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.

DRAFT

AIA® Document A102™ – 2017

Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

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

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

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

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

« »« »
« »
« »
« »

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

« »« »
« »
« »
« »

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

« »« »
« »
« »
« »

The Owner and Contractor agree as follows.

ELECTRONIC COPYING of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

AIA Document A102™ – 2017. Copyright © 1920, 1925, 1951, 1958, 1961, 1963, 1967, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This draft was produced by AIA software at 12:35:33 ET on 08/22/2022 under Order No.3104236871 which expires on 05/27/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: AIA_UserNotes (1884252977)

TABLE OF ARTICLES

1 THE CONTRACT DOCUMENTS

2 THE WORK OF THIS CONTRACT

3 RELATIONSHIP OF THE PARTIES

4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

5 CONTRACT SUM

6 CHANGES IN THE WORK

7 COSTS TO BE REIMBURSED

8 COSTS NOT TO BE REIMBURSED

9 DISCOUNTS, REBATES AND REFUNDS

10 SUBCONTRACTS AND OTHER AGREEMENTS

11 ACCOUNTING RECORDS

12 PAYMENTS

13 DISPUTE RESOLUTION

14 TERMINATION OR SUSPENSION

15 MISCELLANEOUS PROVISIONS

16 ENUMERATION OF CONTRACT DOCUMENTS

EXHIBITS

Exhibit A: Insurance and Bond Requirements
Exhibit B: Contractor's Clarifications
Exhibit C: AIA Document A201™–2017, General Conditions of the Contract for Construction, as modified by the Owner and Contractor
Exhibit D: Scope of Work
Exhibit E: Project Schedule
Exhibit F: Lien Waiver Forms
Exhibit G: Project Budget
Exhibit H: Alternates, Unit Prices, Allowances
Exhibit I: Application for Payment Form
Exhibit J: HOC Requirements
Exhibit K: Payment and Performance Bonds
Exhibit L: List of Contractor's Project Team Personnel
Exhibit M: Phasing Plan
Exhibit N: Major Subcontractor List
Exhibit O: Contractor's Site Utilization Plan
Exhibit P: Wage Schedule

DRAFT

AIA Document A102™ – 2017. Copyright © 1920, 1925, 1951, 1958, 1961, 1963, 1967, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This draft was produced by AIA software at 12:35:33 ET on 08/22/2022 under Order No.3104236871 which expires on 05/27/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: AIA UserNotes (1884252977)

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 Exhibits listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 16. Any reference to the "General Conditions" shall mean the AIA Document A201-2017, General Conditions of the Contract for Construction, as modified by Owner and Contractor and attached hereto as **Exhibit C**.

ARTICLE 2 THE WORK OF THIS CONTRACT

§**2.1.1** The Contractor shall fully execute the Work described in the Contract Documents, including the scope of work set forth in Exhibit D, and any work reasonably inferable from the Contract Documents and/or by Contractor as necessary to produce the results intended by the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others. All qualifications, exclusions, clarifications and assumptions regarding the scope of the Work are clearly described and set forth in Exhibit B (Contractor's Clarifications). The Contractor shall comply with all applicable federal, state, and local laws, statutes, codes, ordinances, rules, regulations, and lawful orders and requirements of governmental and quasi-governmental agencies, regulatory bodies, and authorities having jurisdiction over the Project (collectively, "Applicable Laws"), including any applicable requirements of any state or local affordable housing agencies, the United States Department of Housing and Urban Development, or all other governmental and quasi-governmental agencies and authorities having jurisdiction over the Project (collectively, "AHJ")

§2.2 Contractor Review

§**2.2.1** The Owner and the Contractor agree that the Owner has selected the Contractor for this Project in material part because of the Contractor's experience in constructing similar projects. Before executing this Agreement and before commencing construction for any phase of the Work, the Contractor represents and warrants that it has carefully reviewed and shall carefully review the Project site, all Contract Documents, all other exhibits thereto, and all legal requirements applicable to the means and manner of performance of the Work. The Contractor further represents to the Owner that it is familiar with market conditions prevalent in the construction industry, local conditions under which the Work will be performed, and the requirements and results identified in, or reasonably inferable from, the Drawings and Specifications.

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

ARTICLE 3 RELATIONSHIP OF THE PARTIES

§3.1 The Contractor accepts the relationship of trust and confidence established by this Agreement in that Contractor has represented itself as having expertise in conceptual estimating, scheduling, and construction means and methods and experience with work of similar scope, size, and complexity. The Contractor covenants with the Owner to cooperate with the Owner and exercise the Contractor's best skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish 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.

AIA Document A102™ – 2017. Copyright © 1920, 1925, 1951, 1958, 1961, 1963, 1967, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This draft was produced by AIA software at 12:35:33 ET on 08/22/2022 under Order No.3104236871 which expires on 05/27/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: AIA UserNotes (1884252977)

§3.2 All persons employed by the Contractor in connection with the performance of the Work shall be employees of the Contractor, and neither the Contractor nor any such employees nor any subcontractors shall be deemed to be employees or agents of the Owner for any purpose whatsoever. The Contractor shall be at all times acting as an independent contractor hereunder, and not an agent or employee of the Owner, and shall be responsible as an independent contractor to the Owner. Nothing contained herein shall be construed to make the Contractor an agent or employee of the Owner or create any partnership, joint venture, or other association.

The key members of the Contractor's staff, which positions are enumerated in Article 3.9 of the General Conditions, shall be persons agreed upon with the Owner and set forth in the Schedule of Key Personnel attached hereto and made a part hereof as **Exhibit L** (the "Key Personnel"). Because the Key Personnel are critical to the success of the Project, and replacement of Key Personnel can result in delays, inefficiencies, additional costs and reduction of quality, Contractor shall not change the Key Personnel without the written consent of the Owner, unless such personnel become unable to perform any required duties due to death, disability or voluntary termination of employment with the Contractor by such personnel, in which event they shall be replaced as soon as possible. The Contractor acknowledges and agrees that the designation and dedication of the Key Personnel and their availability to work on this Project is a material inducement to the Owner entering into this Agreement. The Owner and Contractor shall agree on mutually acceptable substitute personnel, if any.

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.

[« X »] A date set forth in a notice to proceed or a limited notice to proceed, as applicable, issued by the Owner. The Owner may elect to issue a LNTP in order to allow Contractor to order certain long lead items. In such event, the date of commencement will be the date of the Notice to Proceed and not the date of any LNTP issued.

[« »] Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

« »

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

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

§ 4.2 The Contract Time shall be measured from the date of commencement of the Work up to and including the Substantial Completion Date. The Contractor agrees that the Owner will only grant an extension of the Contract Time when Work on the critical path is delayed by factors determined to be beyond the Contractor's control, as enumerated with greater particularity at Section 8.3 of the General Conditions. General Conditions costs as proscribed in Section 8.3 shall be capped at [_____].

§ 4.3 Substantial Completion

§ 4.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:
(Check one of the following boxes and complete the necessary information.)

[« »] Not later than « » (« ») calendar days from the date of commencement of the Work.

DRAFT

AIA Document A102™ – 2017. Copyright © 1920, 1925, 1951, 1958, 1961, 1963, 1967, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This draft was produced by AIA software at 12:35:33 ET on 08/22/2022 under Order No.3104236871 which expires on 05/27/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: AIA UserNotes (1884252977)

[« »] By the following date: « »

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

Portion of Work	Substantial Completion Date
[List Phased Milestones]	

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

ARTICLE 5 CONTRACT SUM

§ 5.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Contractor's Fee, which Contract Sum will not exceed the Guaranteed Maximum Price determined in Section 5.2.

