

## **CONSTRUCTION AGREEMENT**

**THIS CONSTRUCTION AGREEMENT** (the “**Agreement**”) is entered into as of the “**Effective Date**” by and between the “**Owner**,” acting through “**Owner’s Agent**,” and the “**Contractor**,” each defined below (each a “**Party**” or collectively “**Parties**”). References to “**Article**” shall refer to the numbered sections of this Agreement, references to “**Section (§)**” shall refer to the numbered sections of Exhibit A-1, and references to “**Paragraph**” refer to the numbered paragraphs of Exhibit A-2. Bolded terms are defined in the Agreement, Exhibit A-1, or Exhibit A-2.

For and in consideration of Contractor’s performance of the Work and Owner’s payment therefor in accordance with the “**Contract Documents**” identified in Article 9, and the other mutual promises and covenants contained herein, the receipt and sufficiency of which are acknowledged, the Owner and Contractor (each a “**Party**” or collectively “**Parties**”) agree as follows:

### **PROJECT SPECIFICS**

#### **1. Project Description:**

- 1.1 The “**Effective Date**” of this Agreement is: \_\_\_\_\_.
- 1.2 The “**Project**” is [BRIEF TOPICAL SENTENCE OF PROJECT; e.g., construction (renovation or repair) of \_\_\_\_\_]. The Project also may be described in Contractor’s proposal, if any, attached hereto as Exhibit B-1.
- 1.3 The Project is located at [INSERT STREET ADDRESS] (the “**Property**” or “**Site**”).
- 1.4 The Contractor’s contract has been designated by Owner’s Agent as Job/Contract No: \_\_\_\_\_.
- 1.5 The “**Site Reports**” (discussed in Section 6.7) provided to Contractor prior to establishing the Contract Sum and Contract Time are identified in Exhibit B-4.

#### **2. The Parties and Third Parties:**

##### **2.1 Owner-related Parties:**

- 2.1.1 The “**Owner**” is: [INSERT NAME], a Delaware limited liability company, c/o Owner’s Agent at the address set forth in Article 2.1.2.
- 2.1.2 The “**Owner’s Agent**” is [INSERT PORTCO], a Delaware limited liability company, [INSERT ADDRESS].
- 2.1.3 The “**Owner’s Project Representative**” or “**OPR**” is: [INSERT NAME, ADDRESS; MOBILE, AND EMAIL].
  - 2.1.3.1  If checked, OPR is a third-party engaged by Owner’s Agent, and Section 6.2 applies.
- 2.1.4 The Owner’s “**Lender**,” if any, is: [INSERT NAME, ADDRESS, POC, PHONE, EMAIL]
- 2.1.5 The Owner’s “**Legal Contact**” is: Leonard S. Goodman, Esq., VP-Development & Construction, Revantage Corporate Services, 233 S. Wacker Drive, Suite 4600, Chicago IL 60606; lgoodman@revantage.com.

##### **2.2 Contractor-related Parties:**

- 2.2.1 The “**Contractor**” is: [INSERT FULL LEGAL NAME, a STATE ENTITY, ADDRESS].
- 2.2.2 The Contractor’s “**Project Representative**” is: [INSERT NAME, ADDRESS; MOBILE, AND EMAIL].
- 2.2.3 The Contractor’s “**Legal Contact**” is: NAME, ADDRESS, PHONE, EMAIL.

##### **2.3 Third Parties:**

- 2.3.1 The “**Architect**” is: [INSERT NAME, ADDRESS; POC, MOBILE, AND EMAIL].
- 2.3.2 The “**Engineer**” is: [INSERT NAME, ADDRESS; POC, MOBILE, AND EMAIL].
- 2.3.3 The  “**Design Consultant**” is: [INSERT NAME, ADDRESS; POC, MOBILE, AND EMAIL]. The Architect, Engineer and Design Consultant, if any, may be referred to collectively as “**Owner’s Consultants**.”
- 2.3.4 Owner’s “**Separate Contractors**,” if any, are:
  - 2.3.4.1 [INSERT NAME, ADDRESS; POC; MOBILE, AND EMAIL].
  - 2.3.5 The “**Property Manager**,” if any, is: [INSERT NAME, ADDRESS; POC; MOBILE, AND EMAIL].
- 2.3.6 The Owner’s “**Tenant**” if any is: [INSERT NAME, ADDRESS, POC, EMAIL]. The “**Tenant Lease**” is the agreement by which Tenant occupies all or part of the Property and, if applicable, is identified in Exhibit H.

#### **3. Schedule and Contract Time:**

- 3.1 The “**Schedule**” is attached as Exhibit D. If a Schedule is not attached hereto as Exhibit D, Contractor shall submit a schedule within ten (10) days of the Effective Date or prior to commencement of the Work on the Site, whichever is earlier.

**3.2** The “**Contract Time**” shall be measured from the Date of Commencement to (*check either*):  Substantial Completion in accordance with Article 3.2.2.1; or  Final Completion in accordance with Article 3.2.2.2.

**3.2.1** The “**Date of Commencement**” shall be (*check either*):  [INSERT DATE]; or  within [INSERT # OF DAYS] days of Owner’s Notice to Proceed.

**3.2.2** In accordance with Section 3.2, the Contractor shall achieve:

**3.2.2.1** “**Substantial Completion**” of the Work by  [INSERT DATE]; or  within [INSERT # OF DAYS] days of the Date of Commencement and Final Completion within [INSERT # OF DAYS] days of Substantial Completion; or

**3.2.2.2** “**Final Completion**” of the Work by  [INSERT DATE]; or  within [INSERT # OF DAYS] days of the Date of Commencement.

**3.3 Liquidated Damages and Compensable Delay:**

**3.3.1** The Owner’s “Liquidated Damages” per Section 3.4 shall be: \$\_\_\_\_\_ per day.

**3.3.2** The “General Conditions Per Diem” per Section 3.5.2 is: \$\_\_\_\_\_ per day.

**4. Contract Sum and Payment:**

**4.1** Owner shall pay Contractor the “**Contract Sum**” (defined below) for Contractor’s proper completion of the Work. The Contract Sum is subject to such additions and deductions by Change Order as provided in the Contract Documents and is subject to the exclusions, qualifications and assumptions (if any) included in Exhibit B-1 (the “**List of Qualifications**”). The terms “**Contract Sum**” and “**Guaranteed Maximum Price**” or “**GMP**” are used interchangeably.

**4.2** The Contract Sum shall be [SELECT ONE OF THE FOLLOWING]:

**4.2.1**  A stipulated, lump-sum amount of \$\_\_\_\_\_.

**4.2.2**  Based upon the Cost of the Work (defined in Exhibit A-2) plus Contractor Fee (set forth in Article 4.4.2), subject to the Guaranteed Maximum Price set forth in Article 4.3.1.

**4.2.3**  on a “time and materials” (“**T&M**”) basis not to exceed \_\_\_\_\_ Dollars and \_\_\_\_\_ Cents (\$\_\_\_\_\_) (the “**TM-NTE**”) without Owner’s prior written consent. The reimbursable “time and materials” costs shall not be higher than the standard paid at the place of the Project and shall be based on any Unit Prices and/or Hourly Rates included in Exhibit B-1 (or Exhibit B-3). The reimbursable “time and materials” costs shall not include any costs attributable to the negligence, fault or breach of the Contract Documents by Contractor or its Subcontractors.

**4.2.3.1** The markup on the cost of materials shall not exceed \_\_\_\_%. This markup represents compensation for Contractor’s Overhead and profit. There shall be no markup on Hourly Rates.

**4.3** The Contract Sum  includes or  does not include a stipulated amount of General Conditions costs in accordance with Section 4.4 (the “**Lump Sum General Conditions**” or “**LSGC**”).

**4.4** If the Contract Sum includes a GMP: If Article 4.2.2 is selected:

**4.4.1** The “**Guaranteed Maximum Price**” or “**GMP**” for the entirety of the Work is \$\_\_\_\_\_. Contractor guarantees the Contract Sum will not exceed the GMP, subject to additions and deductions as provided in the Contract Documents.

**4.4.1.1**  If checked, the GMP includes a “**Construction Contingency**” of \$\_\_\_\_\_ subject to Paragraph 2 of Exhibit A-2.

**4.4.2** The “**Contractor’s Fee**” (discussed in Paragraph 1) is: [SELECT ONE OF THE FOLLOWING BY CHECKING THE BOX]:

**4.4.2.1**  A stipulated, lump-sum amount of \$\_\_\_\_\_.

**4.4.2.2**  \_\_\_\_\_% of the Cost of the Work allowed by Exhibit A-2.

**4.4.3** The Contractor’s Fee [SELECT ALL THAT APPLY]:

**4.4.3.1**  will or  will not be applied to the LSGC.

**4.4.3.2**  will or  will not be applied to Contractor’s insurance (and, if applicable, bond) premiums.

**4.4.3.3**  will or  will not be applied to Self-Performed Work.

**4.5** The Contract Sum includes each of the following [SELECT ALL THAT APPLY]:

**4.5.1**  If checked, the Contract Sum includes the “**Allowances**” identified below or in Exhibit B-1 (or Exhibit B-3).

**4.5.1.1** [INCLUDE ALLOWANCE DESCRIPTION; AMOUNT; QUANTITY]

4.5.2  If checked, the Contract Sum includes the “**Alternates**” identified below (accepted and pending) or in Exhibit B-1 (or Exhibit B-3).

4.5.2.1 [INCLUDE ALTERNATE DESCRIPTION; PRICE]

4.5.3  If checked, Contractor’s compensation includes “**Unit Price Work**” based upon the “**Unit Prices**” and/or “**Hourly Rates**” set forth in Exhibit B-1 (or Exhibit B-3). Unless a separate mark-up is specified in Article 4.4.3.1 below, there shall be no additional markup on Unit Prices or Hourly Rates in accordance with Section 4.3.

4.5.3.1 Unit Prices established for Unit Price Work and Hourly Rates may be marked-up by \_\_\_%. This markup represents compensation for Contractor’s Overhead and profit.

4.6 Payment shall be made (*check one*):

4.6.1  Upon achieving Final Completion of all Work in accordance with Section 4.5;

4.6.2  On the basis of monthly pay applications in proportion to the amount of Work completed and based upon the approved “**Schedule of Values**” included in Exhibit B-1 (or Exhibit B-3) in accordance with Section 4.4.3 or, where payment is based on the Cost of the Work plus Contractor Fee, in accordance with Paragraph 3 of Exhibit A-2. Owner shall retain 10% from each progress payment (“**Retainage**”). Retainage shall be paid as part of Final Payment in accordance with Section 4.5; or

4.6.3  where the basis of payment is T&M, on the basis of monthly pay applications of the value of Work performed during the application period; provided, however, Owner is not obligated to make payment to the extent the value of the Work performed exceeds the proportionate amount of Work actually completed in relation to the TM-NTE. Each invoice shall be accompanied by contemporaneous records of (i) the material and equipment used on the Project each day; and (ii) the nature of the Work performed, and the number of hours spent, each day by its employees (or agents) on the various components of the Work comprising the Project (the “**Daily Time & Material Records**”). Contractor shall supply Owner with the Daily Time & Material Records with each Application for Payment.

4.7  If checked, Payment includes an initial down-payment of \$ \_\_\_\_\_ towards purchase of materials and equipment in accordance with Exhibit B-1 (or Exhibit B-3).

5. **Change Orders/Markup:** In the event of a Change in the Work approved in advance by Owner in a written Change Order or Construction Change Directive (“**CCD**”) in accordance with Section 5.1.3, the parties agree as follows:

5.1 **If the Contract Sum is a Lump Sum per Section 4.2.1:**

5.1.1 For Changes in the Work performed by Subcontractors: To the extent of a net increase in the Contract Sum directly attributable to the Change in the Work Overhead and profit shall equal (i) \_\_\_ percent (\_\_\_%) for Contractor (the “**Change Order Fee**”); and (ii) a maximum aggregate total of \_\_\_ percent (\_\_\_%) for all Subcontractors (the “**Subcontractor Markup Percentage**”) which total shall be apportioned by Contractor among any and all such Subcontractors; and

5.1.2 For Changes in the Work performed by Contractor’s own forces: Contractor’s Change Order Fee shall equal \_\_\_ percent (\_\_\_%) of the costs directly attributable to the change in the Work.

5.2 **If the Contract Sum is a GMP per Section 4.2.2:** To the extent of a net increase in the Contract Sum directly attributable to the Change in the Work:

5.2.1 Contractor’s Change Order Fee is \_\_\_%; and

5.2.2 The Subcontractor Markup Percentage shall not exceed \_\_\_% in the aggregate.

The Change Order Fee and Subcontractor Markup Percentage shall be Contractor’s and Subcontractors’ sole compensation for Overhead, profit, insurance, and General Conditions except to the extent the Change in the Work causes the Contract Time to be delayed in accordance with Section 3.5.1 in which event the Contract Sum shall be adjusted by the Extended General Conditions in accordance with Section 3.5.2.

5.3 **The “Shared Savings” allocation (if any) per Section 3.8 of Exhibit A-2 is: 80 % to Owner and 20 % to Contractor.**

6. **Insurance and Bonds:**

6.1 **Coverage Requirements:**

6.1.1 Unless modified in Section 6.2.1, below, Contractor shall procure and pay for insurance as required by this Agreement and Exhibit F-1.

**6.1.2** Unless modified in Section 6.2.1, based on the scope of Work, Contractor is required to procure and maintain either or both of the following policies of insurance as specified in **Exhibit F-1**:  Professional  Pollution [Check one or both boxes].

**6.1.3** Unless modified in Section 6.2.2, based on the scope of Work, the following trade contractor/subcontractor(s) is/are required to procure and maintain professional liability insurance as specified in **Exhibit F-1**:

**6.1.3.1** \_\_\_\_\_

**6.1.4** Unless modified in Section 6.2.2, based on the scope of Work, the following trade contractor/subcontractor(s) is/are required to procure and maintain pollution liability insurance as specified in **Exhibit F-1**:

**6.1.4.1**

**6.2** Exceptions to Coverage Requirements: With the approval of Owner's risk managers, the limits of coverage and/or the requirement for environmental and/or professional liability insurance for the Contractor and/or the following Subcontractors are modified as set forth below notwithstanding the requirements set forth in **Exhibit F-1**:

**6.2.1** For the Contractor:

**6.2.1.1** \_\_\_\_\_ [Type of Insurance (CGL, Auto, WC, Umbrella, Pollution or Professional)];

**6.2.1.2** \$ \_\_\_\_\_ [Adjusted limit of coverage]

**6.2.1.3**  If checked, Contractor is not required to carry environmental (pollution) coverage.

**6.2.1.4**  If checked, Contractor is not required to carry Professional Liability Insurance.

**6.2.2** For the following Trade or Subcontractor:

**6.2.2.1** \_\_\_\_\_ [Identify Subcontractor(s)]

**6.2.2.2** [Type of Insurance (CGL, Auto, WC, Umbrella, Pollution, or Professional)]

**6.2.2.3** \$ \_\_\_\_\_ [Adjusted limit of coverage]

**6.2.2.4**  If checked, Subcontractor is not required to carry environmental (pollution) coverage.

**6.2.2.5**  If checked, Subcontractor is not required to carry Professional Liability Insurance.

**6.3** Additional Insureds: In addition to Owner, Owner's Agent, the Owner Indemnitees (identified in Section 11.1) and the Additional Insureds (identified in Exhibit F-1), Owner Indemnitees and Additional Insureds include the following (CHECK ALL THAT APPLY):

**6.3.1**  Owner's Lender or Mortgagee: \_\_\_\_\_

**6.3.2**  Owner's Property Manager or Operator: \_\_\_\_\_

**6.3.3**  Owner's Project Representative: \_\_\_\_\_

**6.3.4**  Owner's Tenant: \_\_\_\_\_

**6.3.5** Other: \_\_\_\_\_

**6.4** Payment and Performance Bonds: Contractor (*check one*)  is required  is not required to procure and pay for payment and performance bonds; if required, such bonds shall comply with the requirements of Exhibit F-3 and be in substantially the same form as set forth in Exhibit F-4.

## 7. Miscellaneous:

**7.1** Building Permit: The cost of the building permit (*check one*)  is included  is not included in the Contract Sum. The building permit shall be procured by  Owner  Contractor. Owner shall reimburse Contractor for the cost of the building permit if Contractor procures and cost is not part of the Contract Sum.

**7.2** Design-Build Items:  If checked, the Work includes components to be designed and built by Contractor in accordance with Section 1.2 instead of being designed and detailed by the Architect or other design consultant retained by Owner (the "**Design-Build Items**"). The Design-Build Items are set forth below or in Exhibit B-1 (or Exhibit B-3):

**7.2.1** \_\_\_\_\_

**7.3** Third-party Agreements:  If checked, the Property, the Project or Work is subject to the "**Third-party Agreements**" (defined in Section 1.3) identified in Exhibit H that may include Tenant or Lender requirements, obligations to state or local zoning, land-use or economic development agencies, construction easements with adjacent property owners, or requirements for federal, state or local tax credit or other incentive programs.

**7.4** Off-site Stored Materials:  If checked, material and equipment will be stored by Contractor at an off-site warehouse. Section 7.6.2 applies to materials stored off the Property.

**7.5 Labor Matters:**

**7.5.1** The Project is an  open shop  closed shop. Contractor assumes all risks associated with this status.

**7.5.2** Owner represents that it  has  has not entered into an agreement with any municipality or other third party that will require the Contractor to take any action to solicit, hire, or contract with any minority business enterprise, women business enterprise, veteran-owned business enterprise, or any other business-enterprise class, or to implement affirmative action policies and procedures. Any agreement in effect will be identified in Exhibit H; provided, however, Contractor acknowledges its obligation to comply with all Federal and state anti-discrimination statutes regardless of whether or not Owner is a party to such an agreement.

**7.6 COVID-19:** The Agreement is subject to the COVID-19 Rider attached as Exhibit G.

**8. Exhibits:** The following exhibits, preceded by an [X], are attached and incorporated herein by this reference:

A-1:  Additional Terms & Conditions

A-2:  Terms and Conditions where the Basis of Payment is the Cost of the Work plus Contractor's Fee with a Guaranteed Maximum Price

A-3:  Allowable General Conditions Costs

B-1:  Contractor's Proposal/List of Qualifications/Design-Build Items

B-2:  List of Drawings and Specifications (if not included in Exhibit B-1)

B-3:  Schedule of Values/Allowances/Alternates/Unit Prices & Hourly Rates (if not included in Exhibit B-1)

B-4:  Site Reports

C:  Additional Requirements for Conduct of Work at Owner's Property

D:  Schedule

E-1:  Lien Waiver Forms

E-2:  Contractor's Affidavit

F-1:  Insurance Requirements

F-2:  Certificate of Insurance and Liability Policy Endorsements

F-3:  Bond Requirements

F-4:  Bond Forms

G:  COVID-19 Rider

H:  Third-party Agreements

I-1:  Stored Materials Affidavit

I-2:  Landlord's Affidavit

J:  Form of Subcontractor Warranty

**9. Contract Documents:** This Agreement, the Exhibits, and modifications to them signed by the Parties after execution of this Agreement, comprise the "**Contract Documents**" and constitute the Parties' agreement, and may be referred to collectively as the "**Agreement**" or synonymously the "**Contract**."

<b>OWNER:</b> _____, a Delaware limited liability company By: _____, a Delaware limited liability company, its Authorized Agent  By: _____ Print Name: _____ Title: _____, its Authorized Signatory	<b>CONTRACTOR:</b> _____, a _____  By: _____ Print Name: _____ Title: _____, its Authorized Signatory
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## EXHIBIT A-1: ADDITIONAL TERMS AND CONDITIONS

### 1. THE WORK:

**1.1 "Work"** means the totality of the obligations imposed upon Contractor by the Contract Document and includes all labor, supervision, management, administration, materials, supplies, systems, equipment, services and other things required by or reasonably inferable from the Contract Documents as necessary for the complete and proper functioning of the Project. Contractor shall execute the Work described in the Contract Documents except as specifically indicated in the Contract Documents to be the responsibility of others. The Work shall be subject to any qualifications, assumptions, and/or exclusions set forth in the Contract Documents (the "**List of Qualifications**"). Any List of Qualifications applicable to the Work on a Project shall be in writing and included in an exhibit.

**1.2** The Project includes the Design-Build Items identified in Article 7.1 or Exhibit B-1 (or Exhibit B-3), if any. If the Work includes Design-Build Items, the Contract Sum includes all engineering and design services to (1) prepare any technical drawings, specifications, and other documents (collectively, "**Design-Build Plans**") that are necessary to fully indicate the requirements for completion of the Design-Build Items in accordance with Laws and Rules; and (2) obtain the permits from applicable AHJs required to complete the Design-Build Items, whether or not those services are individually expressed in the Contract Documents. Any professional services required to complete the Design-Build Items shall be performed by persons employed by or under direct contract with Contractor who are licensed to do so under Applicable Law and are covered by the professional liability insurance specified in Exhibit F-1, §1.7; provided, however, Design-Build Plans prepared by Contractor shall not cause any Change in the Work or the Contract Documents without Owner's express written consent. In the event of any inconsistency between Design-Build Plans and the Contract Documents, the Contract Documents shall take precedence. After consultation with and approval by Owner, Contractor (or its Subcontractor) shall respond to requirements or proposed modifications, if any, imposed or proposed by AHJs. Changes that are required to be made to the Design-Build Plans as a result of review by AHJs shall be incorporated by Contractor without an increase in the Contract Sum. Any modification, change, or substitution from the Design-Build Plans must be approved in advance by Owner in a Change Order. The Contract Sum and Contract Time shall not be adjusted on account of any impact that may result from Design-Build Plans. The Design-Build Items shall be completed in strict accordance with the approved Design-Build Plans and Laws and Rules.

