

# DRAFT AIA® Document A102™ - 2017

## Standard Form of Agreement Between Owner and Contractor

where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

**AGREEMENT** made as of the [ ] day of [ ] in the year [ ]  
(In words, indicate day, month and year.)

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

[TBD]  
c/o McCormack Baron  
McCormack Baron Salazar Development, Inc.  
720 Olive Street, Suite 2500  
St. Louis, Missouri 63101  
Telephone: 314-621-3400  
Facsimile: 314-421-3289

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

Galveston Housing Authority  
4700 Broadway  
Galveston, TX 77551

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

Oleander Homes  
The Project site is located at northeastern corner of Broadway Avenue and 51st Street in Galveston Texas, and is approximately 11 acres. The Project consists of 375 apartment units in a mix of one, two and three bedroom units.

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

[Redacted]

The Owner and Contractor agree as follows.

**ADDITIONS AND DELETIONS:**  
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

The parties should complete A102™-2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201™-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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### ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents, the Agreement and the Contract are each defined in Section 1.1 of the General Conditions of the Contract for Construction, AIA Document A201-2017, as modified by the parties (the “*General Conditions*”). Contractor represents that the Contractor has fully reviewed the Contract Documents and agrees that the Contract Documents describe, to the best of Contractor’s knowledge, the work necessary to furnish and provide (and that Contractor will furnish and provide) a fully functioning Project with this Agreement.

### ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the entire Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others. See also Section 1.1.3 of the General Conditions.

### ARTICLE 3 RELATIONSHIP OF THE PARTIES

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 best effort, skill and judgment all 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 the times required by this Contract, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents. See also Article 2 of the General Conditions.

### ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 4.1 The “*date of commencement*” of the Work shall be:

(Check one of the following boxes.)

- [  ] The date of this Agreement.
- [  ] A date fixed in a notice to proceed issued by the Owner (the “*Notice to Proceed*”). Contractor shall thereafter continuously and diligently perform and prosecute such Work to completion, subject only to Excused Delays (as defined in Section 15.1.6.3 of the General Conditions).
- [  ] Established as follows:  
(Insert a date or a means to determine the date of commencement of the Work.)

«N/A»

§ 4.2 The “*Contract Time*” shall be the number of days (or portions thereof) between the date of commencement (as defined in Section 4.1 above) and the Substantial Completion Date and Final Completion Date (as applicable).

### § 4.3 Substantial Completion

§ 4.3.1 Contractor shall achieve Substantial Completion (as defined in Section 9.8.1 of the General Conditions) of the entire Work not later than the date that is **seven hundred thirty (730)** calendar days after the date of commencement of the Work (the “*Substantial Completion Date*”), subject only to Excused Delays. In addition, Contractor shall achieve Substantial Completion (as defined in Section 9.8.1 of the General Conditions) with respect to each Phase of the Work in accordance with the schedule set forth in Section 4.3.2 below (each such required Substantial Completion date for a Phase of the Work as set forth below is referred to in the Contract as a “*Phase Substantial Completion Date*”). Contractor shall also achieve Final Completion (as defined in Section 9.10.1 of the General Conditions) not later than the date that is **sixty (60)** calendar days after the Substantial Completion Date (the “*Final Completion Date*”), subject only to Excused Delays.

§ 4.3.2 The Project is the total construction, of which the Work performed under the Contract Documents may be the whole or a part. The Contractor understands, acknowledges and agrees that the Contractor’s Work under the Contract Documents is to be Substantially Completed and delivered to the Owner in distinct phases, as identified and further described in **Exhibit J** hereto (each individually a “*Phase*,” or collectively the “*Phases*”), which shall consist generally of blocks (or portions thereof) and/or other designations containing a series of lots, buildings, and/or apartment dwelling units, and may consist of related parking areas and other Project amenities in proximity to each other, with each Phase in proximity to the one scheduled for completion immediately prior to it. Contractor acknowledges that it will be responsible for the construction of each Phase, as well as the overall planning, coordination, and integration of each Phase with all other Phases (and with any existing structures and conditions at the Project Site). Contractor agrees that it shall plan, coordinate and integrate the activities requested of Contractor with respect to each Phase, with the other aspects of the overall Project, so that each such Phase and the overall Project are integrated, completed, and coordinated (both individually and with each other and the existing and newly developed structures, site work, public improvements work and all other work conditions at the Project Site) in accordance with the Contract Documents. Contractor shall achieve Substantial Completion of the following Phases as set forth in **Exhibit J**.

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

## ARTICLE 5 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 below, plus the Contractor’s Fee, as defined in Section 5.1.1 below.

### § 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.)

The “*Contractor’s Fee*” shall be a fixed, lump sum amount of \_\_\_\_\_ and 00/100 Dollars (\$ \_\_\_\_\_) which will not be reduced (or increased) regardless of the actual Cost of the Work and subject to the Cap on the Contractor’s Markup (as defined in Section 5.1.1.1 below). The Contractor’s Fee shall be Contractor’s sole and exclusive compensation for all costs described as Non-Allowable Costs of the Work in Article 8 hereof, and is inclusive of all overhead and profit arising out of or relating to Contractor’s Work.

§ 5.1.1.1 Notwithstanding anything to the contrary in the Contract Documents, in no event shall the sum of (i) Contractor's general conditions, general requirements and/or any other general or similar expenses and (ii) Contractor's overhead and profit (items (i) and (ii) being referred to collectively herein as the "**Contractor's Markup**"), as a percentage of the Contract Sum, be greater than fourteen percent (14%) at the time of commencement of the Work and with respect to any Change Order. The product of (a) 14% and (b) the Contract Sum shall be referred to herein as the "**Cap on the Contractor's Markup.**" To the extent the Contractor's Markup at the time of commencement of Work, or with respect to any Change Order, exceeds the Cap on the Contractor's Markup, the Contractor agrees that the Contractor's Markup shall be reduced such that the Cap on the Contractor's Markup is not exceeded.

