

Invitation For Bids (IFB)
FOR
General Contractor Services

Solicitation NO. 2022-CON-B09



METROPOLITAN DEVELOPMENT AND HOUSING AGENCY
FOR
5th & Summer Apartments
NASHVILLE, TENNESSEE

ADDENDUM No. 3

February 2, 2023

Addendum No. 3 5th & Summer Apartments

Updated Information

1. **IFB Section 1.2:** in the second to last paragraph replace the sentence with “The Successful Bidder shall be required to finally complete all work within **seven hundred thirty (730) consecutive calendar days** from and after the Commencement Date specified in the Notice to Proceed.”
2. **IFB Section 2.3 Interpretation of Contract Documents:** replace the deadline for requests for interpretation with **February 13, 2023 at 2:00 p.m. Central Standard Time (CST)**. Questions may be submitted via “Housing Agency Marketplace” URL:

https://ha.internationaleprocurement.com/requests.html?company_id=51162

or to:

Diane Baseheart
Contracting Agent/DBE Coordinator
Metropolitan Development & Housing Agency
712 South Sixth Street
Nashville, TN 37206
purchasing@nashville-mdha.org

3. **IFB Section 2.4 Submission Deadline:** replace the submission deadline with **February 22, 2023 at 2:00 p.m. Central Standard Time (CST)**, below zoom link:

<https://us06web.zoom.us/j/84144347263?pwd=WG54UXBwSTk1YS9MV1o5TzRhMHZEz09>

Meeting ID: 841 4434 7263

Passcode: 997336

Phone Number: 1 (646) 931-3860

4. **IFB Section 2.11.1:** Add the following statement to the end: “MDHA reserves the right to adjust bids based on the bidders assumptions, clarifications, and exclusions provided in attachment to the Bid Form. The apparent low bidder announced during the bid opening may not be the actual low bidder based on these adjustments.”
 5. **IFB Attachment B – Bid Form:** is replaced in its entirety with the new Attachment B – Bid Form attached to this Addendum No. 3.
 6. **IFB Exhibit A – AIA A101-2017 Standard Form of Agreement Between Owner and Contractor** is replaced with **Exhibit A – AIA A102-2017 Standard Form of Agreement Between Owner and Contractor** where the basis of payment is the Cost of the Work plus a Fee with a Guaranteed Maximum Price attached to this Addendum No. 3.
 7. **IFB Exhibit D – Exhibits to the Agreement:** added Exhibit B – Contractor’s Assumptions, Clarifications, and Exclusions; and Exhibit C – Contractor’s Schedule; then re-lettered the original exhibits to follow.
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Questions

- Q1.** Will escalation be included for 4 months GMP and is it for full project?
- A1.** **Yes. All bidders shall include in their Guaranteed Maximum Price a lump sum of one million two hundred thousand dollars (\$1,200,000.00). See Attachment B – Bid Form, and Exhibit A – AIA A102-2017 Article 5.2.3.**
- Q2.** Who is responsible for security cameras and access control?
- A2.** **Bidders shall include in their Guaranteed Maximum Price the cost for security cameras and access control provided by Eye in the Sky. Eye in the Sky can be contacted at Joey Edenfield Phone number-615-469-5688**
- Q3.** Electrical bidders have included aluminum feeders and Romex cabling in their quotes. These materials conflict with the specifications. Their reasoning is cost savings. Please advise if these materials are acceptable to the owner and design team to be used on this project?
- A3.** **From the Engineer: It is acceptable to use aluminum feeders in lieu of copper ones from the transformer to the switchgear and to the electrical meters. Romex cabling is only acceptable with the tenant spaces. A revised specification will be issued to this effect.**

ADDITIONAL INFORMATION

1. Acknowledge Addendum 1 on your Bid Form.
2. Acknowledge Addendum 2 on your Bid Form.
3. Acknowledge Addendum 3 on your Bid Form.
4. Attached Pre-Bid Sign In Document

END OF ADDENDUM No. 3

ATTACHMENT B

BID FORM

PROPOSAL OF:

(Name of Bidder)

(Address of Bidder)

organized and existing under the laws of the State of _____ and doing business as a _____ (insert "a corporation", "a partnership" or "an individual" or otherwise as applicable).