**1.3** The Work shall comply with all "**Laws and Rules**," which are comprised of: (i) applicable codes, laws, regulations, statutes, acts, rules, and ordinances of federal, state, or local governmental or regulatory authorities and utilities having jurisdiction over, or with respect to, the Project, the Work, the Property, or Contractor ("**AHJs**"), including the Americans with Disabilities Act and the Accessibility Guidelines relating thereto, and those pertaining to building codes, immigration, environmental, tax, social security, wage rates, unemployment compensation, worker's compensation, and safety laws (collectively, "**Applicable Law**"); (ii) any conditions, restrictions, or requirements imposed by AHJs or applicable by reason of permits, approvals, review processes, consents, contracts, waivers, agreements, and notices with respect to the Project, the Property, or the Work, including any applicable building permits; (iii) applicable industry standards; (iv) the specifications, requirements, and instructions, of manufacturers or suppliers whose products or systems are being installed by Contractor, including warranty requirements; (v) any covenants, conditions, restrictions, declarations, agreements, easements, rights-of-way, and servitudes filed or enrolled of record; and (vi) conditions, restrictions, or requirements applicable to the Property, the Project, or the Work contained in any agreements between Owner and third-parties, public or private (collectively, "**Third-party Agreements**") identified in Exhibit H, including (1) state or local zoning, land-use or economic development agencies or departments, Owner's Lender, Tenant, or other third parties including adjacent property owners; or (2) federal, state or local tax credit or other incentive programs pursued by Owner.

**1.4** Contractor shall perform the Work with the same care, skill, and diligence as is ordinarily exercised by contractors and, with respect to Design-Build Items by members of the applicable architectural or engineering professions, performing the Work in the same locale as the Project under similar circumstances and conditions on behalf of large institutional owners.

**1.5** Contractor may have commenced Work prior to executing this Agreement. The Contract Documents shall apply to any Work performed by Contractor for the Project, whether before or after execution of this Agreement.

**2. THE PROPERTY:** Contractor acknowledges that the Property may include operating businesses that will remain in operation and occupied throughout the course of the Work. Contractor shall (1) protect all employees, tenants, invitees and other persons on, in, or adjacent to the Property from injury arising from the Work; (2) use commercially reasonable efforts to protect the Property and adjacent property (real, personal, or mixed) from damage from the Work, and to minimize any interference with the occupancy or beneficial use of any areas and buildings adjacent to the portion of the Work then in progress; and (3) include in the Contract Sum, Contract Time, and Schedule the costs and time associated with planning, coordinating and scheduling the Work to comply with the above obligations in addition to the requirements of Exhibit C. Contractor shall not cause any interruption of existing services to the Property during performance of the Work. Contractor will utilize due diligence in locating existing utilities; shall not cut or suspend utility lines that are not shown on the Contract Documents, but shall immediately call the condition to Owner's attention and present Owner with recommendations on how to safely proceed with the Work; and use

commercially reasonable efforts to minimize potential service disruptions and to restore and maintain operations, including installation of any necessary temporary measures. Without prior approval of Owner, Contractor shall not permit any workers to use any existing facilities at the Site, including, without limitation, lavatories, toilets, entrances, and parking areas other than those designated by Owner.

### **3. THE CONTRACT TIME; LIQUIDATED DAMAGES; REMEDIES FOR DELAY**

#### **3.1 Commencement and Completion:**

**3.1.1** The Work shall commence on the Date of Commencement.

**3.1.2** “**Final Completion**” shall occur when all the Work (including completion of any “punch list” items) has been completed and accepted by Owner. The requirements for achieving Substantial Completion (below) shall apply to achieving Final Completion where the Contract Time is based upon a date of Final Completion only.

**3.1.3** “**Substantial Completion**” shall occur when Owner can occupy or utilize the Work for its intended use; provided, however, the following shall be conditions precedent to Substantial Completion:

**3.1.3.1** Owner shall have received all certificates of occupancy, if applicable, and all other Permits, approvals, licenses, certifications, and other documents from AHJs necessary for Owner’s beneficial occupancy of the Work;

**3.1.3.2** Any mechanical, electrical, and plumbing (including gas) systems and equipment that are part of or affected by the Work (including the Related Systems) shall have been started-up, tested, balanced, commissioned, and determined to be performing reliably and within their predetermined limits;

**3.1.3.3** Operations and Maintenance manuals, warranties, keys, control devices, and drawings required to operate and maintain the equipment or systems have been delivered to Owner;

**3.1.3.4** The Work has been reviewed and approved by any product manufacturer (or its authorized designee) whose warranty requires such review and approval, and the manufacturer’s warranty has been issued without exception for the benefit of Owner;

**3.1.3.5** If applicable, the Work has been reviewed and approved by any Tenant, Lender, Property Manager, or any third party (or the entity’s authorized designee) where Public Programs and/or Private Agreements apply; and

**3.1.3.6** All trailers, portable toilets, and other construction vehicles, equipment, material, and debris have been removed from the Site so that all areas are presentable.

#### **3.2 Compliance with Schedule; Acceleration:**

**3.2.1** Except as adjusted pursuant to Section 3.5.1, Contractor shall achieve Substantial Completion and/or Final Completion by times specified in Article 3.2.2. Time is of the essence with respect to the dates and times set forth in the Contract Documents for Contractor’s performance and completion of the Work. Contractor shall undertake to make up or mitigate all delays for which it (or a Subcontractor) is responsible, at Contractor’s expense and without increase in the Contract Sum, including, for overtime, double shift work, employing additional personnel, and expediting delivery of materials by air freight.

**3.3** Contractor shall perform the Work in accordance with the Schedule. Contractor confirms that the Contract Time and Schedule represent a reasonable period for completing the Work for the Contract Sum. If Contractor’s rate of progress is such that the amount of Work completed within any time period specified in the applicable Schedule is less than the amount required to be completed within such time, or it reasonably appears that Contractor will be unable to achieve the Substantial Completion and/or Final Completion of the Work within the Contract Time, Owner may direct Contractor to accelerate the Work by issuing a notice to accelerate. Upon such notice, Contractor shall be obligated to employ such measures as necessary to bring the Work into conformity with the Contract Time and applicable Schedule, including providing Owner with a written recovery plan detailing the means and methods Contractor will use to achieve Substantial Completion (or Final Completion) within the Contract Time. Contractor shall not be entitled to an increase in the Contract Sum in connection with schedule recovery efforts to the extent made necessary by Contractor’s or a Subcontractor’s negligence or failure to comply with the requirements of the Contract Documents. Even if the performance of the Work is progressing in accordance with the Contract Time or applicable Schedule or is delayed solely for Excusable Delay, Owner may also direct Contractor to accelerate the Work by issuing a written notice to Contractor requesting such acceleration. Contractor expressly agrees that its sole and exclusive remedy for such acceleration shall be an adjustment of the Contract Sum by Change Order in the amount of the reasonable and verifiable costs actually incurred directly by Contractor and any affected Subcontractors over and above their normal rates as a result of any such acceleration.

**3.4 Liquidated Damages.** If Article 3.3.1 includes a sum for Liquidated Damages, the Parties agree that, if Contractor fails to achieve Substantial Completion within the Contract Time (or Final Completion if Article 3.2.2.2 applies), as such date may be modified for Excusable Delay, the Owner will suffer actual financial damage that will be difficult to fully ascertain and the assessment of Liquidated Damages is appropriate. Accordingly, Contractor agrees to pay Owner the amount of Liquidated Damages per day set forth in Article 3.3.1 for each day that Substantial Completion (or Final Completion) is delayed beyond the Substantial Completion Date (or Final Completion Date). The Parties agree that these Liquidated Damages are a good-faith and

reasonable pre-construction estimate of Owner's actual damages and are not considered to be a penalty. Owner shall be entitled to deduct and retain the Liquidated Damages from any unpaid amounts then or thereafter due Contractor under this Agreement. Any Liquidated Damages not so deducted and retained from unpaid amounts due Contractor shall be payable by Contractor to Owner upon demand, together with interest at the legal rate. The Liquidated Damages shall be Owner's exclusive damage remedy for delay unless the delay was willfully caused by Contractor, but such damages shall in no way limit Owner's other rights including "recovery measures," damages covered by insurance, or termination or limit Owner's entitlement to damages for any breach other than for delay for which Contractor may be responsible pursuant to the terms of the Contract Documents or Applicable Law. Contractor further acknowledges that it shall be liable for Liquidated Damages in the event Owner must engage a replacement contractor to complete the Work due to Contractor being terminated for cause. If Article 3.3.1 does not include a sum for Liquidated Damages, then Owner shall be entitled to recover its actual damages to the extent Contractor causes Substantial Completion (or Final Completion) to be delayed.

### **3.5 Contractor's Remedy for Delay:**

**3.5.1** If Contractor (or any Subcontractor) is delayed at any time in the progress of the Work by (1) an act or omission of Owner in breach of a material provision of the Agreement, (2) Additional Work authorized in writing by Owner, (3) Owner's suspension of the Work for convenience, or (4) a Force Majeure (items (1)-(3) are "**Compensable Delay**," and items (1)-(4) are "**Excusable Delay**") then, provided Contractor submits an NPCO in accordance with Section 5, the Contract Time shall be extended by Change Order to the extent that such delay (i) is a critical-path delay that will prevent Contractor from achieving Substantial (or Final) Completion within the Contract Time; (ii) is not caused, or could not have been reasonably prevented, by the Contractor; and (iii) could not be limited or avoided by the Contractor's timely notice to the Owner of the delay or reasonable likelihood that a delay will occur.

**3.5.2** To the extent that an extension of the Contract Time is caused Compensable Delay, then (in addition to any increase in the Contract Sum permitted on account of an Authorized Change), the Contract Sum shall be increased to the extent of the additional General Conditions costs actually incurred by Contractor (and by any affected Subcontractor if payable by Vendor under the terms of the subcontract) during each day the Contract Time is extended (the "**Extended General Conditions**"), but not to exceed the General Conditions Per Diem. The "**General Conditions Per Diem**" is the maximum amount of allowable General Conditions costs recoverable per day of Compensable Delay by Contractor or any affected Subcontractor. The General Conditions Per Diem is either set forth in Article 3.3.2 or, if not, then calculated by dividing the General Conditions line item in the Schedule of Values by the number of days in the original Schedule allocated for the construction Work (or the affected Subcontractor's General Conditions value divided by its time to perform the construction Work; provided, however, that all Subcontractor General Conditions Per Diem in the aggregate shall not exceed fifty percent (50%) of the Contractor's General Conditions Per Diem). Except for the right of Contractor and each affected Subcontractor to recover Extended General Conditions as set forth in this Section, Contractor expressly agrees not to make, and hereby waives (and shall cause its Subcontractors to similarly agree not to make, and to waive), any claim for costs, losses, damages, or expenses on account of any delay, obstruction, impact, or hindrance for any cause whatsoever, including consequential damages, lost opportunity costs, actual or alleged loss of efficiency or productivity, unabsorbed home office overhead, extended overhead, impact damages, cumulative impact, ripple effect, or other similar remuneration.

**3.5.3 Definition of Force Majeure:** Events of "Force Majeure" shall consist of the following to the extent that they are beyond the reasonable control of Contractor and cause critical path delay to the Work: Acts of God, Acts of War, Terrorist Acts, civil unrest, riots, area-wide labor disputes (excluding disputes with laborers on the Project), abnormal adverse weather conditions in excess of the historical impact of adverse weather for the time and location of the Project, unavoidable material or labor shortages, fire or other unavoidable casualty loss, and governmental restrictions including, but not limited to, those resulting from the incidence of disease, virus or other illness that reaches epidemic and/or pandemic proportions, announced or enacted after the Effective Date.

## **4. THE CONTRACT SUM AND PAYMENT**

### **4.1 Contract Sum:**

**4.1.1** The Contract Sum is complete and includes the cost of all (a) materials, systems and equipment ("**MS&E**") including delivery, handling, and installation; (b) labor and supervision ("**Labor**"); (c) mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, social security and other governmental retirement contributions or benefits, insurance, sick leave, holidays, vacations, pension, and profit sharing ("**Labor Burden**"); (d) all trade permits, taxes, insurance ("**PTI**"); (e) general conditions and general requirements ("**General Conditions**"); (f) capital and general and administrative expenses that support the overall operations of Contractor's and each Subcontractor's business, including their respective home offices and other accounting, human resources management, and financial management services (collectively "**Overhead**"); and (g) Contractor's profit. Contractor shall not be entitled to any increase in either Contract Sum on account of any increase in the price of labor, material or equipment charged to the Contractor or its Subcontractors.



Taxes include, without limitation, sales tax, use tax, ad valorem tax, business opportunity tax, personal property tax and/or real estate tax, whether imposed by any federal, state, county, local or foreign taxing entity, all fees, levies, and duties imposed by any country, commonwealth, state, port, or customs authority to export and/or import any MS&E associated with the Work.

**4.1.2** Owner's written consent shall be a condition precedent to any obligation on the part of Owner to make payments to Contractor in excess of the Contract Sum. To the extent any costs or expenses incurred by Contractor in performing the Work exceed the Contract Sum, Contractor shall bear such costs without reimbursement or additional compensation from Owner subject to such additions and deductions by Change Order as provided in the Contract Documents. Neither the Schedule nor the Schedule of Values, including any specific element of the Schedule of Values for which a separate budgeted amount is included, shall be modified without Owner's written consent.

**4.2 Allowances:** The Allowances identified in Article 4.4.1 are the only allowance items related to the Work. For avoidance of doubt, any quantities included in any exhibit or in Contractor's proposal or bid document, are Contractor's quantity takeoffs and not allowances. It will be no basis for modification to the Contract Sum or the Contract Time if actual quantities differ from Contractor's takeoffs. Allowances shall cover the cost to Contractor of all MS&E, Labor, General Conditions, Labor Burden, and PTI necessary to perform the portions of the Work contemplated by the Allowances. Contractor's Overhead and profit for the stated Allowance amounts is included in the Contract Sum but not in the Allowances. Whenever costs are more than or less than Allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect the difference between the actual costs of the Allowance-related Work and the Allowances. Contractor shall notify Owner if an Allowance amount will or may be exceeded within the time set forth in Section 5.2 for Additional Work.

#### **4.3 Hourly Rates and Unit Prices:**

**4.3.1** Agreed unit prices and hourly rates as of the Effective Date, if any, are included in Exhibit B-3 (or Exhibit B-1). Unit prices and hourly rates that may be used for pricing (1) the Contract Sum, if Article 4.2.2 is selected; or (2) Additional Work, whether by way of Change Order or Construction Change Directive.

**4.3.2** "Unit Prices," if included in Exhibit B-3 (or Exhibit B-1) or proposed after execution of the Agreement, are (and shall be considered) complete and include, as applicable, all M/E, Labor, Labor Burden, and any other costs or expenses in connection with, or incidental to, the performance of that portion of the Work to which such unit prices apply, including General Conditions (provided, however, for Change Orders increasing the Contract Time, Section 10.2 shall apply).

**4.3.3** "Hourly Rates," if included in Exhibit B-3 (or Exhibit B-1) or proposed after execution of the Agreement, are inclusive of (1) Labor Burden; (2) Contractor's (or other Contractor Party's) Overhead; and (3) Contractor's (or other Contractor Party's) profit.

**4.3.4** Unit Prices and Hourly Rates shall remain in effect through the completion of the Project. .

**4.4 Lump-Sum General Conditions:** If Article 4.2 includes a lump-sum amount, Contractor's total compensation for its allowable General Conditions costs (identified in Exhibit A-3) shall be the lump-sum amount stated in Article 4.2 and called the "Lump-Sum General Conditions" or "LSGCs". The costs constituting the Lump-Sum General Conditions are all-inclusive and include all Labor, Labor Burden, and M/E. Any adjustment to the Lump-Sum General Conditions shall be subject to Sections 3.5, 5 and 10.2. The Lump-Sum General Conditions will be paid on a monthly basis in proportion to the percentage of Work completed and shall be calculated for purposes of Paragraph 3.2 by (1) multiplying the Lump-Sum General Conditions by the same percentage of completion used in Paragraph 3.3, as applicable; and (2) reducing this product by the Lump-Sum General Conditions payments already made to Contractor. The Lump-Sum General Conditions are included within the Contract Sum and/or Guaranteed Maximum Price.

#### **4.5 Payment:**

**4.5.1** Contractor's compensation for the Work (whether payable in the form of monthly progress payments or only after Final Completion is achieved) shall be due and payable in U.S. dollars within forty-five (45) days of Owner's receipt of Contractor's invoice subject to Owner's rights under Section 4.8 and provided that Contractor complies with the provisions of the Contract Documents. All undisputed amounts shall be paid within forty-five (45) from receipt of Contractor's invoice. Amounts not "disputed in good faith" and remaining unpaid after the date on which such payment is due shall bear interest at the WSJ Prime Rate commencing ten (10) days after such payment was due. ("Disputed in good faith" means written notice from Owner to Contractor of the reason(s) for Owner's withholding under Section 4.8, where Contractor's mere disagreement with Owner's reasons shall not constitute an absence of "good faith").

**4.5.2** Invoices for progress payments shall be accompanied by each of the following and such other backup documentation as Owner reasonably requires: (a) a Contractor's Affidavit in the form attached as Exhibit E-2; (b) A current, duly executed and notarized waiver of mechanic's and materialmen's liens waiving all liens or claims of lien for all Work covered by the Invoice, executed by (i) Contractor; and (ii) each Subcontractor or materialmen to be paid, and providing that such lien waiver shall

become effective upon payment of the amount requested for payment to such party under the Invoice; and (c) commencing with the 2nd Invoice, a current, duly executed and notarized waiver of mechanic's and materialmen's liens unconditionally waiving all liens or claims of lien for all Work covered by the previous Invoices, executed by (i) Contractor; and (ii) each Subcontractor and material supplier establishing payment or satisfaction of all amounts requested by Contractor on behalf of such entities or persons in all previous Invoices. Contractor shall utilize the mechanic's lien waiver forms ("**Lien Waivers**") included in Exhibit E-1; provided, however, if the Applicable Law of the state where the Project is located (the "**Project State**") prescribes the forms of Lien Waivers, Contractor shall utilize the forms prescribed by statute.

**4.5.3** A Schedule of Values allocating the entire Contract Sum to the various portions of the Work and approved by Owner is a condition precedent to payment to Contractor where progress payments are being made. The Schedule of Values shall be prepared in such form and supported by such data to substantiate its accuracy as Owner requires. Once approved by Owner, the schedule of values shall be a Contract Document and cannot be modified without the consent of Owner. The Schedule of Values shall be updated monthly when Contractor submits its Application for Payment and shall be used as a basis for reviewing Contractor's Applications for Payment. From time to time, the Schedule of Values shall be recast by Contractor (subject to Owner's approval for concurrence with any applicable Change Order) to include in each applicable line item the changes thereto by any previously executed Change Order. Any Schedule of Values or trade breakdown that fails to include sufficient data, is unbalanced, or exhibits "front-loading" of the value of the Work shall be rejected. If found improper for any reason, sufficient funds shall be withheld from future Applications for Payment to ensure an adequate reserve (in addition to normal retainage) to complete the Work.

**4.6 Progress Payments:** Payment of the Contract Sum shall be made on the basis of monthly pay applications based upon the percentage of completion of the Work in accordance with the Schedule of Values as of the end of the period covered by the Application for Payment less ten percent (10%) and amounts, if any, for which Owner has withheld or nullified payment as provided in Section 4.5, which retainage shall be withheld from the amount of each progress payment and payable upon Contractor achieving Final Completion of the entire Work. 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 (i) the expense that has actually been incurred by the Contractor on account of that portion of the Work for which the Contractor has made, or intends to make, actual payment prior to the next Application for Payment, by (ii) the share of the Contract Sum allocated to that portion of the Work in the Schedule of Values.

**4.6.1** If the Contract Sum includes Lump Sum General Conditions under Article 4.3, the LSGCs will be payable per Section 4.9. If it does not, then Contractor may request payment for General Conditions based on the percentage of completion;

**4.7 Final Payment:**

**4.7.1** Final Payment, constituting the entire unpaid balance of the Contract Sum, shall not become due until after Final Completion of the Work is achieved in strict accordance with the Contract Documents. When Contractor believes that the Work is finally complete, and is ready for a final inspection, Contractor shall so notify Owner by submitting its "Final Invoice." Owner (or an independent consultant hired by Owner) will then make final inspection of the Work and, if the Work is complete in accordance with the Contract Documents, and the Contract has been fully performed, including the requirements of Sections 3.1.2, 3.1.3 and 4.5.2, then Owner shall make Final Payment on Contractor's Final Invoice (less amounts Owner is permitted to withhold under the Contract Documents) in accordance with Section 4.6.

**4.7.2** In addition to the documents and information identified in Sections 3.1.2-3.1.3, Contractor shall supply Owner with each of the following as a condition precedent to making Final Payment:

**4.7.2.1** A current, duly executed and notarized general release executed by (i) Contractor; and (ii) each Subcontractor or materialmen unconditionally waiving, releasing, and relinquishing upon receipt of Final Payment, any and all rights to assert a lien or claim of lien against Owner's property, or to make any Claim for Work performed or materials supplied to the Project, except those Claims previously made in writing to Owner in accordance with the Contract Documents and identified in writing as unsettled at the time of Final Payment. Forms of Final Lien Waivers shall substantially conform to the forms included in Exhibit E-1 unless the form of lien waivers is prescribed by the Laws of the Project state in which event the statutory forms shall be used;

**4.7.2.2** Certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents; and

**4.7.2.3** A list of all Subcontractors and principal suppliers on the Project, including addresses and telephone numbers.

