

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)

«c/o Housing Opportunities Commission»
«10400 Detrick Avenue»
«Kensington, MD 20895»

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.

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 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~~ Exhibits 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. An enumeration of the Contract Documents, other than a Modification, appears in Article 16.

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.~~§2.1.1 The Contractor shall fully execute the Work described in the Contract Documents, including the scope of work set forth in Exhibit D, and any work reasonably inferable from the Contract Documents and/or by Contractor as necessary to produce the results intended by the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others. All qualifications, exclusions, clarifications and assumptions regarding the scope of the Work are clearly described and set forth in Exhibit B (Contractor's Clarifications).

§2.2 Contractor Review

§2.2.1 The Owner and the Contractor agree that the Owner has selected the Contractor for this Project in material part because of the Contractor's experience in constructing similar projects. Before executing this Agreement and before commencing construction for any phase of the Work, the Contractor represents and warrants that it has carefully reviewed and shall carefully review the Project site, all Contract Documents, all other exhibits thereto, and all legal requirements applicable to the means and manner of performance of the Work.

§2.2.2 The Contractor shall perform all construction necessary to result in a completed and functioning Project, including without limitation fully operational and functional components, notwithstanding, among other things, errors, omissions, inconsistencies, or lack of coordination in the Drawings and Specifications that any experienced contractor that has constructed many similar projects could reasonably have recognized during bidding and negotiation of the Guaranteed Maximum Price (together, "Discoverable Errors"). If the Contractor encounters any Discoverable Errors, the Contractor shall promptly report them to the Owner and if Contractor fails to do so, any resulting additional Work or cost or time necessary to complete the Project shall not form a basis for an increase in the Guaranteed Maximum Price or the Contract Time. *Nothing in this clause shall be deemed to require the Contractor to perform architectural or engineering services, or to otherwise act as a design professional.*

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 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 in that Contractor has represented itself as having expertise in conceptual estimating, scheduling, and construction means and methods and experience with work of similar scope, size, and complexity. The Contractor covenants with the Owner to cooperate with the Owner and exercise the Contractor's best skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; 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 All persons employed by the Contractor in connection with the performance of the Work shall be employees of the Contractor, and neither the Contractor nor any such employees nor any subcontractors shall be deemed to be

employees or agents of the Owner for any purpose whatsoever. The Contractor shall be at all times acting as an independent contractor hereunder, responsible as an independent contractor to the Owner.

ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

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

(Check one of the following boxes.)

- [] The date of this Agreement.
- [] A date set forth in a notice to proceed or a limited notice to proceed, as applicable, issued by the Owner.
- [] Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

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

At the Owner's election, the Owner may provide a limited notice to proceed to the Contractor that will authorize Contractor to commence performance of a specified portion of the Work (an "LNTP"). Such LNTP shall specify the maximum total cost of such specified Work, and Contractor shall be paid for such specified Work pursuant to the terms and conditions of this Agreement. For the avoidance of doubt, any amounts paid by Owner in connection with the LNTP Work shall be credited against the Contract Sum.

§ 4.2 The Contract Time shall be measured from the date of commencement of the ~~Work.~~ Work up to and including the Substantial Completion Date. The Contractor agrees that the Owner will only grant an extension of the Contract Time when Work on the critical path is delayed by factors determined to be beyond the Contractor's control, as enumerated with greater particularity at Section 8.3 of the modified AIA Document A201™-2017, General Conditions of the Contract for Construction at Exhibit C (herein, the "General Conditions").

§ 4.3 Substantial Completion

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

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

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

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

Portion of Work	Substantial Completion Date
<u>[List Phased Milestones]</u>	

§ 4.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 4.3, liquidated ~~damages, if any, damages~~ 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 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.)