**TO THE: METROPOLITAN DEVELOPMENT AND HOUSING AGENCY
712 SOUTH SIXTH STREET
NASHVILLE, TENNESSEE 37206**

In compliance with your Advertisement for Bids, Bidder hereby proposes to furnish all necessary labor, machinery, tools, apparatus, materials, equipment, services and other necessary supplies, in strict accordance with the terms and conditions of plans, specifications and Contract Documents within the number of consecutive calendar days and at the prices set forth below for:

- **The drawings titled Construction Documents, 5TH AND SUMMER PLACE, 725 S. 5th Street, Nashville, TN 37206, MDHA, dated 09.21.2022;**
- **the Project Manual Volumes 1 and 2, Construction Documents, Gresham Smith Project No. 44287.00, 5th and Summer Place, MDHA Apartment Building, Nashville, Tennessee, dated September 21, 2022.;**
- **and**
- **this IFB, its addendums, attachments, and exhibits.**

By submitting this Bid, Bidder certifies that this Bid has been arrived at independently, without consultation, communication or agreement as to any matter relating to this Bid with any other Bidder or with any other competitor.

Bidder agrees, upon receipt of the Notice of Award accompanied by the Contract and Agreement (C&A) and all required attachments, to cause same to be properly executed and returned to the MDHA within fifteen (15) days thereafter. Bidder further agrees, upon receipt of the Notice to Proceed, to commence work on the project immediately thereafter and to complete the project within **seven hundred thirty (730) consecutive calendar days** after receipt of said Notice to Proceed. Liquidated Damages shall be assessed at **\$3,745.00 or portion thereof at \$35.00 per incomplete apartment per calendar day** for each day of un-excusable delay.

The Bidder agrees to furnish and construct all work as shown on the contract documents for a contract sum in the form of a Guaranteed Maximum Price of:

_____ & _____/100 Dollars,
Written amount
\$ _____.
Numerical amount

Bidder shall breakout the cost for grading and utilities: \$ _____

Bidder shall breakout the total cost for level 2 garage: \$ _____
(For MDHA’s financing purposes)

Bidder has included fee in the Guaranteed Maximum Price as ____% of the Cost of the Work for a total of \$ _____.

Bidder has included one million two hundred thousand dollars in their Guaranteed Maximum Price for Escalation Allowance. See Article 5.2.3 of Exhibit A – AIA A102. _____
initial

Bidder has included Construction Contingency in the amount of \$ _____ in their Guaranteed Maximum Price in accordance with Article 5.2.3 of Exhibit A – AIA A102.

Bidder has read and understands the Exhibit A – AIA A102, including revisions made by MDHA, especially for Articles 4 and 5 : _____
initial

Contractor shall attach to the end of this Bid Form their assumptions, clarifications, and exclusions.

1. In submitting this bid, it is understood that the right is reserved by the Metropolitan Development and Housing Agency to reject any and all bids. If written notice of the acceptance of this bid is mailed, telegraphed, or delivered to the undersigned within sixty (60) days after the opening therefore, or at any time thereafter before this bid is withdrawn, the undersign agrees to execute and deliver a contract in the prescribed form and furnish the required bond within ten (10) days after the contract is presented to him for signature.
2. Security in the sum of five percent (\$ _____), in the form of _____ is submitted herewith in accordance with the Specifications.
3. By signing and submitting this bid, the Contractor recognizes the requirement for 5% retainage of payment and provisions of the statute T.C.A. 66-11-144, of the State of Tennessee.
4. The bidder represents that he (___) has, (___) has not, participated in a previous contract or subcontract subject to the equal opportunity clause prescribed by Executive Orders 10925, 1114 or 11246, or the Secretary of Labor that he (___) has, (___) has not, filed all required compliance reports, and that representations indicating submission of required compliance reports, signed by proposed subcontractor, will be obtained, prior to subcontract awards. (The above representations need not be submitted in connection with contracts or subcontracts which are exempt from the clause.)

5. The Bidder acknowledges that he (or she) has received the following Addenda. The modifications to the Bid Documents noted therein have been considered and all costs thereto are included in the Bid Sum.