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

In accordance with Section 7.3.3.4 of the General Conditions.

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

In accordance with Section 7.3.3.4 of the General Conditions.

§ 5.1.4 Rental rates for Contractor-owned equipment shall not exceed the standard rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any:

*(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)*

Item	Units and Limitations	Price Per Unit (\$0.00)
N/A		

§ 5.1.6 Liquidated damages, if any:

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

Contractor acknowledges and agrees that timely completion of the Work is the essence of the Contract Documents. Specifically, Contractor acknowledges that Owner will incur substantial damages if Contractor does not achieve Substantial Completion of each Phase of the Work by the by the applicable Phase Substantial Completion Date for each Phase as identified Section 4.3.2 above and/or Final Completion by the Final Completion Date. Among other things, Contractor acknowledges that in such event Owner will incur additional costs (including, without limitation, additional financing costs), may be required to pay additional amounts to the Architect, other consultants and Owner's own personnel for assistance on the Project, and will suffer actual economic loss in the form of lost revenues, reduced equity, and increased operations costs that will not be recoverable by offsetting revenues from the Project's income because each Phase of the Work is not Substantially Complete by the applicable Phase Substantial Completion Date and/or Finally Complete by the Final Completion Date. Because the exact amount of these damages cannot be readily ascertained as of the date of this Agreement, and because both Owner and Contractor desire certainty with respect to their rights and obligations in the event that each Phase of the Work is not Substantially Complete by the applicable Phase Substantial Completion Date and/or Finally Complete by the Final Completion Date, the parties agree that if Contractor fails to achieve Substantial Completion of each Phase by the applicable Phase Substantial Completion Date and/or Final Completion by the Final Completion Date, Contractor shall pay Owner the following amounts, as agreed and liquidated damages (and not as a penalty), which shall be cumulative and have been based on a reasonable approximation of Owner's damages in the event of such a failure by Contractor: (1) One Thousand and No/100 Dollars (\$1,000.00) per Phase for each calendar day that each such Phase is not Substantially Complete by the applicable Phase Substantial Completion Date for such Phase as identified Section 4.3.2 above, beginning with such applicable Phase Substantial Completion Date and continuing through the date that is thirty (30) calendar days following such applicable Phase Substantial Completion Date or the date upon which Contractor achieves Substantial Completion of the Phase (whichever occurs first), subject only to Excused Delays; (2) One Thousand Five Hundred and No/100 Dollars (\$1,500.00) per Phase for each calendar day that each such Phase is not Substantially Complete by the applicable Phase Substantial Completion Date for such Phase as identified Section 4.3.2 above, beginning with the date that is thirty-one (31) calendar days after the applicable Phase Substantial Completion Date for such Phase and continuing through the date that is sixty (60) calendar days following such applicable Phase Substantial Completion Date or the date upon which Contractor achieves Substantial Completion of the Phase (whichever occurs first), subject only to Excused Delays; (3) Two Thousand Five Hundred and No/100 Dollars (\$2,500.00) per Phase for each calendar

day that each such Phase is not Substantially Complete by the applicable Phase Substantial Completion Date for such Phase as identified Section 4.3.2 above, beginning with the date that is sixty-one (61) calendar days after the applicable Phase Substantial Completion Date for such Phase and continuing through the date by which Contractor achieves Substantial Completion of the Phase, subject only to Excused Delays; and (4) Five Hundred and No/100 Dollars (\$500.00) for each calendar day that the entire Work is not Finally Complete, beginning with the Final Completion Date set forth in Section 4.3.1 above and continuing through the date when Contractor achieves Final Completion of the entire Work, subject only to Excused Delays. Owner agrees that the liquidated damages set forth in this Section 5.1.6 shall be the sole and exclusive damages recoverable by Owner as a result of Contractor's failure to achieve Substantial Completion of each Phase by the applicable Phase Substantial Completion Date for each Phases as identified Section 4.3.2 above and/or Final Completion by the Final Completion Date. However, Contractor acknowledges and agrees that the liquidated damages set forth herein apply only to damages resulting from Contractor's failure to achieve Substantial Completion of each Phase by the Substantial applicable Phase Substantial Completion Date and/or Final Completion by the Final Completion Date, and that such liquidated damages do not limit or preclude Owner from recovery of any other damages of any kind, type or nature to the extent they result from any other breach of contract, negligence or other action or omission of Contractor or its Subcontractors, including, but not limited to, any defective, substandard or deficient construction. In addition, Contractor agrees that Owner's exercise of its option under the Contract Documents to use any portion of the Work or Project prior to Substantial Completion or Final Completion, shall not toll, waive or diminish in any way the liquidated damages for which Contractor is responsible under this Section 5.1.6 for failure to achieve Substantial Completion of each Phase of the Work by the applicable Phase Substantial Completion Date for such Phase and/or Final Completion by the Final Completion Date. Contractor agrees that the exact amount of Owner's damages due to Contractor's failure to achieve Substantial Completion of each Phase of the Work by the applicable Phase Substantial Completion Date for such Phase and/or Final Completion by the Final Completion Date are not readily ascertainable, that Contractor has generally reviewed with Owner the nature and extent of the anticipated actual damages that Owner may or will incur should Contractor fail to perform its obligations under the Contract Documents with respect to achieving Substantial Completion of each Phase of the Work by the applicable Phase Substantial Completion Date and/or Final Completion by the Final Completion Date, and that therefore the amounts established herein as liquidated damages constitute an agreed, fair and reasonable estimate of such damages, and are not a penalty. The liquidated damages set forth in this Section 5.1.6 shall survive termination of the Contract.