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

« »

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

« »

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

« The total markup on Changed Work by Subcontractors of any tier shall not exceed 10% of the Cost of the Work for the Changed Work, and the total markup shall not exceed 20% across all subtiers. »

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

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

Item	Units and Limitations	Price Per Unit ($0.00)

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

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

[_____]

AIA Document A102™ – 2017. Copyright © 1920, 1925, 1951, 1958, 1961, 1963, 1967, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This draft was produced by AIA software at 12:35:33 ET on 08/22/2022 under Order No.3104236871 which expires on 05/27/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: AIA UserNotes (1884252977)

Owner and Contractor acknowledge and agree that the actual delay damages which Owner will suffer in the event of a delay in achieving Substantial Completion of all or a portion of the Project, are difficult, if not impossible, to determine and that the liquidated damages described herein are a fair, reasonable, and conservative forecast of the delay damages which the Owner is expected to suffer in the event of such delay, and that they do not constitute a penalty. The remedies for defaults other than delay of completion are contained in other provisions of the Contract Documents. Except as may be provided in Section 8.3.1 of the General Conditions, liquidated damages are the only damages for delay to which the Owner is entitled and are in lieu of and are not in addition to actual delay damages

If the liquidated damages set forth herein are determined by a court or arbitrator(s) of competent jurisdiction to be unenforceable, the Owner instead shall be entitled to recover those actual delay damages that it sustained as a result of the Contractor's failure to timely achieve Substantial Completion of the entire Work and each portion of Work identified herein by the applicable Substantial Completion deadline. The Owner's right to liquidated damages hereunder is self-executing and no prior notice or Claim by the Owner is required as a condition precedent to the Owner's right to offset liquidated damages from amounts otherwise due the Contractor or to otherwise pursue recovery of liquidated damages. If the Contractor disputes any liquidated damages to which the Owner asserts it is entitled, the Contractor may make a Claim in accordance with the terms of the Contract Documents.»

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

«**§ 5.1.7.1 Cost Savings** If at the time of Final Payment, the actual Cost of the Work and the Contractor's Fee is less than the Guaranteed Maximum Price, as such Guaranteed Maximum Price may be adjusted pursuant to the Contract Documents ("Savings") as follows: (i) if the Contractor has provided written evidence satisfactory to the Owner that Contractor has contracted with all subcontractors required to complete the Work (the "Subcontractor Buyout") on or before one hundred twenty (120) days after the execution of this Agreement (the "Buyout Period"), then sixty percent (60%) of the Savings shall accrue to the Owner and forty percent (40%) of the Savings shall accrue to the Contractor, or (ii) if the Contractor has not completed the Subcontractor Buyout during the Buyout Period, seventy-five percent (75%) of the Savings shall accrue to the Owner and twenty-five percent (25%) of the Savings shall accrue to the Contractor. For the avoidance of doubt, Allowances will not be included in the definition of Savings. The Owner shall pay any Savings due to Contractor at the time of final payment, and all unused Allowances will return to the Owner at the time of Final Payment.

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

§ 5.2.2 Alternates [HOC Note: If applicable, will become an exhibit]
§ 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

AIA Document A102™ – 2017. Copyright © 1920, 1925, 1951, 1958, 1961, 1963, 1967, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This draft was produced by AIA software at 12:35:33 ET on 08/22/2022 under Order No.3104236871 which expires on 05/27/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: AIA UserNotes (1884252977)

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

Item	Price

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

« See Exhibit B »

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

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

§ 5.2.7 At the time of Owner's approval of any Subcontract hereunder, any buyout savings (being the savings resulting from the difference between the Contractor's Schedule of Values and the amount of the contract amount from the Subcontractor's Subcontract) shall be transferred to the Buyout Contingency line item (with the savings referred to as the "Buyout Savings"). In the instance where the value of a Subcontract is above the Contractor's Schedule of Values for such item, Contractor may transfer the necessary amounts from the Buyout Contingency (being the positive amounts or Buyout Savings) to the line item or items where the estimate for each of such line items is under the actual cost to complete (being the negative amounts).

Contractor agrees that at all times hereunder it is obligated to keep the Cost of the Work "in balance". The Cost of the Work shall be deemed to be "in balance" when the sum of the Buyout Savings, the remaining Schedule of Values, the General Conditions and the Contractor's Fee is equal to or less than the Guaranteed Maximum Price. This Contingency Fund may be drawn upon by the Contractor to pay for a Cost of the Work, but only provided that (i) the Contractor provides the Owner with a written explanation of each requested draw upon the Contingency Fund, along with back-up documentation reasonably requested by the Owner, (ii) the Owner provides written authorization of each requested draw on the Contingency Fund, and (iii) each Application for Payment contains a report aggregating the Contractor's use of the Contingency Fund. The Contractor shall include the Contingency as a separate line item in the Schedule of Values, and upon the use of part of the Contingency, that part shall be allocated to the applicable line item of the Schedule of Values. In no event, however, shall the Contingency Fund be used for (a) General Conditions Costs & Categories, or Work performed by a related party, without the Owner's prior written consent, or (b) any cost incurred that is not a Cost of the Work. If at any time during the performance of the Work, there are not sufficient amounts in the Buyout Contingency to cover all of the negative amounts referred to above, Contractor agrees that it shall execute a Change Order necessary to allocate to the Buyout Contingency some or all of the Contractor's Fee and/or General Conditions to the extent necessary to cover in full all such negative amounts. If the Buyout Contingency, Contractor's Fee and General Conditions have been exhausted, Contractor shall then use reasonable efforts to work with Owner to develop and implement the necessary plan for Contractor to cover any such deficiency and bring the Cost of the Work back "in balance"; provided, however, in all events such plan shall be subject to Owner's prior written approval (which approval shall not be unreasonably withheld or delayed). In no event shall Owner be responsible for any Costs of the Work that are in excess of the Guaranteed Maximum Price, unless such costs are otherwise authorized or permitted under the Contract Documents.

§ 5.2.8 The Guaranteed Maximum Price includes all Work expressly indicated in the Contract Documents, or reasonably inferable therefrom, or consistent therewith, as necessary for the proper, timely, and orderly completion of the Work. If at any time or from time to time Owner reasonably believes that based on the progress of the Work and Cost of the Work that the Work cannot be completed for the Guaranteed Maximum Price, Owner shall have the

AIA Document A102™ – 2017. Copyright © 1920, 1925, 1951, 1958, 1961, 1963, 1967, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This draft was produced by AIA software at 12:35:33 ET on 08/22/2022 under Order No.3104236871 which expires on 05/27/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: AIA UserNotes (1884252977)

right to require Contractor, by written request, to provide Owner with satisfactory evidence of funds available to Contractor to pay any anticipated overage. Contractor shall, within ten days following receipt of the request from Owner, provide Owner with either (i) evidence reasonably satisfactory to Owner that the Work can be completed within the Guaranteed Maximum Price and the basis upon which Contractor believes this to be accurate or (ii) satisfactory evidence of funds available to make up any anticipated overage. If Owner, after reviewing the evidence submitted by Contractor pursuant to paragraph (i) herein, still reasonably believes that the Work cannot be completed for the Guaranteed Maximum Price, then Owner shall have the right to notify Contractor in writing of Owner's determination thereof and Contractor shall, within five days of receipt of Owner's written notice of this determination, provide Owner with satisfactory evidence of funds available to pay any anticipated overage as described in Owner's initial request for proof of funds. Contractor's failure to timely provide such satisfactory evidence to Owner of available funds shall constitute a default under this Agreement.