- A. Addendum Number _____ Dated _____
- B. Addendum Number _____ Dated _____
- C. Addendum Number _____ Dated _____
- D. Addendum Number _____ Dated _____

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

DATE: _____

(NAME OF BIDDER)

OFFICIAL ADDRESS & PHONE NUMBER:

BY: _____

TITLE: _____

EXHIBIT A

AIA A102-2017

**STANDARD FORM OF AGREEMENT BETWEEN OWNER AND
CONTRACTOR**

WHERE THE BASIS OF PAYMENT IS THE COST OF THE WORK PLUS A FEE
WITH A GUARANTEED MAXIMUM PRICE

Modified by MDHA

DRAFT AIA® Document A102™ - 2017

Standard Form of Agreement Between Owner and Contractor

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

AGREEMENT made as of the « » day of « » in the year « »
(In words, indicate day, month and year.)

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

«Metropolitan Development and Housing Agency
701 S 6th Street»
Nashville, TN 37206 »«↔»
«↔»
«↔»
«↔»

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

«TBD-»« »
« »
« »
« »

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

«5th & Summer Apartments-»
«725 South Fifth Street
Nashville, TN 37206»
«Located on the southeast quadrant of the intersection of South Fifth Street and Summer
Place in the Cayce Homes Neighborhood of East Nashville, TN. 37206.
One (1) singular 153,496 SF apartment building to include a total of 107 MDHA apartment
units.-»

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

«Gresham Smith-»«↔»
«222 2nd Avenue S-»
«Suite 1400-»
«Nashville, TN 37201-»

The Owner and Contractor agree as follows.

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

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

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



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EXHIBIT A INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 16.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 RELATIONSHIP OF THE PARTIES

The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

§ 3.1 The Contractor represents to the Owner that is it financially solvent, able to pay its debts as they mature and possesses sufficient working capital to complete the services and perform its obligations as required under this Contract.

§3.2 The Contractor hereby warrants and represents to the Owner that it is an expert possessed of special knowledge and experience in matters of multi-family housing construction type, is familiar with the construction requirements of urban multi-family housing projects, and is able to furnish all of the facilities, tools, materials, supplies, equipment, and labor required to complete the services and to perform all of its obligations hereunder, and that it has sufficient experience, capacity, and competence to successfully do so.

ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

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

(Check one of the following boxes.)

[] The date of this Agreement.

[] A date set forth in a notice to proceed issued by the Owner. Notice to Proceed is subject to the Owner's ability to obtain financing. Several notices to proceed may be issued to allow portions of the Project to proceed at the Owner's risk, but in no event shall the Contractor obligate Cost of the Work directly, or indirectly through subcontractors and suppliers, that the Owner has not approved.

The assumptions at the time of the bid are as follows:

- Notice to Proceed for a Grading and Utility Package will be issued April 1, 2023.
- Notice to Proceed for the remaining scope of Work will be issued July 1, 2023.

[] Established as follows:

(Insert a date or a means to determine the date of commencement of the Work.)

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

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

§ 4.3 Substantial Completion

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

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

[] Not later than seven hundred thirty (~~730~~) calendar days from the date of commencement of the Work.

[] By the following date:

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

Portion of Work

SEE BELOW

Substantial Completion Date

SEE BELOW

Phase 01: Seven (07) Street-Level Apartment Units with South Fifth Street Frontage/Access, Leasing Office Space, Grand Foyer, Security Systems, Elevators per Code Requirements, and Parking Garage Complete with Stairwells and Rear Occupant Corridors 115 & 116 for Unobstructed Garage and Garbage Ramp Access

- Request for Owner/Architect inspection and Punch List for Phase 01: 08/31/2024

- Issuance of Metro Codes Certificate of Partial Occupancy: On or Before 10/31/2024
- Substantial Completion and Final Turnover of Phase 01: 10/31/2024

NOTE: Phase 01 must be completed by these dates for compliance with funding sources. Delays are unacceptable. Contractor and Owner shall consider accelerated schedule methods to complete this phase on time.