**4.8 Representations and Warranties:** By signing an Invoice, Contractor represents and warrants to Owner as follows:

**4.8.1** Contractor has no notice of any design professional's, subcontractor's, materialman's, mechanic's, supplier's, or other similar lien rights or rights to liens, chattel mortgages, or conditional sales contracts pertaining to the Work covered by the Invoice;

- 4.8.2 The Work covered by the invoice has been completed in strict accordance with this Agreement;
- 4.8.3 The Work performed to date as shown on the Invoice represents the actual value of the Work completed under the Agreement (and all approved Change Orders);
- 4.8.4 All amounts have been paid by Contractor for Work for which previous payments have been received from Owner;
- 4.8.5 The current payment shown in the Invoice is now due;
- 4.8.6 All previous amounts previously due have been received and, except as set forth in the current Invoice, no additional amounts are due;
- 4.8.7 Contractor has complied with and paid all amounts due under federal, state, and local tax laws, including social security laws, unemployment compensation laws, worker's compensation laws, and fringe benefits insofar as applicable; and
- 4.8.8 All claims against Owner for extensions of time or adjustments to the Contract Sum based on events or circumstances more than five (5) days prior to the subject Invoice are waived, except as specifically stated in the Invoice or as previously set forth in a separate written notice to Owner complying with the requirements of this Agreement.

**4.9 Withholding:** Payments may be withheld, in whole or in part, by Owner on account of (1) defective Work not remedied, (2) a claim filed by a third party or if a stop work notice has been served on Owner or Contractor that remains unsatisfied or unbonded, (3) failure of Contractor to make payments properly to Subcontractors for labor, materials, or equipment, (4) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum, (5) damage to Owner or another contractor, (6) reasonable evidence that the Work will not be completed within the Contract Time, (7) failure to carry out the Work in accordance with the Agreement, (8) Contractor becoming insolvent, or the subject of bankruptcy proceedings, an assignment for the benefit of creditors, or other insolvency proceedings, or (9) for any other reason provided by the Agreement.

**4.10 Effect of Payment:** No payment made to Contractor, no inspection by Owner or on Owner's behalf or by a regulatory body, or partial or entire use or occupancy of the Work by Owner shall constitute Owner's acceptance of any Work or materials not in strict conformity with the requirements of the Contract Documents unless Owner acknowledges acceptance of such defective or non-conforming work in writing. Acceptance of a payment by Contractor, a Subcontractor, or a material supplier shall constitute a waiver of any and all payment claims that the payee has or may have against Owner or any Indemnitee (as hereinafter defined).

**4.11 Payments to Subcontractors:** If Owner learns that a Subcontractor or other person or entity has wrongfully not been paid for its work, labor, materials, equipment, and/or services provided on the Project from payments remitted by Owner, then Owner may, in its sole discretion, elect to pay such Subcontractor, person, or entity through joint check or directly for the labor, materials, equipment, and/or services supplied, and deduct any amounts so paid from any amounts otherwise due Contractor. However, neither this provision nor any payment made hereunder shall afford such Subcontractors, persons, or entities any rights under this Agreement or directly against Owner.

## **5. CHANGES AND ADDITIONAL WORK:**

### **5.1 Definitions:**

**5.1.1** Without invalidating this Agreement, Owner has the right to amend, modify, and adjust the scope of the Work to achieve its desired goals. "**Additional Work**" is Work, approved by Owner in writing in advance in a Change Order or Construction Change Directive, that (1) exceeds the Work included in the Contract Documents; and (2) is a material change in the scope, quantity, quality, programmatic requirements, timing, scheduling, or other substantial deviation from or modification of the Work; provided in any case that such changes or extra work are not the result, in whole or in part, of an error or omission or failure to perform of any member of the Contractor Group. Under no circumstances shall Owner be obligated to compensate Contractor or others for fees or expenses for any Additional Work absent advance written authorization by Owner. Additional Work includes "changes" in the Work and "extra" Work.

**5.1.2** A "**Change Order**" is a written instrument prepared by Owner (or Contractor if directed by Owner) and signed by Owner and Contractor, stating their agreement upon all of the following: (i) the Change in the Work; (ii) the amount of the adjustment, if any, in the Contract Sum; and (iii) the extent of the adjustment, if any, in the Contract Time.

**5.1.3** A "**Construction Change Directive**" (or "**CCD**") is a written order prepared by Contractor or Owner and signed by Owner, directing a Change in the Work prior to (or in the absence of) total agreement on the terms of a Change Order, including the adjustment, if any, in the Contract Sum or Contract Time, or both. Owner may order Changes in the Work by Construction Change Directive without invalidating the Contract, and, where appropriate, the Contract Sum and Contract Time shall be adjusted accordingly as set forth below.

**5.2 Change Event:** If Contractor believes that a directive, event, or other occurrence has or will result in a claim for additional compensation or additional time (a “**Change Event**”), Contractor will submit an NPCO and PCO in accordance with this Section 5.2:

**5.2.1** Contractor shall submit a Notice of Proposed Change Order (“**NPCO**”) to Owner no more than five (5) days after the occurrence of a Change Event (1) describing the occurrence; (2) indicating whether Contractor expects to request a change in the Contract Sum, the Contract Time, or both; and (3) supplying Owner with the information described in Section 5.2.2 that Contractor may have at the time the NPCO is submitted; and

**5.2.2** No more than five (5) days after submission of an NPCO, Contractor shall submit a Proposed Change Order (“**PCO**”) to Owner that shall include a written statement setting forth in detail (1) the costs attributable to the proposed Change Event, (2) any adjustment to the Substantial Completion Date, and (3) all other direct and indirect costs that Contractor claims are attributable to the proposed Change Event and recoverable under this Agreement.

**5.2.3** The Parties acknowledge that Owner will be prejudiced if Contractor fails to provide either the NPCO or PCO as required under this Section 5.2, and agree that both obligations are express conditions precedent to any right to any adjustment in the Contract Sum, Contract Time, or any other modification to any other obligation of Contractor under the Agreement.

**5.2.4** The markups for Change Orders set forth in Article 5 shall be applied only to net increases in the Contract Sum (or the Cost of the Work where applicable) (and to net decreases as set forth below) attributable to a Change as follows: Once the actual direct cost of Changes in the Work and/or alterations in the Contract Time have been determined, prior to using such actual cost to make any increase (or decrease) in the Contract Sum (or GMP), or extension in the Contract Time, such actual cost and/or extension, as the case may be, shall be reduced and offset by any and all reductions or Changes in the Work that result in reduced Costs of the Work and/or advancement of the Contract Time, as the case may be (i.e., the cost and time impact of Changes in the Work shall be netted out). The Contract Sum (or GMP) shall be increased only if the net Changes in the Work result in a net increase in the Contract Sum (or Costs of the Work), and the Contract Time shall be extended only if the Changes in the Work result in a net increase in the Contract Time. In the case of Changes in the Work that result in a net decrease in the Contract Sum (or Cost of the Work), the Contract Sum (or GMP) shall be reduced in a deductive Change Order by the sum of (i) the net decrease; plus (ii) the Change Order Fee applicable to the net decrease, i.e., to the same extent as set forth in Article 5 in the case of a net increase in the Contract Sum (or GMP).

**5.3 Disputes:** If Owner does not agree with Contractor’s PCO, in whole or in part, Owner shall notify Contractor within ten (10) days as follows:

**5.3.1** If Owner’s disagreement relates only to the proposed adjustment in the Contract Sum or the Contract Time, Owner may direct Contractor to proceed with the Work specified in the PCO as a Construction Change Directive; in such event, Contractor shall promptly proceed with the Additional Work and establish the Pending/Disputed CO Account described in Section 5.4.2;

**5.3.2** If, however, Owner claims that the work set forth in the PCO is not Additional Work and must be performed as part of the Work without adjustment of the Contract Sum or Contract Time, Contractor shall continue to perform the Work (including the Work that is subject of the disputed NPCO and PCO) without interruption and without waiving its right to assert a Dispute, subject to compliance with Section 5.4.

#### **5.4 Pending Change Work:**

**5.4.1** Pending final agreement on the cost of Additional Work or adjustment to the Contract Time as a result of a Change Event, Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. Subject to Contractor’s compliance with Section 5.4.2, Owner shall determine the amounts to be paid Contractor for such Work in good faith and the Contract Sum shall be increased based on Owner’s determination, without prejudice to Contractor’s right to assert a Dispute; provided, however, under no circumstances is Owner required to make payment under the circumstances set forth in Section 5.3.2 until the issue is resolved by the Parties or as part of the dispute resolution process.

**5.4.2** When (1) Owner has issued a Construction Change Directive, but agreement on the adjustment to the Contract Sum or Contract Time has not been finalized; or (2) Contractor is performing Work while, at the same time, asserting entitlement to a change in the Contract Sum and/or Contract Time that Owner has rejected (“**Pending/Disputed Change Work**”), Contractor shall establish a separate “not-to-exceed” account in the Schedule of Values (the “**Pending/Disputed CO Account**”) reflecting the aggregate total of reimbursable costs that Contractor expects to incur in performing the Pending/Disputed Change Work. Contractor shall not be entitled to pursue a Dispute for Pending/Disputed Change Work unless a Pending/Disputed CO Account is established, Contractor’s Applications for Payment reflect the costs incurred each month for each item of Pending/Disputed Change Work separate from the Work that is not pending or disputed, and supplies OPR with cost records for the Pending/Disputed Change Work on a weekly basis.

**5.5 Final Settlement:** Except based on Owner's written authorization under Section 5.4.1, the Contract Sum and Contract Time shall only be changed by a fully executed Change Order. Accordingly, no course of conduct or dealings between the Parties, nor express or implied acceptance of changes or extra work or Additional Work, and no claim that Owner has been unjustly enriched, whether or not there is, in fact, any unjust enrichment, shall be the basis of any claim or Dispute. A fully executed Change Order shall constitute a final settlement of all matters relating to the change and/or Additional Work that is the subject of the Change Order, including the cumulative impact of the change or Additional Work, all direct and indirect costs (including cumulative costs) associated with such change or Additional Work, and any and all adjustments to the Contract Sum, Contract Time, and Schedule. By executing any Change Order, Contractor further expressly and irrevocably waives, renounces, and releases (and shall cause any affected Subcontractor to similarly waive, renounce, and release) any and all other claims of any kind or nature concerning, arising from, or relating to the change or delay that is the subject of the Change Order.

## **6. THE OWNER:**

**6.1 Owner's Agent:** Owner's Agent is identified in Article 2.1.2. Owner's Agent is authorized to act on behalf of Owner in all matters in connection with this Agreement. Notwithstanding the foregoing, Contractor acknowledges that with respect to this Agreement Owner's Agent is acting in a representative capacity and as the disclosed authorized agent of Owner as identified in the Agreement; accordingly, Owner's Agent shall have no personal obligation or liability to Contractor under this Agreement by virtue of its status as Owner's Agent or by acting on Owner's behalf in connection with the Project or the Work, including enforcement of Contractor's obligations hereunder.

**6.2 OPR:** Owner's Agent will designate a representative in connection with the Project, called the OPR. The initial OPR is identified in Article 2.1.3. The OPR cannot be changed except in a writing signed by Owner's Agent. The OPR will serve as Contractor's single point of contact for the Work. Throughout the Project, Contractor shall work with, take direction and instruction from, and provide copies of all Work to OPR. Unless the OPR is a third party as set forth in Article 2.1.3, OPR is the only person authorized in writing to (1) modify this Agreement; and (2) increase, or cause an increase in, the Contract Sum or the Contract Time, (3) declare a default, or (4) suspend or terminate the Work in whole or in part (collectively "**Major Decisions**"). If OPR is a third-party, Major Decisions must be authorized in advance by Owner's Agent in writing and it shall be deemed unreasonable for Contractor to rely on any promise, authorization, course of conduct, or directive by the OPR in derogation of this Section, and no such promise, authorization, directive, or course of conduct shall be effective or enforceable against Owner.

**6.3 Owner:** Owner is identified in Article 2.1.1. Subject to Sections 6.1 and 6.2, references to "Owner" in this Agreement also refer to Owner's Agent and OPR.

**6.4 Rights and Responsibilities:** Owner shall furnish information reasonably requested of it as necessary for the orderly progress of the Work. Contractor shall be entitled to rely on the accuracy and completeness of any information provided by Owner pertaining to the Project except to the extent that Contractor knows or should know in the exercise of its professional responsibility that such information contains an error, omission, or inconsistency. In no event shall Owner have control over, charge of, or any responsibility for design or construction means, methods, techniques, sequences, or procedures; for safety precautions or programs in connection with the Work; or for coordinating or supervising any portion of the Work under this Agreement, notwithstanding any of the rights or authority granted to Owner in this Agreement. Contractor's duties shall not be diminished or otherwise affected at any time or in any way by reason of any approval, inspection, payment, or acceptance by Owner, nor shall Contractor be released from any liability by reason of such acceptance, inspection, payment, or approval by Owner. It is the express intention of the Parties that Contractor, in the performance of the Work, is an independent contractor and not an employee, agent, joint venturer, or partner of Owner. Nothing in this Agreement shall be interpreted as creating the relationship of employer and employee between Owner and Contractor; or between Owner and any employee, agent, or Subcontractor of Contractor. Contractor does not have any authority to execute any contracts or agreements for or on behalf of Owner, Owner's Agent or OPR; and is not granted any right or authority to assume or create any obligation or liability or make any representation, covenant, agreement, or warranty, express or implied, on behalf of Owner, Owner's Agent or OPR or to bind Owner, Owner's Agent or OPR in any manner whatsoever. Contractor acknowledges that Owner may be affiliated with other entities that have an interest in the Property or the Project and that the Agreement is intended to benefit Owner and such other entities. Owner reserves the right to perform construction or operations related to the Project with Owner's own forces, and to award separate contracts in connection with other portions of the Project.

**6.5 Separate Contractors:** Owner reserves the right to perform design, construction, or operations related to the Project with Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the Property. Owner's separate contractors shall be properly licensed and permitted as required by Applicable Law.

Contractor shall co-ordinate and schedule the Work with the activity and work of Owner's Consultants and Separate Contractors (if any), and the Owner's own personnel at the Site. If any part of the Work depends upon the proper performance of a separate contractor's work, Contractor shall, prior to proceeding with the Work, promptly report to Owner any apparent discrepancies or defects in such other work that render it unsuitable or prevent Contractor from proceeding expeditiously with the Work. By failing to report, Contractor acknowledges that Owner's or the separate contractor's completed or partially completed work is fit and proper to receive Contractor's Work, except as to defects not then reasonably discoverable.

**6.6 Title to Work:** Title to all MS&E and related construction will pass to and vest in Owner either by incorporation in the Work or upon the receipt of payment by Contractor therefor, whichever occurs first; provided, however, the risk of loss to MS&E shall not pass to Owner until after Final Completion. Nothing contained herein shall be construed as a limitation on the furnishing of lien waivers as may be required by Owner.

**6.7 Site Reports:** If applicable to the Work, Owner shall furnish to Contractor any and all written and tangible material knowingly in its possession concerning physical conditions at the Site or below ground, including surveys, studies, or reports describing the Site's physical characteristics and geotechnical and environmental reports (collectively "**Site Reports**") and such Site Reports shall be identified in Exhibit B-4. Site Reports are furnished to Contractor only in order to make complete disclosure of such material and for no other purpose. By furnishing Site Reports, Owner does not represent, warrant, or guarantee their accuracy or completeness, either in whole or in part, and shall have no liability therefor. Contractor will notify Owner of any inconsistencies between the Site Reports and Drawings or Specifications. Contractor shall use the Site Reports in determining the appropriate construction means and methods for completing the Work, including excavation, underground plumbing, and foundations (if any), and in preparing Submittals, if any. Subject to the List of Clarifications, the Contract Sum is assumed to include the cost and time (and contingency) associated with conditions identified in the Site Reports.

## **7. THE CONTRACTOR:**

**7.1 Responsibilities:** Contractor shall be solely responsible for and have control over:

**7.1.1** All health and safety precautions and programs in connection with the Work;

**7.1.2** Coordination of all portions of its Work, and coordination of all portions of its Work with the work of other contractors, designers and consultants involved in the Project;

**7.1.3** Protecting the Work against the elements at the end of each working day; and

**7.1.4** Ensuring that no occupied portion of the Work is left without essential services, heat, light, and water at the end of each working day as the result of Work.

**7.2 Familiarity with Site and Contract Documents:** By executing this Agreement, Contractor represents and warrants that Contractor:

**7.2.1** Has visited (or had the opportunity to visit) the Project site;

**7.2.2** Has evaluated, familiarized itself, and satisfied itself as to the conditions and limitations under which the Work is to be performed, including, without limitation, (1) the local conditions under which the Work is to be performed; (2) the location, condition, layout, and nature of the Project site and surrounding areas; (3) generally prevailing climatic conditions; (4) anticipated labor supply and costs; (5) availability and cost of materials, tools, and equipment; and (6) other similar issues;

**7.2.3** Has performed (or had the opportunity to perform) such other inspections and reviews as are reasonably necessary to determine the conditions under which the Work will be performed;

**7.2.4** Has carefully analyzed, and correlated the observations and information described in subsections 7.2.1 to 7.2.3 with the requirements of the Contract Documents;

**7.2.5** The inspections, analyses, and reviews under Sections 7.2.1 to 7.2.4 have sufficiently described the scope, construction requirements, and design intent of the Work in detail sufficient to enable Contractor to firmly establish the Contract Price and the Contract Time as qualified by any List of Qualifications included among the Contract Documents. Except for Changes in the Work or concealed or unforeseen conditions encountered during the progress of the Work, Contractor shall not be entitled to an adjustment in the Contract Price or the Contract Time in connection with any failure by Contractor to have undertaken the inspections and analyses described in this Section 7.2 or for any inaccuracy in Contractor's representations

**7.3 Requests for Information:** Contractor acknowledges that the Contract Documents may not include all drawings, details, or specifications (collectively "**Details**") required or necessary to complete all elements of the Work. Contractor shall be responsible for obtaining such Details necessary to carry out the intent of the Drawings and Specifications, or which are customarily performed. Where the Drawings show any detail and fully describe components, similar details not fully described shall incorporate the fully described details and components. Where only part of the Work is indicated, similar parts shall be considered repetitive. When more detailed information is required for performance of the Work or when an interpretation of the

Contract Documents is necessary, Contractor shall submit a written request for clarification to Owner and Owner's Consultant(s), and Owner or Owner's Consultant(s) shall furnish such information or interpretation in the form of a Supplemental Instruction or other written or drawn form. Contractor shall give Owner and Owner's Consultant(s) timely notice of any additional design drawings, specifications, or instructions required to define the Work in greater detail or to permit the proper progress of the Work. Contractor shall not proceed with any Work not clearly and consistently defined in detail in the Contract Documents but shall request additional drawings or instructions from Owner or Owner's Consultant(s). If Contractor proceeds with such Work without obtaining further drawings or instruction, Contractor shall correct Work incorrectly done at its own expense.

#### **7.4 Subcontractors:**

**7.4.1** All Work provided by Contractor shall be supervised by a principal, partner, or approved corporate officer of Contractor. All contracts between Contractor and Subcontractors shall be in writing and explicitly state that (1) Owner is an intended third-party beneficiary thereof, (2) Contractor may not assign the contract without Owner's consent, and (3) Owner may, by its own action, cause the contract to be assigned to itself or any third party that Owner so designates. Contractor shall include all applicable requirements of this Agreement in agreements with its Subcontractors to ensure completeness and timely progress in meeting all scheduled dates. Owner reserves the right to reasonably object to any Subcontractor retained by Contractor prior to or after its engagement. Contractor shall be responsible to Owner for the acts and omissions of Contractor's employees, Subcontractors and their agents and employees, other persons performing portions of the Work under a contract with Contractor, express or implied, and others for whom any of them may be liable relating to the Work or the Project ("**Contractor Group**"). "**Subcontractors**" (whether or not capitalized) as used throughout this Agreement means subcontractors of any tier and all others performing Work by, through, or under Contractor, whether directly or indirectly, and all employees, agents, successors, and assigns thereof.

**7.4.2** Contractor shall only employ or hire Subcontractors in connection with the Work capable of working harmoniously with all trades, crafts, or other individuals associated with the Project, and with Owner's own forces and separate contractors. Contractor shall use its best efforts to minimize the likelihood of any strike, work stoppage, or other labor disturbance. Contractor shall make all necessary arrangements to reconcile, without delay, damage, or cost to the Owner, and without recourse to the Owner, any conflict between the Contract Documents and any agreements or regulations of any kind at any time in force among members or councils that regulate or distinguish the activities that shall not be included in the work of any particular trade. In case the progress of the Work is affected by any undue delay in furnishing or installing any items or materials or equipment required under the Contract Documents because of such conflict involving any such labor agreement or regulation, the Owner may require that other material or equipment of equal kind and quality be provided pursuant to a Change Order or CCD.

#### **7.5 Submittals:**

**7.5.1** Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect (or Engineer) shop drawings, product data, and samples, and similar submittals ("**Submittals**") required by the Contract Documents in accordance with the Submittal schedule approved by Owner's Consultant(s) or, in the absence of an approved Submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of Owner or of separate contractors. Contractor agrees to use its independent professional judgment in its review to determine Submittals' compliance with the Contract Documents. Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Submittals until Owner's Consultant(s) has approved the respective Submittal.

