less all discounts, rebates, and salvages that shall be taken by the Contractor, subject to Article 9 of the Agreement. All payments made by the Owner pursuant to this Article 7, whether those payments are actually made before or after the execution of the Contract, are included within the Guaranteed Maximum Price ("GMP") specified in Section 5.2 above; provided, however, that in no event shall the Owner be required to reimburse the Contractor for any portion of the Cost of the Work incurred prior to the Commencement Date unless the Contractor has received the Owner's written consent prior to incurring such cost. The Cost of the Work shall include only the items set forth in this Article 7.

§ 7.1.2 Where any cost is subject to the Owner's prior approval, the Contractor shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing this Agreement.

§ 7.1.3 Notwithstanding the breakdown or categorization of any costs to be reimbursed in this Article 7 or elsewhere in the Contract Documents, there shall be no duplication of payment in the event any particular items for which payment is requested can be characterized as falling into more than one of the types of compensable or reimbursable categories.

§ 7.2 LABOR COSTS

§ 7.2.1 Wages 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.

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

(If it is intended that the wages or salaries of certain personnel stationed at the Contractor's principal or other offices shall be included in the Cost of the Work, identify in Article 15, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

§ 7.2.3 Wages and 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 required by law or collective bargaining agreements and, for personnel not covered by such 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 through 7.2.3 and are approved in advance, in writing, by the Owner..

§ 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 properly entered into under this Agreement.

§ 7.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

§ 7.4.1 Costs, including transportation and storage, 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 and shall be properly stored by the Contractor at the Project site in accordance with the Owner's instructions 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 including transportation, storage, installation, maintenance, dismantling 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 used but not fully consumed, which are paid for by the Owner, shall become the property of the Owner and shall be delivered to the Owner upon the completion of the Work in accordance with instructions furnished by the Owner. If the Owner elects, however, the Contractor shall purchase any such items from the Owner at a purchase price equal to the original cost charged to the Owner, less the reduction in fair market value resulting directly from use of any such item in connection with the Work or such other price that is mutually acceptable to the Owner and the Contractor. Upon demand by the Owner, the Contractor shall furnish the Owner with any information and documentation necessary to verify the period of time for which such items were used in connection with the Work.

§ 7.5.2 Costs, including transportation and storage, installation, maintenance, dismantling 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; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Contractor. Cost for items previously used by the Contractor shall mean fair market value.

§ 7.5.3 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, whether rented from the Contractor or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval. Rental rates actually paid by Owner to Contractor or its affiliates shall not exceed the lower of seventy-five percent (75%) of the "Associated Equipment Dealers" ("AED") rate or of the rate listed in a comparable manual; provided, however, if the item is not listed in the AED manual or comparable manual, such rental rates shall in no event exceed seventy-five percent (75%) of the rate prevailing in the area for similar machinery and equipment owned by the Contractor or its affiliates, and rental rates include the installation, minor repairs and replacements, dismantling and removal thereof.

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

§ 7.5.5 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.

§ 7.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's and Lender's prior approval, and such requirements imposed by Owner and Lender, including, without limitation, insurance requirements, segregation and marking of the materials, and an aggregate cap with respect to the amount of materials stored off-site at any one time.

§ 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 and required by this Contract, provided, however, that such costs shall not be included in

the Cost of the Work for purposes of calculating the Contractor's Fee. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 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.

§ 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 by Section 13.5.3 of AIA Document A201-2007 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; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and 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. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201-2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 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. Said approval to be at Owner's sole discretion.

§ 7.6.9 Subject to the Owner's prior 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 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. All travel in excess of one hundred (100) miles shall be approved in advance in writing by the Owner.

§ 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, and to the extent not (a) caused by the Contractor, a Subcontractor, suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract or (b) capable of being prevented through timely notice of an unsafe condition to the Owner..

§ 7.7.1.1 Contractor will utilize Subguard as an alternative surety program. Subguard is agreed to be considered cost of the work at a fixed rate of ____% of the subcontracted amounts and costs of builder's risk insurance premiums and deductibles; and bonds required by the Contract Documents that can be directly attributed to this Contract. The cost of all other insurance required to be provided by the Contractor under this Agreement will be reimbursed at a fixed rate of ____% of the Contract Amount. The fixed rates set forth in this Agreement are not subject to audit. [NOTE: FIXED RATES OR NOT?]

§ 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 Section 10.4 of AIA Document A201-2007.

§ 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 negligence or

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failure to fulfill a specific responsibility of 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, provided the absence of collectable insurance is not due to the Contractor's breach of a contract for insurance or this Agreement.

§ 7.8 RELATED PARTY TRANSACTIONS

§ 7.8.1 For purposes of Section 7.8, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Contractor.

§ 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 Article 10. If the Owner fails to authorize the transaction, 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.

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 Overhead and general expenses, except as may be expressly included in Article 7;
- .4 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work;
- .5 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence 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 a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Article 7, including trade dues, fees and assessments, even if the amount thereof is based upon the amount of the compensation paid under the Contract to Contractor; and
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.
- .8 Any cost not specifically and expressly described in Article 7.1
- .9 Costs and expenses arising from Contractor's indemnity obligations, including but not limited to Contractor's costs and expenses in removing or defending against a mechanic's lien claim asserted against the Owner and/or its property, unless such mechanic's lien arises from Owner's wrongful failure to make timely payments.
- .10 Taxes incurred by Contractor, including but not limited to sales or use taxes on real property improvements, franchise, property, or income taxes; however, sales tax on materials utilized on or incorporated into the Project are reimbursable under this Agreement.
- .11 Penalties for the failure of the Contractor or a subcontractor or another party for whom Contractor is responsible under the Contract to comply with statutes, laws, ordinances, codes, rules and regulations, lawful orders, and all other requirements of public authorities applicable to performance of the Work ("Applicable Laws"), including without limitation, those relating to safety and immigration.
- .12 Costs of record storage relating to the Contract.
- .13 Costs to repair defective Work, and other costs to comply with Contractor's warranty obligations under the Contract, other than the cost to repair defective Work under the warranty obligation which is performed post-Final Completion by the Contractor on behalf of a defunct Subcontractor and such cost does not exceed the GMP.
- .14 Notwithstanding the breakdown or categorization of any costs to be reimbursed in Article 7 or elsewhere in the Contract Documents, there shall be no duplication of payment if any particular item for which payment is requested can be characterized as falling into more than one of the types of compensable or reimbursable categories.
- .15 Any cost that could be prevented through Contractor's timely notice to the Owner of an unsafe

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- condition.
- .16 Costs or expenses for which payment has already been sought by Contractor and paid by Owner, except as to any unreimbursed costs or expenses incurred by Contractor as a result of Owner's wrongful withholding of payment. In the event a claim or lien is asserted by a Subcontractor of any tier claiming through Contractor against Owner for an item of work for which payment has already been made to Contractor by Owner and, if Owner pays or has paid all or a portion of such claim to claimant, such payment by Owner shall reduce the amount payable to the Contractor under this Agreement accordingly.
 - .17 Costs of any self-performed work and costs of Contractor or related party owned subcontractors, supply houses, and rental companies, except as provided in Section 7.8.

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 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 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.

§ 10.2 Except as may be otherwise directed or approved by Owner and wherever reasonably possible, all subcontracts and purchase orders shall be awarded pursuant to competitive bids and according to the procedures set forth in this Article 10 and in Section 5.2 of the General Conditions. The Contractor must disclose to Owner its intention to perform any Work, other than supervision of the Work, by the Contractor's own forces. Upon Owner's request, the Contractor shall be required to solicit competitive bids from other qualified subcontractors for the Work the Contractor proposes to perform with its own forces in compliance with the same procedures.

- .1 Unless waived in writing by the Owner, the Contractor shall obtain bids from no less than three (3) qualified Subcontractors and from no less than three (3) qualified suppliers of materials or equipment fabricated especially for the Work. The Owner may designate specific persons from which the Contractor shall obtain bids. Otherwise, the Contractor shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated to a special design for the Work from the list of acceptable entities previously developed pursuant to Section 10.1.
- .2 The Contractor shall prepare written requests for proposals for all bid packages, which requests for proposals shall be submitted to Owner for approval.
- .3 All bids obtained by the Contractor for any Work shall contain separate line-item details for labor costs and material costs in whatever detail required by Owner.
- .4 The Contractor shall summarize the bid results for each component of the Work in a spreadsheet format, acceptable to Owner, including an analysis of the bids in such detail as required by Owner to allow for meaningful comparison by the Owner of the bidders and the bids. Along with its bid analysis, the Contractor shall provide the Owner with a profile of each bidder, including its workmanship reputation, performance history on past projects, financial strength, current workload/capacity, and such other information as requested by Owner.
- .5 Any and all discussions with bidders for clarification of scope (commonly referred to as "bid leveling") shall be done in the presence of an Owner representative;
- .6 The Contractor shall make an award recommendation to the Owner for each element of Work.

- Such recommendation shall be accompanied by all supporting documentation.
- .7 The Owner will then determine, with the advice of the Contractor and subject to the reasonable objection of the Architect, which bids will be accepted, including any bid by the Contractor to self-perform work. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.

§ 10.3 If a specific bidder among those whose bids are obtained in accordance with the procedures set forth in the Contract Documents (a) is recommended to the Owner by the Contractor; (b) is qualified to perform that portion of the Work; and (c) has submitted a bid which conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted which is for a greater amount or would cause the Contractor not to meet any Interim Substantial Completion Date or the Substantial Completion Date, then the Contractor may require that a Change Order be issued to adjust the Contract Time and the GMP by the difference between the bid of the person or entity recommended to the Owner by the Contractor and the amount of the Subcontract actually signed with the person or entity designated by the Owner. However, no increase in the GMP or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required by Section 5.2.1 of the General Conditions and following the other provisions of the Contract Documents regarding obtaining bids.

§ 10.4 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 11, below.

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, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, 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. Subcontractors retained by the Contractor on a "cost-plus" basis shall have the same obligations to retain records and cooperate with audits as are required of the Contractor under this Article 11. If any inspection by the Owner of the Contractor's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and any other data relating to the Contract Documents reveals an overcharge, including, without limitation, any untimely request for payment as described in section 14.3, the Contractor shall pay the Owner upon demand an amount equal to one hundred twenty percent (120%) of such overcharge, as reimbursement for said overcharge and the administrative expenses incurred in determining the overcharge. The requirements of this Article 11 shall not apply to any portion of an overcharge that is the subject of a good-faith dispute between the Owner and Contractor.

ARTICLE 12 PAYMENTS

§ 12.1 PROGRESS PAYMENTS

§ 12.1.1 Based upon Applications for Payment in a form satisfactory to the Owner and accompanied by all supporting documentation required by Owner on the Application for Payment, including all required mechanic's lien waivers and releases, using the forms appended hereto as Exhibit I, submitted to the Owner and 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, or as follows:

Within thirty (30) days following Contractor's receipt of each progress payment, or as soon thereafter as available, Contractor shall deliver to Owner Contractor's monthly job cost report for the prior month.