§5.3 COSTS IN EXCESS OF THE GUARANTEED MAXIMUM PRICE

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

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work may be determined by any of the methods listed in Article 7 of the General Conditions.

§ 6.2 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of the General Conditions, 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 this Agreement, unless the Owner has furnished the Contractor with prior written approval of the form and substance of a subcontract, in which case such adjustments shall be calculated in accordance with the terms and conditions of that subcontract. Subcontractors' mark-up for overhead and profit shall be limited as specified in Section 5.1.3.

§ 6.3 In calculating adjustments to the Guaranteed Maximum Price, unless the Owner and Contractor agree in writing to a lump sum amount, the terms "cost" and "costs" as used in Article 7 of the General Conditions mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Contractor's Fee as defined in Section 5.1.1 of this Agreement.

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

§6.4.1 For changes to the Work performed by the Contractor's own forces, (1) the Contractor shall receive a mark-up of [_____] percent ([_____]%) of the actual direct labor and material cost of the Additional Work as the Contractor's Fee, in accordance with Section 5.1.2, and (2) if the Additional Work causes an increase in the Contract Time, the Contractor shall receive its actual proven increase in the general conditions costs.

§ 6.4.2 For changes to the Work performed by a Subcontractor, (1) the Contractor shall receive a mark-up of [_____] percent ([_____]%)] of the amount owed to the Subcontractor for the performance of the Additional Work as Contractor's Fee, in accordance with Section 5.1.3, and (2) if the Additional Work causes an increase in the Contract Time, the Contractor shall receive its actual proven increase in the general conditions costs. When both additions and deletions covering related Work or substitutions are in any one change, the increase in the Contractor's Fee (or decrease, in the case of a net deductive change) shall be figured on the basis of the net increase or decrease, if any, with respect to the change.

AIA Document A102™ – 2017. Copyright © 1920, 1925, 1951, 1958, 1961, 1963, 1967, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This draft was produced by AIA software at 12:35:33 ET on 08/22/2022 under Order No.3104236871 which expires on 05/27/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: AIA UserNotes (1884252977)

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

§ 6.5 No change from the Contract Documents shall be undertaken without the prior review by the Architect and approval of the Owner. The Contractor shall be responsible for details of the Work necessary to carry out the intent of the drawings and specifications, or which are customarily performed. When more detailed information is required for performance of the Work or when an interpretation of the Contract Documents is requested, the Contractor shall submit a written request to the Architect and the Owner, and the Architect shall furnish such information or interpretation in the form of an Architect's Supplemental Instruction or other written form or drawing. Where only part of the Work is indicated, similar parts shall be considered repetitive. Where any detail is shown and components thereof are fully described, similar details not fully described shall be considered to incorporate the fully described details and components. In the case of inconsistency between drawings and specifications or within either document not clarified by Addendum, the better quality or greater quantity shall be provided in accordance with the Architect's interpretation at no extra cost to the Owner.

ARTICLE 7 COSTS TO BE REIMBURSED

§ 7.1 Cost of the Work

§ 7.1.1 The term "Cost of the Work" shall mean costs reasonably and 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 location of the Project, except with prior approval of the Owner. In the event Owner objects to a cost being higher than the standard paid at the location of the Project, the burden shall be on the Contractor to demonstrate that a cost is the standard paid at the location of the Project. The Owner reserves the right to exclude any cost for Work not in compliance with any requirements of the Contract Documents.

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

§ 7.2 Labor Costs

§ 7.2.1 Wages 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. The stipulated wages for such Contractor personnel, including costs paid or incurred by Contractor pursuant to Section 7.2.4, are set forth in **Exhibit P**.

§ 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, activities, and rates listed in **Exhibit P** or such additional personnel as are reasonably required and assigned to the Project with the written approval of the Owner.

§ 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, which such costs are included in the stipulated wages set forth in **Exhibit P**.

AIA Document A102™ – 2017. Copyright © 1920, 1925, 1951, 1958, 1961, 1963, 1967, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This draft was produced by AIA software at 12:35:33 ET on 08/22/2022 under Order No.3104236871 which expires on 05/27/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: AIA UserNotes (1884252977)

§ 7.2.5 Contractor and Owner have agreed to the rates for labor costs, in lieu of actual costs, as set forth in **Exhibit P** of this Agreement. Such agreed upon 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 and shall be properly stored at the Project site in accordance with the Owner's instructions or, at the Owner's option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 7.4.3 Owner bears no responsibility for the costs of the storage of Contractor's materials, whether onsite or offsite, if the Project is subject to any unforeseen delays.

§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items
§ 7.5.1 Costs, including transportation and maintenance, of all materials, supplies, equipment, temporary facilities, and hand tools (not owned by the workers) consumed in the performance of the Work. Any such items used but not consumed, which are paid for by the Owner, shall become the property of the Owner and shall be delivered to the Owner upon completion of the Work in accordance with instructions furnished by the Owner. If the Owner elects, however, the Contractor shall purchase any such items from the Owner at a purchase price equal to the original cost charged to the Owner, less the reduction in fair market value resulting directly from use of any such item in connection with the Work or such other price that is mutually acceptable to the Owner and the Contractor. Upon demand by the Owner, the Contractor shall furnish the Owner with any information and documentation necessary to verify the period of time for which such items were used in connection with the Work.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, 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. In no event shall the 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 sixty percent (60%) of its fair market value as of the date that such machinery or equipment is first put into service in connection with the Work. The Contractor shall pay any excess rental charges.**§ 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, provided that the Contractor's insurance and bond costs shall be reimbursed at the Contractor's cost without mark-up and shall not be included in the Cost of the Work for purposes of calculating the Contractor's Fee. For the avoidance of doubt, payment and performance bonds shall be billed at the actual cost of the bond and all other bonds required for the work shall be billed at the actual cost of the bond.

§ 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. Contractor's insurance program and other coverage requirements

DRAFT

AIA Document A102™ – 2017. Copyright © 1920, 1925, 1951, 1958, 1961, 1963, 1967, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This draft was produced by AIA software at 12:35:33 ET on 08/22/2022 under Order No.3104236871 which expires on 05/27/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: AIA UserNotes (1884252977)

under the modified A201 shall be billed at of the Cost of the Work, excepting builders risk and other project specific insurance which shall be billed based on actual costs incurred. Insurance and bond costs shall not be included in the Cost of the Work for purposes of calculating the Contractor's Fee.

§ 7.6.1.2 Intentionally Omitted.

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

§ 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Contractor is required by the Contract Documents to pay. The costs for inspection by a governmental authority are only a Cost of the Work for the initial inspection and one re-inspection; any cost for subsequent re-inspection is not a Cost of the Work and such cost shall be borne by the party necessitating the additional re-inspections.

§ 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 General Conditions or by other provisions of the Contract Documents.

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

§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Contractor resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Contractor had reason to believe that the required design, process or product was an infringement of a copyright or a patent, and the Contractor failed to promptly furnish such information to the Architect or Owner, as applicable, as required by Article 3 of the General Conditions, or Contractor infringed patent rights in any of the design elements delegated to Contractor under this Agreement. 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 and provided that Owner in its sole discretion, may retain such communications services, electronic equipment and software upon completion of the Work. Any electronic or security equipment installed or used at the Project must comply with Section 889 of the National Defense Authorization Act of 2019.