<< >>

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

<< >>

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

<< The total markup on Charged Work by Subcontractors of any tier shall not exceed 10% of the Cost of the Work for the Charged Work. >>

§ 5.1.4 Rental rates for Contractor-owned equipment shall not exceed << >> percent (<< >> %) of the standard rental 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)
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§ 5.1.6 Liquidated damages, if any:

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

<< Time is of the essence as to achieving Substantial Completion of the entire Work and each specified milestone date. The Contractor understands and acknowledges that any delay in completion of the entire Work beyond those specified will materially affect the Owner by causing, among other things, loss of revenues, great inconvenience, increased administrative expenses, and other tangible losses and damages. Accordingly, Owner and Contractor agree that if Substantial Completion of the entire Work is not achieved by the Substantial Completion Date, as may be adjusted pursuant to Section 8.3 of the General Conditions, Contractor, unless any such delay is the result of an event for which Contractor is entitled to an extension of the Contract Time under this Agreement, shall pay the Owner liquidated damages, calculated as follows:

[_____]

Owner and Contractor agree that these amounts constitute a reasonable and conservative forecast of the actual delay damages Owner would suffer as a result of any such delay, and that they do not constitute a penalty. Owner shall not be permitted to recover any damages with respect to a delay in achieving Substantial Completion of the Work other than the specified liquidated damages.>>

§ 5.1.7 Other:

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

<< § 5.1.7.1 Cost Savings If at the time of Final Payment, the actual Cost of the Work and the Contractor’s Fee is less than the GMP, as such GMP may be adjusted pursuant to the Contract Documents (“Savings”), [] percent ([]%) of the Savings shall accrue to the Owner and [] percent ([]%) of the Savings shall accrue to the Contractor. >>

§ 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. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.

§ 5.2.2 Alternates

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

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

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

<< >>

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

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

§5.3 COSTS IN EXCESS OF THE GUARANTEED MAXIMUM PRICE

If the Cost of the Work and Contractor’s Fee together exceed the GMP, then the Contractor shall pay all of such excess from its own funds and shall have no claim against the Owner on account thereof. If the Owner is required to pay any such excess for any reason, the Contractor shall be obligated to reimburse the Owner such amounts plus interest as set forth in Section 12.3 herein plus all costs of collection, including without limitation attorneys’ fees.

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 Article 7 of ~~AIA Document A201™–2017, General Conditions of the Contract for Construction~~ the General Conditions.

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

§ 6.3 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of ~~AIA Document A201–2017~~ shall the General Conditions 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. For changes in the Work, the Contractor's, Subcontractor's and Sub-subcontractor's mark-ups shall be calculated as follows: The Contractor shall not receive any additional general conditions costs unless the change results in an extension of Contract Time set forth in Article 4 above. In the event of such extension, if Contractor demonstrates to Owner that a change in the Work requires Contractor to use additional supervision, additional material or additional equipment to perform the change over and above the amounts already included in the general conditions costs (the "Additional Work"), Contractor shall be entitled to receive the actual costs of the additional supervision, material and/or equipment cost as part of the change. The calculations below at Sections 6.4.1 and 6.4.2 are a subject to the terms of this Section 6.4.~~

§6.4.1 For changes to the Work performed by the Contractor's own forces, (1) the Contractor shall receive a mark-up of [] percent ([]%) of the actual direct labor and material cost of the Additional Work as the Contractor's Fee, and (2) if the Additional Work causes an increase in the Contract Time, the Contractor shall receive its actual proven increase in the general conditions costs.

§ 6.4.2 For changes to the Work performed by a Subcontractor, (1) the Contractor shall receive a mark-up of [] percent ([]%) of the amount owed to the Subcontractor for the performance of the Additional Work as Contractor's Fee, and (2) if the Additional Work causes an increase in the Contract Time, the Contractor shall receive its actual proven increase in the general conditions costs. When both additions and deletions covering related Work or substitutions are in any one change, the increase in the Contractor's Fee (or decrease, in the case of a net deductive change) shall be figured on the basis of the net increase or decrease, if any, with respect to the change.

§ 6.4.3 The Contractor and Owner agree that no markup shall be paid on the first \$[Amount Equal to []% of the Total Contract Value] of any Additional Work.