**7.5.2** By submitting Submittals, Contractor represents to Owner's Consultant(s) and Owner that Contractor has (1) reviewed and approved them; (2) determined and verified materials, field measurements, and field construction criteria related thereto, or will do so; and (3) checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Contract Documents. Contractor shall be solely responsible for any quantities and dimensions that may be shown on the Submittals.

**7.5.3** The Work shall be performed in accordance with approved Submittals, except that Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by approval of Submittals by Architect (or Engineer or Owner) unless Contractor has specifically informed Owner's Consultant(s) (and Owner) in writing of such deviation at the time of submittal and (1) Owner's Consultant(s) (and Owner) has given written approval to the specific deviation as a Minor Change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. Contractor shall not be relieved of responsibility for errors or omissions in Submittals by Owner's Consultant's(s') approval thereof.

**7.5.4** Contractor shall direct specific attention, in writing or on resubmitted Submittals, to revisions other than those requested by Owner's Consultant(s) on previous Submittals. In the absence of such written notice, Owner's Consultant's(s') approval of a resubmission shall not apply to such revisions.

**7.5.5** Owner shall also, in its discretion, have the right to review Submittals, and if Owner so elects, Contractor shall not perform any portion of the Work as to which Owner has required Submittal review until after Owner reviews such Submittal. Review by Owner, however, shall not be evidence that Work installed pursuant to Owner's approval conforms to the

requirements of the Contract Documents nor shall such approvals relieve Contractor of any of its responsibilities or warranties under the Contract Documents. If Owner elects to review Submittals, Contractor shall have the duty to carefully review, inspect, and examine any and all Submittals before submission of same to Owner. Submittals are not Contract Documents.

## **7.6 Receipt and Handling of MS&E:**

**7.6.1 Inspection of MS&E:** Contractor shall receive, inspect, insure, transport, unload, and store all MS&E within the scope of the Work. Contractor shall determine and strictly comply with the requirements of all freight carriers and/or shippers delivering MS&E, including with respect to time periods, methods, and manners for inspecting, documenting, and reporting damage to MS&E. Upon delivery, Contractor shall timely inspect all MS&E to identify any damage or other nonconformity and notify Owner of the same. In case of any nonconforming MS&E, Contractor shall, unless Owner otherwise directs, (1) reject the nonconforming MS&E within any required time period, (2) note on the bill of lading that the MS&E is nonconforming, (3) take photographs that identify the MS&E and evidence the nonconformity, and (4) complete and deliver to Owner with five (5) days a damage and loss report. Contractor acknowledges that Contractor's (and Owner's) rights with respect to MS&E could be impaired if Contractor fails to timely take such actions.

**7.6.2 Off-site Stored Materials:** In connection with M&E stored by Contractor at an off-site warehouse ("**Stored Materials**"), and as a condition precedent of payment, Contractor shall, or shall cause its warehouse operator to:

**7.6.2.1** Segregate the Stored Materials at the storage facility and specifically mark them for use on the Project;

**7.6.2.2** Protect the Stored Materials against excessive cold, heat, moisture, humidity, or physical abuse as specified by the applicable supplier or manufacturer;

**7.6.2.3** Evidence Owner's title to Stored Materials with documentation satisfactory in form and substance to Owner, including, without limitation, recorded financing statements and UCC filings;

**7.6.2.4** Insure the Stored Materials against damage or loss in an amount not less than the total value thereof;

**7.6.2.5** Allow Owner to make inspections of the storage areas at any reasonable time; and

**7.6.2.6** As a condition precedent to payment for Stored Materials, Contractor shall supply a Stored Materials Affidavit in substantially the same form as Exhibit I-1. If the storage facility used by Contractor to store the Stored Materials is leased by Contractor or by Contractor's warehouse supplier, Contractor represents and guarantees that, for so long as M&E is stored in such warehouse, the rent payable to the warehouse's landlord (the "*Landlord*") shall remain current. Contractor shall obtain, and supply Owner with, a Landlord's waiver in favor of Owner prior to delivery of, or payment for, any Stored Materials in substantially the same form as is attached hereto as Exhibit I-2. Contractor shall notify Owner if it is unable to obtain the Landlord's waiver; in such event, Owner, in its sole discretion, may accept the following in lieu of the Landlord's Affidavit: Each month, Contractor will provide Owner with a receipt (or other written acknowledgement) from Landlord confirming its receipt of rent from Contractor (or Contractor's warehouse supplier) no more than five (5) days after such rent is due. In the event the confirmation of rental payment required is not supplied, Owner may, in its discretion, require Contractor to relocate and store the M&E at another location.

**7.7 Hot Works Program:** To protect against any loss resulting from Work that would include an open flame or producing heat and/or sparks, including when welding, cutting, brazing, grinding, soldering, or using a torch to thaw piping or heat material, Contractor shall be solely responsible for maintaining and implementing at the Site a hot works program at no additional cost or charge to Owner, which shall, at the very least, require precautionary and safeguard checklists and proper instruction on the implementation to monitor and safeguard the area where Work is being performed.

**7.8 Decorum:** Contractor shall enforce strict discipline and good order among members of the Contractor Group. Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. Contractor shall control, among other things: noise, including music; the use of offensive language; smoking, vaping, and drinking of alcoholic beverages within the Site; physical violence; riding in the passenger elevators; thievery; and the transportation of hazardous articles or materials. If Owner determines, in its sole discretion, that any personnel needs to be removed due to his failure to comply with the terms of this provision, Contractor shall remove such personnel from the Property immediately.

**7.9 Clean Site; Cutting and Patching.** Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Agreement. At the end of each day and at completion of the Work, Contractor shall remove from and about the Project waste materials, rubbish, Contractor's tools, construction equipment, machinery, and surplus materials. At the completion of the Work, Contractor shall repair any damage to, and restore to its original condition, any landscaping, hardscape, or other property damaged by Contractor's operations or debris. If Contractor fails to clean up as provided in the Agreement, Owner may do so and the cost thereof shall be charged to Contractor. Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.



**7.10 Protection of the Work:** At all times, Contractor shall protect excavations, trenches, building, and materials from rainwater, ground water, back-up or leakage of sewers, drains, or other piping, and from water of any other origin. Contractor shall promptly remove any accumulation of water and provide and operate all pumps, piping, and other equipment necessary to this end. During cold weather, Contractor shall protect all Work from damage. If low temperatures make it impossible to continue operations safely in spite of cold weather precautions, Contractor shall cease Work and notify Owner in writing. Contractor shall remove snow or ice that might result in damage or delay. Contractor shall take all reasonable precautions necessary to prevent loss or damage caused by vandalism, theft, burglary, pilferage, or unexplained disappearance of property of Owner, whether forming part of the Work or not, located within those areas of the Project to which Contractor has access.

**7.11 Liens:** Contractor shall save and keep Owner's property free from all mechanic's, materialman's, laborer's, service provider's, and all other liens whatsoever arising out of Contractor's Work. In the event a lien is asserted or filed by anyone in relation to the labor and/or material being furnished by Contractor, Contractor agrees to have the same discharged, unless Owner is in breach of its payment obligations under the Contract Documents, by posting a bond with the appropriate authorities or otherwise within fifteen (15) days of receipt of notice from Owner. If such liens are not so discharged, Owner shall have the right to bond-off said lien(s) and withhold or recover from Contractor all Losses and Liabilities incurred as a result thereof, including bond premiums and attorneys' fees. Owner's remedies under this Section 7.11 are in addition to, and not a limitation of, any rights Owner may have under the Contract Documents or other rights Owner may have under Applicable Law.

**7.12 Books and Records.**

**7.12.1** Contractor acknowledges Owner's expectation to be informed as the Project progresses of the actual costs incurred by Contractor for the various components of the Work in relation to the corresponding amount included in the Schedule of Values, including to monitor the ongoing progress and quality of the Work.

**7.12.2** Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles consistently applied. Owner shall have the right during the performance of the Work and for a period of three (3) years after final payment, from time to time, upon reasonable notice, to be given access to, and to copy, Contractor's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda, and other data relating to the Work.

**7.12.3** Contractor further agrees that a material variance between Contractor's actual construction costs and the corresponding scheduled value should be reviewed with Owner to confirm that the progress and quality of the Work is not, or will not be, adversely affected by the variance. For purposes of the Agreement, a material variance shall mean a variance between the actual cost and the scheduled value exceeding (1) ten percent (10%) from the original value; or (2) five percent (5%) of any scheduled value that had been revised with Owner's consent. Accordingly, contemporaneously with submission of its monthly Invoice, Contractor shall provide Owner with a variance report comparing the actual construction costs incurred by Contractor against the corresponding value set forth in the approved Schedule of Values. Change Orders shall be accounted for independently of this report; however, the monthly report will include a similar variance report for Change Orders once their values are established. Contractor shall respond with reasonable promptness to questions from Owner regarding any reported variances.

**7.13 Violations:** Contractor shall immediately notify Owner if Contractor receives notice of violation of any Laws and Rules in the performance of the Work, cause such violations to be immediately corrected, and bear all costs attributable to such correction.

**7.14 Hazardous Materials.** Contractor shall not direct, suffer, or permit any of the Contractor Group at any time to handle, use, manufacture, store, or dispose of any flammables, explosives, radioactive materials, hazardous wastes or materials, toxic wastes or materials, petroleum products or derivatives, other similar substances, or any substance subject to regulation (collectively, "**Hazardous Materials**") in, on, or about the Property; provided, however, subject to Owner's prior written consent and Laws and Rules, Contractor may handle, store, use, and dispose of Hazardous Materials (except asbestos) to the extent customary and necessary for the performance of the Work hereunder. If Owner consents to Contractor's handling, storage, or use of any Hazardous Materials at, in, or about the Site, such use shall comply with Laws and Rules and any manufacturer instructions. In no event shall Contractor discharge or release any Hazardous Materials in any public sewer or any drain and/or drainpipe leading or connected to a sewer or drain, or allow such Hazardous Materials to contaminate the environment. Contractor shall be solely responsible for providing adequate protection for persons and property during the Work involving any Hazardous Materials, and for giving all notices required in connection therewith. Contractor shall hold Indemnitees harmless from any discharge or release of Hazardous Materials from the Site, or in connection with the construction or operation thereof, including any costs of all necessary cleanup activities.

**7.15 As-built Drawings:** Contractor shall maintain at the Property one complete set of Drawings of the Work that are marked "as-built." During the progress of the Work, Contractor shall mark these Drawings with colored pencils to reflect any changes, including changes in dimension, the location of all runs, conduits, traps, footing depths, or any other information not already shown on the Drawings or differing therefrom. All buried utilities inside the boundaries of the Property shall be located by a metes and bounds survey performed by a licensed surveyor, who shall certify as to its accuracy. These drawings shall be in sufficient detail to show the full extent of the Work that was performed by Contractor and to facilitate the operation and maintenance of the buildings and facilities. These marked-up drawings and surveys shall be made available to Owner at any time during the progress of the Work upon request. A complete set of all as-built drawings shall be a condition precedent to Final Payment

## **8. WARRANTY/CORRECTION OF WORK:**

**8.1 Contractor.** In addition to any other warranties set forth in this Agreement or under Laws and Rules, Contractor warrants to Owner as follows: (1) any MS&E specified or recommended by Contractor (as a part of the Design-Build Item or otherwise) is suitable, appropriate, and fit for the particular purposes of the Owner, Site, and Property; and shall fit and function properly, operationally and mechanically, on the Property utilizing the existing facilities, except as such existing facilities may be modified and/or upgraded as part of the Work recommended by Contractor; (2) the Work will be free from defects in materials and workmanship, and will be merchantable and new unless otherwise required or permitted by this Agreement; and (3) the Work will conform to Laws and Rules. Work not conforming to these requirements and warranties, including substitutions not properly approved and authorized, shall be considered "**Defective Work.**" Unless otherwise specified in this Agreement, Contractor shall obtain warranties from MS&E manufacturers and suppliers on commercial terms and conditions at least as favorable as those generally supplied in the industry with respect to such MS&E for projects equivalent to the Project. MS&E warranties shall be enforceable directly by Owner against such manufacturers and suppliers. Any MS&E warranties that do not name Owner as an express beneficiary shall be assignable to Owner and shall be assigned by Contractor to Owner as a condition precedent to final payment except if such assignment would void or otherwise limit the terms or conditions of any such warranty; in such event, Contractor shall retain the right to enforce directly any such manufacturer's warranties during the applicable warranty period and shall enforce such warranty at Owner's request in the event Owner reasonably determines a warranty is breached.

**8.1.1 Subcontractors:** All warranty and repair obligations owed by any Subcontractor to Contractor shall also be deemed to be owed to Owner. All warranties issued to Contractor by any Subcontractor shall be assigned to Owner upon Substantial Completion. Such an assignment of warranties to Owner shall be deemed to automatically occur and shall not require further action on behalf of Owner, Contractor, Subcontractor or supplier. Contractor and Owner shall both have the right to enforce any warranty required by the Contract Documents. As a condition precedent to Final Payment, Contractor also shall require each Subcontractor to execute and deliver to Owner a warranty in connection with the Work performed by such subcontractor, in substantially the same form as attached as an Exhibit L.

**8.2 Correction Period.** For one (1) year following Final Completion (the "**Correction Period**"), Contractor shall perform and supply any and all architectural services, engineering, design, work, services, material, and equipment as are required to correct or remedy Defective Work and any real or personal property damaged by such Defective Work, whether observed before or after Final Completion, without any additional cost or expense to Owner. If, within five (5) days of receiving written notice from Owner, Contractor fails to commence and continue correction of Defective Work and property with diligence and promptness and reasonable opportunity to cure, Owner may, without prejudice to other remedies Owner may have, correct such deficiencies and may deduct the cost thereof (including compensation for architectural, engineering, inspecting, or other services and expenses made necessary thereby) from the payment then or thereafter due Contractor; to the extent the cost to correct such deficiencies exceeds any retained amount, Contractor must pay Owner such excess amount. To the greatest extent permitted by Applicable Law, any period of limitations applicable to any claim by Owner shall not accrue until the subject defect or failure to conform to a requirement of this Agreement has been actually discovered by Owner. The one (1) year correction period applies only to Contractor's specific obligation to correct Defective Work. The one year period does not constitute a period of limitations for any rights or remedies Owner may have under the Contract Documents, at law, or in equity, and has no relationship to the time within which Owner may seek to enforce Contractor's obligation to comply with the Contract Documents or commence proceedings to establish Contractor's liability with respect to Contractor's obligation.

**9. OWNERSHIP OF DOCUMENTS:** Any documents, models, renderings, and other materials to be furnished to Owner or anyone in connection with this Agreement or Project by or on behalf of Contractor, or by any Subcontractors or others retained by Contractor; all modifications made by any member of the Contractor Group to any documents supplied by Owner to Contractor; all written information, reports, studies, object or sources codes, flow charts, diagrams, and other tangible material that has been created by a member of the Contractor Group in order to provide Work pursuant to this Agreement; and all digital

forms thereof (collectively, the “**Work Product**”) shall be considered “work made for hire” commissioned by Owner, and any and all legal rights to such Work Product, including all copyrights, shall be deemed permanently vested in Owner, regardless of whether or not the Project for which it is prepared is executed. Contractor hereby unconditionally and irrevocably transfers to Owner any and all rights, title and interest Contractor may be deemed to have in and to such Work Product including all intellectual property rights, and represents and warranty to Owner that it has secured the rights to make such transfer from the authors of the Work Product. The rights and ownership granted to Owner under this Section 9 shall not be affected by any suspension, termination, breach of contract by Owner, or dispute between Owner and Contractor except to the extent Owner fails to pay Owner any undisputed amount for Work Product in which event Owner’s rights to the applicable Work Product shall be suspended until payment of such undisputed amount is made. Submission or distribution of Work Product to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the any rights of Contractor, Subcontractors, or Owner.

#### **10. TERMINATION/SUSPENSION:**

**10.1 Suspension and Termination by Contractor for Cause:** If, through no act or fault of Contractor or any member of the Contractor Group, after five (5) days’ written notice from Contractor, Owner fails to pay to Contractor any amount not disputed in good faith, Contractor may, upon five (5) additional days’ written notice to Owner, suspend the Work until Owner remedies such failure to make payment. If the Work is so suspended and Owner fails to remedy the non-payment within thirty (30) days, then Contractor may terminate this Agreement and recover from Owner payment for all Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable cancellation charges of Subcontractors (less any amounts Owner may withhold under any other provision of this Agreement). The foregoing shall constitute Contractor’s sole remedy for Owner’s failure to pay to Contractor any amount not disputed in good faith. In the case of a partial suspension of the Work, Contractor shall continue to perform such portion of the Work as is not suspended. Contractor shall not under any circumstances suspend performance of the Work except as set forth in this Section 10.1.

**10.2 Suspension and Termination by Owner for Cause:** If, within five (5) days after receipt of written notice from Owner, Contractor fails to cure, or to commence and continue to cure with diligence and promptness, any default or failure to carry out the Work in accordance with the Agreement, Owner may, without prejudice to other remedies Owner may have, (1) issue an order for Contractor to stop all or any portion of the Work; (2) use its own forces to remediate any deficiencies caused by Contractor and deduct all costs and expenses so incurred from any compensation then or thereafter due to Contractor; and/or (3) terminate this Agreement, take possession of the Site and of all materials, equipment, records, tools, and construction equipment and machinery thereon, and may finish the Work by whatever method Owner may deem expedient, and may accept assignment of subcontracts. The five (5)-day notice requirement shall not apply where the default jeopardizes the life, health, or safety of any person; where the default poses a risk of substantial harm to property; or where the default poses a significant risk of loss of revenue. If Owner terminates this Agreement in accordance with the foregoing, then Contractor shall not be entitled to receive further payment from Owner until Final Completion. Owner may deduct all costs and expenses incurred by Owner in finishing the Work and/or remedying the default, including obtaining labor and/or materials and a new contractor to complete the Work. After all such deductions are made, if there is a remaining balance on the Contract Sum, but not in excess of the Guaranteed Maximum Price, if applicable, Owner shall pay Contractor amounts due and owing for Work it performed. Contractor shall be liable to Owner and shall indemnify Owner for Owner’s costs and expenses in excess of the remaining balance of the Contract Sum.

**10.3 Termination by Owner for Convenience:** In addition, Owner may, at any time, terminate all or any part of the Work without cause by giving written notice to Contractor specifying the Work to be terminated. Contractor shall stop all specified Work and incur no further obligations in connection therewith and, unless Owner specifies otherwise, terminate all outstanding orders and subcontracts. Owner will incur no liability to Contractor for a termination without cause except for payment for Work actually and properly executed in strict accordance with the Agreement prior to the effective date of such termination and for payment for costs incurred by Contractor in terminating affected subcontracts, provided said costs are authorized in writing by Owner (less any amounts Owner may withhold under any other provision of this Agreement). Notwithstanding anything herein to the contrary, Contractor shall not be entitled to recover special, indirect, or consequential damages of any form or type, including lost revenue, lost profits, or Overhead in the event of any suspension or termination by Owner.

**10.4 Assignment of Subcontracts:** In the event of termination, suspension, or abandonment of this Agreement or the Work, in whole or in part, upon Owner’s request, Contractor shall promptly assign all specified subcontracts to Owner, which assignment shall be a condition precedent to Owner’s obligation to make payments otherwise due, if any, to Contractor. Upon such assignment, Owner may further assign the subcontracts to a successor contractor or other entity.

## **11. INDEMNIFICATION AND CONSEQUENTIAL DAMAGES:**

**11.1** To the fullest extent permitted by Applicable Law, Contractor agrees to indemnify, defend and hold harmless Owner, Owner's Agent, the OPR, Owner's lender and mortgagee, if any, the Property's third-party Property Manager, if any, the Owner's Tenant, if applicable, the parent and subsidiary companies of each of them, and each of their respective members, partners, officers, directors, employees, successors, and assigns of each of them, now existing or which may hereafter exist (collectively, the "Indemnitees") for, from, and against all claims, suits, actions, demands, legal proceedings, awards, damages, liabilities, losses, fines, penalties, judgments, costs, and expenses (including attorney's fees and costs and expenses of litigation and of investigation, regardless of whether suit is filed) ("**Losses and Liabilities**") to the extent caused by or resulting from the negligent acts, errors, omissions of, willful misconduct of, or breach of the Contract Documents by any member of the Contractor Group, even if an Indemnitee's negligence or fault is, or is alleged to be, a contributing cause of such Losses and Liabilities; for avoidance of doubt, under no circumstances is Contractor liable to indemnify an Indemnitee to the extent the Indemnitee caused or contributed to the Loss or Liability. Contractor's defense and indemnification obligations shall not be limited by the amount or type of damages, compensation, or benefits payable by or for Contractor under any policy of insurance, workers' compensation acts, disability benefit acts, or other employee benefit acts. In claims against any person or entity indemnified under this Section 11.1 by an employee of the Contractor Group, the indemnification obligation shall not be limited by a limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor Group member under workers' compensation acts, disability benefit acts, or other employee benefit acts. Without intending to limit the scope of Losses and Liabilities in any way, and to the extent permitted by Applicable Law, Contractor expressly waives its immunity under the applicable worker's compensation statute in connection with any Indemnitee's claim for defense and/or indemnification under this Section. The agreements in this Section shall survive Final Completion.