#### § 5.1.7 Other:

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

If the actual Cost of the Work plus the Contractor's Fee is less than the GMP as set forth above, then all such savings shall be retained by (or returned to, as applicable) the Owner. Contractor shall deliver to Owner within one hundred eighty (180) days of the commencement of construction, and every ninety (90) days thereafter, an accounting showing any and all savings inuring to Owner's benefit in a separate line item described as "**Unallocated Savings**." Owner, in its discretion, may at any time: (i) use the Unallocated Savings to pay for Work performed by Contractor pursuant to duly executed Change Orders and/or CCDs, which use shall be in place of the increase in the GMP to which Contractor would otherwise be entitled pursuant to the Contract Documents on account of such Change Orders and/or CCDs; and/or (ii) direct, pursuant to a CCD, that the GMP be reduced by the amount of such Unallocated Savings. With each such accounting, Contractor shall also deliver to Owner and Architect for review and approval an adjusted schedule of values.

#### § 5.2 Guaranteed Maximum Price

§ 5.2.1 Except and only for any increase expressly permitted by the terms of the Contract, the Contract Sum is guaranteed by the Contractor not to exceed \_\_\_\_\_ and 00/100 Dollars (\$ \_\_\_\_\_ .00 ), 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**" or "**GMP**." Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner. The Contractor shall receive no compensation in excess of the GMP for any costs incurred by the Contractor in repairing or correcting, or supervising the correction or repair, of defective or non-conforming Work performed or supplied by any Subcontractor or any other person or entity employed by or under contract with or on behalf of or under the supervision of the Contractor, regardless of whether or not such defective or non-conforming Work resulted from the fault or neglect of the Contractor or the Contractor's personnel, and the Contractor's sole remedy with respect to the recovery of any such costs in excess of the GMP shall be whatever remedies are contained in the Contractor's agreements with its Subcontractors and other persons or entities providing Work on the Project.

**§ 5.2.2 Alternates**

**§ 5.2.2.1** The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

Item	Price
N/A	

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

Item	Price	Conditions for Acceptance
N/A		

**§ 5.2.3** Allowances, if any, included in the Guaranteed Maximum Price: *(Identify each allowance.)*

Item	Price
N/A	

**§ 5.2.4** Assumptions and Clarifications, if any, upon which the Guaranteed Maximum Price is based: *(Identify each assumption.)*

As set forth in **Exhibit B**

**§ 5.2.5** To the extent, if at all, that the Guaranteed Maximum Price has been established prior to the full completion of the design for the Project, based on design development and/or partially completed construction documents, Drawings and Specifications, which are anticipated to require further description, development and/or refinement by the Architect or otherwise after execution of this Agreement, Contractor nonetheless has provided in the Guaranteed Maximum Price contingencies for such further description, development and/or refinement consistent with the Contract Documents in existence as of the date of this Agreement, and reasonably inferable therefrom, plus written specifications, directions and clarifications. Accordingly, Contractor agrees that any later description, development and/or refinement of the design for the Project shall entitle Contractor to compensation in addition to the GMP only if: (1) such later description involves work of a materially different nature, character, scope or cost (other than refinement) than that set forth in or reasonably inferable from the Contract Documents in existence as of the date of the Agreement, and (2) the Owner has authorized the Contractor to proceed with such work in advance and in writing in a Change Order or CCD.

**§ 5.2.6** Intentionally Deleted.

**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 the General Conditions.

**§ 6.2** In calculating adjustments to subcontracts (except those awarded with Owner’s prior written consent on the basis of cost plus a fee), the terms “cost” and “fee” as used in Section 7.3.3 of the General Conditions and the term “costs” as used in Section 7.3.7 of the General Conditions shall have the meanings assigned to them in the General Conditions and shall not be modified by Articles 5, 7 or 8 of this Agreement. Adjustments to subcontracts awarded with the Owner’s prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts. For the avoidance of doubt, no cost plus a fee subcontracts shall be awarded without Owner’s prior written consent.

**§ 6.3** Intentionally Deleted.

**§ 6.4** Intentionally Deleted.

## 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. 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, consent or authorization, the Contractor shall obtain such approval in writing prior to incurring the cost. Contractor shall endeavor to identify any such costs prior to executing this Agreement.

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

### § 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 Project 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 Project Site and performing Work, with the Owner’s prior approval.

§ 7.2.2.1 Wages or salaries of certain personnel stationed at Contractor’s principal or other offices other than the Project Site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:

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

N/A

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

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

§ 7.2.5 If rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

### § 7.3 Subcontract Costs

Payments made by the Contractor to Subcontractors pursuant to subcontracts entered into for the performance of Work on the Project and in accordance with the requirements of the subcontracts and this Contract. Notwithstanding anything to the contrary herein, however, in no event will the Cost of the Work, as defined herein, include any payments made by Contractor to Prime Subcontractor pursuant to the Master Subcontract (each as defined in Section 15.7.14 below) that relate to compensation for Master Subcontractor’s overhead and/or profit, it being understood that the sole compensation Owner shall be required to pay with respect to any overhead and profit shall be the amount of the Contractor’s Fee set forth in this Agreement (subject only to such adjustments as are permitted by the terms of the Contract Documents), which amount Contractor may utilize to make payment to Prime Subcontractor for Prime Subcontractor’s overhead and profit (*i.e.*, Prime Subcontractor’s “Contractor’s Fee”) pursuant to and in accordance with the Master Subcontract.