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

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

§ 7.2 Labor Costs

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

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

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

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

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

§ 7.3 Subcontract Costs

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

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

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

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

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

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

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Contractor at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal 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 site of the Work and its proper and legal disposal.

§ 7.5.4 Costs of the Contractor's site office, including general office equipment and supplies.

§ 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.

§ 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.~~ Intentionally Omitted.

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

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

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of ~~AIA Document A201-2017~~ General Conditions 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.

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

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

§ 7.6.7 Costs of document reproductions and delivery charges.

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

§ 7.6.9 Legal, mediation and arbitration costs, including reasonable 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, and not arising out of Contractor's negligence, gross negligence or gross misconduct, which shall not be unreasonably withheld.

§ 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 in discharge of duties connected with the ~~Work~~ Work provided that no repair or maintenance cost will be included and if approval for such expenses has been provided by Owner in advance and in writing (which may be in the form of an email from any of Owner's Representatives).

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval.

§ 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 ~~AIA Document A201-2017~~ the General Conditions.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Contractor, and only to the extent that the cost of repair or correction is not recovered by the Contractor from insurance, sureties, Subcontractors, suppliers, or others. Contractor shall use best efforts to recover such costs from any subcontractor or supplier that Contractor reasonably determines is responsible for such damaged or nonconforming Work and/or such subcontractor or supplier's insurer and/or surety.

§ 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 of, or sharing 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 in the aggregate; (3) any 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, who has the right to control the business or affairs of 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 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 in writing, the Contractor shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 10.

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 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Contractor or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Contractor's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Article 7;
- .5 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Contractor, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .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.
- .9 Fines other than those due to the acts or omissions of Owner or its agents;
- .10 Consultants to the Contractor not previously approved, in writing, by Owner;
- .11 Matters between Owner and Contractor and any of its Subcontractors or suppliers requiring legal representations;
- .12 Amounts required to be paid by Contractor for federal, state or local income or franchise taxes;
- .13 Other cost, damages, or expenses specifically excluded elsewhere in the Contract Documents;
- .14 Any cost identified as a general conditions cost per paragraph [5.1.2];
- .15 Overtime wages or salaries (and fringe benefits related thereto) incurred by the Contractor as a result of the Contractor's failure to perform the Work in a timely manner in accordance with the Construction Schedule set forth on Exhibit E, unless the Contractor has received the Owner's prior written consent to incur overtime; AND
- .16 Insurance deductibles or self-insured retentions.

§ 8.2 The items listed in Section 8.1 shall not comprise Costs of the Work nor general conditions costs nor be cause for any increase in the Guaranteed Maximum Price, and the Contractor shall not submit any application for payment or reimbursement thereof.

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

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

ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS

§ 10.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or other appropriate agreements with the Contractor. The Owner may designate specific persons from whom, or entities from which, the Contractor shall obtain bids. The Contractor shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Contractor shall deliver such bids to the Architect and Owner. The Contractor shall, as soon as practicable, provide the Owner with a list of all prospective bidders for subcontracts to perform any portion of the Work, with an indication as to which bids the Contractor intends to accept. The Owner then has the right to review the Contractor's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 10.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Contractor of its responsibility to perform the Work in accordance with the Contract Documents. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection. The Contractor shall obtain approval from the Owner if the Contractor does not want to select the lowest bidder for initial award of that subcontract scope. Contractor shall provide Owner with copies of all subcontract bids and supporting documentation for all changes to the Work. A minimum of three bids must be obtained from potential subcontractors bidding to supply labor or materials with an aggregate contract value in excess of \$100,000.00 (or which are engaged in a trade critical to the Project as determined by the Owner) (the "Key Subcontractors"). Selection of Key Subcontractors is subject to the Owner's reasonable approval. The Contract Time shall not be adjusted due to the requirement of obtaining Owner approval of a Subcontractor unless the Contractor timely submitted the request for approval and Owner's delay in providing approval resulted in a delay to Work on the critical path.

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

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

§ 10.3 The Contractor shall disclose to the Owner, in writing, whether the Contractor, its officers, directors or any person related to them has an ownership interest in a proposed Subcontractor, Sub-subcontractor, fabricator or supplier.