Phase 02: Remaining One Hundred (100) Apartment Units on Levels 03, 04, 05 and 06, Interior Common Areas, ALL Exterior Improvements in there Entirety, and Exterior Finishes

- Request for Owner/Architect inspection and Punch List for Phase 02: 08/31/2024
- Issuance of Metro Codes Certificate of Occupancy: On or Before 03/30/2025
- Issuance of Architect’s Certificate of Substantial Completion and Final Turnover for Phase 02 apartments: 03/30/2025
- Correction of remaining common area or exterior punchlist items and Final Turnover of the Project : 04/30/2025

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

ARTICLE 5 CONTRACT SUM

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

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

~~«To be determined based on successful bid»~~

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

~~« No increase for overhead as a percentage. Overhead increase for change in the Work shall be reviewed as cost of Work but only to the extent such change impacts the schedule duration of the Project. Fee for change in the Work shall be submitted and approved as a part of the bid process or change order request »~~

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

~~« Change Order work self-performed by the Contractor shall receive an amount not to exceed ten percent (10%) of the direct costs for overhead expenses. The Subcontractor performing the Work shall receive an amount not to exceed ten percent (10%) of the direct costs for overhead expenses and five percent (5%) of costs for profit. In the case where a Change Order results in a decrease in costs, the same allowances specified above for additive Change Orders will apply to those costs in the deduction along with a reduction in the Contractor’s fee in accordance with the established fee percentage. »~~

§ 5.1.4 Rental rates for Contractor-owned equipment shall not exceed ~~«one hundred»~~ percent (~~«-100»~~ %) of the standard rental rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any:
(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

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

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

«If the Contractor shall neglect, fail, or refuse to complete the Work within the Contract Time specific for the completion of the Work, then the Contractor does hereby agree, as a part for consideration for the awarding of this Contract to pay the Owner as liquidated damages and not as a penalty, a sum per day for each calendar day beyond the Contract Time. The Contractor does hereby agree to pay the Owner THREE THOUSAND SEVEN HUNDRED FORTY FIVE DOLLARS (\$3,745.00) for the Project per calendar day, or portion thereof at Thirty Five Dollars (\$35.00) per incomplete apartment per calendar day, for each calendar day beyond the established Contract Time. Apartments of Work that are completed prior to the expiration of Contract Time shall be used to offset Apartments of Work completed after the expiration of Contract Time in equal amounts in so much as those completed Apartments or Work have received Temporary Use & Occupancy and a partial Certificate of Substantial Completion. The sum per day for liquated damages is agreed to be a reasonable estimate of the amount of damages of which the Owner will sustain. The amount is fixed and agreed on by and between the Contractor and the Owner because of the impracticability and extreme difficulty of fixing and ascertaining the true value of the damages which the Owner will sustain by failure of the Contractor to complete the Work on time. The amount shall be deducted from contract balances due or that may become due to the Contractor as a direct reduction of the Contract price and not be treated as a reimbursable cost. If said contract balances are insufficient to cover said damages, then the Contractor shall pay the amount of the difference.

»

§ 5.1.7 Other:

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

«If the Project is completed on schedule (subject to approved extensions) and after the final Cost of the Work is determined, any remaining Owner-Controlled Contractor Contingency will be split as twenty five percent (25%) kept by the Contractor and seventy five percent (75%) returned to the Owner in a final change order.»

§ 5.2 Guaranteed Maximum Price (GMP)

§ 5.2.1 The Contract Sum is guaranteed by the Contractor not to exceed « To be determined based on successful bid » (\$ « »), subject to additions and deductions by Change Order as provided in the Contract Documents. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.

Execution of this Agreement is not a Commitment of the Owner that Work will proceed. Notice to Proceed is subject to the Owner's ability to obtain financing. Several notices to proceed may be issued to allow portions of the Project to proceed at the Owner's risk, but in no event shall the Contractor obligate Cost of the Work directly, or indirectly through subcontractors and suppliers, that the Owner has not approved.

§ 5.2.2 Alternates

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

Item	Price

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

Item	Price	Conditions for Acceptance

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

Item

Escalation Allowance

-Construction Contingency

Price

One Million Two Hundred Thousand Dollars (\$1,200,000)

To be determined based on successful bid or 3% of the Cost of the Work or \$1 Million Dollars, whichever is greater.