### **11.2 Waiver of Consequential Damages:**

**11.2.1** Except as set forth in Sections 11.2.2 and 11.3, Contractor and Owner waive claims against each other for incidental, consequential, or punitive damages arising out of or relating to this Agreement and to all consequential damages due to any party's termination in accordance with Section 10. This mutual waiver includes:

**11.2.1.1** Damages incurred by Owner for losses of income, profit, business, and reputation; and

**11.2.1.2** Damages incurred by Contractor for principal office expenses, including the compensation of personnel stationed there, for losses of financing, business, and reputation, for home office overhead, for extended overhead, and for loss of profit, except for profit on properly completed Work.

**11.2.2** The foregoing waiver of consequential damages shall not (1) preclude an award of Liquidated Damages in accordance with the requirements of the Contract Documents; or (2) limit, or be construed to limit, or affect in any way amounts or proceeds payable to, or recoverable by, Indemnitees, including as Additional Insureds, under the insurance policies that Contractor or any member of Contractor Group is required to carry and maintain under the Contract Documents, regardless of the nature of the claim or type of damage (including consequential damages). Further, this Section 11.2 is not intended by the Parties to in any way benefit any insurer or to afford any insurer any basis to deny coverage to any insured or additional insured under any policy that Contractor and Subcontractors are required to carry and maintain under Exhibit F-1.

**11.2.3** Contractor shall require each of its Subcontractors to waive claims against Owner for incidental, consequential, or punitive damages to the same extent as set forth herein arising out of or relating to their work on the Project.

**11.3 Exceptions to Waiver of Consequential Damages:** The waiver of consequential damages in Section 11.2 does not include or apply to:

**11.3.1** Intentionally tortious acts, fraud, or willful or wanton misconduct;

**11.3.2** Either Party's right to obtain specific performance and other injunctive relief that may be available; and

**11.3.3** Contractor's obligation to defend, indemnify, and hold Indemnitees harmless against a third party's claim under Section 11.1.

**11.4 Survival:** The agreements in this Section 11 shall survive the expiration or earlier termination of this Agreement or the Work.

## **12. INSURANCE**

**12.1 Requirements:** Contractor shall procure, pay for, and maintain, and shall verify that Subcontractors procure, pay for, and maintain, the insurance coverages described in Sections 1 and 2 of Exhibit F-1.

**12.2 Representations:** Contractor represents and warrants that Exhibit F-2 includes (1) a true and correct copy of an original Certificate of Insurance (ACORD Form 25 (2014/01) or equivalent) signed by insurance brokers or agents licensed in the Project state; and (2) true and correct copies of (i) original Additional Insured endorsements for ongoing and completed operations, (ii) a

Primary/Non-contributory endorsement and Per Project Aggregate endorsement endorsing the General Liability policy referenced in the Certificate of Insurance, and (iii) Waiver of Subrogation endorsements endorsing the General Liability, Automobile, and Worker's Compensation policies referenced in the Certificate of Insurance. Certificates of insurance and copies of the additional insured and waiver of subrogation endorsements signed by the applicable insurers shall be re-supplied to Owner upon renewal or replacement of each required policy of insurance.

**12.3 Builder's Risk:** Unless Owner directs otherwise, Owner shall procure, pay for, and maintain the Builder's Risk insurance described in Section 3 of Exhibit F-1.

### **13. MISCELLANEOUS PROVISIONS:**

**13.1 The Contract Documents:** The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. To the extent of any direct conflict or inconsistency between any of the provisions of the Contract Documents, the parties shall give precedence to the more stringent provision, i.e., the one requiring the better quality or greater quantity of Work. The Agreement will take precedence over any other Contract Document. Exhibit A-1 shall take precedence over any other exhibit except, however, Exhibit A-2 will take precedence over Exhibit A-1 where the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price. If the Contract Documents include as an exhibit all or any portion of Contractor's Bid or Proposal, the Parties agree that (1) the purpose of incorporating Contractor's Proposal is to describe the scope of the Project, including to identify any clarifications, qualifications, and/or exclusions applicable to the Work; and (2) any terms in the Contractor's Proposal that either affect the Parties' respective rights, remedies, and liabilities arising out Contractor's performance of the Work or that are inconsistent with the Agreement, Exhibit A-1 or Exhibit A-2 are not incorporated into and are excluded from the Contract Documents. For example, and without limitation, if Contractor's Proposal includes or references Contractor's "general terms and conditions," "standard contract," or other similar terms, that portion of the Contractor's Proposal is expressly excluded.

**13.2 Notices:** All notices required to be given under this Agreement shall be in writing. Except for notices of default, Dispute, or termination (collectively "**Major Notices**"), written notices required under the Agreement may be transmitted by email to the each Party's Project Representative (or to such person's replacement identified in a subsequent written notice of a change of that representative) but shall be effective only if received. Any notice may be sent, and Major Notices shall be sent: (1) by hand (with signed receipt); or (2) by a nationally recognized overnight delivery service (such as Federal Express or DHL), in either case addressed to the other Party's Project Representative, or to such other address as either party shall designate by notice to the other party, given as set forth herein. Delivery shall occur: (3) if by hand, on the day when actually delivered; and (4) if by overnight carrier, on the date indicated on the delivery receipt of the commercial carrier. In the event of a refusal to accept or inability to deliver, notice shall be deemed effective on the third (3rd) business day following dispatch; provided, however, in the event of a refusal to accept or inability to deliver Major Notices, Major Notices also shall be delivered by hand or by overnight delivery service to the Party's registered agent or to an officer of the Party for which it was intended at such Party's last known address. Contractor also shall deliver Major Notices to Owner's Legal Contact.

### **13.3 Claims and Disputes.**

**13.3.1 Mediation:** Any claim, dispute, or other matter in question arising out of or related to this Agreement ("**Dispute**") not resolved after a meeting between the Parties' representatives shall be subject to mediation as a condition precedent to litigation for not more than two (2) business days unless otherwise agreed. The Parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Unless the Parties otherwise mutually agree, such mediation shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures. A request for mediation shall be made in writing, delivered to the other Party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a suit or other dispute resolution mechanism, but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the Parties or court order. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. Notwithstanding any Dispute between Owner and Contractor, or between Contractor and a Subcontractor, Contractor shall continue to perform all of the Work diligently and in a good and workmanlike manner in conformity with the Agreement, and Owner shall continue to make payments as required hereunder excluding any payment that is the subject of a Dispute.

**13.3.2 Litigation:** If the parties do not resolve a Dispute through mediation, the Dispute shall be resolved by submission to either a federal or state court of competent jurisdiction and located in the county and state in which the Property is located, wherein exclusive jurisdiction and venue shall lie. For purposes of this provision, Owner and Contractor irrevocably submit to the

personal jurisdiction of any such court and agree that any Dispute arising hereunder may be brought therein and without regard to any *forum non conveniens* considerations.

**13.3.3 WAIVER OF JURY TRIAL:** OWNER AND CONTRACTOR BOTH WAIVE THEIR RIGHTS TO A TRIAL BY JURY OF ANY OR ALL ISSUES ARISING IN ANY ACTION OR PROCEEDING BETWEEN THE PARTIES HERETO OR THEIR SUCCESSORS, UNDER OR CONNECTED WITH THIS AGREEMENT, OR ANY OF THE PROVISIONS. THE PARTIES ACKNOWLEDGE THAT THEY HAVE READ AND UNDERSTAND THE FOREGOING, HAVE HAD THE OPPORTUNITY TO HAVE THIS AGREEMENT REVIEWED BY THEIR LEGAL COUNSEL, AND ACCEPT THAT THEY ARE WAIVING THEIR RIGHT TO A JURY TRIAL.

**13.3.4 Continuation of Work:** Contractor shall have no right to cease performance hereunder or to permit the performance of the Work to be delayed while any Dispute is ongoing except as permitted under Section 10.1.

**13.3.5 Consolidation and Joinder:** To the extent that Owner reasonably determines that, in order to obtain a full and complete resolution of any Dispute, it is necessary that another party or parties in addition to Contractor be included in proceedings to resolve the Dispute, Contractor shall make no objection to the inclusion of such third party, whether by joinder, consolidation or otherwise. In addition, in the event that Owner is party to another mediation, litigation, arbitration or other legal proceeding, the subject of which is or relates to the Work, Contractor agrees to be joined in such other proceeding.

**13.3.6 Litigation Assistance:** Provided that Owner and Contractor are not then in mediation or litigation against each other, Contractor shall, upon Owner's reasonable request, use commercial reasonable efforts to cooperate with and assist Owner in connection with any dispute resolution proceeding involving Owner and an issue relating to the Work, including meetings with Owner and its consultants and attorneys, reviewing documents, and appearing for depositions and any formal proceedings.

**13.3.7 Governing Law/Choice of Forum:** This Agreement shall be governed by law of the Project state without regard to or application of its principals or laws regarding conflict of laws and without regard to the United Nations Convention on the International Sale of Goods of 1980 (and any amendments or successors thereto).

**13.4 Severability:** If any provision of this Agreement is held to be prohibited or invalid under Applicable Law by a court of competent jurisdiction, such provision will be modified or severed from this Agreement to the extent necessary to make such provision enforceable against such party. Neither the unenforceability of such provision nor the modification or severance of such provision shall affect (1) the enforceability of any other provision of this Agreement, or (2) the enforceability of such provision against any party or in any circumstance other than those against or in which such provision is found to be unenforceable.

**13.5 No Assignment:** Contractor may not transfer or assign any rights or delegate any obligations hereunder, in whole or in part, whether voluntarily or by operation of law, without the prior written consent of Owner. In the event of a sale of a Property while this Agreement is in effect, the purchaser of such Property shall be deemed to have assumed this Agreement, and Owner and Owner's Agent shall thereafter be released from any liability hereunder. At Owner's request, in connection with any such sale, Contractor shall provide to Owner and the purchaser a statement of amounts paid to date and amounts remaining outstanding with respect to such Property and an acknowledgement of such assignment and release in a form reasonably acceptable to Owner.

**13.6 Entire Agreement:** This Agreement, including the attached or referenced Exhibits, represents the entire and integrated agreement between Owner and Contractor and supersedes all prior negotiations and agreements for this Project, and shall be binding upon Owner and Contractor, their successors and assigns. Subsequent provisions of any construction contracts, subcontracts, or other project documents shall not supplement or supplant the terms and conditions of this Agreement and extend the obligations beyond those created by this Agreement.

**13.7 Waiver:** No failure to exercise, or delay in the exercise of, a party's rights under this Agreement shall constitute a waiver of such rights. No waiver of a provision of this Agreement will constitute a waiver of the same or any other provision of this Agreement other than as specifically set forth in such waiver.

**13.8 Counterparts:** This Agreement may be executed in counterparts, each of which will be deemed an original, and together all of which shall constitute one and the same agreement. Signatures to this Agreement may be delivered by facsimile and will be binding upon the parties.

**13.9 Interpretation:** No provision of this Agreement shall be interpreted against any party because such party or its counsel drafted the provision. The term "day" shall mean calendar day unless otherwise specifically defined. Unless otherwise specified, "including" shall mean "including (without limitation)". The masculine shall include the feminine and neuter, and vice versa.

**EXHIBIT A-2**  
**ADDITIONAL TERMS AND CONDITIONS WHERE THE BASIS OF PAYMENT IS THE COST OF THE WORK PLUS**  
**CONTRACTOR'S FEE WITH A GUARANTEED MAXIMUM PRICE)**

**1. GMP and Contractor's Fee:**

**1.1.** Where the basis of payment in the Contract is the Cost of the Work plus Contractor's Fee, the Contract Sum is comprised of the recoverable Costs of the Work identified in Paragraph 6, below, plus the Contractor's Fee set forth in Article 4.3.2 and applied in accordance with Article 4.3.3.

**1.2.** Contractor's Fee will be paid on a monthly basis in proportion to the actual percentage of Work completed. Contractor's Fee is included within the Guaranteed Maximum Price established in the Contract. Contractor's Fee shall be Contractor's sole compensation for Contractor's Overhead, insurance, and profit under the Contract.

**1.3.** By executing the Contract, Contractor represents and acknowledges that (i) the Contract Documents, materials and information furnished Contractor have sufficiently described the scope, construction requirements, and design intent of the Work in detail sufficient to enable Contractor to firmly establish the Guaranteed Maximum Price as qualified in the List of Qualifications and the Contract Time; and (ii) Contractor is familiar with the scope and quality of those aspects of the Project and has taken such scope and quality matters into consideration in preparing each component of the Guaranteed Maximum Price and the Construction Schedule. Contractor shall not be entitled to an adjustment in either the Guaranteed Maximum Price or the Contract Time in connection with the further development of the Contractor Documents after execution of the Contract except for Work described in modified Drawings and Specifications (or Construction Documents) that is (i) not reasonably inferable from the Contract Documents as of the date of the Contract or Contract Documents furnished prior to execution of Contract by a Contractor of similar skill, experience, and expertise; and is (ii) either (a) materially inconsistent with Contractor's List of Qualifications; or (b) a material change in the scope, systems, kinds and quality of materials, finishes or equipment or other substantial deviation from the Drawings and Specifications.

**2. Construction Contingency**

**2.1.** If a Construction Contingency is included the GMP, the Construction Contingency shall be available for Contractor's exclusive use to cover the net amount of any additional costs resulting from unforeseen conditions and events not evidenced or reasonably inferred at the time the Agreement is executed that are not reasonably recoverable by Contractor from any responsible Subcontractor or insurance company and provided such conditions or events do not result in or constitute a Change in the Work. Charges against the Construction Contingency will be tabulated and reported by Contractor as part of Contractor's Monthly Progress Report to Owner. To the extent any Construction Contingency remains upon Final Completion of the Project, such remaining Construction Contingency shall be subject to Shared Savings and allocated pursuant to Section 3.8. Contractor shall not be entitled to any additional overhead, profit, or other markup on any Construction Contingency expenditure as the Parties acknowledge that Contractor's Fee covers such overhead, profit, or other markup. Notwithstanding the foregoing, however, the Construction Contingency will not be used to fund (i) Change Orders, or (ii) costs or expenditures incurred by reason of Contractor's fault.

**2.2.** Subject to, but without intending to limit the generality of, Paragraph 2.1, the Construction Contingency is intended to cover items including or similar to the following: (i) items required by the Contract Documents mistakenly (but not negligently) not bid or brought into Subcontractor or vendor scopes of work; (ii) field coordination items between trades mistakenly (but not negligently) not purchased in any Subcontractor or Vendor scope of work; (iii) schedule acceleration used in the interest of Contractor to benefit the Project Schedule through the use of overtime for select trades or equipment not resulting from Contractor's or any Subcontractor's failure to perform in accordance with the Contract Documents. The Construction Contingency also may be available to pay for an equitable adjustment of Subcontracts in the event of a sudden and unexpected material escalation in the cost of Project materials after the execution of the Agreement, if Contractor and Subcontractor demonstrate to Owner's reasonable satisfaction, through industry recognized resources, that (i) the Subcontractor's initial material cost estimate was reasonable; (ii) the proposed adjusted material cost is reasonable and in accordance with existing industry standards; and (iii) both Contractor and Subcontractor procured the applicable contract in a timely manner in relation to the Work and schedule. Any adjustment due to material price escalation shall not be subject to markup for Contractor's Fee.

**3. PAYMENT OF CONTRACTOR'S COMPENSATION**

**3.1. Progress Payments:**

**3.1.1.** With each monthly Application for Progress Payment, Contractor shall submit receipted invoices or invoices with check vouchers attached, and any other evidence required by Owner to demonstrate that cash disbursements already made by Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by Contractor; less (2) that portion of those payments attributable to Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment. Similar documentation shall be included from each of Contractor's Subcontractors and consultants. Applications for Payment may not include requests for payment of amounts Contractor does not intend to pay to a Subcontractor because of a dispute or other reason. The request for payment shall be verified under oath by an officer of Contractor.

**3.1.1.1.** As provided in Section 5.4.1, Applications for Payment may include requests for payment on account of Changes in the Work that have been properly authorized by Construction Change Directive, or by interim determinations of Owner's Agent (or Architect), but not yet included in Change Orders.

**3.2. Progress Payment Calculation:** Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

**3.2.1.** Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work (as set forth in Paragraph 3.3, below) 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 Owner of Changes in the Work, amounts not in dispute shall be included and accompanied by a Change Order indicating the Parties' agreement with part or all of such costs;

**3.2.2.** Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work or, subject to compliance with Section 4.2, suitably stored off the Site;

**3.2.3.** Add payment on account of the Contractor's Fee;

**3.2.4.** Subtract retainage of ten percent (10%);

**3.2.5.** Subtract the aggregate of previous payments made by Owner;

**3.2.6.** Subtract the shortfall, if any, indicated by Contractor in the documentation required by Paragraph 3.1 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by Owner's accountants in such documentation; and

**3.2.7.** Subtract amounts, if any, for which Owner has withheld or nullified approval of payment as provided in Section 4.8.

**3.3. Percentage of Completion:** Applications for Payment shall include a worksheet ("Percentage of Completion Worksheet") showing the percentage of completion of each portion of the Work and the entire Work as of the end of the period covered by the Application for Payment, showing the calculations for both (1) and (2) in the next sentence. The percentage of completion of each portion of the Work for purposes of calculating the progress payment shall be the lesser of (1) the percentage of that portion of the Work that has actually been completed in the field, i.e., without reference to the costs incurred in connection with that component of the Work that is included as part of AIA Document G703; and (2) as set forth in AIA Document G703, the percentage obtained by dividing (a) the expense that has actually been incurred by Contractor on account of that portion of the Work for which 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.

**3.4. Owner's Right to Rely:** In taking action on Contractor's Applications for Payment, Owner shall be entitled to rely on the accuracy and completeness of the information furnished by Contractor and shall not be deemed to have made (i) a detailed examination, audit, or arithmetic verification of the documentation submitted, notwithstanding Owner's audit rights under Paragraphs 4.6-4.7 of this Exhibit A-2; (ii) exhaustive or continuous on-Site inspections; or (iii) examinations to ascertain how or for what purposes Contractor has used amounts previously paid on account of the Contract Sum. Such examinations, audits, and verifications, if required by Owner, will be performed by Owner's auditors acting in the sole interest of Owner as set forth below in connection with Final Payment.

### **3.5. Final Payment:**

**3.5.1.** "Final Payment" means payment to Contractor of all amounts due and owing and remaining to be paid under the Contract Documents (less amounts properly deducted or withheld by Owner), including any retainage. Final Payment shall not become due until after Final Completion, as defined in Section 3.1.2 of Exhibit A-1, is achieved, and Contractor has submitted a final accounting for the Cost of the Work as set forth in Paragraph 3.6 below and a final Application for Payment. Final Payment shall be payable thirty (30) days after the last of the requirements of Section 3.1.2 is satisfied and provided Owner's property is free and clear of all liens.

**3.5.2.** Calculation of Final Payment: The amount of Final Payment shall be calculated as follows:



- 3.5.2.1.** Take the sum of the Cost of the Work substantiated by Owner based on Contractor's final accounting, Contractor's Fee, and Contractor's Lump Sum General Conditions, but not more than the Guaranteed Maximum Price;
- 3.5.2.2.** Subtract amounts, if any, for which Owner deducts or withholds approval of payment as provided in Section 4.8 or other provisions of the Contract Documents; and
- 3.5.2.3.** Subtract the aggregate of previous payments made by Owner.
- 3.5.2.4.** If there are Savings, ass the amount of shared savings to which Contractor is entitled under Section 3.8.

If the aggregate of previous payments made by Owner exceeds the amount due Contractor, Contractor shall reimburse the difference to Owner.

**3.6. Review of Final Accounting and Payment:** Owner's accountants will review and report in writing on Contractor's final accounting within thirty (30) days after delivery of the final accounting to Owner by Contractor. Contractor's accounting shall include all information that is customarily included in such an accounting, including a detailed job cost detail report identifying all of the costs incurred by Contractor in performance of the Work. Based upon such Cost of the Work as Owner's accountants report to be substantiated by Contractor's final accounting, and provided the other conditions of Section 3.1 have been met, Owner will, within seven (7) days after receipt of the written report of Owner's accountants, either approve and make Final Payment, subject to Owner's rights to withhold payment as otherwise set forth in the Contract Documents, or notify Contractor in writing of the reasons for withholding payment. If Owner's accountants report the Cost of the Work as substantiated by Contractor's final accounting to be less than claimed by Contractor, Contractor may, within fifteen (15) days of receiving notice of Owner's decision to withhold partial payment, give written notice of its objection to Owner, setting forth the basis for Contractor's objection. In such case, Owner and Contractor will promptly use their best efforts to resolve the discrepancy in good faith; if the Parties are unable to agree on a resolution, the claim shall be decided as set forth in Section 13.3. Failure to provide written objection within this fifteen (15)-day period shall result in the substantiated amount reported by Owner's accountants becoming binding on Contractor. Pending a final resolution, Owner shall pay Contractor the amount approved by Owner.

**3.7. Accounting Records:** Contractor shall keep full and detailed records and accounts related to the cost and performance of the Work and shall 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 Owner. Owner and Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, Contractor's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. Contractor shall preserve these records for a period of three (3) years after final payment, or for such longer period as may be required by law. All records shall be maintained in accordance with generally accepted accounting procedures, consistently applied. If any inspection by Owner of Contractor's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and any other data relating to the Contract Documents reveals an overcharge, including, without limitation, any untimely request for payment, Contractor shall pay Owner upon demand an amount equal to such overcharge plus interest at the legal rate; if the amount of overcharges exceeds One Hundred Thousand Dollars (\$100,000.00) Contractor also shall reimburse Owner for the fees and costs associated with performance of the audit up to a maximum of One Hundred Thousand Dollars (\$100,000.00). The requirements of this Paragraph shall not apply to any portion of an overcharge that is subject of a good-faith dispute between Owner and Contractor.