§ 10.4 Subcontractor agreements shall be assignable to the Owner and any lender to the Project (the "Owner's Lender") in the event of a Contractor default under this Agreement that is not timely cured; provided, that neither Owner nor Owner's Lender shall have any obligation for costs and/or liabilities incurred by the subcontractor prior to the assignment for which the Contractor was compensated or for additional work directed by the Contractor without written consent of the Owner.

ARTICLE 11 ACCOUNTING RECORDS

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

to this Contract. The Contractor shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law-law and shall make them available to the Owner at all reasonable times at the office of the Contractor, or at such other location as mutually agreed upon, without charge to the Owner.

ARTICLE 12 PAYMENTS

§ 12.1 Progress Payments

§ 12.1.1 Based upon Applications for Payment submitted to the Architect and Owner by the Contractor, and Certificates for Payment issued by the ~~Architect~~, Architect and approved by the Owner, 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:

« »

§ 12.1.3 Provided that an Application for Payment is received by the Architect and Owner not later than the « » day of a month, the Owner shall make payment of the amount certified to the Contractor and approved by the Owner not later than the « » day of the « » month. If an Application for Payment is received by the Architect and Owner after the application date fixed above, payment of the amount certified and approved shall be made by the Owner not later than « » (« ») days after the Architect ~~receives and~~ Owner receive the Application for Payment.
(Federal, state or local laws may require payment within a certain period of time.)

§ 12.1.4 With each Application for Payment, the Contractor shall submit lien releases in the applicable form set forth on Exhibit F and as satisfactory to Owner and Owner's Lender, payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner ~~or Architect~~ to demonstrate that payments already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee.

§ 12.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Contractor's Fee.

§ 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~~ Owner may require. The schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

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

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

§ 12.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work and for which the Contractor has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

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

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

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

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

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of ~~AIA Document A201-2017;~~ **the General Conditions;**
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of ~~AIA Document A201-2017;~~ **the General Conditions;**
- .5 The shortfall, if any, indicated by the Contractor in the documentation required by Section 12.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 12.1.8.

§ 12.1.8 Retainage

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

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

«[] percent ([]%)»

§ 12.1.8.1.1 The following items are not subject to retainage:

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

« General liability insurance, builder's risk insurance (if provided by the Contractor), general conditions, and performance and payment bond (if provided). »

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

(If the retainage established in Section 12.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

« »

§ 12.1.8.3 Except as set forth in this Section 12.1.8.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 12.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

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

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

§ 12.1.10 Except with the Owner's prior written approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site-site for installation within 30 days after delivery.

§ 12.1.11 The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.

§ 12.1.12 In taking action on the Contractor's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 12.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 12.2 Final Payment

§ 12.2.1 ~~Final~~ A final payment of unpaid amounts of the Cost of Work and Contractor's Fee shall be due in accordance with the payment schedule set forth above upon final completion, approval, and acceptance of the Work by the Owner as recommended by the Architect and all governmental agencies and authorities having jurisdiction over the Work or the Project, receipt of all certifications as to the completeness of the Work and all lien releases and waivers. Without limiting the generality of the foregoing, 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~~, Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of ~~AIA Document A201-2017~~, 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; and a final Certificate for Payment has been issued by the Architect;
- .3 all punch list items have been completed or an escrow account has been established or a maintenance bond provided for 1.5 times the value of the Work not yet complete as agreed by the Architect, Owner, and Contractor; and
- .4 the following items have been received by the Owner, to the Owner's satisfaction:
 - a. An executed Contractor's Final Release and Waiver of Liens and Claims conditioned only upon receipt of payment. Such final payment application shall be accompanied by executed Subcontractor/Supplier's Final Release and Waiver of Liens and Claims in the form for all Subcontractors and Suppliers conditioned only upon receipt of payment whose agreements with Contractor exceed the contract amount of \$10,000.00;
 - ~~.3~~ a final Certificate for Payment has been issued by the Architect in accordance with Section 12.2.2.b. All guarantees and warranties required by the Contract Documents, assignment from the Contractor to the Owner of all guarantees and warranties from Subcontractors, vendors, suppliers, and manufacturers, and a list of the names, addresses and telephone numbers of all Subcontractors and any other entities providing these guarantees or warranties;
 - c. Manufacturer's installation manual with manufacturer's specifications for install in order to obtain valid warranty;
 - d. Operating manuals;
 - e. Consent of surety;
 - f. A Certificate of Occupancy; and
 - g. As-built drawings, where appropriate.