§ 5.2.3.1 Escalation Allowance

The Contractor is required to guarantee their bids for sixty (60) days after the submission deadline. If the Owner issues the Notice to Proceed after sixty (60) days after the bid submission, the Escalation Allowance may be used by the Contractor with the Owner’s approval during the Contractor’s procurement of subcontractors and suppliers where cost increases are observed as a result of the delay. This does not waive the responsibilities of the Contractor in other provisions in this Agreement. Remaining Escalation Allowance at the end of the Project is subject to the incentives provision of Article 5.1.7.

§ 5.2.3.2 Construction Contingency

The Contractor shall include its contingency for the Contractor’s use “Construction Contingency” to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order. The Construction Contingency is incorporated into the Guaranteed Maximum Price as part of this Agreement. The Construction Contingency shall only be used by the Contractor with prior written approval of the Owner. The Construction Contingency shall be tracked by the Contractor and reported to the Owner each month with the monthly pay request. Construction Contingency Funds remaining at the completion of the project shall be subject to the incentives provision of Article 5.1.7.

The Construction Contingency is subject to additions and subtractions based upon the Contractor’s buyout of trades and supplies.

Examples of allowable uses of Construction Contingency include, but are not limited to, scope gaps in buyout of the Work, market-driven price fluctuations, errors in the Work not caused by the negligence of the Contractor or its Subcontractors, and cleanup or repair of damage to the Work not identifiable to a particular contractor. Construction Contingency is not to be used to defray costs for which the Contractor is entitled to an increase in the Guaranteed Maximum Price by Change Order, including but not limited to design changes, design corrections or concealed conditions.

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

←← Exhibit A – List of Drawings and Specifications
Exhibit B – Contractor’s Assumptions, Clarifications, and Exclusions
Exhibit C – Contractor’s Schedule»

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

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

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work may be determined by any of the methods listed in Article 7 of AIA Document A201™–2017, General Conditions of the Contract for Construction.

§ 6.2 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as they refer to “cost” and “fee,” and not by Articles 5, 7 and 8 of this Agreement.

Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201-2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Contractor's Fee as defined in Section 5.1.1 of this Agreement.

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

ARTICLE 7 COSTS TO BE REIMBURSED

§ 7.1 Cost of the Work

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. The Cost of the Work shall include only the items set forth in this Article 7.

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

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

§ 7.2 Labor Costs

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

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

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

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

« Administrative costs for administrative personnel involved with the Project but stationed at a location other than the site shall be included in the fee. »

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

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

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

§ 7.3 Subcontract Costs

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

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

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

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

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

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

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

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

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

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

§ 7.6 Miscellaneous Costs

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

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

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

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

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

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

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

§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Contractor resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Contractor had reason to

believe that the required design, process or product was an infringement of a copyright or a patent, and the Contractor failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201–2017. The costs of legal defenses, judgments, and settlements, shall not be included in the Cost of the Work used to calculate the Contractor’s Fee or subject to the Guaranteed Maximum Price.

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

§ 7.6.7 Costs of document reproductions and delivery charges.

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

§ 7.6.9 Legal, mediation and arbitration costs, including attorneys’ fees, other than those arising from disputes between the Owner and Contractor, reasonably incurred by the Contractor after the execution of this Agreement in the performance of the Work and with the Owner’s prior approval, which shall not be unreasonably withheld unless such costs are the result of negligence on the part of the Contractor or pertaining to the administration of subcontracts or purchase agreements.

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

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

§ 7.7 Other Costs and Emergencies

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

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

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

§ 7.8 Related Party Transactions

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

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

ARTICLE 8 COSTS NOT TO BE REIMBURSED

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

- .1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 15;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Contractor or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Contractor's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Article 7;
- .5 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Contractor, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Article 7; and
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.
- .9 Travel related expenses for personnel not specifically and directly related to business of the Project.

ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS

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

§ 9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 9.1 shall be credited to the Construction Contingency, unless such amounts accrue after Final Payment, then such amounts shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS

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

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

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

ARTICLE 11 ACCOUNTING RECORDS

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

§ 11.1 In addition to Article 11 of this Agreement, Accounting Records, the Contractor shall provide to the Owner copies of subcontracts and purchase agreements including Change Orders as they are executed and the Contractor shall work with the Owner in an "open book fashion" providing costs and information described in Paragraph 6.11 throughout the Project duration as required by the Owner.