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

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

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner’s property at the completion

of the Work or, at the Owner's option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

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

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

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

**§ 7.5.3** Costs of removal of debris from the Project Site of the Work and its proper and legal disposal.

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

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

### **§ 7.6 Miscellaneous Costs**

**§ 7.6.1** Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

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

**§ 7.6.1.2** Costs for insurance through a captive insurer owned or controlled by the Contractor, 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 all required building and other permits, licenses, and inspections, for which the Contractor is required by the Contract Documents to pay.

**§ 7.6.4** Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of the General Conditions or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3 and are not otherwise excluded by the provisions of the Contract.

**§ 7.6.5** Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

**§ 7.6.5.1** The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Contractor resulting from such suits or claims, and payments of settlements made with the Owner's consent; provided, however, such costs of legal defenses, judgments, and settlements, shall not be included in the Cost of the Work for the purpose of calculating the Contractor's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by Section 3.17 of the General Conditions 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 and located at the Project Site, with the Owner's prior approval.

§ 7.6.7 Intentionally Deleted.

§ 7.6.8 Deposits lost for causes other than the Contractor's or any Subcontractor's fault, negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 7.6.9 Intentionally Deleted.

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

§ 7.6.11 That portion of the reasonable expenses of the Contractor's supervisory or administrative personnel incurred while traveling (which expenses must be previously approved in writing by Owner if they shall exceed twenty-five (25) miles) in discharge of duties connected with the Work and actually paid to the Contractor's personnel.

### § 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 by the Owner in a Change Order or CCD.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of the General Conditions.

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

### § 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term "*related party*" shall mean: (1) a parent, subsidiary, affiliate, or other entity having common ownership or common management with the Contractor; (2) any entity in which any stockholder in, or management employee of, the Contractor holds an equity interest in excess of ten percent (10%) in the aggregate; (3) any person or entity which has the right to control the business or affairs of the Contractor; or (4) any person, or any member of the immediate family of any person identified in (1) - (3) above.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Contractor and a related party, the Contractor shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, 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 (each a "*Non-Allowable Cost of the Work*"):

- .1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the Project Site office, except as specifically provided in Section 7.2;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Contractor or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Contractor's principal office and offices other than the Project Site office, including, but not limited to, the costs of personnel stationed at such offices;
- .4 Overhead, general conditions, profit and general expenses, except as may be expressly included in Article 7 (subject, however to the Cap on Contractor's Markup);

- .5 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work;
- .6 Any other provision notwithstanding, costs due to the fault, negligence, or failure to fulfill a specific responsibility of the Contract by, the Contractor, Subcontractors (of any tier), or any other person or entity employed by the Contractor or Subcontractors, or under contract with them or performing work on the Project on behalf of them or under their supervision, or for whose acts the Contractor or its Subcontractors may be liable, including, but not limited to, the costs of correcting damaged, defective or non-conforming work, disposal and replacement of materials and equipment incorrectly ordered or supplied, and making good damage to property not forming part of the Work. The Contractor specifically acknowledges and agrees that it shall receive no compensation, and the Cost of Work shall not include, any costs incurred by the Contractor in repairing or correcting, or supervising the correction or repair, of defective or non-conforming Work, performed or supplied by any Subcontractor, or any other person or entity employed by the Contractor, under contract with the Contractor, or performing Work on the Project on behalf of or under the supervision of the Contractor, regardless of whether or not such defective or non-conforming Work resulted from the fault or neglect of the Contractor or the Contractor's personnel and that the Contractor's sole remedy with respect to the recovery of such costs shall be whatever remedies are contained in the Contractor's subcontract agreements with its Subcontractors providing Work on the Project;
- .7 Any cost not specifically and expressly described in Article 7; and
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

## **ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS**

§ 9.1 Cash and 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 (or Prime Subcontract's, as applicable) 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, including, without limitation, from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect and Owner. 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.

§ 10.1.1 See Section 5.2.6 of the General Conditions.

§ 10.2 See Section 5.2.7 of the General Conditions.

## **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 and other representatives shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Contractor's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Contractor shall preserve these records for a period of four (4) years after Final Payment, or for such longer period as may be required by law. See also General Conditions Section 7.2.4.

## **ARTICLE 12 PAYMENTS**

### **§ 12.1 Progress Payments**

§ 12.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum, to the

Contractor, as provided below and elsewhere in the Contract Documents. Applications for Payment shall be submitted on AIA Documents G702 and G703, or in such other form as Owner shall approve in writing.

§ 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:

N/A

§ 12.1.3 Provided that a Certificate for Payment is received by the Owner not later than the last day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the last day of the next month. If a Certificate for Payment is received by the Owner after the receipt date fixed above, payment of the amount certified shall be made by the Owner not later than «forty-five» ( «45» ) days after the Owner receives the Certificate for Payment.