.5 the Contractor has provided Owner with satisfactory evidence of its compliance with Exhibit J regarding HOC and Government Requirements.

§ 12.2.2 Within 30 days of the Owner's receipt of the Contractor's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

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

§ 12.2.2.2 Within seven days after receipt of the written report described in Section 12.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 12.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of ~~AIA Document A201-2017-the General Conditions~~. The time periods stated in this Section 12.2.2 supersede those stated in Article 9 of ~~AIA Document A201-2017-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' report concludes that the Cost of the Work, as substantiated by the Contractor's final accounting, is less than claimed by the Contractor, the Contractor shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of ~~AIA Document A201-2017-the General Conditions~~. 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.

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

« »

§ 12.2.4 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 for such costs, and the Contractor's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 5.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 12.2.4 in determining the net amount to be paid by the Owner to the Contractor.

§ 12.3 Interest

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

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

~~«An annual rate of Two percent (2%) over the "Prime Rate" of interest, as published on a daily basis by the Wall Street Journal (or, in the event that the Wall Street Journal ceases to publish a "Prime Rate" of interest, at a comparable compilation of the nation's largest banks' prime rate of interest published by a similar, nationally-recognized financial publication, as reasonably determined by the Contractor).»~~

§ 12.4 CONDITIONS FOR PAYMENT

§12.4.1 At the option of the Owner, in its reasonable discretion, the Owner may hold payment of an amount not to exceed: (1) Two hundred percent (200%) of the Owner's liability associated with defective or damaged work not remedied by Contractor, and (2) one hundred and twenty-five percent (125%) of the amount of any claims or liens filed or threatened in writing by laborers, materialmen, and/or subcontractors under this Agreement, which amounts shall be determined by Owner in its reasonable discretion, until such time as the Contractor has rectified the condition to the reasonable satisfaction of the Owner.

§12.4.2 At the option of the Owner, partial or final payment will not be payable or due in the event that any of the following conditions exists: (1) Contractor fails to make proper applications for payment; (2) this Contract between Owner and Contractor is in material breach; (3) any insurance required of Contractor ceases to be effective and in force; or (4) failure to comply with any reasonable requirement of Owner's Lender of which Contractor has prior written notice. Additionally, Owner may delay any and all payments due Contractor, either for reimbursable Costs, Contractor's Fee or otherwise, until Contractor shall have submitted satisfactory evidence to Owner that all payrolls, material bills, and other indebtedness connected with the Work for which Contractor has been paid, have been paid by Contractor or its subcontractors. The aggregate amount of any payment that the Owner is permitted to withhold or delay under the terms of this §12.4.2 shall not exceed one hundred and fifty percent (150%) of the amount necessary to reasonably compensate Owner for the adverse economic impact on Owner of the claimed failure of performance by Contractor. If a lien is filed by any subcontractor, laborer, or materialmen, except to the extent the Owner has properly withheld payment for the Work in accordance with the terms of this Agreement, Contractor shall be solely responsible for the amount of the lien plus any and all incidental costs and shall cause the lien to be extinguished and canceled or bonded around, so that such lien shall not constitute a cloud, lien, or encumbrance against the ownership of the Project by Owner. Further, Owner, upon receipt of written notice that liens may be claimed by any third party pertaining to the Work, has the right to make payment jointly on behalf of the Contractor or its subcontractor to such third party, provided the Owner gives Contractor contemporaneous written notice of making such payment.