§ 7.6.7 Costs of document reproductions and delivery charges, to the extent costs for reproduction of documents and delivery charges are not caused by the actions of the Contractor, a Subcontractor, or anyone for whom either is responsible.

§ 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 Intentionally Deleted.

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

§ 7.6.11 That portion of the reasonable expenses of the Contractor's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work provided that no repair or maintenance cost will be included and if approval for such expenses has been provided by Owner in advance and in writing (which may be in the form of an email from any of Owner's Representatives).

§ 7.6.12 Temporary utility fees and costs including, but not limited to, water, sewer, steam, gas, oil, and temporary power costs shall be paid separately by the Contractor and are included in the Cost of the Work.

AIA Document A102™ – 2017. Copyright © 1920, 1925, 1951, 1958, 1961, 1963, 1967, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This draft was produced by AIA software at 12:35:33 ET on 08/22/2022 under Order No.3104236871 which expires on 05/27/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: AIA UserNotes (1884252977)

§ 7.6.13 All costs and fees associated with protection and repairs of adjoining property (except to the extent such repairs are made necessary by the fault, act or omission of the Contractor or another for whom the Contractor is responsible), and rental property for storage of materials to be incorporated in 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 the General Conditions, to the extent not (i) caused by the Contractor, a Subcontractor, or anyone for whom either is responsible or (ii) capable of being prevented through timely notice of an unsafe condition to the Owner.

§ 7.7.3 Intentionally Deleted.

§ 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, meals, tangible goods including garments, or celebratory events paid to anyone hired by the Contractor or paid to any Subcontractor or vendor, unless the Owner has provided prior written approval;

.3 Expenses of the Contractor's principal office and offices other than the site office;

.4 Contractor's and subcontractor's overhead and general expenses, except as may be expressly included in Article 7;

.5 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work;

.6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Contractor, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;

.7 Any cost not specifically and expressly described in Article 7; and

.8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

.9 Fines other than those due to the acts or omissions of Owner or its agents, including any fines levied on or costs incurred by Contractor or fines or costs incurred by Owner due to Contractor's actions or failure to act for traffic violations, OSHA violations, or other violations of the law (collectively, the "Violations");

.10 Consultants to the Contractor not previously approved, in writing, by Owner;

AIA Document A102™ – 2017. Copyright © 1920, 1925, 1951, 1958, 1961, 1963, 1967, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This draft was produced by AIA software at 12:35:33 ET on 08/22/2022 under Order No.3104236871 which expires on 05/27/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: AIA UserNotes (1884252977)

.11 Matters between Owner and Contractor and any of its Subcontractors or suppliers requiring legal representations;
.12 Amounts required to be paid by Contractor for federal, state or local income or franchise taxes;
.13 Other cost, damages, or expenses specifically excluded elsewhere in the Contract Documents;
.14 Overtime wages or salaries (and fringe benefits related thereto) incurred by the Contractor as a result of the Contractor's failure to perform the Work in a timely manner in accordance with the Project Schedule set forth on Exhibit E, unless the Contractor has received the Owner's prior written consent to incur overtime;
.15 Insurance deductibles or self-insured retentions.
.16 Cost to repair or correct damaged or non-conforming Work executed by the Contractor, Subcontractors, or suppliers; and
.17 Soft costs incurred as a result of improper planning by the Contractor (e.g., repeat inspections by design or third party consultants as a result of non-conforming work or work not complete).

§ 8.2 The items listed in Section 8.1 shall not comprise the Cost of the Work and shall not be cause for any increase in the Guaranteed Maximum Price, and the Contractor shall not submit any Application for Payment or claim for reimbursement for any items in Section 8.1

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. The Contractor shall not obtain for its own benefit any discounts, rebates, material price decreases, or refunds in connection with the Work prior to providing the Owner with seven (7) days' prior written notice of the potential discount, rebate, or refund and an opportunity to furnish funds necessary to obtain such discount, rebate, material price decrease, or refund on behalf of the Owner in accordance with the requirements of this Section 9.1.

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

ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS

§ 10.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or other appropriate agreements with the Contractor. The Owner may designate specific persons from whom, or entities from which, the Contractor shall obtain bids. The Contractor shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Contractor shall deliver such bids to the Architect and Owner. The Contractor shall, as soon as practicable, provide the Owner with a list of all prospective bidders for subcontracts to perform any portion of the Work, with an indication as to which bids the Contractor intends to accept. The Owner then has the right to review the Contractor's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 10.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Contractor of its responsibility to perform the Work in accordance with the Contract Documents. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection. In no event shall the Contractor enter into a subcontract without the approval of the Owner. The Contractor shall not delegate any portion of the Work subject to this Contract to any entity without the approval of the Owner. The Contractor shall obtain approval from the Owner if the Contractor does not want to select the lowest bidder for initial award of that subcontract scope. Contractor shall provide Owner with copies of all subcontract bids and supporting documentation for all changes to the Work. A minimum of three bids must be obtained from potential subcontractors bidding to supply labor or materials with an aggregate contract value in excess of $100,000.00 (or which are engaged in a trade critical to the Project as determined by the Owner) (the "Key Subcontractors"). Selection of Key Subcontractors is subject to the Owner's reasonable approval. The Contract Time shall not be adjusted due to the requirement of obtaining Owner approval of a Subcontractor unless the Contractor

AIA Document A102™ – 2017. Copyright © 1920, 1925, 1951, 1958, 1961, 1963, 1967, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This draft was produced by AIA software at 12:35:33 ET on 08/22/2022 under Order No.3104236871 which expires on 05/27/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: AIA UserNotes (1884252977)

timely submitted the request for approval and Owner's delay in providing approval resulted in a delay to Work on the critical path.

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

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

§ 10.3 The Contractor shall disclose to the Owner, in writing, any trade Work that the Contractor wishes to perform with the Contractor's own forces and whether the Contractor, its officers, directors or any person related to them has an ownership interest in a proposed Subcontractor, Sub-subcontractor, fabricator or supplier. Except as otherwise agreed in writing by both parties hereto, the Contractor must competitively bid any trade Work that the Contractor wishes to perform with the Contractor's own forces, or through a related party as defined in Section 7.8, and shall obtain no less than two (2) additional responsive bids from responsible Subcontractors acceptable to the Owner. The Contractor, or related party, shall be permitted to perform such trade Work only if (i) the Owner consents thereto in writing after full disclosure in writing by the Contractor to the Owner of the affiliation or relationship with the related party to the Contractor, (ii) the Owner approves in writing any subcontract, contract, purchase order, agreement, or other arrangement between the Contractor and such related party in form and substance, and (iii) the Contractor has given due consideration to any applicable MBE/WBE and EEOC requirements. In no event will the Contractor be permitted to charge any overhead, profit, or other form of markup or fee as a general contractor for trade Work performed with its own forces or a related party, including, without limitation, the Contractor's Fee under Section 5.1 of this Agreement. Any trade Work performed by the Contractor's own forces or by a related party, if required by the Owner, shall be covered in a separate agreement between the Owner and the Contractor or the related party.

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

§ 10.5 The Contractor shall provide all notices required or permitted by the laws of the state in which the Project is located for protection of the Owner from liens and claims of lien if permitted or required by Applicable Law. The Contractor shall be responsible for filing in the appropriate court or other governmental office records all such notices as required or permitted by the laws of the state in which the Project is located. The Contractor shall provide the Owner with copies of all notices received by the Contractor from subcontractors, sub-subcontractors, and/or suppliers to the Contractor.