§ 12.1.3 Provided that an Application for Payment in a form satisfactory to the Owner and accompanied by all supporting documentation required by Owner on the Application for Payment, including all required mechanic's lien waivers and releases, is received by the Owner and the Architect not later than the first (1st) day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the last day of the same month. If an Application for Payment in a form satisfactory to the Owner and accompanied by all supporting documentation required by Owner on the Application for Payment, including all required mechanic's lien waivers and releases, is received by the Owner and the Architect after the application date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Owner and the Architect receive and approve the Application for Payment. *(Federal, state or local laws may require payment within a certain period of time.)*

§ 12.1.4 If requested by Owner in writing with respect to one or more Applications 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 cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor; less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment. In addition, each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner and in compliance with applicable statutes of the state in which the Project is located:

- .1 Duly executed waivers and releases of mechanic's (or material supplier's) liens from all Subcontractors, material suppliers, and, where appropriate, lower tier subcontractors, Contractor and establishing receipt of payment or satisfaction of payment of all amounts requested on behalf of such entities, in the form attached hereto as Exhibit I and made part hereof.
- .2 Such other information, documentation, and materials as the Owner, the Architect, Owner's lenders or title insurers may require.

With respect to the lien waivers described in this Section 12.1.4 and also in Section 12.2.1, conditional lien waivers shall be delivered with Applications for Payment and, if requested by Owner, unconditional lien waivers shall be delivered within ten (10) days following receipt of payment by Contractor and the applicable Subcontractor, material supplier and, where appropriate, lower tier subcontractors.

§ 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 the various portions of the Work, except that the Contractor's Fee shall be shown as a single separate item. The Cost of the Work on the schedule of values shall be broken down into three (3) categories: Site Work, Garage, and Building. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner or the Architect may require. This schedule, unless objected to by the Owner or the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 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 for which the Contractor has made or intends to make actual 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.

§ 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, less retainage of ten percent (10%). 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 AIA Document A201-2007 as modified;
- .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, less retainage of ten percent (10%);

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- .3 Add the Contractor's Fee, less retainage of ten percent (10 %). 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 of ten percent (10 %) from that portion of the Work that the Contractor self-performs;
- .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 AIA Document A201-2007 as modified.

§ 12.1.8 Payments to Subcontractors shall be subject to retainage of not less than ten percent (10%). The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments and retention for Subcontractors consistent with Section 7.3. It is mutually agreed and understood that the early release or retaining for those portions of the Work that have been substantially completed (i.e. concrete structure, earthwork, excavation retention, site utilities) shall not be unreasonably withheld prior to Project's substantial completion. These requests for reduction of retainage prior to the substantial completion of the Project will be reviewed on a case-by-case basis by Owner and shall require Lender's approval for early release.

§ 12.1.9 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 12.1.4 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.

§ 12.1.10 Upon the Substantial Completion of the Work, each item on the Owner's punchlist shall be assigned a value by the Architect (with the Owner's concurrence) equal to the actual cost to complete such item, plus 25% ("Punchlist Value"). Provided the retainage and any amounts withheld pursuant to Section 9.5.1 of the General Conditions is more than the Punchlist Value, no additional amount for the punchlist items shall be withheld by the Owner at the time of making the payment following Substantial Completion provided that Owner has paid the undisputed amount of each Contractor invoice. If, however, the retainage and any additional amount withheld pursuant to Section 9.5.1 of the General Conditions is less than the Punchlist Value, then the amount of the Punchlist Value in excess of the retainage and withheld pursuant to Section 9.5.1 of the General Conditions, in excess of the punchlist holdback retainage (the "Excess") also shall be withheld by the Owner at the time of making the payment following Substantial Completion. At the time of the next progress payment following the Final Completion of each punchlist item, as certified by the Owner, Owner shall pay to Contractor the Punchlist Value for such punchlist items, which payments shall reduce the retainage.

§ 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 Section 12.2.2 of AIA Document A201-2007, 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;
- .3 a final Certificate for Payment has been issued by the Architect certifying that the Final Payment is due to the Contractor;
- .4 Final lien waivers from Contractor and all Subcontractors, material suppliers, and, where appropriate, lower tier subcontractors in the form attached hereto as Exhibit I and made part hereof for all purposes, and all other documents and items as required elsewhere in the Contract Documents,

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- including but not limited to warranties and guarantees, certificates of occupancy, record drawings, operations and maintenance manuals, keys, and any other items specific to the Project, have been submitted to and are acceptable to the Owner;
- .5 the Contractor has completed the "Construction Close-out Checklist" and submitted it to the Owner;
 - .6 all close-out requirements set forth in the Contract Documents have been completed to Owner's satisfaction;
 - .7 and provided however, that if the Owner has received notice or has actual or constructive knowledge of any existing and unwaived mechanic's liens from any design or engineering professional, contractor, subcontractor, supplier or materialman, the Owner may withhold from such final payment an amount equal to the total of all amounts of such existing and unwaived liens.

§ 12.2.2 If the Owner requests a final accounting from the Contractor, the Owner's auditors will review and report in writing on the Contractor's final accounting within 10 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 AIA Document A201-2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201-2007. The Architect is not responsible for verifying the accuracy of the Contractor's final accounting.

The Contractor agrees to cooperate with the auditor and make available for examination at his principal office all of his books, records, correspondence and other documents deemed necessary to conduct the audit by the auditor. If any inspection by the Owner of the Contractor's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and any other data relating to the Contract Documents confirms an overcharge or overpayment, Contractor, subject to the Contractor's right to contest the claimed overcharge and overpayment by arbitration, shall pay the Owner upon demand one hundred percent (100%) of such overpayment, together with interest at the Default Rate from the date Owner made such overpayment to Contractor until such time as Contractor has reimbursed Owner for such overpayment. The requirements of this Section 7.2.2 shall not apply to any portion of an overpayment which is the subject of a good faith dispute between the Owner and the Contractor. If the overpayment is in excess of the cost of the audit, Contractor shall pay the entire cost of the audit, anticipated to be no more than \$ _____. If, however, the overpayment is less than the cost of the audit, Contractor shall pay that portion of the audit that the overpayment bears to the cost of the audit (i.e., overpayment/cost of audit). In determining whether an overcharge has occurred, the auditor shall take into consideration any undercharges as an offset to any alleged overcharges. Finally, if any audit reveals no overcharge, Owner shall reimburse Contractor for any out-of-pocket expenses incurred by Contractor in connection with cooperating with Owner's auditor.

§ 12.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Contractor's final accounting to be 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 Section 15.2 of A201-2007. 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.

§ 12.2.4 If, subsequent to final payment and at the Owner's request, the Contractor incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Contractor 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 the Contractor has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Contractor.

(Paragraph deleted)

ARTICLE 13 DISPUTE RESOLUTION

§ 13.1

(Paragraphs deleted)

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§ 13.2 BINDING DISPUTE RESOLUTION

For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007 as modified, the method of binding dispute resolution shall be as follows:

(Check the appropriate box. If the Owner and Contractor do not select a method of binding dispute resolution below, 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.)

☐ Arbitration pursuant to Section 15.4 of AIA Document A201–2007

☒ Litigation in a court of competent jurisdiction located in the same jurisdiction as the Project, unless another method is agreed to by the Parties to this Agreement.

☐ Other *(Specify)*

§ 13.2.1 The prevailing party in any legal action or proceeding to enforce any provision of this Agreement shall be awarded all reasonable attorney's fees and costs incurred in good faith in that legal action or proceeding.

ARTICLE 14 TERMINATION OR SUSPENSION

§ 14.1 Subject to the provisions of Section 14.2 below, the Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2007 as modified.

§ 14.2 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2007 as modified, the amount, if any, to be paid to the Contractor under Section 14.2.4 of AIA Document A201–2007 as modified 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; and
- .3 Subtract the aggregate of previous payments made by the Owner.

§ 14.3 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 14.2.1. 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.

§ 14.4 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007 as modified; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007 as modified, except that the term "profit" shall be understood to mean the Contractor's Fee as described in Sections 5.1.1 and Section 6.4 of this Agreement.

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Where reference is made in this Agreement to a provision of AIA Document A201–2007 as modified or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 15.2 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.

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

Prime rate in the location of the Project

§ 15.3 The Owner's representative:
(Name, address and other information)

Attn: _____
Email: _____
Phone: _____

§ 15.4 The Contractor's representative:
(Name, address and other information)

Attn: _____
Email: _____
Phone: _____

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

§ 15.6 Other provisions:

§ 15.6.1 WARRANTIES.

The Contractor represents and warrants the following to the Owner (in addition to any other representations and warranties contained in the Contract Documents), as an inducement to the Owner to execute this Agreement, which representations and warranties shall survive the execution and delivery of this Agreement, any termination of this Agreement, and the final completion of the Work:

- .1 That it and its Subcontractors are financially solvent, able to pay all debts as they mature, and possessed of sufficient working capital to complete the Work and perform all obligations hereunder.
- .2 That it is able to furnish the plant, tools, materials, supplies, equipment, and labor required to complete the Work and perform its obligations hereunder.
- .3 That it is authorized to do business in the State in which the Project is located and is properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over it and over the Work and the Project.
- .4 That its execution of this Agreement and its performance thereof is within its duly authorized powers.
- .5 That its duly authorized representative has visited the site of the Project, familiarized himself, or herself, with the local and special conditions under which the Work is to be performed, and correlated his observations with the requirements of the Contract Documents.
- .6 That it possesses a high level of experience and expertise in the business administration, construction, construction management, and superintendence of projects of the size, complexity, locale, and nature of this particular Project, and it will perform the Work with the care, skill, and diligence of such a contractor.

The foregoing warranties are in addition to, and not in lieu of, any and all other liability imposed upon the Contractor by law with respect to the Contractor's duties, obligations and performance hereunder. The Contractor acknowledges that the Owner is relying upon the Contractor's skill and experience in connection with the Work called for hereunder.