ARTICLE 13 DISPUTE RESOLUTION

§ 13.1 Initial Decision Maker

The Architect will serve as Initial Decision Maker pursuant to Article 15 of ~~AIA Document A201-2017, General Conditions~~, 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.)

§ 13.2 Binding Dispute Resolution

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

(Check the appropriate box.)

- Arbitration pursuant to Section 15 of ~~AIA Document A201-2017~~ the General Conditions
- Litigation in a court of competent jurisdiction. With respect to any "judicial proceedings" by and between the parties, it is hereby agreed that they shall be commenced only in: (a) the Circuit Court of Montgomery County, Maryland; or (b) in the United States District Court for the District of Maryland (Greenbelt Division), and the parties do hereby consent to both personal jurisdiction and venue in and to proceedings brought in any such court which has competent subject matter jurisdiction. TO THE EXTENT PERMITTED BY LAW, IT IS MUTUALLY AGREED BY AND BETWEEN THE OWNER AND THE ARCHITECT THAT THE RESPECTIVE PARTIES HERETO SHALL, AND THEY DO HEREBY, WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BETWEEN THE PARTIES HERETO OR THEIR SUCCESSORS OR ASSIGNS ON ANY MATTERS ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, THIS AGREEMENT OR THE PROJECT.

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.

§ 13.2 IN THE EVENT OF ANY DISPUTE BETWEEN THE OWNER AND THE CONTRACTOR AND PROVIDED THE OWNER CONTINUES TO PAY ALL UNDISPUTED AMOUNTS IN ACCORDANCE WITH THE PROVISIONS OF THE CONTRACT DOCUMENTS, THE CONTRACTOR SHALL PROCEED WITH THE PERFORMANCE OF ITS OBLIGATIONS UNDER THE CONTRACT DOCUMENTS IN ACCORDANCE WITH THE PROGRESS SCHEDULES, WITH RESERVATION OF ALL RIGHTS AND REMEDIES CONTRACTOR MAY HAVE AT LAW OR IN EQUITY.

§ 13.3 The Agreement shall be governed by the laws of the State of Maryland without regard to conflicts of law principles.

ARTICLE 14 TERMINATION OR SUSPENSION

§ 14.1 Termination

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

§ 14.1.2 Termination by the Owner for Cause

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

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

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

§ 14.1.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of ~~AIA Document A201-2017~~ the General Conditions, then the Owner shall pay the Contractor a termination fee as follows:

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

« The Contract may be terminated by the Owner for convenience, as provided in Article 14 of the General Conditions. In such event, Owner shall pay Contractor for the Cost of the Work actually performed, demobilization costs, and the unpaid amount of the Fee with respect to the portion of the Work completed. Owner shall not be liable to any subcontractor or materialmen for any costs, nor to Contractor or any other party for prospective profits on work not performed or other consequential or incidental damages. Owner's termination of the Contract for convenience shall be without prejudice to or in any way waive the Owner's rights and remedies against the Contractor with respect to any default or breach by the Contractor. Any default termination, subsequently determined to have been erroneous, shall be treated as termination for convenience under Article 14. »

§ 14.2 Suspension

The Work may be suspended by the Owner as provided in Article 14 of ~~AIA Document A201-2017; the General Conditions~~; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of ~~AIA Document A201-2017; the General Conditions~~, except that the term "profit" shall be understood to mean the Contractor's Fee as described in Article 5 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 A201-2017; 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)

« »
«Housing Opportunities Commission »
« 10400 Detrick Avenue »
«Kensington, MD 20895 »
« »
« »

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

« »
« »
« »
« »
« »
« »

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

§ 15.5 Insurance and Bonds

§ 15.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in ~~AIA Document A102™-2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit A, Insurance and Bonds, the General Conditions Exhibit A to this Agreement~~, and elsewhere in the Contract Documents.

§ 15.5.2 The Contractor shall provide bonds as set forth in ~~AIA Document A102™-2017 Exhibit A, Exhibit A to this Agreement~~, and elsewhere in the Contract Documents.