**3.7.1.** Upon request, Contractor's President, Chief Operating Officer or Chief Financial Officer shall be required to certify that, to the best of his/her knowledge and belief, all data subject to audit pursuant to this Paragraph 3.7 is accurate, complete, and current. Such certifications shall be made by Contractor to Owner in the case of this Agreement, and by Subcontractors in the case of subcontractor audit.

**3.7.2.** Subcontractors retained by Contractor on a "cost-plus" basis shall have the same obligations to retain records and cooperate with audits as are required of Contractor under this Paragraph 3.7.

**3.8. Shared Savings:**

**3.8.1.** The difference as of the date of final payment between (i) the Contract Sum; and (ii) the Guaranteed Maximum Price, as adjusted by Change Orders, shall be the "Savings." Expressed formulaically, Savings shall be calculated as follows:

Original GMP Value  
Plus (+) or Minus (-) approved Change Orders  
Less the Final Cost of the Work plus Fee plus General Conditions  
=Shared Savings Pool

**3.8.2.** Savings shall be allocated as set forth in Section 1A.3.7 provided as a condition precedent the Project is substantially completed within fifteen (15) days of the Substantial Completion Date (subject to any adjustments to the Date of Substantial Completion permitted under the Contract Documents).

**3.8.3.** Contractor shall not be entitled to any portion of Savings if Owner terminates the Contract for cause.

#### **4. COSTS OF THE WORK**

##### **4.1. Costs to Be Reimbursed.**

**4.1.1. Definition.** “**Cost of the Work**” means costs necessarily incurred by Contractor in the proper performance of the Construction Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with the prior written consent of Owner. The Cost of the Work shall include only the items set forth in this Article. Notwithstanding the breakdown or categorization of any costs to be reimbursed in this Exhibit, or elsewhere in the Contract Documents, there shall be no duplication of payment in the event of any particular item for which payment is requested that can be characterized as falling into more than one of the types of compensable or reimbursable categories, including, but not limited to, to the extent of costs included as part of the General Conditions.

**4.1.2. Prior Approval.** Where any cost is subject to Owner’s prior approval, Contractor shall obtain this approval in writing prior to incurring the cost. Owner’s approval may be withheld in Owner’s sole discretion and revoked in Owner’s sole discretion if the costs are of a continuing nature, unless otherwise expressly indicated.

##### **4.2. Labor Costs.**

**4.2.1.** Contractor’s personnel are included as part of Contractor’s General Conditions. Contractor does not anticipate Contractor’s personnel performing any part of the Work other than the General Conditions accordingly, this Paragraph and its subsections will apply only if Contractor personnel perform other portions of the Work not included in the Hourly Rates. In the event a classification of Contractor personnel performing a portion of the Work is not included in Hourly Rates, Labor Burden shall not exceed Fifty-Five percent (55%) of an employee’s direct salary or wages.

**4.2.2.** Wages, exclusive of any markups or Labor Burden, of construction workers directly employed by Contractor to perform the construction of the Work at the Site or, with Owner’s prior approval, at off-site workshops, but only for that portion of their time required for the Work.

**4.2.3.** Wages or salaries of Contractor’s supervisory and administrative personnel when stationed at the Site with the Owner’s prior approval at the Hourly Rates.

**4.2.4.** Wages and salaries of Contractor’s supervisory or administrative personnel engaged at factories, workshops, or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work at the Hourly Rates.

**4.2.5.** Costs paid or incurred by Contractor for Labor Burden, provided such costs are based on wages and salaries included in the Cost of the Work under Paragraphs 4.2.1 through 4.2.3, and are pro-rated to reflect only that portion of their time required for the Work.

**4.2.6.** Bonuses, profit sharing, incentive compensation, and any other discretionary payments paid to anyone hired by Contractor or paid to any Subcontractor or vendor, but only with Owner’s prior approval, which may be withheld in Owner’s sole discretion.

##### **4.3. Subcontract Costs**

**4.3.1.** Payments made by Contractor to Subcontractors in accordance with the requirements of subcontracts complying with the terms of the Contract Documents. Subcontracts or other Contracts shall conform to the applicable payment provisions of the Contract Documents and shall not be awarded on cost-plus fee basis without Owner’s prior written approval. If a subcontract is awarded on a cost-plus fee basis, Contractor shall provide in the subcontract for Owner to receive the same audit rights with regard to the Subcontractor as Owner receives with regard to Contractor below and in the Contract.

##### **4.4. Costs of Materials and Equipment Incorporated in the Completed Construction.**

**4.4.1.** Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

**4.4.2.** Costs of materials described in the preceding subsection in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become Owner’s property at the completion of the Work and shall be

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

#### **4.5. Costs of Other Materials and Equipment, Temporary Facilities and Related Items.**

**4.5.1.** Costs of transportation, storage, installation, maintenance, dismantling, and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by 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 Contractor shall mean fair market value.

**4.5.2.** Rental charges for all necessary machinery and equipment, exclusive of hand tools, used at the Site, whether rented from Contractor or others, including installation, minor repairs and replacements, dismantling, removal, transportation, and delivery costs thereof. Rates of Contractor-owned equipment and quantities of equipment shall be subject to Owner's prior approval and shall not exceed rates calculated in accordance with the most current "*Rental Rate Blue Book*" published by *EquipmentWatch*. In no event shall Contractor be entitled to reimbursement for any cumulative total of rental charges in connection with any single piece of machinery or equipment in excess of seventy-five percent (75%) of its fair market value as of the date that such machinery or equipment is first put into service in connection with the Work. Contractor shall pay any excess rental charges.

**4.5.3.** Costs of removal of debris from the Site of the Work, and its proper and legal disposal.

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

**4.5.5.** That portion of the reasonable expenses of Contractor's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work excluding daily commuting expenses, which shall not be reimbursable.

**4.5.6.** Costs of materials and equipment suitably stored off the Site at a mutually acceptable location, subject to Owner's prior approval and Contractor's compliance with the Contract.

#### **4.6. Miscellaneous Costs.**

**4.6.1.** Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Statement of Work, except premiums for bonds or security obtained by Contractor to release a lien or claim of lien. Premium costs shall be "below the bottom line" and shall not be included in the Cost of the Work for purposes of calculating Contractor's Fee. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

**4.6.2.** Sales, use, or similar taxes imposed by an AHJ that are related to the Work and for which Contractor is liable.

**4.6.3.** Fees and assessments for the building permit and for other Permits, licenses, and inspections for which Contractor is required by the Contract Documents to pay.

**4.6.4.** Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by provisions of the Contract Documents, and which do not fall within the scope of Paragraph 4.7.3 below.

**4.6.5.** Royalties and license fees paid for the use of a particular design, process, or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against Contractor resulting from such suits or claims and payments of settlements made with Owner's consent, each in accordance with the Contract. However, such costs of legal defenses, judgments, and settlements shall not be included in the calculation of Contractor's Fee. If such royalties, fees and costs are excluded by the Contract or other provisions of the Contract Documents (including those items designed, engineered, specified, detailed, or prepared by Contractor), then they shall not be included in the Cost of the Work.

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

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

**4.6.8.** Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between Owner and Contractor, or between Contractor and any of its Subcontractors (except as set forth below), reasonably incurred by Contractor after the execution of the Statement of Work and necessary or required to perform the Work, which costs are subject to Owner's prior approval, which shall not be unreasonably withheld provided such costs arise from the assertion of a good-faith claim or defense in a dispute not caused by the breach, fault, or negligence of Contractor.

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

#### **4.7. Other Costs and Emergencies.**

- 4.7.1. Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by Owner.
- 4.7.2. Costs incurred to prevent threatened damage, injury, or loss in case of an emergency affecting the safety of persons and property, at Contractor's reasonable discretion.
- 4.7.3. Costs of repairing or correcting damaged or nonconforming Work executed by Contractor, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of Contractor, and only to the extent that the cost of repair or correction is not recovered by Contractor from insurance, sureties, Subcontractors, suppliers, or others.

#### **4.8. Related Party Transactions.**

- 4.8.1. For purposes of this Paragraph, "*Related Party*" means a parent, subsidiary, affiliate, or other entity having common ownership or management with Contractor; any entity in which any stockholder in, or management employee of, Contractor owns any interest in excess of ten percent (10%) in the aggregate; or any person or entity which has the right to control the business or affairs of Contractor. "Related Party" includes any member of the immediate family of any person identified above.
- 4.8.2. If any of the Costs of the Work to be reimbursed arise from a transaction between Contractor and a Related Party, Contractor shall notify Owner in writing 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. Unless otherwise agreed to in writing by both parties, Contractor must competitively bid any trade Work that Contractor wishes to perform with Contractor's own forces or through a Related Party and obtain no less than two (2) additionally responsive bids from responsible Subcontractors. If Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a Cost of the Work, and Contractor shall procure the Work, equipment, goods, or service from the Related Party, as a Subcontractor; provided, however, Contractor will not be permitted to charge any Overhead, profit, or other form of markup or fee for trade Work performed with its own forces or a Related Party, including, without any limitation, Contractor's Fee. If Owner does not authorize the transaction, Contractor shall procure the Work, equipment, goods, or service from some person or entity other than a Related Party.

#### **5. COSTS NOT TO BE REIMBURSED**

- 5.1. The Cost of the Work shall not include the items listed below:
  - 5.1.1. Salaries and other compensation of Contractor's personnel stationed at Contractor's principal office or offices other than the Site office, except as specifically provided in Paragraph 4.2 above;
  - 5.1.2. Expenses of Contractor's principal office and offices other than the Site office, including, without limitation: (1) the services of Contractor's estimating, sales, legal, labor relations, and tax departments; (2) the costs of professional association membership and all other costs of doing business, providing services, and related expenses; and (3) overhead required or desired to maintain and operate such offices, including, but not limited to, computers (which are included as part of Contractor's Fee);
  - 5.1.3. Home Office Overhead (including unabsorbed, underabsorbed, or extended overhead and *Eichleay*-type damages) and general and administrative expenses, except as may be expressly included above;
  - 5.1.4. Contractor's capital expenses, including interest on Contractor's capital employed for the Work;
  - 5.1.5. Costs arising out of the fault, negligence, or failure of Contractor, Subcontractors, and suppliers, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, to fulfill a specific responsibility of the Contract Documents, except with Owner's prior written approval;
  - 5.1.6. Any cost not specifically and expressly described in Paragraph 4, above;
  - 5.1.7. Costs, other than costs included in Change Orders approved by the Owner, that would cause the GMP to be exceeded;
  - 5.1.8. Costs for services incurred during the Preconstruction Phase or for Preconstruction Phase Work, if applicable;
  - 5.1.9. Costs for uncovering Work if excluded by the Contract Documents, including uncovering uninspected Work, correcting rejected Work, and recovering Work uncovered for inspection, including compensation for any services required of Contractor or Owner, except with Owner's prior written approval;
  - 5.1.10. Any of Contractor's international, U.S. federal, state, or local income taxes or franchise or personal or real property taxes;
  - 5.1.11. Costs of remedying Subcontractor defaults, including the cost of enforcing payment and performance bonds obtained from Subcontractors, unless Contractor has received the prior written approval of Owner;
  - 5.1.12. Replacement or payment for lost or stolen machinery and equipment. While not a Cost of the Work, Contractor may seek to recover the cost of such items through the insurance required by the Contract Documents;

**5.1.13.** Costs incurred by Contractor in bonding off liens filed by anyone performing labor and/or providing material being furnished by Contractor hereunder, where Owner is not in breach of its payment obligations hereunder, pursuant to the Contract and no good faith dispute exists as between Owner and Contractor;

**5.1.14.** Losses and expenses to the extent paid by Contractor's or any Subcontractor's insurance or otherwise reimbursed by Contractor or a third party;

**5.1.15.** Overtime wages or salaries (and fringe benefits related thereto), or other costs related to Recovery Measures incurred by Contractor as a result of Contractor's failure to perform the Work in a timely manner in accordance with the Schedule, unless Contractor has received Owner's prior written consent to incur such overtime;

**5.1.16.** All moving costs associated with the relocation of Contractor personnel for the purpose of staffing the Project;

**5.1.17.** Costs of labor or materials for Work related to completing Punch List items after the deadline for Final Completion, and costs of performing warranty or corrective Work provided under the Contract Documents, except as specifically otherwise agreed by Owner, Contractor, and lender (if applicable); and

**5.1.18.** Any fines levied on or costs incurred by Contractor, or fines or costs incurred by Owner, due to Contractor's Violations per Paragraph 5.2 below.

**5.2. Violations.** Contractor expressly understands and agrees that any fines levied on, or costs incurred by, Contractor, or fines or costs incurred by Owner, due to Contractor's means and methods of performing the Work hereunder (and not in connection with errors/omissions in the Contract Documents, except those items designed, engineered, specified, detailed, or prepared by Contractor), for traffic violations, OSHA violations, or other violations of Applicable Law (collectively, the "**Violations**"), excepting Violations that are due solely to the failure of the Drawings and Specifications prepared by or through Contractor to comply with Applicable Law, are to be borne by Contractor, and thus shall not be a Cost of the Work, and shall not constitute a compensable adjustment or Change to the Contract Documents, unless the fines are for Violations related to Work performed in compliance with the Contract Documents prepared by or through persons other than Contractor. Contractor hereby waives its right to receive compensation for any and all claims relating to fines for any Violations except to the extent that any such Violations result from acts of Owner. Contractor further agrees that, in the event that any fines are levied against Owner for any Violations for actions attributable to Contractor, Owner shall have the right to offset such amounts from payments otherwise due Contractor.

**EXHIBIT A-3 TO AGREEMENT BETWEEN OWNER AND CONTRACTOR  
(Allowable General Conditions)**

**Allowable General Conditions include the following (unless otherwise agreed)**

Staff (onsite)  
Staff (offsite)  
Safety Manager  
Trailer or temporary construction office offsite.  
Jobsite Furnishings,  
Communications; telephones, cell phones, radio's, etc.  
Utility and Janitorial fees and services for Site offices/trailer  
On-Site computers, copiers, printers, plotters, scanners, fax machines, etc. at site  
Software related to performing work on the project  
Construction Management software, database charges  
Schedules and schedule updates  
City Licenses  
Legal Fees  
Off Hour/premium time for supervision  
Vehicles, including gasoline, insurance, maintenance and parking for all onsite staff

**The following items are NOT considered General Conditions - including but not limited to the following:**

SWPPP Establishment & maintenance  
Parking Fees  
Project Signage  
Temporary Fencing, Construction Gates, Dual Gates  
Punch List Touch up - Common Area  
Survey  
Final Clean up  
Shoring Monitoring  
Preconstruction Services  
Trade Damage - other than punch list  
Hazardous Materials Training  
Blueprint/Shop Drawing/Submittal Reproduction  
Independent Quality Control  
Job Site Safety & First Aid  
Hard Hats  
Traffic Control, Flagman  
Progressive Construction Clean up (other than subcontractor clean up)  
Debris Bins  
Protection of Finishes (Common Areas)  
Mock-up  
Material & Man Hoists & Operator(s)  
Mobile and/or Tower Crane & Operator(s)  
Temporary Vertical Transportation & Operator(s)  
Utility Consumption and Charges  
Temporary Weather Protection  
Temporary Power Distribution  
Temporary Lighting  
Design Build Trade Engineering Costs

**EXHIBIT B-1 TO AGREEMENT BETWEEN OWNER AND CONTRACTOR  
(Contractor's Proposal/List of Qualifications/Design-Build Items)**

DRAFT

**EXHIBIT B-2 TO AGREEMENT BETWEEN OWNER AND CONTRACTOR  
(List of Drawings and Specifications)**

DRAFT



**EXHIBIT B-3 TO AGREEMENT BETWEEN OWNER AND CONTRACTOR**  
**(Schedule of Values/Allowances/Alternates/Unit Prices & Hourly Rates (if not included in Exhibit B-1))**

DRAFT

**EXHIBIT B-4 TO AGREEMENT BETWEEN OWNER AND CONTRACTOR  
(Site Reports)**

DRAFT

## EXHIBIT C TO AGREEMENT BETWEEN OWNER AND CONTRACTOR

### Additional Contractor Requirements for Conduct of Work at Property

“Contractor Personnel” refers to the employees and agents of Contractor and all of Contractor’s Subcontractors and suppliers

1. All Contractor Personnel will enter the Property through designated entrance only.
2. No Contractor Personnel will be allowed at any time in public areas of the Property where work is not occurring, nor will they be allowed to use at any time public elevators in the Property unless authorized by Owner.
3. Contractor Personnel must sign-in and sign-out each work day. All employees will be issued an ID badge provided by each subcontractor and must wear this badge in plain view.
4. If the Property is a hotel, residential property or office, noise-related work must be scheduled by Contractor and approved by Owner’s Project Manager prior to commencing work. Normal working hours will be 8:00a.m. until 7:00p.m. Noise hours are from 9:30 AM until 3:30 PM.
5. All Contractor Personnel will park only in the areas designated by Owner. Failure to do so could result in a vehicle being towed at the vehicle owner’s expense.
6. There will be no use of alcohol or controlled substances. Non-compliance with this rule will result in immediate expulsion from the property. Use includes consumption prior to or during work.
7. All lifting of materials or manpower shall be by the designated elevator only. Any material distribution that will tie up the elevators for more than five (5) minutes will be scheduled in advance with Owner and/or Property.
8. Owner is not responsible for the property of any Contractor Personnel.
9. Meals are to be consumed either in the work area or off the Property. No meals or beverages are to be taken into the Property Employees’ Cafeteria, the Property’s public restaurants, or finished construction areas.
10. All materials or containers are subject to a security check upon entering or leaving the building. Any refusals will cause the person to be barred from the Property premises.
11. All Contractor Personnel must stay in designated job site areas only and must not stray into any other areas of the Property under any circumstances without permission from Owner’s Project Manager or Job site Superintendent.
12. Contractor Personnel working the public area of the Property where they may be viewed by guests must wear a shirt or “T” shirt (no sleeveless or tank tops), long pants and shoes.
13. Contractor Personnel must maintain safe, clean and secure work areas at all times to minimize risk to Owner’s employees and guests. Each trade will be responsible for its own materials coordination and debris removal on a daily basis.
14. Contractor Personnel are not to use any house telephones at any time, for any reason.
15. Any utility shut-off or interruption must be scheduled and approved in advance, with the Owner’s Project Manager and Property Operations.
16. No shouting, profanity or confrontation with Property guests or with Property employees will be tolerated. No pornography on the Property is permitted. Standards of behavior while on Property premises will be determined at the sole discretion of the Property and the Owner’s Project Manager.

17. Smoking will not be allowed in the back of house or public areas of the Property. Anyone smoking outside will be required to use appropriate means of disposal, not the ground.
18. Restrooms for use by Contractor Personnel will be designated by Owner.
19. Any operations which might put the Property's fire alarm or sprinkler systems into alarm, affect performance of, or modify those systems must be approved and scheduled with the Contractor and Owner's Project Manager. All operations dealing with the Life Safety of the property must meet all local, State and Federal codes.
20. All deliveries must be sent to the designated receiving area for the project and clearly marked for the contractor.
21. All deliveries must be received by Contractor Personnel. After hours deliveries will not be accepted by the Property.
22. No Contractor Personnel will be allowed to perform any work on the premises without prior knowledge and scheduling with the Contractor and Owner's Project Manager and the General Manager.
23. Contractor Personnel must provide Material Safety Data Sheets (MSDS) for material used while on the premises and must properly dispose of flammable material and hazardous waste off of the Property in compliance with OSHA and government requirements.
24. Contractor Personnel are responsible for their own waste disposal. The Property's compactor or dumpster may not be used.
25. All work will be performed in the proper sequence and all existing work or furnishings will be properly protected.

**EXHIBIT D TO AGREEMENT BETWEEN OWNER AND CONTRACTOR  
(Schedule)**

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**EXHIBIT E-1 TO AGREEMENT BETWEEN OWNER AND CONTRACTOR**  
**CONTRACTOR'S AFFIDAVIT AND PARTIAL WAIVER OF LIENS AND CLAIMS**

**Project:**  
**Property:**  
**Contractor/Lienor:** \_\_\_\_\_  
**Owner:**

**State of** \_\_\_\_\_, **County of** \_\_\_\_\_; Personally appeared before me, the undersigned officer duly authorized to administer oaths, (insert name) \_\_\_\_\_, who after being duly sworn deposed and stated:

1. That s/he is an officer or principal of Contractor and an agent of Contractor, and is duly authorized to execute this affidavit, waiver and release in his/her representative capacity on behalf of said Contractor, as well as in his/her individual capacity.
2. That Contractor contracted with Owner to furnish services, labor or materials on the Project.

**CONDITIONAL WAIVER OF LIENS FOR CURRENT PAY APPLICATION**

3. That the undersigned Lienor, upon payment of the sum of \$ \_\_\_\_\_ (insert payment amount authorized in current approved Application for Payment), hereby waives and releases its lien and right to claim a lien against the Property for labor, services, or materials furnished through \_\_\_\_\_ (insert date) in connection with the Project. This waiver and release does not cover any a) retention; b) labor, services, or materials furnished after the date specified; or c) pending claims or Proposed Change Orders for which timely notice has been given and all other Contract conditions have been met.