§ 10.6 As further detailed in Section 5.3 of the General Conditions, the Contractor shall incorporate the terms of this Agreement into each subcontract entered into by the Contractor for the purpose of obtaining labor, services, or materials for performance of the Work, such that the provisions of the Contract Documents "flow down" and bind the Subcontractor to the extent applicable to the Subcontractor's scope under the subcontract. The Contractor shall also require that each of its Subcontractors and materials suppliers incorporate the terms of this Agreement into their respective subcontracts related to the Project.

ARTICLE 11 ACCOUNTING RECORDS

§ 11.1 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, the Owner's Lender,

AIA Document A102™ – 2017. Copyright © 1920, 1925, 1951, 1958, 1961, 1963, 1967, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This draft was produced by AIA software at 12:35:33 ET on 08/22/2022 under Order No.3104236871 which expires on 05/27/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: AIA UserNotes (1884252977)

the Owner's auditors and any AHJ and any of their respective auditors, underwriters, and authorized representatives, if requested, 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 (3) years after final payment, or for such longer period as may be required by law and shall make them available to the Owner at all reasonable times at the office of the Contractor, or at such other location as mutually agreed upon, without charge to the Owner.

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

ARTICLE 12 PAYMENTS

§ 12.1 Progress Payments

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

§ 12.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

§ 12.1.3 Contractor shall provide a Draft Application for payment on or before the twenty third (23) day of the month at each OAC meeting and a properly completed Final Application for Payment on the twenty fifth (25) day of the month, together with all supporting documentation and information required by the Contract Documents, is received by the Architect and Owner not later than the twenty-fifth «25th» day of a month, the Owner shall make payment of the amount certified to the Contractor and approved by the Owner not later than the thirtieth «30th» day of the following month. If an Application for Payment, and all supporting documentation and information required by the Contract Documents, is received by the Architect and Owner after the application date fixed above, payment of the amount certified and approved shall be made by the Owner not later than «forty-five » («45») days after the Architect and Owner receive the Application for Payment.

§ 12.1.4 With each Application for Payment, the Contractor shall submit lien releases in the applicable form set forth on Exhibit F and as satisfactory to Owner and Owner's Lender, payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner 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. Contractor shall also prepare and submit a time impact analysis to illustrate potential delays and schedule impacts within fourteen (14) days prior to the end of each month. The Contractor shall submit to the Owner before the first Application for Payment, all certificates of policies of insurance required by the Contract Documents and a listing of all known Subcontractors and material suppliers.

§ 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. An updated project schedule and monthly report shall be submitted with the Application for Payment or the pay request will be rejected by the Owner.

AIA Document A102™ – 2017. Copyright © 1920, 1925, 1951, 1958, 1961, 1963, 1967, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This draft was produced by AIA software at 12:35:33 ET on 08/22/2022 under Order No.3104236871 which expires on 05/27/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: AIA UserNotes (1884252977)

§ 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 Owner may require. The most recent approved 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 and will be required to have the approval of the Owner prior to re-allocating costs.

§ 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 General Conditions and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 12.1.7.1 Subject to other provisions of the Contract Documents, 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 and provided that proper supporting documentation has been provided, including,

1) Bill of Sale
2) Certificate of insurance
3) Photographic Documentation
4) Certificate of Title Transfer to Owner
5) Any other documentation required by Owner or Lender**;**

.3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified and with Owner's approval; and

.4 The Contractor's Fee, computed upon the Cost of the Work described in the preceding Sections 12.1.7.1.1 and 12.1.7.1.2 at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 12.1.7.1.1 and 12.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

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

.1 The aggregate of any amounts previously paid by the Owner;

.2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of the General Conditions;

.3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;

.4 For Work performed, non-conforming Work, 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 the General Conditions;

AIA Document A102™ – 2017. Copyright © 1920, 1925, 1951, 1958, 1961, 1963, 1967, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This draft was produced by AIA software at 12:35:33 ET on 08/22/2022 under Order No.3104236871 which expires on 05/27/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: AIA UserNotes (1884252977)

.5 The shortfall, if any, indicated by the Contractor in the documentation required by Section 12.1.4 and 12.1.13 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; and

.7 Other amounts properly withheld by the Owner.

§ 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.)

«Ten percent (10%) until the Project reached 50% completion, at which time 5% will be withheld on subsequent work.»

§ 12.1.8.1.1 The following items are not subject to retainage:

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

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

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

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

«Requests for retention reduction shall be released with respect to Subcontractors who have completed their work, at the reasonable discretion of the Owner on a case by case basis. »

§ 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 unless and until the Owner notifies Contractor that written approval of release of retainage has been received by the Owner from the Owner's Lender.

Upon Substantial Completion of the Work, retainage with respect to the Work shall be reduced to an amount equal to 150% of the value attributable to any punchlist work, outstanding claims or liens, and any incomplete work as estimated by the Architect and Owner's representative. The remaining retainage will be released proportionately as the punchlist work is completed and claims are resolved. As punchlist items are completed, payments withheld on account thereof shall be paid to the Contractor on a monthly basis as set forth above. There shall be no retainage on Contractor's Fee, insurance costs, bond costs, General Conditions Costs and Contractor direct purchase of materials and equipment.

§ 12.1.9 If final completion of the Work is materially delayed through no fault of the Contractor and justified as such, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of the General Conditions.

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

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

§ 12.1.12 In taking action on the Contractor's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor, and such action shall not be deemed to be

AIA Document A102™ – 2017. Copyright © 1920, 1925, 1951, 1958, 1961, 1963, 1967, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This draft was produced by AIA software at 12:35:33 ET on 08/22/2022 under Order No.3104236871 which expires on 05/27/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: AIA UserNotes (1884252977)

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.

12.1.13 As an express condition precedent to the Owner's obligation to make any progress payment to the Contractor, the Contractor must provide the following:

- **.1** A fully executed Application for Payment using AIA Documents G702 and G703, or such other form as is approved by the Owner, based on the approved schedule of values;
- **.2** A certification by the Contractor that all amounts previously paid by the Owner to the Contractor have been used to pay the amounts owed by the Contractor to Subcontractors and suppliers for labor, services and materials provided for the Work through the date which the Contractor has been paid by the Owner;
- **.3** A duly executed Interim Waiver And Release Upon Payment in the form attached hereto as **Exhibit F**, effective through the date of the Contractor's current Application for Payment to be paid, from the Contractor and each Subcontractor and supplier that has provided a notice to Owner and Contractor and, at the Owner's request, from all other Subcontractors and suppliers who have performed work for or have provided labor, services or materials to the Project;
- **.4** A separate written acknowledgement of payment in full, through the last date the Owner has paid the Contractor, from each Subcontractor and supplier, in form and substance satisfactory to the Owner;
- **.5** All new Change Orders executed since the last progress payment and the Change Order Log, including a list of any Change Orders contemplated or under negotiation at the date of such payment request;
- **.6** Copy of monthly progress report;
- **.7** An updated schedule of values and cash flow projections;
- **.8** A consent of surety, if required by Owner in its sole discretion;
- **.9** All required evidence of the insurance identified in the Contract Documents (to the extent not previously provided); and
- **.10** Such other information, documentation and materials the Owner, Architect, Owner's Lender, if any, any AHJ, or the title company responsible for issuing endorsements to the Owner's lender's title policy may reasonably require.