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

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

« All notices required or permitted hereunder shall be in writing and may be sent either (i) by messenger, by United States Certified Mail (Return Receipt Requested), or by Federal Express or other national overnight courier service or (ii) by electronic mail addressed to the representatives identified in Sections 15.2 and 15.3; provided, however, that any notice of default from Contractor to Owner shall additionally be sent both by electronic mail to **notice@hocmc.org** and by one of the methods set forth in clause (i) above to the Executive Director of HOC as set forth below:

To Owner:

[Owner Entity]
Housing Opportunities Commission
10400 Detrick Avenue
Kensington, MD 20895
Attn: Executive Director

With copy to:

[Owner Entity]
Housing Opportunities Commission
10400 Detrick Avenue
Kensington, MD 20895
Attn: Office of General Counsel »

§ 15.7 Other provisions:

Provisions

§ 15.7.1 Drawing Sets. Contractor shall provide two (2) electronic sets of red-lined as-built drawings, as well as return of the County-approved set of drawings with the final Application for Payment.

§ 15.7.2 Conflicts. The intent of the parties is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary and what is required by one shall be as binding as if required by all subject to the order of precedent set forth below. In the event of any conflict, inconsistency, or discrepancy among the Contract documents, and unless otherwise provided in the Contract Documents, the conflict, inconsistency, or discrepancy shall be resolved by giving precedence to the Contract Documents in the following order:

- 1) Amendments executed by the Parties after execution of this Agreement that explicitly supersede this AIA A101-2017 or the Contractor's Clarifications
- 2) Other Amendments executed by the Parties after execution of this Agreement
- 3) This Agreement (i.e.: this AIA A101-2017)
- 4) AIA A201-2017 (the General Conditions)
- 5) The Drawings (large scale drawings govern over small-scale drawings)
- 6) The Specifications
- 7) Exhibits A, B, D, E, F, G, H, I, J, K, L, M and N
- 8) Contractor's Clarifications (Exhibit B)
- 9) All other Contract Documents.

If there is a conflict between any Contract Document and that certain RFP [Number & Date of RFP], the more stringent requirement for the benefit of the Owner will apply.

§ 15.7.3 Compliance with Certain Provisions of the Owner's Loan for the Project. Notwithstanding any provision of the Contract Documents to the contrary, Contractor shall comply with the following Owner's Lender requirements:

1. Change orders for changes in the Work greater than [\$xxx] for any individual change order or [\$xxx] in the aggregate must be approved by the Lender prior to initiation of the work contemplated thereunder. Contractor shall have no obligation to proceed with any such changed Work above such thresholds prior to receipt of written approval from Owner's Lenders, and Contractor shall not be responsible for delays to the critical path of the Work while waiting for receipt of such Lender approvals.
2. Contractor shall promptly furnish to Lender such documentation related to the Work as the Lender may reasonably request from the Contractor.

3. Contractor shall participate in Lender scheduled monthly field program meetings at the Project site with representatives of the Lender.
4. Contractor shall furnish to the Lender such documents as the Lender may reasonably request to support Applications for Payment submitted by the Contractor.
5. If requested by the Lender with respect to any Contractor Application for Payment, the Contractor shall provide waivers of liens and copies of accepted invoices indicating payment has been made to each of Contractor's subcontractors and suppliers for all prior Applications for Payment.
6. Contractor shall provide to Lender copies of final releases of liens from the Contractor and its subcontractors and materialmen who performed work or supplied materials to the Project.
7. Contractor shall permit Lender and its agents at all times during normal business hours with advance notice to Contractor to have the right to inspect all work done, and materials, equipment and fixtures furnished, installed, or stored by Contractor in and about the Project site. However, at all such times while Lender and/or its agents are on the Project, due to safety regulations they must be accompanied by one of Contractor's onsite staff and be wearing all required personal protective equipment.
8. Contractor shall provide Lender with evidence reasonably satisfactory to Lender that any off-site materials to be funded by Lender financing, have been appropriately insured and inspected; and stored in secure, bonded warehouses prior to Lender disbursing any funds for such materials.
- [9. If required by the Lender, Contractor shall provide to Lender evidence satisfactory to Lender that all laborers and mechanics employed by Contractor or any of its subcontractors have been paid prevailing wages as required by the Davis Bacon Act and that all subcontracts comply with all labor standards and provisions of 20 C.F.R. Parts 1.3, and 5.]