§ 15.6.2 OFAC REPRESENTATION

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Contractor further represents and warrants that Contractor is not and shall not be, and, after making due inquiry, no Person who owns a controlling interest in or otherwise controls Contractor, is an employee, agent or contractor of Contractor is or shall be (a) listed on the Specially Designated Nationals and Blocked Persons List (the "SDN List") maintained by the Office of Foreign Assets Control ("OFAC"), Department of the Treasury, and/or on any other similar list ("Other Lists" and, collectively with the SDN List, the "Lists") maintained by the OFAC pursuant to any authorizing statute, Executive Order or regulation (collectively, "OFAC Laws and Regulations"); or (b) a Person (a "Designated Person") either (i) included within the term "designated national" as defined in the Cuban Assets Control Regulations, 31 C.F.R. Part 515, or (ii) designated under Sections 1(a), 1(b), 1(c) or 1(d) of Executive Order No. 13224, 66Fed. Reg. 49079 (published September 25, 2001) or similarly designated under any related enabling legislation, or any other similar Executive Orders (collectively, the "Executive Orders"). The OFAC Laws and Regulations and the Executive Orders are collectively referred to in this Agreement as the "Anti-Terrorism Laws". Contractor also shall require, and shall take reasonable measures to ensure compliance with the requirement, that no Person who owns any other direct interest in Contractor is or shall be listed on any of the Lists or is or shall be a Designated Person. This Section shall not apply to any Person to the extent that such Person's interest in the Contractor is through a U.S. Publicly-Traded Entity. As used in this Agreement, "U.S. Publicly-Traded Entity" means a Person (other than an individual) whose securities are listed on a national securities exchange, or quoted on an automated quotation system, in the United States, or a wholly-owned subsidiary of such a Person.

§ 15.6.3 LEED CERTIFICATION [NOTE: IS THIS APPLICABLE?]

Contractor acknowledges the design intent for this Project includes compliance with the Green Building Council's Leadership in Energy and Environmental Design ("LEED") guidelines. Owner anticipates pursuing a LEED pre-certified ranking as described in the Drawings and Specifications. Without limiting what is required in the Drawings and Specifications, Contractor will plan its effort and perform all tasks necessary to achieve this requirement. Contractor is committed to assisting Owner in developing a sustainable design strategy that is not only environmentally responsible, but that meets the Project's timeline and that is also financially responsible. Contractor will apply Contractor's LEED accredited knowledge and expertise and will guide Subcontractors, Sub-subcontractors and suppliers and act as Owner's advocate when driving the construction of the sustainable building elements to meet the Owner's goals and objectives for the Project. Contractor will ensure that Contractor and all others acting through or under Contractor comply with all requirements to achieve Owner's LEED certification and sustainable design objectives.

§ 15.6.4 Compliance with Owner's Policies. While on the Project site or at Owner's offices, Contractor will comply with Owner's policies outlined in Exhibit J attached hereto and made part hereof, as the same may be amended from time to time by Owner with notice to Contractor, including: (i) no smoking; (ii) drug-free environment; (iii) dress code; (iv) non-harassment; (v) travel/expense guidelines; (vi) time reporting; (vii) all safety and security policies (including a prohibition against weapons); (viii) computer security and use policies; and (ix) Owner's Physical Security Policy. The parties agree that violation of Owner's physical security policy by Contractor's employees shall entitle Owner to deduct \$2,000 from any other compensation due Contractor's hereunder for the initial violation and \$8,000 and possible termination of Agreement for subsequent violations. Contractor's employees may be required to attend a short orientation program prior to performing services on Owner's premises. Owner may require Contractor to immediately remove any of its personnel that do not comply with these policies or who are otherwise objectionable to Owner for any reason. If Contractor fails to turn in a security badge for its Employees (as defined below) who are no longer performing Services on the Premises within 5 work days of said Employees last day of performing Services then Owner is entitled to deduct \$100.00 for each missing or late card from any other compensation due Contractor hereunder. These amounts will be the sole responsibility of Contractor and not passed through to Owner.

§ 15.6.5 Background Checks. Contractor agrees that it will cause to be completed a reasonable background check on any "Contractor's Employees" (which shall include employees of Contractor and employees of Contractor's subcontractors and consultants of whatever tier), who will have (i) unescorted access to Owner premises, (ii) access to Customer or Employee Data ("Customer and Employee Data" means any personally identifiable information of an Owner customer or employee) or (iii) access to. Owner information technology systems. The background check will be completed by Contractor prior to any Services being performed by such person within the Contractor's Employees.

§ 15.6.6 Proof of Employment Eligibility. Contractor warrants that all Contractor Employees' names and social security numbers match and that all Contractor Employees hired after the date of this Agreement are United States

citizens or they have one of the documents currently accepted by the USCIS as proof of employment eligibility, as shown on USCIS website's instructions for Form I-9 (www.uscis.gov/portal/site/uscis). For Contractor Employees hired prior to the date of this Agreement, Contractor warrants that all Contractor Employees are United States citizens or they provided proof of employment eligibility documents accepted by the USCIS or its predecessors at the time of said Contractor Employee's hire. Any Contractor Employee whose proof of employment eligibility documents (such as temporary work visas issued by USCIS, Bureau of Citizenship and Immigration Service or Immigration and Naturalization Service) expire while said Contractor Employee is providing services, must have their I-9 form re-verified according to USCIS requirements.

§ 15.6.7 Extent of Responsibility

The recommendations and advice of the Contractor concerning design alternatives shall be subject to the review and approval of the Owner and the Owner's professional consultants. Although the Contractor shall exercise the Standard of Care in connection with its services and the Work, it is not the Contractor's responsibility to ascertain that the Drawings and Specifications are in accordance with Applicable Laws. Notwithstanding the foregoing, however, if the Contractor recognizes, discovers or learns that portions of the Drawings and Specifications are at variance therewith, the Contractor shall promptly notify the Architect and Owner in writing. If the Contractor fails to notify the Architect and Owner as required in the preceding sentence, the Contractor shall be liable for any damages, costs or liability resulting therefrom, including, without limitation, any fines, Architect's fees, consulting fees and costs of correction of the Work.

§ 15.6.8 Foundation Surveys; Encroachments. Owner shall provide the initial surveys to the Contractor providing the bench marks for the Contractor's layout of the Work. After the location of the foundation for any building has been established and staked on the ground and before such foundation is poured, Contractor, at Owner's expense, will cause to be made and delivered to Owner a current survey (from a surveyor acceptable to Owner and Contractor in the exercise of reasonable judgment) reflecting that the location of such improvements and all other existing improvements on the Property will be entirely within the boundary lines of the Property and will not encroach upon any set-back line, easement, right-of-way or adjoining property or breach or violate any permit, code, covenant, condition or restriction affecting the Property or any legal requirements and that no adjoining structure encroaches upon the Property. If requested by Owner, Contractor, at Owner's expense, will cause surveys of each portion of the slab on-grade, beginning with the western boundary of the slab, to be prepared to confirm that the improvements on the Property are entirely within the boundary lines of the Property and do not encroach upon any set-back line, easement, right-of-way or adjoining property or breach or violate any covenant, condition or restriction affecting the Property or any legal requirement and that no adjoining structure encroaches upon the Property. Additionally, if requested by Owner, Contractor, at Owner's expense, shall cause a survey of the on-grade foundation to be prepared following completion of such foundation reflecting that the improvements on the Property are entirely within the boundary lines of the Property and do not encroach on any said-back line easement, right-of-way or adjoining property or breach or violate any covenant, condition, or restriction affecting the Property or any legal requirement as an adjoining structure encroaches upon the Property. Any encroachments made by Contractor or his Subcontractors without Owner's written approval or adjacent properties or in violation of any permit, code, covenant, condition or restriction affecting the Property or any legal requirements due to construction as revealed by an as-built or improvement survey will be the responsibility of Contractor, and Contractor shall correct these encroachments within a reasonable period of time.

§ 15.6.9 Resolving Conflicts. In the case of a conflict between any provisions of this Agreement and any provisions of any other Contract Document, the provisions of this Agreement shall prevail. It is also agreed that the most recently approved Contract Document will take precedence over previous issues of the same Contract Document, and that if there is any conflict or inconsistency among the Contract Documents, the Contract Documents will be interpreted in accordance with the following order of priority: (a) written modifications, addenda, amendments, qualifications and clarifications to this Agreement made after the date hereof; (b) this Agreement; (c) Exhibit "A", and (d) the Drawings and Specifications. If the enumeration of provisions in the Supplementary Conditions is not consistent with the enumeration of the General Conditions, then, to the extent that a provision in the Supplementary Conditions amends or modifies a provision of the General Conditions, the enumeration of such provision in this Supplementary Conditions shall be amended to be consistent with the provisions of the General Conditions.

§ 15.6.10 No Waiver. No consent or waiver, express or implied, by either party to this Agreement to or of any breach or default by the other in performance of any obligations hereunder shall be deemed or construed to be a

consent to or waiver of any other breach or default by such party hereunder. Failure on the part of any party hereto to complain of any act or failure to act of the other party or to declare the other party in default hereunder, irrespective of how long such failure continues, shall not constitute a waiver of the rights of such party hereunder. Inspection or failure of the Owner to perform any inspection hereunder shall not release the Contractor of any of its obligations hereunder.

§ 15.6.11 Contractor's Subordination. Contractor acknowledges that Owner will borrow certain funds to finance the construction of the Work and, that as a condition to any loans to Owner, the Lender may require from time to time certain statements, certificates, and documents from Contractor. Contractor covenants and agrees that any lien, statutory, expressed or implied, right and interest (whether choate or inchoate and including, without limitation, all mechanics' and materialmen's liens under the Applicable Laws and statutes of the state where the Project is located) which are owned or claimed by Contractor or shall exist or shall hereafter accrue to the benefit of Contractor for labor performed, materials furnished and Work done on this Project, shall be and remain subordinate, second and inferior to a first lien securing the payment of an interim construction loan and all advances made thereunder, and to any renewals, extensions or rearrangements thereof. Neither Contractor nor any subcontractor or other party shall be permitted to remove any improvements or other property constructed or installed or delivered in connection with the Work notwithstanding that such improvements or other property can be removed without material injury to any improvements not sought to be removed by any lien claimant and without such injury to any improvements sought to be removed by any lien claimant. A subordination provision to this effect applicable to liens and lien rights of Subcontractors shall be contained in all Subcontracts entered into by Contractor.

§ 15.6.12 Nonconforming Work. When any nonconforming Work is found, the entire area of the affected Work involved shall be corrected unless Contractor can completely define the limits of the nonconforming Work, except to the extent that to do so would constitute economic waste, in which event, Owner shall be entitled to an equitable adjustment of the Cost of the Work credit for such defective Work. Additional testing, sampling or inspecting needed to define nonconforming Work shall be at Contractor's expense. Contractor shall employ Owner's independent testing laboratory, or a mutually satisfactory independent testing laboratory if such services are required. All corrected Work shall be retested at Contractor's expense. Extra architectural services required by Contractor to analyze nonconforming Work shall be paid for by Contractor.

§ 15.6.13 No Kickbacks. Contractor warrants that it has not given any commissions, payments, gifts of substantial value, kickbacks, lavish or extensive entertainment, or other things of value to any employee, member of the employee's family, or agent of Owner or received any such item from any vendor, supplier, or contractor in connection with this Contract and acknowledges that the giving or receiving of any such payments, gifts, kickbacks, extensive entertainment, or other things of value is strictly in violation of Owner's policies and constitutes a material breach of this Agreement entitling Owner to terminate this and any other contracts between Owner (or any affiliate thereof) and Contractor (or any affiliate thereof). Contractor shall notify Owner of any such solicitation by any of Owner's employees, family members, or agents. Owner has the right to audit Contractor's records pertaining to compliance with this paragraph.