**UNCONDITIONAL WAIVER OF LIENS AND CLAIMS (PRIOR PAY APPLICATIONS & INVOICES)**

4. That the Contractor acknowledges it has received the sum of \$ \_\_\_\_\_ (insert total amounts paid in connection with previous approved pay applications) as payment in full for all amounts owed (excluding retention) to the Contractor for all labor, services and materials furnished to the Owner for the Project through \_\_\_\_\_ (insert the date of the last pay application or invoice), and certifies that all bills for labor, equipment, materials and/or services furnished to or performed for Contractor and any other indebtedness incurred by Contractor, in connection with the work on the Project for which previous Applications for Payment were approved and payments received from the Owner, have been paid in full or otherwise satisfied, except for the subcontractor/lienors identified on an attachment hereto. **Check this box if there is an attachment:** [  ].
5. That the undersigned Lienor, in consideration of payment received, hereby waives and releases its lien and right to claim a lien against the Property for labor, services, or materials furnished through \_\_\_\_\_ (insert date from paragraph 4). This waiver and release does not cover any a) retention; b) labor, services, or materials furnished after the date specified; or c) pending claims or pending Proposed Change Orders for which timely notice has been given and all other Contract conditions have been met.

**RELEASE OF CLAIMS**

6. That the undersigned, in consideration of payments received, hereby forever waives, releases and discharges the Owner and Indemnitees (as defined in the Contract Documents) from any and all claims, suits, debts, causes of action, damages, encumbrances, judgments, demands and Liabilities (as defined in the Contract Documents) whatsoever, in law or equity, including but not limited to claims for extensions of time or additional payment, based on materials or equipment delivered, work or other obligations performed, and/or events existing or occurring ten (10) days prior to the date of the Contractor's current Application for Payment or invoice, except as specifically stated herein or on an attachment hereto and further provided said claims have been made in strict accordance with the requirements of the Contract Documents. **Check this box if there is an attachment:** [  ].

Sworn to me and subscribed before me, this \_\_\_\_\_ day of \_\_\_\_\_, 2020

\_\_\_\_\_  
Notary Public

Contractor/Lienor  
By: \_\_\_\_\_  
Its \_\_\_\_\_ and Agent

**NOTE: THIS DOCUMENT INCORPORATES DEFINED TERMS FROM THE CONTRACT DOCUMENTS.**

### SUBCONTRACTOR'S AFFIDAVIT AND PARTIAL WAIVER OF LIENS AND CLAIMS

**Project:**  
**Property:**  
**Contractor/Lienor:** \_\_\_\_\_  
**Owner:**  
**Subcontractor:** \_\_\_\_\_ ("Subcontractor" or "Lienor")

**State of** \_\_\_\_\_, **County of** \_\_\_\_\_; Personally appeared before me, the undersigned officer, principal or owner duly authorized to administer oaths, (insert name) \_\_\_\_\_, who after being duly sworn deposed and stated:

1. That s/he is an officer, principal or owner of Subcontractor, and an Agent of Subcontractor, and is duly authorized to execute this affidavit, waiver and release in his/her representative capacity on behalf of said Subcontractor, as well as in his/her individual capacity.
2. That Subcontractor contracted with (a) Contractor; or (b) \_\_\_\_\_ (insert name of other party with whom you contracted, if not the Contractor) (hereinafter "Customer"), to furnish services, labor or materials on the Project.

#### CONDITIONAL WAIVER OF LIENS FOR CURRENT PAY APPLICATION

3. That the undersigned Lienor, upon payment by Customer of the sum of \$ \_\_\_\_\_ (insert payment amount authorized in current approved Application for Payment), hereby waives and releases its lien and right to claim a lien against the Property for labor, services, or materials furnished through \_\_\_\_\_ (insert date) for the contractor in connection with the Project. This waiver and release does not cover any a) retention; b) labor, services, or materials furnished after the date specified; or c) pending claims or Proposed Change Orders for which timely notice has been given and all other Contract conditions have been met.

#### UNCONDITIONAL WAIVER OF LIENS AND CLAIMS (PRIOR PAY APPLICATIONS & INVOICES)

4. That the Subcontractor acknowledges it has received from Customer the sum of \$ \_\_\_\_\_ (insert total amounts paid in connection with previous pay applications) as payment in full for all amounts owed (excluding retention) to the Subcontractor for all labor, services and materials furnished in connection with the Project through \_\_\_\_\_ (insert the date of the last pay application or invoice), and certifies that all bills for labor, equipment, materials and/or services furnished to or performed for Subcontractor and any other indebtedness incurred by Subcontractor, in connection with the work on the Project for which previous Applications for Payment were approved and payments received from the Contractor and/or Customer, have been paid in full or otherwise satisfied, except for the liens identified on an attachment hereto. **Check this box if there is an attachment:** [  ].
5. That the undersigned Lienor, in consideration of payment received, hereby waives and releases its lien and right to claim a lien against the Property for labor, services, or materials furnished through \_\_\_\_\_ (insert date from paragraph 4). This waiver and release does not cover any a) retention; b) labor, services, or materials furnished after the date specified; or c) pending claims or Proposed Change Orders for which timely notice has been given and all other Contract conditions have been met.

#### RELEASE OF CLAIMS OCCURRING BEFORE CURRENT PAY APPLICATION

6. That the undersigned, in consideration of payments received, hereby forever waives, releases and discharges the Contractor, Customer, Owner and Indemnitees (as defined in the Contract Documents) from any and all claims, suits, debts, causes of action, damages, encumbrances, judgments, liabilities and demands whatsoever, in law or equity, including but not limited to claims for extensions of time or additional payment, based on materials or equipment delivered, work or other obligations performed, and/or events existing or occurring ten (10) days prior the date of the Subcontractor's current Application for Payment or invoice, except as specifically stated herein or on an attachment hereto and further provided said claims have been made in strict accordance with the requirements of the Contract Documents. **Check this box if there is an attachment:** [  ].

Sworn to me and subscribed before me, this \_\_\_\_\_ day of \_\_\_\_\_, 2020

\_\_\_\_\_  
Notary Public

Subcontractor/Lienor  
By: \_\_\_\_\_  
Its \_\_\_\_\_ and Agent

**NOTE:** THIS DOCUMENT INCORPORATES DEFINED TERMS FROM THE CONTRACT DOCUMENTS. THE CONTRACTOR WILL PROVIDE A COPY OF THE APPLICABLE PORTIONS OF THE CONTRACT DOCUMENTS FOR YOUR REVIEW IF REQUESTED IN WRITING.

### CONTRACTOR'S AFFIDAVIT AND FINAL RELEASE OF LIENS AND CLAIMS

**Project:**  
**Property:**  
**Contractor/Lienor:** \_\_\_\_\_  
**Owner:**

**State of** \_\_\_\_\_, **County of** \_\_\_\_\_; Personally appeared before me, the undersigned officer, principal or owner duly authorized to administer oaths, (insert name) \_\_\_\_\_, who after being duly sworn deposed and stated of his/her own personal knowledge the following:

1. That s/he is an officer, principal or owner of Contractor, and an Agent of Contractor, and is duly authorized to execute this affidavit, waiver and release in his/her representative capacity on behalf of said Contractor, as well as in his/her individual capacity.
2. That Contractor, pursuant to a contract with Owner, has furnished or caused to be furnished labor, materials, and services for the Project consisting of construction of certain improvements to real property as more particularly set forth in said Contract.
3. This affidavit is executed by Contractor for the purposes of obtaining final payment from the Owner in the amount of \$ \_\_\_\_\_.
4. All work performed under the Contract has been fully completed, all lienors under the direct contract have been paid in full, and all payrolls, bills for labor, equipment, materials and/or services furnished to or performed for Contractor and any other indebtedness incurred by Contractor, in connection with the work on the Projwrx for which previous Certificates for Payment were issued and payments received from the Owner, have been paid in full or otherwise satisfied, except for the lienors identified on an attachment hereto. **Check this box if there is an attachment:** [  ].
5. That the said Contract has been completely performed by Contractor and the said services, labor or materials have been furnished and/or completed in strict accordance with the terms of the Contract Documents.
6. That to the best of the Contractor's knowledge and belief there are no unsatisfied claims for damages resulting from or arising out of the performance of the said Contract, or any suits or claims for any other damage of any kind, nature or description which might constitute a lien upon the property of the Owner.
7. That all labor and materials furnished and/or services performed in connection with the construction of said improvements were furnished and/or performed at the instance of the undersigned, and that the agreed price or reasonable value thereof has been paid.

#### WAIVER AND RELEASE OF LIEN UPON FINAL PAYMENT

8. That the undersigned Lienor, in consideration of the final payment of the sum of \$ \_\_\_\_\_, hereby waives and releases its lien and right to claim a lien against the Property for labor, services, or materials furnished to the Owner in connection with the Project.

#### WAIVER AND RELEASE OF CLAIMS UPON FINAL PAYMENT

9. That the undersigned, in consideration of the final payment stated above, hereby forever waives, releases and discharges the Owner and Indemnitees (as defined in the Contract Documents) from any and all claims, suits, debts, causes of action, damages, encumbrances, judgments, liabilities and demands whatsoever, in law or equity, whether known or unknown, including but not limited to claims for extensions of time or additional payment based on materials or equipment delivered, work or other obligations performed, and/or events existing or occurring on or before the date below.

Sworn to me and subscribed before me, this \_\_\_\_\_ day of \_\_\_\_\_, 2020

\_\_\_\_\_  
Notary Public

Contractor/Lienor  
By: \_\_\_\_\_  
Its \_\_\_\_\_ and Agent

**NOTE:** THIS DOCUMENT INCORPORATES DEFINED TERMS FROM THE CONTRACT DOCUMENTS.



### SUBCONTRACTOR'S AFFIDAVIT AND FINAL WAIVER OF LIENS AND CLAIMS

**Project:**  
**Property:**  
**Contractor/Lienor:** \_\_\_\_\_  
**Owner:**  
**Subcontractor:** \_\_\_\_\_ ("Subcontractor" or "Lienor")

**State of** \_\_\_\_\_, **County of** \_\_\_\_\_; Personally appeared before me, the undersigned officer, principal or owner duly authorized to administer oaths, (insert name) \_\_\_\_\_, who after being duly sworn deposed and stated:

1. That s/he is an officer, principal or owner of Subcontractor, and an Agent of Subcontractor, and is duly authorized to execute this affidavit, waiver and release in his/her representative capacity on behalf of said Subcontractor, as well as in his/her individual capacity.
2. That Subcontractor contracted with (a) Contractor; or (b) \_\_\_\_\_ (insert name of other party with whom you contracted, if not the Contractor) (hereinafter "Customer"), to furnish services, labor or materials on the Project.
3. That the said Subcontract has been completely performed by Subcontractor, the said services, labor or materials have been furnished and/or completed in strict accordance with the terms of the Contract Documents and all payrolls, bills for labor, equipment, materials and/or services furnished to or performed for Subcontractor and any other indebtedness incurred by Subcontractor, in connection with the work for which previous Certificates for Payment were issued and payments received from the Contractor and/or Customer, have been paid in full or otherwise satisfied, except for the lienors identified on an attachment hereto. **Check this box if there is an attachment: [ ]**.
4. That to the best of his knowledge and belief there are no unsatisfied claims for damages resulting from or arising out of the performance of the said Subcontract, or any suits or claims for any other damage of any kind, nature or description which might constitute a lien upon the property of the Owner.

#### WAIVER AND RELEASE OF LIEN UPON FINAL PAYMENT

5. That the undersigned Lienor, in consideration of the final payment of the sum of \$ \_\_\_\_\_ (insert payment amount authorized in current approved Application for Final Payment), hereby waives and releases its lien and right to claim a lien against the Property for labor, services, or materials furnished to Contractor/Customer in connection with the Project.

#### WAIVER AND RELEASE OF CLAIMS UPON FINAL PAYMENT

6. That the undersigned, in consideration of payments received, hereby forever waives, releases and discharges the Contractor, Customer, Owner and Indemnitees (as defined in the Contract Documents) from any and all claims, suits, debts, causes of action, damages, encumbrances, judgments, liabilities and demands whatsoever, in law or equity, whether known or unknown, including but not limited to: claims for extensions of time or additional payment based on materials or equipment delivered, work or other obligations performed, and/or events existing or occurring on or before the date below.

Sworn to me and subscribed before me, this \_\_\_\_\_ day of \_\_\_\_\_, 2020

\_\_\_\_\_  
Notary Public

Subcontractor/Lienor  
By: \_\_\_\_\_  
Its \_\_\_\_\_ and Agent

**NOTE:** THIS DOCUMENT INCORPORATES DEFINED TERMS FROM THE CONTRACT DOCUMENTS. THE CONTRACTOR WILL PROVIDE A COPY OF THE APPLICABLE PORTIONS OF THE CONTRACT DOCUMENTS FOR YOUR REVIEW IF REQUESTED IN WRITING.

**EXHIBIT E-2 TO AGREEMENT BETWEEN OWNER AND CONTRACTOR**

**(Contractor's Schedule of Subcontractors, Suppliers, and Materialmen)**

The undersigned, \_\_\_\_\_ (Name) being duly sworn, deposes and says under the penalties of perjury that he or she is \_\_\_\_\_ (Position/Title) of \_\_\_\_\_ (Company Name) who is the (sub)contractor furnishing \_\_\_\_\_ work on the building located at \_\_\_\_\_ and that the following are the names of all parties who have furnished material or labor, or both, for said Scope of Services and all parties having contracts or subcontracts for specific portions of said Scope of Services or for material used in the construction thereof and the amount due or to become due to each, and that the items mentioned include all labor and material required to complete said Scope of Services according to Work plans and specifications:

1	2	3	4	5	6	7
CONTRACTOR & CONTACT INFORMATION	TYPE OF WORK	AMOUNT OF CONTRACT	TOTAL RETAINED	NET PREVIOUSLY PAID	NET AMOUNT THIS PAYMENT	BALANCE TO BECOME DUE
<b>TOTAL</b>						

AMOUNT OF ORIGINAL CONTRACT:		WORK COMPLETED TO DATE:	
EXTRAS TO CONTRACT:		LESS RETAINAGE:	
TOTAL CONTRACT & EXTRAS:		NET AMOUNT EARNED:	
CREDITS TO CONTRACT:		NET PREVIOUSLY PAID:	
ADJUSTED TOTAL CONTRACT:		NET AMOUNT OF THIS PAYMENT:	
		BALANCE TO BECOME DUE (INCLUDING RETENTION:)	

That there are no other contracts for said work outstanding and that there is nothing due or to become due to any person for material, labor or other work of any kind done or to be done upon or in connection with said Scope of Services other than above stated.

**Date** \_\_\_\_\_ **Signature** \_\_\_\_\_  
 STATE OF \_\_\_\_\_ )  
 COUNTY OF \_\_\_\_\_ ) ss.

On this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, before me appeared \_\_\_\_\_ to me personally known, who, being by me duly sworn, acknowledged the signing of this document to be of his/her free act as an agent of Contractor and that he/she executed the same for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public in and for said  
 County and State

\_\_\_\_\_  
 Type or Print Name

My commission expires:

**EXHIBIT F-1 TO AGREEMENT BETWEEN OWNER AND CONTRACTOR  
(Insurance Requirements for Interior and Exterior Renovation, Maintenance, and Repair Projects)**

**Article 1: Types and Limits of Liability Insurance for Contractors, Subcontractors, and other Project Vendors**

**§ 1.1.1** In connection with the Project, Contractor (hereinafter also referred to as the “Insured” or “Contractor”) shall procure, pay for, and maintain, and shall verify that Subcontractors procure, pay for, and maintain, the types of insurance coverage and corresponding limits of coverage set forth below.

**§ 1.1.2** Coverages shall be maintained from the date of commencement of the Work at each Property through any period the Contractor is furnishing any services or performing any Work (including any warranty or corrective Work) and, with respect to completed operations coverage, until the expiration of the period specified in Section 1.3.1 below. All policies shall be made with insurers licensed to do business in the Project State and otherwise acceptable to Owner and under forms of policies satisfactory to Owner. All coverage must be provided by insurance carriers with an A.M. Best rating of “A-” and “VIII” or better. The cost of any deductible or self-insured retention contained in any of the insurance policies shall be borne by the Insured without any increase or adjustment to the Contract Sum to the same extent as set forth in the indemnification article of the Agreement.

**§ 1.2 Worker’s Compensation and Employer’s Liability:** Worker’s compensation limits shall not be less those required by statute. Employer’s Liability limits shall be at least equal to:

**\$500,000 each accident**

**\$500,000 each employee**

**\$500,000 policy aggregate**

In claims against any person or entity indemnified under Section 11.1 of the Agreement by an employee of Contractor, the indemnification obligation shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor member under workers’ compensation acts, disability acts, or other employee benefit acts. Without intending to limit the scope of Losses and Liabilities in any way, and to the extent permitted by Applicable Law, Contractor expressly waives its immunity under the applicable workers’ compensation statute in connection with any Owner Indemnitee’s claim for indemnification under Section 11.1.

**§ 1.3.1 Commercial General Liability (“CGL”) Insurance:** The CGL insurance (for Contractor and Subcontractors) shall be on an occurrence basis using form ISO CG 00 01 (or equivalent) including products-completed operations, property damage, bodily injury and personal & advertising injury with limits applying on a per project/location basis and not less than:

**\$1,000,000 per occurrence**

**\$2,000,000 general aggregate**

**\$2,000,000 products-completed operations hazard**

The policy shall use form ISO CG 00 01 (or equivalent) form with respect to: a. Contractual Liability; b. Pollution; c. Bodily Injury; d. Property Damage; e. Personal Injury; f. Mobile Equipment; and include, without limitation the coverages outlined below:

- .1 premises-operations liability (including explosion, collapse, elevator liability, underground hazards, and damage to underground utilities);
- .2 coverage for the operations of any Subcontractors of any tier without any exclusion or limitation for the nature of the Subcontractor’s work or nature of the project;
- .3 no exclusions for bodily injury to subcontractor’s employees (no Labor Law exclusions);
- .4 products and completed operations coverage to be kept in full force and effect after Final Completion of the Work for the period established by the applicable state statute of repose or, if there is no statute of repose, for ten (10) years;
- .5 coverage for contractual liability (i.e., no deletion of the “insured contract” exception to exclusion b.);
- .6 no professional liability exclusion broader than CG 22 79 (i.e., must contain a construction means/methods exception) broad form property damage coverage including Completed Operations;
- .7 no cross-liability exclusions between Named Insured and Additional Insured.

**§ 1.4 Business Automobile Liability:** Coverage to include any Owned, Leased, Non-Owned, or Hired vehicles. The policy shall include coverage for loading and unloading activities. Coverage is to be provided via the ISO CA 00 01 (or equivalent) form with limits of: **\$1,000,000** per accident for bodily injury and property damage.

**§ 1.5 Umbrella/Excess Liability Insurance:** Umbrella/Excess policy coverage shall be on an occurrence basis and not be any more restrictive in coverage than the scheduled underlying policies. The Umbrella/Excess policy will schedule the following policies on the schedule of underlying coverage: Commercial General Liability, Automobile Liability, and Employers Liability. The

policy shall “drop down” if a claim falls outside the coverage grant of the primary policy and is covered by the umbrella policy. The umbrella policy must be specifically written or endorsed to be primary and non-contributory to any insurance procured or maintained by the additional insureds and shall attach once the Insured’s liability exceeds the amount of the primary policy, whether or not the underlying insurer actually paid out the policy limit. The policy shall not permit the umbrella insurer from withholding benefits if the insured cannot make payment of a deductible or self-insured retention due to bankruptcy or insolvency.

The Contractor shall provide limits in an amount not less than:

**\$5,000,000 per occurrence**

**\$5,000,000 aggregate**

The Contractor shall require subcontractors of any tier to carry limits in an amount not less than:

**\$3,000,000 per occurrence**

**\$3,000,000 aggregate**

**§ 1.6 Contractor’s Pollution Liability Insurance:** In the event the Contractor or any Subcontractor is performing asbestos removal, demolition involving hazardous substances, environmental remediation, excavation of contaminated fill, hazardous waste removal or services that create the potential for pollution or impairment of the environment, the Contractor or Subcontractor performing the service shall procure pollution liability insurance in the amount set forth below arising out of any sudden and/or non-sudden pollution or impairment of the environment including but not limited to, exacerbation of any pre-existing environmental condition, including third party bodily injury and property damage, clean-up costs and defense relating to pollution arising from construction operations at the Project site; provided, however, if the party required to carry pollution liability insurance is a Subcontractor then the General Contract Contractor must also carry the pollution coverage specified below. If Contractor’s Pollution liability coverage is written on a claims made policy form, the retroactive date of the policy must be shown on the certificate of insurance and must be on or before the date of the Agreement. Insurance shall be maintained for at least ten years after Final Completion of the Work. If the coverage is canceled or not renewed and it is not replaced with another policy with a retroactive date that precedes the date of this Agreement, the Insured must provide extended reporting coverage for a minimum of three years after completion of the Agreement or the work on the former policy.

The Contractor shall provide limits in an amount not less than:

**\$1,000,000 per occurrence**

**\$1,000,000 aggregate**

The Contractor shall require subcontractors of any tier to carry limits in an amount not less than those provided below if scope of work involves environmental hazards:

**\$1,000,000 per occurrence**

**\$1,000,000 aggregate**

**§ 1.7 Contractor’s Professional Liability Insurance (“CPRL”):** In the event Contractor or any Subcontractor is (i) an architect, engineer, surveyor; (ii) is providing stamped drawings or submittals; (iii) providing as-built drawings; or (iv) providing another professional service as part of Project or the Work, the Contractor or Subcontractor performing the Work or service shall procure contractor’s professional liability coverage in the amount set forth below; provided, however, if the party required to carry professional liability insurance is a Subcontractor then the General Contractor must also carry the CPRL coverage specified below. The CPRL policy will cover economic damages and remedial costs and will not exclude from coverage damages or losses based upon or arising out of a claim for breach of contract, for liquidated damages, or for delay damages so long as the claim is based upon the Insured’s negligent act, error, omission in the performance of professional services. If written as a claims-made policy form, the retroactive date of the policy must be on or before the date of the Agreement. Insurance shall be maintained for at least ten years after Final Completion of the Work. If the coverage is canceled or not renewed and is not replaced with another policy with a retroactive date that precedes the date of this Agreement, the Insured must provide extended reporting coverage for a minimum of three years after completion of the Agreement or the work on the former policy.