§ 15.7.4 Severability. Wherever possible, each provision of this Agreement shall be interpreted in a manner as to be effective and valid under applicable law. If, however, any provision of this Agreement, or portion thereof, is prohibited by law or found invalid under any law, only such provision or portion thereof shall be ineffective, without in any manner invalidating or affecting the remaining provisions of this Agreement or valid portions of such provision, which are hereby deemed severable.

§ 15.7.5 No Waiver. No action, failure to act or failure to require strict compliance with any term of this Agreement by Owner or Contractor shall constitute a waiver of a right or duty afforded them under this Agreement, nor shall such action, failure to act or failure to require strict compliance with any term of this Agreement constitute approval or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

§ 15.7.6 Survival of Terms. All matters that relate to the termination or expiration of this Agreement, that relate to warranties, ownership of documents, payment or indemnity obligations of the parties, as well as all rights and obligation of the parties that would by their nature be expected to survive any termination or expiration of this Agreement, shall survive any termination or expiration of the Agreement and shall be given full force and affect notwithstanding any termination or expiration of the agreement, but such survival shall not operate to extend any applicable statute of limitations.

§ 15.7.7 Negotiated Agreement. This Agreement was negotiated between the parties and shall be construed in accordance with its plain meaning, without giving any effect to any implication or inference arising from the fact that it may have been drafted by or on behalf of any party to this Agreement.

§ 15.7.8 Corporate Action. Owner and Contractor hereby represent and warrant to each other that all necessary corporate action has been taken to enter into this Agreement and that the person signing this Agreement on behalf of Owner and Contractor respectively, is duly authorized to do so.

§ 15.7.9 Governmental Requirements. See Exhibit J (HOC Requirements) for additional terms that are hereby incorporated into this Article 8.

ARTICLE 16 ENUMERATION OF CONTRACT DOCUMENTS

§ 16.1 This Agreement is comprised of the following documents:

~~1~~ ~~AIA~~

~~This Document A102™–2017, Standard Form of Agreement Between Owner and Contractor~~

~~2~~ ~~AIA Document Exhibit A – A102™–2017, Exhibit A, Insurance and Bonds~~

~~Exhibit B – Contractor’s Clarifications~~

~~3~~ ~~Exhibit C – AIA Document A201™–2017, General Conditions of the Contract for Construction (modified)~~

~~4~~ ~~AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203–2013 incorporated into this Agreement.)~~

~~5~~ ~~Drawings Exhibit D – Scope of Work (List of Drawings and Specifications)~~

~~Exhibit E – Construction Schedule~~

Number	Title	Date

~~6~~ ~~Specifications~~

Section	Title	Date	Pages

~~7~~ ~~Addenda, if any:~~

Number	Date	Pages

~~Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 16. Exhibit F – Forms of Lien Waivers~~

~~Exhibit G – Project Budget~~

~~8~~ ~~Other Exhibits: Exhibit H – Alternates, Unit Prices, and Allowances~~

~~(Check all boxes that apply.) Exhibit I – Sample Application for Payment~~

~~Exhibit J – HOC Requirements~~

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

~~The Sustainability Plan:~~

Title	Date	Pages

~~Supplementary and other Conditions of the Contract:~~

~~Exhibit K – Payment and Performance Bonds~~

Document	Title	Date	Pages

~~9~~ ~~Other documents, if any, listed below:~~

~~(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor’s bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of~~

~~the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)~~ Exhibit L – List of Contractor’s Project Team Personnel

Exhibit M – Phasing Plan

Exhibit N – Major Subcontractor List

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

OWNER *(Signature)*

« »« »

(Printed name and title)

CONTRACTOR *(Signature)*

« »« »

(Printed name and title)