ARTICLE 12 PAYMENTS

§ 12.1 Progress Payments

§ 12.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum, to the Contractor, as provided below and elsewhere in the Contract Documents.

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

« »

§ 12.1.3 Provided that an Application for Payment is received by the Architect not later than the « first » day of a month and by the Owner by the seventh (7th) day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the « thirtieth (30th) » day of the « same » month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than « thirty » (« 30 ») days after the Architect receives the Application for Payment. If the Application for Payment is returned to the Contractor for revision, the payment will be made by the Owner not later than twenty (20) days following receipt of acceptable submission.
(Federal, state or local laws may require payment within a certain period of time.)

§ 12.1.4 With each Application for Payment, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee. Partial or interim releases of liens for Contractor and such Subcontractors and Sub-subcontractors shall be submitted with all pay requests for work performed and for which payment has been made and as required by Project financing. The Contractor shall include with each pay application DBE Form 2004 reflecting payments made to DBE firms.

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

§12.1.5.1 Adjustments to the Schedule of Values shall be reviewed and approved by the Architect and Owner no later than submission of an Application for Payment based on such revision. Approval shall not be unreasonably withheld.

§12.1.5.2 Change Orders shall be itemized on the Schedule of Values as they are approved in a method acceptable to the Owner and Architect.

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

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

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

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

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

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

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

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

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

§ 12.1.8 Retainage

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

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

« five percent (5%) »

§ 12.1.8.1.1 The following items are not subject to retainage:

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

« None »

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

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

«Upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. Applications for Payment for retainage shall be separate from Applications for Payment for work in place and newly stored materials each period.

Upon mutual agreement between Owner, Architect, and Contractor, payment in full may be made to a subcontractor whose Work is fully and satisfactorily completed during the early stages of the Project, provided that the Subcontractor has complied with requirements for the final payment in accordance with the contract documents and terms of the Agreement. »

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

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

« »

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

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

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

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

§ 12.2 Final Payment

§ 12.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract, except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;

- .2 the Contractor has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 12.2.2.
- .4 when the Surety has provided to the Owner a written consent (Consent of Surety);
- .5 the Owner has received a properly executed lien waiver and release of claims by Contractor and properly executed final conditional lien waiver (with the only condition being release from the title company to the Contractor of the final payment) and release of claims by Contractor's Subcontractors and suppliers, all in a form satisfactory to Owner;
- .6 assignments of all guarantees and warranties from the Contractor, Subcontractors, vendors, suppliers or manufacturers are provided to the Owner;
- .7 the Owner has been provided all maintenance and operating instruction manuals; and
- .8 a marked-up set of as-built documents has been submitted to the Owner and Architect.

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

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

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

§ 12.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Contractor's final accounting, is less than claimed by the Contractor, the Contractor shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201-2017. A request for mediation shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Contractor. Pending a final resolution of the disputed amount, the Owner shall pay the Contractor the amount certified in the Architect's final Certificate for Payment.

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

« »

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

§ 12.3 Interest

Payments due and unpaid under the Contract shall bear interest from ninety (90) days after the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

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

« » % « » Prime

ARTICLE 13 DISPUTE RESOLUTION

§ 13.1 Initial Decision Maker

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

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

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§ 13.2 Binding Dispute Resolution

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

(Check the appropriate box.)

Arbitration pursuant to Section 15 of AIA Document A201–2017

Litigation in a court of competent jurisdiction

Other *(Specify)*

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

ARTICLE 14 TERMINATION OR SUSPENSION

§ 14.1 Termination

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

§ 14.1.2 Termination by the Owner for Cause

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

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

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

§ 14.1.3 Termination by the Owner for Convenience

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

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

« [Shall be the same as 13.2.2 except Owner assumes the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017](#) »

§ 14.2 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, except that the term “profit” shall be understood to mean the Contractor’s Fee as described in Article 5 and Section 6.4 of this Agreement.