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

§ 12.1.4 Each Application for Payment shall 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 submitted by the Contractor shall be accompanied by the following items: (i) Subcontractor backup documentation, including, but not limited to, AIA Document G702 and G703 and copies of receipted invoices or invoices with check vouchers attached for any and all materials purchased for the Project; (ii) a conditional partial waiver of lien by the Contractor covering the entire amount of the payment requested by the relevant Application for Payment, in the applicable form attached hereto as **Exhibit F**; (iii) conditional partial waivers of lien by each Subcontractor covering the entire amount of the payment requested by Contractor on behalf of each Subcontractor in the relevant Application for Payment, in the applicable form attached hereto as **Exhibit F**; (iv) an unconditional waiver of lien by Contractor equal to the amount of all payments made by the Owner to the Contractor in all preceding Applications for Payment, in the applicable form attached hereto as **Exhibit F**; (v) unconditional partial waivers of lien by each Subcontractor which partial waivers of lien shall be equal to the amount of all payments made by the Owner to the Contractor on behalf of such Subcontractor in all preceding Applications for Payment, in the applicable form attached hereto as **Exhibit F**; (vi) a payee list for the current Application for Payment; (vii) a Section 3 compliance report; (viii) a MBE/WBE compliance report and certified payroll report; (ix) copies of all certified payroll reports produced since the previous Application for Payment; (x) a Project Schedule update; (xi) a Change Order log, including approved Change Orders on AIA G701 form (if applicable); (xii) a request for any new Change Orders, including Change Order rationale, and accounting of cost detail and estimate (if applicable); (xiii) a list of any and all stored materials (whether stored on-site or off-site); (xiv) any additional materials required under Section 15.6 of this Agreement; and (xv) any and all other information or documents necessary for or required by Owner, Owner's lender, investors, mortgagees or applicable governmental authorities, including, but not limited to, HUD, GHA and the City (each as defined in Section 3.18.1 of the General Conditions). Further, the payee list submitted with each Application for Payment submitted by the Contractor shall itemize and identify the amounts within each application which the Contractor intends to pay to each Subcontractor for Work performed on the Project up to the date of each Application for Payment, and shall set forth the amount of the contract balance with each such Subcontractor which will still be unpaid after payment of the amounts so itemized.

§ 12.1.5 Contractor shall provide separate accounting within its Applications for Payment for each separate phase of the Work, as required by Owner. Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents and accepted and approved by Owner. 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. A copy of the schedule of values is attached hereto as **Exhibit A**.

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

§ 12.1.5.2 Intentionally Deleted.

§ 12.1.5.3 Intentionally Deleted.

§ 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 Cost of the Work 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 Intentionally Deleted.

§ 12.1.7.1 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, as determined by Section 12.1.6 above, of each portion of the Work (including the Contractor’s general conditions) by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts for Work authorized by a CCD not in dispute shall be included as provided in Section 7.3.9 of the General Conditions;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the Project Site for subsequent incorporation in the completed Work, and as provided in the General Conditions or if approved in writing in advance by the Owner, suitably stored off the Project Site at a location agreed upon in writing;
- .3 Intentionally Deleted.
- .4 Add that portion of the Contractor’s Fee, that shall be computed upon the Cost of the Work described in the preceding Sections 12.1.7.1.1 and 12.1.7.1.2 at the rate stated in Section 5.1.1 or, if the Contractor’s Fee is stated as a fixed sum in that Section, shall be an amount determined by multiplying the Percentage of Completion of the entire Work by the fixed sum Contractor’s Fee;
- .5 Subtract retainage in accordance with Section 9.3.1.2 of the General Conditions;
- .6 Subtract the aggregate of previous payments made by the Owner;
- .7 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
- .8 Subtract amounts, if any, for which the Architect or Owner has withheld or nullified a Certificate for Payment as provided in this Agreement or in Section 9.5 of the General Conditions.

Notwithstanding the foregoing, if and only if allowed by Owner’s lender, investors, mortgagees and any applicable governmental authorities and if approved by Owner in writing in its sole discretion, Owner may, in its first (1st) progress payment paid to Contractor hereunder, pay an amount for Contractor’s general conditions expenses in excess of the amount due to Contractor under Section 12.1.7.1.

§ 12.1.7.2 Intentionally Deleted.

§ 12.1.8 Intentionally Deleted.

§ 12.1.8.1 Intentionally Deleted.

§ 12.1.8.1.1 Intentionally Deleted.

§ 12.1.8.2 Intentionally Deleted.

§ 12.1.8.3 Intentionally Deleted.

§ 12.1.9 Intentionally Deleted.

§ 12.1.10 Except with the Owner’s prior written approval, payments to Subcontractors shall be subject to the same retainage as Contractor.

§ 12.1.11 The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and written approval of payments to Subcontractors, and the Contractor shall execute subcontracts in accordance with those

agreements. Owner shall release retainage in accordance with Section 9.3 of the General Conditions or as otherwise required by applicable Laws.

§ 12.1.12 In taking action on the Contractor's Applications for Payment the Architect and Owner 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 or Owner has made: (1) a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 12.1.4 or other supporting data; (2) exhaustive or continuous on-site inspections; or (3) 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 or other representatives acting in the sole interest of the Owner.

§ 12.1.13 See General Conditions Article 9 for additional provisions regarding payment.

## § 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, subject to Section 12.2.3 below, when:

- .1 the Contractor has fully performed the Contract and the entire Work is Finally Complete, as defined in Section 9.10.1.1 of the General Conditions, except for the Contractor's responsibility to correct Work as provided in Article 12 of the General Conditions, 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 based on a final Application for Payment and a final accounting for the Cost of the Work submitted by the Contractor and approved by the Owner; and
- .4 all of the conditions for Final Payment as set forth in the Contract Documents have been satisfied, including, without limitation, all requirements for Final Payment set forth under Section 9.10.2 of the General Conditions, and the delivery of all information, documents or certifications that are required by the Contract Documents, the Owner, the Owner's lenders, investors or mortgagees, HUD, GHA, the City (each as defined in Section 3.18.1 of the General Conditions), and/or any other governmental authority with jurisdiction over the Project in order to allow the Owner to proceed to final Project completion, including, but not limited to, an accounting and certification of (i) all costs incurred by Contractor in the execution of the Work, (ii) all charges or costs included in Contractor's Applications for Payment with respect to the Project, and (iii) the Contractor's Markup comprising the GMP, as a percentage of the GMP, which accounting and certification shall be prepared in accordance with generally accepted accounting principles, by a licensed, independent, third-party accountant and shall identify and verify all costs and charges included in Contractor's payment applications and shall be accompanied by such detail and supporting documentation as required by the Contract Documents, the Owner, the Owner's lenders, investors or mortgagees, HUD, GHA, the City, and/or any other governmental authority with jurisdiction over the Project. See also Section 9.10.1.1 of the General Conditions.