§ 15.6.14 Unsafe Materials. In addition to the provisions of Section 10.2 and 10.3 in the General Conditions, if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered but not created 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. The Owner, Contractor, and Architect shall then proceed in the same manner prescribed in Subsection 10.3.2 of the General Conditions. The Owner shall be responsible for obtaining 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 verify that it has been 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 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 Architect have no reasonable objection.

§ 15.6.15 Bankruptcy. It is recognized that if Contractor is a debtor in bankruptcy, or makes a general

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assignment for the benefit of creditors, or if a receiver is appointed for the benefit of its creditors, or if a receiver is appointed to operate or liquidate Contractor on account of its insolvency, such could impair or frustrate Contractor's performance of this Agreement. Accordingly, it is agreed that upon the occurrence of any such event, Owner shall be entitled to request of Contractor or its successor in interest adequate assurance of future performance in accordance with the terms and conditions hereof. Failure to comply with such request within ten (10) days of delivery of the request shall entitle Owner to terminate this Agreement and to the accompanying rights set forth above. In all events pending receipt of adequate assurance of performance and actual performance in accordance therewith, Owner shall be entitled to proceed with the Work with its own forces or with other contractors on a time and material or other appropriate basis, the cost of which will be backcharged against the Contract Sum hereof.

§ 15.6.16 Contractor's Miscellaneous Obligations. Contractor shall:

- (1) Use materials that are new, and be:
 - (a) Corresponding in quality to related materials in the absence of a complete specification.
 - (b) Of good appearance where exposed to view.
 - (c) Plainly marked and delivered to the site in their original unopened containers when the nature of the materials is suitable for containers.
- (2) Follow supplier's instructions when they conflict with the Contract Documents and notify Architect for clarification before proceeding. Keep a copy of the manufacturer's instructions on the job and make available to Architect.
- (3) Report discovered errors or inconsistencies to Owner before commencing work. Confirm the placement of the building on the site with Owner after all lines are staked out.
- (4) Be responsible for damages to the building contents, under the one (1) year warranty described above, when damages result from Contractor's use of non-conforming materials or negligent workmanship, but only if not covered by Owner's or a tenant's insurance (provided that Owner and/or its tenants insure the building contents for its full insurable value, subject to a reasonable deductible).

ARTICLE 16 ENUMERATION OF CONTRACT DOCUMENTS

§ 16.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 16.1.1 The Agreement is this executed AIA Document A102–2007, Standard Form of Agreement Between Owner and Contractor.

§ 16.1.2 The General Conditions are AIA Document A201–2007 as modified, General Conditions of the Contract for Construction.

§ 16.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
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§ 16.1.4 The Specifications:

(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Title of the Specifications exhibit:

(Table deleted)

§ 16.1.5 The Drawings:

(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Title of the Drawings exhibit

(Table deleted)

§ 16.1.6 The Addenda, if any:

Number	Date	Pages
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Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 16.

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§ 16.1.7 Additional documents, if any, forming part of the Contract Documents:

.1 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:

.2 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2007 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

List of Exhibits

Exhibit A – Current Schedule of Anticipated Starts and Durations [ONLY APPLICABLE IF FAST TRACK]

Exhibit B – Performance Schedule

Exhibit C – Contractor's General Conditions Costs

Exhibit D – Schedule of Unit Prices

Exhibit E – Schedule of Alternates

Exhibit F – Schedule of Allowances

Exhibit G – Contractor's Contingency

Exhibit H – Drawings and Specifications

Exhibit H-1 – Drawings and Specifications (as developed through Fast Track Project)

Exhibit I – Lien Releases

Exhibit J – Owner's Policies

ARTICLE 17 INSURANCE AND BONDS

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201–2007 a modified.

(Table deleted)

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

OWNER (Signature)

CONTRACTOR (Signature)

(Printed name and title)

(Printed name and title)

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Additions and Deletions Report for AIA[®] Document A102[™] – 2007

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 13:15:01 on 11/17/2014.

PAGE 1

AGREEMENT made as of the _____ day of _____ in the year 2014

...

...

...

...

The Owner and Contractor agree as follows.

#120510369 v.1
11/17/14

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§ 1.1 Should contradictory language exist between this Agreement and any Contractor supplied exhibits, this

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User Notes:

(1249211217)

Agreement shall be considered the prime contract, and the language of this Agreement shall supersede the language of the exhibits.

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. The Contractor further acknowledges and warrants that it has closely examined all the Contract Documents, that they contain sufficient information to enable the Contractor to complete the portion of the Work then designed (pursuant to the fast track delivery process) in a timely manner for the Contract Sum.

§ 2.1 Except as expressly provided for in the Contract Documents to the contrary, the Contractor at its sole cost, risk, and expense shall construct, equip, provide, purchase, pay for, and furnish all of the Work in accordance with the Contract Documents, governmental codes and regulations as they apply to performance of the Work.

§ 2.2 It is not the intent of the Drawings and Specifications to set forth in detail or to otherwise direct every item properly necessary to the completion of the Work. It is Contractor's sole responsibility to be fully qualified to complete the Work, and it must, without direction, accomplish everything necessary to provide a workmanlike product within industry standards for good construction, complete in every detail and condition, so as to be ready for use without any additional work being required, other than that explicitly stated elsewhere in this Agreement.

§ 2.3 [NOTE: IS THIS APPLICABLE? IF NOT, TO BE DELETED.] The Project is being constructed on a "fast track" basis. Contractor has not been provided the complete design for all of the Drawings and Specifications. Owner will provide Contractor on a rolling basis completed Drawings and Specifications and such other information to enable Contractor to prepare bid packages ("Bid Packages") for Subcontractors. Attached as Exhibit A is the current schedule of anticipated starts and durations of each major group of activities. Contractor shall advise Owner how far in advance it needs a completed design for a particular segment of the Work, including Drawings and Specifications, related to each contemplated Bid Package in order to maintain the schedule. Contractor understands that the engineering on the Project will be done on a "Just-In-Time" basis and Contractor will be required to adjust its procurement and scheduling activities to meet this approach. Due to the fast track process, Owner acknowledges that it has been advised by Contractor that the Project will be affected by such process. Some of the effects of an accelerated project delivery process, like fast track construction, include the necessity of making early or premature commitments to design decisions and the issuance of incomplete and uncoordinated construction documents for permitting, bidding, and construction purposes in order to maintain a fast track or accelerated schedule, or the actual progress of the Work of the Contractor. The Owner acknowledges that it has been advised that the Project, if developed on an accelerated Project delivery basis, may require associated coordination, design, and redesign of parts of the Project after construction documents are issued and this Contract is executed, and may require removal of work in place, all of which events may cause an increase in the Contract Sum and/or an extension of the Project construction schedule. Therefore, the Owner acknowledges and understands that Change Orders arising from the accelerated Project delivery process should be expected as a part of and related to this process; and the Owner understands the necessity of including sufficient contingencies in the budget for the Contract Sum to account for additional costs and construction schedule extensions arising from this process and agrees to include such contingencies in the Project construction budget commensurate with industry standards for Projects of similar scope and quality of this Project. However, the Contractor agrees to promptly advise Owner in writing whenever Contractor believes that specific aspect of the fast track process could adversely affect the Work in place or current design of portions of the Project to minimize the need to make changes or re-execute portions of the Work, and in the absence of such notification when Contractor has such belief and/or actual knowledge of such fact, Contractor shall be responsible for any additional costs arising therefrom.

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The Contractor accepts the relationship of trust and confidence established 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 and supervision; to furnish at all times an adequate supply of workers and materials; and 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.

§ 3.1 The Contractor accepts the relationship of trust and confidence established 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 and supervision; to furnish at all times an adequate supply of workers and materials; and 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.

§ 3.2 The Contractor shall maintain the confidentiality of Project and Owner information, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent the Contractor from establishing a claim or defense in an adjudicatory proceeding. The Contractor shall require of the Subcontractors similar agreements to maintain the confidentiality of Project and Owner information. This subparagraph is not intended to limit the use by Contractor or its Subcontractors of Project information to perform its Work under this Agreement.

§ 3.2.1 The Contractor, at any time upon the request of the Owner, shall immediately return and surrender to the Owner all copies of any materials, records, notices, memoranda, recordings, drawings, specifications, and mock-ups and any other documents furnished by the Owner or the Architect to the Contractor. Contractor shall require the Subcontractors to agree to all of the requirements outlined in Section 3.2. The Contractor may retain copies of any information, at the Contractor's expense, that the Contractor deems necessary for business records or for any regulatory, financing, tax or insurance requirements, or that are necessary to service warrantee obligations after completion.

§ 3.2.2 The covenants contained in this Section 3.2 shall survive the complete performance of the Work or earlier termination of this Agreement.

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§ 4.2.1 Time is of the essence of this Agreement. The Contractor acknowledges and recognizes that the Owner is entitled to full and beneficial occupancy and use of the completed Work following expiration of the Contract Time, that the Owner may enter into binding agreements demising all or part of the premises where Work is to be completed, and that Owner may have entered into financing agreements based upon the Contractor's achieving Substantial Completion of the Work within the Contract Time. The Contractor further acknowledges and agrees that if the Contractor fails to complete substantially or cause the Substantial Completion of any portion of the Work within the Contract Time, the Owner will sustain extensive damages and serious loss as a result of such failure.

§ 4.2.2 As time is of the essence for the performance of this Agreement, Contractor is obligated to meet or exceed the Schedule (Exhibit B) and as set forth in Section 4.3 for the Substantial Completion and Final Completion of the Project.

(a) The Contractor, Architect and/or Owner will meet weekly or more often if required by the Owner, at the Project, to review the progress of the Work and determine if the Work is on schedule.

(b) If the Owner, in good faith, determines that the Contractor is behind the Project Schedule, the Owner shall give the Contractor thirty (30) days to bring the Work back on schedule. After such thirty (30) day period, if the Owner determines that the Work is still behind the Project Schedule, and the Work has not been impacted by events beyond the Contractor's control and without its fault, the Owner shall give the Contractor another three (3) days to take whatever action is necessary to return the Work to adherence to the Schedule. After such three (3) day period, if the Owner determines that the Work is still behind schedule, the Owner may terminate the Contract as provided in General Conditions 14.2 or correct the deficiency at the Contractor's expense as provided in General Conditions 2.4.1.

(c) Notwithstanding the foregoing, if the Work is behind the Project Schedule due to unusual severe weather conditions, as defined elsewhere in the Contract Documents, the Contractor will make every reasonable effort to return the Project to adherence with the Schedule but may not be terminated.

(d) It is understood that modifications to the Project Schedule may be required occasionally. Any such modifications to the Contract Time must be agreed to by the Contractor and Owner and contained in a Change Order to the Contract signed by both parties.