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 15.2 The Owner’s representative:

(Name, address, email address and other information)

« [Brad Muckel, Senior Project Manager](#)
[Sanford Patterson, Assistant Project Manager](#)»
« [712 S 6th Street](#) »
« [Nashville, TN 37206](#) »
« bmuckel@nashville-mdha.org
spatterson@nashville-mdha.org»
« [615-252-8427](tel:615-252-8427)
[615-252-8429](tel:615-252-8429)»
« »

§ 15.3 The Contractor’s representative:

(Name, address, email address and other information)

« [TBD](#) »
« »
« »
« »
« »
« »

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

§ 15.5 Insurance and Bonds

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

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

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

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

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§ 15.7 Other provisions:

« § 15.7.1 Assignment

The Owner and Contractor, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Contractor shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201–2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§15.7.1.1 Financing Requirements. The Contractor understands that Owner may finance the development or construction of the Project with a lender or other third parties. Contractor agrees to subordinate its lien rights if any to the rights of any such lenders or third parties providing financing for the Project. Contractor also agrees as part of its GMP to follow any administration or reporting procedures and to execute any reasonable documents required by such lenders or third parties and to cooperate with the Owner in satisfying the requests and requirements of such lenders or third parties. Further, notwithstanding anything to the contrary in this Agreement, it is understood and agreed that the Owner shall have the right to assign this Agreement, if required, to a lender for the purposes of obtaining financing for the construction and/ or completion of the Project, the Contractor agrees to acknowledge and consent to such assignment. Failure of the Contractor to provide information required for financing can be basis for termination of this Agreement.

§15.7.2 The Contractor's Bid is incorporated by reference to this Agreement. In the event of conflict between this Agreement and provisions found in the Bid, the provisions most favorable to the Owner shall govern and control. The Schedule shall be as established by executed Amendment to this Agreement.

~~§15.7.3 In the event of an inconsistency between or among the terms of this Agreement, the General Conditions and the Supplementary Conditions, and to the extent neither the Contract Documents nor the parties' intentions are clear as to which instrument should control, the terms of this Agreement shall be deemed to control the relative right and duties of the parties with respect to such matters.~~

§15.7.4 Upon execution of this Agreement and accompanying General Conditions and Supplementary Conditions incorporated herein, this Agreement shall be deemed to have been drafted and prepared by both the Owner and Contractor. Neither party shall be deemed to be the drafter nor preparer of the instrument, such that the terms of this Agreement or the conditions incorporated herein shall be construed against either party and in favor of the other.

»§15.7.5 No Waiver. The waiver of any breach of any covenant or condition by either party shall not constitute a waiver of any other breach regardless of knowledge thereof.

»§15.7.6 Severability. The provisions of this Agreement are severable in that should any provision be held to be illegal, invalid, or unenforceable by a court of competent jurisdiction, the legality, validity, and enforceability of the other provisions herein shall not be affected, but they shall remain in full force and effect.

»§15.7.7 Effective Date. This Agreement shall not be binding upon the parties until it has been signed by the parties. When it has been so signed, this Agreement shall be effective as of the date first written above.

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ARTICLE 16 ENUMERATION OF CONTRACT DOCUMENTS

§ 16.1 This Agreement is comprised of the following documents:

- .1 AIA Document A102™–2017, Standard Form of Agreement Between Owner and Contractor
- .2 ~~AIA Document A102™–2017, Exhibit A, Insurance and Bonds~~
- .3 AIA Document A201™–2017, General Conditions of the Contract for Construction
- .4 ~~AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below: HUD General Terms and Conditions~~
(Insert the date of the E203–2013 incorporated into this Agreement.)

« »

- .5 Drawings – See Exhibit A

Number	Title	Date

- .6 Specifications – See Exhibit A

Section	Title	Date	Pages

- .7 Addenda, if any:

Number	Date	Pages

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

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

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

~~« »~~

~~« »~~ ~~The Sustainability Plan:~~

Title	Date	Pages

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

Document	Title	Date	Pages

- .9 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor’s bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

« Exhibit A – List of Drawings and Specifications »