The Contractor shall provide limits in an amount not less than:

**\$1,000,000 per occurrence**

**\$1,000,000 aggregate**

The Contractor shall require subcontractors of any tier to carry limits in an amount not less than those provided below if CPRL coverage is required:

**\$1,000,000 per occurrence**  
**\$1,000,000 aggregate**

**§ 1.8 Contractor's Aviation Liability:** Should a Contractor's work include using any owned, leased, chartered, or hired aircraft of any type (including helicopters and unmanned aircraft) on the Project, minimum limits in an amount not less than **\$5,000,000** per occurrence including Passenger Liability shall apply. Coverage shall include Aircraft Damage and Slung Cargo.

**§ 1.9 Duty of Care:** Nothing contained in this Exhibit, the Contract Documents, or elsewhere shall relieve Contractor or any of its Subcontractors of any tier of their indemnification obligations to Owner under the Contract Documents or their respective obligations to exercise due care in the performance of their duties in connection with the Work, and to complete the Work in strict compliance with the Contract Documents. Regardless of anything to the contrary expressed in this Exhibit or other Contract Documents, if the Contractor maintains any insurance coverage and/or limits that exceed the types of coverage and/or limits set forth in this Exhibit, the broadest coverage and highest limits actually provided under these policies shall be deemed the coverage and limits that are required under this Agreement and such coverage and limits will be available in full to the additionally-insured and indemnified parties of this Agreement.

## **Article 2: Other Insurance Provisions**

**§ 2.1 Additional Insureds:** Each policy of liability insurance, with the exception of workers' compensation and professional liability, shall be endorsed to name Owner, Owner's Agent, the OPR, Owner's lender and mortgagee, if any, the Property's Third-Party Property Manager, the parent and subsidiaries of each of them, and each of the foregoing entities' members, partners, officers, directors, employees, successors, and assigns, now existing or which may hereafter exist as well as any person or entity having an ownership or possessory interest in any portion of a Property (including, without limitation, lessors or tenants) (collectively, "Additional Insureds"), as additional insureds during the period of the Insured's ongoing operations on the Project site and for the products and completed operations period set forth in this Exhibit. The additional insured coverage shall not require privity of contract between an Additional Insured and the Named Insured. The additional insured coverage shall not be limited to vicarious liability for the negligence of the Named Insured.

**§ 2.2 Commercial General Liability:** Contractor shall use ISO forms CG 20 10 10 01 for ongoing operations, and CG 20 37 10 01 for completed operations, or their equivalents, for Additional Insured coverages; provided, however, if policies providing the Additional Insured coverage required under this Agreement contain wording, either in the basic policy or by endorsement, to the effect that such Additional Insured coverage will be no broader than the minimum required under this Agreement (including, but not limited to, CG 20 10 04 13 or 20 37 04 13), such language will be of no force or effect or in any way limit the breadth of insurance provided to the Additional Insureds as set forth in this exhibit and the Contractor shall provide the greater of (a) the coverage limits specified herein; and (b) the Contractor's actual coverage limits.

**§ 2.3 Primary Non-Contributory:** As pertains to the policies to which such parties are considered as Additional Insureds, all policies will contain either standard ISO policy wording, or be endorsed, stating that such coverage as it applies to the Additional Insureds shall be on a primary concurrent and primary non-contributory basis, not contributing with or excess of, any other valid and collectible insurance or self-insurance available to the Additional Insureds. The amount of the insurer's liability under these insurance policies shall not be reduced by the existence of such other insurance.

**§ 2.4 Waiver of Subrogation:** Contractor and subcontractors grant to Additional Insureds a waiver of any right to subrogation which any insurer of Contractor and subcontractor may acquire against the Additional Insureds by virtue of the payment of any loss under such insurance. Contractor and subcontractors agree to obtain any endorsement that may be necessary to affect this waiver of subrogation, this provision applies regardless of whether or not the Contractor and subcontractor received a waiver of subrogation endorsement from the insurer.

**§ 2.5** If a Contractor fails to purchase and maintain any insurance required under this Exhibit or elsewhere in the Contract Documents, Owner may, but shall not be obligated to, upon ten (10) days' written notice to the Contractor, purchase such insurance on behalf of the Contractor and shall be entitled to be reimbursed by the Contractor upon demand.

**§ 2.6** At the request of Owner, a Contractor shall supply Owner with a copy of any applicable policy or policies, including all applicable endorsement(s) (provided, however, that Owner shall not be deemed by reason of its custody of such policy to have notice of the contents thereof); and to deliver to Owner, upon Owner's request, receipts or other evidence that the premiums

thereon have been paid in accordance with the policy. In the event a Contractor wishes to change insurance carriers during the required period of coverage, such policies shall be required to maintain a retroactive date which is no later than the date of this Agreement, and shall clearly evidence the continuation of all coverage in the same manner, limits of protection, and scope of coverage as was provided by the previous policy. In the event any renewal or replacement policy differs in any way from the previous policy, the Contractor shall also furnish Owner with a certified copy of the renewal or replacement policy, unless Owner provides Contractor with prior written consent to submit only a Certificate of Insurance for any such renewal or replacement policy. All renewal and replacement policies shall be in form and substance satisfactory to Owner and underwritten by carriers acceptable to Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with Contractor's Final Application for Payment and be a condition precedent to Owner's making Final Payment, and also shall be submitted to Owner upon renewal or replacement of such coverage until the expiration of the completed operations period. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

**§ 2.7** In no event shall any failure of Owner to receive certified copies of policies, endorsements, or Certificates of Insurance of policies required under this Exhibit, or to demand receipt of such certified copies or certificates prior to Contractor's commencing the Work, be construed as a waiver by Owner of Contractor's obligations to obtain insurance pursuant to this Exhibit. The obligation to procure and maintain any insurance required by the Contract Documents, including this Exhibit, is a separate responsibility of Contractor and independent of the duty to furnish a certified copy or certificate of such insurance policies.

**§ 2.8 Preparation of Certificate of Insurance (ACORD Form 25):** In accordance with the Agreement, Contractor shall supply an original Certificate of Insurance (ACORD Form 25 or equivalent) ("COI") signed by insurance brokers or agents licensed in the Project state attesting that the insurance that Contractor is required to procure and maintain under the Agreement is in effect and that the applicable liability policies have been endorsed to cover the Additional Insureds as required hereunder. The Certificate of Insurance should include Additional Insured and Waiver of Subrogation endorsements. In this regard, Contractor shall the cause the section of the COI entitled, "Description of Operations/Locations/Vehicles" to include the following information:

Project: \_\_\_\_\_

Contract: Agreement between [INSERT OWNER], as Owner by and through [INSERT PC AS AGENT], as Owner's Agent, and [INSERT CONTRATOR], as Contractor, dated as of \_\_\_\_\_.

Additional Insureds: Owner, Owner's Agent, Owner's lender and mortgagee, if any, the OPR, the Property's Third-Party Property Manager, the parent and subsidiaries of each of them, and each of the foregoing entities' members, partners, officers, directors, employees, successors, and assigns, now existing or which may hereafter exist as well as any person or entity having an ownership or possessory interest in any portion of a Property (including, without limitation, lessors or tenants) are included as additional insureds under the commercial general liability ("CGL") and umbrella liability policies referenced above for ongoing and completed operations.

The Insured's insurance shall be on a primary concurrent and primary non-contributory basis, with no recourse to or contribution from, any other valid and collectible insurance or self-insurance available to the Additional Insureds.

Waiver of subrogation in favor of the Additional Insureds applies.

### **Article 3: Property Insurance**

**§ 3.1 Builder's Risk Policy:** By endorsement to its property policy or otherwise, Owner has, and shall maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, builder's risk property insurance upon the Contractor's Work on an "all-risk" or equivalent policy form, for at least 100% of the full replacement cost value thereof, plus the value of subsequent modifications to Contractor's Work (the "BR Policy"). The BR Policy shall be maintained until substantial completion has been achieved. Contractor shall be responsible for any loss within the deductible limits of the BR Policy, and for any losses not covered by such insurance including to building materials and equipment owned by Contractor that are not destined to become a permanent fixture of the project.

**§ 3.2** Owner's BR policy shall not cover any tools, apparatus, machinery, scaffolding, hoists, forms, staging, shoring, and other similar items commonly referred to as construction equipment, that may be on the site and the capital value of which is not included in the Work. Contractor shall make its own arrangements for any insurance it may require on such construction equipment. Any such policy obtained by Contractor shall include a waiver of subrogation in favor of Indemnitees.

**§ 3.3** A loss insured under Owner's BR policy shall be adjusted by Owner in good faith and made payable to Owner in good faith for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause. Contractor shall pay

Subcontractors their just shares of insurance proceeds received by Owner, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their sub-Subcontractors in similar manner.

**§ 3.4 Mutual Waiver of Subrogation:** Owner (except as set forth below) and Contractor waive all rights of subrogation against (1) each other and any of their Subcontractors, sub-Subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors, if any, and any of their Subcontractors, sub-Subcontractors, agents and employees, for damages to the Project caused by fire or other causes of loss to the extent covered and paid by Owner's BR Policy, except such rights as they have to proceeds of such insurance held by Owner in good faith. For avoidance of doubt, Owner's subrogation waiver does not apply to non-Project property such as existing adjacent improvements or equipment. Owner or Contractor, as appropriate, shall require of separate contractors, if any, and the Subcontractors, sub-Subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged. Notwithstanding the foregoing, Owner's subrogation waiver shall not apply to nor limit in any way any claim by Owner against Contractor to the extent of Contractor's responsibility under Section 3.1 of this Exhibit for any loss within the deductible limits of the BR Policy.

**§ 3.5 Contractor's Equipment Policy:** Any insurance policy covering a Contractor's or Subcontractors' equipment against loss by physical damage shall include an endorsement waiving the insurer's right of subrogation against Additional Insureds. Such insurance shall be the Contractor's and Subcontractors' sole and complete means of recovery for any such loss. Should the Contractor or Subcontractors choose to self-insure this risk, it is expressly agreed that Contractor and its Subcontractors hereby waive any claim for damage or loss to said equipment in favor of Additional Insureds, even if such claim arises from or is attributed to the concurrent negligence of any Additional Insured.

**EXHIBIT G TO AGREEMENT BETWEEN OWNER AND CONTRACTOR  
(COVID 19 RIDER)**

1. The Parties acknowledge that due to uncertainty surrounding the COVID-19 pandemic, a Project may be delayed in its commencement, or may be interrupted, suspended or delayed by government action, directives, or requests, such as so-called “shelter in place” orders, or by the necessity of, or Owner’s election to, impose so-called “social distancing,” “self-quarantine,” “large gathering” or other restrictions on the Project (collectively “**C19 Restrictions**”). In the event of C19 Restrictions, the Owner may suspend all or any portion of the Work on a Project, for cause, and Contractor shall continue to provide only the Work permitted under the C19 Restrictions that Owner authorizes and the Parties agree may be performed safely and without significant risk of exposure to or spread of the coronavirus or other epidemic or pandemic. At its election, the Owner also may terminate the Agreement. Contractor acknowledges that health and safety of Owner’s and the Contractor’s personnel and the public are of preeminent importance to the Owner; accordingly, C19 Restrictions shall include all COVID-19-related restrictions imposed by the Owner as a result of the COVID-19 pandemic, even if voluntary and in the absence of government action, directives or requests; provided, however, and notwithstanding anything to the contrary in the Agreement including Section 3.5, if Owner voluntarily suspends the Project in the absence of either government-imposed C19 Restrictions or a reported case of COVID-19 exposure at the Site necessitating temporary shutdown, then Contractor shall be entitled to recover the actual and reasonable costs of demobilization and, if and when the suspension is lifted, remobilization costs incurred by Contractor and its Subcontractors.

2. Contractor agrees to adopt and implement a health and safety plan (“**HASP**”) which adheres to the health and safety guidelines set forth by the Centers for Disease Control & Prevention (CDC), the Occupational Safety and Health Administration (OSHA) and any COVID-19-related mandates and recommendations issued by the state and/or local jurisdiction in which the Work is performed (collectively, “**C19 Safety Precautions**”). Immediate notification to the project superintendent is required if an individual is sent home sick or falls into any of the below categories: (i) Employees who have symptoms (i.e., fever, cough, or shortness of breath) should notify their supervisor and stay home; (ii) Sick employees should follow CDC-recommended steps. Employees should not return to work until the criteria to discontinue home isolation are met in consultation with healthcare providers and state and local health departments; and (iii) Employees who are well but who have a sick family member at home with COVID-19 should notify their supervisor and follow CDC recommended precautions. All such notices must then be reported immediately to the OPR. HASPs also should include how these practices will be communicated to your personnel and those of your subcontractors, and how the plans will be updated and communicated as COVID-19 Safety Precautions change or situations demand.

3. Contractor represents that the Contract Sum and the Contract Time account for the cost and time impacts that the C19 Safety Precautions and C19 Restrictions issued as of the Effective Date will have on the performance of the Work and the Contractor’s labor force and supply chain. Neither Party is responsible for the costs incurred by the other Party as the result of C19 Restrictions and C19 Safety Precautions in effect as of the Effective Date. If, after the Effective Date, however, the C19 Restrictions and/or the C19 Safety Precautions are modified and such modification causes an Excusable Delay then Contractor may recover the Extended General Conditions to the same extent as set forth in Section 3.5.1 notwithstanding anything to the contrary in Section 3.5.



**EXHIBIT H**  
Third-party Agreements

**EXHIBIT I-1**  
Stored Materials Affidavit

State of \_\_\_\_\_, County of \_\_\_\_\_; Personally appeared before me, the undersigned officer duly authorized to administer oaths, \_\_\_\_\_, who after being duly sworn deposed and stated:

1. He is the \_\_\_\_\_ of \_\_\_\_\_ (the "**Company**") and is duly authorized to execute this affidavit on behalf of the Company.
2. The Company owns and operates a warehouse facility located at \_\_\_\_\_ (the "**Warehouse**").
3. The Company has entered into a contract with \_\_\_\_\_ (the "**Contractor**") to store certain items of furniture, furnishings, fixtures and equipment ("**Stored Materials**") in the Warehouse pursuant to Contractor's agreement with \_\_\_\_\_ (the "**Owner**") to construct the following property: \_\_\_\_\_ (the "**Project**").
4. The Company acknowledges that the Stored Materials have been purchased by the Owner for the specific purpose of being used in the renovation of the Project and that the Stored Materials will be stored at the Warehouse and transported to the Project at Contractor's expense.
5. At all times the Stored Materials are stored at the Warehouse, the Company agrees that the Stored Materials:
  - a. Shall not be subject to any lien, claim or encumbrance by the Company.
  - b. Shall be clearly marked and identified for the Project and located in an area separate from any other materials not referenced in this affidavit.
  - c. Shall be stored in a safe and secure manner so as to preclude damage by the elements, theft, or vandalism.
  - d. Shall be covered by all risk property insurance in an amount not less than the total value thereof (which is expected to be approximately \$ \_\_\_\_\_), and with a deductible not in excess of \$10,000, with the Owner identified as a named insured.
  - e. Will remain at the Warehouse until delivery to the Site, except in an emergency which threatens the Stored Materials.
  - f. Will be available for inspection by Contractor and/or Owner at any time during normal business hours.
6. The undersigned makes this affidavit in order to induce Owner to permit Contractor to store the Stored Materials with the Company.
7. Contractor or Owner, at their convenience, can acquire physical possession of the Stored Materials within (24) hours of written request notwithstanding any contractual relation.

\_\_\_\_\_  
By: \_\_\_\_\_  
Its \_\_\_\_\_ and Agent

Sworn to me and subscribed before me, this \_\_\_\_\_ day of \_\_\_\_\_, 2020

**EXHIBIT I-2**  
Landlord's Affidavit

State of \_\_\_\_\_, County of \_\_\_\_\_; Personally appeared before me, the undersigned officer duly authorized to administer oaths, \_\_\_\_\_, who after being duly sworn deposed and stated:

1. H/she is the \_\_\_\_\_ of \_\_\_\_\_ (the "**Landlord**") and is duly authorized to execute this affidavit on behalf of the Landlord.
2. The Landlord owns the real property and improvements located at \_\_\_\_\_) (the "**Property**") and leases the Property to \_\_\_\_\_ ("Tenant") for use as a warehouse facility.
3. Landlord acknowledges that Tenant has entered into a contract with \_\_\_\_\_ (the "**Contractor**") to store certain items of furniture, furnishings, fixtures and equipment ("Stored Materials") in the Warehouse pursuant to Contractor's agreement with \_\_\_\_\_ (the "**Owner**") to construct \_\_\_\_\_ (the "**Project**").
4. Landlord represents that Tenant is current in its rent and is not otherwise indebted or in arrears to Landlord.
5. At all times the Stored Materials are stored at the Property, Landlord agrees that the Stored Materials shall not be subject to any lien, claim or encumbrance by Landlord, at law or in equity, arising out of or resulting from any indebtedness or claim of indebtedness of Tenant to Landlord notwithstanding any lease or contract between Landlord and Tenant to the contrary.
6. Landlord further agrees that Contractor or Owner, at their convenience, can acquire physical possession of the Stored Materials within (24) hours of written request to Landlord notwithstanding any contractual relation or any indebtedness or claim of indebtedness of Tenant to Landlord.
7. The undersigned acknowledges that Owners are relying on this affidavit in order to permit Contractor to store the Stored Materials with the Tenant.

**LANDLORD**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its \_\_\_\_\_ and Agent

Sworn to me and subscribed before me, this \_\_\_\_\_ day of \_\_\_\_\_, 2020

Notary Public \_\_\_\_\_

## EXHIBIT J TO CONTRACT BETWEEN OWNER AND CONTRACTOR

(Subcontractor's Warranty (Form))

The attached warranty shall be provided in addition to, and not in substitution of, any other warranties required by the Contract Documents or by law. Contractor shall require its Subcontractors to execute the attached **Exhibit J** as required by the Contract Documents, except that the Owner may elect, in its discretion, to require that the form be modified as appropriate in the Owner's determination to reflect any given Subcontractor's work, special warranties, or relevant industry standards. If a given Subcontractor proposes to use another form, Contractor shall provide such proposed alternate form for Owner's review and acceptance, modification or rejection.

**SUBCONTRACTOR WARRANTY**

**Project:** \_\_\_\_\_  
**Contractor:** \_\_\_\_\_  
**Owner:** \_\_\_\_\_  
**Subcontractor:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Phone:** \_\_\_\_\_  
**Emergency #:** \_\_\_\_\_

**Subcontract #:** \_\_\_\_\_

**Subcontract Date:** \_\_\_\_\_

**Work Covered (General Description Only – Not Exhaustive or Definitive):** \_\_\_\_\_  
\_\_\_\_\_

In addition to any guarantees or warranties (1) provided under law; (2) required pursuant to the Contract Documents and/or the Subcontract Documents, and any "special warranty" terms or conditions required of the Subcontractor by the Specifications, each of which are incorporated herein by reference); and (3) any other written warranties provided by the Subcontractor, Subcontractor hereby warrants and guarantees to Contractor and Owner that all workmanship, materials, equipment and other services provided under the Subcontract for this Project (the "Subcontract Work") conform with the requirements of the Contract Documents and Subcontract Documents and authorized modifications thereto, including any special warranty requirements set forth in the Specifications, and are free from defects in materials and workmanship. For the period set forth in any special warranty required of the Subcontractor, or if none, for a period of one (1) year, commencing on the date of Substantial Completion (as identified in the Certificate of Substantial Completion), Subcontractor shall promptly correct, repair or replace all defective or non-conforming Subcontract Work, including adjacent work displaced, and all damage caused by defective or non-conforming Subcontract Work at no expense to the Owner. Upon completion of any corrective work under or pursuant to this warranty, Subcontractor's obligation to correct such Subcontract Work shall be renewed and recommence. Damage caused solely by ordinary wear and tear or improper use or neglect by Owner are excepted from this warranty. In the event Subcontractor fails to comply with the above conditions within 10 days after being notified, Subcontractor hereby authorizes Contractor and/or the Owner to proceed to have such defects and damages repaired, corrected and made good at Subcontractor's expense, and will honor or pay the costs and charges and related expenses therefor upon demand. The one (1) year correction period applies only to Subcontractor's specific obligation to correct Defective Work. It does not constitute a period of limitations for any other rights or remedies Owner or Contractor may have under the Contract Documents, at law, or in equity, and has no relationship to the time within which Owner or Contractor may seek to enforce Subcontractor's obligation to comply with the Contract Documents or Subcontract or commence proceedings to establish Subcontractor's liability with respect to Subcontractor's obligations. This warranty may be freely assigned or transferred by the Contractor to the Owner, or by the Owner to any third-party. As used herein, the "Contract Documents" are defined in the Owner-Contractor Agreement, and the "Subcontract Documents" are defined in the Subcontract Agreement.

**Signed:** \_\_\_\_\_  
(Type Name of Signer Here)

**License:** \_\_\_\_\_  
(Insert State Subcontractor's License Number)

\_\_\_\_\_  
Signature                      Title

**Date:** \_\_\_\_\_