§ 12.2.2 The Owner's auditors, accountants or other representatives will review and report in writing on the Contractor's final accounting within thirty (30) days following the Contractor's delivery of the final accounting to the Architect and Owner.

§ 12.2.2.1 Intentionally Deleted.

§ 12.2.2.2 Based upon such Cost of the Work as the Owner's auditors, accountants or other representatives report to be substantiated by the Contractor's final accounting, and provided the other conditions of Section 12.2.1 have been met, the Architect will, within seven (7) days after receipt of the written report of the Owner's auditors, accountants or other representatives, either issue to the Owner a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the General Conditions. The time periods stated in this Section 12.2.2 supersede those stated in Section 9.4.1 of the General Conditions. The Architect is not responsible for verifying the accuracy of the Contractor's final accounting.

§ 12.2.2.3 If the Owner's auditors, accountants or other representatives 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 resolution of the disputed amount pursuant to the provisions of the Contract Documents. Such demand for resolution shall be made by the Contractor within thirty (30) days after the Contractor's receipt of a copy of the Architect's final Certificate for Payment. Failure to make such demand within this thirty (30) -day period shall result in the substantiated amount reported by the Owner's auditors, accountants or other representatives 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.

§ 12.2.3 The Owner's Final Payment to the Contractor shall be made no later than thirty (30) days after the after the conditions in this Section 12.2, including specifically those in Section 12.2.1, have been satisfied.

§ 12.2.4 Intentionally Deleted.

### § 12.3 Interest

See Section 13.5 of the General Conditions.

## ARTICLE 13 DISPUTE RESOLUTION

§ 13.1 Intentionally Deleted.

### § 13.2 Binding Dispute Resolution

For any Claim, as defined in Section 15.1.1 of the General Conditions, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box.)*

Arbitration pursuant to Article 15 of the General Conditions

Litigation in a court of competent jurisdiction, subject to Section 15.3 of the General Conditions

Other *(Specify)*

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

## ARTICLE 14 TERMINATION OR SUSPENSION

### § 14.1 Termination or Suspension

§ 14.1.1 The Work may be suspended, or the Contract may be terminated as set forth in Article 14 of the General Conditions.

§ 14.1.2 Intentionally Deleted.

§ 14.1.2.1 Intentionally Deleted.

§ 14.1.2.2 Intentionally Deleted.

§ 14.1.3 Intentionally Deleted.

§ 14.2 Intentionally Deleted.

## ARTICLE 15 MISCELLANEOUS PROVISIONS

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

### § 15.2 The "Owner's Representative":

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

720 Olive Street, Suite 2500  
St. Louis, Missouri 63101  
Telephone: (314)  
Facsimile: (314) 335-2881

The Owner's Representative shall be the sole person(s) authorized to act on behalf of the Owner with regard to the Project. In the event the Contractor receives any instructions or approvals, either orally or in writing, by persons other than the Owner's Representative, the Contractor shall notify the Owner's Representative of such instructions or approvals, and shall not act upon any such instructions or approvals until provided express directions from the Owner's Representative.

§ 15.3 The "**Contractor's Representative**":  
(Name, address, email address and other information)

§ 15.4 The Contractor's Representative shall not be changed without ten (10) days' prior written notice to the Owner.

§ 15.5 Insurance and Bonds

§ 15.5.1 The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 General Conditions. The coverages and limits of liability contained for the Contractor's liability insurance are set forth in Article 11 of the General Conditions.

§ 15.5.2 The Owner does not maintain insurance of any kind on tools, equipment, temporary offices, sheds, shacks or other property of the Contractor and its Subcontractors, and Contractor and its Subcontractors shall be solely responsible for the protection of, and for all loss or damages, to such items.

§ 15.6 Intentionally Deleted.

§ 15.7 Other provisions:

§ 15.7.1 The Contractor will be furnished free of charge one (1) CD with the complete construction document set, one (1) set of reproducible Drawings and one (1) copy of the Specifications (and a similar number of any Addenda issued to either the Drawings or Specifications) for use in the execution of the Work. All other copies of the Drawings, Specifications or other Contract Documents requested or required by Contractor shall be at the Contractor's sole cost and expense.

§ 15.7.2 Notwithstanding anything herein to the contrary, this Agreement shall be expressly contingent upon Owner's access to available financing, loans or other financial arrangements intended to fund this Project and to allow the Owner to discharge its obligations, and disbursement to Owner (or disbursing agent, if applicable) of all funds anticipated in connection therewith.

§ 15.7.3 Contractor shall, and shall cause all Subcontractors performing Work on the Project to, (i) comply with all federal, state, territory or local laws, statutes, ordinances, building codes, rules, regulations, permits or other authorizations, approvals and/or requirements (collectively, "**Laws**") applicable to the Work, including, but not limited to, the Americans with Disabilities Act ("**ADA**") (including, without limitation, the 2010 ADA Standards for Accessible Design promulgated thereunder (collectively, the "**ADA Standards**")), the Uniform Federal Accessibility Standards, as published in the Federal Register, and the federal Fair Housing Act, any state-, territory- and/or local-law equivalents and all regulations promulgated under any of the foregoing and (ii) perform the Work in compliance, in all respects, with applicable Laws. Contractor expressly acknowledges that the Project involves the design and construction of facilities that the Owner believes are "Public Accommodations" under the ADA and should be constructed in accordance with the current and applicable physical accessibility requirements set forth in the ADA, the ADA Standards and its or their Accessibility Guidelines, and the Uniform Federal Accessibility Standards as set

forth in the Federal Register, unless otherwise directed in writing by Owner. Contractor agrees that it shall be held responsible for any Work that is in violation of, or not in compliance with applicable Laws.