§ 4.3 The Contractor shall achieve Substantial Completion of the entire Work not later than To Be Determined () days from the date of commencement, or as follows:

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To Be Determined

...

§ 4.3.1 LIQUIDATED DAMAGES

A. The parties acknowledge and agree to the following:

- .1 The Owner shall be entitled to damages attributable to delays that are caused by any act or omission of Contractor or any entity under contract with Contractor (whether directly or indirectly) or for whom Contractor is otherwise responsible ("Delays").
- .2 At the time of execution of the Agreement, it is extremely difficult, if not impossible, to ascertain with precise accuracy the amount of actual damages that the Owner would incur as a result of any Delays.
- .3 The Liquidated Damages sums specified in Section 4.3.1C below ("Stipulated Sum"), however, bear a substantial relationship to and approximate the actual damages the Owner is expected to incur from Delays, represent reasonable compensation to the Owner from damages anticipated from such Delays, and are not a penalty. The Stipulated Sum is based on a fair and methodically reasonable attempt to predict damages resulting from Delays, including, but not limited to, (a) the Owner's loss of revenues from lost rents; (b) the Owner's increased costs of financing and other costs of carry; and (c) the Owner's increased costs of taxes and insurance. Accordingly, neither party may change the Stipulated Sum, or the basis therefor, in any future setting.
- .4 A material part of the consideration for which the Owner has bargained is the Contractor's willingness to assume the risk of pre-determined damages for Delays. The Contractor has attempted to bargain for additional consideration (e.g. an increased fee) in return for this risk and in fact is free to decline the Agreement altogether.
- .5 Liquidated Damages shall constitute the Owner's sole remedy for unexcused delay.

B. The Contractor hereby warrants and represents that it is familiar with liquidated damages provisions generally, and has received advice of counsel with respect to this Section 4.3.1.

C. Liquidated Damages. In the event the Contractor does not achieve Substantial Completion within the Contract Time, as defined in Section 4.3, including approved extensions, the Contractor shall pay Owner as Liquidated Damages and not as a penalty a Stipulated Sum of _____ Dollars (\$ 10,000) per calendar day until such time that the Contractor has achieved Substantial Completion in accordance with A201, Section 9.8 hereto (as modified). The Liquidated Damages shall begin to accrue on the first day after the Substantial Completion date as set forth in Section 2.3.1.2 hereto. In addition, Contractor shall pay Owner as Liquidated Damages and not as a penalty a Stipulated Sum of _____ Dollars (\$ 10,000) per calendar day for each day that the time from Substantial Completion to Final Completion exceeds _____ () days. In the event of early Substantial Completion by Contractor, Contractor shall be awarded _____ Dollars (\$ 5,000) per calendar day for each day it achieves Substantial Completion ahead of the Substantial Completion date as measured from the original Substantial Completion Date plus extensions of the Substantial Completion date as a result of Owner directed changes, not weather delays, subject to a maximum of _____ Dollars (\$ _____). There is no incentive payment for early Final Completion. The Owner shall be entitled to set off from monies due to the Contractor during the course of the Project amounts sufficient to reimburse the Owner for these agreed upon Liquidated Damages.

PAGE 6

 % of the Cost of the Work.

...

§ 5.1.2.1 The rate of the Contractor's Fee for changes in the Work shall not be adjusted and shall remain the same as the rate specified in Section 5.1.1 above. Consequently, the total amount earned by the Contractor as the Fee may increase or decrease, depending upon the nature of the changes in the Work, and shall be adjusted by multiplying the amount of the change in the Cost of the Work attributable to the changes in the Work by the rate specified in Section 5.1.1 above.

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work: Work shall be calculated by the same methods as specified for the Contractor in Section 5.1.2 above:

...

§ 5.1.4 Rental rates for Contractor-owned equipment shall not exceed percent (%) of the standard rate paid at the place of the Project. The "Contractor's General Conditions" costs shall be Contractor's actual costs for the items described in Sections and and further identified on Exhibit C. The Contractor's General Conditions costs shall be a Cost of the Work.

§ 5.1.4.1 The Contractor shall maintain daily equipment usage time reports noting the hours and activity for which the equipment was used, standby time, idle time, etc. Such equipment usage reports will be used by Contractor to determine whether hourly, daily, weekly, or monthly rates shall apply; and the rates used for billing purposes will be those most economical to the Owner based on the circumstances of actual usage.

§ 5.1.4.2 The aggregate rentals chargeable for each piece of Contractor owned, or related party owned tools or equipment shall not exceed 50% of the fair market value of such equipment at the time of its commitment to the Work. The original purchase price and date of purchase of the equipment will be documented with a copy of the purchase invoice and submitted to the Owner along with a proposed fair market value. The fair market values to be used for purposes of this contract clause will be subject to advance approval of the Owner. Such aggregate limitations will apply and no further rentals shall be charged even if a piece of equipment is later replaced by a similar piece of equipment.

§ 5.1.5 Unit prices, if any:
(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.) prices are to be used only for items where the plans, specifications or conditions do not allow for quantities to be established before bidding. Unit prices, if any, are set forth in the "Schedule of Unit Prices" attached hereto and made a part hereof as an Exhibit D. Such unit prices are considered complete and include (a) all materials, equipment, labor, delivery, installation, overhead and profit, and (b) any other costs or expenses in connection with, or incidental to, the performances of that portion of the Work to which such unit prices apply.

...

Refer to "Schedule of Unit Prices"

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The shared savings based on initial GMP versus final GMP shall be one hundred percent (100 %) to Owner. The shared savings based on final GMP versus the final Cost of the Work will be ninety seven percent (97%) to Owner and three percent (3 %) to Contractor.

§ 5.2.2 The Guaranteed Maximum Price

includes the alternates specified in the "Schedule of Alternates" attached hereto and made a part hereof as an Exhibit E. The Contractor shall furnish the Owner with no less than fourteen (14) days prior written notice of the date upon which the alternates set forth in the "Schedule of Alternates" must be accepted by the Owner in order for the Contractor to perform the Work covered by such alternates for the price set forth in the "Schedule of Alternates" and without any adjustment to a milestone date or in the Contract Time.

§ 5.2.3 Allowances included in the Guaranteed Maximum

Price are set forth in the "Schedule of Allowances" attached hereto and made a part hereof as Exhibit F. Such allowances are considered complete and include (a) all materials, equipment, labor, delivery, installation, fees, overhead and profit, and (b) any other costs or expenses in connection with, or incidental to, the performances of that portion of the Work to which such allowances apply.

Item	Price
------	-------

...

§ 5.2.6 [NOTE: IS THIS APPLICABLE?] A "Contractor's Contingency" in the amount of \$ _____ shall be included in the GMP for the exclusive use of the Contractor for any unexpected Cost of the Work items that are not otherwise reimbursable and do not constitute a change in the Work as defined in **Exhibit G to this Agreement, such as: errors in estimating; correction of Subcontractor scope deficiencies; acceleration of construction Schedule; issues related to coordination of the Drawings and Specifications; issues related to omissions in the Drawings and Specifications; issues related to the completeness of the Drawings and Specifications; and changes in the Drawings and Specifications between the set issued for Final Guaranteed Maximum Price (see **Exhibits H and H-I** to this Agreement) and the set to be issued for construction after execution of this Agreement. The Owner's approval in writing, which will not be unreasonably withheld, is required in order for Contractor to access and utilize the Contractor's Contingency. The Contractor's Contingency shall not be used for the Article 8 Costs Not To Be Reimbursed. [NOTE: We could include some additional fast track costs here.]**

...

§ 6.2 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 AIA Document A201-2007 ~~and the term "costs" as used in Section 7.3.7 of AIA Document A201-2007~~ shall have the meanings assigned to them in AIA Document A201-2007 and shall not be modified by Articles 5, 7 and 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 this Agreement, unless the Owner has furnished the Contractor with prior written approval of the form and substance of a subcontract, in which case such adjustment shall be calculated in accordance with the terms of those subcontracts and conditions of that subcontract.

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§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. ~~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.~~ Costs as defined herein shall be actual costs paid by the Contractor, less all discounts, rebates, and salvages that shall be taken by the Contractor, subject to Article 9 of the Agreement. All payments made by the Owner pursuant to this Article 7, whether those payments are actually made before or after the execution of the Contract, are included within the Guaranteed Maximum Price ("GMP") specified in Section 5.2

above; provided, however, that in no event shall the Owner be required to reimburse the Contractor for any portion of the Cost of the Work incurred prior to the Commencement Date unless the Contractor has received the Owner's written consent prior to incurring such cost. The Cost of the Work shall include only the items set forth in this Article 7.

...

§ 7.1.3 Notwithstanding the breakdown or categorization of any costs to be reimbursed in this Article 7 or elsewhere in the Contract Documents, there shall be no duplication of payment in the event any particular items for which payment is requested can be characterized as falling into more than one of the types of compensable or reimbursable categories.

...

§ 7.2.4 Costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such 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 through 7.2.3 and are approved in advance, in writing, by the Owner..

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Payments made by the Contractor to Subcontractors in accordance with the requirements of the
~~subcontracts-subcontracts~~ properly entered into under this Agreement.

...

§ 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 and shall be properly stored by the Contractor at the Project site in accordance with the Owner's instructions 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.

...

§ 7.5.1 Costs ~~of including~~ transportation, storage, installation, maintenance, dismantling 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.~~ used but not fully consumed, which are paid for by the Owner, shall become the property of the Owner and shall be delivered to the Owner upon the completion of the Work in accordance with instructions furnished by the Owner. If the Owner elects, however, the Contractor shall purchase any such items from the Owner at a purchase price equal to the original cost charged to the Owner, less the reduction in fair market value resulting directly from use of any such item in connection with the Work or such other price that is mutually acceptable to the Owner and the Contractor. Upon demand by the Owner, the Contractor shall furnish the Owner with any information and documentation necessary to verify the period of time for which such items were used in connection with the Work.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment ~~Costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment~~ and hand tools not customarily owned by construction workers ~~workers~~ that are provided by the Contractor at the site and ~~costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Contractor-owned item may not exceed the purchase price of any comparable item. Rates of Contractor-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.~~ fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed.

whether sold to others or retained by the Contractor. Cost for items previously used by the Contractor shall mean fair market value.

§ 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal. 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, whether rented from the Contractor or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval. Rental rates actually paid by Owner to Contractor or its affiliates shall not exceed the lower of seventy-five percent (75%) of the "Associated Equipment Dealers" ("AED") rate or of the rate listed in a comparable manual; provided, however, if the item is not listed in the AED manual or comparable manual, such rental rates shall in no event exceed seventy-five percent (75%) of the rate prevailing in the area for similar machinery and equipment owned by the Contractor or its affiliates, and rental rates include the installation, minor repairs and replacements, dismantling and removal thereof.

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

§ 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. 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.

§ 7.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's and Lender's prior approval, and such requirements imposed by Owner and Lender, including, without limitation, insurance requirements, segregation and marking of the materials, and an aggregate cap with respect to the amount of materials stored off-site at any one time.