- [Exhibit B – Contractor’s Assumptions, Clarifications, and Exclusions](#)
- [Exhibit C – Contractor’s Schedule](#)
- [Exhibit D – Insurance Certificate](#)
- [Exhibit E- Diversity Business Enterprise \(DBE\) Forms 2001, 2002, 2003, 2004](#)
- [Exhibit F – Standard Form Partial Release of Liens and Final Release of Liens Contractor](#)
- [Exhibit G – Standard Form Final Release of Liens Subcontractor](#)
- [Exhibit H – Weather Delays](#)
- [Exhibit I – Contractor’s License](#)
- [Exhibit J- Attachments from IFB](#)
 - [Attachment A – Contractor/Subcontractor License Information Form](#)
 - [Attachment B – Bid Form](#)
 - [Attachment C – AIA Document A310™-2010, Bid Bond](#)
 - [Attachment D – –Form of Non-Collusive Affidavit-\(must be notarized\)](#)
 - [Attachment E - Drug Free Affidavit](#)
 - [Attachment F – AIA Document A305™-2020, Contractor’s Qualification Statement](#)
 - [Attachment G – DBE Form 2001 – Metropolitan Development and Housing Agency Diversity Business Program, Bidder/Proposer Outreach Efforts and Documentation](#)
 - [Attachment H - DBE Form 2002- Metropolitan and Housing Agency Diversity Business Enterprise Program Utilization Plan](#)
 - [Attachment I- HUD Section 3 Bidder/Proposer Certification and Compliance Agreement](#)
 - [Attachment J - Fair Employment Practice Statement Affidavit](#)
 - [Attachment K- Contingent Fees Statement](#)

»

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

§ 16.2.1 This agreement shall not in any way be construed or intended to create a partnership or joint venture between the parties or among any of the parties. None of the parties of such Agreement shall hold itself out in a manner contrary to the terms of this intention not to create a partnership or joint venture. No party shall become liable for any representation, act or omission of any other party contrary to the terms of this Agreement.

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

OWNER (Signature)

« **Dr. Troy White** » « **Executive Director** »

(Printed name and title)

CONTRACTOR (Signature)

« **TBD** » « »

(Printed name and title)

EXHIBIT D

EXHIBITS TO THE AGREEMENT

- Exhibit A – List of Drawings**
 - Exhibit B – Contractor’s Assumptions, Clarifications, and Exclusions**
 - Exhibit C – Contractor’s Schedule**
 - Exhibit D – Insurance Certificates**
 - Exhibit E – Diversity Business (DBE) Forms 2001, 2002,2003, 2004**
 - Exhibit F – Standard Form Partial Release of Liens and Final
Release of Liens Contractor**
 - Exhibit G – Standard Form Final Release of Liens Subcontractors**
 - Exhibit H – Weather Delays**
 - Exhibit I - Contractor’s License**
 - Exhibit J – Attachments from IFB**
-

EXHIBIT A to the AIA Agreement

LIST OF DRAWINGS AND SPECIFICATIONS

EXHIBIT B to the AIA Agreement

**CONTRACTOR'S ASSUMPTIONS, CLARIFICATIONS, AND
EXCLUSIONS**

(PROVIDED FROM RESPONSE TO ATTACHMENT B – BID FORM)

EXHIBIT C to the AIA Agreement

CONTRACTOR'S SCHEDULE

(TO BE PROVIDED AFTER BID AWARD)

EXHIBIT D to the AIA Agreement

INSURANCE CERTIFICATE

**Insurance Certificate from the Selected Bidder will be Entered Here Prior to
Execution of the Contract**

EXHIBIT E to the AIA Agreement

DIVERSITY BUSINESS ENTERPRISE (DBE)

FORMS 2001, 2002, 2003, 2004

EXHIBIT F to the AIA Agreement

**STANDARD FORM PARTIAL RELEASE OF LIENS AND FINAL
RELEASE OF LIENS CONTRACTOR**

EXHIBIT G to the AIA Agreement

FINAL RELEASE OF LIENS SUBCONTRACTOR

EXHIBIT H

WEATHER DELAYS

EXHIBIT I

CONTRACTOR'S LICENSE

Contractor's License from the Successful Bidder will be Entered Here Prior to Execution of the Contract

EXHIBIT J

ATTACHMENTS FROM IFB

**Completed Attachments from the Successful Bidder will be Entered Here
Prior to Execution of the Contract**