**§ 15.7.4** Contractor acknowledges and agrees that any Work performed pursuant to this Contract that involves any movement, disturbance, removal, disposal or other displacement of the earth or soil at the site must comply with all Laws relating to dust control, storm water discharges or the control of erosion or sediment discharges from construction projects (collectively, the “*Dust and Storm Water Requirements*”). Contractor further acknowledges and agrees that part of its Work hereunder includes compliance with a comprehensive Storm Water Pollution Prevention Plan developed for the Project (“*SWPPP*”), governing storm water discharges and the control of erosion or sediment discharges from construction operations. All construction and other Work performed pursuant to this Contract that involves any movement, disturbance, removal, disposal or other displacement of the earth or soil at the site shall comply with such SWPPP. Contractor shall comply with all requirements set forth in the SWPPP, and shall promptly inform Architect and Owner in the event Contractor discovers that anything set forth in the SWPPP is not in compliance with applicable Laws. Contractor shall perform no construction Work on the SWPPP until Owner has instructed the Contractor, in writing, to proceed therewith. All construction and related Work in connection with the SWPPP shall be provided in accordance with the final SWPPP Construction Documents. In this regard, consistent with the EPA General Permit, the Texas Commission on Environmental Quality (TCEQ) general permit and the SWPPP, the Contractor shall be responsible for installing and maintaining all dust, erosion and sediment controls (or storm water best practices) relating to its Work. Contractor agrees that it will retain in files that are readily accessible all records required by such applicable Laws and Dust and Storm Water Requirements applicable to its Work, for a minimum of five (5) years, or for such longer time as may be required by applicable Laws or Dust and Storm Water Requirements. Such records shall, without limitation, include all erosion and sediment control drawings, and all reports of inspection of any storm water controls installed by Contractor. Contractor shall, at any time, upon request of the Owner provide the Owner with copies of any and all such records.

**§ 15.7.5** Contractor acknowledges that the Project is subject to federal, local, and state prevailing wage laws, including, without limitation, The Davis Bacon Act (40 U.S.C. §§ 3141-3148), and agrees to comply, and to ensure that all Subcontractors comply, with all such laws. Contractor shall ensure that all persons providing Work for the Project (whether under direct contract with Contractor or with its Subcontractors of any tier) are compensated for “straight-time” at hourly rates not less than the wage required under the most current Davis Bacon wage decision. Contractor shall furnish to Owner, upon Owner’s request, any forms, papers, payroll copies, or any other information or documentation that may be required to show Contractor’s (and any Subcontractor’s) compliance with such laws. Contractor understands and agrees that the establishment of prevailing wage rates pursuant to Chapter 2258, Texas Government Code shall not be construed to relieve Contractor or any Subcontractor from their obligations under any Federal or State Law regarding the wages to be paid to or hours worked by laborers, workmen or mechanics insofar as applicable to the Work to be performed hereunder.

**§ 15.7.6** The Contractor shall submit certified payrolls to the Owner, which shall be grouped on a weekly basis and in a form acceptable to the Owner. The Contractor shall submit to the Owner a plan for SBE/MBE/WBE participation and Section 3 hiring and business participation as required by the Owner.

**§ 15.7.7** Contractor warrants that it is and will remain in compliance with all federal, state, territorial and local labor and immigration laws, regulations and requirements (“*Labor Laws*”), including those of U.S. Department of Homeland Security (DHS) and U.S. Citizenship and Immigration Services (USCIS), regarding all personnel retained by Contractor or any Subcontractors who will be providing work, labor, services, materials or equipment to the Project. This includes, but is not limited to, the proper processing, storage and retention of required USCIS Form I-9s, the examination of required documentation, and the confirmation of appropriated evidence reflecting the identity and employment eligibility of each worker performing any portion of the Work (in such form and at such times as are required by applicable Laws), and compliance with all visa laws and regulations. Additionally, Contractor will maintain at the Project Site records required by the USCIS, including records of any posting requirements under H-1 visa regulations. Contractor hereby indemnifies and holds Owner harmless from and against any losses arising out of Contractor’s failure to comply with all applicable Laws, regulations and requirements related to Contractor’s or any Subcontractor’s use of non-U.S. citizens to perform or supply work, labor, services, materials or equipment to the Project. The Contractor will retain any and all documentation relating to its compliance with immigration laws, regulations and requirements for five (5) years after termination of the Contract or completion of all Work.

**§ 15.7.8** Contractor acknowledges that Owner has engaged an independent, third-party vendor to maintain a cloud-based data-storage program for the Project (the “*Project Database*”) for purposes of storing, indexing and tracking



the Project Documents (defined below). The Project Database shall include, without limitation, all design documents, construction documents, Contract Documents, Contractor's Applications for Payment, the Architect's payment certifications, and all submittals required by any of the foregoing (collectively, the "**Project Documents**"). Contractor agrees that it shall cooperate in good faith with Owner and Owner's third-party vendor in the construction of the Project Database, and in this regard, shall submit, and shall cause all Subcontractors to submit, all Project Documents (as applicable to the Contractor and the Subcontractors) to the Project Database on a timely basis. Contractor agrees that it and the Subcontractors shall utilize the Project Database for all submittals and approvals required under this Agreement.

**§ 15.7.9** Contractor shall employ its best efforts to use local vendors, suppliers, contractors and laborers when available and feasible.