...

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Contract and required by this Contract, provided, however, that such costs shall not be included in the Cost of the Work for purposes of calculating the Contractor's Fee. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

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§ 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. approval. Said approval to be at Owner's sole discretion.

...

§ 7.6.10 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. All travel in excess of one hundred (100) miles shall be approved in advance in writing by the Owner.

...

§ 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. Owner, and to the extent not (a) caused by the Contractor, a Subcontractor, suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract or (b) capable of being prevented through timely notice of an unsafe condition to the Owner.

§ 7.7.1.1 Contractor will utilize Subguard as an alternative surety program. Subguard is agreed to be considered cost of the work at a fixed rate of _____ % of the subcontracted amounts and costs of builder's risk insurance premiums and deductibles; and bonds required by the Contract Documents that can be directly attributed to this

Contract. The cost of all other insurance required to be provided by the Contractor under this Agreement will be reimbursed at a fixed rate of _____ % of the Contract Amount. The fixed rates set forth in this Agreement are not subject to audit. [NOTE: FIXED RATES OR NOT?]

...

§ 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 negligence or failure to fulfill a specific responsibility of 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, provided the absence of collectable insurance is not due to the Contractor's breach of a contract for insurance or this Agreement.

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§ 7.8.1 For purposes of Section 7.8, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Contractor; any entity in which any stockholder in, or management employee of, the Contractor owns any interest in excess of ten percent in the aggregate; or any person or 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 ~~Article 10-~~ Article 10. If the Owner fails to authorize the transaction, 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-~~ Article 10.

...

- .6 Any cost not specifically and expressly described in Article ~~7-~~7, including trade dues, fees and assessments, even if the amount thereof is based upon the amount of the compensation paid under the Contract to Contractor; and
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.
- .8 Any cost not specifically and expressly described in Article 7.1
- .9 Costs and expenses arising from Contractor's indemnity obligations, including but not limited to Contractor's costs and expenses in removing or defending against a mechanic's lien claim asserted against the Owner and/or its property, unless such mechanic's lien arises from Owner's wrongful failure to make timely payments.
- .10 Taxes incurred by Contractor, including but not limited to sales or use taxes on real property improvements, franchise, property, or income taxes; however, sales tax on materials utilized on or incorporated into the Project are reimbursable under this Agreement.
- .11 Penalties for the failure of the Contractor or a subcontractor or another party for whom Contractor is responsible under the Contract to comply with statutes, laws, ordinances, codes, rules and regulations, lawful orders, and all other requirements of public authorities applicable to performance of the Work ("Applicable Laws"), including without limitation, those relating to safety and immigration.
- .12 Costs of record storage relating to the Contract.
- .13 Costs to repair defective Work, and other costs to comply with Contractor's warranty obligations under the Contract, other than the cost to repair defective Work under the warranty obligation which is performed post-Final Completion by the Contractor on behalf of a defunct Subcontractor and such cost does not exceed the GMP.
- .14 Notwithstanding the breakdown or categorization of any costs to be reimbursed in Article 7 or elsewhere in the Contract Documents, there shall be no duplication of payment if any particular item for which payment is requested can be characterized as falling into more than one of the types of

- compensable or reimbursable categories.
- .15 Any cost that could be prevented through Contractor's timely notice to the Owner of an unsafe condition.
 - .16 Costs or expenses for which payment has already been sought by Contractor and paid by Owner, except as to any unreimbursed costs or expenses incurred by Contractor as a result of Owner's wrongful withholding of payment. In the event a claim or lien is asserted by a Subcontractor of any tier claiming through Contractor against Owner for an item of work for which payment has already been made to Contractor by Owner and, if Owner pays or has paid all or a portion of such claim to claimant, such payment by Owner shall reduce the amount payable to the Contractor under this Agreement accordingly.
 - .17 Costs of any self-performed work and costs of Contractor or related party owned subcontractors, supply houses, and rental companies, except as provided in Section 7.8.

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§ 10.2 When a specific bidder (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. Except as may be otherwise directed or approved by Owner and wherever reasonably possible, all subcontracts and purchase orders shall be awarded pursuant to competitive bids and according to the procedures set forth in this Article 10 and in Section 5.2 of the General Conditions. The Contractor must disclose to Owner its intention to perform any Work, other than supervision of the Work, by the Contractor's own forces. Upon Owner's request, the Contractor shall be required to solicit competitive bids from other qualified subcontractors for the Work the Contractor proposes to perform with its own forces in compliance with the same procedures.

- .1 Unless waived in writing by the Owner, the Contractor shall obtain bids from no less than three (3) qualified Subcontractors and from no less than three (3) qualified suppliers of materials or equipment fabricated especially for the Work. The Owner may designate specific persons from which the Contractor shall obtain bids. Otherwise, the Contractor shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated to a special design for the Work from the list of acceptable entities previously developed pursuant to Section 10.1.
- .2 The Contractor shall prepare written requests for proposals for all bid packages, which requests for proposals shall be submitted to Owner for approval.
- .3 All bids obtained by the Contractor for any Work shall contain separate line-item details for labor costs and material costs in whatever detail required by Owner.
- .4 The Contractor shall summarize the bid results for each component of the Work in a spreadsheet format, acceptable to Owner, including an analysis of the bids in such detail as required by Owner to allow for meaningful comparison by the Owner of the bidders and the bids. Along with its bid analysis, the Contractor shall provide the Owner with a profile of each bidder, including its workmanship reputation, performance history on past projects, financial strength, current workload/capacity, and such other information as requested by Owner.
- .5 Any and all discussions with bidders for clarification of scope (commonly referred to as "bid leveling") shall be done in the presence of an Owner representative;
- .6 The Contractor shall make an award recommendation to the Owner for each element of Work. Such recommendation shall be accompanied by all supporting documentation.
- .7 The Owner will then determine, with the advice of the Contractor and subject to the reasonable objection of the Architect, which bids will be accepted, including any bid by the Contractor to self-perform work. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.

§ 10.3 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 11;

below. If a specific bidder among those whose bids are obtained in accordance with the procedures set forth in the Contract Documents (a) is recommended to the Owner by the Contractor; (b) is qualified to perform that portion of the Work; and (c) has submitted a bid which conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted which is for a greater amount or would cause the Contractor not to meet any Interim Substantial Completion Date or the Substantial Completion Date, then the Contractor may require that a Change Order be issued to adjust the Contract Time and the GMP by the difference between the bid of the person or entity recommended to the Owner by the Contractor and the amount of the Subcontract actually signed with the person or entity designated by the Owner. However, no increase in the GMP or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required by Section 5.2.1 of the General Conditions and following the other provisions of the Contract Documents regarding obtaining bids.

§ 10.4 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 11, below.

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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, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, 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. Subcontractors retained by the Contractor on a "cost-plus" basis shall have the same obligations to retain records and cooperate with audits as are required of the Contractor under this Article 11. If any inspection by the Owner of the Contractor's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and any other data relating to the Contract Documents reveals an overcharge, including, without limitation, any untimely request for payment as described in section 14.3, the Contractor shall pay the Owner upon demand an amount equal to one hundred twenty percent (120%) of such overcharge, as reimbursement for said overcharge and the administrative expenses incurred in determining the overcharge. The requirements of this Article 11 shall not apply to any portion of an overcharge that is the subject of a good-faith dispute between the Owner and Contractor.

...

§ 12.1.1 Based upon Applications for Payment in a form satisfactory to the Owner and accompanied by all supporting documentation required by Owner on the Application for Payment, including all required mechanic's lien waivers and releases, using the forms appended hereto as Exhibit I, submitted to the Owner and 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.

...

Within thirty (30) days following Contractor's receipt of each progress payment, or as soon thereafter as available, Contractor shall deliver to Owner Contractor's monthly job cost report for the prior month.

§ 12.1.3 Provided that an Application for Payment in a form satisfactory to the Owner and accompanied by all supporting documentation required by Owner on the Application for Payment, including all required mechanic's lien waivers and releases, is received by the Owner and the Architect not later than the first (1st) day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the last day of the same month. If an Application for Payment in a form satisfactory to the Owner and accompanied by all supporting documentation required by Owner on the Application for Payment, including all required mechanic's lien waivers and releases, is received by the Owner and the Architect after the application date fixed above, payment shall be made by the Owner

not later than (—) days after the Architect receives thirty (30) days after the Owner and the Architect receive and approve the Application for Payment.

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~~§ 12.1.4 With each Application~~ If requested by Owner in writing with respect to one or more Applications 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 cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor; less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment. In addition, each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner and in compliance with applicable statutes of the state in which the Project is located:

- .1 Duly executed waivers and releases of mechanic's (or material supplier's) liens from all Subcontractors, material suppliers, and, where appropriate, lower tier subcontractors, Contractor and establishing receipt of payment or satisfaction of payment of all amounts requested on behalf of such entities, in the form attached hereto as Exhibit I and made part hereof.
- .2 Such other information, documentation, and materials as the Owner, the Architect, Owner's lenders or title insurers may require.

With respect to the lien waivers described in this Section 12.1.4 and also in Section 12.2.1, conditional lien waivers shall be delivered with Applications for Payment and, if requested by Owner, unconditional lien waivers shall be delivered within ten (10) days following receipt of payment by Contractor and the applicable Subcontractor, material supplier and, where appropriate, lower tier subcontractors.

~~§ 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 the various portions of the Work, except that the Contractor's Fee shall be shown as a single separate item. The Cost of the Work on the schedule of values shall be broken down into three (3) categories: Site Work, Garage, and Building. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner or the Architect may require. This schedule, unless objected to by the Owner or the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

...

- .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; values, less retainage of ten percent (10%). 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 AIA Document A201-2007; A201-2007 as modified;
- .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; writing, less retainage of ten percent (10%);
- .3 Add the Contractor's Fee, less retainage of ten percent (10 %). 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 of ten percent (10 %) from that portion of the Work that the Contractor self-performs;

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- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007; A201-2007 as modified.

§ 12.1.8 Payments to Subcontractors shall be subject to retainage of not less than ten percent (10%). The Owner and the Contractor shall agree upon a (1)-mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements and retention for Subcontractors consistent with Section 7.3. It is mutually agreed and understood that the early release or retaining for those portions of the Work that have been substantially completed (i.e. concrete structure, earthwork, excavation retention, site utilities) shall not be unreasonably withheld prior to Project's substantial completion. These requests for reduction of retainage prior to the substantial completion of the Project will be reviewed on a case-by-case basis by Owner and shall require Lender's approval for early release.

...