Each Subcontractor and supplier waiver required by preceding subsections 12.1.13.4 and 12.1.13.5 must indicate it covers all work performed through the same work cut-off date specified in the Contractor's corresponding Sworn Statement and specify an amount matching the corresponding amount specified for the subcontractor or supplier in the Contractor's Sworn Statement.

§ 12.1.14 Each Application for Payment shall constitute a certification and representation by the Contractor to the Owner that: (i) the construction has progressed to the point indicated; (ii) the quality of the Work covered by the Application is in accordance with the Contract Documents; (iii) the draw requests and supplier invoices delivered by the Contractor to the Owner identify all Subcontractors and suppliers providing labor, services or materials to the Contractor for performance of the Work and the amounts owed to each Subcontractor and supplier; (iv) duly executed waivers and releases have been obtained from all Subcontractors and suppliers for work done and materials furnished through the last date of payment from the Owner for such Subcontractors and suppliers; (v) the Contractor is entitled to payment in the amount requested; (vi) such Application represents a just estimate of cost reimbursable to Contractor under the terms of the Contract Documents; (vii) such Application has not been front-end-loaded either by the Contractor or by any of its Subcontractors (including placing a value on a line item that is in excess of its cost, increasing unit prices on early completed items while decreasing unit prices on later completed ones, and/or inflating the percentage of completion on line items); (viii) there are no liens or claims outstanding or known to exist at the date of the Application; and (ix) all due and payable bills with respect to the Work have been paid to date or included in the amount requested in the current Application, and there is no known basis for the filing of any construction liens or claims or any other lien or claim on the Work. If any lienors under the Contractor, including Subcontractors, Sub-subcontractors, material suppliers or laborers, entitled to assert a lien against the Owner's property refuse to furnish a release or waiver required by the Owner, payment may be withheld by Owner on

DRAFT

AIA Document A102™ – 2017. Copyright © 1920, 1925, 1951, 1958, 1961, 1963, 1967, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This draft was produced by AIA software at 12:35:33 ET on 08/22/2022 under Order No.3104236871 which expires on 05/27/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: AIA UserNotes (1884252977)

account thereof while the remainder is paid, unless the Contractor furnishes a bond satisfactory to the Owner to indemnify the Owner (and its lender, if any) against such lien.

§ 12.1.15 The Contractor shall not submit any Application for Payment which seeks payment for any Cost of Work payable to a Subcontractor or supplier that the Contractor does not intend to pay to the Subcontractor or supplier. If after receipt of any payment for Cost of Work performed by a Subcontractor or supplier the Contractor determines to withhold payment from any Subcontractor or supplier, in whole or in part, the Contractor shall adjust for such amount on the subsequent Application for Payment, unless the Owner's lender requires return of such amount, in which event the Contractor shall promptly return such amount to the Owner.

§ 12.2 Final Payment

§ 12.2.1 A final payment of unpaid amounts of the Cost of Work and Contractor's Fee shall be due in accordance with the payment schedule set forth above upon final completion, approval, and acceptance of the Work by the Owner as recommended by the Architect and all governmental agencies and authorities having jurisdiction over the Work or the Project, receipt of all certifications as to the completeness of the Work and all lien releases and waivers. Without limiting the generality of the foregoing, final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

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

.2 a final Certificate for Payment has been issued by the Architect;

.3 all punch list items have been completed or an escrow account has been established or a maintenance bond provided for 1.5 times the value of the Work not yet complete as agreed by the Architect, Owner, and Contractor; and

.4 the following items have been received by the Owner, to the Owner' satisfaction:

a. An executed Contractor's Final Release and Waiver of Liens and Claims conditioned only upon receipt of payment. Such final payment application shall be accompanied by executed Subcontractor/Supplier's Final Release and Waiver of Liens and Claims in the form for all Subcontractors and Suppliers conditioned only upon receipt of payment whose agreements with Contractor exceed the contract amount of $10,000.00;

b. All guarantees and warranties required by the Contract Documents, assignment from the Contractor to the Owner of all guarantees and warranties from Subcontractors, vendors, suppliers, and manufacturers, and a list of the names, addresses and telephone numbers of all Subcontractors and any other entities providing these guarantees or warranties;

c. Manufacturer's installation manual with manufacturer's specifications for install in order to obtain valid warranty;

d. Operating manuals;

e. Consent of surety;

f. A Certificate of Occupancy; and

g. As-built drawings, where appropriate.

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

.6 the Contractor has delivered a "Cost Certification" if required by an AHJ, in accordance with the instructions and form required by an AHJ, in both hard copy format and electronic files; and

.7 the Contractor has delivered such other information, documentation and materials the Owner, Architect, Owner's lender, if any, any AHJ, or the title company responsible for issuing endorsements to the Owner's lender's title policy may reasonably require.

§ 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

AIA Document A102™ – 2017. Copyright © 1920, 1925, 1951, 1958, 1961, 1963, 1967, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This draft was produced by AIA software at 12:35:33 ET on 08/22/2022 under Order No.3104236871 which expires on 05/27/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: AIA UserNotes (1884252977)

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 the General Conditions. The time periods stated in this Section 12.2.2 supersede those stated in Article 9 of the General Conditions. The Architect is not responsible for verifying the accuracy of the Contractor's final accounting.

§ 12.2.2.3 If the Owner's auditors' 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 the General Conditions. A request for mediation shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Contractor. Pending a final resolution of the disputed amount, the Owner shall pay the Contractor the amount certified in the Architect's final Certificate for Payment.

§ 12.2.3 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, , and fulfillment of the other conditions for Final Payment as set forth in Article 9.10 of the General Conditions.

§ 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.

§ 12.2.5 In addition to its other obligations specified in the Contract Documents, the Contractor shall cooperate with and provide information necessary for the Owner to comply with any cost certification requirements of the Owner's Lender and each AHJ. Contractor shall provide cost certification by a third party accountant within forty-five (45) days of final walk-through and acceptance of work by the Owner, Architect, and the Owner's Lender.

§ 12.3 Interest
Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.
(Insert rate of interest agreed upon, if any.)

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

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

§12.4.2 At the option of the Owner, partial or final payment will not be payable or due in the event that any of the following conditions exists: (1) Contractor fails to make proper applications for payment; (2) this Contract between Owner and Contractor is in material breach; (3) any insurance required of Contractor ceases to be effective and in force; or (4) failure to comply with any reasonable requirement of Owner's Lender of which Contractor has prior written notice. Additionally, Owner may delay any and all payments due Contractor, either for reimbursable Costs, Contractor's Fee or otherwise, until Contractor shall have submitted satisfactory evidence to Owner that all payrolls, material bills, and other indebtedness connected with the Work for which Contractor has been paid, have been paid

AIA Document A102™ – 2017. Copyright © 1920, 1925, 1951, 1958, 1961, 1963, 1967, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This draft was produced by AIA software at 12:35:33 ET on 08/22/2022 under Order No.3104236871 which expires on 05/27/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: AIA UserNotes (1884252977)

by Contractor or its subcontractors. The aggregate amount of any payment that the Owner is permitted to withhold or delay under the terms of this §12.4.2 shall not exceed one hundred and fifty percent (150%) of the amount necessary to reasonably compensate Owner for the adverse economic impact on Owner of the claimed failure of performance by Contractor. If a lien is filed by any subcontractor, laborer, or materialmen, except to the extent the Owner has properly withheld payment for the Work in accordance with the terms of this Agreement, Contractor shall be solely responsible for the amount of the lien plus any and all incidental costs and shall cause the lien to be extinguished and canceled or bonded around, so that such lien shall not constitute a cloud, lien, or encumbrance against the ownership of the Project by Owner. Further, Owner, upon receipt of written notice that liens may be claimed by any third party pertaining to the Work, has the right to make payment jointly on behalf of the Contractor or its subcontractor to such third party, provided the Owner gives Contractor contemporaneous written notice of making such payment.