**§ 15.7.10** Without limitation of anything in the Contract Documents, the Contractor shall comply with all rules, requirements and other Laws applicable to the Project established or imposed by HUD and/or its divisions or departments, including, without limitation, the following: HUD Training, Employment and Contracting Opportunities (Section 3); HUD Equal Employment Opportunities; and HUD-Federal Labor Standards Provisions. Contractor shall execute all associated certifications in this regard as required by Owner, its lenders, GHA, the City and/or any other governmental authority with jurisdiction over the Project and/or as otherwise required by applicable Laws.

**§ 15.7.11** Contractor certifies that neither it nor any of its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from participation in contracts by any federal department or agency or the Comptroller General. Contractor shall execute such certifications in this regard as may be reasonably required by Owner, its lenders, HUD, the City, GHA, or any other governmental authority with jurisdiction over the Project or as otherwise required by applicable Laws.

**§ 15.7.12** Contractor expressly acknowledges that Owner intends to achieve Enterprise Green Communities ("**EGC**") certification and that the Contract Documents include criteria for such EGC certification. Contractor represents and warrants that Contractor has experience in the construction of improvements substantially similar to this Project and that Owner has reasonably relied on such representations in entering into the Contract. Without limitation of anything in the Contract Documents, Contractor shall perform the Work in compliance with EGC related requirements or practices. Contractor agrees to cooperate with the Architect and any other consultant of Owner in connection with the Architect's and/or such consultant's responsibilities and obligations to the Owner for monitoring the construction of the Work for its compliance with EGC criteria, achieving the final list of desired EGC tax or similar benefits or credits, and collecting any and all information required for submittals of the EGC certification packages. Contractor shall be liable to Owner for any damages, losses, or expenses related to failure to obtain EGC certification for the Project to the extent caused in any way by Contractor, the Subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, including without limitation, damages, losses or expenses for loss of income or profits, inability to realize potential reductions in operating maintenance or other related costs, taxes or similar benefits or credits, marketing opportunities and other similar opportunities or benefits.

**§ 15.7.13** Contractor acknowledges that portions of the Project Site may be occupied during performance of the Work. Contractor further acknowledges and agrees that the Work must be completed in a clean and orderly manner so as not to unreasonably interfere with the normal operations of the surrounding property and the day-to-day activities of the tenants and employees at the site, including, but not limited to, parking, play areas, trash pick-up, and mail delivery. Safety of all persons and property at the Project Site, including all tenants and employees of the Owner, are a prime concern, and Contractor shall employ all necessary safety control measures to prevent any injury or damage to persons or property in the vicinity of the Work. Contractor shall provide written notice to the Owner's Representative and the property manager, sufficiently in advance, of any disruption of the normal operations of and/or services to the property, including, without limitation, any interruptions to utility services, to ensure that Contractor's performance of the Work does not unreasonably inconvenience residents of the Project. Contractor agrees that it will comply, and will cause all of its subcontractors, vendors and consultants to comply, to the extent applicable, with all rules and requirements implemented by Owner relating to the Project, and all other reasonable requests of Owner with respect to such Work, without any additional compensation or extension of the Contract Time. Without limiting the foregoing, Contractor shall also coordinate the performance of the Work with any resident relocations being performed or to be performed by Owner in connection with the Work.

§ 15.7.14 It is agreed that the obligations of Contractor may be fulfilled in each case by its entering into a Master Subcontract Agreement (the “*Master Subcontract Agreement*”) with [REDACTED] (“*Prime Subcontractor*”) which obligates Prime Subcontractor to fulfill each of Contractors obligations under the Contract.

**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.

- .1 The Agreement is this executed AIA Document A102™–2017, Standard Form of Agreement Between Owner and Contractor (as modified by the changes, deletions and/or additions hereto).
- .2 Intentionally Deleted.
- .3 The General Conditions are the executed AIA Document A201™–2017, General Conditions of the Contract for Construction (as modified by the changes, deletions and/or additions thereto). Notwithstanding any statement contained in any of the Contract Documents to the contrary, neither the Owner nor Contractor intend that any AIA Document A201 be incorporated into this Agreement by reference, except the AIA Document A201 which has been modified and signed by Owner and Contractor.
- .4 Intentionally Deleted.

.5 Drawings

Number	Title	Date
See table of Drawings in <u>Exhibit C</u>		

.6 Specifications

Section	Title	Date	Pages
See table of Specifications in <u>Exhibit C</u>			

.7 Addenda, if any:

Number	Date	Pages
N/A		

Portions of Addenda relating to bidding requirements are not part of the Contract Documents.

.8 The following Exhibits, each incorporated herein by this reference:

- .1 Schedule of Values, attached hereto as Exhibit A
- .2 Assumptions and Clarifications, attached hereto as Exhibit B
- .3 Drawings and Specifications, attached hereto as Exhibit C
- .4 Affidavit and Certificate of Completion, attached hereto as Exhibit D
- .5 Project Schedule, attached hereto as Exhibit E
- .6 Form of Lien and Claim Waivers, attached hereto as Exhibit F
- .7 Federal Davis Bacon Wage Decision, attached hereto as Exhibit G
- .8 HUD Federal Labor Standards Provisions (Copeland (“Anti-Kickback” Act), attached hereto as Exhibit H
- .9 HUD Section 3 Provisions, attached hereto as Exhibit I
- .10 Phases of the Work, attached hereto as Exhibit J

.9 Intentionally Deleted.

*[signatures appear on the following page]*

This Agreement entered into as of the day and year first written above and is executed in at least three (3) original copies, of which one is to be delivered to the Contractor, one to the Architect for use in the administration of the Contract, and the remainder to Owner.

**OWNER:**

\_\_\_\_\_

By: \_\_\_\_\_

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

\_\_\_\_\_  
*(Printed name and title)*

**CONTRACTOR:**

\_\_\_\_\_

By: \_\_\_\_\_

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

\_\_\_\_\_  
*(Printed name and title)*