§ 12.1.10 Upon the Substantial Completion of the Work, each item on the Owner's punchlist shall be assigned a value by the Architect (with the Owner's concurrence) equal to the actual cost to complete such item, plus 25% ("Punchlist Value"). Provided the retainage and any amounts withheld pursuant to Section 9.5.1 of the General Conditions is more than the Punchlist Value, no additional amount for the punchlist items shall be withheld by the Owner at the time of making the payment following Substantial Completion provided that Owner has paid the undisputed amount of each Contractor invoice. If, however, the retainage and any additional amount withheld pursuant to Section 9.5.1 of the General Conditions is less than the Punchlist Value, then the amount of the Punchlist Value in excess of the retainage and withheld pursuant to Section 9.5.1 of the General Conditions, in excess of the punchlist holdback retainage (the "Excess") also shall be withheld by the Owner at the time of making the payment following Substantial Completion. At the time of the next progress payment following the Final Completion of each punchlist item, as certified by the Owner, Owner shall pay to Contractor the Punchlist Value for such punchlist items, which payments shall reduce the retainage.

...

- .2 the Contractor has submitted a final accounting for the Cost of the Work and a final Application for Payment; ~~and~~
- .3 a final Certificate for Payment has been issued by ~~the Architect~~ the Architect certifying that the Final Payment is due to the Contractor;
- .4 Final lien waivers from Contractor and all Subcontractors, material suppliers, and, where appropriate, lower tier subcontractors in the form attached hereto as Exhibit I and made part hereof for all purposes, and all other documents and items as required elsewhere in the Contract Documents, including but not limited to warranties and guarantees, certificates of occupancy, record drawings, operations and maintenance manuals, keys, and any other items specific to the Project, have been submitted to and are acceptable to the Owner;
- .5 the Contractor has completed the "Construction Close-out Checklist" and submitted it to the Owner;
- .6 all close-out requirements set forth in the Contract Documents have been completed to Owner's satisfaction;
- .7 and provided however, that if the Owner has received notice or has actual or constructive knowledge of any existing and unwaived mechanic's liens from any design or engineering professional, contractor, subcontractor, supplier or materialman, the Owner may withhold from such final payment an amount equal to the total of all amounts of such existing and unwaived liens.

§ 12.2.2 ~~The~~ If the Owner requests a final accounting from the Contractor, the Owner's auditors will review and report in writing on the Contractor's final accounting within 30-10 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 42.2.1-7.2.1 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 AIA Document A201-2007. The time periods stated in this Section 42.2.2-supersede those stated in Section 9.4.1 of the AIA Document A201-2007. The Architect is not responsible for verifying the accuracy of the Contractor's final accounting.

The Contractor agrees to cooperate with the auditor and make available for examination at his principal office all of his books, records, correspondence and other documents deemed necessary to conduct the audit by the auditor. If any inspection by the Owner of the Contractor's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and any other data relating to the Contract Documents confirms an overcharge or overpayment, Contractor, subject to the Contractor's right to contest the claimed overcharge and overpayment by arbitration, shall pay the Owner upon demand one hundred percent (100%) of such overpayment, together with interest at the Default Rate from the date Owner made such overpayment to Contractor until such time as Contractor has reimbursed Owner for such overpayment. The requirements of this Section 7.2.2 shall not apply to any portion of an overpayment which is the subject of a good faith dispute between the Owner and the Contractor. If the overpayment is in excess of the cost of the audit, Contractor shall pay the entire cost of the audit, anticipated to be no more than \$. If, however, the overpayment is less than the cost of the audit, Contractor shall pay that portion of the audit that the overpayment bears to the cost of the audit (i.e., overpayment/cost of audit). In determining whether an overcharge has occurred, the auditor shall take into consideration any undercharges as an offset to any alleged overcharges. Finally, if any audit reveals no overcharge, Owner shall reimburse Contractor for any out-of-pocket expenses incurred by Contractor in connection with cooperating with Owner's auditor.

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§ 12.2.4 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:

If, subsequent to final payment and at the Owner's request, the Contractor incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Contractor 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 the Contractor has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Contractor.

~~**§ 12.2.5** If, subsequent to final payment and at the Owner's request, the Contractor incurs costs described in Article 7 and not excluded by Article 8 to correct defective or nonconforming Work, the Owner shall reimburse the Contractor 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 the Contractor has participated in savings as provided in Section 5.2, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Contractor.~~

§ 13.1 INITIAL DECISION MAKER

The Architect will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2007, 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.)

INTENTIONALLY DELETED

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For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201-2007, A201-2007 as modified, the method of binding dispute resolution shall be as follows:

...

- [X] Litigation in a court of competent jurisdiction located in the same jurisdiction as the Project, unless another method is agreed to by the Parties to this Agreement.

...

§ 13.2.1 The prevailing party in any legal action or proceeding to enforce any provision of this Agreement shall be awarded all reasonable attorney's fees and costs incurred in good faith in that legal action or proceeding.

...

§ 14.1 Subject to the provisions of Section 14.2 below, the Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201-2007; A201-2007 as modified.

§ 14.2 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201-2007; A201-2007 as modified, the amount, if any, to be paid to the Contractor under Section 14.2.4 of AIA Document A201-2007; A201-2007 as modified shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

...

§ 14.4 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2007; A201-2007 as modified; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201-2007; A201-2007 as modified, except that the term "profit" shall be understood to mean the Contractor's Fee as described in Sections 5.1.1 and Section 6.4 of this Agreement.

...

§ 15.1 Where reference is made in this Agreement to a provision of AIA Document A201-2007 as modified or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

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%—Prime rate in the location of the Project

...

Attn: _____
Email: _____
Phone: _____

...

Attn: _____
Email: _____
Phone: _____

...

§ 15.6.1 WARRANTIES.

The Contractor represents and warrants the following to the Owner (in addition to any other representations and warranties contained in the Contract Documents), as an inducement to the Owner to execute this Agreement, which representations and warranties shall survive the execution and delivery of this Agreement, any termination of this Agreement, and the final completion of the Work:

- .1 That it and its Subcontractors are financially solvent, able to pay all debts as they mature, and possessed of sufficient working capital to complete the Work and perform all obligations hereunder.
- .2 That it is able to furnish the plant, tools, materials, supplies, equipment, and labor required to complete the Work and perform its obligations hereunder.
- .3 That it is authorized to do business in the State in which the Project is located and is properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over it and over the Work and the Project.
- .4 That its execution of this Agreement and its performance thereof is within its duly authorized powers.
- .5 That its duly authorized representative has visited the site of the Project, familiarized himself, or herself, with the local and special conditions under which the Work is to be performed, and correlated his observations with the requirements of the Contract Documents.
- .6 That it possesses a high level of experience and expertise in the business administration, construction, construction management, and superintendence of projects of the size, complexity, locale, and nature of this particular Project, and it will perform the Work with the care, skill, and diligence of such a contractor.

The foregoing warranties are in addition to, and not in lieu of, any and all other liability imposed upon the Contractor by law with respect to the Contractor's duties, obligations and performance hereunder. The Contractor acknowledges that the Owner is relying upon the Contractor's skill and experience in connection with the Work called for hereunder.

§ 15.6.2 OFAC REPRESENTATION

Contractor further represents and warrants that Contractor is not and shall not be, and, after making due inquiry, no Person who owns a controlling interest in or otherwise controls Contractor, is an employee, agent or contractor of Contractor is or shall be (a) listed on the Specially Designated Nationals and Blocked Persons List (the "SDN List") maintained by the Office of Foreign Assets Control ("OFAC"), Department of the Treasury, and/or on any other similar list ("Other Lists" and, collectively with the SDN List, the "Lists") maintained by the OFAC pursuant to any authorizing statute, Executive Order or regulation (collectively, "OFAC Laws and Regulations"); or (b) a Person (a "Designated Person") either (i) included within the term "designated national" as defined in the Cuban Assets Control Regulations, 31 C.F.R. Part 515, or (ii) designated under Sections 1(a), 1(b), 1(c) or 1(d) of Executive Order No. 13224, 66Fed. Reg. 49079 (published September 25, 2001) or similarly designated under any related enabling legislation, or any other similar Executive Orders (collectively, the "Executive Orders"). The OFAC Laws and Regulations and the Executive Orders are collectively referred to in this Agreement as the "Anti-Terrorism Laws". Contractor also shall require, and shall take reasonable measures to ensure compliance with the requirement, that no Person who owns any other direct interest in Contractor is or shall be listed on any of the Lists or is or shall be a Designated Person. This Section shall not apply to any Person to the extent that such Person's interest in the Contractor is through a U.S. Publicly-Traded Entity. As used in this Agreement, "U.S. Publicly-Traded Entity" means a Person (other than an individual) whose securities are listed on a national securities exchange, or quoted on an automated quotation system, in the United States, or a wholly-owned subsidiary of such a Person.

§ 15.6.3 LEED CERTIFICATION [NOTE: IS THIS APPLICABLE?]

Contractor acknowledges the design intent for this Project includes compliance with the Green Building Council's Leadership in Energy and Environmental Design ("LEED") guidelines. Owner anticipates pursuing a LEED pre-certified ranking as described in the Drawings and Specifications. Without limiting what is required in the Drawings and Specifications, Contractor will plan its effort and perform all tasks necessary to achieve this requirement. Contractor is committed to assisting Owner in developing a sustainable design strategy that is not only environmentally responsible, but that meets the Project's timeline and that is also financially responsible. Contractor will apply Contractor's LEED accredited knowledge and expertise and will guide Subcontractors, Sub-subcontractors and suppliers and act as Owner's advocate when driving the construction of the sustainable building elements to meet the Owner's goals and objectives for the Project. Contractor will ensure that Contractor and all others acting through or under Contractor comply with all requirements to achieve Owner's LEED certification and sustainable design objectives.

§ 15.6.4 Compliance with Owner's Policies. While on the Project site or at Owner's offices, Contractor will comply with Owner's policies outlined in Exhibit J attached hereto and made part hereof, as the same may be amended from time to time by Owner with notice to Contractor, including: (i) no smoking; (ii) drug-free

environment; (iii) dress code; (iv) non-harassment; (v) travel/expense guidelines; (vi) time reporting; (vii) all safety and security policies (including a prohibition against weapons); (viii) computer security and use policies; and (ix) Owner's Physical Security Policy. The parties agree that violation of Owner's physical security policy by Contractor's employees shall entitle Owner to deduct \$2,000 from any other compensation due Contractor's hereunder for the initial violation and \$8,000 and possible termination of Agreement for subsequent violations. Contractor's employees may be required to attend a short orientation program prior to performing services on Owner's premises. Owner may require Contractor to immediately remove any of its personnel that do not comply with these policies or who are otherwise objectionable to Owner for any reason. If Contractor fails to turn in a security badge for its Employees (as defined below) who are no longer performing Services on the Premises within 5 work days of said Employees last day of performing Services then Owner is entitled to deduct \$100.00 for each missing or late card from any other compensation due Contractor hereunder. These amounts will be the sole responsibility of Contractor and not passed through to Owner.