ARTICLE 13 DISPUTE RESOLUTION

§ 13.1 Initial Decision Maker

The Architect will serve as Initial Decision Maker pursuant to Article 15 of General Conditions, unless the parties appoint below another individual, not a party to the Agreement, to serve as Initial Decision Maker.

§ 13.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by the Initial Decision Maker or mediation pursuant to Article 15 of the General Conditions, the method of binding dispute resolution shall be as follows:
(Check the appropriate box.)

[« X »] Litigation in a court of competent jurisdiction. With respect to any "judicial proceedings" by and between the parties, it is hereby agreed that they shall be commenced only in: (a) the Circuit Court of Montgomery County, Maryland; or (b) in the United States District Court for the District of Maryland (Greenbelt Division), and the parties do hereby consent to both personal jurisdiction and venue in and to proceedings brought in any such court which has competent subject matter jurisdiction.

[« »] Other *(Specify)*

« »

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

§ 13.3 WAIVER OF JURY TRIAL

WITHOUT DEROGATION OF THE ELECTION OF ARBITRATION AS THE METHOD OF BINDING DISPUTE RESOLUTION, THE OWNER AND THE CONTRACTOR HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM INVOLVING ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH (A) THIS AGREEMENT OR THE CONTRACT DOCUMENTS, (B) THE PROJECT, (C) THE WORK, (D) ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR (E) ANY ACTION OF EITHER PARTY. THE WAIVERS SET FORTH IN THIS SECTION ARE MADE KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY BY BOTH PARTIES. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE OWNER AND THE CONTRACTOR IN AGREEING TO ENTER INTO THIS AGREEMENT.

§ 13.4 ATTORNEYS' FEES

In any suit, action, arbitration or other proceeding arising out of or in any manner relating to this Agreement or the Contract Documents, including: (a) the enforcement or interpretation of either party's rights or obligations under this Agreement or the Contract Documents, whether in contract, tort, or both, or (b) the declaration of any rights or obligations under this Agreement or the Contract Documents, the prevailing party, as determined by the court or the arbitrator(s), shall be entitled to recover from the losing party Attorneys' Fees. For purposes of this Section, "Attorneys' Fees" shall mean all reasonable fees and disbursements, including disbursements that would not otherwise be taxable as costs in the proceeding, which are incurred by a party, including all legal assistants',

DRAFT

AIA Document A102™ – 2017. Copyright © 1920, 1925, 1951, 1958, 1961, 1963, 1967, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This draft was produced by AIA software at 12:35:33 ET on 08/22/2022 under Order No.3104236871 which expires on 05/27/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: AIA UserNotes (1884252977)

paralegals', experts' and law clerks' fees and all fees incurred through all post award or judgment and appellate levels and in connection with bankruptcy, and collection proceedings (post judgment and otherwise).

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

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

ARTICLE 14 TERMINATION OR SUSPENSION

§ 14.1 Termination

§ 14.1.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of the General Conditions.

§ 14.1.2 Termination by the Owner for Cause

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

.1 Take the Cost of the Work incurred by the Contractor to the date of termination;

.2 Add the Contractor's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;

.3 Subtract the aggregate of previous payments made by the Owner and other amounts, if any, properly withheld by the Owner pursuant to the Contract Documents; and

.4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of the General Conditions.

§ 14.1.2.2 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 the General Conditions, then the Owner shall pay the Contractor a termination fee as follows:
(Insert the amount of or method for determining the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)

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

§ 14.2 Suspension

The Work may be suspended by the Owner as provided in Article 14 of the General Conditions; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of the General

AIA Document A102™ – 2017. Copyright © 1920, 1925, 1951, 1958, 1961, 1963, 1967, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This draft was produced by AIA software at 12:35:33 ET on 08/22/2022 under Order No.3104236871 which expires on 05/27/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: AIA UserNotes (1884252977)

Conditions, except that the term "profit" shall be understood to mean the Contractor's Fee as described in Article 5 and Section 6.4 of this Agreement.

§ 14.3 The Contractor shall not be entitled to any portion of Savings if the Owner terminates this contract for cause or if the Contractor terminates this Agreement for any reason prior to Substantial Completion.

ARTICLE 15 MISCELLANEOUS PROVISIONS

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

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

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

§ 15.2.1 The Owner's Representative shall represent the Owner and, except as otherwise provided in the Contract Documents, communications given by the Contractor or Contractor's Representative to the Owner's Representative shall be deemed given to the Owner. Important communications given to the Owner's Representative shall be confirmed in writing by the Contractor or Contractor's representative. Other communications shall be similarly confirmed on written request in each case. The Owner's representative is authorized to sign Change Orders and Construction Change Directives on behalf of Owner; however, all Change Orders and Construction Change Directives must be approved in writing by an authorized employee of the Owner.

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

« »
« »
« »
« »
« »
« »

§ 15.3.1 The Contractor's Representative shall represent the Contractor and, except as otherwise provided in the Contract Documents, communications given by the Owner or Owner's Representative to the Contractor's Representative shall be deemed given to the Contractor. Important communications given to the Contractor's Representative shall be confirmed in writing by the Owner or Owner's representative. Other communications shall be similarly confirmed on written request in each case. The Contractor's representative shall be authorized to sign Change Orders on behalf of Contractor. The Contractor's representative shall not be changed without ten days' prior written notice to the Owner.

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

§ 15.5 Insurance and Bonds

§ 15.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in the General Conditions Exhibit A to this Agreement, and elsewhere in the Contract Documents.

AIA Document A102™ – 2017. Copyright © 1920, 1925, 1951, 1958, 1961, 1963, 1967, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This draft was produced by AIA software at 12:35:33 ET on 08/22/2022 under Order No.3104236871 which expires on 05/27/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: AIA UserNotes (1884252977)

§ 15.5.2 The Contractor shall provide bonds as set forth in Exhibit A to this Agreement, and elsewhere in the Contract Documents.

§ 15.6 Notices.

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

To Owner:

[Owner Entity]
Housing Opportunities Commission
10400 Detrick Avenue
Kensington, MD 20895
Attn: President/Executive Director
Email: notice@hocmc.org

With copy to:

[Owner Entity]
Housing Opportunities Commission
10400 Detrick Avenue
Kensington, MD 20895
Attn: Office of General Counsel
Email: notice@hocmc.org »

To Contractor:

[TO BE INSERTED]

§ 15.7 Other Provisions

§ 15.7.1 Drawing Sets. Throughout the execution of the Work, the Contractor shall be responsible to maintain reproducible copies of marked-up "as-built" drawings of all Work performed as part of this Agreement. These "as-built" drawings shall be made available by the Contractor for inspection by the Owner and Architect with adequate prior notice being provided. These drawings shall be in sufficient detail to show the full extent of the Work that was performed by the Contractor Parties, and to facilitate the operation and maintenance of the buildings and facilities. The Architect will upon request provide a set of CADD drawing files for the use by the Contractor, its subcontractors and sub-subcontractors in the development of the "as-built " drawings. The Contractor agrees to accept the CADD files in the condition provided by the Architect. The acceptance of these CADD files by the Contractor Parties constitutes an agreement by them to hold the Owner and Architect harmless for any damages that result from any modifications of the Architect's drawings by the Contractor Parties. Contractor shall provide two (2) electronic sets of red-lined as-built drawings, as well as return of the County-approved set of drawings with the final Application for Payment.