§ 15.6.5 Background Checks. Contractor agrees that it will cause to be completed a reasonable background check on any "Contractor's Employees" (which shall include employees of Contractor and employees of Contractor's subcontractors and consultants of whatever tier), who will have (i) unescorted access to Owner premises, (ii) access to Customer or Employee Data ("Customer and Employee Data" means any personally identifiable information of an Owner customer or employee") or (iii) access to Owner information technology systems. The background check will be completed by Contractor prior to any Services being performed by such person within the Contractor's Employees.

§ 15.6.6 Proof of Employment Eligibility. Contractor warrants that all Contractor Employees' names and social security numbers match and that all Contractor Employees hired after the date of this Agreement are United States citizens or they have one of the documents currently accepted by the USCIS as proof of employment eligibility, as shown on USCIS website's instructions for Form I-9 (www.uscis.gov/portal/site/uscis). For Contractor Employees hired prior to the date of this Agreement, Contractor warrants that all Contractor Employees are United States citizens or they provided proof of employment eligibility documents accepted by the USCIS or its predecessors at the time of said Contractor Employee's hire. Any Contractor Employee whose proof of employment eligibility documents (such as temporary work visas issued by USCIS, Bureau of Citizenship and Immigration Service or Immigration and Naturalization Service) expire while said Contractor Employee is providing services, must have their I-9 form re-verified according to USCIS requirements.

§ 15.6.7 Extent of Responsibility

The recommendations and advice of the Contractor concerning design alternatives shall be subject to the review and approval of the Owner and the Owner's professional consultants. Although the Contractor shall exercise the Standard of Care in connection with its services and the Work, it is not the Contractor's responsibility to ascertain that the Drawings and Specifications are in accordance with Applicable Laws. Notwithstanding the foregoing, however, if the Contractor recognizes, discovers or learns that portions of the Drawings and Specifications are at variance therewith, the Contractor shall promptly notify the Architect and Owner in writing. If the Contractor fails to notify the Architect and Owner as required in the preceding sentence, the Contractor shall be liable for any damages, costs or liability resulting therefrom, including, without limitation, any fines, Architect's fees, consulting fees and costs of correction of the Work.

§ 15.6.8 Foundation Surveys; Encroachments. Owner shall provide the initial surveys to the Contractor providing the bench marks for the Contractor's layout of the Work. After the location of the foundation for any building has been established and staked on the ground and before such foundation is poured, Contractor, at Owner's expense, will cause to be made and delivered to Owner a current survey (from a surveyor acceptable to Owner and Contractor in the exercise of reasonable judgment) reflecting that the location of such improvements and all other existing improvements on the Property will be entirely within the boundary lines of the Property and will not encroach upon any set-back line, easement, right-of-way or adjoining property or breach or violate any permit, code, covenant, condition or restriction affecting the Property or any legal requirements and that no adjoining structure encroaches upon the Property. If requested by Owner, Contractor, at Owner's expense, will cause surveys of each portion of the slab on-grade, beginning with the western boundary of the slab, to be prepared to confirm that the improvements on the Property are entirely within the boundary lines of the Property and do not encroach upon any set-back line, easement, right-of-way or adjoining property or breach or violate any covenant, condition or restriction affecting the Property or any legal requirement and that no adjoining structure encroaches upon the Property. Additionally, if requested by Owner, Contractor, at Owner's expense, shall cause a survey of

the on-grade foundation to be prepared following completion of such foundation reflecting that the improvements on the Property are entirely within the boundary lines of the Property and do no encroach on any said-back line easement, right-of-way or adjoining property or breach or violate any covenant, condition, or restriction affecting the Property or any legal requirement as an adjoining structure encroaches upon the Property. Any encroachments made by Contractor or his Subcontractors without Owner's written approval or adjacent properties or in violation of any permit, code, covenant, condition or restriction affecting the Property or any legal requirements due to construction as revealed by an as-built or improvement survey will be the responsibility of Contractor, and Contractor shall correct these encroachments within a reasonable period of time.

§ 15.6.9 Resolving Conflicts. In the case of a conflict between any provisions of this Agreement and any provisions of any other Contract Document, the provisions of this Agreement shall prevail. It is also agreed that the most recently approved Contract Document will take precedence over previous issues of the same Contract Document, and that if there is any conflict or inconsistency among the Contract Documents, the Contract Documents will be interpreted in accordance with the following order of priority: (a) written modifications, addenda, amendments, qualifications and clarifications to this Agreement made after the date hereof; (b) this Agreement; (c) Exhibit "A", and (d) the Drawings and Specifications. If the enumeration of provisions in the Supplementary Conditions is not consistent with the enumeration of the General Conditions, then, to the extent that a provision in the Supplementary Conditions amends or modifies a provision of the General Conditions, the enumeration of such provision in this Supplementary Conditions shall be amended to be consistent with the provisions of the General Conditions.

§ 15.6.10 No Waiver. No consent or waiver, express or implied, by either party to this Agreement to or of any breach or default by the other in performance of any obligations hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default by such party hereunder. Failure on the part of any party hereto to complain of any act or failure to act of the other party or to declare the other party in default hereunder, irrespective of how long such failure continues, shall not constitute a waiver of the rights of such party hereunder. Inspection or failure of the Owner to perform any inspection hereunder shall not release the Contractor of any of its obligations hereunder.

§ 15.6.11 Contractor's Subordination. Contractor acknowledges that Owner will borrow certain funds to finance the construction of the Work and, that as a condition to any loans to Owner, the Lender may require from time to time certain statements, certificates, and documents from Contractor. Contractor covenants and agrees that any lien, statutory, expressed or implied, right and interest (whether choate or inchoate and including, without limitation, all mechanics' and materialmen's liens under the Applicable Laws and statutes of the state where the Project is located) which are owned or claimed by Contractor or shall exist or shall hereafter accrue to the benefit of Contractor for labor performed, materials furnished and Work done on this Project, shall be and remain subordinate, second and inferior to a first lien securing the payment of an interim construction loan and all advances made thereunder, and to any renewals, extensions or rearrangements thereof. Neither Contractor nor any subcontractor or other party shall be permitted to remove any improvements or other property constructed or installed or delivered in connection with the Work notwithstanding that such improvements or other property can be removed without material injury to any improvements not sought to be removed by any lien claimant and without such injury to any improvements sought to be removed by any lien claimant. A subordination provision to this effect applicable to liens and lien rights of Subcontractors shall be contained in all Subcontracts entered into by Contractor.

§ 15.6.12 Nonconforming Work. When any nonconforming Work is found, the entire area of the affected Work involved shall be corrected unless Contractor can completely define the limits of the nonconforming Work, except to the extent that to do so would constitute economic waste, in which event, Owner shall be entitled to an equitable adjustment of the Cost of the Work credit for such defective Work. Additional testing, sampling or inspecting needed to define nonconforming Work shall be at Contractor's expense. Contractor shall employ Owner's independent testing laboratory, or a mutually satisfactory independent testing laboratory if such services are required. All corrected Work shall be retested at Contractor's expense. Extra architectural services required by Contractor to analyze nonconforming Work shall be paid for by Contractor.

§ 15.6.13 No Kickbacks. Contractor warrants that it has not given any commissions, payments, gifts of substantial value, kickbacks, lavish or extensive entertainment, or other things of value to any employee, member of the employee's family, or agent of Owner or received any such item from any vendor, supplier, or contractor in connection with this Contract and acknowledges that the giving or receiving of any such payments, gifts, kickbacks,

extensive entertainment, or other things of value is strictly in violation of Owner's policies and constitutes a material breach of this Agreement entitling Owner to terminate this and any other contracts between Owner (or any affiliate thereof) and Contractor (or any affiliate thereof). Contractor shall notify Owner of any such solicitation by any of Owner's employees, family members, or agents. Owner has the right to audit Contractor's records pertaining to compliance with this paragraph.

§ 15.6.14 Unsafe Materials. In addition to the provisions of Section 10.2 and 10.3 in the General Conditions, if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered but not created 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. The Owner, Contractor, and Architect shall then proceed in the same manner prescribed in Subsection 10.3.2 of the General Conditions. The Owner shall be responsible for obtaining 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 verify that it has been 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 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 Architect have no reasonable objection.

§ 15.6.15 Bankruptcy. It is recognized that if Contractor is a debtor in bankruptcy, or makes a general assignment for the benefit of creditors, or if a receiver is appointed for the benefit of its creditors, or if a receiver is appointed to operate or liquidate Contractor on account of its insolvency, such could impair or frustrate Contractor's performance of this Agreement. Accordingly, it is agreed that upon the occurrence of any such event, Owner shall be entitled to request of Contractor or its successor in interest adequate assurance of future performance in accordance with the terms and conditions hereof. Failure to comply with such request within ten (10) days of delivery of the request shall entitle Owner to terminate this Agreement and to the accompanying rights set forth above. In all events pending receipt of adequate assurance of performance and actual performance in accordance therewith, Owner shall be entitled to proceed with the Work with its own forces or with other contractors on a time and material or other appropriate basis, the cost of which will be backcharged against the Contract Sum hereof.

§ 15.6.16 Contractor's Miscellaneous Obligations. Contractor shall:

- (1) Use materials that are new, and be:
 - (a) Corresponding in quality to related materials in the absence of a complete specification.
 - (b) Of good appearance where exposed to view.
 - (c) Plainly marked and delivered to the site in their original unopened containers when the nature of the materials is suitable for containers.
- (2) Follow supplier's instructions when they conflict with the Contract Documents and notify Architect for clarification before proceeding. Keep a copy of the manufacturer's instructions on the job and make available to Architect.
- (3) Report discovered errors or inconsistencies to Owner before commencing work. Confirm the placement of the building on the site with Owner after all lines are staked out.
- (4) Be responsible for damages to the building contents, under the one (1) year warranty described above, when damages result from Contractor's use of non-conforming materials or negligent workmanship, but only if not covered by Owner's or a tenant's insurance (provided that Owner and/or its tenants insure the building contents for its full insurable value, subject to a reasonable deductible).

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§ 16.1.2 The General Conditions are AIA Document A201-2007, A201-2007 as modified, General Conditions of the Contract for Construction.

...

Title of the Specifications exhibit:

Section

Title

Date

Pages

...

Title of the Drawings exhibit

Number

Title

Date

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(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2007 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

List of Exhibits

Exhibit A – Current Schedule of Anticipated Starts and Durations [ONLY APPLICABLE IF FAST TRACK]

Exhibit B – Performance Schedule

Exhibit C – Contractor's General Conditions Costs

Exhibit D – Schedule of Unit Prices

Exhibit E – Schedule of Alternates

Exhibit F – Schedule of Allowances

Exhibit G – Contractor's Contingency

Exhibit H – Drawings and Specifications

Exhibit H-1 – Drawings and Specifications (as developed through Fast Track Project)

Exhibit I – Lien Releases

Exhibit J – Owner's Policies

...

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201–2007.

~~(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007.)~~ A201–2007 a modified.

Type of insurance or bond

Limit of liability or bond amount (\$0.00)