§ 15.7.2 Conflicts. The intent of the parties is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary and what is required by one shall be as binding as if required by all subject to the order of precedent set forth below. In the event of any conflict,

AIA Document A102™ – 2017. Copyright © 1920, 1925, 1951, 1958, 1961, 1963, 1967, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This draft was produced by AIA software at 12:35:33 ET on 08/22/2022 under Order No.3104236871 which expires on 05/27/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: AIA UserNotes (1884252977)

inconsistency, or discrepancy among the Contract documents, and unless otherwise provided in the Contract Documents, the conflict, inconsistency, or discrepancy shall be resolved by giving precedence to the Contract Documents in the following order:

1) Amendments executed by the Parties after execution of this Agreement that explicitly supersede this AIA A101-2017 or the Contractor's Clarifications
2) Other Amendments executed by the Parties after execution of this Agreement
3) This Agreement (AIA A101-2017)
4) AIA A201-2017 (the General Conditions)
5) The Drawings (large scale drawings govern over small-scale drawings)
6) The Specifications
7) All remaining Exhibits to this AIA A102-2017
8) Contractor's Clarifications (Exhibit B)
9) All other Contract Documents.
10) Those requirements from Request for Proposal No. [_____] issued [_____], as amended or supplemented, and any addendums issued thereto.

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

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

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

2. Contractor shall promptly furnish to Lender such documentation related to the Work as the Lender may reasonably request from the Contractor.

3. Contractor shall participate in Lender scheduled monthly field program meetings at the Project site with representatives of the Lender.

4. Contractor shall furnish to the Lender such documents as the Lender may reasonably request to support Applications for Payment submitted by the Contractor.

5. If requested by the Lender with respect to any Contractor Application for Payment, the Contractor shall provide waivers of liens and copies of accepted invoices indicating payment has been made to each of Contractor's subcontractors and suppliers for all prior Applications for Payment.

6. Contractor shall provide to Lender copies of final releases of liens from the Contractor and its subcontractors and materialmen who performed work or supplied materials to the Project.

7. Contractor shall permit Lender and its agents at all times during normal business hours with advance notice to Contractor to have the right to inspect all work done, and materials, equipment and fixtures furnished, installed, or stored by Contractor in and about the Project site. However, at all such times while Lender and/or its agents are on the Project, due to safety regulations they must be accompanied by one of Contractor's onsite staff and be wearing all required personal protective equipment.

8. Contractor shall provide Lender with evidence reasonably satisfactory to Lender that any off-site materials to be funded by Lender financing, have been appropriately insured and inspected; and stored in secure, bonded warehouses prior to Lender disbursing any funds for such materials.

DRAFT

AIA Document A102™ – 2017. Copyright © 1920, 1925, 1951, 1958, 1961, 1963, 1967, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This draft was produced by AIA software at 12:35:33 ET on 08/22/2022 under Order No.3104236871 which expires on 05/27/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: AIA UserNotes (1884252977)

[9. If required by the Lender, Contractor shall provide to Lender evidence satisfactory to Lender that all laborers and mechanics employed by Contractor or any of its subcontractors have been paid prevailing wages as required by the Davis Bacon Act and that all subcontracts comply with all labor standards and provisions of 20 C.F.R. Parts 1,3, and 5.]

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

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

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

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

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

§ 15.7.9 Governmental Requirements. See Exhibit J (HOC Requirements) for additional terms that are hereby incorporated into this Article 15.

§ 15.7.10 Compliance with Prevailing Wage Laws.
§ 15.7.10.1 If required by applicable Maryland or Montgomery County law and in accordance with any requirements set forth in Exhibit J, Contractor will provide to Owner evidence satisfactory to Owner that all laborers and mechanics employed by Contractor or any of its subcontractors have been paid prevailing wages pursuant to Maryland and/or Montgomery County Law and all subcontracts comply with all labor standards required under such laws.

§ 15.7.10.2 If required by the Lender and in accordance with any requirements set forth in Exhibit J, Contractor shall provide to Lender evidence satisfactory to Lender that all laborers and mechanics employed by Contractor or any of its subcontractors have been paid prevailing wages as required by the Davis Bacon Act and that all subcontracts comply with all labor standards and provisions of 20 C.F.R. Parts 1,3, and 5.

§ 15.7.10.3 If required by applicable Maryland or Montgomery County law and in accordance with any requirements set forth in Exhibit J, Contractor will provide to Owner evidence satisfactory to Owner that all laborers and mechanics employed by Contractor or any of its subcontractors have been paid minimum wages pursuant to Maryland and/or Montgomery County law and all subcontracts comply with all labor standards required under such laws.

§ 15.7.11 Consent. Wherever the Contract Documents provide that the Owner must consent to or approve an item, or where a decision is in Owner's discretion, the Owner agrees that unless a different standard is explicitly stated in the relevant provision, Owner will not unreasonably withhold such consent or approval and a decision will be made in Owner's reasonable discretion. Wherever the Contract Documents provide that the Contractor must consent to or

AIA Document A102™ – 2017. Copyright © 1920, 1925, 1951, 1958, 1961, 1963, 1967, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This draft was produced by AIA software at 12:35:33 ET on 08/22/2022 under Order No.3104236871 which expires on 05/27/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: AIA UserNotes (1884252977)

approve an item, or where a decision is in the Contractor's discretion, the Contractor agrees that unless a different standard is explicitly stated in the relevant provision, Contractor will not unreasonably withhold such consent or approval and a decision will be made in Contractor's reasonable discretion.

§ 15.7.12 Site Utilization Plan. Contractor will comply with the site utilization plan set forth on **Exhibit O**.

ARTICLE 16 ENUMERATION OF CONTRACT DOCUMENTS

§ 16.1 This Agreement is comprised of the following documents:

This Document A102™–2017, Standard Form of Agreement Between Owner and Contractor	
Exhibit A	Insurance and Bonds
Exhibit B	Contractor's Clarifications
Exhibit C	AIA Document A201™–2017, General Conditions of the Contract for Construction, as modified by the Owner and Contractor
Exhibit D	Scope of Work (List of Drawings and Specifications)
Exhibit E	Project Schedule
Exhibit F	Forms of Lien Waivers
Exhibit G	Project Budget
Exhibit H	Alternates, Unit Prices, and Allowances
Exhibit I	Sample Application for Payment
Exhibit J	HOC Requirements
Exhibit K	Payment and Performance Bonds
Exhibit L	List of Contractor's Project Team Personnel
Exhibit M	Phasing Plan
Exhibit N	Major Subcontractor List
Exhibit O	Contractor's Site Utilization Plan
Exhibit P	Wage Schedule

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

OWNER *(Signature)*	**CONTRACTOR** *(Signature)*
« »« »	« »« »
(Printed name and title)	*(Printed name and title)*

DRAFT

AIA Document A102™ – 2017. Copyright © 1920, 1925, 1951, 1958, 1961, 1963, 1967, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This draft was produced by AIA software at 12:35:33 ET on 08/22/2022 under Order No.3104236871 which expires on 05/27/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes: AIA UserNotes (1884252977)